

## **VICTIMOLOGY: VICTIMIZATION AND EMERGING TRENDS UNDER CURRENT JUSTICE SYSTEM**

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### **Evolution of Victim, victim justice and victimology**

The term victimology was coined by Benjamin Mendelsohn during 1940s<sup>1</sup>. The term victimology consists of two words: a Latin word 'victima' which implies victim and a Greek word 'logos; which means a system of knowledge, thus one can deduce that victimology is a system of knowledge about victims. Initially, victimology evolved as a branch of criminology but with the passage of time it has grown far beyond from where it started. However, it had been affected by various events such as the world war, feminist movement, the human rights movements. Subsequently, since 1940s this concept of victimology progressed further with every decade. Especially in 1940s and 1950s based on the research of Benjamin Mendelsohn and Hans Von Hentig, victimology emerged as distinct field of study. Today, Victimology is not just limited to the study of crime victims but also includes those individuals whose human rights or legal rights are affected, also, it includes victim assistance services and reparation provided to the victims.

Tracing back to history, the concept of victim arises from the concept of justice. Victims, to a larger extent were connected to the practice of sacrifice. So, during those times, justice was achieved through the individual act of revenge, where the victim who has suffered any harm or loss, take the law into their own hands and put on the role of a judge, also the concept of providing restitution to the victim was administered at that time. The first victim rights statute known as the code of Hammurabi (1786 B.C.), provided for the system of reparation based on revenge where the victim's family and community assume the responsibility of aiding the victim if the offender could not be caught. Thus, this code to a larger extent provides the rights of victims. Also, during Rig Veda Period, the victim had the right to punish the offender<sup>2</sup>.

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1. Edna Erez, The Impact of Victimology on Criminal Justice Policy, 3 Crim. Just. Pol'y Rev. 236 (1989).

2. The Conceptual and Theoretical Aspect of Victimology, (Feb. 07, 2018, 12:45 AM), [http://shodhganga.inflibnet.ac.in/bitstream/10603/79773/2/11\\_chapter%202.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/79773/2/11_chapter%202.pdf)

The ancient Hindu law framer Manu provided for the compensation to the victims along with the remitment of fine to the king. The Yajnavalakays, Brihaspati, and Narada also provides for restitution to the victims upto double the amount of money paid for buying a good and also a fine of equal amount in case where the sellers sell defective product to the consumers thereby making them victims. During the Muslim rule, this concept of restitution was upheld and importance was laid to the criminal justice system also reforms were introduced for the improvement in judiciary<sup>3</sup>.

Thus, during the reign of Hindu kings as well as Muslim period, victims enjoyed their right to get justice and compensation, though the criminal justice system at that time was harsh but aims to provide justice to the victims. However, with the emergence of ‘adversarial system of justice’, the condition of victims became worse and once significant players faded into mere prosecution witness. So here, the main focus lies on the concepts of victim, victimization and victimology<sup>4</sup>.

### **Concepts of Victim, Victimization and Victimology**

#### **Victim:**

In **Section 2 (wa)** of the Code of Criminal Procedure, 1973, “Victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir.”<sup>5</sup>

According to:

#### **Fattah (1966)**

“The Victim may be specific such as physical or moral person (Corporation, State, and Association) or non-specific and an abstraction.”

#### **Quinney (1972)**

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3. Id.

4. Id.

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

“The victim is a conception of reality as well as an object of events. All parties involved in sequence of actions construct the reality of the situation. And in the larger social contacts, we all engage in common sense construction of the crime, the criminal, and the victims.”

Separovic (1975)

“We consider a victim as anything, physical or moral person who suffers either as a result of ruthless design or accidentally. Accordingly, we have victim of crime or offence and victims of accidents.”

Castro (1979)

“A Victim is a variable of crime or is an accident producing factor for others and for him.”<sup>6</sup>

Roy Lambron (1983-1984)

“\_\_\_\_\_ person who has suffered physical or mental injury or harm, mental loss or damage or other social disadvantage as result of conduct.

