
VICTIMOLOGY: AN UNDERRATED CONCEPT IN INDIAN JURISPRUDENCE

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ABSTRACT

Crime is an act done by a person which inflicts harm on another person and that harm may be physical, mental, or economical. It involves two persons, one is the offender and other is victim. The criminal justice administration in India is mainly concentrated on prevention of crimes and sentencing the offenders or their rehabilitation. The victim's role is indispensable in the process of criminal justice administration for proving the guilt of the accused, and unfortunately, the role and concern for the victims limited for that purpose alone. It treats the victims as mere witnesses only. The rights of the accused is one of the widely debated concepts in the courtrooms but the rights of the victim is not usually given importance. Victimology is the study of victims and the effect of crimes on the victims. It deals with the relationship of victims with the offenders and the criminal justice system. The Indian legislature has not given much importance for Victimology as it gave for criminology and penology, but in recent times the concept of Victimology to some extent is gaining attention before the Bench.

Keywords: Victims, Victimization, Criminal Justice System, Victimology.

INTRODUCTION

Crime is an act which involves two persons; Offender and Victim. These two persons are termed as 'Penal Couples' by Mendlesohn in his work. The criminal justice administration system concerns itself to give justice to the victim by way of penalizing the offender. The stages of Criminal administration system starts with the commission of crime, then the investigation and the trial of the accused person which will result in either conviction or acquittal. During this entire process the courts and the police, represented by the public prosecutors, are concerned about whether the offense has been committed? If so then the accused must be penalized, if not so then the innocence must be proved before the court. But the ignored person in the entire process is the victim, they are merely treated as a witness for the state and his importance was limited to that extent only. The questions with regard to the victims such as how the crime has affected the victim personally and/or mentally or how the victim's lifestyle has changed after the occurrence of the crime are unanswered. In other terms, what is the impact of the crime on the victim and what are all its effects is still debatable. But sadly, there are only few instances where the questions has been answered. And these are the questions which turned out to be a study of victims known as Victimology.

MEANING:

The first use of the English word "victim", in 1497, was taken from the Latin word "*victima*" as applied to living beings killed as religious sacrifices¹. In 1947, Sir Benjamin Mendelsohn, popularly known as the 'Father of Victimology', first used the term Victimology. It is described as the scientific study of victims and their role in the crime. Victimology also deals with the typology of victims based on their contribution and vulnerability towards the crime. It also studies the causes and consequences of the crime on the victims. Initially the study of victims were only limited to the characteristics of victims which led to the commission of crime but later it turned out to be study which deals with the welfare and dignity of the victims in the process of justice administration and the prevention of victimization. It safeguards the rights of the victims and opposes the way the victims treated merely as witnesses.

¹ Revista de Victimologia / Journal of Victimology, Volume 1, issue 1, 2015, "The Evolution of International Victimology and its Current Status in the World Today," 2015.

TYPOLOGY OF VICTIMS:

Hans Von Hentig, Benjamin Mendelsohn and Stephen Schafer were the ones who created the typologies of victims based on characteristics, situations and behaviours of the victim.

Hans von Hentig created a typology based on the concept of Victim-Blaming. He developed the typology based on the characteristics of the victims. He said proposed that some victims/aggrieved contribute to their own victimization. He believed that the perpetrator of the crime and the victim may be from different worlds but they both carry same weightage for the causation of the crime. He developed 13 typologies of victims according to their characteristics which are as follows:²

CHARACTERISTICS	DESCRIPTION
The Young	Children and infants: physically weaker, less mental prowess, fewer legal rights, economically dependent on their caretakers.
The Female	All women: physically weaker than men, culturally conditioned to accept men's authority, financially dependent, conditioned to believe that their value is associated with their bodies, therefore their sexuality.
The Old	The elderly: many of the same vulnerabilities as children.
The Mentally Defective and deranged	The feeble-minded, the "insane," drug addicts, and alcoholics: have an altered perception of reality
Immigrants	Foreigners unfamiliar with the culture: gaps in communication and comprehension.

