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# Victimology in India: Need for Victim-Oriented Laws

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## ABSTRACT

*The formulation of laws and legislations in a society is paramount to promote peace and harmony and to shield individuals from becoming victims to the crime. The term 'victim' is wide enough to encompass the immediate kin or dependants of the direct victims of the crime and persons who have suffered harm or injury while assisting the victims in distress or to prevent victimization. A victim plays a crucial role in an offence and is an important component of the crime scene. Victimology is a part of criminology and is an emerging science that studies the crime from the perspective of the victim.*

*For many decades the criminal justice systems around the world have overlooked and failed to notice the importance of victims in an offence. Many countries have realised the need to extend assistance and services to the victims of crime thereby a paradigm shift has emerged in their way of dealing with the victims, however, under the Indian criminal justice system, victims of crime have no inherent prerogative and are treated as mere witnesses for prosecuting and punishing the offenders. Compensating and compounding the victims are only considered as justice, apart from protecting them and their property from any harm. Though the system along with the judges has played a key role in the expansion of victim's rights in our country, yet due weightage and importance are not heeded to them. Major changes and advancement focusing on the victim's rights needs to be introduced in our justice system.*

**Keywords:** *Victims, Victimology, Criminal Justice, Compensation, Human Rights.*

## I. INTRODUCTION

Human rights are present in every society and has been recognised at an international level. In India, fundamental rights are provided to the individuals by the constitution of the country which has its origin deep-rooted with the human rights.

Law and order are implemented in a nation to promote peace and harmony, to punish the infiltrators of crime and to protect the innocent individuals from becoming prey to the criminals. However, there is no society in which crime does not happen as a result of which

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the law has to be constantly amended and improved to meet the new contingencies that the nation presents.

The object and purpose of any procedural law and the criminal justice system is to further the ends of justice and to ensure that the accused obtains a full and fair trial along the lines of natural justice. Justice can only ensue not when a criminal gets his punishment but when the victim of the crime is satisfied and compensated for the losses he has incurred. Victims and criminals are 2 major essential components in a crime. The present criminal justice system focuses mainly on the accused and his rights; however, the prerogatives and the plights of victims are brushed aside in India. Victimology is a science that focuses its study of the crime from the point of view of the victims. There are a plethora of issues in crime and criminology which are being debated in the society but the concept of victimology is one such arena which needs a lot more attention. The focus of this paper is to analyse the emerging concept of victimology, to establish the pressing need for the same, and the changes to be adopted in our Indian criminal justice system.

## II. MEANING OF VICTIMOLOGY

To understand the concept of victimology it is a prerequisite to be well aware of the expression 'victim'. Derived from a Latin word '*victima*', it is any person who has suffered or is subjected to some kind of harm which could be physical or a mental injury, emotional or economic suffering or an impairment of his fundamental rights by the criminal as has been defined by the UN Declaration of 1985.<sup>2</sup>

The term 'victim' is also wide enough to encompass the immediate kin or dependants of the direct victims of the crime and persons who have suffered harm or injury while assisting victims in distress or to prevent victimization. In India, the criminal code<sup>3</sup> defines a victim as 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.

The genesis of victimology as a branch of criminology can be traced in the UK, West Germany, Canada, Australia, New Zealand and the USA. Victimology is an emerging science and an integral branch of criminology which studies the interrelationship between the violators of law i.e.,, criminals and the sufferers of crime i.e.,, victims. It has its emphasis on both the victim's

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<sup>2</sup> CENTRE FOR INTERNATIONAL CRIME PREVENTION, HANDBOOK ON JUSTICE FOR VICTIMS 116 (UN Office on Drugs and Crime, 1999).

<sup>3</sup>The Code of Criminal Procedure 1973, No. 2, Acts of Parliament, 1974 (India), s. 2(wa).

state as well as his co-relation to the criminal. Until recently the victims were not studied, they were considered as a non-essential constituent of crime, however, over the years the study of victims has gained popularity on an international level and at present victimology is perceived by many scholars as a distinct discipline altogether and is closely linked with the human rights. It is the empirical and factual study of victims of crime or crime victims and issues relating to victimization i.e., the process of being victimised or becoming a victim. The term 'crime victim' refers to any person, group or entity who has experienced injury or loss due to the unlawful act of the other. The harm can be physical, psychological or economic. These individuals may be also called 'primary victim of crime'. Besides, there are others who are known as 'secondary crime victims.

