



VICTIMOLOGY: VICTIMIZATION AND VICTIM'S RIGHTS

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**VICTIMOLOGY:
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ABSTRACT

The term victimology denotes to the subject, which studies about the harms caused to victim in commission of crime and the relative scope for compensation to the victim a means of redressal. It is defined as “the study of why certain people are victims of crime and how lifestyles affect the chances that a certain person will fall victim to a crime. The United Nations General Assembly adopted the “Declaration of the Basic Principles of Justice for the victims of Crime and abuse of Power” in 1985. It includes Right to Access to Justice and Fair Treatment; Right to Restitution of property; Right to Compensation; Right to

Necessary Material, Medical, Psychological and Social Assistance.

In Indian Criminal Procedure Code, though provisions have been made in Section 357 to provide compensation to victims, who have suffered loss or harms in consequence to commission of offence. But, what has been provided in Indian Law, as a compensatory measure to victims of crimes, is not enough. The Hon’ble Supreme Court held compensation in a long-drawn criminal case to be appropriate additional relief. Compensation awarded was often not enough. These problems were addressed by the 2008 amendment, which enables the Court to direct the State to award compensation. Jurisprudence has expanded in order to grant compensation in cases of violation of a constitutional right, medical negligence, rape, custodial torture, etc. The prime focus of this informative research paper would be to analyze the V.C.S. and its leading cases, as well as the history of compensation, the position prior and post to the amendment, and analysis of Section 357-A of Cr.P.C. This paper also tries to highlight the

inefficiency of important provisions of State compensation theory and need of restorative theory in India.

INTRODUCTION

Victimology has been defined as the scientific study of the victims of crime, victim of human rights violation, of victimization and the reactions to both crime and human rights violations. In one dimension the basic theme of victimology is study of the reactions of the victim and on the other hand we focus on the reactions on the social environment of the victims. Victims themselves react in informal ways towards victimization and the social environment has formal ways of reaction. The criminal justice system is one form of formal reaction towards victimization and towards victims. Therefore, the simple question what is victimology is quiet difficult to answer. India is country where the government is chosen by the people of India. The government work in the parliament form where the process of giving remedy of compensation, justice is decided by the judiciary. But these rights to the judiciary are given by the constitution, so to provide a right justice to the victims, bit-by-bit the legislature and the judiciary is

originating the essential precepts by which compensation could be paid to the Victims of Crimes (hereinafter 'V.O.C.'). The Indian Criminal Justice system is based on the British model. The judiciary is independent for conducting fair trial and justice to both, the accused and the victim of crime. Therefore, it requires balancing of interest of accused and the victim. The accused when are prosecuted and found guilty are sentenced to jail but this does not complete the process of criminal justice because the crime victim still suffers. Crime cause financial, physical and psychological loss to the crime victim. Traditionally, it may have been sufficient that the criminal is caught and punished. But, the modern approach is to also focus on the victims of crime. The victim has no right under criminal justice system. A victim is only a witness for the prosecution. The recent shift in concern for the rights of accused to the rights of victim balance the interest of both the accused and victim. **According to justice Krishna Ayyar: "It is a weakness of our jurisprudence that the victims of crime and the distress of the dependents of the prisoner do not attract the attention of law. Indeed, victim reparation is still the vanishing point of our criminal law"**. This is a deficiency in the system which must be rectified by the legislature. 'Justice to

victims' is possible only through a coordinated effort of the legislature, judiciary and the executive. The study of victimization is the study of crime giving importance to the role and responsibility of the victim and his offender.

- 1) To analyse the magnitude of the victim's problems
- 2) To explain the causes of victimization
- 3) To develop a system of measures to reduce victimization

WHO IS A VICTIM?

A person is a victim regardless of whether the crime is reported to the police, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between perpetrator and the victim. The term 'victim' also includes, where appropriate the immediate family or dependents of the direct victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization. "victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, caused due to actions or omissions which violate the criminal laws

operative within the states. In wider meaning victims includes persons who have suffered injury of any nature whether physical, mental or emotional. After the amendment of Criminal Procedure Code in 2008 the definition of victim has been incorporated under section 2(wa). '*Victim*' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression '*victim*' includes his or her guardian or legal heir".

Definition of victim under Victims' Rights Act means

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

pleads guilty to, the offence concerned.

