A DISSERTATION

On

“RIGHT OF VICTIMOLOGY IN INDIA”

SUBMITTED TO PARTIAL FULLFILMENT OF
THE REQUIRMENT FOR THE DEGREE OF
(LL.M)

Batch: 2019-2020

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2019-20

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DECLARATION

I, **Ramesh Chander Pandey,** student of LL.M. (Corporate and comercial Law), School of Legal Studies, **Babu Banarasi Das University**, declare that the work embodied in this LL.M. Dissertation is my own bonafide work, carried out by me, under the supervision of **Prof**. **Dr. T.N. Prasad** (Head & Dean, School of Legal Studies, BBDU). The matter embodied in this dissertation has not been submitted previously for the award of any degree or diploma in any other University or Institute.

I declare that I have faithfully acknowledged, given credit, and referred to the authors wherever their works have been cited in the dissertation.

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ACKNOWLEDGEMENT

I acknowledge the heartfelt thanks to the School of Legal Studies, **Babu Banarasi Das University**, to provide me the opportunity to complete my dissertation for the Partial Fulfillment of the Degree in Master of Law.

I am thankful to my Supervisor Prof. Dr. TN Prasad, for not only helping me to choose the dissertation topic but also for his valuable suggestions and co-operation till the completion of my dissertation. He provided me every possible opportunity and guidance and being a support in completing my work.

I also thank to all the respondents without whom this study would have never been completed.

I am thankful to everyone from core of my heart.

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ABBREVIATIONS

1.	ACJ	Accidents Claims Journal,
2.	ACC	Accidents Compensation Cases
3.	AJR	Accidents Judicial Reports
4.	AI Hin L Rtr	All India Hindu Law Reporter
5.	AILLR	All India Land Law Reporter
6.	AIR	All India Reporter
7.	AIR(SC)	All India Reporter (Supreme Court)
8.	All Cr LJ	Allahabad Criminal Law Journal
9.	BC	Banking Cases
10.	CLR	Calcutta Law Reporter
11.	CAR	Criminal Appeal Reporter
12.	CLC	Criminal Law Cases
13.	HCJ	High Court Judgments (Hindi)

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1.1 Introduction

Victims of crime are important players in criminal justice administration both as complainant/informant or as witnesses for the police/prosecution. Despite the criminal justice system being heavily dependent on the victim, it has however been more concerned with the offender and his interests almost subordinating or disregarding the interest of victim. In the civil law system generally the victims enjoyed a better status in administration of justice. Towards the last quarter of the twentieth century, the common law realized the adverse consequences arising from this inequitable situation and enacted laws giving rights of participation and compensation to the victims. In the Constitution of many countries, victims' rights have been recognized by making necessary changes in criminal justice procedures. Victim's participation in plea bargain negotiations has been shown to contain their vengeful instincts, decrease their assessment of the system being too lenient on criminals and inculcate feeling of fairness in the whole process. Increased victim satisfaction will in effect enhance the efficiency of the criminal justice system by ensuring his future support to the system.[1]

In the context of criminal justice system there are victims of crime and also victims of abuse of power. These days, the study of criminal law would remain incomplete without taking into consideration the circumstances and situation of the victim. The victim is one of the central figures in the criminal process that deserves the attention of the society. The criminal justice system, without the cooperation of the victim of crime and victims of abuse of power cannot work. The victim has due concerns in the administration of criminal justice. Victim puts forward complaint to competent authority and sets the criminal law into motion. During trial he provides relevant evidence to the court and is principal witness. "*Witnesses*" as Bentham said "*are the eyes and ears of justice*". If the victim/witness is incapacitated from acting as the eyes and ears of justice, the trial gets paralysed and cannot be called as a fair trial.

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[1] Justice Malimath Committee Report (2003) on Criminal Justice Reforms constituted by the Government of India (Ministry of Home Affairs, New Delhi), available at: http://mha.nic.in/pdf/criminal_justice_system.pdf.

Universally efforts are being made by the States collectively and independently to enhance the role of the victims in the criminal justice system. Major amendments have been made in the criminal procedures to advance various rights to such victims of crime. The involvement of the victims of crime is required for reporting of crime, investigation of the case, trial of accused, determining the sentencing and even in aftermath of the sentencing i.e. restoration and rehabilitation of victim and also the convict. A number of studies have proved that while some victims may prefer not to report the crime, or set the criminal law in motion for some obvious reasons, there are others who actively participate in the criminal proceedings against the offender. Globally it is felt that there is a need to provide victims their participatory rights to secure justice, restitution and rehabilitation. Many countries have assured to specifically accord participatory rights to the victims of crime.[2]

1.2 Victimology – Meaning and Concept

The word "victimology" has been derived from a Latin word *Victima* and a Greek word *Logos* which means science of victims. The term was developed by a French lawyer in the middle of twentieth century[3]. It is basically a study of crime from the point of view of victims suffering from physical injury or economic loss. Defining Victimology Marvin E. Wolfgang stated that victimology is the scientific study of the victims and process of etiology and consequences of victimisation.

Victimology is relatively a new study in the field of criminal law. Victimology is concerned with the role of victims in the criminal justice system, their rights and deals with protecting their dignity and human values. Victimology is an academic scientific discipline which studies data that describes phenomena and causal relationships related to victimizations. This includes events leading to the victimization, the victim's experience, its aftermath and the actions taken by society in response to these victimizations. Therefore, victimology includes the study of the

[2] Robert C. Davis et al., *Victims of Crime,* Sage Publications, U.S.A, 2007, p. 278.
[3] The term Victimology was developed by Benjamin Mendelson.

precursors, vulnerabilities, events, impacts, recoveries, and responses by people, organizations and cultures related to victimizations[4].

Victimology is the thorough study and analysis of victim characteristics and may also be called as 'victim profiling'. The reason why victimology is important is that the victim constitutes roughly half of the criminal offence and as such, is as much part of the crime as the crime scene, weapons and eye witnesses. This is especially true when we are presented with a live victim and may be able to provide the best behavioural and physical description of the offender[5].

Victimology helps in gaining knowledge of consequences, impact of crime on victims of crime. Getting full and adequate information pertaining to various needs of victims is the foremost requirement for providing an effective criminal justice system. Crime victims often suffer physical, financial and psychological trauma that persists long after their victimization. Intense and concrete feelings of dejection, distress, anger, fear, anxiety, isolation, low self-esteem, helplessness, sleep disturbances, alienation, emotional distress, other anxiety-related symptoms and depression are common reactions after the commission of a crime against the victim. Victimization put the concerned victim in a state of dilemma and the mind of victim thus lose its equilibrium resulting in further deterioration of health both mental and physical. Therefore a meaningful study on victimology needs to focus on all these significant facets pertaining to criminal justice system to meet the ends of criminal justice system on the whole.

The study of victimology attempts to discuss victims in various crime situations like victims of violent crimes, victims of Socio-Economic offences, victims of terrorism, victims of organized crimes, victims of international crimes, victims of vulnerable class like women victims of sexual offences, sexual harassment, domestic violence, acid attack, trafficking, prostitution, outraging the modesty of women, victims of voyeurism, stalking etc., child victims of abuse, trafficking, child pornography, prostitution, child exploitation etc, victims of disadvantaged class like poor, socially/educationally backward. 'Vulnerability and Fragility' refers to those conditions whether it be a physical, psychological, social, economic condition wherein a person or a group of

[4] John P. J. Dussich, Associate Professor, Criminology Department, California State University, Fresno and Director, Tokiwa International Victimology Institute, Tokiwa University Victimology Graduate School, Japan, "131st International Senior Seminar Visiting Experts' Papers", Resource Material Series no. 70, available at: www.unafei.or.jp.
[5] Prakash Talwar, *Victimology*, Isha Books Publishers, New Delhi, (2006), p. 1.

persons has weaknesses which would make them more fragile. It means those sections of the society which are more prone to be victimized as women and children.

Victimology helps in knowing the causation of victimizations, commonly referred as 'Victimogenesis'. It simply refers to the factors relating to the origin of victimization. Similarly it also provides basis for the study of contributory factors relating to victimization. That is commonly known as 'Victim Precipitation' which means study of situations where the victim causes, directly or indirectly, wholly or partly, their own victimization. 'Victimization' refers to an incident or an event whereby grave violation of human rights takes place where human beings, communities and institutions are damaged or injured. Human ethics and human rights violation leads to a situation wherein feelings of hatred destroy the moral fabric of the society. Human rights aim to protect the dignity of all human beings and unity and integrity of a nation. Human rights are not the gift of any high authority. The law only recognize and regulate them.The study of victimology also provides basis to study law and its various aspects pertaining to securing justice to victims of crime. Victimology is more concerned with protection of human dignity, human values, human ethics, code of conduct in society and rights of an individual which must be protected in the society by the agency of State.

The study of victimology provides for an initiative to put the victim in the same position as was enjoyed by the victim prior to his/her victimization. It is the duty of the State and the society to again bring the feelings of mutual trust after victimization. This is also known as victim-offender reconciliation, restorative justice, victim-offender dialogue, victim-offender conferencing, victim-offender mediation. The victim and the offender are joined by their family members, community members or other socially respectable persons. Under this process, the offender and the victim talk to each other about the crime, the effects of such crimes relating to victimization and the effects it had on their lives of the victims and their family members.

Victimology is concerned with wide range of issues concerning victims. It investigates the relationship between the offender and victim/victims. It also deals with the process of victimisation, of being a victim, and in this context directs much of its attention to the problems and miseries of victim. The victim suffers short-term or long-term damage of an economic, a social, a physical, mental or moral nature, a damage which is almost totally overlooked by institutionalised social control, such as Law, Courts, Public Prosecutors and last but not the least

by the system itself. The victim of crime is remarkably reluctant to openly put forward demands for his redress or relief for violation of his rights[6].

1.3 Interrelationship of Criminology, Penology and Victimology

The concept of crime is not new it is rather quite old. We can say crime existed right from the start of mankind. The old societies were having certain traditions and rules which were followed by the communities. 'A tooth for tooth and an eye for an eye', the theory of retribution/retaliation/vengeance etc. was present in some of the primitive societies. Miller says that a crime is the commission or omission of an act which the law forbids or commands under the pain of punishment by the State by the proceedings under its own name. Law, according to Austin is the command of the sovereign. So a wrong which is pursued by the sovereign or his subordinates is a crime.[7] Kenny says that crimes are wrongs whose sanction is punitive and in no way remissible by a private person; but is remissible by crown alone, if remissible at all.[8]

In the traditional societies, private vengeance rule was there in which the burden of protection against crimes and of punishing the offenders rested with the individuals against whom the offence had been committed. It was only after the societies got organized that crime was taken as an act against the society as a whole and against the State as particular. Now, it is the society and State which is considered to be the proper authority to bring the culprit to book.

In medieval period human thinking was dominated by religious mysticism and human relations were controlled and regulated through myths, superstitions and religious beliefs. Little attention was given to motive, environment, psychology of the offender in the causation of crimes and relatively less concern was shown towards the victims of crime and abuse of power. This situation prevailed till the end of seventeenth century. Thereafter, with the change of human thinking, the concept of crime was altogether changed as more reference was started to be given to the real crime causations and providing proper attention towards the victims of crime and abuse of power[9]. Thus finally it paved the way for a new branch of knowledge that today is known as victimology.

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[6] Hari Om Gautam, *Victims of Crime and the Law*, Regal Publications, New Delhi, 2011,
[7] Lectures on Jurisprudence, XXVII.
[8] Kenny, *Outlines of Criminal Law*, The Macmillan Company, New York, 1907.
[9] N.V. Paranjape, *Criminology and Penology with Victimology*, Central Law Publications, Allahabad, 2012, pp. 40-48.

It all started with the development in the field of criminology which ultimately leads towards the attention of the society towards victim oriented studies. The father of modern criminology, Cesare Bonesana Marchese De Beccaria, an Italian criminologist, started studying the systematic and scientific study of criminology for the very first time. He started the scientific study of criminals. He gave concrete results of his scientific investigation.

In Europe, the seventeenth and eighteenth century was dominated by religion and church was having the maximum powers. In political sphere, thinkers such as Hobbes and Locke were concentrating on social contract as the basis of social evolution. Scientific knowledge was at rudimentary stage. The concept of crime was not understood in a scientific manner, it was rather vague and obscure. There was a general belief that man's actions were controlled by some super natural power as man himself was not able to do the concerned act termed as an offence. It was generally believed that man commits crime due to influence of some external spirit called 'demon' or 'devil'. Thus an offender commits crime due to influence of that external factor which was called as super power. No attempt was made to probe into the real cause and the factors of crime causations. The Pre-classical thinkers considered crime and criminals as an evidence of the fact that the individual was possessed of some evil. These thinkers considered that the super spirit is present everywhere and they considered the omnipotence of spirit. Trial by battle was common mode of deciding the fate of criminal. The right of the society to punish the criminal was, however, well recognized[10]. The offender was regarded as a person who could only be cured by torture and pain and suffering as ultimately the concerned soul is benefited thereby[11].

In India, since the time of Manu it has been repeatedly argued that trials by ordeals are the creation of Brahma and have been practiced by gods, great sages and all thoughtful persons. Medhatiti further pointed out that ordeals have worked very efficiently. In India judgment by Divine Ordeal was given in Yajnavalkya Smiriti i.e by fire, water, poison, balance and Kosa.

During the middle of eighteenth century Cessare Beccaria gave his theory of criminality by rejecting the hypothesis that the evil spirit is present everywhere in the universe. His study

[10] Criminology Teaching Material prepared by Ms. Glory Nirmala, under the sponsorship of the Justice and Legal System Research Institute, 2009, available at http://ethiopianlaw.weebly.com/uploads/5/5/7/6/5576668/ criminology.pdf.
[11] *Supra* note 9.

proved that the mind of an individual plays an important role in the commission of a crime and attributed the concept of free will of an individual in the commission of a crime. He further emphasized the Pain and Pleasure Theory. According to him a man has power of reasoning, with this power he is distinguished from other creatures of nature. Only the act is to be seen and not the intention of the offender. It is the physical act of an individual and not his criminal mind which resulted into the commission of crime or a wrong. The offender takes pleasure by giving pain to other persons. So pain is also to be inflicted on him. So, indirectly victim concern studies initiated thereby. Prevention of crime is better than punishing a person as it served no purpose.

The theory developed by Beccaria was due to the writing of the people like Rousseau, Montesque, Bacon and Hume. His work, Essays on Crimes and Punishment received worldwide recognition. He raised his voice against severe penalties as torture or abuse of power and death penalty. The major shortcoming of the theory is that it was based on the hypothesis of free will. He relied only on the physical act/wrong committed by a person without putting any attention to the guilty mind of the said person. Further Beccaria supported the concept of equal punishment for same offence thus making no distinction between first offenders and the recidivists or habitual offenders who deserved more punishment for the repetitive crime.

Due to the major short comings in free will theory, it did not survive and soon it was felt that treating first offenders and the recidivists alike, a big mistake was committed. Certain wrongdoers in the society such as minors, idiots, insane or incompetent had to be treated leniently irrespective of the similarity of their criminal act because these people were incapable of appreciating the difference between right and wrong[12].

With the development of behavioural sciences, the monogenetic explanation of human conduct lost its validity and a new trend to study the genesis of crime was adopted. By the nineteenth century, certain French doctors were successful in establishing that it was neither free will of the offender nor his innate depravity which actuated him to commit crime but the real cause of criminality lay in the anthropological features of the criminal[13]. The main exponents of this school were three eminent Italian criminological jurists, namely, Cesare Lombroso, Raffaele Garofalo and Enrico Ferri.

[12] Retrived from http://www.slideshare.net/aika92TD/sharon-classical-and-neoclassical-schools.
[13] *Supra* note 10.

Lombroso was the first criminologist who made an attempt to understand the personality of offender in physical terms. He employed scientific methods in explaining criminal behaviour and shifted the emphasis from crime to the criminal. His theory was that the criminals were physically different from normal people and possessed few physical characteristics of inferior animal world. Goring, Gabriel Tarde etc. had criticized him because it is sought of foolish thing to convict a person only on the basis of his appearance. This theory vanished with the passage of time. The assumption that there is some nexus between atavism and criminal behaviour had no scientific basis. Criticising Lombrosian theory, Professor Sutherland observed that by shifting attention from crime as a social phenomenon to crime as an individual phenomenon, Lombroso delayed for fifty years the work which was in progress at the time of its origin and in addition, made no lasting contribution of its own[14].

Enrico Ferri (1856-1928) believed that factors such as emotional reactions, social infirmity or geographical conditions also play a vital role in determining criminal tendencies in men. His main contribution is his work, *The Law of Criminal Saturation*. This theory presupposes that the crime is the synthetic product of three main factors: geographical, anthropological, psychological or social. Ferri proved that mere biological reasons were not enough to account for criminality. He firmly believed that other factors such as emotional reaction, social infirmity or geographical conditions also play a vital role in determining criminal tendencies in man. He emphasized that criminal behaviour is the outcome of various factors having their combined effect on the individual. According to him the social change which is inevitable in a dynamic society, results in disharmony and conflict. As a result of this social disorganization takes place. In a wake of such rapid social changes, the incidents of crime are bound to increase. The heterogeneity of social conditions destroys the congenial social relationship, creating a social vacuum which proves to be fertile ground for criminality[15].

More recently, with the development of human psychology there is greater emphasis on the study of emotional aspect of human nature. This branch of knowledge has enabled modern criminologists to understand the criminal behaviour of offenders in its proper perspective. Professor Gillin, has therefore, rightly remarked that the theory of modern clinical school on the side of crimogenesis presupposes offender as a product of his biological inheritance

[14] *Supra* note 10.
[15] *Supra* note 9.

conditioned in his development by experiences of life to which he has been exposed from infancy upto the time of commission of crime. Thus, clinical school takes into account variety of factors. It further suggests that the criminals who do not respond favourably to correctional measures must be punished with imprisonment or transportation for life while those who are only victims of social conditions should be subjected to correctional methods such as probation, parole, reformatories, open-air-camps etc. Thus briefly speaking, individualization has become the cardinal principle of criminology. The main theme of clinical school is that personality of man is a combination of internal and external factors, therefore, punishment should depend on the personality of the accused[16].

As civilization advanced, new ideas regarding individual rights and duties towards fellow human beings developed and crime was considered as crime against society and the State. The sociological aspect about the evolution of society is that first of all individual came into being then families thereafter clans, after that society and then the State (earlier it was police State but now the concept of welfare State is there). One of the basic criticism against the present system is that it has failed to protect the society against rising incidents of crime[17].

Victimology is the latest branch of criminology which deals with the study of victims who suffer at the hands of wrongdoer. Criminology is the study of crime and criminals. It aims at discovering the causes of criminality and effective measures to fight against crimes. Penology is associated with criminal justice policies pertaining to punishments, modes of punishments, forms of punishments etc. Victimology, according to some thinkers is a branch of criminology which is concerned with victims of crime. Though there is an interrelation between criminology, penology and victimology, yet there is need to give specific attention to study victimology.
As such, issues in victimology, are central to the victim and is required to be studied in the wider conspection of criminal justice system along with criminology and penology. The adjective law of evidence and procedural law required to respect rights and assure meaningful remedies to the victims in a dignified manner.

[16] *Ibid.*
[17] An address by Justice S. Rajendra Babu, Chairperson, NHRC, on the Foundation Day Function of National Human Rights Commission (12th October, 2007) at FICCI Golden Jubilee Auditorium, New Delhi.

1.4 Historical Developments in Victimology

The European countries suffered countless hardships in the shape of deaths and loss to property during Second World War. After the end of war some eminent scholars started exploring the concept of victimology as an independent study other than criminology. The scientific and technical research pertaining to victimology can be traced back to 1950. Till then the criminologists were focusing their attention towards the wrong doers and crimes itself. Then the criminologist shifted their focus towards the victims of crime and abuse of power. People like Mendelson and Von Hentig, started the research in that direction and began to study the vic tims of crime.[18]

In 1960s movements pertaining to victim compensation and rehabilitation started across the globe. In Europe, the Convention on the Compensation of Victims of Violent Crimes, 1983 incorporated the essential rights of victims. The Council of Europe recommended changes and modifications in criminal justice by incorporating victim's rights in every stage of criminal proceedings. Following this recommendation, many countries enacted laws aimed at providing increased participation of the victims of crime in the criminal justice process. For example, the *Criminal Injuries Compensation Act*, 1995 of the U.K., the *Victim and the Witness Protection Act*, 1982 of the USA, the *Victims' Rights and Restitution Act*, 1990 of the USA, etc. In an informative report "*Criminal Justice: The Way Ahead*" presented to the British Parliament in February 2001, the UK Home Department made the following recommendation for reforms in the criminal justice system with the observation:

> We will put the needs of victims and witnesses at the heart of the criminal justice system and ensure they see justice done more often and more quickly. We will support and inform them, and empower them to give them best evidence in the most secure environment possible[19]

The history of crime is very old and crime existed since time immemorial. According to some philosophers Civilization is supposed to have come into existence from that very day when man started thinking that he is naked. It is from then that the concept of crime has evolved. The earlier

[18] K.B. Agrawal (Prof.) and R.K. Raizada, (Prof.), *Modern Thoughts on Victimology and Crimes, A Comparative Study*, University Book House Pvt. Ltd., Jaipur, 1997, p. 1.

[19] "Witness Protection Rights, Needs and Benefits Required to Ensure Effective Victim Testimony" by Justice M. Jagannadha Rao, available at: http://www.sabrang.com/cc/archive/2005/dec05/humanrights.html.

societies had some rituals and customs which were followed by all members of the respective society. 'A tooth for tooth and an eye for an eye', the theory of retribution or retaliation or vengeance etc. was present in old days.

In ancient times, the Babylonian Code of Hammurabi (more than four thousand years old) is often taken as the first legal Code that provides even compensation to the victims. The position of victim was that the victim was given priority over the offender. Each crime included different modes of restitution. Like if a theft of goods in transit was

committed then the restitution was five times more than the amount of goods, like wise if criminal breach of trust was committed by an employee he was bound to make restitution three times more than the amount. There were also provisions, that if the thief was not traced or identified, then the State has to pay the amount of restitution if the victim had itemized his property in the presence of God[20]. (The legal document also provides that if the brigand has not been taken, the man plundered shall claim before God what he has lost; and the city and sheriff in whose land and boundary the theft has taken place shall restore to him all that he has lost). The Code of Hammurabi also provided that if a man has committed robbery and is caught then the punishment of death is to be given. But if he is not caught then the city mayor shall replace whatever the man who was robbed had lost provided the robbed man declare what he lost in the presence of God. And if in the process of robbery the death has been caused then the city mayor to provide one munch of silver to his heirs.

The penal processes adopted by many countries for years relied mainly on the deterrent and retributive aspects of punishments. In some situations law was such as to compensate the victim and not to provide severe punishment to the offender. And in those cases the state plays the role of arbitrator. In the codes of all archaic civilisations, the amount of redress was to be fixed as per the discretion adopted by the injured party. The penal laws were more akin to the law of torts. The person injured proceeds against the wrongdoer by an ordinary civil action, and recover money damages if he succeeds22.Therefore many offences as theft, assault, libel, slander etc were treated as torts wherein compensation was paid to the victims if he succeeds in proving damages to them.

[20] *Supra* note 6 at pp. 54-55.

During the eleventh century, the victim had a key position in common law and was responsible for the apprehension, charge and prosecution of offenders. This system was known as private prosecution and the victims controlled every aspect of judicial process including punishment (Kirchengast, 2006). This was referred as the golden age of the victims as they exercised their rights and played major role in the criminal justice process. The Saxons and the Germans introduced the use of wergild, which means that they renounced a vendetta after a murder or serious bodily injury, provided that the offender compensated the victim or his family (Schaffer, 1968; Alline, 2001). The agreement between the offender and victim or his clan put an end to any further violence. But 13th century witnesses the decline of the victim's role and rights. There were thoughts that the crime was primarily against the society rather than an individual. So aftermath the commission of crime the payment of compensation was to be paid by the offender rather than by the State. From the 17th Century onwards, parliamentary sovereignty grew and the king becomes less influential personally. Instead he was seen as a figure of sovereignty. Laws were passed by legislature and were no longer passed by a king alone[21].

There is no society in the world without crime. The concept of law is essentially concerned with the maintaining of law and order situation and can be said to have been started with the jurisprudential aspect of Social Contract Theory. Under that theory two pacts were signed and these are first, pactum unionis (agreement between the general crowd to live together) and the second, pactum subjectionis (agreement between subjects and the King under which subjects surrendered some of their rights to the King whose ultimate duty was to protect them under whatever circumstances). Crime is considered as a wrong the remedy of which is the punishment of the offender at the instance of State or the society. It is therefore, considered as an offence against the society and ultimately against the State.

In India, Manu (ancient law giver) clearly says that if limb is injured or a wound is caused or blood flows, the assailant shall be made to pay for the expenses incurred on cure as a whole. He further says that he who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to the damage[22]. To make it more clear the maxim-tooth for tooth and an eye for an eye based on the retributive theory of punishment gives the

[21] G.S. Bajpai, Criminal Justice System Reconsidered, Victim & Witness Perspectives, Serial Publications, New Delhi, 2012, pp. 2-3.
[22] The Laws of Manu in Manusmruthi, Chapter VIII, verse 287, available at: www.legalserviceindia.com.

victim a kind of relief to satisfy his/her vengeance by punishing the wrong doer. The compensation to crime victim is not considered a punishment to the offender. It has been an obligation on the part of the society to re-impose faith and confidence on the victim which was lost due to the offender's act of delinquency and crime.