The victim is typically the individual who is forgotten or brushed aside under the criminal justice system. He is the one who puts into place the criminal law to motion but then goes into oblivion. However, many recent developments highlighting to the plights of victims has led to an increased scholarly attention and involvement holding victim as an important component of the criminal situation.

Thus, the development of the concept of victimology has drawn its basis and is built on the foundations of various fields such as criminology, law, medicine, psychology, psychiatry, social work, politics, education and public administration. Under the Indian criminal justice system, victims of crime have no inherent prerogative, and the state treats victims as mere witnesses. Thus, it is indispensable under the justice system to compensate to the person who has suffered, that is to say, that the accused is responsible for the reparation and restitution of any harm inflicted to the sufferer of an offence.

### **III. POSITION OF VICTIM IN CRIMINAL JUSTICE SYSTEM**

For many decades the criminal justice systems have overlooked and failed to notice the importance of victims in an offence. Before the advent of the formal criminal justice system in the world, victims of crime acquired more desirable justice as the offenders were always asked to compensate or make payments which were in equal proportion to the amount of damage or injury caused to the victims. It was an era of "Golden Age" for the victims where rigorous penalty and hefty compensation were imposed even on cutting certain trees and animals because it was considered to be a heinous sin. However, with the furtherance of the development of the 'state' and the responsibility to maintain the peace, harmony and stability and to shield the citizen from the onslaught of crime a major paradigm shift emerged where victims began to be the one who became the forgotten person and justice was gradually meant

to exhibit the guilt of the accused and punish the offender if the guilt was proven<sup>4</sup> since accused is presumed to be innocent until proven guilty. Thus, a major focus is on protecting and safeguarding the rights of the accused rather than focusing on the plight of the victims.

**One of the main reasons for the same could be that with the establishment of the UN Declaration of Human Rights,<sup>5</sup> which was adopted and proclaimed in 1948, a greater emphasis was laid on the protection of human rights of accused and offenders as he is already penalised by the curtailment of his freedom. The preamble of the same declared that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.**

The founding fathers of the study of victimology are Benjamin Mendelsohn and Hans Von Hentig who fled to America from Germany during 1940. By profession, both these writers were lawyers and criminologists and as such were very much concerned with the comprehension of the victim-victimiser dyad. Since then crime victims and their position in criminal justice have become a subject of intense study and research by various scholars in the different parts of the world.

A significant turning point emerged with the strong victim's rights movement in the US starting in the late 1970s as a response to the observation of many that somewhere along the way, the criminal justice system was out of balance, "serving lawyers, judges and defendants, [while] treating the victim with institutionalized disinterest."<sup>6</sup> The first international conference on victimology was held in Jerusalem in 1973 followed by another conference in 1976 at Boston.

The past few decades have witnessed a revolution in the way society deals with victims of crime. Many conferences and seminars are held at both national and international level highlighting the dire needs of the victim, their plights, compensation etc. Many countries have now recognized the need to provide services to victims to help them recover from the ill-effects of crime and assist them in their dealings with the criminal justice system. But in India, there has not been any significant improvement in the position of victims in the criminal justice system.

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<sup>4</sup> C. RAJ KUMAR AND K. CHOCKALINGAM, HUMAN RIGHTS, JUSTICE, & CONSTITUTIONAL EMPOWERMENT 442 (Oxford University Press, New Delhi; New York, 2007).

<sup>5</sup> Universal Declaration of Human Rights, (March 20, 2020, 9:00AM) <https://www.un.org/en/universal-declaration-human-rights/>.

<sup>6</sup> President's Task Force on Victims of Crime, Final Report, *The History and Evolution of the Crime Victims' Rights Movement*, NVRDC (Mar. 20, 2020, 10:00 AM) <http://www.assaultservicesknowledge.org/docs/librariesprovider8/default-document-library/history-of-cvr-movement.pdf?sfvrsn=0>.