CONCEPTUALIZING VICTIM, VICTIM JUSTICE AND VICTIMOLOGY

‘Victim’ had its source in the Latin term ‘victima’, which contained the concept of sacrifice. Many religions were fundamentally sacrificial. The plight of the victim or his family members is remarkably described in the story of murder of Abel in the Bible. Victim contains within itself the concept of sacrifice. This sacrifice implies the sacrifice of once rights, property, peaceful conditions of living, security etc. With the passage of time and development of the justice systems it was realized that recognition of the rights of the victims is a sine qua none for an effective and welfare oriented working of the state sponsored justice system and the responsibility of the wrong done to the victim should be borne by the offender or the person responsible. However, since, it was not rational to make revenge and cruelty the basis of this responsibility, this concept underwent a change over the period of time. The notion of doing justice to the victim does not just involve the

punishment that is awarded to the offender but it is also inclusive of the mechanism which shall place the victim back in its original position prior to victimization.

The newer dimension of victimology too needs to be considered especially in the legislative scheme of the country. In cases of victims of natural disasters and calamities the State should bear a responsibility of responding to the needs of such victims in a more responsive manner. The loss of basic necessities of life i.e. food, shelter and clothing, of such victims of natural disasters, has to be taken care of by none other than the State. As the welfare of the citizens is the primary concern of the state, hence, the newer dimension of victimology or general victimology, makes it obligatory for the state to take of such situations and provide the required adequate victim assistance services. Similarly, in cases of victims of displacement induced development the role played by the State in compensating such victims should be more defined and uniform. The State requires a uniform scheme to cater to such needs of “general victimology”. Victimology as a scientific discipline today has marched ahead of its traditional concept which studied the victim or the victimization

caused due to crimes committed. In the contemporary society, Our Criminal Justice System is based on 'due process of law' i.e., every individual, executive, legislature or judiciary is within the framework of law and the powers which are given to the various law enforcement agencies of the State are for effective discharge of their duties and not to be abused by them, either for their selfish aggrandizement or to exhibit their power and vanity. Such abuse of power leads to both primary and secondary victimization and there is an acute need for constructing accountability on the part of such perpetrators of abuse of power which can be done in consonance with existing recommendations of the Law Commission with regard to the abuse of power by the public servants. Amendment in CrPC which was made in pursuance of recommendation made by Law Commission in its Forty-first Report (1969) brought the new dimension if this approach. Specific provisions were added in section 357 where Courts may award compensation at the time of giving judgment to the Victims at particular cases for delivery of justice. After that in 152nd law commission report they recommended that Sec 357-A needs to be added in CrPC where compensation should be awarded at the time of sentencing the wrongdoer.

STATEMENT OF PROBLEM **UNDERSTUDY**

Victimization is not an uncommon phenomenon in the society. It can occur at various stages. As opined by various victimologists, it can result due to any contribution by the victim themselves or a person can be subject to some sort of victimization without being liable for any contribution by him/her. One can also become victimized for the second time while addressing and seeking redress for his/ her victimization from the criminal justice system. Or at times one may even become victimized for being a part of a society or community. In order to do the same, the victims in many cases are under recognized or ignored as crimes are initially considered as offences mainly against the State. However, it was from the start of 1970s that the reformers attempted to bring about a change by shifting focus from accused to victim India after independence had inherited and used a substantial body of British codified criminal law. The rights of victims and witnesses hardly formed a part of those existing criminal laws. The realization and recognition of the rights of the victims has been a rather new

phenomenon. Until recently, victim's position was no more than a witness in a criminal case. In such state versus cases he did not have any right to appeal against the order by the trial court acquitting the accused. Due to the lack of interest or apathy due to extraneous considerations by the politically motivated investigation agency or prosecuting agency, the victim of crime further gets victimized by the criminal justice system.

However legal provisions do exist under criminal law to protect the interests of the victims and witnesses. The Law of evidence provides protection to the victims or witnesses. There is an obligation on Criminal Courts to make such orders for payment of reasonable expenses which the witnesses or complainants/ victims may incur for the purpose of attending the court.