² Brotto, Sinnamon and Petherick, *Victimology And Predicting Victims Of Personal Violence*, Chapter 3 (pg. 83)

<p>Minorities</p>	<p>The racially disadvantaged: groups against which there is some amount of bias and prejudice.</p>
<p>Dull Normals</p>	<p>The simple-minded persons: same type of exposure as the mentally defective and deranged.</p>
<p>The Depressed</p>	<p>Persons with various psychological maladies: they can expose themselves to all manner of danger.</p>
<p>The Acquisitive</p>	<p>The greedy, those looking for quick gains: may suspend their judgment or put themselves in dangerous situations in order to achieve their goals.</p>
<p>The Wanton</p>	<p>The promiscuous persons: they engage themselves in indiscriminate sexual activity with different partners.</p>
<p>The Lonesome or Heartbroken</p>	<p>The widows, widowers, those in mourning: they are prone to substance abuse and become easy prey.</p>
<p>The Tormentor</p>	<p>The abusive parents: they expose themselves to the harm they inflict, the resulting angst, and the degree to which their victims fight back.</p>
<p>The Blocked, Exempted or Fighting.</p>	<p>Victims of blackmail, highway robbery, and confidence swindles: they are exposed to continual fiscal loss or physical detriment, or must suffer the consequences that come from bringing the police in to help.</p>

Benjamin Mendelsohn:

Mendelsohn introduced the term “Victimology”. He is also considered as the father of Victimology. In his experience as an Attorney, he found that there exists a relationship between the offenders and the victims and also found that some of the victims are responsible for their own victimization. Like Von Hentig, Mendelsohn also created a typology³,

LEVEL OF CULPABILITY	DESCRIPTION
Completely innocent victim	No provocative or facilitative behaviors
Victim with minor guilt	Inadvertently places him/herself in a compromising situation.
Victim as guilty as offender	Engages in vice crimes and is hurt; Includes victim of suicide.
Victim guiltier than offender	Provokes or instigates the causal act
Most guilty victim	Starts off as the offender and in turn is hurt.
Imaginary victim	Pretends to be a victim.

Stephen Schafer:

Dr. Stephen Schafer is a professor of Sociology. He has published a book named “The Victim and His Criminal: A Study in Functional Responsibility” in 1968. His typology is similar to that of the Mendolsohn’s typology. He created the typology after interviewing with the criminals. The typology is described in the below table⁴

³ Brotto, Sinnamon and Petherick, *Victimology And Predicting Victims Of Personal Violence*, Chapter 3 (pg. 84)

⁴Brotto, Sinnamon and Petherick, *Victimology And Predicting Victims Of Personal Violence*, Chapter 3 (pg. 85)

TYPE	VICTIM RESPONSIBILITY	DESCRIPTION
Unrelated victims	Entirely innocent	All unfortunate targets of offenders
Provocative victims	Shares responsibility	All situations where the offender is reacting to some action or behavior of the victim.
Precipitative victims	Some degree of responsibility	People who place themselves in dangerous situations by the way they dress, where they go and at what time, and what they say for instance
Biologically weak victims	Not responsible	Young, elderly, physically or mentally weak people who become easy targets for offenders
Socially weak victims	Not responsible	The immigrants, minorities, or isolated who become easy targets for offenders.
Self-victimizing victims	Total responsibility	Prostitutes, drug users, gamblers, and other people who voluntarily interact with criminals.
Political victims	Not responsible	People who oppose those in power or people who are kept

		in subservient social positions.
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INDIAN JUDICIARY:

In the late 90s the concept of Victimology has started to gain recognition from the bench and bar. Even though there is support and assistance from the judiciary, the victim often treated as a witness or evidence through which the accused is put behind the bars. Only during the last few decades the attention was drawn on the victims in the criminal justice administration system. The criminal justice system usually concentrates on the accused and the trial. It confines itself in most cases proving the guilt of the accused and to award punishment. In this process the system uses the victim as the tool to prove the accused guilty and forgets the victims after sentencing the accused. The subject which is left behind but ought to be noticed is the change in the lifestyle of the victim or the loss of livelihood either for a particular period of time or for the lifetime of the victim. The major question is that, how that lapse is fulfilled. Justice is not only in the end result but also in the due process. This statement also signifies the fulfilment of that lapse.