#### IV. EMERGENCE OF VICTIMOLOGY IN INDIA: INDIAN SOCIETY OF VICTIMOLOGY

Victimology is a science which makes the “sufferer of an offence” the core of study and aims at an intensive understanding of the victim-offender relationship, victim’s share in the crime causation and so forth, that is to say, that it is the study of the crime from the victim’s eye. The concept of victimology in the Indian criminal justice system which is based on the British model had been a foreign science till recent times. Many national commissions and committees have strongly advocated for the victim’s rights and asserted the need for victim-oriented laws. In India, simultaneously various statutes and acts were formulated serving to the exigencies of the victims. The Fatal Accidents Act, 1855, Police Act, 1861 are few statutes which were established prior to the independence and like statutes were formulated after independence such as The Probation of Offenders Act, 1958, The Motor Vehicles Act, 1988, which did comprise of strings of compensatory jurisprudence for ensuring justice to victims. In fact, the Fatal Accidents Act, 1855 was the first Indian law which dealt with the claims of compensation for harm or loss suffered, by the legal representative of the deceased for his death caused by tort/civil wrong or even by crime.

A seminar on victimology for the very first time was organized in the University of Madras, Chockalingam, 1985. In August 1992, an organization named the Indian Society of Victimology (ISV)<sup>7</sup> was established which laid down the impetus of dissipating knowledge and awareness regarding the issues faced by the victims and marshalling support for the creation of new law for victims.<sup>8</sup> Many discussion, seminars, symposia and biennial conferences on subjects of pressing interest in the field of Victimology was organized by the ISV.

The notable contribution made by ISV in the year of September 1996 along with the support of the National Law School of India University, Bangalore and the National Human Rights Commission (NHRC) under the Chairmanship of the champion of human rights and victim justice, and the Indian Supreme Court’s former justice, V. R. Krishna Iyer to the advancement and development in the field of victimology in India was the organization of a workshop to draft a Victim Assistance Bill. The object of this bill on Victim Assistance<sup>9</sup> was to enact a national law on victim compensation/assistance in India. This initiative of the ISV acquired

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<sup>7</sup> Indian Society of Victimology (Mar. 20, 2020, 5:00PM) <https://isvindia.webs.com/>.

<sup>8</sup> Kritika Singh, *A socio-legal study of victims’ rights in India with special reference to victims’ human rights*, 1 *Droit penale: ILJCC*, (2016).

<sup>9</sup> Kumaravelu Chockalingam, *Measures for crime victims in the Indian criminal justice system*, WORK PRODUCT 144TH INTERNATIONAL SENIOR SEMINAR VISITING EXPERTS’ PAPERS 99-100, 97-109, (2010).

encouragement support from both The UN Commission on Crime Prevention and Criminal Justice, Vienna.

The efforts of ISV grabbed attention when in 1995 the then Chief Minister of Tamil Nadu in the Legislative Assembly announced the introduction of a monetary fund to assist certain categories of victims of violent crime and allocated ten million rupees as a first step for the scheme (Government of Tamil Nadu, 1995; Government of Tamil Nadu, 1997).<sup>10</sup>

With the increase of various social vices, targeting the vulnerable sections of the society such as the Scheduled Castes and Scheduled Tribes which hampers the social order and poses a threat to the healthy functioning of the state has been often counter-attacked by ambitious enactments focusing at curtailing the victimization. One such legislation is The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 which aims at protecting the rights of the marginalized section of the society which has suffered a long trail of discrimination and victimization.

Till date there is no separate law for victims however, it would not be completely justifiable to state that the victims were fully neglected from the criminal justice system of India however there is still a very long road to go. Apart from ensuring justice to the victim by protecting them against the crime, the focus should also be asserted towards the needs, difficulties, plight and rights of the victims which is pivotal towards reinforcing the Criminal Justice System.

## **V. PLIGHT OF THE VICTIMS IN INDIA**

Victims under the criminal justice system are deprived of their rights as they are treated as mere witnesses for prosecuting and punishing the offenders. Compensating and compounding the victims are only considered as justice apart from protecting them and their property from any harm under the Indian Criminal Justice System. Various statues such as The Criminal Procedure Code, 1973, The Motor Vehicles Act, 1988, The Fatal Accidents Act, 1855 etc. provides compensation to the sufferer of the crime.

The present Criminal Justice system concentrates on the crime, the offender, trial of the case, the collection of evidence, prosecution of the case, proving the offender guilty, protecting the human rights of the accused and awarding punishment. It totally ignores and marginalizes the victim after his presence as the witness in the case. A traumatic effect is left on the victims of crimes like rape, child abuse, homicide and no due diligence is heeded towards the needs of the victims subsequently leading to distortions in the Criminal Justice System. Therefore, there

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<sup>10</sup> Socio-legal study of victims' rights in India, *supra* note 7.

is a dire requirement to switch our focus from the offenders to the victims who have suffered substantial injury and harm.