The protection of the human dignity is the responsibility of the State machinery. It is the State which is responsible for the protection of all human beings and unity and integrity of a nation. If the human dignity of an individual is not respected that means that the individual might be victimized. The violation of human ethics and code of conduct often leads to anarchy. The institution of State is having the sole responsibility to maintain law and order situation. If it is so only then the peace and security can be maintained. The obligation to protect life, liberty and property of the citizens is on the institution of State. State is thus duty bound to protect the citizens and to put the offender behind the bars and to bring him to book. According to Martin Luther King injustice anywhere is threat to justice everywhere. Justice is not only to be delivered but also must be shown to have been delivered. If any where there is violation of standard norms of society that would mean that there would be chaos. It simply means that threat to justice has been posed and such a situation will also adversely affects the law and order situation and would result in great loss to human life and property resulting in injustice and victimization.

1.5 National and International Developments in Victimology

During the past thirty years efforts have been made to initiate victim orientation schemes by the Western countries for rehabilitation, protection and financial assistance to the victims of crime and to prevent abuse of power. Only recently, long after the Second World War as a result of the activities of certain progressive thinkers and activists in various advanced countries, like the U.K., Canada, U.S.A., Australia and New-Zealand, the focus has marginally shifted towards the unfortunate victim, who generally is the most affected party in the crime and also the party who naturally deserves redress. Just to take an example: Canada-Manitoba enacted the *Justice for the Victims of Crime Act*, 1986. New-Zealand also enacted the *Victims of Offences Act*, 1987. In U.K., the *Criminal Justice Act*, 1988 has made new provisions for payment of compensation by

the Criminal Injuries Compensation Board. In U.S.A., the *Victims of Crime Act*, 1984 is made part of the federal law.[23]

The United Nations General Assembly on 29th November, 1985 made a Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopting national and international perspectives pertaining to the rights of victims of crime and victims of abuse of power. It was also declared that offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. This Declaration has been described as 'Magna Carta' of rights of victims' worldwide.

Various international documents like the International Bill of Human Rights (that includes *Universal Declaration of Human Rights* (UDHR) 1948, *the International Covenant on Civil and Political Rights*, 1966, the *International Covenant on Economic Social and Cultural Rights*, 1966) the *International Convention on the Elimination of All Forms of Racial Discrimination*, 1963, the *Convention on the Rights of the Child*, 1989, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* adopted by United Nations Assembly (1985) etc. provides for various rights to vulnerable groups as well as individuals. The Declaration of 1985 defines the victim irrespective of the status of the offender. A victim is a victim irrespective of the status of the perpetrator of a crime. The said document of 1985 was produced by the Commission on Crime Prevention and Criminal Justice of the United Nations.

In India recently various developments are noticed in the criminal justice system like Fair Trial, Speedy Justice, Public Interest Litigation, Plea Bargaining, Witness protection, Free Legal Aid, Judicial Activism etc. speaking about fairness in the Criminal Justice Process. Most part of the Indian Criminal Law was codified by the Britishers during colonial rule by enacting three major criminal law statutes viz: the *Indian Evidence Act*, 1872, the *Indian Penal Code*, 1860, the *Codes of Criminal Procedure*, 1861, 1872, 1882 and 1898 (now the *Code of Criminal Procedure*, 1973). These laws are amended from time to time to meet the challenges. There are also Special and Local laws which deal with various issues pertaining to victims for example: The *Immoral Traffic (Prevention) Act*, 1956, the *Dowry Prohibition Act*, 1961, the *Indecent Representation of Women (Prohibition) Act*, 1986, The *Commission of Sati Prevention Act*, 1987, the *Protection of*

[23] Justice A.S. Anand, (Dr.), Judge Supreme Court of India, Shri P. Babulu Reddy Foundation Lecture on "Victims of Crime – The Unseen Side", (1998) 1 SCC (Jour) 3.

Women from Domestic Violence Act, 2005). The *Constitution of India*, 1950 guarantees certain fundamental rights to citizens that are enforceable by the judiciary. Recently the *Criminal Law(Amendment) Act*, 2013 has included penal and procedural provisions keeping in view the need to protect the victims.

Judicial Trends: In the violation of human rights, the Supreme Court of India has also emphasised the need for compensation in various judicial pronouncements[24].The courts in India while Sentencing the accused with imprisonment do impose fine. But with long term imprisonment the fine was treated to be burden on convict's family27. As such there was also a trend to increase fine by reducing the terms of imprisonment[25]. Presently with the introduction of Section 357 and 357A in the *Code of Criminal Procedure*, 1973 new compensatory jurisprudence has emerged. The apex court has emphasised that trial court must take into account the need to compensate victim on the conviction of accused as a mandatory consideration[26]. The Supreme Court has specifically issued guidelines for the awarding of compensation to rape victim. The court issued directions to constitute Criminal Injuries Compensation Board.

1.6 Restorative Justice through Compensation and Rehabilitation

Western countries adopted schemes for payment of victim compensation and enacted laws on this topic. New-Zealand was the first country to adopt victim compensation scheme in 1963. United Kingdom followed New-Zealand and introduced Criminal Injuries Compensation Scheme in 1964 to provide ex-gratia compensation to victims of specific crimes. The Criminal Injuries Compensation Board was constituted to administer compensation scheme. In Australia, State of New South Wales was the first State to enact legislation in this respect, and Queens Land, South Australia and Western Australia followed it in 1968, 1969 and 1970 respectively. The State of Victoria enacted more comprehensive law in 1972, and the other States followed. In

[24] See *Rudal Shah* v. *State of Bihar, (1983) 4 SCC 141, Sebastian M. Hongray* v. *Union of India AIR 1984 SC 571, Saheli* v. *Commissioner, AIR 1990 SC 513, Padmini* v. *State of Tamil Nadu, 1993 Cri LJ 2964, Civil Liberties and Human Rights Organisation* v. *P.L. Kukerty 1988 (2) G.L.R. 37, Susheela v. State of Karnataka, 1991 Cri LJ 2675, P.V. Kapoor* v. *Union of India 1992 Cri LJ 128, P.U.D.R.* v. *Union of India, AIR 1987 SC 355, Nilabati Bahera* v. *State of Orissa AIR 1993 SC 1960.*

[25] See *Nand Ballabh Pant* v. *U.T. of Delhi, AIR 1977 SC 892, Prabhu Parsad Sah* v. *State of Bihar, AIR 1977 SC 704, Brijlal* v. *Premchand, AIR 1989 SC 1661, Venkatesh* v. *State of Tamil Nadu, 1993 Cri LJ 61, Madhukar Chander* v. *State of Maharashtra 1993 Cri LJ 3281.*

[26] See *Munish Jalan* v. *State of Karnataka, AIR 2008 SC 3074, Ankush Shivaji Gaikwad* v. *State of Maharashtra, AIR 2013 SC 2454* (Courts are bound to consider award of compensation. The word 'may' should be read as 'shall' in Section 357), *Suresh* v *State of Haryana*, Criminal Appeal No. 420 of 2012.

the USA it was the State of California, in the year 1965, to legislate on victim compensation; most of the other States also followed California. The Federal Government of the USA also enacted (1) The *Victim and Witness Protection Act*, 1982, (2) The *Victims of Crimes Act*, 1984 which were enforceable throughout the country[27].

The *Indian Penal Code*, enacted in 1860 as such did not contain any provision for awarding compensation to the victim. However, under offences against property, Chapter XVII, the stolen property if recovered is liable to be returned to the victim/owner. The *Code of Criminal Procedure*, 1898 contained Sections 545 and 546 which empowered the trial court to award relief to the victim in the form of compensation to the victims to be paid out of fine imposed on the accused when he was convicted and sentenced. But the payment was allowed only when the judgment became final, subject to recovery of the fine. The *Code of Criminal Procedure*, 1898 has been thoroughly revised and re-enacted as the *Code of Criminal Procedure*, 1973. Provisions of Sections 545 and 546 of the old Code were included as such in the new Code as Sub-Sections (1), (2) and (5) of Section 357 and Sub-Sections (3) and (4) were newly inserted to make Section 357 more victim friendly. The new provisions are meant to be dealt with those offences where, fine is not part of the substantive punishment and to enhance the discretionary powers of the trial/appellate courts to award compensation. Section 357-A has been newly inserted by the *Code of Criminal Procedure (Amendment) Act*, 2008. This Section provides for a scheme for providing funds by the State Government in co-ordination with the Central Government to provide compensation to the victim of crime or his dependents who have suffered any substantial loss or any injury as a result of an offence. Further by the *Criminal Law (Amendment) Act*, 2013, new Sections i.e. Section 357B and 357C have been added. Section 357B provides for compensation to be in addition to fine under Section 326A or Section 376D of the *Indian Penal Code*, 1860. Section 357C provides that all hospitals, public or private, whether run by Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A, 376, 376A, 376B, 376C 376D or Section 376E of the Indian Penal Code and shall immediately inform the police of such incident.

[27] V.N. Rajan, *Victimology in India*, Ashish Publishing House, New Delhi, 1995, pp. 17-85.

1.7 Rights of Victims

The victim of crime is an informant to lodge FIR. A victim of crime after the commission of an offence has the choice either to lodge First Information Report with the police regarding the cognizable offence or approach the court through a complaint. Sometime victim is hesitant to go to the police because of the indifferent behaviour of the police officers firstly in recording the FIR and then during investigation. It is only after an FIR is lodged that investigation in the case can be initiated. However, police avoids the recording of FIR which further aggravates the agony of the victim. The practice to verify any information before recording FIR is against the statutory provisions of law. The principle concern of lodging an FIR is to set the criminal law in motion and to take suitable steps by the police for the investigation of the case and to bring the offender to book. The police are duty bound to hold the investigation of a cognizable offence without obtaining an order from the court. It is the criminal law requirement that FIR must be recorded in the case of cognisable offence. However after completion of the investigation the police officer is empowered to submit the investigation or police report to the Magistrate in the shape of charge sheet, failure report or cancellation report as the case may be.

The victim of crime has a right to be examined as a prosecution witness. Then victim deposes as a prosecution witness against the accused during the trial. In the present criminal justice system, offences recorded by the police are treated as offences not only against an individual rather against the institution of the State/Society itself, which after investigation by the police come to the court through prosecution agency for the purpose of the trial. During the trial of the case the victim is examined as a witness before the court.

In a criminal justice system, victims of crime have various rights like right to lodge a complaint, right to speedy justice, right to be heard, right to fair trial, right to get information, right to be present in the court at hearing, right to protection against retaliation, right to address the court, right to consult officials, cross examining witnesses, right to produce evidence in his favour, right to incamera proceedings during inquiry and trial of certain cases like rape, domestic violence, right regarding maintaining of confidentiality of name and address in prosecution of rape cases, 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, right not to be asked indecent questions as to previous immoral character in rape cases etc. There is inclusion of new

Chapter XXI A on plea bargaining which also affords complainant/victim to be part of mutually satisfactory disposition.

Similarly certain rights are granted for the protection of victims like the identity of the victim to be kept confidential, trial of certain offences must be to the exclusion of general public, recording of the statements of victims, use of screen recording of the statement through video conferencing, cross-examination through Judge, change in the venue of trial, physical protection to the victim of crime etc.

1.8 Scope of the Study

Crime is prevalent in every country in one form or the other and necessary steps to control/eradicate it are necessary. The criminal justice system all over the world is focused on the reformation of offender and their punishment. Further it is concerned with the rehabilitation of the convicts after the sentence is over. The concept of providing justice has widened the area of penal reforms like the release of the offenders on probation or parole and other correctional methods to make the convicts fit to live in the society as good citizens. The victims of crime on the other hand are almost forgotten. Today the purpose of the criminal justice system appears to find out the guilt or innocence of the accused person and for that cause the victim is regarded as a mere witness because he(victim) is personally interested to get the culprit punished. In case the offender is not punished or awarded minor punishment the victim will be discontented with the criminal justice system itself and there is a possibility of his breaking the law for getting the justice that will disturb law and order situation.

There is a discernable change in the overall crime scenario and pattern of crime in the present time. The new forms of crime and criminality have emerged in new situations and circumstances. The researcher has studied all these aspects to study the impact of present day crimes on victims.

The significance of the study is in the point that it is the need of hour that the victims of crime must be protected, rehabilitated and provided with speedy and timely justice. The victims of crime must be granted rights, protections and remedies for securing justice.

The study will benefit academic researchers and students of criminal law as it has made a detailed analysis of the emerging legal concepts and laws on victims of crime in India and abroad. Further the study will serve the society by highlighting the shortcomings in the laws on

victims and suggesting suitable changes and modifications. The study will also serve the legal community especially the criminal law lawyers by providing detailed discussion on procedural aspects, law and judicial pronouncements of courts. The study will also contribute towards generating a sense of responsibility in State agencies like police, prosecutors etc. towards giving the treatment to the victims of crime in conformity with their human dignity.

1.9 Objective

The primary and basic objective of the study is to analyse the various emerging trends in victimology in India and in other countries. The study has made a humble attempt to understand various developments on the subject at the national and international level and to suggest improvements in the existing criminal law in India and to make the system more victims friendly. The concern of this study is to make available and analyse in one study the scattered literature on this subject.

A lot of research has been done abroad on various issues concerning victims. No doubt few studies have been done in India also. But comparatively there is dearth of literature on the topic in the Indian context. As we follow adversarial process, victims are granted less rights in India as compared to Western countries. The purpose of the study is to highlight the issues that various rights and remedies to the victims of crime must be granted at all the stages of criminal justice like investigation, trial, at the sentencing stage and even after the sentencing.

1.10 Research Methodology

The present study is mainly doctrinal. Doctrinal research has been done by the researcher using descriptive, analytical and critical methods of research. Sources of analytical study are books of both national as well as international authors, national and international journals, articles, magazines, reports of certain committees & commissions. Besides the above mentioned sources, various judicial pronouncements on the subject are thoroughly surveyed and critically analysed. To make the findings of the study to reach a meaningful conclusion, an attempt is made to discuss and critically evaluate different provisions of the *Criminal Law (Amendment) Act*, 2013, the *Indian Penal Code*, 1860, the *Code of Criminal Procedure*, 1973, the *Indian Evidence Act*, 1872, the *Constitution of India*, 1950, the *Protection of Women from Domestic Violence Act*, 2005, the *Legal Services Authority Act*, 1987 etc. Thus, critical method of research is used along with descriptive and analytical to find out lacunas in the present laws. Even data is analysed from

secondary sources like the National Crime Record Bureau and other resources pertaining to crime commission that shows trends in crimes.

1.11 Hypothesis

1. Victim of crime does not have an appropriate place in the criminal justice system in India.

2. Increase in number and nature of present day crimes have aggravated the plight of victims.

3. To maintain peace and harmony in the society, the victims of crime must be protected and rehabilitated.

4. Restoration and Rehabilitation of victim is prime concern of Criminal Justice System whether the guilt of accused is established or not.

5. State must develop mechanism to redress grievance of victims of crime.

6. The guilty must compensate/ provide redressal to the victim.

7. There is a need to develop Victim Relief Fund to meet exigencies of victim compensation in all cases.

8. There is a need for comprehensive legal frame work to ensure justice to victims of crime in the criminal justice system.

1.12 Research Questions

An attempt has been made to answer the following research questions:

1. How is the Indian Criminal Justice System lacking in providing fairness and justice to victims of crime?

2. How is the emerging crime scenario impacting more harshly the victims of crime?

3. What are the emerging trends in victimology at the national and international levels?

4. How does the denial of justice harm the larger interests of peace and harmony in a democratic and welfare State?

5. Why and how to compensate/rehabilitate the victims of crime?

6. Why the guilty person should compensate the victim with/without punishment?

7. What should be the objective and purpose of victim relief fund?

8. Whether there is a need for comprehensive policy and legislation for victim compensation/rehabilitation?

CHAPTER- II

VICTIMS IN PRESENT CRIME SCENARIO

The protection of people in a State is the responsibility of the State machinery. It is the State which is responsible for the protection of all human beings and unity and integrity of a nation. If the human dignity of an individual is not respected that means that the individual might be victimized. The violation of human ethics and code of conduct often leads to anarchy. It is the primary responsibility of the State to maintain law and order in society so that people can enjoy peaceful atmosphere.

These days' people find themselves in a helpless position as serious and violent crimes are at rise. There are various crime situations which result in victimisation. We see around us victims of violent crimes, victims of Socio-Economic offences, victims of terrorism, victims of organized crimes, victims of international crimes, victims of vulnerable class like women victim of sexual offences, sexual harassment, domestic violence, acid attack, trafficking, prostitution, outraging the modesty of women, victims of voyeurism, stalking etc., child victims of abuse, trafficking, child pornography, prostitution, child exploitation etc., victims of disadvantaged class like poor, socially/educationally backward etc.

Even World Governments today are facing grave and serious crimes that are affecting economic and social conditions depicting the grim situations. Drug trafficking, human trafficking, smuggling, firearms, terrorism, cyber crimes, don/mafia/underworld, crime syndicate (satisfying unlawful public demands like prostitution, availability of drugs etc.), predatory crimes, racketing (business labour racket, flesh trade racket, gambling, on line gambling menace, Kidneys for cash trade rackets, fake certificates racket etc.) are some of the examples of the dangerous dimension of these borderless crimes and threats involved in them and also their destructive powers which pose major threat to mankind as a whole. These are deadly crimes affecting the economic fabric and social structure of global society resulting in victimization of vulnerable people globally.

There is also a change in international relations as these crimes need extensive cooperation on the parts of civilized States to manipulate and lowers the deadly results of these offences and to get the desired results for the victims of these serious and grave offences. These crimes pose

major hindrance in development whether it be social or economic development, advancement of society and benefit of mankind. These crimes pose major threat to justice and human dignity which is the basis of any international instrument on basic human rights whether it be the International Covenant on Economic Social and Cultural Rights (ICESCR, 1966), Universal Declaration of Human Rights (UDHR, 1948) or the International Covenant on Civil and Political Rights (ICCPR, 1966) etc.

2.2 Who are victims?

In simple words victim of crime means any person or a group of persons suffering any harm as a result of crime committed by known or unknown persons. It includes spouses, children, parents and other legal representatives. It has not been defined by Indian legislature in any statute till 2008. However, recently this term has been defined by the Code of Criminal Procedure (Amendment) Act, 2008.[28] Due to agitation by lawyers some provisions of this Act relating to arrest, bail and adjournments have been kept in abeyance for the time being and will be made applicable after fresh notification.

In Section 2 (wa) of the Code of Criminal Procedure Act, 1973 “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.[29]

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[30].

Collins English Dictionary defines the term 'victim' as a person or thing that suffers harm, death, etc. from another or from some adverse act, circumstance, etc. Further, according to New Webster's Dictionary, ‘victim’ means a person destroyed, sacrificed, or injured by another, or by some condition or agency; one who is cheated or duped; a living being sacrificed to some deity, or in the performance of a religious rite. The American Heritage Dictionary defines victim as

[28] Enforced with effect from 31 December, 2009
[29] The Code of Criminal Procedure (Amendment) Act, 2008
[30] Meaning of the term ‘victim’ according to the Oxford Dictionary, available at: http://www.nhrc.nic.in/speeches.htm.

someone who is put to death or subjected to torture or suffering by another, further it provides that anyone who is harmed by or made to suffer from an act, circumstance, agency or condition: victims of war, or a person who suffers injury, loss, or death as a result of voluntary undertaking: a victim of his own scheming or a person who is tricked, swindled or taken advantage of: a dupe.

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 Victim's Right. The United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted in November, 1985 gives a very comprehensive definition of the phrase which is as follows:

> Article 1: 'Victim' means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
>
> Article 2: A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted... .The term 'victim' also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

The ambit of definition of victim under the Declaration is very wide. It includes both individuals and group of people who have collectively suffered harm. Herein the term harm includes the physical or mental injury, emotional suffering, economic loss or substantial impairment of fundamental rights. And when we talk about defining the term crime under criminal law, it can be defined as the commission or omission of acts or illegal omissions that violate law of the land. The same has been defined by the definition. Further the definition also includes the victims of abuse of power. Under the definition a person is to be considered as a victim irrespective of the fact that the perpetrator of the crime is not identified, apprehended, prosecuted or convicted. A victim is a victim irrespective of the status of the perpetrator. The term victim also includes the immediate family members or dependants of the direct victim. The term victim under the

Declaration also includes any person who intervened in the commission of an offence in order to save or assist victim in distress to prevent victimisation and suffered harm by such intervention.

The task of proving an individual as a victim of crime and abuse of power is much more complex than it might appear. Certainly, there is no single definition that can be applied across the nations universally because the legal order changes as the society, place changes. Generally those definitions that do exist tend to imply that the victim is one who has suffered because of an illegal act of the offender.

In U.S.A. a victim, as defined, under Section 3771 (e) of the Justice for All Act, 2004, is a person, directly and proximately harmed, as a result of a federal offence. Arizona4 defines a victim as a person against whom criminal offence has been committed or if death occurred or the victim is incapacitated, the victim's spouse, parent, child or other legal representative. Wisconsin defines a victim as a person against whom a delinquent act or crime has been committed. One of the few definitions to exist under English Law is found under Section 7(7) of the Human Rights Act which rather unhelpfully defines a victim by reference to Article 34 of the European Convention. However for the purpose of the Act it seemingly includes one whose rights under the Act have been violated as a result of an act of a Public Authority contrary to Section 6 of the Act.[31]

According to Separovic, Victims are persons threatened, injured or destroyed by an act or omission of another man. Suffering may be caused by another man or another structure where people are also involved. Roy Lamborn6 in 1983 defined victim as:

> (A) person who has suffered physical or mental injury or harm, material loss or damage or other social disadvantage as a result of conduct: (a) in violation of national penal laws; or (b) deemed a crime under international law; or (c) constituting a violation of internationally recognized human rights, protecting life, liberty and personal security; or (d) (I) which otherwise amounts to "an abuse of power" by persons who, by reason of their position of power or authority derived

[31] Doak Jonathan, Victims Rights, Human Rights and Criminal Justice, Reconceiving the Role of Third Parties, Oxford and Portland Oregon, 2008, p. 20.

from political, economic or social power, whether they are public officials, agents or employees of the state or corporate entities, are beyond the reach of the law or which; (II) although not presently proscribed by national or international law, causes physical, psychological or economic harm as serve as that caused by abuses of power constituting a violation of internationally recognized human rights norms and creates needs in victims as serious as those caused by violations of such norms.

The aspects of the term 'Victim' vary from society to society and region to region. The USSR Penal Code described the victim as a person who has as a direct result of a crime suffered moral, physical or material damage. The term also includes any person who has suffered physical, moral or material damage through an attempted offence.

Victims of Abuse of Power means 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 relating to human rights. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support[32].

The term victim has also been defined under the ICC statute. According to Rule 85 of the Rules of Procedure and Evidence of ICC, it means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the court. Further the term also 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, hospital and other places and objects for humanitarian purposes.

[32] The United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, available at: http://www.ohchr.org/english/about/publications/docs/train11add1.pdf.

The term victim is often one of moral approbation lacking descriptive precision in respect of actual human behaviour. 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.[33]

Sellin and Wolfgang in 1964 classified the victims in three categories i.e. primary victims, secondary victims and tertiary victims[34]. The very first one i.e. the primary victims are those who have been directly victimized by the offender/wrongdoer/criminal by doing an act or by an illegal omission of an act that are against the mandate of a lawful and civilized society. Secondary victims are persons or the entities recognised as legal person by the society these would include industries, business corporations etc. Tertiary victims are the disadvantageous group of people, or communities whose interests are directly or indirectly harmed by crime. Further within the secondary victims therein come even the family members and other related persons of primary victims. This is an important category because in many countries such secondary victims are assigned procedural rights in criminal trials and made eligible for awards by State Compensation Funds for Victims of Violent Crime. Tertiary victims are persons or entities that are indirectly harmed by a crime. They could also be termed as indirect victims[35]. Unlike the "conventional" crimes (murder, rape, robbery etc.), citizens hardly refer the matter pertaining to the commission of organized crimes to the police. Many of the offences are without victims or we can say it as victimless crimes, in the sense that none of the parties participating has any interest in bringing the matter to the attention of the police. This is particularly concerned with the unlawful and unjust demands of society. Even when there is a clear victim, this person may be reluctant to report for fear of reprisals. Further, to sell contraband or illicit services, criminal markets have to be open enough to attract customers, and to operate in this way suggests some degree of tolerance on behalf of the authorities. Corruption is often implicit, and members of the public may be left with the impression that complaints would be useless[36].

[33] Edward A. Ziegenhagen, Victims, Crimes and Social Control, Praeger, New York, 1977, p. 1.
[34] Sellin, T. & M. Wolfgang, The Measurement of Delinquency, John Wiley, New York, 1964.
[35] Jan Van Dijk, Transnational Organised Crime, Civil Society and Victim Empowerment, Studies of Global Justice, 2011.
[36] Retrieved from http://www.unodc.org/documents/data-and - analysis/tocta/TOCTA_Report_2010_low_res.pdf.