Judicial activism, has further provided some basic protective measures like holding an in camera trial- procedure for victims and witnesses during trial. Provisions like holding in camera trial may be useful from victims' perspective. Another such measure for the benefit of the victims which has been recommended by the Apex court is the use of video conferencing for recording of evidence. Victimological jurisprudence in India started its journey with the liberal

interpretation of Article 21 of the Indian Constitution. The judicial activism of the Apex Court gave birth to to the realization of the rights of the victims, in India, in reality. The Apex Court has designed new tools, methods and strategies in order to make the fundamental rights meaningful to the victims of crime. The fundamental right to life and liberty is guaranteed by Article 21 of the Indian Constitution to any person in India. In *D.K. Basu v. State of West Bengal*¹⁸ the Apex Court developed compensatory and custodial jurisprudence while discussing Custodial Jurisprudence. Though pragmatic approach of the Apex Court is visible through various landmark judgments but there lies a lack of uniformity in devising and designing the compensation for the various categories of victims. Some of the legislations like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 have a minimum fixed limit of compensation to be paid to the victim. But in general the judicial pronouncements lack a uniformity while declaring the compensation packages. The Apex Court itself has depicted a broad range while granting compensations for example in cases of violation of human rights due to abuse of power. The exercise of the discretion of the judges plays the pivotal role in determining

the quantum of compensation. There needs to be brought a uniformity in disbursement of the quantum of compensation based on quantum of damages and injury suffered. The newer dimension of victimology too needs to be considered especially in the legislative scheme of the country. In cases of victims of natural disasters and calamities the State should bear a responsibility of responding to the needs of such victims in a more responsive manner. As the welfare of the citizens is the primary concern of the state, hence, the newer dimension of victimology or general victimology, makes it obligatory for the state to take of such situations and provide the required adequate victim assistance services.

INDIAN APPROACH

In India scenario is even worse. Victims have no right their situation in criminal justice system is inadequate, pessimistic and requires attention of concerned authorities. In India rate of conviction is very low and that too convictions can be sent in appeal and revision. The final judgment takes a long process and the victim meanwhile is subjected to mental agony and emotional distress. The crime victims lose all hopes getting justice. Right from the inception of the judicial system

it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.

It includes fundamental principles such as right to access to the trial proceeding and treating the victims fairly, right to compensation from the offender or state, right to legal, psychological, social and medical assistance. These rights require that victims receive respect and are not humiliated by the police or the offender, the information regarding the proceeding is received by the crime victims and there should be protection of their private and physical safety. The court should also try to meet the needs of the victim. A crime victim should be compensated no matter what the source is. First, the court should direct the offender to compensate the crime victim and if not successful then the state should compensate the crime victim. It is the duty of the state to prevent crime and protect people and property. If the state fails to prevent crime then, the state is liable to pay compensation to the victim. According to Jeremy Bentham, due to the presence of the social contract between the state and the citizen, victims of crime should be compensated when their property or person was violated. Thus modern approach of victimology

acknowledge that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of identification and prosecution of offender and the payment of such compensation should be made by state.¹⁴ Not only should the Criminal Justice system provide economic support but also legal, psychological and social support to the crime victims. The Indian Constitution has several provisions which highlights the principle of victim Compensation. The constellation of clauses dealing with Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) laid the foundation for a new social order in which justice, social and economic, would flower in the national life of the country (Article 38). Article 41, which is directly related to victims, declares that state shall enact effective provisions for “securing public assistance in cases of disablement and in other cases of undeserved want”. Under Article 51-A it a fundamental duty of citizens of India “to protect and improve the natural environment ... and to have compassion for living creatures” and “to develop humanism”. If liberally interpreted and properly expanded, we can find the constitutional beginning of victimology under Article 21 on Indian constitution.

We can easily establish the fact that “no person shall be deprived from his life and liberty without the procedure established by law” means that if anyone is deprived of his life and liberty without the procedure established by law it is responsibility of state to compensate victims properly. Criminal Injuries Compensation Act, 1995 which was passed in UK makes it mandatory for the secretary of the state that it responsibility of state to make necessary arrangements for the compensation of Victims and shall also make arrangements for the payment of compensation to or in respect of persons who have sustained criminal injury. Section 9(4) of the Act stipulates that sums required for the payment of compensation in accordance with the Scheme shall be provided by the Secretary of State out of money provided by parliament. So, the funding is by the State and not by the offender. Consequently, The Criminal Injuries Compensation Scheme (2001) was framed in U.K which, inter alia, specifies the standard amount of compensation payable in respect of each type of injury and compensation is payable irrespective of the criminal being apprehended or not and independent of the trial of the accused. Right of restitution to Victims of crime are still absent in statues in India. In several