Safeguards introduced in India for the victims through 2008 amendments in Cr.P.C.<sup>11</sup> and the criminal justice system was based on the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power or was derived in spirit. This declaration stands as a 'Magna Carta' for victims of crime and was adopted by the General Assembly of the United Nations in the year of 1985. The Declaration recommends measures to be taken at international, regional and national levels for providing a basic framework of principles influencing the development of the rights of victims by most of the countries and to improve access to justice and fair treatment, compensation, legal aid and assistance.

Unfortunately, in India, the police who are actually in proximity with the victims in the day to day crime situations are ignorant of the international development in the arena of victimology and are still not oriented to meet the expectations of the victims as per the UN Handbook on Justice for victims.<sup>12</sup>

#### A. LAW BEING INADEQUATE

The CrP.C. does not recognise the rights of the victim to take part in the prosecution of cases instituted on the basis of police report neither does he have the right to appeal against an order of acquittal of the accused by the trial court in a criminal case instituted by the police and only treats victims as mere witnesses in a state case.

In case of a cognizable offence<sup>13</sup> if the victim of a crime furnishes any information to the police then the officer is obligated to record the same and get it signed by the informant. The victim also has the right to send the information in writing to the Superintendent of Police provided the police denies to record the same under sec.154 (3) of Cr.P.C. According to the sec. 154(1) and (2) of Cr.P.C, police cannot decline to cater the copy of the First Information Report to the informant.

However, police officers many a time manipulate or distort the complaint to their own will rather than accounting it veraciously, for instance, offences that should be treated as cognizable are made non-cognizable and vice versa. The complainants made to the police are usually ill-treated and at many instances, the victims or the informants are harassed at the police stations rather than addressing their plights. One method to avoid or skip the redress by visiting the

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<sup>11</sup> The **Code of Criminal Procedure (Amendment) Act 2008**, No 5, Acts of Parliament, **2009 (India)**.

<sup>12</sup> Handbook on Justice for Victims, *supra* note 1.

<sup>13</sup> The Code of Criminal Procedure 1973, No. 2, Acts of Parliament, 1974 (India), s. 2(c)

police station is given under Section 190 of the Code, the victims are provided with an imperative to move to the magistrate directly with a complaint, the magistrate then has the power to either to investigate or inquire, however, the process of investigation, yet lies entirely in the hands of the police. In many cases, the accused himself gives the complaint and the investigation is initiated by him.

The above mentioned are some potential reasons as to why victims feel a sense of alienation and detach themselves from the justice system. Thus, the procedural law should be suitably amended so as to allow the victims to participate in every stage of the criminal justice system.

## **B. RAPE VICTIMS**

*The grievances of the women who become the victims of rape are manifold. These women are not only prey to physical violence but suffer a sense of violation that goes beyond these physical injuries. Whenever a rape victim enters into the gateway of the criminal justice system, she is faced with interrogation using the medieval method in the name of medical examination. Such an environment resurfaces the incident of the rape in the mind of the victim which if followed by harassment, delay, adjournment, repeated court appearances, insults and character assassination by the defence counsel (as can be seen in the recent infamous Nirbhaya Case) and the society and so on. She is denied by the society to resume a normal life at home, place of work or in the society and more or less is treated as untouchables.*

*The general tendency is to narrow down the victimisation of women to only sex-related offences, however, this restricted observation causes flagrant mistreatment to the victims who are subjected to offences on grounds apart from sex. The discrimination due to the male-dominated and patriarchal society is not always manifestations of sexual offences. These include subject to discrimination at her workplace, the disparity in wages, the ill-treatment which is done to women in homes behind closed doors.*

*The National Commission for Women in India constituted under the National Commission for Women Act, 1990<sup>14</sup> is the apex body that works for protecting and promoting the interests and rights of women and ensures fair treatment and justice. Similar commissions have also been established to cater to the needs of women in other parts of the nation.*

*A PIL was filed in the Bombay High Court by the forum against the oppression of women in the wake of the Delhi gang-rape incident, demanded the implementation of a Supreme Court<sup>15</sup> 1995 judgment which directed to evolve a scheme for the compensation and rehabilitation of*

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<sup>14</sup> National Commission for Women Act 1990, No. 20, Acts of Parliament, 1990 (India).

