

## SECONDARY VICTIMIZATION UNDER THE CRIMINAL JUSTICE SYSTEM

Written by *Dheerendra Kumar Baisla*  
LLM Student, Galgotia School of Law, Galgotias University

### INTRODUCTION:

Primarily the victimization is caused by the offence, which is considered offence against the society at large for that it is the state who become the party in the name of victim. Secondary the victimization is caused by the institutions and agencies of society. It refers to victimization of victims on the part of society like police is an institution of society, medical hospitalities is an institution of society and also attitude of individuals in the society e.g. family, friends and colleagues as they may deny the impact of the crime on the victim, these are some form of secondary victimization which caused mental trauma as this is the stage where victim need assistance in terms of Emotionally, Monetarily and of Mentally. <sup>1</sup>According to Pound, 'Law is social engineering which means a balance between the competing interests in society' means that Man is a social animal and needs a society for his leaving, working and enjoying life. However, society itself caused the secondary victimization by the abuse of power. As we already know the victim of crime set the criminal proceeding into motion by giving information to police under section 154<sup>2</sup> thereafter his role in criminal proceeding get

<sup>1</sup> Gochhayat, Sai Abhipsa, 'Social Engineering by Roscoe Pound'. Issues in Legal and Political Philosophy (November 15, 2010). Available at SSRN:<http://ssrn.com/abstract=1742165> or <http://dx.doi.org/10.2139/ssrn.1742165> (visited on 10.11.2015).

<sup>2</sup> The Code of Criminal Procedure, 1973 Section 154 reads, "1. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer; provided further that—

in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

the recording of such information shall be video graphed;

the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

- A copy of the information as recorded under Sub-Section (1) shall be given forthwith, free of cost, to the informant.

decreased as investigation is being part of police function no role of victim in it and after the investigation, trial process starts in the name of state as crime is considered as crime against society. In the trial process itself role of victim is not as much as victim have substantial interest of participating in criminal proceeding he has no right to participate as dominant stakeholder, he has right to move the court for cancellation of bail but action thereon depends upon the stand taken by the prosecution as provided under section 439(2)<sup>3</sup>, even prosecution can seek withdrawal of trial at any time without consulting the victim as provided under section 321<sup>4</sup>. Whereas as compared to accused participation in criminal proceeding number of rights and protective measures provided to them such as presumption of innocence, the right to legal assistance, right to fair trial, right of the accused to be informed of charges before trial, and right to present a defense, these are all been developed by the common law principles however Criminal Procedure Code 1973 does not prohibit the victim to participate, act is salient upon it.

The phrase “Access to Justice” generally means individual who has suffered harm or his legal heir get convenient justice by approaching various institution whether it will be judicial or non judicial.

- 
- Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

<sup>3</sup> The Code of Criminal Procedure 1973, Section 439(2) reads, “Special powers of High Court or Court of Session regarding bail.-(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody”.

<sup>4</sup> The Code of Criminal Procedure 1973, Section 321 reads, “Withdrawal from Prosecution - The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal, —

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;  
(b) If it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences:

Provided that where such offence-

- (i) Was against any law relating to a matter to which the executive power of the Union extends, or
- (ii) Was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or
- (iii) Involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or
- (iv) Was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

And the Prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

But as above mentioned discrepancies in various provision as well as neglecting effect by the institution change the meaning of phrase “Access to justice” in to “Access to Injustice”.

## VICTIM AND VICTIMAZATION UNDER CRIMINAL JUSTICE SYSTEM

The term victim is define in various subjects to understand the term victimization we need to know who are considered as victim, in what manner they are considered to be victim:-

### As per dictionary meaning victim is:

1. A person who suffers from a destructive or injurious action or agency
2. A person who is deceived or cheated, as by his or her own emotion or ignorance, by the dishonesty of other or by some impersonal agency
3. A person or animal sacrificed or regarded as sacrificed

### As per Criminal Procedure Code 1973 section 2(wa):

“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.