In violation of national penal laws, or

1. Deemed a crime under international laws; or
2. Constructing a violation of internationally recognised human rights human rights, norms, protecting life, liberty and personal security: or which otherwise amounts to “an abuse of power” by persons, who, by reason of their position of power by authority derived from political, economic or social power, whether they are public officials, agents or employees of the state or corporate entities, are beyond the reach of the loss which;
3. although not proscribed by national or international law, causes physical, psychological or economic harm as severe as that caused by abuses of power constituting a violation of internationally recognized human rights norms and creates needs in victims as serious as those caused by violations of such norms.”<sup>7</sup>

Classification of victims:

There are majorly three types of victims

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6. Wolfgang, Marvin “Patterns in Criminal Homicide”. Philadelphia, PA: University of Pennsylvania Press. 1958

7. Aucoin, K. & Beauchamp, D. (2007). “Impacts and consequences of victimization”, GSS 2004, Canadian Centre for Justice Statistics Juristat, Vol. 27, No. 1.

a. Primary Victims

Any person(s) who suffers harm or injury due to illegal or criminal act of some other person. The harm may be physical, financial or psychological.

b. Secondary Victims

Any person(s) who suffers any harm or injury due to harm or injury to the primary victim.

c. Tertiary Victims

Tertiary victims are those who experiences any harm or injury due to the criminal act of the perpetrator.<sup>8</sup>

Thus, definition of victim given under Victims Rights Act-

- A person against whom an offence is committed by another person;
- A person who, through, or by means of an offence committed by another person, suffers physical injury, or loss of, or damage to, property;
- A parent or legal guardian of a child, or of a young person; and
- A member of the immediate family of a person who, as a result of an offence committed by another person, dies or is capable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.<sup>9</sup>

**Victimization:**

The act of a person being harmed by a crime, tort or other wrong is victimization.<sup>10</sup> A victimized person suffers through various physical, financial or psychological injuries/loss.

**Impact of Victimization:**

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8. A brief study of concepts of Victimology and Rights of Victims under Indian law, (Feb. 07, 2018, 1:25 AM), [https://lawschoolnotes.wordpress.com/2016/10/04/a-brief-study-of-concepts-of-victimology-and-rights-of-victims-under-indian-law/#\\_ftn18](https://lawschoolnotes.wordpress.com/2016/10/04/a-brief-study-of-concepts-of-victimology-and-rights-of-victims-under-indian-law/#_ftn18)

9. Victims' Right Act, 2002

10. Black's Law Dictionary, P. 1598, 8<sup>th</sup> edition

The victim suffers from physical, financial and psychological trauma:

a. Physical Impact

The physical impact is in the form of physical injuries which may be as apparent as cuts, bruises, or broken arms or legs. The victims may also be fatigued, unable to sleep properly, or may have increased or decreased appetites.

a. Financial impact

The financial impact on the crime victims can be in terms of cost incurred on medical treatment for the physical injuries, damages to goods or property, litigation cost, loss of earnings, or funeral cost, if any.

b. Psychological impact

The Victim of crime may suffer from Post-traumatic stress disorders. These emotional injuries of victimizations cause both immediate and long-term impact on victims and their loved ones.<sup>11</sup>

**Victimology:**

The centre of victimology is the investigation of offender-victim relationship and interactions,' particularly the changing degrees to which victims may add to their own particular exploitation.' The disciplinary degrees of victimology are far more extensive; researchers who appropriately see themselves as victimologists seek after a wide variety of victim focused examinations. One commentator guarantees that advanced victimology contains, in any event, the accompanying four highlights:

- (1) Victim participation in the crime which may range from provocation to innocently passive reception.
- (2) Victim compensation by the criminal and/or the state.
- (3) Involving the victim in defining the seriousness of a crime.