<sup>15</sup> Delhi Working Women's Forum v Union of India (1995) 1 SCC 14.

*rape victims*

“Such a scheme shall be prepared within six months from the date of this judgment,” the SC said. But even 18 years later, the scheme was yet to see the light of day, the PIL stated. Though the state did draft a scheme for the relief and rehabilitation for victims of rape but no Victim Compensation Fund, as required by law, had been formed, in violation of the victims’ rights, it added.<sup>16</sup>

### **C. CHILD VICTIMS**

The other category of victims are child victims. They are the most vulnerable category of victims since many times they don’t even have the capacity of intimating the offences either to their families or to the law enforcing agencies. Such reporting is least expected in cases where infants fall prey to their own family members. Children are subjected to various forms of crimes like trafficking, sexual abuse, rape, abduction, kidnapping etc.

The National Policy for Children, 1974 declared that “Children are supremely important national asset” and the same was scrutinised in the landmark case of Sheela Barse v. Union of India.<sup>17</sup> Yet in India, every third rape victim is a child and it has the largest number of sexually abused children in the world according to report of International Business Times<sup>18</sup> and as per Louis-Georges Arsenault, UNICEF Representative to India.

A report by Human Rights Watch<sup>19</sup> stated that the rape victims are “mistreated a second time by a criminal justice system that often does not want to hear or believe their accounts, or take serious action against perpetrators”.

The protection of child against all forms of abuse and ill-treatment is very important for the future of the country because the development of a nation depends on its youth.

## **VI. AMENDMENTS**

The following are the major amendments under Cr.P.C

### **A. BEFORE 2008 AMENDMENTS**

The victim’s right of receipt of compensation was recognized under the Criminal Procedure Code of 1898<sup>20</sup> only in cases where a substantive sentence of fine was imposed and was limited

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<sup>16</sup>Swati Deshpande, *Forum moves HC for aid to rape victims*, TOI, January 30, 2013.

<sup>17</sup> AIR 1986 SC 1873.

<sup>18</sup> REPORT OF INTERNATIONAL BUSINESS TIMES, Sept. 14, 2016.

<sup>19</sup>*BREAKING THE SILENCE Child Sexual Abuse in India*, HUMAN RIGHTS WATCH, (Mar. 30, 2020, 4:30pm), <https://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdf>.

<sup>20</sup> The Code of Criminal Procedure 1898, No.5, Acts of Parliament, 1898 (India), s 545(1), (2), s 546.

to the actual amount of fine realized.

Even before amendments were introduced, Cr.P.C. contained provisions relating to compensation to victims and disposal of the property involved in the offence, which ultimately aimed towards ensuring justice to victims. Section 357, 358 and 359 dealt with orders to pay compensation and costs. Section 237 and 250 of the Code also deal with payment of compensation. Section 451, 452, 453, 454 of Cr.P.C. deal with provisions relating to disposal of property.

While awarding compensation, it is an obligation on the court to take into account, the nature of the crime, the injury suffered, the justness of claim for the compensation, the ability of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation<sup>21</sup>. The provision of section 357 is just and expedient to give speedy and less expensive redress to the victim.

#### **B. POSITION OF VICTIM POST CRIMINAL PROCEDURE CODE AMENDMENT OF 2008**

The amendments of 2008 made in the Criminal Procedure Code made every effort of the legislature towards victim justice more conspicuous and vocal. These amendments brought in Sec 2(wa), Proviso to Sec 24(8), Proviso to Sec 26(a), Proviso to Sec 157(1), 173(1A), Sec 309 (1), Sec 327 (2), Sec 327 (3), Sec 357A, Sec 372 of the C.r.P.C., 1973 is indeed a welcome move towards orienting the criminal justice system with victimological thoughts and developments. The inclusion of Section 2(wa) defining a 'victim' was in itself indicative of the legislative intent.

The other amendments brought about in the Cr.P.C. through the 2008 amendments<sup>22</sup> are quite encouraging. These provisions guarantee certain rights and safeguards for the victims. Provisions like sections 24(8) states about the permission which a court may grant to the victim for engaging an advocate of his choice to assist the prosecution and Section 372 provides for the right of the victim to prefer an appeal against an order of the court acquitting or convicting the accused for a lesser offence or imposing inadequate compensation. It aims towards direct involvement of the victim in the justice process.