2.2.1 Victims of Crimes and their Position

B. Mendelsohn and Von Hentig started studying victims of crimes in regard to relationship between them. As a result that resulted into the framing of typologies of victims. The study of Mendelsohn depicts victim culpability and that of Von Hentig suggest victim proneness. The study of victim culpability as suggested by Mendelsohn was first of all published in a Belgian Criminal Law Journal in 1937 in which he surveyed criminals, victims attitude in attracting criminals and the responses of the families of victims and criminals. He put stress on the study of victim offender relationship more critically than the material evidence itself. The result of the study of Von Hentig, regarding victim proneness, was published in 1941 in an American Journal. Hans Von Hentig took a similar approach in his article, in which he wrote, "Possession of money has certainly to do with robbery and prettiness or youth are contributing factors in criminal assaults...if there are born criminals, it is evident that there are born victims, self harming and self destroying through the medium of a pliable outsider."[37] After Seven years, Hentig famous book, The Criminal and his Victim, was published in which he gave the concept of duet frame of crime i.e. the criminal and his victim was given. According to Von Hentig, the relationship between the offender and his victim is much more intricate than the rough distinctions of criminal law. As soon as they draw near to one another, male or female, young or old, rich or poor, ugly or attractive – a wide range of interactions, repulsions as well as attractions, is set in motion. What the law does is to watch the one who acts and the one who is acted upon. By this external criterion, subject or object, a perpetrator and a victim are distinguished. There is a close relationship between offender and victim as such play determinant role in deciding his/her fate. According to him it was the attitude of the victim that forced the offender in the commission of crime. Von Hentig gave as many as thirteen categories of victims like the young, the old, the female, immigrants, the mentally defective, the victims belonging to minorities, dull normals, the depressed, the wanton, the acquisitive, the tormentor, the fighting victim, the lonesome and heartbroken. One of the criticisms of this typology of victims is that these are not founded on the basis of any research or survey. On the other hand Mendelsohn gave the concept of penal couple and by that he means victim and his offender. He gave six types of victims and these are: Victims who are completely innocent, victims due to their ignorance, victims as guilty as the wrongdoer, victim more guilty than the offender like a victim who provoke the other to commit a

[37] Hari Om Gautam, Victims of Crime and the Law, Regal Publications, New Delhi, 2011, p. 11.

crime, victims who are the most guilty example violent perpetrator who is killed by another in self defence, and imaginary victims example paranoid and hysterical persons[38].

Stephen Schafer in his work, The Victim and His Criminal, A Study in Functional Responsibility, in 1968 observed that victims are actually essential element of crime, so directly or indirectly, victims are actually responsible for the happening of crime that resulted in their victimisation. Schafer through his work suggested the concept of 'Victim Precipitation' that means where the victim causes, directly or indirectly, wholly or partly, their own victimization. It relates to the contributory factors relating to victimization. In a study conducted by Zvoimir P. Separovic on the murderer victim relationship, the victim precipated one out of four homicide cases. In the same way, Horowitz and Amir found that the victim precipated one out of five rape cases.

The concept of victim precipitation is more precisely defined by Ezzat A. Fattah in the following words[39]:

> (T)he term victim precipitation is applied to those criminal homicides in which the victim is a direct, positive precipitator in the crime. The role of victim is a characterized by his having been the first in the homicide drama to use physical force directed against the subsequent slayer. The victim precipitated cases are those in which the victim was the first to show and use a deadly weapon, to strike a blow in altercation – in short the first to commence the interplay of resort to physical violence.
>
> The use of explanatory concepts such as victim-precipitated, victim-facilitated, victim-initiated and victim-invited criminality to describe the victim's role in the causative process should in no way be interpreted as an attempt on the part of the social scientist to blame the victim or to hold him responsible for the crime.

Henry Ellenberger, a prominent psychoanalyst, focused his research on the psychological relationship between the criminal and the victim. In his book, Relations, he states that it is important for the criminologists to focus special attention on what he refers to as victimogenesis

[38] Id., at p. 31.
[39] Id., at pp. 18-20.

('Victimo genesis' refers to the cause of victimization. It simply refers to the factors relating to the origin of victimization) rather than on criminogenesis.

Penal Victimology looks at the dynamic interplay between victim and offender. Criminal Justice System should aim to satisfy the offender's need for atonement, the victim need for retribution and their joint need for reconciliation. For the adherents of penal victimology the scope of the field is defined by the criminal law: victimology studies the victims of incidents defined as criminal by law. The research agenda of this victimological stream combines issues concerning the causation of crimes and those concerning the victim's role in the criminal proceedings[40].

In relation to violence against women, the issue of victim-precipitation is particular sensitive. The notion that victims by their provoking behaviour triggered their victimisation by male victimizers – and in fact deserved to be victimized – is a part of the patriarchal mindset which is at the root of many of such crimes. By focusing on the victim's involvement attention is diverted from the structural causes of violence against women. Researchers who study the role played by the victim in dynamics resulting in the crime as well as in the ensuing legal conflict will typically hold discriminate opinions on the punishment of the offender. In some cases the victim might indeed have to share part of the blame.

Over the centuries, the word victim came to have additional meanings. During the founding of victimology in 1940s, victimologists such as Mendelsohn, Von Hentig and Wolfgang tended to uses textbook or dictionary definitions of victims as hapless dupes who instigated their own victimisations. The notion of victim precipitation was vigorously attacked by feminists in 1980s, and was replaced by the notion of victims as anyone caught up in an asymmetric relationship or situation. Asymmetry means anything unbalanced, exploitative, parasitical, oppressive, destructive, alienating or having inherent suffering. In this view, victimology is all about power differentials. Today, the concept of victim includes any person who experiences injury, loss, or hardship due to any cause[41].

[40] Prakash Talwar, Victimology, Isha Books Publishers, New Delhi, 2006, p. 2.
[41] Id., at p. 19.

2.3 Victims of Violent Crimes

Violent crimes includes violent crimes affecting body i.e. murder, attempt to murder, culpable homicide not amounting to murder, dowry deaths, kidnapping and abduction. Further there are violent crimes affecting property like dacoity, robbery, preparation and assembly to commit dacoity and robbery. Then there are violent crimes that are affecting public safety like riots, arson etc. There are also violent crimes affecting vulnerable classes like women and children.

As per the National Crime Record Bureau in its report on crimes in 2013, (the relevant extracts of the report given below) the following crimes reported to the Police authorities under the Indian Penal Code, 1860 have been grouped as 'Violent Crimes' for the purpose of crime analysis:

I. **Violent crimes affecting body** (i) Murder: {Motives of murder: The prominent motives behind murders were 'personal vendetta or enmity' and 'property dispute', which accounted for 10.3% and 8.4% of total murder cases respectively. The other significant causes were: 'love affairs / sexual causes' (7.1%), 'gain' (5.0%) and 'dowry' (4.1%). **Victims of murder, age-wise and gender-wise:** Almost one-sixth (16.7%) of the total murder victims under 10 years of age, 13.3% (10- 15 years), one-third (15-18 years), 44.0% (18-30 years) was maximum, 30-50 years (39.4%), 10.3% (above 50 years), (ii) **Attempt to commit murder:** {Personal vendetta or enmity' (2.5%), 'property dispute' (1.6%) and 'dowry' (1.2%) were the major motives reported under culpable homicide not amounting to murder (Bihar Highest), (iii) Dowry deaths: The incidence of Dowry deaths during the year 2013 (8,083 cases) increased by 30.2% over the 2003 level, decreased by 3.3% over average of 2008 - 2012 and decreased by 1.8% over previous year (8,233 cases). Uttar Pradesh, like previous year, has reported the highest number of such incidents (2,335 cases) followed by Bihar (1,182 cases) and (iv) **Kidnapping & Abduction:** Victims of kidnapping & abduction have undergone ordeal at the hands of the criminals for various causes, viz. for adoption, begging, camel racing, marriage, prostitution, ransom, revenge, sale, slavery, etc. A total of 65,461 cases of 'kidnapping & abduction' were reported during the year 2013, showing an increase of 227.4% over the 2003 level (19,992 cases), an increase of 68.0% over the average of 2008 - 2012 and an increase of 37.5% over the previous year (47,592 cases). The highest incidence of kidnapping & abduction was reported from Uttar Pradesh (11,183 cases) accounting for 17.1% of the total cases reported in the country). Out of 65,461 cases registered under kidnapping & abduction, maximum cases were reported under marriage

purpose (30,045 cases) followed by illicit intercourse purpose (5,433 cases) accounting for 45.9% and 8.3% respectively during 2013. A total of 66,441 persons were kidnapped & abducted during the year 2013 as compared to 48,219 in the previous year (2012), registering an increase of 37.8% over the year 2012.

2.4 Victims of Socio-Economic Crimes

These days crimes are not only violent but certain crimes have emerged that have the capacity to affect the society at large. There are of various types of crimes that have a bad impact on the society. New forms of crime are emerging. The traditional crimes affect a specific individual resulting in a particular victim, but now there is an emergence of crimes that can affect stability of the society. While violent/traditional crimes like murder, rape, kidnapping, abduction etc. affect a particular victim and have the capacity to destabilise him, Socio-economic crimes/white collar crimes, public welfare offences/ regulatory offences, prohibited offences like frauds, scams, embezzlement, hoarding, black marketing, tax evasion, etc. affect national stability and integrity. Reasons/causes for the commission of such offences are avarice, greed, anger, jealously, revenge, or pride. The Greed for money, materialistic things or expensive belongings often lead towards the commission of such crimes such as corruption, food adulteration, drug and cosmetic adulteration, spurious drugs, demands for dowry, cruelty for dowry, other white-collar crimes that affect the health and well being of people. The desire for power, control, revenge often leads to violent crimes such as murders, assaults, rapes, kidnappings, abductions etc. These causes of the commission of these violent crimes are usually that they are committed at the spur of the moment when tension runs high and also that they can be intended or voluntarily done by the wrongdoer. Socio-Economic crimes often are most planned. That means that they are committed after preponderance or prior thinking.

The Socio-economic crime/white collar crimes are committed by the elite class or by professionals by exploiting the professional position by adopting corrupt practices pertaining to their profession. They are committed by adopting fraudulent means and by exploiting the situation.

The recent scandals of crores of Rupees bear testimony to the dangerous dimensions of these crimes and the people involved in them and in the commission of such crimes. They affect the material welfare of the community and affect the society at large. The methods adopted in their

commission are hidden. As these offences are against the society as a whole, the victims remain hidden (in case of white collar crimes). The public exchequer is affected.

These crimes can be curbed only when the onus is shifted towards the wrongdoer to prove that he is not guilty. There cannot be in all the cases presumption of innocence of the accused to be presumed. If the actus reus i.e the physical act is proved then there is a need to presume (and in fact in India it is presumed subject to the specified statute) mensrea i.e. the guilty mind on the part of the wrongdoer. This clearly means that the common law maxim that is actus non facit reum nisi mensitrea is supposed to be read subject to certain exceptions granted by the statute in case in which the mensrea is to be presumed on the part of the accused.

In the case of Satyam Scam (country's biggest corporate fraud), six years after a special CBI court held the founder chairman of Satyam Computers, B. Ramalinga Raju and nine others guilty and awarded them a seven year imprisonment. The accused are held liable under Section 120B (Criminal Conspiracy), Section 409 (Criminal Breach of Trust), Section 420 (Cheating), Section 467 (Forgery of Valuable Security, Will), Section 468 (Forgery for Cheating), Section 471 (Using Forged Documents as Genuine) and Section 477A (Falsification of Accounts). The CBI probed the case and alleged that the scam had caused a loss of 14, 000 Crores to the shareholders of Satyam.

2.5 Victims of International Crimes

Although in the past many commissions and institutions were set up to investigate disputes pertaining to laws relating to war, it was not till the establishment of the Nuremberg and Tokyo tribunals, that enforcement took place before an international community. The Nuremberg tribunal was institutionalized to try the war criminals of Germany. In 1945 an agreement was entered into by the victorious nations to confer jurisdiction upon the court through a charter. The tribunal was authorized to punish the persons who were guilty of crimes during war, crime against peace, humanity, liberty, freedom and justice. The maxims Nulla Poena Sine Lege i.e. no punishment without a law and Nullem Crimen Sine Lege i.e. no crime without a law were ignored to prosecute and execute the concerned criminals. Further these accused persons were also charged of having violated the Treaty of Varsilles, 1919 and the Pact of Paris, 1928. They were also guilty of inhuman atrocities upon the Jews. The concerned trials showed that some

sought of victimological aspects were kept in view by punishing the war criminals and providing justice and relief to the victims of such war crimes and atrocities.

Some of the critics have severely criticized the working of these tribunals on the account that charges against the wrong doers were not properly and justifiably levelled, that there was no pre-existing rules, that the plea of Superior Order was dismissed, that the impartial justice was not possible, that the grave doubts engraved, that the judges were from victorious nations. Even after all this, Nuremberg Tribunal paved the way for the enforcement of the international criminal law at municipal/local level for providing justice. It also encouraged the codification of international law and also showed the concern towards victims of such crimes by bringing the accused to book and by providing them with justice.

Similarly on the same grounds the Tokyo Tribunal was established to try the war criminals of Japan in the year 1946. A special feature of this trial was that its judges were not only from the victorious States, but some of the judges belonged to other States also, examplePhilippines, some of the countries of common wealth of the nations and also from India.

On 6th October 1992 the Security Council passed a resolution unanimously authorizing Secretary-General Boutros Boutros Ghali to establish U.N. War Crimes Commission. The Commission was required to investigate crimes committed during war in the region of former Yugoslavia. Furthermore in the year 1993 the International Criminal Tribunal Yugoslavia (ICTY) decided cases relating to gross injustice. Similarly in 1994 International Criminal Tribunal, Rwanda (ICTR) was constituted for further providing timely justice in the region of Rwanda.

Nowadays the ICC is the court under the auspices of UN that provides provisions for the rights of victims. The Court allows the victims to participate in the criminal proceedings. It also allows for reparation to the victims. Article 68, Section 3 of the Rome Statute provides that where the personal interests of victims are affected, the court shall permit their views and concern to be presented and considered at stages of the proceedings determined to be appropriate by the court in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. The participation of victims is indirect i.e. through their legal representatives. The International Court of Justice deals with the cases like the war crimes, crimes against

humanity, genocide etc. The victims that are involved in these crimes are in masses therefore no direct participation is possible.

2.6 Victims of Transnational Organised Crimes

Cross border organized crimes is the major problem in achieving world peace and global security. These crimes impede the cultural development, affect social peace, economic fabric, and political structure of societies across the globe and affecting people at great strength. They affect people/public and social structure. Transnational Organized Crimes destroy economic fabric as offences relating to computers or internet frauds or identity theft, IT Sector and Money Laundering poses major threat to world economy and this affects public order and poses social security threat both at domestic level in general and at international scene in particular. Further these offences affect morality and health like human trafficking for illegal purposes whether for commercial sex or for unlawful transplantation of human organs or forced slavery that is condemned by any civilized State.

In just short span of time, organized crime has become a worldwide menace to all the civilized States taken together. Organized crime is now considered as a complex and serious problem that results in victimisation. It is a framework that is not only affecting a single nation rather it is a concept that has its impact on worldwide politics which is prejudicing the interests of human civilized societies as a whole. Take an example of human trafficking which is a serious crime affecting the health, morality and ethics of a civilized society. When human beings are trafficked it shows the disregard to human dignity and inability on the parts of Civilized States to act swiftly in order to control this dehumanised stuff affecting public in particular. Further it is the responsibility of States to protect their subjects against the gross violation of human rights. Humanity stands at defining movement wherein Herculean efforts of all the civilized States are required in order to bring the law and order situation under control and to make human rights available to all.

(a) Drug Trafficking

In the past few years there has been significant progress in the illicit trafficking of drugs, people, firearms, ammunition, and natural resources. A recent estimate by the UN Office on Drugs and Crimes shows that 7 to 10% of global economic output is attributable to illicit trade.

Transnational organized crimes affect peace, security, development, governance, the rule of law, public health and human rights. States and international organizations have largely failed to anticipate the evolution of transnational organized crime into a strategic threat to governments, civil societies and economies[42].

Drug trafficking generates large financial profits for criminal organizations. The creation of wealth has provided an opportunity for these organizations to infiltrate legitimate commercial business, undermine weakened economies and corrupt the structures of Government. The recognition that drug trafficking is linked to other serious and grave criminal activities including terrorism have raised concern in the international community and world Governments that such trafficking has the potential to destabilize society in which proceeds of crimes are generated and further these are utilized for the commission of other crimes affecting civilization.

(b) Human Trafficking

Human trafficking is another main concern in the commission of such crimes which are similar to the domestic crime syndicate and is mainly done for generating profits by the commission of offences like prostitution, labour, sexual slavery, transplantation of human organs and tissues, for child begging, for children to serve in army or for military purposes etc. In such cases demand and supply principle comes into picture i.e. one group is benefitting another group just in order to make profits.

> However, the current review process to UNTOC does not provide for a comprehensive review of States Parties anti-trafficking responses. In fact, it is often used as a means of promoting the "great work" of a country, rather than reviewing how the State is implementing the Protocol and the impact this is having. Furthermore, this process does not provide adequate means for civil society engagement. We believe that the existing information gathering and implementation review mechanisms to UNTOC neither offer a means of highlighting progress on implementation of UNTOC made by States Parties nor provide adequate space for improvement on implementation measures taken[43]

[42] International Peace Institute Blue Papers, Transnational Organized Crime, p. 4, (2009), available at: http://www.unodc.org/documents/commissions/WGGOVandFiN/Thematic_Programme_on_Organised_Crime_-_Final.pdf

[43] Statement on a monitoring mechanism for the United Nations Convention against Transnational Organized Crime and each of the protocols thereto with specific attention to the Protocol to Prevent, Suppress and Punish

According to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Human Trafficking is the recruitment, transportation transfer, harbouring or receipt of people for the purpose of exploitation (Means that are adopted and generally committed by using various factors like force, deception, abuse of power, against her will, without consent, coercion, undue influence, debt. bondage, misconception of fact, by putting any person in fear of death in whom she is interested, etc). The travaux preparatoires construe the term 'direct or indirect benefit' to be a broad one, encompassing, for example, crimes in which the predominant motivation may be sexual gratification, such as the receipt or trade of materials by members of child pornography rings, the trading of children by members of paeodophile rings or cost sharing amount ring members. Although a group falls within the scope of Convention against Transnational Organised Crimes if it is 'structured' this would exclude randomly formed groups, but would include groups within a hierarchical or other structure, as well as non-hierarchical groups, where the roles of the members of the group need not be formally defined.

(c) Money Laundering

A legal definition of money laundering was first of all given by the 1988 Drugs Convention. It also provided for the confiscation of proceeds of crime. The importance of action against money-laundering was desired by Financial Action Task Force and this was also supported by the Transnational Organized Crime Convention and the UN Convention against Corruption, 2005. UNTOC provided for the criminalization of money laundering. The Convention provided for the establishment of a municipal rules and regulations for financial institutions like banks to combat the growing menace of money laundering. It further suggested for the institutionalisations of the financial intelligence units for the purpose of surveillance of the wrong doers. UNTOC calls for the State Governments to make domestic rules and regulations to correspond with the present situation. The Convention against corruption provides for the measures against money laundering. The convention against corruption is foremost concerned with the evil of money laundering. UNCAC also includes a chapter on asset recovery. Now this chapter contains the provisions pertaining to the prevention and suppression of money laundering. Further, the 1999

Trafficking in Persons (the Human Trafficking Protocol), available at: http://www.gaatw.org/advocacy/urgent%20Action%20on%20Rev%20Mech_Notes%2 0-%20FINAL.pdf.

International Convention for the Suppression of the Financing of Terrorism desires that the Member States are required to criminalize the funding and financing of terrorism and related activities. It also provided for the concrete measures to be adopted for the protection of the economic structure and financial stability against the terrorist attacks and disruptive activities. Further the resolutions of the Governing Bodies like the Security Council Resolution 1373, adopted after the terrorist attacks on the USA, makes elaborative provisions to restrict the commercial and financial activities of terrorist organisations, fund-raising by the anti social groups.[44]

(d) Cyber Crimes

This is an era of a single Global Society. With the advent of science and technology we have entered a new world of Information and Technology. Electronic crimes are also referred in short as e-crimes.

The other terms pertaining to cyber crimes are like e-zines, ecommerce, e-tailer, and e-government, computer abuse, computer crimes, computer related crimes, cyber crime, net crime, hi-tech crime, computer facilitated crime, digital crime and most recently as electronic crime[45].

Examples of cyber crimes: Spamming, copy right crimes (intellectual property crime), telecom fraud, financial fraud, security fraud, hacking 'phishing', id theft, child pornography, online gambling, industrial and economic espionage, trade secret theft, information warfare, traditional espionage, data didling, salami attack, internet time theft, logic bomb, virus, cyber stalking (Pursuing Stealthily), espoofing, crime ware, ransom ware, pharming, sms-based phishing, etc. These computer related crimes are very serious in nature and for tackling these crimes across the international borders extensive cooperation on the parts of civilized States is required. It is only with the cooperation that these crimes can be detected and the culprits are traced.

(e) Terrorism

After the 9/11/2001 attack on U.S., the concept of terrorism has went under a dramatic change. The U.S. and allied forces have launched war on terror. It was only after this incident of 9/11 that U.S. started saying that what was going on in Kashmir is also terrorism. Actually the term

[44] Supra note 24.
[45] Retrived from http://www.criminology.unimelb.edu.au/research/ecrime.ecrimedefn.html

'terrorism' is a complex term. It's a saying that one man's terrorist is another man's freedom fighter. So if we believe U.S. then Al Qaeda is a terrorist organization but if we go by the common man of Afghanistan it is U.S. which is pertaining to terrorist acts. (Other Common terms used for terrorism: separatist, vigilante, paramilitary, guirella, jehadi, Mujahideen, Fidayeen, rebel, liberator, revolutionary, freedom fighter etc). Terrorism is unconventional warfare, psychological warfare. First of all the term 'terrorism' was used in French revolution as 'reign of terror'.

2.7 Victims of the Abuse of Process of Law

Torture is a worldwide phenomenon. Women, children and servants are tortured in homes. Workers are tortured by employers, co-workers and supervisors. Detainees are tortured by police and prisoners are tortured by fellow prisoners. Patients are tortured by doctors and students by teachers. Civilians are tortured by invading armies, militants, extremists and criminals. Minorities are tortured by majorities. The tortures can thus be regarded as physical, mental, sexual, ethical, emotional, behavioural economic and environmental.

Even if police records the arrest and custody of a victim, a death in police custody is made to look like a suicide or accident and body is disposed of quickly with the connivance of a doctor. Records are manipulated to shield police personnel responsible. The local politicians and warlords join the conspiracy. The relatives and friends of the victims are unable to seek justice because of fear, poverty and ignorance. Police atrocities and custodial violence have become so much part of our lives that films and novels have recently made them staple themes.[46]

Some of the examples of Custodial Violence in India are as under:

(1) In Kishore Singh, Ravinder Dev v. State of Rajasthan39 habeas Corpus petition was initiated on receipt of telegram dated 3-10- 1980 which reads:

Convict Kishore Singh, Ravinder Dev Pareek, Surjit Singh Central Jail Jaipur in cells with fetters illegally, unconstitutionally more than eight months. Habeas Corpus writ was prayed for, enquiry was ordered and save.

[46] According to Swami Manavtvadi (1999) police atrocities and custodial violence are increasing in the present crime scenario.

2.8 Victims of Vulnerable Classes

This would include vulnerable victims like women, children and socially/educationally backward classes. There is a rise in crimes against women like sexual offences, sexual harassment, domestic violence, acid attack, prostitution, outraging the modesty, voyering, stalking, eve-teasing etc. Similarly there are vulnerable children who are subjected to the commission of crimes like child abuse, trafficking, child pornography, prostitution, child exploitation etc. Further there are poor people or disadvantaged class like socially/educationally backward class.

2.8.1 Women Victims of Crimes

In the Vedic period women enjoyed a fair amount of freedom and equality with men in every sphere of life. They (women) studied in Gurukuls and enjoyed equality in learning of Vedas. Purdah was unknown and women had equal rights in the matter of selecting life partners. Polygamy was rare and that too was found only in ruling class. The royal and rich families gave dowry only in the form of movable gifts. There was no gender discrimination on the ground of sex. Man used to regard women as equal partners in managing and running the affairs of grihastha. In the context of domestic violence against women, their position was on equal footing with men during the Vedic period. Boys and girls had equal opportunity in every field. Marriage was considered a sacrament and husband and wife enjoyed equal position. Sati and dowry were unknown.