This was given importance in the recent times. In 1980, Justice V.Krishnaiyer, in *Ratan Singh vs State of Punjab*⁵, stated that “It is a weakness of our Indian jurisprudence that the victims/aggrieved of the crime, and the distress of the dependants of the prisoner, doesn’t attract the attention of the law. Its a fact that victim reparation is still the disappearing point of our criminal law. This is a defect/disadvantage in the system which must be rectified by the Legislature”.

From 1980’s the judiciary and the legislature has been continuously expressing their intentions and efforts for the growth of victim justice by their judgments and through various committees to look into the matter.

The recent development in the concept of Victimology is majorly due to the judiciary but it is also important to note that the legislature is not completely turned deaf towards the concept. Though there is no specific legislation made for the victims, the legislature provides certain

⁵ AIR 84, 1980 SCR (1) 846.

provisions in various laws to ensure the dignity, rights and welfare of the victims. The Victimology has evolved in India due to the efforts of judiciary and to some extent by the legislature which focused interalia to the rights of the victims.

The concept of compensation to the victims of crime has gained significance in the 42nd report of the FIFTH Law Commission of India under the chairmanship of Mr.K.V.K.Sundaram. The commission suggested the concept of three patterns used in compensating the victims of crime. Those patterns are

- i. Compensation by the state
- ii. Compensation by the offender by means of fines or paying certain amount
- iii. Offender's duty to repair for its damages.

Not only that, the 142nd, 144th, 146th, 152nd, 154th and 156th reports also dealt with respect to compensation to the victims and made some improvements in this regard.

Recently the Supreme Court in its observation construed Article 21 in a new direction in which the concept of compensation to the victim was added.

D) Victim Compensation in the Criminal Procedure Code, 1973

Section 357-59 deals about the Victims Compensation. Section 357 of CrPC, 1973 is the main provision dealing with Compensation to crime victims. Section 545 of the CrPC, 1898 dealt with the same concept but in a narrow scope earlier.

The Law Commission of India submitted its 41st report in the time 1969. This report provided a thorough analysis of Section 545 of CrPC, 1898. According to the report, the significance of recoverability of compensation should be enforceable in a civil court, analogous to the public remedy accessible in tort.

Therefore, the Indian Parliament submitted the Code of Criminal Procedure Bill, 1970 with the thing of amending Section 545 and introducing it as Section 357 as it stands moment. The Statement of Objects and Reasons underpinning the Bill was as follows:

"Clause 365 (now Section 357) read with Section 545 makes provision for payment of quantum to the aggrieved of crimes. At present similar compensation can be ordered only when the court imposes a forfeiture; the quantum is limited to the quantum of fine. Under the new provision, compensation can be awarded irrespective of whether the offence is punishable with fine or

fine is actually assessed, but similar compensation can be ordered only if the accused is convicted. The quantum must be payable for any loss/injury whether physical or pecuniary and the court shall have due regard to the nature of injury, the mode of inflicting the same, the ability of the defendant to pay and other pertinent components."

The aforementioned statement was held in **Chaman s/o. Gurcharan vs The State (NCT of Delhi)**⁶, **Suresh & Anr vs State of Haryana**⁷ and **Nungshilila vs State of Nagaland & Ors**⁸ cases.

Thus, the variations made in the said Bill of 1970 were espoused into the CrPC. It was derived from the above object and reason of the bill that Section 357 intended to provide relief to the poorer sections of the community. The modified CrPC, on the other hand, gave the court the authority to bear the indicted to pay compensation to victims of crimes" to a larger extent" than was preliminarily allowed under the law.

