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ANALYSIS OF CHANGING DIMENSIONS OF VICTIMOLOGY AND LAWS FOR PROTECTIONS OF VICTIMS IN INDIA

(By: Shailaja Govind Paraswale)

Introduction

Victimology is a relatively new area which is considered as a field of specialization within criminology. In other words criminology encompasses within it the study of law making, law breaking, and societal reactions to law breaking, whereas victimology forms a part of specialized study in the field of societal reaction to law breaking. The study of victims or victimology is a relatively new field of academic research. According to Mendelson B. (1976) the criminal justice system throughout the world is planned with the State being at the center-stage. Indian criminal justice system is no exception to this practice. Law and order is considered as the primary duty of the state. With its primary duty, state fosters peace and prosperity, maintains the rule of law and order, and provides access to justice to all. Every citizen, in a welfare state, is expected to have his or her basic human rights. Whenever these rights are violated either in form of socio-economic backwardness, historical discriminations or violations of civil, political and economic rights, state’s judicial system provides adequate mechanism for redressal of such violations. Sometimes, human right violations go to the root of societal functioning and cause the law and order problem. Whenever a citizen is harmed, injured, or even killed as a result of crime, he/ she are often termed as “victim". Though, there is a inbuilt mechanism to initiate criminal proceeding against such an offender, however such victim may himself seeks justice by setting the criminal justice system in motion, either by his complaint or by informing the police about the same. In the context of criminal justice system there are victims of crime and also victims of abuse of power. These days, the study of criminal law would remain incomplete without taking into consideration the circumstances and situation of the victim. The victim is one of the central figures in the criminal process that deserves the attention of the society. The criminal justice system, without the cooperation of the victim of crime and victims of abuse of power cannot work. The victim has due concerns in the administration of criminal justice. Victim puts forward complaint to competent authority and sets the criminal law into motion. During trial he provides relevant 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

1 Criminology and Penology, by J P S Sirohi, 7th Ed. 2011, pg. 622
justice, the trial gets paralyzed and cannot be called as a fair trial. This paper explores the analysis of changing dimensions of victimology and laws for protection of victims rights in India and focused on the nature, scope, theories of victimology, impact of victimization, emerging trends of victimology and laws for protection of rights of victims in Indian scenario.

**Meaning, Nature, Scope of Victimology**

"Victimology" is an academic scientific discipline which studies data that describes phenomena and casual 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.

**Nature:** Victimology may be defined as the **scientific study** of victimization, including the relationships between victims and offenders, the interactions between the victims and the criminal justice system; that is, the police and courts, and correctional officials. It also includes connections between victims and other social groups and institutions, such as the media, businesses and social movements. However, the term victimology is not restricted to the study of crime-victims alone but it may extend to other forms of human rights violations that are not necessarily crimes. In a narrow sense, victimology is **empirical**, factual study of victims of crime and as such is closely related to criminology and thus may be regarded as a part of the general problem of crime. In broader sense, victimology is the entire body of knowledge regarding victims, victimization and the efforts of society to pervers the rights of the victim. Hence, it is composed of knowledge drawn from such fields as criminology, law, medicine, psychology, social work, politics, education, and public administration.

**Definitions:** According to **Schultz** (1970)-“Victimology is the study of degree of and type of participation of the victim in the genesis or development of the offences and an evaluation of what are just and proper for the victim’s welfare.”

**Drapkin and Viano** (1974) - defined as “Victimology is the branch of criminology which primarily studies the victims of crime and everything that is connected with such a victim.”

Victimology has thus emerged as a branch of criminology dealing exclusively with the victims of crime who need to be treated with compassion and rendered compensation and assistance under the criminal justice system.