However, in post-Vedic period various restrictions were imposed on the rights of women and during Manu period status of women suffered a great set back because their role was restricted within the four walls of their home. Under these circumstances women also started depending on men for their protection. The position of wife started to decline. Remarriage of widow was disallowed and child marriage became order of the day. Manu and other Smritikars ruled out the independence of women and stressed that marriage established the supremacy of men over women. It was emphasized that in childhood, the female child is to be kept under strict supervision by her father, after marriage, the husband and thereafter the son has to maintain strict surveillance. Widow re-marriage was prohibited whereas rite of sati started. Society used to hate the woman who did not commit sati i.e. to burn herself in the pyre of her dead husband.

At the dawn of British rule the position of women in the house and society was at the lowest and Manu period is considered worst period for women and seeds of domestic violence were sown at that time. Reform movements were started under the leadership of Dada BhaiNaroji, Ishwar Chander Vidya Sagar, Aurbindo, and Mahatma Gandhi. Raja Ram Mohan Roy advocated widow remarriage. 18th century brought a new era for women and crucial role was played by women like Sarojini Naidu, Sucheta Kirplani, Durgabai Deshmukh, Kasturba Gandhi, Vijya Lakshmi Pandit and many others. Schools and colleges for girls were started in Metropolitan cities. Laws were enacted to prevent unfortunate atrocities on women i.e. the Child Marriage Restraint Act, 1929, the Hindu Widow Remarriage Act, 1856, the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Code of Criminal Procedure1898 now repealed by new Act of 1973, the Indian Divorce Act, 1869, the Parse Marriage And Divorce Act, 1939, the Dissolution Of Muslim Marriage Act, 1939, and the Indian Divorce Act, 1869, etc.

During post-independence period, the Constitution of India, 1950 gave equal rights, equal protection and opportunities to all without consideration of sex, religion, language, Place of birth, caste and creed. To implement the Constitutional provisions under fundamental rights and Directive Principles of State Policy, other enactments i.e. the Special Marriage Act, 1954, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Dowry Prohibition Act, 1961, the Dowry Prohibition (Amendment) Act, 1986, the Criminal law (Amendment) Act, 1983, the Medical Termination of Pregnancy Act, 1971, and the Preconception And Prenatal Diagnostic Techniques Act, 1994. During British period the Government did not interfere in religious affairs and therefore these laws were not fully implemented. However relief to some extent was felt by women.

After independence, the marriage laws gave right of divorce to the wife, marriage age was enhanced and cruelty by husband and his relatives became a ground for getting divorce. Similarly the Hindu Succession Act, 1956 gave right of inheriting parents property to the daughter but the male dominated society did not allow it to be implemented fully because testamentary succession was left out of the preview of the Hindu Succession Act, 1956. Amendment of the provisions of the Indian Penal Code, 1860 and the Indian Evidence Act, 1972 for preventing dowry deaths, bride burning and cruelty to the wife were made. New Sections i.e. Section 304-B and 498-A of the Indian Penal Code, 1860 and Section 113A, 113B of the Indian

Evidence Act, 1872 have been added but need for comprehensive civil law for protection of women from domestic violence was greatly felt by women organizations, social associations and educated people. They continued agitation for more than ten years and consequently present Act titled the Protection of Women from Domestic Violence Act, 2005 was promulgated and brought on the statute book as Act number 43 of 2005 and came into force w.e.f. 26th October 2006. However majority of victims do not come forward to seek legal remedies provided by the Act. The poor response of victims, to avail the protection available under the Act, is due to the fact that the Central and the State Governments have not taken proper measures to ensure wide publicity through television, radio and print media at regular intervals. Prior to this Act, provisions to this effect were existing in the Indian Penal Code, 1860, the Dowry Prohibition Act, 1961 and other enactments as mentioned above but the response of victims was not up to the mark.

These days Women have been the victims of violence. Women have been subjected to discrimination and atrocities. Women are victims of various violent crimes like murder, robbery, cheating, rape, kidnapping and abduction for specified purpose, homicide for dowry, dowry death or their attempts, torture both mental and physical, sexual assault, acid attacks, Importation of girls etc. These are the crimes which are offences under the Indian Penal Code, 1860. Further there are special legislations which deals with crimes against women like the Immoral Traffic (Prevention) Act, 1956, the Dowry Prohibition Act, 1961, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal Act), 2013, the Indecent Representation of Women (Prohibition) Act, 1986, the National Commission for Women Act, 1990, the Prevention of Women from Domestic Violence Act, 2005, the Criminal Law (Amendment) Act, 2013. Violence against women is a major obstacle in the enjoyment of various human and fundamental rights guaranteed under the Constitution of India, 1950. Violence against women occur in the various forms i.e. female foeticide, infanticide, dowry death, eve teasing, domestic violence, honour killing, sexual assault, sexual harassment, voyering, stalking etc. Today sexual assaults on women are increasing. We see around us many examples of women subjected to assaults at home or at working place. Today the workplaces are becoming an increasing site of sexual harassment encounters. Women are constantly becoming victims of physical, mental, emotional and financial abuse. The vulnerability of women, financial dependence and family pressure are some of the reasons for sexual harassment of women at workplaces. After a lot of hue and cry

the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was passed that defines 'sexual harassment'.

These days' women are subjected to violent sexual assaults. Crimes against women are increasing. The courts are actually the protector of the fundamental rights of citizens. When a woman is subjected to sexual assault, her most cherished fundamental right i.e. Article 21 of the Constitution of India, 1950 is infringed. Article 21 is regarding right to life and personal liberty.

In **Prem Chandra v. State of Haryana**[47]popularly known as Suman Rani Case the Supreme Court reduced the punishment of police constables from 10 years to five years who raped her in the police station. The Supreme Court reduced the sentence of imprisonment on the ground that the victim was women of questionable character and easy virtue.[48]

In **Raju v. State of Karnataka**[49] the Supreme Court reduced the sentence of both the accused from seven years rigorous imprisonment to three years rigorous imprisonment. The main reason out of others for reducing the sentence which was awarded by the trial court and confirmed by the high court was the circumstances under which this offence was committed. As woman on her own, went with accused persons, the Supreme Court shifted the blame on the victim for having trusted the accused in the time of trouble and going along with them to stay in a room of lodge during night. The apex court in this case held:

> (C)onsidering the very young age of the accused persons and considering the circumstances under which there was every likelihood that they could not overcome the fit of passion and lost all sense of decency and morality and ultimately committed the offence of rape and also considering the fact that the incident had taken place long back and during the course of the proceedings up to this Court, both of them had suffered disrepute and mental agony, we think that the ends of justice would be met if both the accused persons are awarded a lesser sentence. We, therefore, direct that both the accused persons should suffer rigorous imprisonment for three years. To the above extent, the judgment of the High Court stands modified in these appeals. It appears that the

[47] (1989) Supp. (1) SCC 286.
[48] Preeti Misra and Alok Chantia, "Compensatory Jurisprudence in India with Special Reference to Dispensation of Justice to the Victims of Rape: A Critical Appraisal", 1 IJHRS 3 (Jan-Feb 2011), p. 9.
[49] 1994 SCC (1) 453.

appellants have been released on bail during the pendency of these appeals. They should, therefore, be taken into custody to suffer the sentence imposed on them.

In yet another **case Pratap Mishra v. State of Orissa**[50] victim was a pregnant woman. She was raped by three men and suffered miscarriage. The trial court convicted the accused and their conviction was upheld by the High Court. The character of the prosecutrix was considered in this case. Despite that both trial court and high court convicted the three accused for the offence of rape. The Supreme Court took into consideration the role of victim in crime precipitation as the prosecutrix was not a lady of character. Even question was raised as not to making stiff resistance against accused. The Supreme Court in this case acquitted all the accused.

In Tukaram v. State of Maharashtra[51] popularly known as Mathura case where the court again took into consideration the role of victim and acquitted the accused. However, this decision initiated the movement towards the change in rape laws.

The year 1979 marked the beginning of the Women's Movement for reform which was centered around the Anti-Rape Campaign. The land mark judgment of the Apex Court in Mathura Rape case was vehemently criticised and need was felt to reform of the obsolete law of rape in the Indian Penal Code, 1860. Against this backdrop of mounting public pressure, the Law Commission came out with its 84th Report dealt exclusively with Rape and sought to address the issues raised particularly after the said case. The Mathura rape case played a vital role in realisation of need to sensitize the law as well as the attitude of the Judiciary towards such cases to avoid the victim of the crime from being victimised again by highlighting the loopholes in the then existing criminal law. In this case, Mathura a tribal girl aged 14-16 was raped by two policemen within the police station. The Sessions judge acquitted the accused and held there was no "satisfactory" evidence, medical or otherwise to make out the offence of rape. Mathura was termed a "shocking liar" who "habituated to sexual intercourse". There is a difference between rape and sexual intercourse which in the present case was with the Prosecutrix's consent. On appeal, the High Court reversed order of acquittal and convicted accused on the grounds that "consent" and "passive submission" do not amount to the same thing. The judgment was received with shock and outrage. An "Open Letter" was subsequently addressed to the Chief

[50] AIR 1997 SC 1307.
[51] AIR 1979 SC 185.

Justice of India by four eminent law teachers, urging for a rethink on the decision. The open letter viewed the decision as a sacrifice of basic Human rights and a blatant violation of the Right to Life under Article 21 of the Constitution of India, 1950 with complete disregard for the socio-economic and legal awareness of the victims of such a crime. The Mathura decision resulted in the enactment of the Criminal Law (Amendment) Act, 1983.

2.8.2 Child Victims

The Supreme Court in Childline India Foundation & Anr. v. Allan John Waters & Ors.[52] has provided for a detailed list (from Para 24-30) of Constitutional protection available to children in the following words:

> (C)hildren are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. There are special safeguards in the Constitution that apply specifically to children. The Constitution has envisaged a happy and healthy childhood for children which is free from abuse and exploitation. Article 15(3) of the Constitution has provided the State with the power to make special provisions for women and children. Article 21A of the Constitution mandates that every child in India shall be entitled to free and compulsory education upto the age of 14 years. The word "life" in the context of article 21 of the Constitution has been found to include "education" and accordingly this Court has implied that "right to education" is in fact a fundamental right. Article 23 of the Constitution prohibits traffic in human beings, beggars and other similar forms of forced labour and exploitation. Although this article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society. It is a known fact that many children are exploited because of their poverty. They are deprived of education, made to do all sorts of work injurious to their health and personality. Article 24 expressly provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. This Court has issued elaborate guidelines on this issue.

[52] Criminal Appeal Nos. 1205-1210 of 2008 decided on March 18, 2011.

The Directive Principles of State Policy embodied in the Constitution of India provides policy of protection of children with a self- imposing direction towards securing the health and strength of workers, particularly, to see that the children of tender age is not abused, nor they are forced by economic necessity to enter into avocations unsuited to their strength.

Article 45 has provided that the State shall endeavor to provide early childhood care and education for all the children until they complete the age of fourteen years. This Directive Principle signifies that it is not only confined to primary education, but extends to free education whatever it may be upto the age of 14 years. Article 45 is supplementary to Article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clause (e) and (f) of Article 39, thus ensuring distributive justice to children in the matter of education. Virtually, Article 45 recognizes the importance of dignity and personality of the child and directs the State to provide free and compulsory education for the children upto the age of 14 years.

The Juvenile Justice Act was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to disposition of delinquent juveniles. This is being ensured by establishing observation homes, juvenile houses, juvenile homes or neglected juveniles and special homes for delinquent or neglected juveniles.

Even in the **case of Vishal Jeet v Union of India,** (1990) 3 SCC 318 this Court issued several directions to the State and Central Government for eradicating the child prostitution and for providing adequate and rehabilitative homes well manned by well qualified trained senior workers, psychiatrists and doctors.

The above analysis shows our Constitution provides several measures to protect our children. It obligates both Central, State & Union territories to protect them from the evils, provide free and good education and make them good citizens of this country. Several legislations and directions of this Court are there to safeguard their intent. But these are to be properly implemented and

monitored. We hope and trust that all the authorities concerned through various responsible NGOs implement the same for better future of these children.

In the above mentioned case the court ordered as follows

> (U)nder these circumstances, the impugned judgment of the High Court acquitting all the accused in respect of charges levelled against them is set aside and we restore the conviction and sentence passed by the trial Judge. It is brought to our notice that A1 has undergone imprisonment for 3 years and 1 month and A2 was in custody for about 5 years and A3 was in custody for about 3 years and 2 months. Inasmuch as the trial Court has imposed maximum sentence of 3 years for William D'Souza (A1) and he had already undergone 3 years and 1 month while confirming his conviction imposed by the trial Court, we clarify that there is no need for him to undergo further imprisonment. On the other hand, inasmuch as Allan John Waters (A2) and Duncan Alexander Grant (A3) were awarded 6 years imprisonment under Section 377 IPC while confirming their conviction, we direct them to serve the remaining period of sentence. The trial Judge is directed to take appropriate steps to serve the remaining sentence and for payment of compensation amount, if not already paid. For the disbursement and other modalities, the directions of the trial Court shall be implemented. The appeals are allowed on the above terms.

In State of Kerala v. Kurissum Moottil Antony[53], the respondent was found guilty of offences punishable under Section 451 and 377 of the Indian Penal Code, 1860. The trial Court had convicted the respondent and imposed sentence of six months and one year's rigorous imprisonment respectively with a fine of Rs. 2,000/- in each case. The factual background shows that on 10.11.1986 the accused trespassed into the house of the victim girl who was nearly about 10 years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house, the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. The victim PW-1 told about the incident to her friend PW-2 who narrated the same to the parents of the victim and accordingly on 13.11.1986, an FIR was lodged. On consideration of the entire prosecution version, the trial Court found the accused guilty and convicted and sentenced as aforesaid. An appeal before the Sessions Judge

[53] (2007) 1 SCC (Crl.) 403.

did not bring any relief to the accused and revision was filed before the High Court which set aside the order of conviction and sentence. The primary ground on which the High Court directed acquittal was the absence of corroboration and alleged suppression of a report purported to have been given before the FIR in question was lodged. In support of the appeal, the State submitted that the High Court's approach is clearly erroneous and it was pointed out that corroboration is not necessary for a case of this nature.

2.8.3 Victims of Dis-Advantaged Class – Poor, Socially/ Educationally Backward

The traditional rule of Locus Standi that a petition under Article 32 can only be filed by a person whose Fundamental Rights has been infringed has now been considerably relaxed by the Supreme Court in its recent rulings. The court now permits public interest/social action litigation at the instance of public spirited citizens for the enforcement of the constitutional and other legal rights of any person or group of persons who because of their poverty or socially or economically weak are unable to approach the court for relief[54]. Mr. Justice Bhagwati speaking for the majority in judges transfer case, re-examined the scope and object of Public Interest Litigation and held where the weaker sections of the community are concerned such as under trial prisoners languishing in jails without a trial, inmates of the protective homes in Agra, or Harijan workers engaged in road construction in Ajmer, who are living in poverty and a miserable existence with their sweat and toil, who are helpless victims of an exploitive society and who don't have easy access to justice, the Supreme Court will not insist on a regular writ petition to be filed by those poor and needy people. Any public spirited citizen can approach for getting justice for such a poor class. The Supreme Court will readily respond to a letter addressed by such individual acting pro bono publico[55]…The court will, therefore, unhesitatingly cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a writ petition and act upon it[56]. The court has now jurisdiction to give appropriate remedy to the aggrieved persons in various situations e.g. Bihar blinding case, flesh trade in protective homes in Agra, injustice by throwing children in jails, protection of pavement and slum dwellers of Bombay, payment of minimum wages and other benefits to workers in various state projects, abolition of bonded labourers, protection of

[54] Retrieved from http://legalservicesindia.com/article/article/constitutionalprotection-on-labour-laws-181-1.html.
[55] Retrieved from http://www.right2info.org/resources/publications/casepdfs/india_s.p.-gupta-v.-president-of-india.
[56] S. P. Gupta and others v. President of India and others, AIR 1982 SC 149.

environment and ecology are some of instances where the court has inspired appropriate writs, orders and directions on the basis of Public Interest Litigation or Social Action Litigation.

In the primitive societies the responsibility of protecting oneself against crimes and of punishing the offenders rested with the individuals which reflected the idea of private vengeance. Under this system compensation had to be paid by the wrongdoer to the injured. As societies got organized the responsibility of punishing wrongdoers shifted from the private individuals to the State. The principle pertaining to providing justice to victim continued as such where the compensation is being paid by the wrongdoer to the victim or his family members. This was the position obtaining in the Code of Hammurabi, old Germanic Law, the Law of Manu and the Ancient Hindu Law. According to Sir Henry Maine, the Law of ancient communities is not the law of crimes, it is the law of wrongs. The person injured proceeds against the wrong-doer by an ordinary civil action and recovers compensation in the shape of money damages if he succeeds. At the end of medieval ages the idea of crime as an act against the State developed where the State was considered to be the proper authority to punish the offender. In the 19th century however the concept of compensation to the victims of crime was sought to be revived by eminent criminologists.

These days crimes against women like rape, incest rape, kidnapping, abduction, homicide for dowry, dowry deaths, torture, assault on women with intent to outrage her modesty, insult to the modesty of women, importation of girl from foreign country are increasing. There is also an increase in the crimes against children. Even there is an increase in crimes committed by juveniles.

> If crime crosses all borders, so must law enforcement. If the rule of law is undermined not only in one country but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights, and defeat the forces of crime, corruption, and trafficking in human beings[57].

Organized crimes have been expanded and transformed by increased globalization. Like legitimate business people entrepreneurial criminals are increasingly free to move their operational activities to those places with the best chances for high profits97.Globalization allows them to operate on the illegal global markets in illicit products. E-commerce has opened unprecedented opportunities for committing sophisticated fraud across borders or selling child pornography98. In addition, crimes relating to e-banking, allows criminals to get away with illegal money and assets out of reach of general public.

[57] Statement by the United Nations Secretary-General Mr. Kofi Annan at a ceremony marking the opening for signature of the United Nations Convention against Transnational Crime, Palermo, Italy, 12 December 2000, available at: http://www.unodc.org/adhoc/palermo/kofi.html

Towards the end of the last century consensus emerged about the need for a new global framework for cooperation against organized crime99. In 2000, the members of the United Nations assembled in large numbers in the city of Palermo to sign the United Nations Convention against Transnational Organized Crime (UNTOC) and its protocols against human trafficking and smuggling of migrants.

The United Nations Convention against Transnational Organized Crime is the main international instrument to tackle the cross border organized crime. The Convention provides for civilized States to introduce a lot of changes in the criminal justice system at the municipal level by training and giving technical assistance to the investigation force, to codify laws at the municipal level depicting out certain act to be taken as a crime and giving punishment for the said act, to follow an approach of unparallel mutual assistance, widen the scope of extradition laws etc.

Human dignity must be protected and this is possible only if there is extensive cooperation in between civilized States whether it is for investigating the crimes or for providing mutual legal assistance. Humanity must be protected and if crimes have crossed borders, laws must also be made in accordance with the changing needs of the society and it must also cross borders and the offenders must be brought to book and must be made liable for these inhuman acts. The spirit of law must be protected and the rule of law must be confined to in order to bring justice and to save humanity from the barbaric clutches of the cruel organisations/enterprises working with the sole motive to satisfy their desires and their greed for money or monetary considerations.

There must be justice delivery in such offences and it is possible if the victims are given their rights like providing them with adequate compensation, reparation, access to fair justice etc. There is a need for strong international legislations in the form of multilateral or bilateral treaties to deal with the aggravating and grave situations. Domestic laws must also correspond to the international norms.

CHAPTER - III

PROBLEMS OF VICTIMS UNDER THE PRESENT INDIAN CRIMINAL JUSTICE SYSTEM

We are passing through a precarious period of world history under the shadows of catastrophic and impending dangers. Never before did we feel more strongly that we are leading a nefarious and neglected life. Is this the defective legal system; the corrupt role of police; the unfair use of the legislative Acts; the weak economic or political perspectives or the prevailing corruption in the judicial system which gives thrust to the administration of criminal justice and devoured everything worthwhile in respect of the victim perspective.

It is well documented that criminal justice system worldwide had a complete tilt in favor of the accused ; hence pre and post trial rights have been recognized for them. India is not an exception to this above stated global position. However, peculiar to India have been the status-quo in its position as compared to other nations of the world. This has further been supported by the adversarial system of criminal justice to which India has opted. Our country has recognized the pre and post trial rights of the offender both constitutionally and procedurally. The important unit of the criminal justice mainly the victim has no place in Indian system except that it has been relegated to the witness that too when necessary.[58] However, certain thunderous pronouncements by the apex court in India have made it possible to create an environment of "take off" relating to victim justice so much that latest amendments in Criminal Procedure Code[59] are indicators in this direction. That is evident by the existing definition of "victim" in Sec.2 (wa).[60]

[58] Subash C. Raina, (2000), "Victimology: towards a new millennium in the study of victims, victimization and Compensatory Jurisprudence in India" In: Renu Gosh (ed.), BRANDED; A Standard Book on Crime Reporting, New Delhi: deep and deep Publications, p-27.

[59] See Amendments of Cr.P.C. (2008).

[60] "A person who suffered directly or threatened physical, emotional or pecuniary harm as a result of commission of a crime, or in the case of a victim being an institutional entity, any of the similar harm by an individual or authorized representative of another entity or group who are essentially covered under civil or constitutional law and deserves assistance by the criminal justice system."

3.3 VICTIM: A NEGLECTED SIDE IN THE CRIMINAL JUSTICE SY VICTIM: A NEGLECTED SIDE IN THE CRIMINAL JUSTICE SYSTEM

A criminal justice system is the system by which society first determines what will constitute a crime and then identifies the accused, tries him, and if found guilty convicts him and punishes him for violating the criminal law.

Criminal justice administration is one of the major sectors of public administration, broadly comprising three principal components, viz., police (i.e., law enforcement); judiciary (i.e., adjudication); and correctional institutions. (i.e., jails, prisons, probation and parole). In a criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society. Its basic objective is not only to enforce law, but also to ensure equity and justice. Its success or failure determines the fate of societal progress. [61]

The principal purpose of criminal justice system is to preserve and protect the Rule of Law which implies enforcement of law, maintenance of order, fair trial and punishment of offenders, and their social rehabilitation through correctional system of justice.

To ensure that innocents are not victimized by the criminal justice delivery system, the accused has been granted certain rights and privileges.6 These rights of the accused or the convict are safeguarded by the constitution as well as various statutory provisions.

The victims who put the law in motion are usually the forgotten people in the criminal justice delivery system.[62] His participation remains at the periphery of the criminal justice system as the initiator of the prosecution and as witnesses of the prosecution when desires. He is neither participant in the proceeding launched against the offender nor a guiding element in any stage of the prosecution.[63] There has been gross neglect of the victims need and interest. In addition he is made to suffer not only in the hand of accused and their associates but at the hand of prosecution

[61] Mir Mehraj-ud-din (1984), Crime and Criminal Justice System in India, New Delhi: Deep and Deep Publications, p-56.
[62] Subash C. Raina, (1992) Evolution of victimological Jurisprudence in India Law, Judiciary and Justice in India. New Delhi: Deep and Deep Publication, p-82.
[63] V.N. Rajan (1995), Victimology in India, New Delhi: A.P.H Publishing Corporation, p-63.

agencies. The law even does not afford him any relief by way of compensation or reparation for the harm suffered except to a limited extent.[64]

The justification given for the exclusion of the victim from prosecution scene is stated that the crime by and large is directed against the society as a whole and the state which has taken upon itself to protect the life; liberty and property of individual exercise the police power and its justice delivery system. It is also bound to restrain the individual from taking law into his own hands. Another reason forwarded is that the intervention of victim in prosecution process may vitiate the fairness of trial and open the door-way to retributive and vengeful traits that may vitiate fair trial.

While highlighting the apathy of our criminal justice system Krishna Iyer, J. **in case of Rattan Singh v. State of Punjab**[65] aptly remarked thus, it is the weakness of our criminal justice system that victims of crimes do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law.

3.2 THE MALIMATH COMMITTEE IN ITS REPORT ON ''VICTIMS OF A CRIME''

Even the "Committee on Reforms of Criminal Justice System" popularly known as the Malimath Committee in its report, it recognized that victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration.

The Committee in its report focused a whole chapter entirely on "Justice to Victims" reiterating the need for more participation of victim so that the faith of people be restored in the entire justice delivery system. It also took into account the United Nation Declaration on the rights of victim and examined various systems prevalent in European Countries. It recognized that the victims' rights can be categorized into two categories namely right to participate in criminal proceeding and the right to compensation for injuries suffered.

[64] D. P. Sharma (2003), Victims of Terrorism, New Delhi: A.P.H. Publishing Corporation, p-84.
[65] (1979) 4 SCC 719.

In our present criminal justice delivery system, the participation of victim is negligible and compensation though provided in certain cases are either inadequate or the offender usually does not have means to pay that. In order that criminal justice delivery system to enjoy the confidence of the people, the aspiration of the victim and his right to participate in criminal prosecution is sine qua non. The criminal justice delivery system must ensure that the victim be furnished with information at the investigation and trial stages and facilitating victim's active participation in judicial process. In addition he must be provided monetary relief and compensation as well as other facilities like medical and legal aid, counseling and rehabilitation. These steps will go a long way in ensuring the faith of people in our criminal justice delivery system by sending a message that the state is taking all possible measures to ensure that justice must not only be done but it seems to be done.[66]

3.3 ROLE OF "VICTIM"IN THE INVESTIGATION PROCESS

At present the role of victim is confined to lodging of complaint or First Information Report (hereinafter FIR) and to tender evidence when called by prosecution. The prosecution is overall in charge of conduct of criminal prosecution. The victim is not even a party to the proceeding except in cases where the private complaint is lodged before a magistrate. It is the police which conduct investigation on the basis of FIR and file the final report or charge-sheet. Then it is the magistrate/judge after looking into the record of investigation and report of investigation takes cognizance and frame charge paving way for the trial, if necessary.