Finally, Section 357 A is the landmark introduction made in the Cr.P.C., through the 2008 Amendments. The Apex Court in *Delhi Domestic Working Women's Forum v. Union of*

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<sup>21</sup> *Sarwan Singh v State of Punjab* (1978) 4 SCC 111; *Hari Singh v Sukhbir Singh* (1988) 4 SCC 551 (India).

<sup>22</sup> The **Code of Criminal Procedure (Amendment) Act 2008**, No 5, Acts of Parliament, **2009 (India)**, Proviso to s 24(8), Proviso to s 26(a), Proviso to s 157(7), 173(1A), s 309 (1), Proviso to s 327 (2), s. 327 (3), s 357A and s 372.

India<sup>23</sup> had laid down certain guidelines for assisting the victims of rape. It provided that having regard to the Directive Principles contained under Art 38(1) of the Constitution of India, it is necessary to set up the Criminal Injuries Compensation Board. According to the guidelines, the court shall order to provide compensation to the victims on conviction of the offender and by the Criminal Injuries Compensation Board irrespective of whether the conviction has taken place.

The Supreme Court before the statutory recognition of grant of compensation has in several writ petitions awarded compensation on various grounds. Under Section 357A the State Government in coordination with the Central Government is obliged to prepare Victim Compensation Schemes for compensating victims of crimes. Clauses 2 to 6 of Sec 357A Cr.P.C. provides that the District and State Legal Services Authority as the case may be shall decide the amount of compensation which should be awarded as per the recommendation of the court to the victim or his dependents. The District and State Legal Services Authority may provide immediate first-aid medical facilities or benefits and award adequate compensation.

### **C. POSITION OF VICTIM POST CRIMINAL PROCEDURE CODE AMENDMENTS OF 2013**

The Criminal Law (Amendment) Act 2013<sup>24</sup> which came into force on 3<sup>rd</sup> February 2013 and received the presidential ascent and was published in the Official Gazette on 2<sup>nd</sup> April 2013, contains amendments which were suggested and intended for a long time. However, the social movement that was launched, as a reaction to the Nirbhaya case, caused these amendments to see the light of the day. Post Mathura, Nirbhaya was the next such draconian incident, which brought the entire population of the nation together demanding a change in the legislative and judicial system of the society. A 3 member committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, Justice Leila Seth, former judge of the High Court and Gopal Subramaniam, former Solicitor General of India was constituted on 23<sup>rd</sup> December 2012 to recommend amendments to the Criminal Law in order to assure quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. The report consisted of recommendations on laws related to rape, sexual harassment, trafficking, sexual abuse of children, medical examination of victims, police, electoral and educational reforms.<sup>25</sup>

The amendments which majorly have an impact on victim justice include Section 166A, 166B of Indian Penal code (hereinafter as, "IPC"), the proviso to sec 154, 161(3), 273 and section

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<sup>23</sup> (1995) 1 SCC 14.

<sup>24</sup> The **Criminal Law (Amendment) Act 2013**, No 13, Acts of Parliament, 2013.

<sup>25</sup> JUSTICE VERMA COMMITTEE REPORT, REPORT OF THE COMMITTEE ON AMENDMENTS TO CRIMINAL LAW. ch. 8,9,11,12,16 (2013).

309(1), 357B, 357C of Cr.P.C.

The new amendment also provides that the compensation to be paid under section 357A is to be paid in addition to the fine to be paid to the victim under section 326A or 376 D of the IPC.<sup>26</sup> In recognition of the international declaration and standard, the newly inserted section 357C of Cr.P.C. provides for an obligation on all state or private hospitals to compulsorily provide free immediate medical aid to the victims of offences under sections 326A, 376, 376A, 376B, 376C, 376D or 376E of the IPC and then inform the police at the earliest.

## **VII. RECOMMENDATIONS OF COMMISSIONS AND COMMITTEES ON JUSTICE TO VICTIMS IN INDIA**

### **A. THE LAW COMMISSION OF INDIA, 1996**

The report of The Law Commission<sup>27</sup> in the year of 1996, stated that the State should accept the principle of assisting victims out of its own funds in cases of acquittals; or where the offender is not traceable, but the victim is identified and also in cases when the offence is proved.

