

ISSN :2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

[www.ijlra.com](http://www.ijlra.com)

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# Emerging Concern for the Victim of Crime

Authored By- Nishant Kumar

*“Of all the persons involved in the criminal justice system, the VICTIM is the one who has most often been overlooked”*

- Alfred Cohn and Roy Udolf

## Introduction

Victims of crime are important players in criminal justice administration both as complainant/informant and 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<sup>1</sup>.

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

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<sup>1</sup> 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](http://mha.nic.in/pdf/criminal_justice_system.pdf).

evidence to the court and is principal witness. “Witnesses” as Bentham said “are the eyes and ears of justice<sup>2</sup>”. If the victim/witness is incapacitated from acting as the eyes and ears of justice, the trial gets paralyzed and cannot be called as a fair trial.

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 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.<sup>3</sup>

**Criminology** is the scientific study of crime, including its causes, responses by law enforcement, and methods of prevention. It is a sub-group of sociology, which is the scientific study of social behavior. There are many fields of study that are used in the field of criminology, including biology, statistics, psychology, psychiatry, economics, and anthropology.<sup>4</sup>

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<sup>3</sup>. It is basically a study of crime from the point of view of victims suffering from physical injury or economic loss.

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

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<sup>2</sup><https://www.antiessays.com/free-essays/Hostile-Witness-200687.html>.

<sup>3</sup> Robert C. Davis et al., Victims of Crime, Sage Publications, U.S.A, 2007, p. 278.  
[http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/200013/17/17\\_annexure.pdf](http://shodhganga.inflibnet.ac.in/jspui/bitstream/10603/200013/17/17_annexure.pdf)

<sup>4</sup><http://www.naijaloaded.com.ng/education/7-universities-offer-criminology-nigeria>.

## **Interrelationship Of Criminology, Penology And Victimology**

Victimology is the latest branch of criminology which deals with the study of victims who suffers 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.

### **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 victims of crime.

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.*<sup>5</sup>

## **National And International Development 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 has 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.<sup>6</sup>

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 fare restitution to victims, their families or dependents. This Declaration has been described as ‘Magna Carta’ of rights of victims’ worldwide.

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

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<sup>5</sup> Human Rights 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.htm>

<sup>6</sup> Dr. Justice A.S. Anand, Supreme Court of India, Shri P. Babulu Reddy Foundation Lecture on Victims of Crime – The Unseen Side, (1998) 1 SCC (Jour) 3 available at: <http://www.practical-lawyer.com/lawyer/articles/9801a1.htm>

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 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<sup>7</sup>. 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 family<sup>9</sup>. As such there was also a trend to increase fine by reducing the terms of imprisonment<sup>10</sup>. 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 on the conviction of accused as a mandatory consideration<sup>11</sup>. 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<sup>8</sup>.

### **Restorative Justice Through Compensation And Rehabilitation:**

FOR LEGAL RESEARCH & ANALYSIS

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

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<sup>7</sup>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.

<sup>8</sup> Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14, Bodhishtwa Gautam v. Subra Chakraborti, AIR 1996 SC 922.

Australia and Western Australia followed it in 1968, 1969 and 1970 respectively. The State of Victoria enacted more comprehensive law in 1972, than the other States followed. In 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 was enforceable throughout the country<sup>9</sup>.

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 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*, 1860 and shall immediately inform the police of such incident.

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<sup>9</sup> V.N. Rajan, *Victimology in India*, Ashish Publishing House, New Delhi, 1995, pp. 17- 85.

## **Rights Of Victims:**

In a criminal justice system like in India, 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.

## **Rights And Remedies For Victims Of Crime:**

Remedies required for victims especially 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, crossexamination through Judge, change in the venue of trial, physical protection to the victim of crime etc. The important feature of the chapter is regarding discussion about certain rights to the victims of crime like, right to notice/information, right to be present, analyzing provisions pertaining to awarding sentence to offender vis a vis victim rights, right to privacy, right to consult officials, right to protection, victim-witness rights through assistance programmes, victim compensation fund and mechanism, right of restitution, right to address the court etc. that are prevalent in the countries like U.S.A., U.K., New Zealand, India etc.

In a recent case *Lalit Yadav v. state of Chhatisgarh*<sup>10</sup> the Supreme Court held that as far as possible the court should not disclose the identity of the victim. It is against the section 228A of IPC which states as follows:

1. *Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E<sup>1</sup> is alleged or found to have been committed (hereafter*
- 2.

<sup>10</sup>U.P., (2014) 2 SCC 1.

*in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.*

3. *Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is*
  1. *by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or*
  2. *by, or with the authorization in writing of, the victim; or*
  3. *where the victim is dead or minor or of unsound mind, by, or with the authorization in writing of, the next-of-kin of the victim:*

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The disclosure of identity of the victim is punishable under this section. Their identity should be hidden and not be disclosed.



## **Conclusion:**

The trauma of victimization is a direct reaction to the aftermath of crime. Crime victims suffer a tremendous amount of physical and psychological trauma. The primary injuries victims suffer can be grouped into three distinct categories: physical, financial and emotional. When victims do not receive the appropriate support and intervention in the aftermath of the crime, they suffer “secondary” injuries.

The physical injury suffered by victims may be as apparent as cuts, bruises, or broken arms and legs. However, it is not uncommon for the victims to be fatigued, unable to sleep, or have increased or decreased appetites. Many victims believe that the stress caused by victimization endangers them to physical problems later in life. Victims or survivors suffer financially when their money or jewelry is taken, when their property is damaged, when their insurances doesn't cover all expenses, and when they must pay funeral cost.

In order to have a better understanding of aftermath of criminal victimization, we must begin to accept the reality that crime is random, senseless and can happen to anyone regardless of precaution that are taken to prevent being victimized. We must also understand that victim's life is turned upside down when he or she becomes a victim of crime. In order to help victims learn to trust society again a sense of balance and self-worth, we must educate all those who come in contact with victims and survivors. With proper training, all professionals will be better able to assist victims in dealing with aftermath and trauma of victimization.