CHAPTER I

INTRODUCTION

1.1 Introduction

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

In the context of criminal justice system there are victims of crime and also victims of abuse of power. These days, the study of criminal law would remain incomplete without taking into consideration the circumstances and situation of the victim. The victim is one of the central figures in the criminal process that deserves the attention of the society. The criminal justice system, without the cooperation of the victim of crime and victims of abuse of power cannot work. The victim has due concerns in the administration of criminal justice. Victim puts forward complaint to competent authority and sets the

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

criminal law into motion. During trial he provides relevant evidence to the court and is principal witness. "*Witnesses*" as Bentham said "*are the eyes and ears of justice*". If the victim/witness is incapacitated from acting as the eyes and ears of justice, the trial gets paralysed and cannot be called as a fair trial.

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

1.2 Victimology – Meaning and Concept

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

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

scientific study of the victims and process of etiology and consequences of victimisation.

Victimology is relatively a new study in the field of criminal law. Victimology is concerned with the role of victims in the criminal justice system, their rights and deals with protecting their dignity and human values. Victimology is an academic scientific discipline which studies data that describes phenomena and causal relationships related to victimizations. This includes events leading to the victimization, the victim's experience, its aftermath and the actions taken by society in response to these victimizations. Therefore, victimology includes the study of the precursors, vulnerabilities, events, impacts, recoveries, and responses by people, organizations and cultures related to victimizations[4].

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

Victimology helps in gaining knowledge of consequences, impact of crime on victims of crime. Getting full and adequate information pertaining to various needs of victims is the foremost requirement for providing an effective criminal justice system. Crime victims often

4 John P. J. Dussich, Associate Professor, Criminology Department, California State University, Fresno and Director, Tokiwa International Victimology Institute, Tokiwa University Victimology Graduate School, Japan, "131st International Senior Seminar Visiting Experts' Papers", Resource Material Series no. 70, available at: www.unafei.or.jp.

5 Prakash Talwar, *Victimology*, Isha Books Publishers, New Delhi, (2006), p. 1.

suffer physical, financial and psychological trauma that persists long after their victimization. Intense and concrete feelings of dejection, distress, anger, fear, anxiety, isolation, low self-esteem, helplessness, sleep disturbances, alienation, emotional distress, other anxiety-related symptoms and depression are common reactions after the commission of a crime against the victim. Victimization put the concerned victim in a state of dilemma and the mind of victim thus lose its equilibrium resulting in further deterioration of health both mental and physical. Therefore a meaningful study on victimology needs to focus on all these significant facets pertaining to criminal justice system to meet the ends of criminal justice system on the whole.

The study of victimology attempts to discuss victims in various crime situations like victims of violent crimes, victims of Socio-Economic offences, victims of terrorism, victims of organized crimes, victims of international crimes, victims of vulnerable class like women victims of sexual offences, sexual harassment, domestic violence, acid attack, trafficking, prostitution, outraging the modesty of women, victims of voyeurism, stalking etc., child victims of abuse, trafficking, child pornography, prostitution, child exploitation etc, victims of disadvantaged class like poor, socially/educationally backward. 'Vulnerability and Fragility' refers to those conditions whether it be a physical, psychological, social, economic condition wherein a person or a group of persons has weaknesses which would make them more fragile. It means those sections of the society which are more prone to be victimized as women and children.

Victimology helps in knowing the causation of victimizations, commonly referred as 'Victimogenesis'. It simply refers to the factors relating to the origin of victimization. Similarly it also provides basis for the study of contributory factors relating to victimization. That is

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

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

Victimology is concerned with wide range of issues concerning victims. It investigates the relationship between the offender and victim/victims. It also deals with the process of victimisation, of being

a victim, and in this context directs much of its attention to the problems and miseries of victim. The victim suffers short-term or long-term damage of an economic, a social, a physical, mental or moral nature, a damage which is almost totally overlooked by institutionalised social control, such as Law, Courts, Public Prosecutors and last but not the least by the system itself. The victim of crime is remarkably reluctant to openly put forward demands for his redress or relief for violation of his rights[6].

1.3 Interrelationship of Criminology, Penology and Victimology

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

In the traditional societies, private vengeance rule was there in which the burden of protection against crimes and of punishing the offenders rested with the individuals against whom the offence had

6 Hari Om Gautam, *Victims of Crime and the Law*, Regal Publications, New Delhi, 2011, p. 5.
7 Lectures on Jurisprudence, XXVII.
8 Kenny, *Outlines of Criminal Law*, The Macmillan Company, New York, 1907.

been committed. It was only after the societies got organized that crime was taken as an act against the society as a whole and against the State as particular. Now, it is the society and State which is considered to be the proper authority to bring the culprit to book.