### As per <sup>5</sup>United nation general assembly declaration of basic principles of justice for victim and abuse of power 1985:-

**Article1** -define “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 prescribing criminal abuse of power.

### **Article 2** - who may be considered as victim

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 victim in distress or to prevent victimization.*

---

<sup>5</sup> United nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power available at [www.un.org/documents/ga/res/40/a40r034.htm](http://www.un.org/documents/ga/res/40/a40r034.htm) (visited on 14.11.2015).

Whereas victimization is the process of being victimized or becoming a victim.

**As per dictionary meaning-** <sup>6</sup>**Victimization is defined** as causing someone to be treated unfairly or made to feel as if he is in a bad position. When you treat someone poorly and make him feel adversity, this is an example of **victimization**.

There are several forms of victimization these forms are also called elements of victimization-

**1. Primary victimization:-** The victimization which is caused by direct result of crime taken place between offender and victim during the commission of the offence and also with any after effect resulted from crime i.e. something which is of cause and effect relationship like offence is of cause and impact of offence upon victim is of effect. This impact is of any kind it may be physical effect, financial effect, and it may be psychological and emotional effects upon victim, all of which can adversely affect their quality of life.

**2. Secondary victimization:-** It is also known as post crime victimization or double victimization. It is a form of victimization, which is not direct result of crime but through the victim's reaction to the offence by change in self-perception or through the neglecting kind of response by the institutions and individuals. Secondary victimization through the process of criminal justice system may occur because of difficulties in balancing the rights of the victim against the right of the accused.

For example:-

1. Secondary victimization which is of outcome of procedure.
2. Secondary victimization which is outcome of justice from criminal justice process.
3. Secondary victimization from the denying effect of the society.
4. Secondary victimization by the unfair treatment of victims by the other institution.

---

<sup>6</sup> [www.yourdictionary.com/victimization](http://www.yourdictionary.com/victimization)



**3. Re-victimization:-**victim who being victimized second time with the same offence are known as re-victimization. The cases of re-victimization may be by not giving adequate protection to them etc...

These are some forms of victimization. Today as far as theory is concerned we categorized victim and victimization but in reality we are not concerned to take care about them as secondary victimization also caused by the society.

### **CURRENT STATUS OF VICTIMS IN INDIAN CRIMINAL JUSTICE**

Before taking into consideration the current status of victim in criminal justice system first of all there is need to clarify the provision or safeguards which are provided to the victim in Criminal Procedural Code 1973 and also there is need to discuss why it is called criminal procedure code as if safeguards provided to victim in it on one hand and procedure for trial of accused provided on the other hand. Why not there is a separate enactment in the name of victim procedure code

In section 24<sup>7</sup> of the principal Act, in sub-section (8), the following proviso shall be inserted, namely:-  
“Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.”

In section 157<sup>8</sup> of the principal Act, in sub-section (1), after the proviso, the following proviso shall be inserted, namely:-

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

In section 161<sup>9</sup> of the principal Act, in sub-section (3), the following provisos shall be inserted, namely:-

---

<sup>7</sup> Section 24 of the code of criminal procedure, 1973 reads as “public prosecutor”.

<sup>8</sup> Section 157 of the code of criminal procedure, 1973 reads as “procedure for investigation”.

<sup>9</sup> Section 161 of the code of criminal procedure, 1973 reads as “examination of witnesses by police”.

“Provided that statement made under this sub-section may also be recorded by audio video electronic means.”

### **Use of Audio Video for Confession/Statement**

In section 164<sup>10</sup> of the principal Act, in sub-section (1), for the proviso, the following provisos shall be substituted, namely:-

“Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence: Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.”

### **Investigations of Child Sex Abuse to be done in time bound**

In section 173<sup>11</sup> of the principal Act,-

(a) After sub-section (1), the following sub-section shall be inserted, namely:-

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

b) in sub-section (2), after clause (g), the following clause shall be inserted, namely:-

“(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376B, 376C or 376D of the Indian Penal Code.”

### **Witness Can Be Done By Using Electronic Means**

In section 275<sup>12</sup> of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:-

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

---

<sup>10</sup> Section 164 of the code of criminal procedure, 1973 reads as “Recording of confession and statement”.