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11. The Trauma of Victimization, (Feb. 07, 2018, 10:57 PM), <http://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/trauma-of-victimization>

(4) Victim advocacy, which itself has many aspects, including protecting the victim from the discomforts of criminal procedure.<sup>12</sup>

### Definitions of Victimology

1. Schultz (1970)-

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

2. Drapkin and Viano (1974)-

“Victimology is the branch of criminology which primarily studies the victims of crime and everything that is connected with such is victim”. (as quoted by Krishna and Singh, 1982).

3. Antilla (1975)-

“Victimology studies by logical, Sociological, Psychological and criminological aspects about the victims and brings into focus the victim-offender relationship and the role played by the victim in occurrence of the offence”.

4. Separovic (1975)-

“Victimology is the entire body of knowledge regarding victims, victimization and to preserve the rights of victim; thus, it is composed of knowledge drawn from such fields Asiminology, Safety, Law, Medicine, Psychology, Social Work, Education and Public Administration.

5. Parsonage (1979)-

“Victimology concerns the interaction in which both the criminal and the victim have functional role and responsibilities.

6. Shinder (1982)-

“----- it investigates the relationship between offender and victim in crime causation. It deals with the process of victimization, of becoming a victim, and in this context, directs much of its attention to the problem victim-offender, sequence, i.e. the question of whether or not victimization can have crimogenic effects or can encourage crime.”<sup>13</sup>

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12. David B. Wexler, *Victimology and Mental Health Law: An Agenda*, 66 Va. L. Rev. 681 (1980).

13. Deepak Y bade, *Concept of Victimology in India*, (Feb. 07, 2018, 1:26 AM), [https://www.academia.edu/1787492/CONCEPT\\_OF\\_VICTIMOLOGY\\_IN\\_INDIA](https://www.academia.edu/1787492/CONCEPT_OF_VICTIMOLOGY_IN_INDIA)

Therefore, in the basic terms, victimology is the study of victims so, there is a need to take a closer look at the label 'victim' and try to locate it within a broader theoretical framework of understanding. The next head, therefore, explores (sub)discipline of victimology and examines the relevance of theoretical victimological debates in furthering the understanding of contemporary responses to crime and victimization.

### **Victimology: Theoretical Perspectives**

#### **1. Positivist victimology**

The positivist victimology takes into consideration those factors which influence non-random pattern of victimization, the examination of how victims contribute to their victimization and a focus upon interpersonal crimes of violence.

- **Von Hentig**

Von Hentig was the first to discover those factors which leads to victimization.

He created a typology of victims:

- a) General classes victims which comprises of the young, the old, female, the mentally defective and immigrants, minorities and dull normal.
- b) Psychological types of victims which includes the depressed, the acquisitive and the wanton.

- **Mendelson**

Mendelson created six categories of victims ranging from completely innocent to the most guilty.

However, the work of Von Hentig and Mendelsohn was criticised because it was based on anecdotal, impressionistic observation rather than empirical evidence

- **Wolfgang and Amir**

Wolfgang placed emphasis on the notion of 'victim precipitation' whereby it was claimed that victim precipitated the victimising event.

Amir created a typology of victim behaviour ranging from accidental victim to the consciously or unconsciously seductive victims. He argued that the

convergence between the victim and the offender sets a motion whereby the victim behaviour and the situation determine the prospects which leads to crime.

However, these approaches were criticised by feminist researchers, they were of the view that this examination of the role of victims may constitute blaming the victims, thereby holding them responsible for their plight. Countering this feminist approach, Fattah brings forth a fine line between blame and account arguing that this examination of victims is not be understood as directly blaming them rather can be understood as trying to find those factors leading to the victimization of particular victims.

- Lifestyle and routine activities

‘lifestyle’ is defined as being ‘the way in which the individuals allocate their time to the vocational activities and leisure activities.’ It was argued that lifestyle affects the risk of being victimised because it tells the probability of being at particular place at a particular time, thus, coming into contact with a potential offender.