Section 357:

Section 545 of CrPC, 1898 was the precursor to Section 357 of the present CrPC. This provision includes

"any order/decision for quantum pronounced by any of the courts in India while performing/executing their governance/overview on revision perspective." According to this provision, the Apex Court can also order compensation.⁹

This section's connection is confined to four specific circumstances. The plaintiff may be entitled to similar compensation so that the costs of the execution is covered. Any person who has incurred loss or injury due to the offence can also recover it in the forenamed applicable courts. The courts have the discretion to award similar compensation to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or abatement thereof. Section 357 applies to cases of property injury also. The courts can also award compensation to a bona fide purchaser of the property, which has encountered theft, cheating, felonious misappropriation and breach of trust or entering or retaining or disposing

⁶ CrI.A. No. 153/2010- 20 March, 2015

<https://indiankanoon.org/docfragment/182489325/?formInput=victim%20compensation>

⁷ CrI. A. No. 420/2012- 28 November, 2014

<https://indiankanoon.org/docfragment/42131728/?big=3&formInput=compensation%20%20fine>

⁸ WP (C) No. 53(k) of 2015

⁹ Karan vs State Nct Of Delhi; CRL.A. 352/2020 & CRL.A. 353/2020

of stolen property, and has been ordered to be returned to its due proprietor. According to Section 357(3), the court can order the payment of compensation, if the discipline doesn't involve the payment of a fine.

The major debit of Section 357 is that, it can only be applied after a successful conviction. It works on the premise that the defendant must be "linked, fulfilled, and condemned." It doesn't apply in cases where the person has not been condemned, or in cases where the police have filed Closure Reports or Summary Reports telling the commission of the offence, but the indicted who's seeking to be fulfilled has not committed the offence, or the indicted has not yet been linked. In similar cases, the courts are unfit to give compensation to the victim under Section 357. In fact, Section 357(2) states that "no disbursement of compensation shall be made, if the order assessing forfeiture is subject to an appeal, until either on the expiry of limitation period or when the appeal is finally disposed of."¹⁰

Section 357A deals how to address the gap in delegating duty to the state. State governments are now needed to develop victim compensation plans. It establishes the function of the District Legal Services Authority (DSLAs) in determining the quantum to be given whether the court makes a recommendation for compensation or the victim files a claim under the state scheme. It also allows for compensation and rehabilitative measures in the event that a court-ordered compensatory order is wrong. Indeed if the miscreant has not been set up or recognised, or if there has been no trial, a claim for compensation under Section 357A can be brought.

In terms of interim support, the DSLA is needed by Section 357A to give for exigency medical aid and other remedies as determined by the applicable authority. The sole disadvantage of Section 357A is that it requires the States to advertise a programme and set away finances so that operations can be reused efficiently and victims can get compensation snappily.

Section 358 of Criminal Procedure Code, 1973 provides for payment of compensation up to Rs. 100/- to persons groundlessly arrested. While sub-clause of **Section 359** of the CrPC, 1973 empowers a court to award costs in non-cognizable cases to the plaintiff who's generally a victim of the crime, from the lawbreaker, furnishing further that if the lawbreaker didn't pay costs as ordered, he shall suffer simple imprisonment up to 30 days.

¹⁰ Criminal Procedure Code, 1973 (Act No. 2 of 1974), Section 357(2)

The recent amendment in the of the Criminal Procedure Code (Amendment) Act, 2008 has handed long batted issue of victims i.e. the compensation scheme. Besides victims compensation scheme the CrPC Amendment Act has also empowered the victims to engage an advocate of his choice with the authorization of the court to assess the execution (Section- 24). This counsel will also be authorised to present separate arguments, examine substantiations and produced substantiation if permitted by the court. This way, the victim may file an appeal against an acquittal of the accused, conviction for a lower offence or the award of an inadequate judgement (Section- 372). These vittles have given a licit space to the victims in the Criminal Justice System.