<sup>11</sup> Section 173 of the code of criminal procedure, 1973 reads as “Report of police officer on completion of investigation”.

<sup>12</sup> Section 275 of the code of criminal procedure, 1973 reads as “Records in warrant cases”.

### **In Camera Trials and identity protection**

In section 327<sup>13</sup> of the principle Act,-

(a) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that *in camera* trial shall be conducted as far as practicable by a woman Judge or Magistrate.”

(b) in sub-section (3), the following proviso shall be inserted, namely:-

“Provided that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.”

### **Victim Compensation**

After section 357<sup>14</sup> of the principal Act, the following section shall be inserted, namely:-

“357A.

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

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

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

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

---

<sup>13</sup> Section 327 of the code of criminal procedure, 1973 reads as “court to be open”.

<sup>14</sup> Section 357 of the code of criminal procedure, 1973 reads as “order to pay compensation”.

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

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

### **Right to appeal for the Victim against the verdict of the Trial Court**

In section 372<sup>15</sup> of the principal Act, the following proviso shall be inserted, namely:-

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

**The main problem** with the existing system in the Criminal Procedure Code is that once the investigation start the role of victim becomes minimal, complainants are treated indifferently by police and even in pre-investigation stage police harassed them by not lodging the F.I.R. This is the primary trauma faced by the victim due to which they lose self-esteem, faith, trust, and other psychological variables by the legal system.

---

<sup>15</sup> Section 372 of the code of criminal procedure, 1973 “No appeal to lie unless otherwise provided”.



**TABLE 1.1**  
**Nature and Number of Complaints Received by Police and Cases Registered under IPC and SLL During 2014**

S.No.	State/UT	Oral Complaints				Written Complaints			
		Total Oral Complaints	Narrated to O/C/SHO	Distress call over Phone/ Dial 100 etc.*	Complaints received in Electronic Forms	Total written Complaints	To O/C/SHO	To SP	Court Complaints (Sec. 156(3) Cr. P. C)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
<b>STATES:</b>									
1	Andhra Pradesh	87630	19564	68064	2	143887	139448	1138	3301
2	Arunachal Pradesh	2	0	2	0	2487	2485	0	2
3	Assam	0	0	0	0	96161	93127	1190	1844
4	Bihar	8523	8472	51	0	169400	151040	6012	12348
5	Chhattisgarh	117141	103002	11734	2405	94167	67689	22007	4471
6	Goa	20332	20311	21	0	2905	2876	9	20
7	Gujarat	163646	158585	4961	100	260058	255453	4399	206
8	Haryana	206061	14459	174900	16702	176567	101154	73906	1507
9	Himachal Pradesh	7156	4123	2103	930	23013	15394	7343	276
10	Jammu & Kashmir	3271	2085	1053	133	19313	17865	647	801
11	Jharkhand	5252	5232	16	4	42664	36328	107	6229
12	Karnataka	22757	20985	10	1762	177578	173284	899	3395
13	Kerala	158340	105961	43447	8932	274923	255829	11364	7730
14	Madhya Pradesh	263229	229212	32812	1205	251444	134786	107490	9168
15	Maharashtra	359083	326607	31831	645	627830	565891	58572	3367
16	Manipur	85	85	0	0	3649	3646	3	0
17	Meghalaya	1	1	0	0	3869	3459	394	16
18	Mizoram	1218	1182	36	0	1130	1130	0	0
19	Nagaland	297	33	223	41	1325	1323	2	0
20	Odisha	175	175	0	0	75899	72778	31	3090
21	Punjab	187622	8122	158526	20974	196704	81903	114718	83
22	Rajasthan	13344	10781	1613	950	243718	171945	6627	65146
23	Sikkim	80	79	1	0	1176	1175	1	0
24	Tamil Nadu	41257	30697	8789	1771	484395	476576	5898	1921
25	Telangana	998	357	641	0	112888	108709	208	3971
26	Tripura	55	38	17	0	5015	4146	0	869
27	Uttar Pradesh	94247	52999	40703	545	571288	338545	218643	14100
28	Uttarakhand	683	683	0	0	10229	9654	100	475
29	West Bengal	92331	89869	2160	302	213024	179096	3327	30601
<b>TOTAL STATE(S)</b>		<b>1854816</b>	<b>1213699</b>	<b>583714</b>	<b>57403</b>	<b>4286706</b>	<b>3466734</b>	<b>645035</b>	<b>174937</b>
<b>UNION TERRITORIES:</b>									
30	A & N Islands	2872	2818	54	0	190	174	10	6
31	Chandigarh	85056	0	85056	0	16658	0	16640	18
32	D&N Haveli	883	183	700	0	1565	1551	0	14
33	Daman & Diu	22	22	0	0	238	226	0	12
34	Delhi UT	2459421	39561	2419694	166	299456	213561	84785	1110
35	Lakshadweep	3	0	3	0	192	137	53	2
36	Puducherry	1103	1052	45	6	1996	1884	46	66
<b>TOTAL UT(S)</b>		<b>2549360</b>	<b>43636</b>	<b>2505552</b>	<b>172</b>	<b>320295</b>	<b>217533</b>	<b>101534</b>	<b>1228</b>
<b>TOTAL ALL INDIA</b>		<b>4404176</b>	<b>1257335</b>	<b>3089266</b>	<b>57575</b>	<b>4607001</b>	<b>3684267</b>	<b>746569</b>	<b>176165</b>