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3 https://shodhganga.inflibnet.ac.in/bitstream/10603/200013/9/09_chapter%201.pdf (last seen 5/12/2020)
Scope of victimology - Victimology has now emerged as a branch of criminology dealing exclusively with the victims of crime who need to be treated with compassion and rendered compensation and assistance under the criminal justice system. While criminology is concerned mainly with the causation of crime, victimology is concerned with the study as to why people fall as a victim to crime and how they can be helped and assisted against abuse of power or criminal acts of offenders through access to criminal justice system. The study also outlines the steps to be taken to prevent victimization against crimes and provide legal remedies to the victims of crime.\textsuperscript{6}

**Theories of Victimology**

a) **Victim Precipitation Theory:**
The victim precipitation theory suggests that the characteristic of victim precipitate the crime. That is, a criminal could single out a victim because the victim is of a certain ethnicity, race, and sexual orientation, gender or gender identity. This theory does not only involve hate crimes directed at specific groups of people. It might also involve occupations or activities. For example someone who is opposed to his or her views may target of political activist. An employee may target recently promoted employees if he or she believes they deserve the promotion.

b) **Lifestyle Theory:**
Some criminologist believes people may become crime victims because their lifestyle increases their exposure to criminal offenders. Lifestyle theory suggests that certain people may become the victim of crimes because of their lifestyle and choices. For example, someone with a gambling or substance addiction could be as an "easy victim" by a con artist. Walking alone at night in a dangerous area conspicuously wearing expensive jewellery giving door unlock and associating with known criminals are other lifestyle characteristic that may lead to victimization.

c) **Deviant Place Theory:**
There is some overlap between the lifestyle theory and Deviant place theory. The deviant place theory states that an individual is more likely to become the victim of a crime when exposed to dangerous areas. The more often victim visit dangerous places, the more likely they will be expose to crime and violence. Victims do not encourage crime, but are victim prone because they reside in socially disorganized high crime areas where they have the greatest risk of coming into contact with criminal offenders, irrespective of their own behavior or lifestyle.\textsuperscript{7}

d) **Routine Activities Theory:**
This theory says that crime occurs whenever three conditions come together, 1) suitable

\textsuperscript{6} Supra note 4, pg725
\textsuperscript{7} https://www.thelawproject.com.au/victimology-four-major-theories(last seen 5/12/2020)
targets 2) motivated offenders and 3) absence of guardians.

e) Psycho-social Copying Theory:-
Psycho-social copying is a General theoretical model from which any form of victimological phenomena can be explained to understand how and why some victims are able to overcome life's problems and some others not, a psychosocial copying model was developed in order to. Comprehensively deal with psychic social and physical variables.⁸

"Victimization" refers to an event where persons, communities, and Institutions are damaged or injured in a significant way. Those persons who are impacted by persons or events suffer a violation of rights or significant disruption of their well-being.

"Victim" - Oxford English dictionary defines the “victim” as “a person harmed, injured, or killed as a result of crime, accident, etc.” The word ‘victim’ primarily indicates ‘suffering’. The idea of victim through international conventions is also wide in its amplitude and in this regard UN General Assembly Declaration may be quoted which gives an extensive definition of the phrase "victim" as a person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violations of criminal laws operative within member states, including those laws proscribing criminal abuse of power.⁹ Further Section 2(wa) of Code of Criminal Procedure Act 1973 provides definition of victim as, "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.

Classification of Victim

i. Primary Victim–
Any person, group, or entity who has suffered injury, harm, or loss due to illegal activity of someone is called a primary victim. The harm may be physical, psychological or financial.

ii. Secondary Victim–
There may also be secondary victim who suffer injury or harm as a result of injury or harm to the primary victim.

iii. Tertiary Victim–
Tertiary victim are those who experience harm or injury due to the criminal act of the

⁸ https://www.unafei.or.jp/publications/pdf/RS_No81/No81_11VE_Chockalingam.pdf (last seen -5/12/2020)
offender. He is another person besides the immediate victim, who is victimized as a result of the perpetrator’s action.

Example, in case of rape, the woman raped is the primary victim, while a child, if born out of such rape, is the secondary victim because he/she suffers from lack of paternity. But the general shame and disgrace which the entire family of the raped victim has to suffer at the hands of the society and the system makes them tertiary victims. However, it cannot be assumed that secondary and tertiary victims are less traumatized than the primary victims.10

**Impact of Victimization**

There are three types of impact of crime on victim, that may be physical, financial, or psychological.

**Physical Impact:** The victim is likely to experience a number of physical reactions to crime to which he has fallen a victim. The victim may also suffer from mental trauma. Another significant impact on the victim is physical injury which may be apparent and immediate or may be realized by the victim at a later stage.