Only opportunity available to the victim is that when the magistrate/judge is not inclined to take cognizance and propose to drop the proceeding, an opportunity is given only to the victim to present his own case on the basis of Supreme Court's decision in case of Bhagwant Singh v. Commissioner of Police.[67]

Necessary changes are required to be made in the existing law to make victim play an active role in prompt investigation and effective prosecution of the case. The effective participation must

[66] Sandra Walklate (2007), Handbook of Victims and Victimology, UK: Willan Publishing, p-96.
[67] AIR 1965 SC 1452.

ensure that the victim does not feel neglected. This can be done by giving victim the right to information relating to investigation and trial.[68]

The Right to Information Act, 2005 may provide an important instrument at the hand of victim to secure information regarding certain entries in diaries and record concerning the progress of investigation and trial17 but again the police can refuse to furnish the information on exclusionary principle which is the ground of interference in investigation and trial.

The Malimath Committee also recommended that the victim be given the right to know the status of investigation and to move to the court to issue direction for further investigation on certain matter or to a supervisory officer to ensure effective and proper investigation to assist in the search of truth.

3.4 VICTIMS ND PROSECUTION

At present the prosecution is carried on by the Public Prosecutor. He is the officer of the court with duty to assist the court in arriving at its decision. At present the victim has no active role to play.[69]

(iv)a Representation at Trial. In certain cases the court may permit an advocate authorized by the victim to assist Public Prosecutor, but such advocate does not have independent right to represent. The Supreme Court has stated that the role of private counsel in such cases is more or less that of a junior counsel who assists a senior. He cannot act independent of Public Prosecutor.

(iv)b Bail Provision. The victim can also intervene when the bail is liable to be cancelled. In the granting and cancellation of bail, victims have substantial interests though not fully recognized by law. Section 439(2) of the Cr.P.C, may allow a victim to move to the Court for cancellation of bail, but the action thereon depends very much on the stand taken by the prosecution. Similarly prosecution can seek withdrawal at any time during trial without consulting the victim. Of course, the victim may proceed to prosecute the case as a private complainant; but he seems to have no right to challenge the prosecution decision at the trial stage itself.

[68] 6 Government of India, Report: Committee on Reforms of Criminal Justice System, (Ministry of Home Affairs, 2003) available at:- http://www.mha.nic.in/pdfs/criminaljusticesystem. (Accessed on 6th Oct., 2011).
[69] Joanna Shaplend and Jon Willmore (1985), Victims in the Criminal Justice System, London (UK): Gower Publishing Co. Ltd., p-47.

(iv)c Plea Bargaining. The Criminal Law (Amendment) Act, 2006 introduces the concept of plea bargaining under Section 265A to Section 265L of the Cr.P.C. Notice is required to be given to the victim to participate in the meeting to work out a mutually satisfactory disposition of case, including payment of compensation to victim.

A non-exclusive list of sentence bargaining concessions include: Judges agreeing to impose specific time limits on probation; prosecutors recommending a specific sentence to the judge; judges agreeing to a specific range of time to be imposed; prosecutors refraining from invoking special sentencing provisions for repeat offenders; prosecutors remaining silent at the sentencing hearing; prosecutors not opposing defendant's request for leniency or specialized rehabilitation programs; prosecutors downplaying the harm to the victim; an agreement that defendant serves sentence in a particular institution; a special sentencing arrangement where defendant serves a period of probation and then his case is designated "non- adjudicated;" imposition of a fine or restitution; judges imposing concurrent sentences for defendant's other matters such as probation or parole violations; and prosecutors agreeing to schedule sentencing before a lenient judge.

This is a welcome step in direction of victim-oriented approach to criminal prosecution, but the experienced by victims is often far more complicated than apologies and restitution. Some victims move on with their lives fairly easily, but many suffer continuing trauma without the services and support they need. Victims often suffer lowered academic performance, decreased work productivity, and severe loss of confidence. Mental illness, drug and alcohol abuse, and suicide are far more common among crime victims than the general public.[70]

3.5 HOW THE PHILOSOPHY OF THEIMBALANCED CRIMINAL JUSTICE SYSTEM THRASHING AND HURTING THE "VICTIMS " OF CRIME"?

The fundamentals of our criminal justice administration have heavily loaded in favor of the accused.22 There is presumption of innocence even when the accused appears to be palpably guilty. The investigation has to discharge the burden of providing the guilt of the accused beyond reasonable doubt. The accused has the remedy of delaying a trial. A delayed trial ensures evaporation of evidence. With its inadequate evidence, the prosecution stands handicapped and

[70] 1 Braithwaite, J. (1999), "Restorative Justice: Assessing Optimistic and Pessimistic Accounts" In: M. Tonry (ed.), Crime and Justice: A Review of Research, Chicago, IL: University of Chicago Press, p-94.

accused runs away scotfree with the benefit of doubt. The high acquittal rate leaves doubt in one's mind that crime today is high-profit, low-risk business. [71]

Accumulation of cases and delay in disposal of cases has assumed gigantic proportion. It has shattered the very confidence of litigating public in the capacity of court to redress their grievances and to grant adequate and timely relief.

The criminal justice system now depends on two rules of practice. The police arrests and charge sheets a person on suspicion. The judge discharges the accused on the benefit of doubt. The offenders are not afraid of punishment as they know there is no certainty of punishment inflicted by any court. Convictions or acquittals depend on whether witnesses depose or turn hostile. The hostility of witnesses coupled with the unwillingness of several persons to depose, exhibits public indifference. Judges under this system are hardly expected to know the truth; they are expected to know only the evidence. The disconnection between truth and evidence is the stark reality of the legal system. [72]

3.6 DEFECTS OF THE ADVERSARIAL MODEL

The system followed in India for dispensation of criminal justice is the adversarial system of common law inherited from the British Colonial Rulers. The adversarial system is two sided structure under which criminal trial courts operate that pits the prosecution against the defense. Justice is done when the most effective adversary (i.e., advocate from each side) is able to convince the judge that his or her perspective on the case is correct one. The whole investigation process remains in the hands of the enforcement agencies i.e., police. The defects of the adversarial system are as follows:-

- The adversarial system is heavily loaded in favor of the accused & is insensitive to the victims' plight & rights. (i.e., accused oriented system).
- Since trial process is a part of the adversarial system, and therefore, the process can be delayed, prolonged and costly.[73]

[71] Arun Jaitley, "House for Jessica, Priyadarshini", Indian Express, July 5, 2006, p. 3.
[72] Austin Sarat, Law, Violence, and the Possibility of Justice, 2001, New Jersey: Princeton University Press, p-83.
[73] Anthony E. Bottoms and Julian V. Roberts, (2005), Hearing The Victim: Adversarial Justice, Crime, Victims And The State, London: Willan Publishing, p-18.

- In the adversarial system, there is a chance that a judge may be easily persuaded by a good counsel.
- In the adversarial system, the image of the Courtroom looks like a battleground. Each side of the advocate is primarily concerned with the resolving of controversies than with the finding of ultimate truth.
- In the adversarial system, there may be a chance of faulty and slipshod investigation depending on the socio-cultural status, economic power and political influences of people, police may adopt differential attitudes, violating equality and human dignity.

3.7 ADHERENCE ON THE PRINCIPLES OF CRIMINAL LAW

The first and the foremost principle of the entire legal system of any democratic country is the rule of law, also called supremacy of law, simply means that the law is above everyone and it applies to everyone.[74]

In the ancient times of Smritis, Administration of justice was one of the most important and obligatory functions of a king and greatly emphasized that the very concept of kingship was conceived and brought into existence for the enforcement of dharma by the might of the king and also to punish the individuals for the contravention of dharma and to give protection and relief to those who were subjected to injury and whose favor dharma lay. Any indifference to this important function of the king, the Smritis cautioned would bring calamity to the king himself and to the people as well.

This aspect of Hindu jurisprudence reveals that there was a doctrine of the supremacy of law that means even the king was not above law; like an ordinary subject he too was subject to law. This historical anecdote, according to Justice S. Ratnavel Pandian, former Supreme Court Judge, "affirms that law was held to be supreme even if the King was the Law-giver." The maxim "The King can do no wrong" is no more an acceptable theory in a democratic polity & the Law-giver

[74] Joginder Singh, (2003) 'Law delays & litigation crisis in India: Mechanics of injustice', Lawyers Update, Vol.XIII, Part 11, November, p.9.

also has to subject himself to the supremacy of law".[75] As mentioned in Rig-veda, “Law is the king of kings, far more powerful and rigid that they are, under whose aid even a weak can prevail over strong”. Thus, the concept of rule of law prevails over every branch of the legal system. Our criminal justice system have further adherence on the three principles of criminal law i.e.,

3.7.1 A PRESUMPTION OF INNOCENCE

The concept of presumption of innocence in the common law system means that everyone is presumed to be innocent until proved guilty i.e., beyond reasonable doubt.[76] A person accused of a crime is not bound to make any statement or to offer any explanation of circumstances which tend to create suspicion against him.

Following the common law concept, the Indian Supreme Court said that one of the cardinal principle of criminal jurisprudence is the presumed innocence of an accused person till otherwise proved30 and cited Woolmington v. Director of Public Prosecution, [77] to the effect that it is the duty of the prosecution to prove the prisoner's guilt subject to any statutory exception.

The Universal Declaration of Human Rights, Article 11, states: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defense.”

The Constitution of Russia, in Article 49, states that "Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the federal law and has been established by the valid sentence of a court of law". It also states that "The defendant shall not be obliged to prove his or her innocence" and "Any reasonable doubt shall be interpreted in favor of the defendant". Although the Constitution of the United States does not cite it explicitly, presumption of innocence is widely held to follow from the 5th, 6th and 14th constitutional amendments of the United States.

[75] Supra note 1 at p.161.
[76] Prashanth Venkateshm, "Presumption of innocence in Criminal Law", 2000 Cri. L.J. 2401 (Delhi), p. 129.
[77] AIR 1935, A.P. 462.

3.7.2 BURDEN OF PROOF

In criminal cases, it is a fundamental principle common to England and India that the accused person must always be presumed to be innocent and the onus of proving everything essential to the establishment of the offence is on the prosecution. The rationale behind this principle is threefold :-

(a) In a criminal trial, the prosecution has the advantage of being in a position to dictate the proceedings. Placing the burden of proof on the defendant will deprive him of a fair opportunity to answer the allegations against him.

(b) The prosecution has access to investigative resources that are superior to those available to the defendant in most criminal cases.

(c) If a burden of proof is on the accused, the court will have to convict if it is uncertain about certain facts in issue.

The words of **Lord Atkin in Basil Reager Lawrencles v. The King**,[78] conveys that it is an essential principle of our criminal law that a criminal charge has got to be established by the prosecution beyond reasonable doubt.

There is no principle of proving beyond reasonable doubt present in Indian Statutes. It has been brought in from common law. Section 101 of the Indian Evidence Act, 1872 merely provides that the burden of proving a certain fact is on the person who wishes to establish that fact.

Hon'ble Supreme Court has held in Bhagwan Singh v. State,[79] that a miscarriage of justice which may arise from the acquittal of a guilty is no less than from the conviction of an innocent. There is a maxim in criminal justice system that an innocent must not be punished even though hundred guilty men may escape from punishment. But this is not the mandate of law.[80]

[78] 84, Cri. L. J. 896 (1933).
[79] AIR 2002 SC 162.
[80] In State of UP v. Anil Singh, 1989 Cri. L.J. 88, the SC held-Judge does not preside over a criminal trial merely to see that no innocent man is punished, a judge also presides to see that a guilty man does not escape. In State of W.B. v. Oriental, 1994 Cr. L.J. 2104, the Apex Court held justice cannot be made sterile on the plea that it is better to let the hundred escape than punish an innocent. Letting guilty escape is not justice.

3.7.3 FAIR TRIA FOR ACCUSED L

The right to a fair trial is an inherent right of the accused in the administration of criminal justice.36 Our courts have recognized that the primary object of criminal procedure is to ensure a fair trial of accused persons.37 The major attributes of fair criminal trial are enshrined in Article 10 and 11 of the Universal Declaration of Human Rights.[81] Article 10 provides that everyone is entitled in full equality to fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations of any criminal charge against him. Article 11 provides that everyone charged with the penal offence has the right to be presumed innocent until proved guilty according to law in public trial at which he has had all the guarantees necessary for his defense.

The Law Commission has accepted the view that the requirements of a fair trial, speaking broadly, relate to the character of the court (i.e., impartial judge), the venue, and the mode of conducting the trial (with a fair prosecutor and atmosphere of judicial calm), rights of the accused in relation to defense and other rights so that justice must not only be done but it should seem to be done.

One of the important rights of the accused (suspects or under trial prisoners) is the right to life. **In the Maneka Gandhi case**[82] the Supreme Court has given a purposive interpretation to the provisions of Article 21 of the Constitution. When it held that the procedure established by law means the law must be just and the procedure must be right, just and fair that embodies the principles of natural justice and not an arbitrary, forceful or oppressive procedure.

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3.7.4 FAIR TRIAL FOR "VICTIMS OF CRIME"

In India, it is widely recognized that victims do not have express legal rights and protection enabling them to be a part of criminal proceedings. For crime victims and their families, the right

[81] Adopted and proclaimed by the General Assembly on December10,1948
[82] Maneka Gandhi v. Union of India (1978) 1 SCC 248.

to be present during criminal justice proceedings is an important one. Victims want to see justice at work. They want to hear counsel's arguments and view the reactions of the judge, jury, and defendant. But our criminal justice system imposes limitations on that right. The restrictions stem from concern that a victim's right to attend proceedings may conflict with the rights of the accused. Thus, victims are often given a right to be present only "to the extent that it does not interfere with the rights of the accused" or are "consistent with the rules of evidence." This tends to result in disinterestedness in the proceedings and consequent distortions in the criminal justice administration. During the process of fair trial, generally, two types of rights are recognized for the victims of crime. They are :-

a. The Victim's right to Participate in Criminal Proceedings such as right to know; right to be heard; right to plead; and right to assist the court in the pursuit of truth. But victim centered activism is often criticized for the reason that it sounds snatching the rights of the accused.

b. The right to seek and receive compensation from the criminal court itself for injuries suffered as well as appropriate interim relief in the course of proceedings. The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy.[83]

3.7.5 DEFECTIVE POLICE ADMINISTRATION

Police as a functionary of the criminal justice system, has to play a crucial role in maintenance of peace and enforcement of law within its territorial jurisdiction. Its primary duty is to safeguard the lives and property of the people and protect them against violence, intimidation, oppression and disorder. But in this fast changing turbulent environment, the modus operandi of organized criminals and gangsters has made the role and responsibility of the police even more than mere trouble shooters. The expert committees and Police Commissions have gone into the problem and made weighty recommendations, but to no avail.

[83] There is a provision of compensation for the "victims of crime" under Section 357 of the Cr.P.C. but this right has not been very expressly and prominently integrated in the criminal procedure.

3.7.6 OUTDATED POLICE STRUCTURE

The Police organization is still based on the structure of the Police Act, 1861, Section 23 of which requires a police officer "promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority." This allows civil and political executive authorities to control the police. Thus, third degree methods prevail since the order to use them on suspects in police custody comes from such 'competent' authority which may result in custodial deaths.

Successive central and state governments have, consistently ignored recommendations for police reforms, such as those proposed by the National Police Commission since 1979. The police remain an "exploited, neglected and despised minority" who are denied the most basic minimum working conditions and who are "servient to the rulers rather than responsive to the people."[84] The police are poorly paid, suffer difficult working conditions, lack adequate housing and have little job security. Let us examine that how the outdated police structure affects the workings of the entire Indian Police Administration.

3.7.7 INSUFFICIENT MAN POWER

In the Indian Police Force, the powerless constabulary constitutes the overwhelming majority. A large number of police forces are deployed for VIPs' securities. Not even a reasonable proportion of the police force is available for deployment for prevention, investigation and detection of crime. In addition to this, the police force is not divided under the law police and the order police. This results in over burden of work on each individual police man which clearly reflects the problem of inadequate man power in the police administration resulting in aggravating the problem for "victims of crime."

(i)b LACK OF AND SOPHISTICATED WEAPONS AND MODERN EQUIPMENT

There is no "modernization" in the entire police administration. The Indian Police Administration is still not equipped with better communication system; better tools of investigation and latest sophisticated weapons as the criminals and law breakers are armed with the latest equipments and modern sophisticated weapons.[85]

[84] Joshua Aston, (2011), Restructuring the Indian Police System, USA: Lap Lambert Academic Publishing, p-48.
[85] Arvind Verma (2005), The Indian Police: A Critical Evaluation, New Delhi: Daya Publishing House, p-32.

3.7.8 OUTDATED POLICE ACT, 1861.

The Police Act, 1861 was promulgated nearly a century and half ago. To meet the changing societal needs, law cannot remain static. Society of today is very much different from the society of the 1800's. To cater to societal needs law must be dynamic and imbibe citizen's aspirations, experiences in implementation and the many challenges of the times. The shortcomings observed over time are to be addressed so that legislation achieves the intended purpose. A review of the existing Act and the promulgation of a new Police Act is the required step forward.[86]

With this intent the National Police Commission constituted a Police Act Drafting Committee (PADC) or the Soli Sorabjee Committee consisting of eminent legal luminaries to frame a model Police Act which seeks to replace the archaic Act.55 Police functioning has undergone a paradigm change. Focus has shifted from policing to service, from working in isolation to working with the people, from arbitrariness to accountability for actions, from secrecy to transparency. Clearly the time has come to herald change in statute.[87]

3.7.9 CRITICAL EVALUATION OF THE POLICE ACT, 1861.

The Police Act, 1861 is extremely authoritarian in nature, which is anachronistic to the present times where democracy, public participation and service to citizens must occupy centre stage. Issues like accountability of the police, co-operation of the police with the community is conspicuously absent in the Act.

Furthermore, there is no mention of the need for public support or community cooperation in police work. Welfare provisions for the police are not covered. Under Section 227 of the Act deployment in far flung areas can be done at short notice without adequate time for preparation, quite often without a specified duration and making satisfactory arrangement for family left behind.

3.7.10 POLICE –CRIMINAL CRIMINAL CRIMINAL(UNDERWORLD)

In most of the big cities like Mumbai, Delhi, Kolkata, Bangalore, etc., criminal activities are on the increase. Organized crimes in the form of periodic extortion, kidnapping, supari-killings etc.

[86] Ibid.
[87] Ibid.

have become the order of the day. Wellorganized criminal gangs are on the prowl. It is widely believed that most of the gang leaders have close links with high-level officers. There are several instances of these dreaded criminals continuing their 'activities' even from their prison cells.59 The escape of Bangalore underworld Don Tanveer in May 1999 by pushing aside the policemen, who were escorting him to a hospital and a gap of about four hours in lodging the complaint about his escape, is just one example of the police-underworld nexus.[88]

MANIPULATION IN FIRST INFORMATION

Most of our police officers deliberately make absence of material details like names of the accused, names of the witnesses, list of stolen properties, etc. from the FIR which ruins the prosecution case.66 Accordingly, there is often an attempt to add and interpolate information collected at the stage of investigations into the body of the FIR.67 Such subsequent additions and interpolations create a doubt about the reliability of investigations in the mind of the court and more often than not the prosecution case is rejected in Toto.[89]

THIRD DEGREE METHODS IN INVESTIGATION

Custodial torture has become a common phenomenon and a routine police practice of interrogation. The term 'torture' with reference to police custody implies infliction of severe pain or suffering, whether physical or mental, intentionally for the purpose of extracting from the person who is in police custody, or a third person, information or confession or coercing or intimidating him or a third person, to divulge the truth.

The police officials justify custodial torture as a 'necessary evil' to keep crime-rate under control on the following grounds:-[90]

- Professional and hardened criminals understand the language of violence only. They would not tell the truth unless sternly dealt with.
- When these offenders have no respect for the rights of innocent persons i.e. victims, why should the police respect their rights?
- Lack of public co-operation frustrates the cause of police investigation and people are unwilling to give witness against the criminals. Therefore, the police have to resort to

[88] www.timesofindia.indiatimes.com (accessed on 20-12-2011).
[89] Ibid.
[90] K. M. Mathur (1997), The Problems of Police in a Democratic Society, Jaipur: RBSA Publishers, p-96.

self-help for eliciting information about the crime from the offender by using third degree methods if the arrested person is stubborn and adamant in not divulging out the truth.

Whatever may be the justification for the institutionalization of custodial torture, but in **D. K. Basu case,**[91] the Apex court observed- "custodial violence like torture, rape, death in police custody/lock-up is a matter of deep concern it infringes article 21 of the constitution as well as basic human rights and strikes a blow at rule of law". It may be noted that there is no specific provisions in the code against custodial torture.

The Supreme Court in Raghubir Singh v. State of Haryana,[92] emphasize the need to organize the special strategies "to prevent and punish brutality of police methodology, otherwise the credibility of the Rule of Law would deteriorate". The court suggested that in order to improve the police image any officer found guilty of concoction, fabrication and third degree methodology of investigation should apart from conviction, be dismissed as a matter of course to rid the police force of such undesirable elements.

The developing human rights jurisprudence demands that this dangerous practice should be eliminated completely. Reacting sharply against the tendency of custodial torture and use of third degree methods by the police, the Supreme Court in Gaury Shankar v. State of U.P.,[93] observed thus—"it is generally difficult in cases of death in police custody to secure evidence against policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate. It is only a few cases that some direct evidence is available."

The developing human rights jurisprudence demands that this dangerous practice should be eliminated completely. Reacting sharply against the tendency of custodial torture and use of third degree methods by the police, the Supreme Court in **Gaury Shankar v. State of U.P.,** observed thus—"it is generally difficult in cases of death in police custody to secure evidence against policemen responsible for resorting to third degree methods since they are in charge of police

[91] D. K. Basu v State of West Bengal AIR 1997 SC 610.
[92] 1980 Cr.LJ 801 (SC).
[93] AIR 1990 SC 709.

station records which they do not find difficult to manipulate. It is only a few cases that some direct evidence is available."

In Yusuf Ali v. State of Maharastra[94], Supreme Court held that if the accused is beaten or starved or tortured in any way during the course of investigation by the police, it will be taken as a case of custodial torture.

Elaborating the point further, the Apex Court in Nandini Satpati v. P.L.Dani[95] laid down certain guidelines to provide protection to an accused person in police custody. The court held that if there is any mode of profuse subtle or crude, mental or physical, direct or indirect, but sufficiently substantially, applied by the police in obtaining information from the accused, it becomes a case of custodial torture which is violation of right against self-incrimination. The court, however, clarified that though the accused is not bound to answer self-incriminatory questions, he can be asked non-incriminatory questions which he is bound to answer.

3.8 POLICE AND SOCIETY: THEIR INTERACTION.

Police is an integral part of the society, but on account of hostility towards them, they feel that their occupation is in conflict with the community. If the aam aadmi is asked which organ of government hurt the most, the answer will invariably be the police; both in the negative sense of not doing what it is supposed to do – ensure the rule of law – and in the positive sense of doing what it should not do – harassment, rent-seeking.85 What are the causes for popular dissatisfaction with the police? What follows are the examples of popular discontent against the police. The issue is not whether all of these are absolutely true or not but whether they exist in the public mind & whether there is any justification for them.

3.8.1 DIFFICULTIES AND PROBLEMS IN ENFORCEMENT OF HUMAN RIGHTS

There are many difficulties that are encountered in securing and enforcing human rights. First, we have a surfeit of laws and institutions but poor implementation. What is laid down in policies and laws about the priorities to be assigned to human rights needs to "be woven into the realities of the streets."

[94] AIR 1968 SC 150.
[95] AIR 1978 SC 1075.

Second, many draconian laws have been enacted from time to time, which seriously limit and contain human rights. Thus, under Entry 9 of Schedule VII of the Constitution, we have the provision for preventive detention legislation. Then, we had MISA, the Criminal Law Amendment Act, the National Security Act and the Armed Force Special Powers Act. We have had the infamous TADA which was enacted in 1985 and has since been allowed to lapse. Maharashtra Control of Organized Crime Act (MCOCA) is law enacted by Maharashtra state in India in 1999 to combat organized crime and terrorism. But MCOCA has been misused by the corrupt police officers to book businessmen in false case for their personal gain.[96]

3.8.2 POLICE AND WEAKER SECTIONS

The situation in case of Crimes against Weaker Sections does present the police in a rather poor light, considering the continued atrocities being perpetrated against the weaker sections in general and Dalits in particular, this section attempts to look at the problem from an overall perspective.