Complaints figures include crime related complaints only

TABLE 1.1 - Page: 1 of 2

\*\* Some States/UTs has not furnished figures as the complaints received through 'Distress call over Phone/ Dial 100 etc' have not been converted in to FIR.

16

As per the report of National Crime Bureau record of cases registered in 2014 there are huge number of F.I.R are registered through section 154 sub-section (3) or through the court 156 (3) and 190 of the

<sup>16</sup> Government of India. (2014). Crime in India, National Crime Records Bureau, Ministry of Home Affairs, New Delhi. (Visited on 16.11.2015).

principal act. This show's how police neglecting in registering the F.I.R even after the strict guidelines of the supreme court constitution bench in <sup>17</sup>Lalita kumari v. Govt. of U.P (2013) in which supreme court held that registration of F.I.R is mandatory by the police at very first instance without conducting preliminary investigation i.e. no discretion given to police but there are some cases in which preliminary investigation is required to test whether the very offence is of cognizable ones or not for which time limitation max. 15 days provided. It is also held that if the police does not follow the guidelines strict action or suspension form duty will be done.

In trial stage itself several provision like in granting and cancellation of bail, similarly prosecution can seek withdrawal at any time during trail without consulting victim , in cases compounding of offences sometimes the requirement of permission of the court before compounding is got over by making the complaint and other prosecution witness retract their statement given to police and to depose favorably to the accused , even in compensating the victim under the provision's of principal act it is more of token relief rather than substantial remedy. Most of the state fixed their upper limit to compensate the victim which is not sufficient.

After the trail stage itself there no machinery to keep an eye upon victim as to whether he is come out of trauma which he has suffer from primary as well as secondary victimization.

There is another report of the National Crime Bureau of India which will clearly show how victim is deny to justice through the process of law this report is as follows:-