**Financial Impact:** The financial impact of crime on the victim may be in any one or more of the following forms:

1. Costs and expenses incurred in medical treatment for physical injuries
2. Damages to property or articles in possession
3. Litigation cost incurred in fighting against the crime and criminal, i.e. the perpetrator
4. Financial suffering due to loss of earnings
5. Funeral or burial expenses, if any.

**Psychological Impact:** Where the victim is confronted with the crime perpetrator immediate reaction will be anger or fear depending on his strength and capacity to face the misfortune. Shock and mental trauma follow immediately after the crime has been committed, for example, the Post-traumatic stress disorder (PTSD). The psychological impact of victimization is clearly reflected in the behavioral responses of the crime victim, which may include increased alcoholism, excessive use of drugs, avoidance of social relationships and social withdrawal, etc. This is very much true in case of rape victims when people blame her for having walked alone or dressed provocatively.

There may, however, be some victims who are able to shed aside their distress and shock and return to normal life.11 [Ref: Dr. N.V. Paranjape, , Criminology and Penology with Victimology, 10 Supra note 4, pg.727-728 11 Supra note 4  pg.733-734]
Emerging Trends in Victimology

International perspective: - In 1985, virtually simultaneously two powerful documents were issued urging the international community to enhance the status of victims. The first one was the "United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power." The second one was the "Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure" which was also adopted in 1985. Although differences in language and in details cannot be overlooked, the content of the Declaration and the Recommendation were to a large extent overlapping and had subsequently been echoed and expanded on in other international documents of a similar nature, such as the "Statement of Victims’ Rights in the Process of Criminal Justice", issued by the European Forum for Victim Services in 1996, and the European Union Framework Decision on the Standing of Victims in Criminal Proceedings. The most recent and most comprehensive example is the Council of Europe Recommendations (2006) on assistance to crime victims, adopted on 14 June 2006. The Basic Principles included in the UN Declaration for Victims are: 1. Access to justice and fair treatment; 2. Restitution; 3. Compensation; and 4. Assistance. With regard to the restitution and compensation in the above Declaration, it is stated that offenders should make a fair restitution to victims or their families; restitution should be part of the sentencing in criminal cases; and when compensation is not fully available from the offender, the state should provide monetary compensation to victims who suffered serious physical or mental injury for which a national fund should be set up (United Nations, 1985). Some of the important recommendations of the Council of Europe Recommendations (2006) on the assistance to victims and prevention of victimization include the following elements: assistance, role of the public services, victim support services, information, rights to effective access to other remedies, state compensation, insurance, protection, mediation, raising public awareness of the effects of crime and so on. It has also recommended for provision of restitution and compensation to victims of crime. It recommends provision of compensation by the state for victims of serious, intentional, violent crimes, including sexual violence. It further states that the state compensation should be awarded to the extent that the damage is not covered by other sources such as the offender, insurance or state-funded health, and social provisions. It is also important to learn from the experiences of the United States in providing justice to victims of crime. Without the report of the victims or witnesses, most crimes would not come to the attention of the police. Without the cooperation of the victim or witness in identifying the offender, most crimes could not be solved, and the offender could not be brought to justice. In the United States, during the late 1960s, the Federal
Government launched a series of surveys designed to estimate the number of crime victims. This research showed that, while arrest rates are high, many victims failed to report crimes. Other studies noted that once an arrest had been made, many victims failed to co-operate in the prosecution of offenders. Victims cited poor treatment by the criminal justice system—long waits for trials, confusing instructions and inadequate child care and transportation resources as the reasons for their reluctance to co-operate. The victim assistance movement began shortly thereafter to respond to these needs. In the United States, spurred by research on victims’ needs, grassroots activism, substantial legislation, and victim assistance programs now number more than 10,000. Further, victim/witness programs in the United States became a major feature of victimological development more than three decades ago. Furthermore, the statutory approach is typified by the United States, where almost all states and the federal government have adopted statutory guidelines on how the police and other officials in the criminal justice system should deal with victims of crime.12

**Position in India:**

The police play a pivotal role in victim assistance as it is the first agency victims come into contact with after being victimized by a crime. The attitude of the victims towards the entire criminal justice system will be based on the kind of treatment the victims get from the police whom they first encounter. Unfortunately, in India the police are still not oriented to meet the expectations of the victims as per the UN Handbook on Justice for Victims. The police at the field level who are in actual contact with the victims in day-to-day crime situations are blissfully ignorant of the international developments in the field of Victimology and the better treatment victims deserve from the police.