II) Victim Compensation in the Special Laws

a) The Probation of Offenders Act,1958

According to Section 5 of Probation of Offenders Act, 1958, a court ordered the release of an offender under Section 3 or under Section 4 of the Act may, if it thinks fit, at the same time, a further order which directs him to pay such compensation as the court thinks reasonable for the loss or injury caused to any person due to the commission of the offence by him.¹¹

b) The Scheduled Castes/SC and Scheduled Tribes/ST (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, provides the financial relief to the victims of crime ranging from Rs 25,000 to 2,00,000 which is based on the nature and circumstances of the case. Generally 25 per cent of the financial support is handed at the time of submission of charge sheet, 75 per cent at the time of conviction by the lower court but in case of serious crimes as murder, the victims are handed 75 per cent relief after the post-mortem and 25 per cent at the time of conviction by the lower court. In case assault on the women with intention to dishonour or outrage her modesty and exploit her sexually, 50 per cent of the monetary relief is provided at the time of medical examination and the remaining 50 per cent of the relief is given at the end of trial respective of the result thereof.

However, the field reality is that most of cases registered under SC/ST Act are not reaching to the logical conclusion. As the matter of fact in 70 per cent cases the accused are not punished by the court due to procedure lapses and other circumstances.

¹¹ <https://blog.iplayers.in/probation-offender-act-1958/>

c) Domestic Violence Act, 2005

This Act provides for further effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind being within the family setting as domestic violence. Sections 20 to 24 are applicable in protection of victims of domestic violence through compensatory justice. The court on application/request being made by the aggrieved/petitioner may pass an order directing the respondent to pay compensation and damages for the injuries like torture and emotional anguish, caused by the acts of domestic violence committed by the same.

d) Bill- The Custodial Crimes-(Prevention, Protection and Compensation) Bill, 2006

The proposed bill aims to prevent and protect against custodial crimes and also compensation to the victims of custodial offences.

e) The Communal Violence Bill, 2005

The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 gives for

- (a) Prevention and control of collaborative violence,
- (b) Speedy investigation and trials, and
- (c) Rehabilitation of victims.

Presently, the National Advisory council(NAC), Government of India has constituted a core group of mortal rights activists to examine the beneficial and effective of the bill in the circumstances of rights based approach to the victims of communal violence.¹²

f) Prevention of Torture Bill, 2010

The Prevention of Torture Bill was passed by Lok Sabha without any debate and Rajya Sabha referred the Bill to a select committee, in its present design, it was discussed by the commenters/analyst as the - “Sanction of Torture Bill”. The critics and rebuttals of the proposed

¹² <https://prsindia.org/billtrack/the-communal-violence-prevention-control-and-rehabilitation-of-victims-bill-2005>.

bill is made on mainly on two aspects-definition of torture and weak redressal mechanism; and lack of compensatory provisions for the survivors of torture and their families.

CONCLUSION:

The concept of Victimology was first studied like a concept which blames the victim for the crime occurred and imposes responsibility over the damage which was inflicted upon the victim by the offender. And in modern times this concept slowly turned to be a concept which concentrates on the welfare of the victim. Though the recognition to the concept of Victimology has been delayed, it is appreciable that it has gained the recognition in the recent times. The law should not be framed only for the punishment and the compensation to the victim but also should care to reinstate the livelihood of the victim which was affected by the crime. Every victim has a right to claim their livelihood which is lost or damaged by the illegal act of the others. In the case of *Olga Tellis v. Bombay Municipal Corporation*¹³, the court observed/held that, “An equally important facet of the right to life is the right to livelihood because no person can live without the means of livelihood” (Article 21 of the Constitution). Whenever a crime/offence has been occurred, it projects the failure in the state’s crime protection/safeguard mechanism. Therefore the state has to ensure the safety of the common people in order to reduce the victimization and when a crime has occurred and an innocent person has been victimized, it is the duty of the state to bring back the victim to his normal lifestyle.

¹³ AIR 180, 1985 SCR Supl. (2) 51