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

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

In Europe, the seventeenth and eighteenth century was dominated by religion and church was having the maximum powers. In political sphere, thinkers such as Hobbes and Locke were concentrating on social contract as the basis of social evolution. Scientific knowledge

9 N.V. Paranjape, *Criminology and Penology with Victimology*, Central Law Publications, Allahabad, 2012, pp. 40-48.

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

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

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

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

11 *Supra* note 9.

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

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

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

these people were incapable of appreciating the difference between right and wrong[12].

With the development of behavioural sciences, the monogenetic explanation of human conduct lost its validity and a new trend to study the genesis of crime was adopted. By the nineteenth century, certain French doctors were successful in establishing that it was neither free will of the offender nor his innate depravity which actuated him to commit crime but the real cause of criminality lay in the anthropological features of the criminal[13]. The main exponents of this school were three eminent Italian criminological jurists, namely, Cesare Lombroso, Raffaele Garofalo and Enrico Ferri[14].

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

12 Retrived from http://www.slideshare.net/aika92TD/sharon-classical-and-neoclassical-schools.
13 *Supra* note 10.
14 *Supra* note 9.

work which was in progress at the time of its origin and in addition, made no lasting contribution of its own[15].

Enrico Ferri (1856-1928) believed that factors such as emotional reactions, social infirmity or geographical conditions also play a vital role in determining criminal tendencies in men. His main contribution is his work, *The Law of Criminal Saturation*. This theory presupposes that the crime is the synthetic product of three main factors: geographical, anthropological, psychological or social. Ferri proved that mere biological reasons were not enough to account for criminality. He firmly believed that other factors such as emotional reaction, social infirmity or geographical conditions also play a vital role in determining criminal tendencies in man. He emphasized that criminal behaviour is the outcome of various factors having their combined effect on the individual. According to him the social change which is inevitable in a dynamic society, results in disharmony and conflict. As a result of this social disorganization takes place. In a wake of such rapid social changes, the incidents of crime are bound to increase. The heterogeneity of social conditions destroys the congenial social relationship, creating a social vacuum which proves to be fertile ground for criminality[16].

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

15 *Supra* note 10.
16 *Supra* note 9.

conditioned in his development by experiences of life to which he has been exposed from infancy upto the time of commission of crime. Thus, clinical school takes into account variety of factors. It further suggests that the criminals who do not respond favourably to correctional measures must be punished with imprisonment or transportation for life while those who are only victims of social conditions should be subjected to correctional methods such as probation, parole, reformatories, open-air-camps etc. Thus briefly speaking, individualization has become the cardinal principle of criminology. The main theme of clinical school is that personality of man is a combination of internal and external factors, therefore, punishment should depend on the personality of the accused[17].

As civilization advanced, new ideas regarding individual rights and duties towards fellow human beings developed and crime was considered as crime against society and the State. The sociological aspect about the evolution of society is that first of all individual came into being then families thereafter clans, after that society and then the State (earlier it was police State but now the concept of welfare State is there). One of the basic criticism against the present system is that it has failed to protect the society against rising incidents of crime[18].

Victimology is the latest branch of criminology which deals with the study of victims who suffer at the hands of wrongdoer. Criminology is the study of crime and criminals. It aims at discovering the causes of criminality and effective measures to fight against crimes. Penology is associated with criminal justice policies pertaining to

17 *Ibid.*

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

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.

1.4 Historical Developments in Victimology

The European countries suffered countless hardships in the shape of deaths and loss to property during Second World War. After the end of war some eminent scholars started exploring the concept of victimology as an independent study other than criminology. The scientific and technical research pertaining to victimology can be traced back to 1950. Till then the criminologists were focusing their attention towards the wrong doers and crimes itself. Then the criminologist shifted their focus towards the victims of crime and abuse of power. People like Mendelson and Von Hentig, started the research in that direction and began to study the victims of crime.[19]

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

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

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[20].

The history of crime is very old and crime existed since time immemorial. According to some philosophers Civilization is supposed to have come into existence from that very day when man started thinking that he is naked. It is from then that the concept of crime has evolved. The earlier societies had some rituals and customs which were followed by all members of the respective society. 'A tooth for tooth and an eye for an eye', the theory of retribution or retaliation or vengeance etc. was present in old days.