In the words of former President K R Narayanan, "We have to ponder over the conditions of not only women in our society, but of the Dalits, Tribals and other weaker sections. Untouchability has been abolished by law, but shades of it remain in the ingrained attitudes nurtured by the caste system…. Fifty years into our life in the Republic, we find that justice - social, economic and political remain an unrealized dream for millions of our fellow-citizens."

3.8.3 JUDICIAL CORRUPTION JUDICIAL CORRUPTION

Corruption is the misuse of entrusted power for personal gain. In the context of judicial corruption, it relates to acts or omissions that constitute the use (or it is better to say 'misuse') of public authority for the private benefit of court personnel, and results in the improper and unfair delivery of judicial decisions. In corrupt judiciaries, citizens are not afforded their democratic right of equal access to the courts, nor do the courts treat them equally.

The merits of the case and applicable laws are not paramount in corrupt judiciaries, but rather the status of the parties and the benefit judges and court personnel derive from their decisions. A citizen's economic level, political status and social background play a decisive role in the

[96] Thomas, K. V. (1999), Human Rights, Terrorism, and Policing in India, New Delhi: Indian Social Institute, p-69.

judicial decision-making process. In corrupt judiciaries, rich and well connected citizens triumph over ordinary citizens, and governmental entities and business enterprises prevail over citizens.

3.8.4 VEERASWAMI'S CASE.

This was the first case where corruption charges were alleged against a judge of higher judiciary. This case dealt with many issues viz. whether judge of a high court or Supreme Court is a 'public servant' or not; who is the sanctioning authority for prosecuting a judge of a high court or Supreme Court; whether Prevention of Corruption Act, 1947 (hereinafter as Act) is applicable on judges or not etc.

3.8.5 SOUMITRA SEN's CASE

Recently, in an unprecedented move by the CJI, wrote a letter to the prime minister, recommending that the proceedings contemplated by article 217(1) read with article 124(4) of the Constitution be initiated by for removal of Justice Soumitra Sen, Judge, Calcutta High Court.109 This recommendation was made on the basis of suggestions made by an inhouse committee, in a report submitted to the CJI that Justice Sen be removed from the office. The committee has in its report charged accused Justice Sen of breach of trust and misappropriation of Receiver's funds for personal gain.[97]

3.8.6 GHAZIABAD PF SCAM CASE

This embezzlement is a very large scam of the judiciary involving 34 judges belonging to subordinate courts and higher courts and a misappropriation of Rs. 23crores from the PF of class III and IV employees.111 They are detected by the confessional statement made by Ashutosh Asthana, a Ghaziabad court official. Although the police had secured vouchers and delivery receipts as preliminary evidence, instead of granting clear permission to investigate the judges, the Registrar General of this Court, apparently under the orders of the CJI, wrote to the Ghaziabad SSP to submit written questions which were proposed to be asked to each of these judges along with the evidence against the judges.[98] However, with the Uttar Pradesh police

[97] 9 indiatoday.indiatoday.in/...Calcutta+High+Court+judge/.../14848html (accessed on 15-12- 2011).
[98] Ibid.

pleading its helplessness to investigate further the case with all its ramifications, the Supreme Court conceded the State government's request to hand over the case to the CBI.

3.8.7 CASH-FOR-JUDGE SCAM

CJI Balakrishnan is the first Chief Justice of India who has granted permission to an investigating agency to register a criminal case against judges of Punjab & Haryana H.C.[99] This is for the first time that power conferred by Veeraswami case is exercised by any CJI. He allowed the CBI to to interrogate two judges of the Punjab & Haryana H.C., Nirmaljit Kaur and Nirmal Yadav, in connection with the cash-for-judge scam. A law officer sent Rs.15 lakh to Justice Nirmaljit Kaur's official residence and later claimed that it was meant for Justice Nirmal Yadav and had been delivered to Justice Kaur by mistake.[100]

3.8.9 PROBLEM OF OVERCROWDING IN PRISONS

It is known fact that prison in most parts of India overcrowded. The effect of overcrowding is that it does not permit to segregation among convicts those punished for serious offences and for minor offences. 116 As a result of this, hardened criminals may spread their influence over other criminals, and therefore, inducing the possibility of 'recidivism'.

The juvenile offender who are kept in jails because of inadequacy of alternative places where they can be confined, come into contact with hard criminals and are likely to become professional offenders. And after release from the jail they might cause the harm in the society, and therefore, there is every possibility for re-victimization.

The law commission in its 78th report made some recommendations for easing congestion to the prisons. These suggestions include liberalization of conditions of release on bail, particularly release of certain categories of under trial on bail.

Other methods of reducing overcrowding in prisons may include extensive use of fine as an alternative punishment for imprisonment, civil commitment and release on probation.

[99] www.hindustantimes.com/cash-for-judge-scam...Article1-338794.aspx (accessed on 17-12- 2011).
[100] Ibid.

Overcrowding may also be reduced by release on parole, a prison after he has served part of the sentence imposed upon him. It is an conditional release of an individual from prison. The system of remission, leave and premature release may also be useful in talking the problem of overcrowding in prison institutions.

3.8.10 THE PROBLEM OF PRISON DISCIPLINE

In prison there must be rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. There is another reason for strict discipline in prison, one might be prison either for the purpose of custody, control and discipline or from prevented to escape or being sent to a correctional institution for treatment. Whatever be the object, it is certain that the life inside prison necessarily poses certain restriction on the liberty of inmates against their free will. Another problem faced by the prison authorities is to guard against the possibility of prison riot which is an essentially an outcome of the combined venture of inmates.

3.8.11 PROBLEM OF CONFINEMENT

Another problem related to prison discipline concern criminality among inmates inside the prison. The continuous absent from the normal society and detachment from members of the family deprives the inmates of their sex gratification which is one of the vital biological urges of human life. The Indian prison management does not accept the idea of conjugal visits, as the system of parole serve more useful purpose so far marital relationship concern. And such conjugal visits cannot be appreciated for the reason of morality and ethical consideration keeping in view the Indian values and cultural norms.

CHAPTER IV

4. RESTITUTION AND REHABILITATION OF VICTIMS OF CRIME

Legal systems all over the world which provides compensation to the victim as a right, besides punishment to the offender, are considered ideal but this facility is not available in India. It is the requirement of justice that when the society and State are resorting to every possible measure of correction and rehabilitation to the criminal, equal protection must be granted to the victim of crime also. Providing compensation for the loss and injury suffered by the victim is most essential and a sacred duty to be performed by the society and the State.

Victim of crime includes any person or persons who individually and collectively suffered loss or injury of any kind whether physical or mental through unlawful acts or omissions of the offender. Similarly, the word 'compensation' literally means a thing or financial help to make good for the injury or loss suffered by the victim of crime. The purpose of awarding compensation to the aggrieved person is to make good the loss suffered by the victim of crime or the legal representatives of the deceased. The victim needs justice and not merely lip service. Most of the human rights have since been incorporated in our constitution in the shape of fundamental rights and are available to the accused person also. However, the cause of Victim of Crime and Abuse of Power appears to have lost sight of the law makers.

An ideal administration of criminal justice provided compensation to the victims of crime along with the punishment to the offenders. In recent times plight of the victims have attracted adequate attention of all concerned with the result that new dimensions have been added to the criminology. State is responsible for the protection and safety of its citizens, failing which it should compensate the victims to prevent retaliatory behaviour of the general public. Victims and witnesses tend to face considerable inconvenience when they are required to attend court repeatedly and face aggressive cross examination from the defence counsel. The State is therefore, duty bound to protect the rights of every citizen and be prepared to pay compensation in case of infringement of their rights.

A Declaration on the Protection and Assistance of Crime Victims' was discussed at an International Workshop on victim Rights in Dubrovnik (Crotia) in 1984 and the Fifth

International Symposium on Victimology in Zagreb (Capital of Crotia) in 1985 and accepted by the Seventh UN Congress on the Prevention of Crime and Treatment of Offenders in Milan in 1985.

Organisations such as Rape Crisis Agency[101]/Centre and Women's Refuge Movement provided support for women victims (sexually assaulted and battered women). These organisations are influential in raising awareness of these specific groups[102].

The term Crime is not something static. It keeps on changing from time to time and from society to society. But studies will show that victims of crime anywhere almost give similar responses broadly.

Victims are affected first of all by the crime itself then afterwards by the attitude of the officials dealing with them under the criminal justice administration. Victims commonly experience anger; fear and anxiety[103]

Services to the victims of crime are heavily dependent upon the Governments' Funding. In Netherlands, for example, services receive financial support from three central government departments5. In other countries like Germany, specific taxes or fines may go directly to the fund victim services6. And also there is heavy dependence on volunteers/ NGOs.

In England and Wales, the National Association of Victim Support Schemes (NAVSS) was formed in 1979. In France, the National Institute for Assistance of Victims (INAVEM) was created in 1986 as a coordinating body for the sixty local associations. In the Netherlands, National Organisation for Victim Support (NOVS) was created. The USA has the National Organization for Victim Assistance (NOVA) which provides for wider range of victim services including specialist ones conserved with domestic violence and offence like rape, services provided to the victims of crime at the later stage of the criminal justice system etc.

[101] J. Hanmer, J. Radford and E. A. Stanko, "Women, Policing and Male Violence", London: Routledge (1989) and M. Joyner: "Surging the Crime Net: Domestic Violence, Crime Prevention and Community Safety", An International Journal, 1999, pp. 1-2.
[102] C. Corbett and K. Hobdell, "Volunteer-Based Services to Rape Victims: Some Recent Developments", (1988) in M. Maguire and J. Pointing, "Victims of Crime: A New Deal?" Milton Keynes.
[103] M. Maguire and J. Kynch, "Public Perception and Victim's Experience of Victim Support", Findings from the British Crime Survey (1998), London: Home Office. (2000).

In some countries like North America some services are actually run by the police departments; in some States victim support systems are actually located within the police stations. That situation is always advantageous for proving timely support and enhanced services for the support of victims of crime. In Ireland there is an organisations for the protection of tourists like Tourist Victim Support Services, 2000.

In the USA, a strongly rights-based victim movement emerged in 1960s. The USA follows conservative outlook wherein harsher punishments to the offenders are always prescribed. Thereafter focus was shifted from accused to victims for the providing of the basic rights to the victims and something much more than that i.e. increased level of services. In 1965 the first compensation scheme was launched as a part of the victim movement. Most of such programmes are being run by independent boards. In Montana, Crime Victim compensation is administered as part of workmen compensation. Four States- Illinois, Massachusetts, Chio and Tennessee place the responsibility for approving crime victim's claims on the Court[104].

Though compensatory programme was made in 1965 in the legislative session the compensation was awarded in the year 1966. The legislation was a good one wherein the aggrieved person had a role to play in the arrest of the criminal, to prevent the crime itself or to get as compensation the cost incurred or other loss suffered as a result of the wrong of the criminal[105].

In 1984 Victims of Crime Act (VOCA) and the 1989 Justice Assistance Act provided new Central Government sources of funding, with local taxes and court fines. In the USA more than half the States mandate restitution for many crimes unless the judge explains in writing why it is not to be imposed in a particular case. Thirty five States reimburse rape victims for medical examinations. All the states have compensation programmes with some states have eligibility criteria for the payment of such loses as medical costs, psychological counselling, lost wages or support, funeral costs and emergencies caused by violent crimes. More than thirty-five States allow a victim to offer a statement of opinion (oral or written) about the appropriate sentence to the court. Some states also allow such statement at other stages of the criminal justice process, such as plea bargaining, parole hearings, early release hearings.

[104] Sanford H. Kadish and T. Morrison, Encyclopedia of Crime and Justice, Vol. 4, The Free Press, MacMillan, London (1983)

[105] James, E. Culhane, "California Enacts legislation to Aid Victims of Criminal Violence", Stanford Law Review, (November 1965), p. 266.

The Federal Victim and Witnesses Protection Act, 1982 (US) improved victim's legal position of victims of crime. An important concern and improvement introduced by the act is that report on the result of the investigation to be submitted by the public prosecutor to the Federal Courts must contain a "Victim Impact Statement", in which particulars of crime and its impact on victims are described from the viewpoint of the victim of crime. The compulsory introduction of the Victim Impact Statement is designed to render it impossible that a court can try on offender without even having seen or heard the victim, as was not infrequently the case until then. This statement shall devote particular attention to the financial, social, physical and emotional damage the victim has suffered as a result of the crime[106].

On the basis of a legal authority as provided under the Act, the US Secretary of State has issued directives in July 1983 to the law agencies to avoid or at least diminish the danger of secondary victimisation. These directives are on the information, Counselling to the victim of crime. The information on counselling service include information to the victim on medical help, compensation claim and other helps available from social and voluntary organisation10. Furthermore, the law authorities must give the victim the opportunity to comment certain question from his own point of view. Among other things he shall have the right to give his opinion about the release of the defendant during the trial. The other services include, for example, safe custody of items in the ownership of the victim, the provision of special waiting room in court house, etc.

Another important improvement introduced by the Act is that, it attempts to bring restitution ideologically and practically to force in the Federal Criminal Process by expanding its authority. Now the Court can inflict restitution of damage caused to the victim as an independent penal sanction. Earlier a court could order restitution only as a condition of probation and only to aggrieved party for actual damages or laws caused by the offence by which conviction was had. The present Act expands the power by abolishing the condition of probation. Federal Court now may order restitution in addition to or in lieu of any other penalty authorized by law. Under the new Act, if the relative of the victim financially supported him even then they would have a right to file damages claim against the offender.

[106] Hari Om Gautam, Victims of Crime and the Law, Regal Publications, New Delhi, 2011, p. 303

Only few States provide compensation to the crime victims for nonresidents. In case of California Court held that all victims are eligible for compensation, even if they are illegal alien13. Pennsylvania provides assistance to non-resident victims if states in which they live treat Pennsylvania citizens similarly. Some financial need criteria are adopted by most of the States in awarding compensation. They are governed by the number of dependents, the usual living expenses of the claimant, his family, the claimant's income and potential earning capacity and his resources[107]. Section 109 of the Criminal Justice Act, 1988 sets out a new and more detailed definition of eligibility, intended to cover broad group of victims. Under the present scheme so also in the earlier scheme, persons who are injured in the law enforcement activity are entitled to compensation. The Act embodies provisions for victim's compensation against various crimes like rape, corporate offences, traffic violation, dangerous driving, etc. The claims for compensation are investigated by Criminal Injury Compensation Board wherein lump-sum payments are resorted to. The Board is having additional powers to accept application for compensation even if given after specified and stipulated time period. Further, the Board is all powerful to reduce the amount of compensation already assessed, if it has notice that the applicant has not taken without delay, all reasonable steps to inform the police of the circumstances of the injury and did not help police in bringing the offender to the book.

The victim compensation programmes in the United States have following objectives[108]:

(1) To demonstrate the State's concern for the plight of crime victim,

(2) To reduce or eliminate the financial suffering caused by the criminal injury on the innocent victims of crime and their dependants,

(3) To improve community crime prevention and better support for the criminal justice system through increased public cooperation, and

(4) To contain and limit the expenditure on this account.

[107] Supra note 9 at p. 308
[108] V.N. Rajan, Victimology in India, Allied Publishers Pvt. Ltd., New Delhi, 1981, p. 65.

One of the primary criticisms of victim compensation programs is that they promise much but deliver little to the victims of crime. A number of studies of State violent crime compensation boards have documented that few victims of violent crime apply for benefits, primarily because few victims know of their existence16. According to Elias, compensation programs are chronically underfunded and represent only a symbolic commitment to make the public think their elected leaders are concerned about them. As he stated, the public lauds its politicians for their concern, hoping it will never need the assistance, yet, if it ever should, it will effectively find little or no hope forthcoming.

In Britain, the Central organ of the victim movement, National Organisation for Victim Assistance (NOVA) (Formerly the National Association of Victim Support Schemes, NAVSS), has concentrated more on securing victims' rights and protection. Rape Crisis Centres were first opened in London (1976) and in Birmingham (1979). Gradually it increased to more than seventy of such centres in operation, offering emotional support and legal and medical advice to women who have been sexually assaulted or raped18. Replacing the term victim with survivor, rape crisis campaigners have deliberately differentiated their response from that of the rest of the victim movement[109].

In UK victim movement started in Bristol in 1974, then it grew dramatically in the coming decades[110]. Over 1970s and 1980s it developed a close relationship with the Home Office, whilst maintaining its independence21. At the other extreme lie individual schemes that are affiliated with Victim Support and linked to the centre via a county structure and a number of national committees. There is a code of practice, which includes requirements covering service provision, training and management structure, and individual schemes that do not conform to the code will be excluded from the organisation, and effectively, from receiving police support. The national organisation is also responsible for allocating central government funding to individual schemes which gives it an additional level of control[111].

For Victim Support, the main important focus is on the service provided by volunteers for victims. Coordinators receive details of victims from the police, or directly from police files,

[109] L. Kelly, Surviving Sexual Violence, Oxford, 1988.
[110] P. Rock, Helping Victims of Crime: The Home Office and the Rise of Victim Support, Oxford (1990).
[111] Supra note 9 at p. 310.

within a day or so of the crime being reported, and decide whether or not contact is to be made and if so whether in person or by letter or phone. If a victim is considered in need of a visit, which will normally takes place within the following 24 hours. Only in exceptional circumstances will a victim be visited when the crime is live. Where contact is made, most victims will be seen only once, although in areas with less crime return visits are more, and more serious crimes, where victims are more severely affected, are allocated markedly more time. In most cases, however, the emphasis is on four or five levels of support; personal support, reassurance support, reassurance and demonstration that someone cares; immediate practical help where the victims need to repair windows, fit secure locks or take other crime prevention measures; the provision of information and advice on what resources or services might be available, for example on compensation; as a link between victim and police to feed-back details of case progress to victims; and a more recent development, specific security advice[112].

The Criminal Justice Act, 1972 was replaced by the Power of Criminal Court Act, 1973 which was further and ultimately replaced by the Criminal Justice Act, 1988. The court was empowered to make compensation order by or before which a person is convicted of an offence, and this was an addition to any other order which the court finds appropriate. The order is not dependent upon the application of the victim and it can be granted in respect of any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentences24.It is important to note that this provision extended not only personal injury loss or damage suffered by the immediate victim of the offence but also to persons indirectly affected by it, provided, of course, that a clear and casual connection can be established[113].

The compensation order was entirely a matter of discretion of the court under the 1973 Act. Under the Criminal Justice Act, 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 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, declined to do so.

[112] Section 35(A) of the Power of Criminal Justice Act, 1973. 25 J. L. Lambert, "Compensation Orders-A Review of the Appellate Case-1", New Law

[113] J. L. Lambert, "Compensation Orders-A Review of the Appellate Case-1", New Law Journal, 1976

The Court can award compensation in respect of any personal injury, loss or damage. But there is a need to establish a causal link between the offence and the loss suffered by the victim. When a court makes a compensation order, it is not required to consider the complete concept of causation applicable to civil law, it is sufficient if the loss or damage can fairly be said to have resulted from the offence. The concern of the court is to avoid difficult rules of remoteness and foreseablity to what is intended to be quick and simple procedure for compensation, largely administered by law magistrates.

In France, Act No. 77-5 of January 1977 came into force in March 1977 throughout the Republic of France guaranteeing State Compensation for certain category of physical injury resulting from crime29. The State guarantees payment of compensation to victims who are the most deprived and who cannot be compensated through the resources or the processes of ordinary law30.A victim of crime is entitled to compensation even if the accused is not prosecuted or convicted or incapable of committing crime by reason of insanity or other legal infirmity. The victims other than citizens are also entitled to compensate in the same way as the French nationals[114]. The other requirements are first of all there must be injury, injury must be inflicted on the person of the victim i.e. physical injury must be there, the criminal acts must have been resulted in death or permanent disability or in total incapacity for the work exceeding one month, the harm resulting from bodily injury must entail financial loss which is defined as a loss or reduction of income, an increase in expenses or unfitness to carry on an occupation[115]. The State compensates the victims only if they have no other right to get compensation and are suffering from serious hardships. Compensation can only be provided for example, that the perpetrator of the offence is insolvent, unknown, or at large that the victim has no other rights to compensation, and also in cases where the victim received insufficient reparation.

Application for compensation will be considered by a Board set up within the jurisdiction of each court of appeal. These courts have the power of civil court and consist of three appeal judges. The victim may apply either to the Board in whose jurisdiction the criminal court dealing with the offence has its seat. If the victim does not live in France he or she may apply to the Board of the Paris Court of Appeal. The application to a Board is made by a petition submitted

[114] Supra note 9 at p. 316.
[115] Ibid.

with a minimum of formality. The petition must obtain certain information concerning the identity of the victim, the cause and nature of the injury, loss, or damage, the victims' financial position, etc. Once the petition has been entered, an inquiry is started by a member of the Board, who may get any necessary investigation carried out. During the course of the inquiry a provisional sum may be awarded to the applicant. On the completion of the inquiry a date is set for hearing wherein the views of each party may be stated. The State is represented before the Board by the Treasury's legal adviser. The decision rendered by the Board can be challenged before the Court de Cessation. The Act says that if the victim has received compensation from another source after compensation has been awarded by the Board, the State can ask for the refund of all or part of what it has paid.

Further, the French Code of Criminal Procedure allows a victim to combine his claim for compensation-actione civilie-in the criminal proceedings. It allows the victim, as a matter of right to join in the criminal proceedings as a third party. It also provides for complete restoration of material loss caused by the offender36. In fact, one of the guiding principles of action civilie is that the injured party should be put back into the position which he occupied before the offence had taken place[116].

In the Italian Civil Law there is a provision under Article 2043 (Civil Code) which states that any fraudulent, malicious or negligent act that causes an unjustified injury to another obliges the person who has committed the act to pay damages. On the same pattern in the Italian Penal Code there is a provision under Article 185 which deals with compensation to victims which states that a criminal act causing damage of a patrimonial or non-patrimonial nature imposes an obligation to pay damages on the guilty person and those who according to the civil law, must answer for what he has done.

The New Criminal Procedure Code (Nuovocodice di prodedurapenale) was an advanced system that mingled adversarial concepts and practices with an inquisitorial foundation. Clearly in an inquisitorial foundation judges often work towards the advancement of case. In an inquisitorial system the work of defence attorney and public prosecutor is limited to the extent of asking certain questions pertaining to the basic inquiry and so on. Perhaps because the inquisitorial

[116] C. Howard, "Compensation in French Criminal Procedure", Modern Law Review, 1958, p. 21.

system places such trust in the abilities of judges to make reasoned decisions, worries about neutrality led Italy to introduce adversarial elements.40In order to emphasise the judge's neutrality, the Italians placed investigation responsibilities in the hands of the public prosecutor, rather than delegating that power to the judge or the police41. After the crime has been reported within the time span of hours, the police is duty bound to give the information regarding the crime to the public prosecutor. Afterwards the public prosecutor is duty bound to investigate the case within six months and to get all the evidence within time period against the concerned accused. As it stands today, Italian Criminal Proceedings can be divided into three separate phases: (1) the preliminary investigation phase (indagini preliminary); (2) the preliminary hearing phase (udienza preliminare) at the Preliminary hearing, a new preliminary hearing Judge evaluates all the evidence collected by the prosecutor and decides whether to continue the trial, to drop the charges or archive the case[117]; and (3) the trial phase (dibattimento).

The 1989 revision made a concerted effort to separate the preliminary investigation from the trial. In the previous system the file prepared after the investigation for the preliminary hearing was delivered to the judge at the beginning of the trial. The new Code resists access to the file. Rather than providing the judge with a comprehensive file, the new system calls for evidence to be produced by the parties at trial. We find in the Italian Criminal Code the mixture of both the adversarial49 and inquisitorial system like, the judge is allowed to question witnesses at the conclusion of the examination and can indicate to the parties new issues that need to be addressed.

In the Federal Republic of Germany, the first law for the improvement of the position of the injured party/aggrieved party (term used in place of victim) was the Criminal Procedure (Victim Protection Act), 1987. This law provides new regulations of three problematic issues.

(1) The protection of the responsibility of the victim and of other parties involved in the trial is improved.

(2) The victim's possibility of participation in the criminal trial are newly regulated and improved.

[117] Supra note 38, p. 234

(3) The victim's responsibilities of obtaining restitution from the offender are extended.

Apart from this Act there is also a law governing compensation for the victims of crime of violence called in short OEG, 1976. Under this Act whosoever has suffered damage to his health through a crime of violence can, in accordance with the relevant provision of the Federal Welfare Act, claim welfare benefit to compensate him for the damage to his health or economic consequences thereof. The crime victims are treated like war victims and entitled to the same benefits as war victims are.

4.1 The Concept of Compensation

The word compensation means a thing or financial help given to the victims of crime with a view to make good the loss of property or injury sustained by the victim in person. This would show that the whole purpose of compensation is to make good the loss sustained by the victim or the legal representatives of the deceased. This concept is not new to India. Manu clearly says that if limb is injured or a wound is caused or blood flows, the assailant shall be made to pay for the expenses incurred on cure as a whole. He further says that he who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to the damage. To make it more clear the maxim- tooth for tooth and an eye for an eye based on the retributive theory of punishment gives the victim a kind of relief to satisfy his/her vengeance by punishing the wrong doer. The compensation to crime victim is not considered a punishment to the offender. It has been an obligation on the part of the society to re-impose faith and confidence on the victim which has been lost due to the offender's act of delinquency and crime.