The UN Handbook says that “victims have a valid interest in the prosecution of the case and should be involved at all stages of the proceedings.” In practice, the entire court proceedings protect the rights and interest of the accused, neglecting the victims’ interest. Excepting that the victims are summoned to tender evidence in courts, the various services and assistance to be rendered by the prosecution to victims are not practiced in the criminal courts in India. With regard to the role of the judiciary in justice for victims, though judges are by and large sympathetic towards victims, on many of the requirements, such as separate waiting halls, information about the criminal proceedings, special services and support, ordering of restitution to victims, victim participation, victim protection etc. we have a long way to go to realize victim justice in India. However, in the last decade, there is greater awareness on the part of the higher judiciary of the need for a better treatment of crime victims by the criminal justice agencies at different stages in India and this is reflected in the recommendations of the different committees

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and commissions calling for reforms in the criminal justice system

**Affirmative Action by the Higher Judiciary**

- **Restitution to Victims**: Despite the absence of any special legislation to render justice to victims in India, the Supreme Court has taken a proactive role and resorted to affirmative action to protect the rights of victims of crime and abuse of power. The court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980s.\(^{13}\)

- **Justice for Rape Victims** – Guidelines for Victim Assistance in "Bodhisattwa Gautam v. Subhra Chakraborty"\(^ {14}\) the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the prima facie culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical, and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:

1. The complainants of sexual assault cases should be provided with a victim’s Advocate who has to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counseling or medical assistance from other agencies;

2. Legal assistance at the police station while she is being questioned;

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, 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


\(^{14}\) AIR 1996 SC 922
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.

**State Compensation for Victims of Abuse of Power:** As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of "Rudul Sah vs. State of Bihar" the Supreme Court ordered the Government of Bihar to pay to Rudul Sah a further sum of Rs.30,000 as compensation, which according to the court was of a “palliative nature”, in addition to a sum of Rs.5,000, in a case of illegal incarceration of the victim for long years. Similarly in, "Saheli, a Women’s Resources Centre through Mrs. Nalini Bhanot vs. Commissioner of Police, Delhi Police" the Court awarded a sum of Rs.75,000 as state compensation to the victim’s mother, holding that the victim died due to beating by the police. In another landmark case of "D. K. Basu vs. State of West Bengal" the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that “To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience”.

**Victims right to challenge bail** – In, "Puran v. Rambilas" and "P. Rathinam v. State" the Apex Court interpreted Section 439 (2) Cr.P.C. in a way that the victim has a say in the grant of bail to an accused. The Court recognized the right of the complainant or any ‘aggrieved party’ to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused.

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15 AIR 1983 SC 1086
16 AIR 1990 SC 513
17 AIR 1997 SC 610
18 (2001) 6 SCC 338
19 (2000) 2 SCC 391
Recommendations of Commissions and Committees on Justice to Victims in India

During the last decade, there has been significant change in the thinking of the judiciary about the human rights of victims. The concern of the courts and the judicial commissions and committees about the need to have a law on victim compensation or a comprehensive law on victim justice has been reflected in their judgments and reports.

The Law Commission of India, 1996

The Law Commission, in its report in 1996, stated that, “The State should accept the principle of providing assistance to victims out of its own funds,

i. in cases of acquittals;

ii. where the offender is not traceable, but the victim is identified;

iii. also in cases when the offence is proved” (Law Commission of India Report, 1996).

The Justice Malimath Committee on Reforms of Criminal Justice System

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime, including the victim’s right to participate in cases and to adequate compensation. Some of the significant recommendations include:

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. 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.