cases, courts refused the prayers of Victims for loss of life, apart from that courts are under the Constitution have a duty to examine the loss of victims and their pleas to redress the problem they suffered during violent communal clashes. Principle that evoked is “culpable inaction “under which state and other agencies are under obligation to compensate the victims of crime and their legal heirs or guardians in circumstances where Victim have no control. However, the very pessimistic approach was seen by Indian courts where they awarded compensation only when or directed the state to compensate victims when the state was at some fault. In *ShriLaxmi Agencies V. Government of AP* AP High Court refused to award compensation to victims for loss of life, destruction and loss of property and contended that only when some state or any authority of state fails to act diligently under the law and if that results in to culpable inaction, state is liable to compensate. Furthermore, Court said that if direct nexus of for damage suffered and state action is absent then Article 21 is inapplicable. Amendment in CrPC which was made in pursuance of recommendation made by Law Commission in its Forty-first Report (1969) brought the new dimension if this approach. Specific provisions were

added in section 357 where Courts may award compensation at the time of giving judgment to the Victims at particular cases for delivery of justice. After that in 152nd law commission report they recommended that Sec 357-A needs to be added in CrPC where compensation should be awarded at the time of sentencing the wrongdoer. Further Law commission realized that even after making recommendations in previous report it had not been implemented properly, in their 154th report again, they recommended that it is necessary to incorporate section 357-A in CrPC to provide a comprehensive scheme of compensation to Victims.

COMPENSATION UNDER CRIMINAL LAW

The theory of compensation in criminal law is mainly about compensation to the victim of a crime. The plight of a victim is only made worse by lengthy hearings and tedious proceedings of courts and improper conduct of the police. The victim is literally traumatized again in the process of seeking justice for the first injury. The legal heirs/guardians of the victim too come in the same definition.

In the case of **Hari Singh v. Sukhbir Singh**, the Supreme Court held, “It may be noted that this power of Courts to award

compensation is not ancillary to other sentences but it is in addition thereto. The law makers made provisions in the Criminal Procedure Code, 1973 under Section 357(3) to enable the Courts to award any amount of compensation to the victims of a crime. This was depicted in the landmark case of **Hari Kisan** where the Supreme Court had awarded compensation as punishment, of Rs. 50,000. Not only this, the lower courts were asked and advised to “exercise the power of awarding compensation to the victims of offences in such a liberal way that the victims may not have to rush to the civil courts”. In the case where the appellant was illegally kept captive for a period of 6 years in an asylum even though he was proved to be sane. In this case, the apex court ordered the State to compensate the appellant by Rs. 15000. A bench of justices’ T S Thakur and Gyan Sudha Misra said that “Section 357 Criminal Procedure Code (CrPC) confers a duty on the Court to apply its mind to the question of compensation in every criminal case. It necessarily follows that the Court must disclose that it has applied its mind to this question in every criminal case”.

However, the lower courts have till now given compensation very rarely and the use of this provision has been made to the

minimal, when the accused get acquitted of charge on benefit of doubt. Sometimes, the compensation given to the victim under the section 357 of the Criminal Procedure Code is not enough for him to rehabilitate. Hence the Code was amended in 2008 on the recommendations of Law Commission and a new section, section 357A came into existence. This section gives powers to Courts to direct the State to make schemes and hence award compensations to victims.

COMPENSATION RELATED TO CONSTITUTIONAL INJURIES

A constitutional solution to fill the gap in the legal right to compensation in the monetary way for the abuse of the many human rights has been found by the apex courts. The Apex Court in the case **Rudal Sah v. State of Bihar** for the first time laid down the principle that compensation can be given in the cases where any fundamental right of an individual has been injured and that the upper courts have the authority to do so “through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence.”

In **Sebastain v. Union of India**, “on account of failure of Government to produce in habeas corpus petition filed by wives, apex court awarded cost of Rs. 1 lakh to be given to wife of each of detenne.”

COMPENSATION RELATED TO RAPE

The victim of rape has to suffer from many hardships like mental shock, lost income due to pregnancy and costs incurred during childbirth because of the offence. Also, in the present Indian society, a raped victim is looked down upon even though she is the victim and not the offender. During a rape trial, if the accused is just punished or asked to pay fine, the judgement does not favour the victim as her position is not restored. Hence it becomes extremely important to compensate such a victim.