The routine activities model is quite similar to the lifestyle approach. This method tries to explain victimization by ‘Direct contact predatory violations’. ‘Direct contact predatory violations’ have been defined as ‘involving direct physical contact between at least one offender and at least one person or object which that offender attempts to take or damage.’

However, these approaches were criticised on the basis that these only provides a partial analysis of the role of human action and structural constraints in victimisation. Also, these models implicitly blame the victims for their plights as an individual’s lifestyle or routine activity is viewed as a factor responsible for their victimisation.<sup>14</sup>

## 2. Radical victimology

Radical criminological and victimological points of view developed as a reaction to occasions like war in Vietnam, worldview emergency inside human science and related controls. For instance, Schwendinder and Schwendinger contended that concentrating on the occasions which are characterized by the state as criminal occasions, the

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14. BASIA SPALEK, CRIME VICTIMS: THEORY, POLICY AND PRACTICE 33-45 (2006)



criminologist disregarded those occasions which are very harmful and are completed by people with significant influence yet at the same time these occasions are not considered as violations by the state or more extensive society.

Radical points of view likewise challenge philosophies for instance Capitalist philosophy. A few writers have contended that inside an industrialist framework 'laborers' move toward becoming victims by the individuals who owe the methods for production. The deaths and wounds which happens at the work environment prompts criminal exploitation. Countering this, a few researchers embracing a radical point of view have seen criminal guilty parties as victims of a monetary framework which teaches yearnings for material riches however which denies them of the way to accomplish that riches.

Radical viewpoints likewise centre around human rights when representing wrongdoing and exploitation. Each individual ought to have a privilege to racial, sexual and financial fairness and that any social framework which damages these rights ought to be considered as improper and illicit. In this manner, people brutalized by state abuse, war, and corporate wrongdoing are victims whose experiences should be documented and whose mistreatment should be conveyed to an end.<sup>15</sup>

### 3. Feminist perspectives

feminist viewpoints have made numerous imperative contributions building up an understanding of victimisation. Feminist work has featured types of abuse experienced by women that have been to a great extent not covered, since women may not report the savagery carried out against them to police, and both national and local crime surveys have neglected to distinguish the genuine level of attack. Women lives are encircled by the social structure of man centric society, which comprise of male monetary and social power, supported by the utilization of, or danger of, savagery. Consequently, by using the examination strategies, women's activist work has revealed beforehand concealed types of exploitation, and men's energy to characterize manhandle has been tested. For instance, an imperative examination completed by Dobash and Dobash reported the shocking violence faced by the battered ladies, including broken noses, genuine injuries, cracked bones and deformation, while

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15. Id.

Russell's investigation of ladies uncovered that in a random survey of 930 ladies, 24 per cent had encountered no less than one assault in her lifetime and another 31 per cent an attempted rape.

Another element of women's activist work is the way women oppose and deal with their lives around savagery. Women are seen as not simply 'victims' who have suffered violence against them, rather, women are seen as currently battling against their material conditions, struggling to relieve the damages caused by the physical and sexual danger. The idea that women oppose and deal with their lives around brutality is in this way a typical topic in feminist research. Although, a few women are executed by men, and some feel that their life is totally destroyed by violence, numerous women yet figure out how to recreate their lives, psychologically, mentally and physically, and this sort of remaking ought to be recognized using the word 'survivor' as opposed to 'victim'.<sup>16</sup>

#### **4. Critical victimology**

Critical Victimology has been for the most part created so as to plan arrangements of a portion of the troubles related with positivism. Critical victimology for the most part thinks about who has the ability to apply the label and what are huge contemplations in that assurance. Defenders of basic victimology opine that victimology neglects to scrutinize the essential establishments of what wrongdoing is and disregards why certain demonstrations are endorsed, this therefore has made it created in the wrong heading. Critical victimology bases on the issue of how and why certain activities are characterized as criminal and, how the whole field of victimology ends up plainly centred around one arrangement of activities rather than another. Critical Victimology endeavours to analyse victims in social setting.<sup>17</sup>

Each one of the perspectives featured above furthers our understanding of victimization and also makes it essential to deal with this issue of victimization in an effective way, thereby shifting the focus on various steps taken by countries like UN, USA, Germany, England and India to redress this problem of victimization.