3. The victim’s right to participation in a criminal trial shall, inter alia, include:

4. To produce evidence, oral or documentary, with leave of the court and/or to seek directions for production of such evidence

5. To ask questions to the witnesses or to suggest to the court questions which may be put to the witnesses

6. 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

7. To be heard in respect of the grant or cancellation of bail

8. To be heard whenever prosecution seeks to withdraw

9. To advance arguments after the prosecutor has submitted arguments

10. To participate in negotiations leading to settlement of compoundable offences
11. 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

12. 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.

13. The victim compensation law will provide for the creation of a **Victim Compensation Fund** to be administered possibly by the Legal Services Authority.  

**The National Commission to Review the Working of the Constitution** The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.  

Recent Laws to care for and protection of special categories of victims:  
There are also significant developments in the form of new laws to promote the cause of victims and to mitigate the sufferings of potential victims of vulnerable sections of the population such as women, children and elders. The recent enactments passed by the Parliament have a significant bearing on preventing victimization and giving relief to victims.

**A. The Protection of Women from Domestic Violence Act, 2005**
This Act aims to provide for more effective protection of the rights of women guaranteed under the Constitution. The definition of domestic violence is wide enough to include physical, sexual, verbal and emotional abuse. The unique feature of the Act is that it prohibits denying the victim “continued access to resources or facilities which the aggrieved person (victim) is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household.” A police officer, protection officer or a magistrate who has received a complaint of domestic violence has a mandatory duty to inform the victim of her right to obtain a protection order or an order of monetary relief, a custody order, a residence order, a compensation order or more than one such order and the availability of the services of service providers, protection officers, and the right to free legal services under this Act. A violation of the protection order by the respondent is an offence which can result in imprisonment for one year or a fine up to Rs.20, 000- or both. If the protection officer refuses to discharge his duties, he shall be punished  

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21 Supra note 8, pg.103
with imprisonment for one year or with a fine of 20,000 rupees or with both.

**B. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007**- This is also an innovative law aiming to protect elders and prevent elder abuse and victimization, which is a growing problem in many countries, including India. Under this law, an obligation is created of the children or adult legal heirs to maintain their parents, or senior citizens above the age of 60 years who are unable to maintain themselves out of their own earnings, to enable them to lead a normal life. If children or legal heirs neglect or refuse to maintain the senior citizen, the Tribunal can pass an order asking the children or legal heirs to make a monthly allowance for their maintenance.

**Prevention of Child Abuse and Victim Protection**

Empowering the child is the road to prevention from abuse and victimization. To empower the child, education is the tool. Therefore, primary education for children has been made a fundamental right as per the decision of the Supreme Court of India in Unnikrishnan’s Case (1993). Article 21-A of the Constitution states that “The State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may by law determine”. The proposal also will have a positive impact on eradication of child labour. The spread of elementary education through constitutional measures would have a good impact on other social indicators like population growth, health and women’s development as well as enhancement of productivity of the economy and reduction in unemployment.

- **The National Commission for Protection of Child Rights (NCPCR):**- This Commission was set up in March 2007 and its mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child (see at Government of India, 2009). India ratified the United Nations Convention on the Rights of the Child in 1992 and this Act was passed as one of the necessary steps to protect the rights of children in the country. The National Commission for Protection of Child Rights has been taking up various issues brought forth in the area of child abuse. After inquiry, the National Commission can recommend initiation of proceedings for prosecution or any other action it may deem fit.

**Protection of Children from Sexual Offences Act, 2012**

This Act has been enacted with a view to prevent of child abuse and victimization. It makes any kind of sexual gratification from a child punishable with strict punishments.

**Prevention of Caste-Based Victimization and Protection for Victims:** The Scheduled
Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. This is an act to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes. Under this Act, compensation to victims is mandatory, besides several other reliefs depending on the type of atrocity. The victims are entitled to receive monetary compensation ranging from Rs. 25,000 to 200,000 depending on the gravity of the offence.22[Ref: https://www.unafei.or.jp/publications/pdf/RS_No81/No81_11VE_Chockalingam.pdf]

**Motor Vehicles Act, 1988:**

The victims of vehicular accidents or their legal representatives are entitled to compensation from the offender under Section 5 of the Act.