### **B. THE JUSTICE MALIMATH COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM (GOVERNMENT OF INDIA, 2003)**

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance in the Criminal Justice system of India in order to improve the position of victims of crime, including the victim's right to participate in cases and to adequate compensation.

The Malimath Committee<sup>28</sup> opined that 'justice to victims' is one of the most significant components of the Indian criminal justice system. Prof. Madhav Menon, in his address at the International Conference of the Indian Society of Victimology, 2011, advocated for a system of 'holistic justice' to victims of crime which should allow the victims the right to participate in criminal proceedings and to seek compensation for loss or injury. The UN Declaration recognised 4 major components of the right of victims of crime i.e., access to justice and fair treatment, restitution, compensation, and assistance.

Key recommendations made by the committee in the field of victim justice were:

1. Participation of victims in cases involving serious crimes and also be provided with

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<sup>26</sup> The Code of Criminal Procedure 1973, No. 2, Acts of Parliament, 1974, s 357B.

<sup>27</sup> THE LAW COMMISSION OF INDIA, REPORT ON THE CODE OF CRIMINAL PROCEDURE 1973 NO. 154, PARA. 11 (1996).

<sup>28</sup> THE MINISTRY OF HOME AFFAIRS (GOVERNMENT OF INDIA), MALIMATH COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, PT. 6. P. 270-271 (2003).

adequate compensation.

2. If the victim is dead, the legal representative shall have the right to implead himself or herself as a party, in case of serious offences.
3. The State should provide an advocate or pleader of the victim's choice to plead on his/her case and the state shall bear its cost if the victim can't afford it.
4. Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation.
5. A Victim Compensation Fund can be created under the victim compensation law and the assets confiscated in organised crimes can be made part of the fund.

### VIII. COMPARATIVE ANALYSIS AND JUDICIAL DECISIONS

The victim-oriented rights and safeguards are present in very many criminal justice systems. The Crime Victims' Rights Act <sup>29</sup> in America provides victims with many rights and safeguards. These include protection from accused, right for participation in the escape or release of the accused, right to be treated fairly and with respect and so on.

In Canada, the Victims Bill of Rights Act, 2015,<sup>30</sup> provides victims with statutory rights. Whenever a complaint is lodged under this bill the federal department to whom the complaint is lodged is required to maintain transparency, that is, a mechanism where the complaints can be reviewed by the victims, recommendations can be suggested and to keep the victims posted with information. Victims are also empowered to file complaints against the police officers if there has been any issues with the services.

The UN Declaration has recognized fair treatment, restitution, compensation as crucial constituents of the victims' rights. In India, the various judicial decisions have paved way to the evolution of this conception. Victimology has gained its inspiration by the liberal interpretation of fundamental rights of the Indian constitution. These fundamental rights are in turn influenced by the human rights. Krishna Iyer J. in the case of Rattan Singh v. State of Punjab<sup>31</sup> lamented, "In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature."<sup>32</sup>

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<sup>29</sup> United States Justice for All Act, 18 U.S.C. § 3771 (2004).

<sup>30</sup> **Victims Bill of Rights Act, SC 2015**, c 13.

<sup>31</sup> AIR 1964 SC 1223.

<sup>32</sup> Dr Dipa Dube and B. R.Gawali, *Reparative Justice for Rape Victims in India*, 1 IJARMSS 257, 258-59 (2012).

The Apex Court in **Sakshi v. Union of India**,<sup>33</sup> mandated trials to be in camera particularly when the victim is a child or rape victim to protect their honour and dignity. In another case of **Nirmal Singh Kahlon v. State of Punjab**,<sup>34</sup> the Hon'ble Apex Court observed that the right to fair investigation and trial applies to the accused as well as the victim and such a right to a victim is provided under Article 21 of the Constitution of India. It laid down that the victims are equally entitled to a fair investigation.

In an offence relating to the rape, the court having the jurisdiction to award compensation also have the right to award interim compensation.<sup>35</sup>

Hussainara Khatoon & Ors v. Home Secretary, State of Bihar<sup>36</sup> recognised victimization due to abuse of state power. The case felt the need to address and redress such grave violation of basic human rights which directly infringed the fundamental right to live with dignity under Art. 21 of the Constitution.

*In the Supreme Court case of Bhaskaran v. Sankaran Vaidhyan Balan*<sup>37</sup> while considering the scope and extent of Section 357(3) Cr.P.C. laid down that the Magistrate can award any sum of compensation and cannot restrict itself in awarding compensation under Section 357(3) since there is no limit in sub-section (3). The magistrate needs to fix the quantum of compensation on the grounds of reasonability.