In ancient times the victimized persons themselves used to choose punishment to the offenders and if possible inflict the same themselves. With the advancement and development of the concept of society, right of vengeance of the individual victim transformed from individual to the group to which he belonged and aggression on the individual was considered as an act of aggression on the entire group. With the emergence of the concept of barter economy, instead of sentencing and punishing the offender by the State, goods were readily accepted as compensation and restitution.

Strangely, victims of accidents have the right to claim compensation under the relevant statutes. However, there are no such compensatory rights available to the victims of crime and abuse of power. These days compensation is awarded at the discretion of the court. Some statutory

provisions have been added in the Code after its amendment from time to time. However, further amendments are required to make compensation as a right to the victim of crime.

4.1 .1 Evolution of the Concept of Compensation to Victims of Crime

Earlier the theory of retribution was in operation according to which an injured person or the relatives of one killed could exact similar vengeance from the wrong doer. Later it was felt that blood money could be paid in lieu of pursuing the blood-feud[118]. Even then an option was there for the injured person or the relative of taking money or taking blood for certain offences In Arabia, Tyler noted the transition from blood vengeance to compensation. Nomadic tribes outside the cities adhered strictly to the blood-feud, but those living in towns found it necessary to practice compensation for offences against the person in order to prevent the socially disintegrating effects of the blood feud.

The principle of compensation58 for victims of crime has its reference and concern in the old Penal law Rome and Greece. The penal laws provided for compensation to the victims of crime and there was considerable increase in awarding compensation in criminal cases. There were certain offences like theft, assault, libel, trespass in which compensation was payable.[119]

During the Anglo Saxon period the payment of compensation assumed major importance. We can notice the first systematic use of awarding damages or compensation to the victim of crime and abuse of power in the form of money. In UK the criminal had to pay compensation in the form of money and monetary payments, like the wite to the King or the Feudal Lord for the wrong which he has done further the offender need to pay money in the form of bot and wer to the victim or his relatives/dependents.60(The amount of money set on a man according to his rank and status in society was known as wer and the amount of compensation to be paid was known as wergild or bot. For breaking King's peace and doing something against the authority of king, a fine was required to be paid which is commonly known as wite.)

[118] Even in the ancient Germans this practice used to follow. Philosopher Tacitus stated: even homicide is atoned by ascertain 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; Greek and Roman Myth, available at:

[119] History of Compensation of the Victims of Crime, available at: http://www.allindiareporter.in/articles/index.php?article=1058&phrase_id=284110.

In the end of the middle ages, the concept of paying compensation started losing its moral support.Due to the increase in the powers of king there was a clear and sharp classification between torts and crimes and the award of compensation in the given cases.63It was in the 19th Century that concern for the grant of compensation to the victims of crime and abuse of power gained a momentum. There were criminal justice thinkers who supported the idea, concept and the need of dispensation in the form of awarding compensation to the victims of crime and abuse of power. Similarly these observers also stressed on the need of rehabilitation of victims and restitution to the victims of crime. The thinkers like Bonneville who advocated the concern of public responsibility to the victims of crime.[120] Criminologist Lombroso65 supported the idea of compensation to the victims of crime. Clearly, he advocated that the victims of crime must be adequately compensated against the wrong which the offender has done. Definitely there were procedural aspects wherein the awarding of justice in this form was difficult but Lombroso strongly advocated the concept that the victim of crime must receive from the criminal some amount as compensation for the wrongdoing of the offender. Meaning thereby, he advocated the conceptual idea of the paying compensation to the victims of crime out of the pocked of the offender during his detention. Another Criminologist Garofalo advanced the idea of enforced reparation whereby it is stressed that the damages need not be only sufficient for the injured party's good but rather also the concern of States' expenses are taken accounted for. One of the concept in criminal law is that the offender must have the capacity to pay. But Garofalo advocated the idea that if the offender has no capacity to pay then he must be made to do labour and to pay out of it in the form of required reparation. It was in the year 1885 at the First Congress of Criminal Anthropology in Rome, a resolution supporting the suggestions of Garofalo was introduced and passed.[121] Likewise on the same grounds in 1891, The Third International Juridical Congress at Florence recommended the setting up of an institution pertaining to Compensation Fund[122].

4.2 Compensation in the United States of America

It was in the year 1960 that the compensation to the victims of crime was considered on priority basis. The victims of crime got recognition in the administration of justice. The increasing crime

[120] Supra note 62 at p. 938.
[121] Supra note 55 at p. 3.
[122] Barone Raffaele Garofalo, Criminology 422 (Little, Brown and Company, Boston, 1edn., 1914).

rates prompted President Lyndon Johnson to establish the President's Commission on Law Enforcement and the Administration of Justice, which conducted the first national victimization surveys. The States then began to establish crime victim compensation programmes. These programmes provided compensation to the victims of crimes from the offenders. California established the first programme in 1965, followed soon after by New York. Twenty-eight States had established compensation programmes by the late 1970s, reimbursing crime victims for medical bills, lost wages, and other expenses. With the advent of these programmes providing compensation and reimbursements to the victims of crime, the victim participation in the criminal justice system, increased because victims were required to file police reports or complaints and then they were expected to co-operate with the prosecution to be eligible for compensation.

At present, almost all the States provide monetary assistance to victims of violent and personal crimes. The compensation is awarded as per the crime victim compensation programs. The benefit is given to the victims of sexual abuse, domestic violence, children subjected to rape, assault, drunk driving and homicide. The important feature of this programme is the benefit is also supposed to be given to the victims of terrorism both in the USA and abroad. The payment of costs to the victims of crimes is also anticipated by these programs. The payments pertaining to the medical expenditure, lost support, and counselling etc. are also covered by the said programme.

Awarding compensation to the victims of crime is one of the oldest types of victim assistance programme in the United States. By 1980, 28 states operated victim compensation programs, and by 1992 all the states had established them, as well as the District of Columbia, the Virgin Islands, Puerto Rico, and Guam. California is the largest program in the country by far, paying out close to $100 million each year, a fourth of the total benefits paid by all programs combined.Until 2001, there was no national or federal compensation program for victims of crimes in the U.S., other than the Public Safety Officers Benefit program. These Programs get their funding primarily from offenders.

The Office for Victims of Crime takes care of the funds to provide monetary assistance to the States by giving financial assistance to the State compensation programs, victim assistance programs, victimwitness protection programs etc. The funding largely comes from a surcharge

on fines, besides other sources such as, forfeited bail money, and confiscation of all or part of their profits derived by an offender from the sale of the rights of the story concerning his offence. Some States have a 72-hour standard time frame work within which a crime is to be recorded or reported. But some States have extended time period like New Jersey's reporting requirement is 90 days and Washington State allows one year for reporting. Further in continuation to this some States like California, Texas, Utah, Vermont and Wyoming have no set time frame at all but the reporting has to be within reasonable time (now what is reasonable time period - that is to be decided by the Hon'ble Court itself according to the facts and circumstances of each case). In California, while reporting to police remains the most common means to show proof that a crime occurred, the program may determine eligibility by other means than a report to law enforcement. It's important to note that every state can extend its reporting period for "good cause," and all of them routinely do so for child victims of crime.

4.3 Victim Compensation Scheme in United Kingdom

The legislative schemes to compensate victims of crime in United Kingdom have grown in the last thirty years. In 1964, the United Kingdom established the first victims' compensation scheme in Europe, the Criminal Injuries Compensation Act. Under the scheme, victims can recover damages for most injuries received from a criminal act, including compensation for medical expenses, loss of earnings, pain and suffering, and pecuniary losses to dependents of crime victims who have died as a result of a crime. Several countries, including France and Germany also enacted victims' compensation schemes following this. Basis of Calculation of Compensation in U.K:[123]

4.3.1 The Criminal Injuries Compensation Authorities

As per the Public Bodies and Task Forces of the UK Government:

> The Criminal Injuries Compensation Authority is a non-departmental public body in the United Kingdom. The Authority administers a compensation scheme for injuries caused to victims of violent crime in Great Britain and is funded by the Ministry of Justice in England and Wales and the devolved Scottish Government in Scotland. Since the scheme

[123] The Criminal Injuries Compensation Act, 1995, Section 2, available at: http://www.uklegislation.hmso.gov.uk/acts/acts1995/Ukpga_19950053_en_1.

was set up in 1964, the Authority and its predecessor, the Criminal Injuries Compensation Board, have paid more than £3 billion in compensation, making it among the largest and most generous of its type in the world, although it has been criticised on occasions for failing to provide adequate compensation to victims of serious crime, particularly parents of murdered children and rape victims It has also been criticised for claiming that the applicant was a contributor to the incident from which they sustained their injury, and in cases of murder or manslaughter that the deceased had contributed to his or her own death; on this basis its compensation payouts to claimants have been reduced to lower amounts and it has even refused to pay any compensation at all in some cases.

Until 1996, awards were set according to what the victim would have received in a successful civil action against the offender. However, since mid - 1996, the level of compensation has been determined according to a scale set by Parliament. The scheme and the 1996 tariff were revised in 2001. The tariff has descriptions of more than 400 injuries; each is attached to one of 25 levels of compensation between Pound 1,000 and 2,50,000. In certain cases, victims may also apply for financial loss compensation for example, through loss of earnings or medical care costs.

*An amendment to the Criminal Injuries Compensation Scheme has been passed by Parliament and will come into effect from 3 November 2008. All claims registered on or after this date will be dealt with under the*2008 Scheme. Ongoing claims registered before this date will still be dealt with under the 2001 Scheme. For registering a claim, it must be based on crimes that have been reported to the police,84although a conviction is not necessary as claims are based on the civil law principle of balance of probabilities85rather than "beyond reasonable doubt" method used in UK criminal courts.

Further, in January 2012, Justice Secretary Ken Clarke proposed further reforms to the Scheme. There was cross-party support for altering the Scheme to compensate victims of overseas terrorist attacks. However, there was criticism of proposals to end compensation awards for certain minor injuries, and for more severe reductions in awards than already exist to people who have been convicted of a crime.[124]

[124] Compensation for U.K. Victims of Terrorism Abroad, available at: http://www.bbc.co.uk/news/uk-16783678.

Thus, in many ways the victim compensation scheme of United Kingdom is advanced than the one provided in India inspite of the law dealing with victim compensation was codified even a century ago than United Kingdom.

Compensation to victims of crime is payable under the Criminal Injuries Compensation Scheme, 1964. For this a Criminal Injuries Compensation Board is established. The basis of the awarding of compensation is the same as that in civil injuries. Further under the revised scheme of awarding compensation 1973, it is now possible to give compensation for injuries caused within domestic issues of a family like a family member injuring another.

The following conditions are required for awarding compensation to the victims of crime in the United Kingdom:

4.4 Victim Compensation in India: An Analysis of the Provisions under the Code of Criminal Procedure, 1973

Criminal justice system in India is based on the British pattern and aims at punishing the accused person to reform and rehabilitate him/her in the society as a good citizen. In the jail also the accused person availed all the human rights available to the citizens enshrined in The Constitution of India. Prisons have also been converted into correctional centres, where the criminals while undergoing imprisonment are given adequate training in some trade, so that after their release from the jail they easily become part of society without being burden on it. The growing emphasis on probation, parole and suspended sentence is also aimed at reformation and assistance to fit in the present day society

The victim of crime, however, remained neglected during the investigation, trial and thereafter. He is simply treated as an informant to lodge FIR and to depose as a prosecution witness against the accused during the trial. It is rightly said that: It is a weakness of our jurisprudence that victim of crime and distress of the dependents of the victim don't 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.[125]

The Indian Penal Code, 1860 does not contain any provision for awarding compensation to the victim. However, under offences against property, Chapter XVII, the stolen property if recovered

[125] **Rattan Singh v. State of Punjab, (1979) 4 SCC 719.**

is liable to be returned to the victim/owner. The Code of Criminal Procedure, 1898 had contained Sections 545 and 546 which empowered the trial court to award compensation to the victims out of fine imposed on the accused when he is convicted and sentenced. But the payment was allowed only when the judgment had become final and that was also subject to recovery of the fine. Paying capacity of the accused person is to be kept in view by the court when imposing fine. There may be cases where the accused being too poor or unidentified or not apprehended the court cannot award compensation. In such a situation the State, that has failed to protect the life, liberty and property of its citizens, shall compensate the victim out of its own funds.

The Code of Criminal Procedure, 1898 has been thoroughly revised and re-enacted as the Code of Criminal Procedure, 197388(herein after referred as Code). Provisions of Section 545 and 546 of the old code were retained as such in the new code as Sub-Sections (1), (2) and (5) of Section 357 and Sub-Sections (3) and (4) were newly inserted to make Section 357 more victim friendly. The new provisions are meant to be dealt with those offences where fine is not part of the substantive punishment and to enhance the discretionary powers of the trial/appellate courts.

In some cases where the trial courts did not award compensation, the victims started approaching the higher courts under Section 482 of the Code but the same was not favoured by the Apex court on the ground that in view of existing provisions under Section 357, such a petition was not maintainable as: If there was an express provision governing a particular subject matter, there is no scope for invoking or exercising the inherent powers of the court because the courts ought to apply the provisions of the statute. Hence the application made by the heirs of the deceased for compensation couldn't have been made under Section 482 since it expressly confers powers on the court to pass an order for payment of compensation.

4.4.1 Compensation in Criminal Cases

The word compensation means a thing or financial help given to the victims of crime with a view to make good the loss of property or injury sustained by the victim in person. This would show that the whole purpose of compensation is to make good the loss sustained by the victim or the legal representatives of the deceased. This concept is not new to India. Manu clearly says that if limb is injured or a wound is caused or blood flows, the assailant shall be made to pay for the expenses incurred on cure as a whole. He further says that he who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to the damage.

To make it more clear the maxim- tooth for tooth and an eye for an eye based on the retributive theory of punishment gives the victim a kind of relief to satisfy his/her vengeance by punishing the wrong doer. The compensation to crime victim is not considered a punishment to the offender. It has been an obligation on the part of the society to reimpose faith and confidence on the victim which has been lost due to the offender's act of delinquency and crime.

In ancient times the victimized persons themselves used to choose punishment to the offenders and if possible inflict the same themselves. With the development of the society, right of vengeance of the individual victim transformed from individual to the group to which he belonged and aggression on the individual was considered as an act of aggression on the entire group. With the emergence of the barter economy, the society accepted money or goods as symbolic compensation and restitution of crime in place of awarding punishment themselves.

4.4.2 Position of Victim in Criminal Cases

The two important components of criminal justice system are the perpetrator who commits the crime and the victim against whom the crime is committed. Neither the victim nor the perpetrator has been defined by any penal statute. Ordinarily a person is liable for his own guilty acts. However in certain situations one is held liable for the criminal acts committed by others also.

There is no society in the world that is not confronted with the problem of criminality. Crime prevention and treatment of offenders is engaging attention of the criminologists. There may be situations where person committing crime may not be free agent. The present day trend is to rehabilitate and reform the accused rather to award deterrent punishment. There are two systems of administration of criminal justice system present in the world. One is accusatorial, which is prevalent in common law countries and the other is inquisitorial followed in some European countries like France. Under first category the burden of proving that the accused person violated some law is on the prosecution whereas under the second the burden is on the accused to prove that he is not guilty. India is following the pattern of common law countries and therefore accused has been given rights in the administration of the criminal justice system to ensure that one innocent is not convicted rather guilty persons may be acquitted.

4.4.3 Compensation to Victims of Crime: Provisions under the Code of Criminal Procedure, 1973

Section 357 of the Code is regarding the order to pay compensation to the victim of crime/dependents. Under this Section when a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment order the whole or any part of the fine recovered to be applied: (a) In defraying the expenses properly incurred in the prosecution, (b) In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion, of the court, recoverable by such person in a Civil Court; (c) When, any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death; (d) When any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto. Under SubSection (2) if the fine is imposed in a case, which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or if an, appeal be presented, before the decision of the appeal. Further when a court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. An order under this Section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this Section.

Section 357 of the Code contains basic law relating to crime victim which is in vogue since the enactment of old Code of 1898. Sub-Section (1), (2), and (5) of the new Code are the same which were contained in Section 545 and 546 of the 1898 Code. However, Sub-Section (3) and (4) are newly inserted. Sub-Section (1) and (3) are the main provisions relating to award of

compensation to victims of crime. According to Sub-Section (1) compensation can be ordered to be paid only when the accused is punished with a sentence of fine or with some other sentence of which fine forms a part. It further provides that the compensation should be ordered to be paid from the amount of fine recovered from the accused. Quantum of compensation, therefore, should not exceed the amount of fine ordered to be paid. The court has to keep in view the pecuniary limits of fine which have been imposed upon it under law. Section 29 of the Code empowers the Court of Magistrate first class to pass sentence of fine not exceeding Rupees 10,000 and the Magistrate of second class not exceeding Rupees 5,000.

This limit has to be kept in view while imposing fine and ordering compensation out of fine imposed on the accused person.

Section 357-A has been newly inserted by the Code of Criminal Procedure (Amendment) Act, 2008. This Section says that every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. Now whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred. Under Sub-Section (3) of Section 357-A of the Act says that if the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation. Further where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation. On receipt of such recommendations or on the application the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.[126]

[126] The Code of Criminal Procedure (Amendment) Act, 2008

4.5 Need for Care and Rehabilitation of Victims

Section 357A has been incorporated in the Code of Criminal Procedure, 1973 vide Act V of 2009111. The object of the said provision is to provide power to Courts to direct the State to pay compensation to the victim where the compensation under Section 357 is inadequate or where the case ends in acquittal or discharge and the victim is required to be rehabilitated or when the accused in not traced but the victim has been identified, or where no trial has commenced. The said Section i.e. Section 357A was added on the recommendation of 154th Law Commission's Report. The 154th Law Commission Report on the Code of Criminal Procedure, 1973 provided for an entire chapter to 'Victimology'. In the said chapter various rights of victims at trials were discussed. The Law commission observed as follows:

> Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directed to victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime...However, in India the criminal law provides compensation to the victims and their dependants only in a limited manner. Section 357 of the Code of Criminal Procedure incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims. In India the principles of compensation to crime victims need to be reviewed and expanded to cover all cases. The compensation should not be limited only to fines, penalties and forfeitures realized. The State should accept the principle of providing assistance to victims out of its own funds.

The providing of compensation under Section 357A has provided the ground for victim oriented justice system. The Apex Court in several decisions has provided of adequate compensation.[127]

[127] See Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770, Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News, (2014) 4 SCC 786, Mohommad Haroon v. Union of India, (2014) 5 SCC 252, Laxmi v. Union of India (2014) 4 SCC 427

5.5.1 Victims of Medical Negligence

In India a claim for medical negligence was always maintainable under tort or contract. Section 304-A, which deals with homicide by negligence, was added in 1870 in the Indian Penal Code, 1860. This Section must be read with Section 336,337 and 338 as well as Sections 88, 89, 93, 94 (consent) of the Indian Penal Code, 1860. Section 336 deals with act endangering human life or personal safety of others whereas Section 337 and 338 would apply if hurt or grievous hurt is caused by rash or negligent act. With the enactment of the Consumer Protection Act, 1986 litigations under this Act against doctors increased to a large extent. This increase was due to the fact that procedure under the Act was simple, cheap and less time consuming in comparison with civil and criminal procedure prevalent earlier. The court fee payable under the Act is nominal. However most cases of medical negligence were dismissed by the Consumer Disputes Redressal Commission or civil courts because these insist that negligence on the part of the doctor should be proved by the claimants through expert evidence or by medical literature which ordinarily claimants were unable to prove.

Doctor-patient relation prevalent in the previous times has almost come to an end because modern medical practice has changed its original concept of service to the community but become a sort of business. Mockery of Hippocratic Oath is now prevalent. Hospitals and their agents in the shape of nursing homes, clinics, laboratories etc. procure patients after paying commissions and as such doctorpatient relation of previous times has come to an end. Government hospitals and dispensaries being run for the welfare of the public have become useless because medicines and other facilities are not available with them and therefore nobody likes to get treatment over there. The Hon'ble Supreme Court many a time condemned the Government medical facilities and stressed the need to raise their standard to higher level to win the confidence of the common people.

Deaths because of negligence of doctors are quite common in India but somehow a large number of such cases do not reach the stage of trial. However, if it is proved that death has been caused by rash or negligent act per se of the doctor, Section 304-A of the Indian Penal Code, 1860 is attracted. Where the accused who was not a qualified doctor, administered an injection to the patient causing his death and there was no evidence that the accused gave any test dose to the

deceased before giving the full dose of the injection.[128] The Allahabad High Court held him guilty under Section 304-A. It was emphasized that the liability under Section 304-A should have been the direct result of rash and negligent act of the accused.131 These are the examples of per se medical negligence which come under the preview of Section 304-A, because in such cases strict proof of negligence was not required. Conviction or acquittal in such cases under section 304- A is no bar to civil action for compensation of damages. However, after the enactment of the Code of Criminal Procedure, 1973 Sub-Section (3) of Section 357 has come into operation and therefore compensation under this Sub-Section is also available to the victim.

The appellant, Dr. Suresh Gupta was in the dock as an accused under Section 304-A of the Indian Penal Code, 1860, for causing the death of his patient on 18/4/2004 while under operation for nasal deformity. After completion of the investigation, challan was put up in the court of Magistrate and charge was framed against the accused.

The doctor (accused) approached the High Court by a petition under Section 482 of the Code of Criminal Procedure, 1973. But The High Court refused to quash the criminal proceeding and upheld the order of the Magistrate. Hence this appeal as mentioned above the patient died in the course of surgical operation and according to the postmortem report, the cause of death was asphyxia resulting from blockage of respiratory passage. A special medical board consisting four eminent doctors was constituted by the investigation agency. The question for decision before the Supreme Court was as to whether the High Court was right in holding that criminal liability prima facie has arisen against the surgeon and that he must face the trial.

For fixing criminal liability of a doctor or surgeon, the standard of negligence required to be proved should be so high as can be described as gross negligent or reckless. It is not merely lack of necessary care, attention and skill. The decision of the House of Lords that a doctor cannot be held responsible for patient's death unless his negligence or incompetency showed such a disregard for life and safety of his patient as to amount to a crime against the State, should apply to the case. For every death or mishap during medical treatment, the medical man cannot be proceeded against for punishment. Criminal prosecution of doctors without adequate medical opinion pointing to their guilt would be doing great disservice to the public at large. No doubt in

[128] **Ram Niwas v. State, 1998 Cri LJ 35 (All).**

the present case, the patient was a young man with no history of any heart ailment. The operation for nasal deformity was not so complicated or serious. If the cause of death as given in the post-mortem report is accepted to be true, it can be described as negligent as there was lack of due care and attention. For this act of negligence or want of his due attention and skill cannot be described to be so reckless or grossly negligent as to make him criminally liable. Consequently appeal allowed and order of the Magistrate and High Court are set aside and proceedings pending against the accused were quashed.

Ashok Kumar Sharma, respondent no. 2, filed a first information report with police station division no. 3 Ludhiana. Thereupon an offence under Section 304 A read with Section 34 of the Indian Penal Code, 1860 was registered and after investigation challan presented in the court. The judicial Magistrate first class Ludhiana framed charge under Section 304-A of the Indian Penal Code, 1860, against the accused persons (both doctors). Both of them filed a revision in the court of Sessions judge submitting that there was no ground for framing charges against them. The revision was dismissed. The appellant filed a petition in the High Court under Section 482 of the Code of Criminal Procedure, 1973, praying for quashing the FIR and all the subsequent proceedings[129], which was also dismissed. Further the court observed:

> (N)egligence is the breach of a duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'.
>
> A professional may be held liable for negligence on one of the two findings: either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess. The standard to be applied for judging, whether the person charged has been negligent or not, would be that of an ordinary skill in that profession.

[129] Jacob Mathew Appellant v. State of Punjab and another 2005 Cri LJ 3710 (SC).

> The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount an offence, the element of mensrea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence would be much higher i.e. gross of a very high degree. Negligence, which is neither, gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis of prosecution.
>
> To prosecute a medical professional for negligence under criminal law it must be shown that the accused did something or failed to do something which in the given facts and circumstances no medical professional in his ordinary senses and prudence would have done or failed to do. The hazard taken by the accused doctor should be of such a nature that the injury, which resulted, was most likely imminent.[130]

In Suresh Gupta Case the Court further held that:

> (T)he investigation officer and private complainant cannot always be supposed to have knowledge of medical science so as to determine whether the act of the accused amounts to rash or negligent act within the meaning of Section 304-A of the Indian Penal Code, 1860. The criminal process once initiated subjects the medical professional to serious embarrassment and sometime harassment. He has to seek bail to escape arrest which may or may not be granted to him. Medical council need to frame statutory rules or executive instructions, so long as it is not done the private complaint may not be entertained unless the complainant has produced evidence before the court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor. The investigating officer should, before proceeding against the doctor accused of rash or negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in a Government service qualified in that branch of medical practice. A doctor accused of rashness or negligence, may not be arrested in a routine manner.