**Amendments to the Code of Criminal Procedure in 2008:**

The Code of Criminal Procedure was amended to bring in various victim-friendly provisions, such as:

**Definition of Victim**

The definition of Victim was added in Section 2 (wa), which states that, “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.”

**Victim’s right to engage his advocate**

Section 24 (8) gives the victim the right to engage his advocate, “provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution.”

**Recording of statement of rape victim under Section 157**

In Section 157, a proviso has been inserted after sub-section (1), “Provided further that in relation to an offence of rape, the recording of statement of victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardians or near relatives or social worker of the locality.” Section 309 (1) after amendment states that the inquiry and trial should be completed within 2 months.

Section 327, has been amended to the following effect, “Provided further that in camera trial shall be conducted as far as practicable by a woman judge or magistrate.” Also that publication

22 Supra note 8 pg.104
of trial proceedings relating to rape cases shall be prohibited, however, the ban on printing or publication can be lifted, subject to maintaining confidentiality of name and address of the party.

**Investigation within three months in case of Child Rape**

Section 173 (1A) provides that, “The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.”

**Compensation to victims**

Section 357 (1) and Section 357 (3) Cr.P.C. vest power in the trial court to award compensation to victims of crime whereas similar power is vested in the Appellate and Revisional Court under sub-section (4). The Court may appropriate whole or any portion of the fine recorded from the offender to be paid as compensation to the victim of crime. This compensation may be for costs, damage or injury suffered or loss caused due to death or monetary loss incurred due to theft or destruction of property, etc.

Sub-section (3) empowers the court, in its discretion, to order the accused to pay compensation to victim of his crime, even though no fine has been imposed on him. Section 357-A has been inserted after the 2008 Amendment, it provides that:

“Section 357-A Victim Compensation Scheme— (1) Every State government in co-ordination with the Central Government, shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded.

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

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

(5) On receipt of such recommendation or on the receipt of application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry, award adequate compensation after completing the enquiry within 2 months.

(6) The said authority, to alleviate the suffering of the victim, may order for immediate first aid
facility or medical benefits to be made available free of cost on the certificate of police officer not below the rank of officer in charge of the police station or a magistrate of the area concerned, or any other interim relief as the authority may deem fit.”

The scheme contained in the section is indeed a progressive measure to ameliorate the woes of crime victims and providing them restorative justice.

The Code also provides compensatory relief to victims of unlawful arrest or detention by police without sufficient cause.[Ref:-Section 358 (1) of the CrPC]

Where an accused is convicted of a non-cognizable offence on a complaint, the court may order him to pay costs to the complainant or in default, suffer simple imprisonment for a period not exceeding thirty days.23

**Victim’s right to appeal**

Proviso to Section 372 gives right of a private appeal to a victim, thus providing the victim with a *locus standi*, however, the right to appeal against inadequacy of punishment is available only on two grounds:

- If accused has been convicted for a lesser offence, example, he was convicted for robbery instead of dacoity
- If inadequate compensation is given.
- The victim, however, cannot appeal on quantum of punishment.

**The Criminal Law (Amendment) Act, 2013**

The Criminal Law (Amendment) Act, 2013 is a result of the Justice Verma Committee Report which dealt in the rape laws and their amendment. This Committee was constituted in the aftermath of the brutal Delhi Gang rape case of 16th December 2012.

The Committee recommended that the gradation of sexual offences should be retained in the Indian Penal Code, 1860 (IPC).

The Committee was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Rape should be retained as a separate offence and it should not be limited to penetration of the vagina, mouth, or anus. Any non-consensual penetration of a sexual nature should be included in the definition of rape.

The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and

23 Supra note 4, pg745-746
the accused should not be relevant. However, non-consensual sexual act within marriage is still not made punishable, even though the amount of punishment has been increased.

The Indian Penal Code (IPC) was amended to section 376A, which provide death penalty in rape cases that cause death of the victim or leave her in a vegetative state. The Act also introduced several other new offences such as causing grievous injury through acid attacks, sexual harassment, use of criminal force on a woman with intent to disrobe, voyeurism and stalking.