Above stated judgments highlight the active role of the Apex Court in the development of the concept of victimological jurisprudence. Nevertheless, in India timely justice is yet not provided to the citizens and victims of crime and the power is abused in the hands of few elite and politically influential class, leading to further victimization of people.

## IX. NEED FOR VICTIMOLOGY

It is amply clear that the legislations, judicial decisions as well as the amendments in Cr.P.C. has changed the purview of the criminal justice system in India. Though the system along with the judges has played a key role in the expansion of victim's rights in our country, yet due weightage and importance are not heeded to victims. *Several judgments of both High Courts and the Supreme Court in the last 2 decades have rescued victims of not only traditional crimes but also in cases where the victimization has been instilled by the instrumentalities of the state itself.*

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<sup>33</sup> AIR 2004 SC 3566.

<sup>34</sup> AIR 2009 SC 984.

<sup>35</sup> **Bodhisattwa Gautam v. Subhra Chakraborty** (1996) 1 SCC 490 (India).

<sup>36</sup> 1979 AIR SC 1369.

<sup>37</sup> 1990 7 SCC 510.

In the recent infamous case of Nirbhaya gang rape, the convicts of the case were sentenced to death punishment and the execution of the same happened after 7 long years. The parents of the victims had to fight for the justice battle for these 7 years. Even though the decision was in favour of the victim and her family yet, the burning questions are whether the justice was duly served?, what about the legal aid to the family?, what about the innumerable court appearances, *insults and character assassination by the defence counsel and the society? and so on.*

The current scenario of the Indian justice system can be felicitously defined by the word of Gladstone i.e., “justice delayed is justice denied”. The number of pending cases and crime rates are constantly on a rise leading to a constant increase in the plights of the victims. A victim not only includes the person who has suffered the loss or injury but also their dependents.

Our legal system is immensely accused oriented that is to say, that victims are forgotten. Even before the execution of the death sentence the accused is provided with the rights of seeking mercy plea and curative petitions. A glaring example of the same is the Delhi Gang Rape Case. The courts must have been ‘bound’ by provisions of the existing laws but, the implementation of punishment to the culprits should not be delayed when the country’s top court has upheld the hanging of the accused. There is no deterrence, there is no regret in the minds of criminals. It only epitomises the maxim- ‘*justice delayed is justice denied.*’ *Even in the Unnao rape case, the victim of the crime was set on fire by the alleged rapist and later died. Due to the lack of proper protection to the victims, such gruesome incidents tend to take place.*

There is a pressing need for victim rights in our country because they form the basic human rights. Human rights do not exclusively mention the provisions for victim’s rights but advocate them indirectly. “Human Rights are the rights that a human being in virtue of whatever characteristics he has that are both specifically and universally human.”<sup>38</sup> Our legal system only provides with few legal rights to victims in our nation. The victims of the crime are not notified of the court proceedings or the release or arrest of the accused. They lack the right to make statements regarding sentencing at the court as well in other hearings. Programs for assisting the victims like legal aid are more or less non-existent. Though there are some provisions under the Indian Constitution and some sections in the Code of Criminal Procedure, 1973 which aims at protecting the rights of the victims and for providing compensation and restitution, the criminal courts at the lower level in India have ignored those provisions for a long time.

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<sup>38</sup> V.R. KRISHNA IYER, ACCESS TO JUSTICE- A CASE OF BASIC CHANGE, 14 (B.R. Pub. Corp 1993).

The victims are paramount and an inseparable part of the crime. Therefore, the phenomenon of crime cannot be comprehensively studied without incorporating the victim of a crime. Victim's rights can thus only be effective as human rights if they fulfil the 2 criteria i.e., conferment of entitlement and imposition of obligations on the people.

## **X. CONCLUSION**

The concept of 'victimology' is gaining importance and India needs to give its due importance and cater to the plights of the victim and help the study of victimology develop and be efficiently functional. Though many legislations and provisions are already in place for the same in our Criminal Justice system yet, more improvements are required to be introduced. Providing assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of a crime. Changes such as proper implementation on various established laws, active participation of victims in various phases of case proceeding, a separate umbrella law only focussing on the victims for their speedy justice are necessary.

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