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16. Id.

17. Id.

### **Emerging Trends in Victimology:**

#### **International scenario**

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985), considered the 'magna carta' for victims, gives the fundamental system of standards which over the most recent two decades have been vociferously wrangled about and changed over as victims' rights by a portion of the developed nations. The global measures expected of the nations in the treatment of victims have been extravagantly nitty gritty in the UN Handbook on Justice for Victims.<sup>18</sup>

The recently created interests in crime victims has prompted certain patterns and approaches, some of them are as per the following:

It is being expandingly understood that the victim must be treated with nobility and regarded by the criminal law organizations, viz. the police and the courts. Regularly secondary exploitation of victims comes about in light because of the uninterested and hard disposition of the criminal law offices as well as of the general population in region, healing facilities and broad communications too. In the USA and some European nations, statutory rules as "Victim Bill of Rights" are being given.

A victim has barely any part in the criminal justice framework, however, there is an expanding mindfulness now that the victim must be given legitimate interest in the trial. For example, in USA under the Witness Protection Act, 1982, victims are to be counselled in the plea-bargaining process. In Germany, compensation is currently payable to a victim if the charges are dropped against a guilty party.

Inventive utilize is being made of certain condemning methods like probation to give alleviation to the victims. A guilty party, in fitting conditions, might be discharged on post-trial supervision, if willing to remunerate the victim. For example, in England, under the Criminal Justice Act, 1982, as revised in 1988, the court must determine the purposes behind not making a request for restitution.

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18. CHOCKALINGAM, KUMARAVELU, MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM, RESOURCE MATERIAL SERIES NO. 81, P. 101

In specific sorts of circumstances where the blame of the wrongdoer is clear, endeavours are made to bring the victim and transgressor together so as to lead them to understanding or change for the restoration of losses to the victim, there being a more noteworthy potential in this sort of approach as opposed to mere punishment to the guilty party. This idea of giving one more opportunity to the wrongdoer instead of sanctioning him is what is provided in Restorative theory and India is presently shifting its focus toward achieving this approach.<sup>19</sup> Also, From the past times there emerged various theories of punishment in India which are elucidated below:

### **Theories of Punishment**

The main theories of punishment are:

- a. Retributive.
- b. Deterrent
- c. Incapacitative
- d. Reformative

- a. **Retributive or Desert Theory**

Retributive comes from the Latin verb *re + tribere* which means ‘again to give’. As a transitive verb it means ‘to give in return’, ‘to retaliate against a person’ and ‘to repay.’ Here punishment is supported, as a characteristic or proper reaction to wrongdoing, and its quantum ought to be proportionate to the level of wrongdoing. Proportionality is the key idea in the restorative theory. Cardinal proportionality requires that overall level of punishment scale should not be more than the gravity of the conduct.

- b. **Deterrent Theory**

The term deterrence is derived from the Latin word – *deterreere*, ‘frighten from.’ This theory regards the counteractive action for any further offense by an individual through a deterrent system as the justification for sanction. The start on which it is defended is that the greatest good of the greatest number represents the supreme value and that the individual checks just shape one: it might consequently be

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19. SIDDIQUE, AHMAD, CRIMINOLOGY, 5TH ED., EASTERN BOOK COMPANY, LUCKNOW, 2005, P. 556

legitimate to punish one-individual seriously with a specific end goal to discourage others successfully.