---

<sup>17</sup> (2014) 2 SCC 1

## FIGURES AT A GLANCE - 2014

SL. NO.	CRIME HEADS	CASES REPORTED	% TO TOTAL IPC CRIMES	RATE OF CRIME	CHARGE-SHEETING RATE	CONVICTION RATE
	<b>A) VIOLENT CRIMES</b>					
1	Murder	33981	1.2	2.7	88.8	39.1
2	Attempt to commit Murder	41791	1.5	3.4	93.1	26.9
3	Culpable Homicide not amounting to Murder	3332	0.1	0.3	90.1	34.9
4	Attempt to commit Culpable Homicide	4358	0.2	0.4	97.1	24.9
5	Rape	36735	1.3	6.1	95.6	28.0
6	Attempt to commit Rape	4234	0.1	0.7	94.0	14.7
7	Kidnapping & Abduction	77237	2.7	6.2	70.9	22.2
8	Dacoity	4395	0.2	0.4	79.5	22.7
9	Making Preparation and Assembly for committing Dacoity	2834	0.1	0.2	98.9	12.3
10	Robbery	38071	1.3	3.1	68.2	30.9
11	Riots	66042	2.3	5.3	91.5	17.2
12	Arson	9289	0.3	0.7	64.9	18.7
13	Dowry Deaths	8455	0.3	1.4	94.1	33.0
	Total Violent Crimes	330754	11.6	26.6	84.8	25.7
	<b>B) SEXUAL OFFENCES</b>					
	Total sexual offences	132939	4.7	22.2	95.2	27.1
	<b>C) CRIMES AGAINST BODY</b>					
	Total crimes against body	813745	28.5	65.4	90.0	56.3
	<b>D) CRIMES AGAINST PROPERTY</b>					
	Total crimes against property	600861	21.1	48.3	39.7	34.7
	<b>E) CRIMES AGAINST PUBLIC ORDER</b>					
	Total crimes against public order	85537	3.0	6.9	88.7	18.4
	<b>F) ECONOMIC CRIMES</b>					
	Total economic crimes	142560	5.0	11.5	70.9	22.9
	<b>G) CRIMES AGAINST WOMEN</b>					
	Total crimes against women	337922	11.9	56.3	91.0	21.3
	<b>H) CRIMES AGAINST CHILDREN (Below 18 years)</b>					
	Total crimes against Children	89423	3.1	20.1	87.6	33.1
	<b>I) CRIMES AGAINST SCs BY NON SCs</b>					
	Total Crimes against SCs by non SCs	47064	1.7	23.4	92.3	28.8
	<b>J) CRIMES AGAINST STs BY NON STs</b>					
	Total crimes against STs by non STs	11451		11.0		37.9
	<b>K) CYBER CRIMES</b>					
1	Total Offences under IT Act	7201	0.3	0.6	52.4	26.3
2	Total Offences under IPC (cyber related)	2272	0.1	0.2	66.8	35.3
3	Total SLL Offences (cyber related)	149	0.0	0.0	97.3	17.5
	Total cyber crimes (1+2+3)	9622	0.3	0.8	57.0	23.9
	<b>L) CRIMES AGAINST SENIOR CITIZENS</b>					
	Total cognizable IPC crimes against Senior Citizen	18714	0.7	18.3	90.3	40.7
	<b>M) CRIMES AGAINST FOREIGNERS</b>					
	Total Crimes against Foreigners	486	0.0	0.0	50.9	38.1
	<b>N) HUMAN TRAFFICKING</b>					
	Total human trafficking	5466	0.2	0.4	94.6	45.1
	<b>O) TOTAL IPC CRIMES</b>					
	Total Cognizable IPC crimes	2851563		229.2	79.6	45.1
	<b>P) TOTAL SLL CRIMES</b>					
	Total Cognizable SLL crimes	4377630		351.9	98.4	92.7
	<b>Q) TOTAL IPC + SLL CRIMES</b>					
	Total (IPC + SLL)	7229193		581.1	91.5	79.9

- \* For calculation of Crime Rate of Crimes Against Women, Crimes Against SCs, Crimes Against STs, Crimes Against Children and Crimes Against Senior Citizens, their respective population has been used instead of overall total population figures as used for other crime heads.
- However, for calculation of Crime Rate of Crimes Against Foreigners (which is negligible), number of foreigners arrived in India obtained from Bureau of Immigration, Govt. of India (MHA) has been used. As per information received, the total No. of foreigners arrived in India during 2014 were 7679099

<sup>18</sup> Government of India. (2014). Crime in India, National Crime Records Bureau, Ministry of Home Affairs, New Delhi. (Visited on 18.11.2015)

This is statistics of 2014 in which it is provided the number of cases registered under the particular offence and the number of conviction done in these particular cases. Now let us talk about the Sexual offence's currently all sexual offences against the women is considered as one of the heinous crime as the trauma which is suffered by the women after committing offence against them are Firstly, Physical trauma by injury if any, Secondly, Mental trauma it can be done either through the impact of offence upon the victim i.e. victim goes in another state of mind (coma) or through the secondary victimization by the society itself i.e. by police not registering case, not doing proper investigation, not submitted charge-sheet in time, by the society itself in which she was living as the society deny or neglect them any such kind of offence against her, even in some case marriage of victim can not be done if she is unmarried and sexual offence committed against her. All this caused to victim overburden with different kinds of trauma.