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

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

committed then the restitution was five times more than the amount of goods, like wise if criminal breach of trust was committed by an employee he was bound to make restitution three times more than the amount. There were also provisions, that if the thief was not traced or identified, then the State has to pay the amount of restitution if the victim had itemized his property in the presence of God[21]. (The legal document also provides that if the brigand has not been taken, the man plundered shall claim before God what he has lost; and the city and sheriff in whose land and boundary the theft has taken place shall restore to him all that he has lost). The Code of Hammurabi also provided that if a man has committed robbery and is caught then the punishment of death is to be given. But if he is not caught then the city mayor shall replace whatever the man who was robbed had lost provided the robbed man declare what he lost in the presence of God. And if in the process of robbery the death has been caused then the city mayor to provide one munch of silver to his heirs.

The penal processes adopted by many countries for years relied mainly on the deterrent and retributive aspects of punishments. In some situations law was such as to compensate the victim and not to provide severe punishment to the offender. And in those cases the state plays the role of arbitrator. In the codes of all archaic civilisations, the amount of redress was to be fixed as per the discretion adopted by the injured party. The penal laws were more akin to the law of torts. The person injured proceeds against the wrongdoer by an ordinary civil action, and recover money damages if he succeeds[22].Therefore many offences as theft, assault, libel, slander etc were treated as torts wherein compensation was paid to the victims if he succeeds in proving damages to them.

---

21 *Supra* note 6 at pp. 54-55.

22 Sir Henry, S. Maine, *Ancient Law*, Oxford Library Press, 1946.

During the eleventh century, the victim had a key position in common law and was responsible for the apprehension, charge and prosecution of offenders. This system was known as private prosecution and the victims controlled every aspect of judicial process including punishment (Kirchengast, 2006). This was referred as the golden age of the victims as they exercised their rights and played major role in the criminal justice process. The Saxons and the Germans introduced the use of wergild, which means that they renounced a vendetta after a murder or serious bodily injury, provided that the offender compensated the victim or his family (Schaffer, 1968; Alline, 2001). The agreement between the offender and victim or his clan put an end to any further violence. But 13th century witnesses the decline of the victim's role and rights. There were thoughts that the crime was primarily against the society rather than an individual. So aftermath the commission of crime the payment of compensation was to be paid by the offender rather than by the State. From the 17th Century onwards, parliamentary sovereignty grew and the king becomes less influential personally. Instead he was seen as a figure of sovereignty. Laws were passed by legislature and were no longer passed by a king alone[23].

There is no society in the world without crime. The concept of law is essentially concerned with the maintaining of law and order situation and can be said to have been started with the jurisprudential aspect of Social Contract Theory. Under that theory two pacts were signed and these are first, pactum unionis (agreement between the general crowd to live together) and the second, pactum subjectionis (agreement between subjects and the King under which subjects surrendered some of their rights to the King whose ultimate duty was

23 G.S. Bajpai, *Criminal Justice System Reconsidered, Victim & Witness Perspectives*, Serial Publications, New Delhi, 2012, pp. 2-3.

to protect them under whatever circumstances). Crime is considered as a wrong the remedy of which is the punishment of the offender at the instance of State or the society. It is therefore, considered as an offence against the society and ultimately against the State.

In India, Manu (ancient law giver) clearly says that if limb is injured or a wound is caused or blood flows, the assailant shall be made to pay for the expenses incurred on cure as a whole. He further says that he who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to the damage[24]. To make it more clear the maxim- tooth for tooth and an eye for an eye based on the retributive theory of punishment gives the victim a kind of relief to satisfy his/her vengeance by punishing the wrong doer. The compensation to crime victim is not considered a punishment to the offender. It has been an obligation on the part of the society to re-impose faith and confidence on the victim which was lost due to the offender's act of delinquency and crime.

The protection of the human dignity is the responsibility of the State machinery. It is the State which is responsible for the protection of all human beings and unity and integrity of a nation. If the human dignity of an individual is not respected that means that the individual might be victimized. The violation of human ethics and code of conduct often leads to anarchy. The institution of State is having the sole responsibility to maintain law and order situation. If it is so only then the peace and security can be maintained. The obligation to protect life, liberty and property of the citizens is on the institution of State. State is thus duty bound to protect the citizens and to put the offender behind the bars and to bring him to book. According to

24 The Laws of Manu in Manusmruthi, Chapter VIII, verse 287, available at: www.legalserviceindia.com.

Martin Luther King injustice anywhere is threat to justice everywhere. Justice is not only to be delivered but also must be shown to have been delivered. If any where there is violation of standard norms of society that would mean that there would be chaos. It simply means that threat to justice has been posed and such a situation will also adversely affects the law and order situation and would result in great loss to human life and property resulting in injustice and victimization.