c. Incapacitative Theory

Incapacitation means an immediate anticipation of an individual guilty party from carrying out another wrongdoing in as much as he is really unsafe to society. As a rule, this method is talked about with reference to guilty parties who are in charge of no less than one perpetrated wrongdoing. The point here, is to control the ex-guilty party from perpetrating another wrongdoing. Consequently, an Incapacitative measure is not proposed to be blameful, agonizing, or undermining. The methods of incapacitation include among others – supervision, confinement, banishment, mutilation, surgery and killing.

d. Reformative Theory

The term ‘reformation’ also known as ‘rehabilitation’ means restoring to a former condition. The prefix *re* indicates return to a state or condition, which has previously prevailed. Reformation infers a difference in character and good demeanor. It has a two-crease point: contrarily to eliminate the criminal disposition and emphatically to enhance the man socially. The method of reasoning here is to avert additionally offending by the person through the technique of rehabilitation, which may involve individual casework, therapy, counselling, intervention in the family. Its behavioural idea is that a few or numerous criminal offense are to a critical degree controlled by social weights, mental challenges, or other issue, which encroach on people. Wrongdoers are viewed as unfit to adapt and needing assistance from specialists, and thus as not as much as completely capable people. The rehabilitative approach demonstrates that sentence ought to be custom fitted to the requirements of the specific guilty parties. It lays accentuation on the procedures of analysis and treatment via trained experts.<sup>20</sup>

Taking into consideration the present scenario of India, there has been a paradigm shift from punitive justice to restorative justice because “arrogance on the part of the offender and revenge on the part of the victim is going to take us nowhere. After all, we have got just one place to live in this world – this earth.” In addition, we can

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20. P. MADHAVA SOMA SUNDARAM, K. JAISHANKAR & S. RAMDAS, CRIME VICTIMS AND JUSTICE, (2008)

live peacefully and better by understanding what Mahatma Gandhi tried to teach us through the following message – *“It is man’s social nature which distinguishes him from the brute creation. If it is his privilege to be independent, it is equally his duty to be interdependent. Only an arrogant man will claim to be independent of everybody else and be self-contained.”*

### **Contribution of the Indian Judiciary**

An examination of the working of the Indian Justice system demonstrates that the attributes of compensatory law existed in India, even before the 1985 UN Declaration. The privilege of receipt of compensation by the victim was perceived under the Criminal Procedure Code of 1898 just in situations where a substantive sentence of fine was levied and was constrained to the genuine measure of fine realised. Indeed, even before amendments were presented, CrPC contained arrangements identifying with compensation to victims and disposal of property associated with the offense, which at last pointed towards guaranteeing justice to victims. Section 357, 358 and 359 deals with order to pay compensation and cost to victims. Section 357 CrPC provides for punishing the wrongdoer and further to pay compensation to the aggrieved party or the victim for the harm or injury suffered by the victim. Under this section compensation can be ordered just in situations where the accused is convicted and condemned. In such cases, it is of little significance whether fine is imposed. Under section 357(1) of CrPC, the court has been empowered to order the payment of compensation to the victim of the offence out of the fine imposed on the accused person while passing an order of sentence of which fine forms a part. Clause (c) contains a provision for compensating the heirs and dependents of the person who is a victim of homicide. In this manner, the measure of compensation couldn't surpass the measure of fine. Section 357(3) which was introduced in 1973, provides when a court imposes a sentence of which fine is not a part in such a case, the court has the power to direct the accused to pay compensation to the victim. The compensation should be payable for any loss or injury, whether physical or pecuniary and the court shall give due regard to the nature of the injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors.<sup>21</sup> The Supreme Court of India in Harikrishna and

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21. Id.