Now come to the above figure which itself give us another form of trauma i.e. in 2014 all about 132000 cases are registered of sexual offences in all over India. About in 95% cases charge-sheet was filed by the police (here we have to see that these are the cases which are reported there are number of cases in which cases are under-reporting i.e. cases which are not in knowledge of police, or judges or the cases which are in knowledge of police but due to sole executive power they not registered as shown in first report of this research paper). But only in 27% cases accused is convicted this what shows **another victimization by the outcome of criminal proceeding** to the victim who did long journey to have 'effective justice' but unfortunately justice also provides them another trauma, although there are number of cases which are malicious but there are also some cases which are proper but due inadequate support their action does not survive.

Even all above mentioned section's and sub-section's proviso are inserted through the amendment in the year 31-12-2009.

This shows that there is clear gap between **Law in Theory, Law in Action, and Law in its Implementation**. Which is an alarming situation and cause new challenges in the near future.

## **GLOBALIZED WORLD VIS A VIS VICTIMS LAW**

As far as victim's law and its procedure in treating the victim of crime in India is concerned it is already discussed in the above chapter.

The important step towards the safeguards of victim it taken by the United Nation by passing a Declaration of Basic Principles of Justice for Victims of Crime and abuse of power in 1985. Under this declaration basic norms and minimum standard in international law for the protection of victim of crime set-up. The United Nation recognized four major components of the rights of victim of crime:

- a) Access to justice and fair treatment
- b) Restitution
- c) Compensation
- d) Assistance

This declaration is the magna carta of the rights of victims globally. It has also deals with the suggestions of problem some of these are:-

- a) Proper assistance to the victim must be there in legal process
- b) Fair treatment of victim with respect and dignity at each mechanisms of justice
- c) Timing, progress and disposition of case information to be given to victim
- d) Views and concerns of victims to be allowed
- e) Protection of privacy, assurance of safety, avoiding unnecessary delay.

Above mentioning suggestions are the needs and expectations of the victim in criminal proceedings.

### **Position in United Kingdom**

In U.K, Criminal Justice Act 1988 is there to deal with procedure. For the purpose of providing compensation it has also made fresh and special provision under the Criminal Injuries Compensation Board.

Here it is also interesting to note that for the purpose of special care of Victim Expectation provisions are made in the “The Code of Practice for Victim of Crime” which set out the service which are expected by the victim such as protection, practical support, and information from Police or the Crown Prosecution Service. This is what beyond the compensation U.K law provides and this is equally important as of compensation. Even there is also Victim Ombudsman/Commissioner who takes special care of victim throughout the proceedings as well as even after the proceedings got over. That’s why U.K provides a fairly advanced provision to victim.



### **Position in United States of America**

While in U.S a separate enactment of law for the victim is there. Many states in U.S enacted Victims Bill of Rights in 1980 and at federal level, the Victims Rights and Restitution Act was adopted in 1990. There was also the Crime Victim Fund was established by the Victim of Crime act 1984 and serves as major funding source for victims service.

Every state in U.S administers a crime victim compensation program

### **Position in Europe**

It is interesting to note that European system of criminal justice assigned a very active role to the victims in criminal proceedings. The council of Europe has recommended every state to incorporate rights of victim in every stage of criminal proceedings thereby here victim can assist in trial stage which is of great help in search of truth even he may suggest question to the court, he can also supplant the prosecution evidence. In Europe it is to be note that not in trial stage itself even in investigation stage also he may assist as they become parties from the investigation stage itself.