In the case of State (Govt. of NCT of Delhi) v. Ram Singh (deceased), Mukesh, Akshay Kumar Singh, Vinay Sharma and Pawan Kumar, Shri Yogesh Khanna, Additional Sessions Judge, New Delhi, awarded death penalty to the accused person as the facts showed a brutality of such a nature that it fell into the category of rarest of rare cases, the entire intestine of the prosecutrix was perforated, splayed and cut open due to repeated insertions of rods and hands. The convicts, in the most barbaric manner, pulled out her internal organs with their bare hands as well as by the rods and caused her irreparable injuries, thus exhibiting extreme mental perversion not worthy of human condonation. They brutally gang raped the prosecutrix, inflicted inhuman torture and threw the defenseless victims out of the moving bus in naked condition, profusely bleeding in a cold winter night.

The Court further held that, “These are the times when gruesome crimes against women have become rampant and courts cannot turn a blind eye to the need to send a strong deterrent message to the perpetrators of such crimes. The increasing trend of crimes against women can be arrested only once the society realize that there will be no tolerance from any form of deviance against women and more so in extreme cases of brutality such as the present one and hence the criminal justice system must instill confidence in the minds of people especially the women. The crime of such a nature against a helpless woman, per se, requires exemplary punishment.”

Another amendment is the addition of Section 326 A regarding the acid attacks, the proviso clearly states that the fine which is imposed on the convict shall be such that it is just and reasonable to meet the medical expenses of the treatment of the victim of acid-attack. Such fine shall be imposed directly to the victim.

In the Code of Criminal Procedure Section 357 B and Section 357 C have been added.

Section 357B Cr.P.C. provides that, “The compensation provided under Section 357 A shall be in addition to the payment of fine to the victim under Section 326A, or Section 376D of the Indian Penal Code.”

25 Unique ID No. 02406R0020522013, SC No. 114/2013 decided on 10.09.2013
Section 357C Cr.P.C. provides that all hospitals, whether public or private, run by Central Government or State Government, local bodies or any other person, shall immediately provide the first-aid or medical treatment, free of cost, to the victim of any offence under Section 326 A, Section 376, Section 376 A to E of the Indian Penal Code, and shall immediately inform the police of such incident.

Suggestions:

The analysis of the existing legal provisions in India for providing justice to victims of crime shows that there is a long way to go. At the micro level certain immediate and possible measures may be taken to help the victims of crime in India. The natural sequence of rendering meaningful justice, social and legal should proceed as follows:

1. Fair, considerate and sympathetic treatment by the police, hospitals, welfare organizations, prosecution and courts;
2. Prompt restitution/compensation to the victim for the injury or loss suffered by using the existing provisions; and
3. Security to victims and potential victims against victimization in future.

The various assistance and services to victims during crime investigation include the following:

I) The first step in assisting the crime victim is- a) to facilitate their access to services that already exist; and b) to get redressed from the impact of crime.

II) The police could improve their support for crime victims by ensuring the responding officer to provide the victim with a card that identifies key telephone numbers of organizations available in the community. The card should also contain: a) the file number (crime number) of the case; b) the name of the officer investigating the case; and c) the phone number to contact regarding enquires about the progress of the case.

III) A victim's support unit should be located in the police department, preferably at the sub-divisional level to co-ordinate matters relating to crime victims.

If the above stated steps are implemented by the law enforcement agencies in India, the position of victims in the criminal justice system will be improved substantially.

Conclusion

In the current decade of victimological research, there is a substantial interest in the study of impact of crime on victims and ways to assist them. Assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of crime. The problems of crime victims and the impact of crime on them is varied and complex.
Therefore, the agencies of the criminal justice system should be receptive to the needs of the victims of crime and address their issues sincerely and empathetically. The Government of India and the State Governments should enact exclusive legislations for victims of crime, as the existing provisions in the criminal laws are not sufficient. A ray of hope is the recommendations of the Committee on Reforms of Criminal Justice System headed by Justice V. S. Malimath. Hence, the Government of India may have to take efforts to implement the recommendations of the Committee on Reforms of Criminal Justice System. There should also be a change in the focus from criminal justice to victim justice, but victim justice should be perceived as complementary and not contradictory to criminal justice.

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