1.5 National and International Developments in Victimology

During the past thirty years efforts have been made to initiate victim orientation schemes by the Western countries for rehabilitation, protection and financial assistance to the victims of crime and to prevent abuse of power. Only recently, long after the Second World War as a result of the activities of certain progressive thinkers and activists in various advanced countries, like the U.K., Canada, U.S.A., Australia and New-Zealand, the focus has marginally shifted towards the unfortunate victim, who generally is the most affected party in the crime and also the party who naturally deserves redress. Just to take an example: Canada-Manitoba enacted the *Justice for the Victims of Crime Act*, 1986. New-Zealand also enacted the *Victims of Offences Act*, 1987. In U.K., the *Criminal Justice Act*, 1988 has made new provisions for payment of compensation by the Criminal Injuries Compensation Board. In U.S.A., the *Victims of Crime Act*, 1984 is made part of the federal law.[25]

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

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

pertaining to the rights of victims of crime and victims of abuse of power. It was also declared that offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. This Declaration has been described as 'Magna Carta' of rights of victims' worldwide.

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

In India recently various developments are noticed in the criminal justice system like Fair Trial, Speedy Justice, Public Interest Litigation, Plea Bargaining, Witness protection, Free Legal Aid, Judicial Activism etc. speaking about fairness in the Criminal Justice Process. Most part of the Indian Criminal Law was codified by the Britishers during colonial rule by enacting three major criminal law statutes viz: the *Indian Evidence Act*, 1872, the *Indian Penal Code*, 1860, the *Codes of Criminal Procedure*, 1861, 1872, 1882 and 1898 (now the *Code of Criminal Procedure*, 1973). These laws are amended from time to time to meet the challenges. There are also Special and

Local laws which deal with various issues pertaining to victims for example: The *Immoral Traffic (Prevention) Act*, 1956, the *Dowry Prohibition Act*, 1961, the *Indecent Representation of Women (Prohibition) Act*, 1986, The *Commission of Sati Prevention Act*, 1987, the *Protection of 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[26].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[27]. As such there was also a trend to increase fine by reducing the terms of imprisonment[28]. Presently with the introduction of Section 357 and 357A in the *Code of Criminal Procedure*, 1973 new compensatory jurisprudence has emerged. The apex court has emphasised that trial court must take into account the need to compensate victim on the conviction of accused as a mandatory consideration[29]. The Supreme

---

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

27 See *State* v. *Pandurang Shinde, AIR 1956 Bom. 711* (fine with life imprisonment cannot be imposed), *Palaniappa Gounder* v. *State of Tamil Nadu, AIR 1977 SC 1323* (High Court commuted death sentence to life imprisonment with fine of Rs. 20,000, Supreme Court held that fine is excessive and reduced to Rs. 3000 to be paid to dependents), *Guruswami* v. *State of Tamil Nadu, AIR 1979 SC 1177* (Death sentence commuted to life imprisonment with fine of Rs. 10,000).

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

29 See *Munish Jalan* v. *State of Karnataka, AIR 2008 SC 3074, Ankush Shivaji Gaikwad* v. *State of Maharashtra, AIR 2013 SC 2454* (Courts are bound to consider award of

Court has specifically issued guidelines for the awarding of compensation to rape victim. The court issued directions to constitute Criminal Injuries Compensation Board[30].

1.6 Restorative Justice through Compensation and Rehabilitation

Western countries adopted schemes for payment of victim compensation and enacted laws on this topic. New-Zealand was the first country to adopt victim compensation scheme in 1963. United Kingdom followed New-Zealand and introduced Criminal Injuries Compensation Scheme in 1964 to provide ex-gratia compensation to victims of specific crimes. The Criminal Injuries Compensation Board was constituted to administer compensation scheme. In Australia, State of New South Wales was the first State to enact legislation in this respect, and Queens Land, South Australia and Western Australia followed it in 1968, 1969 and 1970 respectively. The State of Victoria enacted more comprehensive law in 1972, and the other States followed. In the USA it was the State of California, in the year 1965, to legislate on victim compensation; most of the other States also followed California. The Federal Government of the USA also enacted (1) The *Victim and Witness Protection Act*, 1982, (2) The *Victims of Crimes Act*, 1984 which were enforceable throughout the country[31].

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

---

compensation. The word 'may' should be read as 'shall' in Section 357), *Suresh* v *State of Haryana*, Criminal Appeal No. 420 of 2012.