State of Haryana v Sukhibir Singh and others<sup>22</sup> observed that under section 357(3), the court can award compensation in cases when no fine can be levied

The Supreme Court observed that:

*“It is an important provision but courts have seldom invoked it, perhaps due to ignorance or the object of it. It empowers the court to award compensation to the victims while passing judgment of conviction. In addition to convictions, the court may order the accused to pay same amount by way of compensation to the victims who was suffered by the action of the accused. It may be noted that this power of the court to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not in the criminal justice system. It is a measure of responding appropriately to the crime as well as of reconciling the victim with the offender. It is to some extent, a constructive approach to crime. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally, to meet the end of the justice in a better way. – While awarding compensation the court must be satisfied that, the victim has suffered loss or injury due to the act, neglect, or default, of the accused. This may be physical, mental, or pecuniary loss or injury and the victim is entitled to compensation. Thus, the provision of section 357 is just and expedient to give speedy and less expensive redress to the victim.*

The restorative and reparative theories that have developed in response to the plight of the victims of crime also underline the necessity to compensate the victim of the crime. While explaining the rationale of compensating the victims of crime, the Supreme Court of India in State of Gujarat v. Hon’ble High Court of Gujarat<sup>23</sup> observed:

*‘In our effort to look after and protect the human rights of the convict, we cannot forget the victim or his family in case of his death or who is otherwise incapacitated to 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 will look hollow if justice is not done to the victims of crime. A victim of crime cannot be a “forgotten man” in the criminal justice system. It is he who suffered the most. His family is ruined particularly in case of death and other bodily injury. This apart from factors like loss of reputation, humiliation, etc. An honour,*

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22. Hari Krishna and State of Haryana v. Sukhibir Singh and others, A.I.R. 1988 S.C. 2127

23. State of Gujarat v. Hon’ble High Court of Gujarat, A.I.R. 1998, SC3162

*which is lost or life which is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.*<sup>24</sup>

Under section 358, at whatever point any individual makes some other individual be baselessly arrested, the Magistrate may grant compensation to the degree of Rs 1000/- to the individual who is the victim of such arrest. As per section 358, there should be some immediate association between the arrest and the complainant. Nevertheless, to make this provision viable, it should be demonstrated that the arrest of the accused was caused by the source with no adequate grounds.<sup>25</sup>

According to Section 359, an Appellate Court, High Court or a Court of Session in exercise of its revisional powers, can order payment of costs in cases where a complaint for a non-cognizable offence is made to a Court, and the accused is convicted by the Court. In addition to the penalty imposed, it may, order the accused to pay to the complainant, either in whole or in part, the cost which is incurred by the complainant in the prosecution. Further, the court may also order that in case the accused fails to make the payment, the accused shall be subject to simple imprisonment for a period of not more than thirty days.<sup>26</sup>

Also, Section 237 and 250 of CrPC deals with payment of compensation. Under section 237 CrPC, a court of session shall take cognizance of an offence as per provision contained in section 199 (2) of CrPC. According to section 237(3) CrPC, *“If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of a Union Territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one”*. If the court considers that there lacks reasonable ground of the allegation, it may order the concerned person to pay compensation to the victim of false accusation, not exceeding Rs 1000/- after recording reasons for the same.<sup>27</sup>

### Rape victims

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24. Supra note 20

25. Legislative and Administrative Growth and Development of Victimology in India, (Feb. 07, 2018, 2:31 AM), [http://shodhganga.inflibnet.ac.in/bitstream/10603/79773/4/13\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/79773/4/13_chapter%204.pdf)

26. Id.

27. Id.



The Supreme Court of India observed the plight of the rape victims in India and expressed serious concern and suggested that the defects in criminal laws be removed soon. The court in Delhi Domestic Working Women's Forum v. Union of India<sup>28</sup> observed that:

*“The defects in the present system are firstly, complainants are handled roughly and are not giving such attention as is warranted. The police, more often than not, humiliate the victims. The victims have invariably found rape trials an experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly the court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself.”*

In this view, the court laid down the following guidelines for trial of rape cases:

1. The complainants of sexual assault cases should be provided with a victim's Advocate who has to explain to the victim the proceedings of the case, and to assist her in the police station and in Court and also to provide her guidance as to how to avail help of different nature from other agencies, such as, mind consulting or medical assistance.
2. Legal assistance should be provided at the police station while the victim is being questioned, as she might be in a distressed state.
3. The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
4. A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
5. The Advocate shall be appointed by the Court on application by the police, in order to ensure that victims are questioned without undue delay;
6. In all rape trials, anonymity of the victims must be maintained;
7. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims

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28. Delhi Domestic Working Women's Forum v Union of India, (1995) 1 SCC 14

frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;

8. Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.<sup>29</sup>

Referring to the state of criminal justice in India today, the Government Notification constituting the Criminal Justice Reforms committee observed:

*“-----People by and large have lost confidence in the criminal justice system.... victims feel ignored and are crying for attention and justice.... there is need for developing a cohesive system, in which, all parts work in co-ordination to achieve the common goal.”*

Looking on to this, the committee feels that the justice system must focus on justice to victims and thus made following recommendation, which include the rights of the victim to participate in cases involving serious crimes and to adequate compensation.

1. The victim, and if he is dead, his legal representatives shall have the right to be impleaded as a party in every criminal proceeding where the charge is punishable with 7 years' imprisonment or more.
2. In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in court proceedings.
3. The victim has a right to be represented by an advocate of his choice, provided that if the victim is not in a position to afford a lawyer, the State would provide him with so.
4. The victim's right to participation in a criminal trial shall, inter alia, include:
  - a. To produce evidence, oral or documentary, with leave of the court and/or to seek directions for production of such evidence
  - b. To ask questions to the witnesses or to suggest to the court questions which may be put to the witnesses

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<sup>29</sup>. Supra note 18

- c. To know the status of investigation and to move the court to issue directions for further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in search of truth
  - d. To be heard in respect of the grant or cancellation of bail
  - e. To be heard whenever prosecution seeks to withdraw
  - f. To advance arguments after the prosecutor has submitted arguments
  - g. To participate in negotiations leading to settlement of compoundable offences
5. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting him for a lesser offence, imposing inadequate sentence or granting inadequate compensation.
  6. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization.
  7. Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This should be organized in a separate legislation by the Parliament.
  8. The victim compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority.

So, all this demonstrates that Indian justice system has endeavoured to improve the plight of victims yet at the same time there is a lot more left to be done by the legal system with a specific end goal to give impartial justice to victims.<sup>30</sup>

### **Conclusion**

Thus, as we realize that this issue of 'victimology' is picking up significance, we have to place emphasis on this aspect and enable the study of victimology to develop in an effectively practical way. The, social researcher exploring victimization must embrace a more extensive range of experiences, adopting a more extensive meaning of 'crime' and 'harm', and they should likewise bring more noteworthy specificity into the work that they do. A more

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<sup>30</sup>. Supra note 18

substantial concentration upon victims' identities is required, and this recommends that more open-ended type of information gathering should be energized, for instance, by the usage of narrative techniques. Victimological work should highlight a more prominent concentration upon emotionality, as this can prompt work that is more reflective, making visible those hidden decision-making processes within the research study that serve to reproduce dominant knowledge construction. Along these lines, the (sub)discipline of victimology will all more precisely mirror the various range of experiences that can be found inside the multi-cultural, diverse societies of late modernity.

Taking in view the present scenario that in spite of the fact, that numerous provision has been made by numerous administrations still there is not much change in the situation of the victims. Victims that experience mental and physical injury endure it for the duration of their lives. It is the State obligation to offset the sufferings of different victims everywhere throughout the nation. On the prospect that if the status of victims is improved, it would be the initial phase in the lessening of wrongdoing and consequently will prompt a specific measure of control over the violations. So, to alleviate the status of the victims and build up the subject of victimology, the following measures should be achieved:

- Appropriate execution on different built up laws;
- Since larger part of wrongdoings are against women like rape, sexual assault, outraging modesty etc, thus, women strengthening is fundamental; and
- A different law should be made for the victims with the end goal that speedy, impartial justice and relief is guaranteed to the victims.