The ancient criminal law was greatly influenced by religious considerations. Every person was expected to show the conduct as per the mandates of Dharma. Dharma gave powers to kings to

[130] Ibid.

punish wrongdoers. The primary concern of criminal law was, thus, to punish the offenders. The compensation was to be ordered to be paid in addition to, and not in substitution to punishment. It was only in rare cases that the criminal could go scot free by paying only compensation. Especially when the injury inflicted was serious in its character, the mere payment of compensation was not regarded as sufficient to meet the ends of justice.

In the medieval period the Muslim law became the general law of the land. The Muslim criminal law made provisions for several kinds of punishments prominent were kisa, hadd, tazeerand diya136. Tazeer meant the discretionary punishments which the judges could impose depending upon the facts and circumstances of the case. Under tazeer, judges could impose on the accused an order to pay compensation to victim. Diya meant the blood money. Thus the idea of compounding of the offence was there in the medieval period. The compensation under diya was awarded to the next of kith or kin of the victim on a fixed scale. On accepting diya, the victim's representatives used to forgo their claim of revenge against the offender. In some cases even judges could fix the amount of compensation depending upon the facts and circumstances of each case. The provision of diya during medieval period could entitle the offender to escape punishment by paying. The period of Muslim rule in India was followed by English colonial period.

However, the 1898 Code of Criminal Procedure under Section 545 empowered the court to order the convict to pay compensation to victim. Under Section 545(1) the words 'when passing judgment' were used by the legislature which suggest that award of compensation under this Code could be made only while passing the judgment. As the compensation was to be paid out of the fine, it was implicit that the amount of compensation could in no case exceed the amount of maximum fine which could be imposed for the offence proved. Thus, when the judges imposed fine in addition to compensation, the total amount could not exceed the pecuniary jurisdiction of the court. Another aspect of this rule was that in cases where the sum, which the accused was asked to deposit, did not strictly constitute a fine, the court had no authority to award compensation out of that amount. Compensation could be awarded under this Section only when the same was recoverable in a civil court. This means that the act should constitute both, a tort as well as a crime, only then compensation could be awarded.

As regards the jurisdiction to order payment of compensation, such an order could be made by the trial court or by the appellate court or the revisional court. If the compensation order made under this Section was subject to appeal, the payment of compensation was subject to the final disposal of that appeal, if preferred or till the limitation period provided for filing that appeal continued. Section 546, which supplemented Section 545 provided that the amount paid as compensation under Section 545 shall be taken into consideration in a subsequent suit relating to the same matter. It means that the civil court should deduct from the damages awarded by it, the compensation recovered under Section 545.

The maximum compensation which the courts were authorized to order the convict to pay was limited to the maximum fine which such convicting court were authorized to impose. Even the power to levy fines was limited. This led to the changes in the Code of Criminal Procedure, 1973.

By the Criminal Law Amendment Act, 2008 a new provision i.e. Section 357A have been added wherein compensation scheme is to be provided by the States along with the Central Government. Now the trend is towards the paying of the compensation for the rehabilitation of victims. The Supreme Court of India is delivering judgments pertaining to awarding of compensation to victims out of State funds through the compensation schemes. But according to the Supreme Court the amount fixed in the schedule of the schemes of States is very meager that needs to be enhanced. Also the apex court has stated that the courts need to apply mind in all cases where compensation is required.

We can sum up the whole discussion that compensating a victim of crime can do certain good. Although we can say that monetary relief is not an answer to all the wrongs but money is a necessary evil. In the Indian setup a victim cannot approach a criminal court for getting a definite amount as compensation. Meaning thereby it is not the right of the victim but the courts have resolved to the work of giving monetary relief to the aggrieved/victim for rehabilitation.

CHAPTER V

CONCLUSION AND SUGGESTIONS

In the process of prevention of victimization and the protection of victims, there are many challenges faced in India which are being tackled through some positive measures. The strength of a judiciary is proportionate to the weakness of the executive. Judicial activism most often, is associated with modern liberalism that believes in broad interpretation of the constitution which can be applied to specific issues. Defenders of judicial activism say that many cases of judicial activism merely exemplify judicial review, and that courts must uphold existing laws and strike down any statute that violates a higher law. They say that it is the duty of courts to protect minority rights and to uphold the law, notwithstanding the potential sentiments of the day, and that constitutional democracy is far more than just majority. Some proponents of activism argue that judiciary should grant itself an expanded role to counterbalance the effects of majoritarianism, i.e., there should be an increase in the power of a branch of government which is not directly subject to the electorate, so that the majority cannot dominate any particular minority through its elective powers.

The differential role of the Supreme Court during the emergency between June 1975 and March 1977 contributed significantly to the development of judicial activism in India – particularly after the 1977 elections, change in judiciary's view on its own role was visible. The emergency witnessed large – scale violations of basic rights of life and liberty, facilitated by the statute, the Maintenance of Internal Security Act (MISA) and suspension of basic fundamental rights and the State following the terms of the detention law scrupulously. The Supreme Court assumed the role of the guardian of citizens' liberties through the vigorous growth of PIL. It is discernible that the strength of a judiciary is proportionate to the weakness of the executive.

The Janata Party which came to power in 1977 and subsisted till 1979, at a point in time when the judiciary consciously began to develop PIL. The Supreme Court innovated new methods and strategies in realization of the constitutional obligation of securing enforcement of the fundamental rights, particularly in case of the poor and disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning. It is a known fact that judicial activism has given the country / society some very good case laws. The Supreme Court has

played a significant role in contributing to good governance of environment, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution. The people of India took upon the Supreme Court as an instrument of social justice and a guarantor of the great ideals enshrined in the Constitution.

The recent trend of judicial activism developed because of the seeming failure of other organs of the State to duly perform their function, requiring the judicial process to activate them for public good.

Judicial activism is a delicate exercise involving creativity. Great skill and dexterity is required for innovation. Judicial creativity is needed to fill the void occasioned by any gap in the law or inaction of any other functionary, and thereby, to implement the Rule of Law. Diversion from the traditional course must be made only to the extent necessary to activate the concerned public authorities to discharge their duties under the law and to catalyze the process, but not to usurp their role. The credibility of the judicial process must not get eroded.... The need is to practice self-restraint and to innovate or forge new tools only when that is the requirement of public good and no other method is available under the legal framework... Judicial activism in its true form alone must be promoted and practiced. Judicial activism is legitimate and welcome but not judicial adhocism which may tend to degenerate to judicial tyranny. This is the legitimate province of the judiciary in the Constitutional Scheme in a democracy A stronger judiciary helps to provide checks and balances and grant itself an expanded role to counterbalance the effects of transient majority of elected executive officials. An independent judiciary is a great asset to civil society since special interests are unable to dictate their version of Constitutional interpretation with threat of stopping political donations.

Judicial Activism and Human Rights are inter-connected inexorably in Indian context. Judiciary has adopted an activist approach in dealing with maters for the protection of human rights. The Indian Judiciary in disposing of various cases of human rights have relied upon major International Human Rights Instruments like Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and other allied instruments. The Judiciary took up an active role in the implementation and interpretation of Human Rights, when the executive and legislative authorities were silent spectators and failed to take necessary steps. The Judiciary has shown

special interest in protecting the Human Rights. The Supreme Court of India and various High Courts in a number of cases recognized, highlighted and enforced Human Rights.

The Judiciary played an important role in the formulation and actualization of human rights in India. The Supreme Court of India by widely interpreting the Constitutional provisions has paved the way for birth of innumerous number of human rights namely right to speedy trial, right to free legal aid, right to privacy, right to know and various other rights through its land marking Judgments. In promoting the basic human rights, the Supreme Court of India has entered into an era of Judicial Activism by giving extended meaning to right to life, liberty and security of individual

The genesis of judicial activism lies in the evolution of Public Interest Litigation. Public Interest Litigation, or PIL as it is conveniently called, is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity. PIL has become a prominent segment of the jurisdiction of the Supreme Court and 21 High Courts in India. The traditional rule of Locus Standi that a person, whose right is infringed alone can file a petition, has been considerably relaxed by the Supreme Court and now, the court permits Public Interest Litigation at the instance of public spirited citizens for the enforcement of constitutional and legal rights. Any public spirited citizen can move/approach the court for the public cause (in the interest of the public/social welfare) by filing a petition:

1. in Supreme Court under Article 32 of the constitution;

2. in High Court under Article 226 of the constitution; and

3. in the Court of Magistrate under Sec.133 Cr. P.C.1973.

Victim is the forgotten figure of the contemporary Criminal Justice System. A look at the Indian Criminal justice system reveals the bleak picture that it is not victim oriented but accused oriented. Under Indian procedural criminal law, the accused is treated as privileged person and is provided with all possible help including a defence counsel at the cost of the State. A number of Constitutional protections are also available to an accused under Articles 20, 21 and 22 of the constitution. But very few legal provisions are available to afford assistance and compensation to

victims of crim. In the public mind, the interests of the offender seem to be receiving greater attention than the interests of the victim.

While the court sentencing the offenders under penology, it should not neglect the victims from the act. The Supreme Court observed that while considering the problem of penology courts should not overlook the plight of victimology and the sufferings of the people who die, suffer or are maimed at the hands of the criminals. Unfortunately, victimology has remained neglected.

The Supreme Court in its efforts to look after and protect the human rights of the convict, the courts cannot forget the victim or his family in case of his death or who is otherwise incapacitated to earn his livelihood because of the criminal act of the convict. The victim is certainly entitled to reparation, restitution and safeguard of his rights. Criminal justice would look hollow if justice is not done to the victim of the crim. The subject of victimology is gaining ground while courts are also concerned with the rights of the prisoners and prison reforms. A victim of crime cannot be a forgotten man in the criminal justice system. It is he who has suffered the most. His family is ruined particularly in case of death and other bodily injury. This is apart from the factors like loss of reputation, humiliation, etc.

An honour which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.

In recent years, the rising crime rate, particularly violence against women has made the criminal sentencing by the courts a subject of concern. The court opined that justice demands that courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

At the time, a very important facet of the criminology and penology to which one cannot be oblivious, is the victimology. Unfortunately, the doctrine of victimology has, hitherto, been a neglected segment of criminology.

Currently judicial attitude has taken a shift from the old draconian concept of taking recourse to the conservative doctrine of the civil court’s obligation to award damages as per the traditional jurisprudential system towards the trend of justice-oriented approach to provide expeditious

relief. Law Courts will lose their efficacy if they cannot possibly respond to the need of the society – technicalities there might be many but the justice – oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice.

The problem in India is not that there are not enough laws. A number of statutory laws, exist just as well, such as Code of Criminal Procedure, 1973.(Sec. 357 subsec.1 &3; Sec.357-a; Sec.358 Sub-sec. 1,2 &3; Sec. 359 (1) of Cr.P.C.); Probation of Offenders Act, 1958(Sec.3 or Sec.4); and Motor Vehicles Act, 1988 are the compensatory legislations, which form the basis on which comprehensive victim assistance may be built. But the problems in India are three-fold:

Suggestions

An ever-increasing part of black money in India is generated through corruption of the ruling class that includes politicians and bureaucrats. The main source of corruption today relates to either the allocation of scarce natural resources like land, spectrum and minerals or large scale government construction or procurement contracts or social welfare projects. True quality emanates from good governance.

Judicial Activism all about providing a good governance and ensuring the safety, security and welfare of the society. If human rights are to have real meaning, they must be linked to public participation and must be preceded by empowerment of the people. A sense of empowerment requires a sense of dignity, self – worth and the ability to ask questions. Any commitment to the democratic principles involves transparent governance and accountable governance so as to ensure peoples' right to participate in governance and development. The increasingly instances of corruption in all aspects of governance have brought the issues of accountability and transparency into the development dialogue and discourse. The neo – liberal policy prescriptions of the Breton Wood institutions in the form of structural adjustments, privatization and liberalization alienated the poor from the Indian State and further aggravated their pitiable plight. In this context, by the mid – 1990s clear tendencies towards participatory practices (including local self – governance) with a rights – based perspective emerged in India.

An analysis of the case laws have highlighted how the Supreme Court and High Courts in India have evolved the practice of awarding compensatory remedies not only in terms of money but

also in terms of other appropriate reliefs and remedies. It is a weakness of Indian jurisprudence that victims of crime and the dependents of the victims do not attract the attention of law. In fact, the victim reparation is still the vanishing point of Indian law. This is the deficiency in the system which must be rectified by the legislature. Thus far, the Indian legal regime has failed to protect victims' rights in two fundamental ways: failing to enact suitable laws and where it has, failing to implement both the letter and spirit of the law.

Nevertheless, the problem in India is not that there are not enough laws. There are a number of statutory laws and just as well, because laws are the basis, on which comprehensive victim assistance may be built.

The problems in India are three-fold:

(i) To create awareness among potential victims to recognize victimization, with a view of preventing it and seeking proper assistance and remedy when it occurs.

(ii) To sensitize the courts, the police, the medical and welfare services, including nonofficial agencies, about the needs of victims and an approach towards satisfying them and,

(iii) To organize victim assistance services on a wider front and more comprehensively than currently exists.

Although India has engaged in various reforms in criminal investigations and prosecution, the sufferings of crime victims have been largely neglected. The majority of crime victims in India suffer without any redress. Although victim assistance is a rarity in India, principles for victim assistance exist under the Indian Constitution, in that the State is mandated to secure "the right to public assistance in cases of disablement and in other cases of undeserved want". Under the Criminal law, victims receive compensation only in a limited way when the offender is convicted and sentenced.

A paradigm shift in the justice system is the need of the hour. There should be a change in the focus from Criminal justice to victim justice, but victim justice should be perceived as complementary and non contradictory to criminal justice.

The Compensation orders and criminal injuries compensation touch only the tip of ice berg, they reach only a minority of Victim's and in no way adequately and promptly address Victim's problems. They provide inadequate financial solutions to some Victim's problems. In India, ignorance unlimited is the real cause for the individuals becoming Victims of the Criminal Justice System. Hence, a mass campaign is necessary to make aware of Criminology, Victimology and about penology in the fields of judiciary. As per the recommendations of the Malimath Committee, on Reforms of Criminal Justice System headed by Justice V.S. Malimath, appointed by the Govt. of India in 2003, the Victims should be allowed to participate in the investigation and give their inputs freely to the investigating agencies. Their perspective of the offence and the offender will throw a better and a brighter light on the whole issue. The government should also take the task of educating Victims about Crime prevention.

A majority of the punitive remedies enumerated in the Criminal law statutes such as fines, penalties and imprisonment are not proportionate to the degree of harm suffered by the Victim. While it may be relatively easy to ascertain external physical injuries, it will be far more difficult to ascertain harm suffered in the nature of mental trauma and psychological stresses that emerge much after the Commission of the Crime. Complications may also arise if the aim is to ensure compensation for loss of potential earnings, loss of livelihood on account of the death of an earning member of a family and other kinds of indirect costs linked to the Crime. The situation is even more complicated for Victims of sexual offences. This phenomenon of the Victims of Crimes facing even more harassment during the course of investigation and trial – is called Secondary Victimization. In this context, in the absence of a clear legislative framework, even the higher judiciary has been inconsistent in awarding compensation to victims.

The types of harm, injury, loss or damage caused by wrongful conduct should include: the loss of life or of support, impairment of health including physical or psychological injury, pain and suffering both physical and mental, loss of liberty, loss of income or livelihood, loss of property or damage to it which is not subject to restitution and deprivation of the use of property. Due account must also be taken of special expenses and costs reasonably incurred by the Victim or, where appropriate, by victim's family dependants or heirs, which resulted

from victimization including medical costs, transportation costs, funeral and burial costs, legal costs, treatment and rehabilitation costs and similar and related costs and expenses.

The present system of courts order of payment of compensation to the victim by the accused requires order of conviction and sentence as a pre-condition. The Victim needs to be compensated at the earliest. State should be made to pay immediate Compensation to the Victim without the burden of any additional civil suit to be filed by the Victim, either directly out of its Exchequer or by creation of separate fund or though an insurable scheme as in Motor Vehicles Accident Claims. The mode of Compensation as prevailing in the existing legislations such as the Motor Vehicle Act, the Workmen's Compensation Act, etc., could be adopted as effective guidelines. Thereby victim assistance programme should be initiated on a large scale by the government to meet the growing needs of Victims and the threat of early Victimization. The government should invoke the insurance sector to cater the crying needs of Victim's claim.

The Criminal trial proceedings and Victim Compensation proceedings should be integrated in one continuous process according to which all Victims should be compensated for the injury and / or loss which they sustain. Also there is an urgent need to establish a Compensation Board and of quick disposal of cases of victims of Crime and lock-up deaths in police custody. In case of delay in investigation on trial of the Case, the Victim should be granted on merit of the case some compensation as an interim relief and full settlement on final disposal. The compensation to the victim or his dependants should be granted without delay taking into account the Victim's age, occupation etc., so as to substantially compensate the loss suffered by the Victim and his dependants. Such a Compensation Board may be designated as Crime Compensation Tribunal Board and be set up at every Divisional Headquarter under the Chairmanship of a Judicial Officer of the rank of a District and Session Judge with a doctor and a social worker of standing two other members of these three, one shall be a woman.

For economic offences, the most one can do is to provide heavy Compensation to Victims of such offences. In India, the stream of scams continues to unfold every now and again, and the prevailing corruption has assumed wide-ranging dimensions. The regular emergence of new and highly complicated socio-economic offences needs some more remedial measures.

Howala scam, Urea scam, Fodder scam in Bihar, St.Kit's scam, Ayurvedic Medicines scam and illegal allotment of Government houses and petrol pumps have come to light through the Public Interest Litigation, certain social organizations and public spirited individuals filed writ petitions in the Supreme Court and High Courts by way of Public Interest Litigation requesting court to inquire and punish those who are found guilty of bypassing laws of the country and misusing their official positions in public life. The Public Interest Litigation has proved to be a strong and potent weapon in the hands of the court enabling it to unearth many scams and corruption cases in public life and to punish the guilty involved in those scams.

The growing threats posed by environmental crimes are alarming. The State should play a key role in combating environmental crime. The following are some of the measures to curb environmental crimes. They are: Environmental crimes should be treated as a time critical issue and it should be given a substantial, committed and sustained global response; Efforts are to be undertaken to encourage the application of existing national criminal laws, proceeds of crime and seizure of assets legislation against environmental criminals; To develop a new environmental crime enforcement units to develop investigations and operations targeting criminal networks ;To create adequate political commitment to tackle environmental crimes; To provide technical assistance to police to combat environmental crimes; To take steps to combat corruption at all levels. Unless corrupt officials are tackled, efforts to combat environmental crime will be impeded; and the executive wing of the government needs to show stronger commitment towards implementation of environment related laws. There is a need for a social, political and economic change in the Government as well as of people towards environmental protection. Citizens should lead a life in harmony with nature and development which does not harm the environment. River sand is important for human being. Everywhere unscrupulous elements are emptying the river beds of sand. Rivers now become victims of indiscriminate sand mining. Unregulated sand mining devoured the river bed. Rivers in India are seriously sick. The scientific and technological progress of man, at present, encroaches endlessly on nature. The need of the hour is to amend the Sand Act, 2001 and other legislations incorporating severe' punitive measures against illegal sand – miners. District Level Expert Committees and Teams comprising Revenue and Police officials are also to be formed to combat illegal sand mining. Public Awareness about evil effects of illegal sand mining has to be widely encouraged. A New Sand Mining Policy based on

Sustainable Development has to be evolved throughout the country. In fact, sand is more important from the point of view of environment than from the point of view of commerce.

The Supreme Court has been very much active and is champion of human rights of the child. It has played a vital role in securing for them and putting on solid foundation for several important basic rights including right not to be sent to the jail, right to be tried by the judge who has special knowledge and training for dealing with cases against children, right to free legal aid to poor and right to be defended by a legal practitioner of his own choice, right to speedy trail, and right to ball etcetera. The credit goes to the Supreme Court for highlighting and enforcing the juvenile justice in India. The judges of the Apex Court have displayed great judicial activism. They indeed, have identified and brought to notice of the people the areas where juvenile justice was conspicuous and therefore, needs careful implementation.

The Juvenile Justice Act, 1986 was enacted to protect the interest of Juveniles, taking into consideration the age of person when the offence was committed. The Supreme Court has to decide on the issue of whether the date of commission of the offence or the date on which the offender is brought before a competent authority is the date on which the offender should be a juvenile. The fact that the offender being a juvenile may not have been well aware of the effects of his act contributes to the sanctity of the legislation. However, what happens in a case where an offender is arrested for instance, 30 years after the commission of the offence?

Does one send him to a remand home with other juveniles regardless of the fact he is not of their age? Does one try him as a regular offender regardless of the fact the offence had been committed when he was not of age? In the murder case of one Abhisek of Patna in 1998, the Supreme Court on appeal decided that the crucial date is not the day on which the offence is committed but in the day which the offender is brought before a competent authority. Such a judgment was delivered without taking into consideration the repercussions on the law or on society at large. This case is a perfect example of what harm judicial activism may cause.

Irrespective of how much time elapses after the incident, the offence itself remains an offence committed by a juvenile and the person should thus be judged according to his age and intent at the time of the commission of offence. The Supreme Court, however, provides no guidelines about the aforementioned issue and how this particular situation should be

handled. The only appropriate alternative is to amend the Constitution/law to address those issues not already covered.

The Apex Court shall have to be more active as regards the rights of the girl child. The directives of the Courts on many times are not taken with due seriousness by the Government departments or authorities concerned. For example, one can still find many juvenile delinquents behind the bars in flagrant violation of the highest Courts' directives. Moreover, the delay in the enforcement of child welfare legislation shows lack of political will on the part of Government which cannot be appreciated. Judiciary shall have to be active in finding out ways as how to deal with the situations when the Government adopts such delaying tactics. No doubt judicial responses have made salutary impacts; however, these cannot fill the inherent policy and enforcement vacuum.

The right of victim of a crime to receive compensation was recognized even under the Cr.PC., but was available only where a substantive sentence of fine was imposed and was limited to the amount of fine actually realized. Section 357(3), Cr.PC. permits the grant of compensation even where the accused is not sentenced to fine. However, this provision is invoked sparingly and inconsistently by the courts. The Supreme Court had to exhort the Criminal courts to use this provision since "this power was intended to do something to reassure the victim that he or she is not forgotten in the Criminal Justice System". Besides, many national level commissions and committees have strongly advocated victims' rights and reiterated the need for a victim's law.

Looking into the needs of the victims, there are two different programmes evolved, viz., (i) victim services programmes and (ii) Victim Witness Assistance Programmes. To date, the compensation orders touch only a minority of women victims and in no way adequately address victim's problems. They provide inadequate financial solutions to victim's problems; in no sense, do they either promise or deliver justice.

Thus, in the long run, the interest of Crime Victims and of society at large are best served by humanity, empathy, compassion, tolerance and forgiveness by the development of conciliatory and forgiving humanities rather than hostile and vengeful communities. Constructive healing should be the primary goal of victim services. Women victims should

be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to promote redress for the harm that they have suffered. The Indian legal system is faced with the challenge of having to learn from the past and order its future. The Indian people have much hope and expectation of it.

Empowerment of Women to prevent victimization: Serious efforts to change the traditional submissive and victimized role of women have to be taken up to get more political power for women in the form of representation in the Parliament, State legislatures and local bodies through a 33% reservation of seats for women in these bodies. Women have already succeeded in getting representation in local self-government but the struggle continues to get reservations for women in parliament and State legislatures.

The Cradle Baby Scheme of Tamil Nadu State Government is a step towards protecting female babies and preventing female infanticide. Strengthening the Noon Meal Scheme in the Schools for the Children in Tamil Nadu (and the introduction of this scheme in other states) will attract more children from the weaker sections of the society to schools to pursue study – will have a bearing on victimization of child labour in the long run.

Laws alone are not enough, the mindset of the society and units of the society ie., family needs to be changed and brought in tune and temper with the notion of equality in the true sense of the term. If equality is ensured in the real sense of the term, the evil of domestic violence can be cured. Despite the galaxy of laws, the plight of women is still deplorable. Hence, attempts should be made both by the Government sponsored agencies and voluntary social organizations to introduce attitudinal changes in the society towards the women, particularly the girl child.

Sexual harassment at one's workplace means being deprived of one's precious right to life and liberty. Right to life and liberty includes right to live with dignity and work in profession of one's choice. So it is our utmost duty to protect such precious right of the women workers end provide them a safe environment to work with dignity. Deterrent punishments should be given to the culprits to check sexual harassment at workplace or outside. All employers should set up a redressal mechanism/complaint committee which shall ensure that sexual harassment does not occur at all. Most women hesitate to complain such harassment caused

by their employers because of the fear of losing jobs, so new legislations must incorporate provisions to protect their jobs, when complaints against sexual harassment are made by them.

Human Rights of women have gained considerable visibility in recent years, but public knowledge of them is inadequate. In order to eliminate discrimination and to convert quality of women from de jure to de facto it is high time that Human Rights of women are given priority. Awareness of rights in the society is important for the effective implementation of laws. The great contribution of Judicial Activism in India has been to provide a safety valve in a democracy and a hope that justice is not beyond reach. Judicial Activism has come to stay in India and will prosper as long as judiciary is respected and is not undermined by negative perceptions, which have overtaken the executive and legislature.

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