30 See *Domestic Working Women's Forum* v. *Union of India, (1995) 1 SCC 14, Bodhishtwa Gautam* v. *Subra Chakraborti, AIR 1996 SC 922.*

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

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

1.7 Rights of Victims

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

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

In a criminal justice system, victims of crime have various rights like right to lodge a complaint, right to speedy justice, right to be heard, right to fair trial, right to get information, right to be present in the court at hearing, right to protection against retaliation, right to address the court, right to consult officials, cross examining witnesses, right to produce evidence in his favour, right to incamera proceedings during inquiry and trial of certain cases like rape, domestic violence, right regarding maintaining of confidentiality of name and address in prosecution of rape cases, right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, right not to be asked indecent questions as to previous immoral character in rape cases etc. There is inclusion of new Chapter XXI A on plea bargaining which also affords complainant/victim to be part of mutually satisfactory disposition.

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

1.8 Scope and Significance of the Study

Crime is prevalent in every country in one form or the other and necessary steps to control/eradicate it are necessary. The criminal justice system all over the world is focused on the reformation of offender and their punishment. Further it is concerned with the rehabilitation of the convicts after the sentence is over. The concept of

providing justice has widened the area of penal reforms like the release of the offenders on probation or parole and other correctional methods to make the convicts fit to live in the society as good citizens. The victims of crime on the other hand are almost forgotten. Today the purpose of the criminal justice system appears to find out the guilt or innocence of the accused person and for that cause the victim is regarded as a mere witness because he(victim) is personally interested to get the culprit punished. In case the offender is not punished or awarded minor punishment the victim will be discontented with the criminal justice system itself and there is a possibility of his breaking the law for getting the justice that will disturb law and order situation.

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

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

The study will benefit academic researchers and students of criminal law as it has made a detailed analysis of the emerging legal concepts and laws on victims of crime in India and abroad. Further the study will serve the society by highlighting the shortcomings in the laws on victims and suggesting suitable changes and modifications. The study will also serve the legal community especially the criminal law lawyers by providing detailed discussion on procedural aspects, law and judicial pronouncements of courts. The study will also contribute

towards generating a sense of responsibility in State agencies like police, prosecutors etc. towards giving the treatment to the victims of crime in conformity with their human dignity.

1.9 Object and Purpose of the Study

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

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

1.10 Research Methodology

The present study is mainly doctrinal. Doctrinal research has been done by the researcher using descriptive, analytical and critical methods of research. Sources of analytical study are books of both national as well as international authors, national and international journals, articles, magazines, reports of certain committees & commissions. Besides the above mentioned sources, various judicial

pronouncements on the subject are thoroughly surveyed and critically analysed. To make the findings of the study to reach a meaningful conclusion, an attempt is made to discuss and critically evaluate different provisions of the *Criminal Law (Amendment) Act,* 2013, the *Indian Penal Code,* 1860, the *Code of Criminal Procedure,* 1973, the *Indian Evidence Act,* 1872, the *Constitution of India*, 1950, the *Protection of Women from Domestic Violence Act*, 2005, the *Legal Services Authority Act*, 1987 etc. Thus, critical method of research is used along with descriptive and analytical to find out lacunas in the present laws. Even data is analysed from secondary sources like the National Crime Record Bureau and other resources pertaining to crime commission that shows trends in crimes.

1.11 Hypothesis

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

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

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

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

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

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

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

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

1.12 Research Questions

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

1. How is the Indian Criminal Justice System lacking in providing fairness and justice to victims of crime?
2. How is the emerging crime scenario impacting more harshly the victims of crime?
3. What are the emerging trends in victimology at the national and international levels?
4. How does the denial of justice harm the larger interests of peace and harmony in a democratic and welfare State?
5. Why and how to compensate/rehabilitate the victims of crime?
6. Why the guilty person should compensate the victim with/without punishment?
7. What should be the objective and purpose of victim relief fund?
8. Whether there is a need for comprehensive policy and legislation for victim compensation/rehabilitation?

1.13 A Brief Overview of Chapters

Chapter One gives brief introduction to the subject and studies Scope and Objectives of the Study along with methodology to be adopted. Certain Hypothesis are drawn and Research Questions are raised.

Chapter Two deals with Victims in Present Crime Scenario

Chapter Three is regarding Victims and Criminal Justice System

Chapter Four provides for International and National Developments in Victimology.

Chapter Five depicts Rights and Remedies to the Victims of Crime.

Chapter Six is concerned with Restitution and Rehabilitation of Victims of Crime.

Chapter Seven contains Conclusion and Suggestions based on study**.**