### **REFORMS REQUIRED IN INDIAN LEGAL SYSTEM**

There are number of reforms required in the Indian legal system to provide assistance to victims. As we already know there is no special legislation in India to provide assistance to victims specifically and also his active participation in it. It is only the criminal justice system which is governed by four legislation Constitution of India, Indian Evidence Act, India Penal Code, and at last Criminal Procedure Code 1973 to provide justice to victim with keeping in view at the same time rights of accused. It is interesting to see that number of efforts are made by higher judiciary to provide something beyond compensation to take special care of victims

1. In *Bodhisattwa Gautam v. Subhra Chakraborty*<sup>19</sup> Supreme court had issued guideline to help rape victims who cannot afford legal, medical, and psychological services some of these are:-

---

<sup>19</sup> 1996 SCC (1) 490

1. In sexual assault cases Victim Advocate should be provided, who help him at each level of proceeding from investigation stage itself.
  2. Duty of police to inform the victim of her right to representation.
  3. Victim of sexual assault are unable to continue employment or to start earning due to trauma he suffer, For that Criminal Injuries Compensation Board has to be set up having regard to article 38(1) of Constitution of India.
  4. Duty of court to provide Interim compensation.
2. It is also pertinent to note that if State Abuse of his Power against victim supreme court recognized the state compensation for victims of abuse of power.

For example:-

1. In *Saheli, a Women's Resources Centre Through Mrs. Nalini Bhanot v. Commissioner of Police, Delhi Police Head-quarter and others*<sup>20</sup>, court awarded a sum of Rs.75,000 as state compensation to the victim, holding that the victim died due to beating by the police.

But unfortunately above these efforts are nothing but just like a paper work. There is need of a machinery for better implementation with special "SMARTER RIGHTS".

For the purpose of Enforcement of Victim Rights there is a need to established "SMARTER RIGHTS" in the form of reforming the existing practice.

Firstly, For the purpose of enforcement of victims right first of all there is need to minimize implementation gap i.e. law in action and law in theory and this can be achieved by reforming police administration as number of police man deployed for protection of crime is very less, as per the report of bureau of police research and development 2012 the 568 people for each policeman and the ratio per lakh (100,000) population is 176. Incidentally, the rate of crime (cognizable crimes as per Indian Penal Code) per lakh population is 192, a bit higher than the number of policeman per lakh population<sup>21</sup>. Around 47000 police personal were deployed for giving security to the 14500 V.I.P. so there is need to set-up better enforcement machinery and this can be done by dividing the work of police in two different department i.e.

---

<sup>20</sup> 1990 AIR 513

<sup>21</sup> Bureau of police research and development 2012 avialable at [www.bprd.nic.in/writereaddata/mainlinkFile/File1047.pdf](http://www.bprd.nic.in/writereaddata/mainlinkFile/File1047.pdf) <visited at 12:00 pm on 13.12.2015>.

**a). Preventive department.****b). Investigative department.**

This provide an opportunity to the victim for better enforcement machinery of their right. Secondly, there is need to make special legislation which deals specifically with victims. Thirdly, the role of the victim in the Indian Criminal Justice System which follows the common law colonial tradition, is restricted to that of a witness. It is refreshing to note that despite the fact that no separate laws for Victims of crime have been enacted in India, Victim justice has been rendered through the proactive action of the apex court and ensuing judgments. Despite the amendment of 2010 the legislative policy become only a paper work. For this there is need of SMARTER RIGHTS as in Canada where victim has to prepare **Victim Impact Statement** under which victim itself, his family, and his friends participate to prepare such document. It provide an opportunity for the judge to hear how a criminal action has affected victim and those he love. It is presented to the court at the time of sentencing the accused and accordingly punishment is granted.

Fourthly, SMARTER RIGHTS also includes for the creation of **Victim Ombudsman officer** who has to work according to the victim expectation like in United Kingdom, as where if victim need protection, financial assistance, emotional assistance, legal assistance, or any other kind of assistance he may report to ombudsman officer.