In the landmark case of **DK Basu v. State of West Bengal**, the Supreme Court held that a victim of custodial right has every right to be compensated as her Right to life has been breached by the officer of the State.

In another case, the Supreme Court held that the session’s court too has the power to award compensation to the victim even if the trial has not been completed. In fact, in the case **State of Maharashtra v.**

Madhukar N. Mardikar, Supreme Court held that “even a prostitute has a right to privacy and no person can rape her just because she is a woman of easy virtue.” In the Indian society of the 21st century, many people want their brides to be “pure” virgins. A victim of rape in such cases not only loses out on the opportunity to marry into an otherwise decent family but is also discriminated upon for no fault of hers. It is often said that the most prized possession of a woman is her dignity and respect.

RANI LAXMIBAI COMPENSATION SCHEME

A new scheme launched by state government in FY 2015-16. To provide medical and educational help for women and girl child under the U.P. State Women Empowerment Mission.

PROVISION OF MONETARY COMPENSATION FOR VICTIMS:

Sr. No.	Section of IPC/Special Act	Provisions of the Act	Amount of Compensation in Rupees
1	326A of IPC	Voluntarily causing grievous hurt by use of Acid	300000-1000000
2	304B of IPC	Dowry Death	300000

3	376C of IPC	Rape resulting the death or PVS of the victim	by a person in Authority 1000000
4	376D of IPC	Sexual intercourse	300000
5	376 of IPC	Gang Rape	700000
6	Sec. 4 of the POCSO Act	Penetrative sexual assault	300000
7	Sec. 6 of the POCSO Act	Aggravated Penetrative sexual assault	300000
8	Sec. 4 & 6 of the POCSO Act r/w Sec. 302 of IPC	Sexual assault resulting to death of minor	1000000
9	Sec. 14 of the POCSO Act	Using child for pornographic purposes	100000

the victim's loss is not compensated. The compensation given should at least try to put the victim in a state in which he was before. It is not like victims of crime can never ask for compensation as such a prayer is available under civil laws, but filing two different suits for the same offence in two different courts. The proceedings for one suit are most of the times is agonizing, that such a procedure of filing different suits only gives the victim a second traumatization.

The idea behind providing compensation is legal as well as humanitarian. The inability to protect the person by the State makes it legally obligatory for the State to compensate him. The victim goes through such pain and many times permanent loss of income only makes it logical for him to be compensated. In cases where a person dies or is sent into a vegetative state, compensation should be very high as many times, the victim himself is the sole bread earner of the family and hence his injuries affect the life of his family too. In such cases, if the accused is only imprisoned or asked to pay a small fine, no good happens to either the accused or the victim's family.

CRITICAL ANALYSIS

When a crime is committed against a person, the victim loses out a lot apart from incurring damages and injuries. The work of a judiciary should not only be to punish the guilty but also compensate the victim as even if the accused is punished,

CONCLUSION

We come to the conclusion that compensation is not only required but is in fact a very important aspect of even criminal law and the courts should not use this sparingly but a little liberally. Of course they should be careful of not awarding too high a compensation and hence should be careful. The government should take into consideration the suggestions of the Supreme Court and set up Compensation Boards to help the victims with financial issues. Prior to Cr.P.C (Amendment) 2008, India lacked an all-inclusive legislation for compensation of victims. “Compassionate treatment of victims under the criminal justice system itself leads to the belief in the system which is enhanced by way of compensation programs, independent of conviction of offenders”.

- *The suggestion given by the law commission of India in its 42nd report on Indian Penal Code must be taken in to consideration and it would be better if the legislature also take in to account the separate note of Justice R.L. Narsimha a member of the commission*
- *The law must also provide recording of reason for not providing or providing the compensation as we have in the case of death sentence in Cr.P.C.*
- *The law must also provide for institutional set up as we have in western countries.*
- *If possible it would be better to give the compensation as a right to victim”.*

SUGGESTIONS

“It is need less to point out that the whole legislative paradigm coupled with lack of judicial determination has exposed numerous flaws of the present legal system about the compensation therefore there is need for revamping the whole legal system once. The mandatory changes that are needed are as follows: