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Victims of Crime – With reference to Indian Criminal Justice System

Dr. S.M. Mahendra Simha Karna

Dept. of Criminology and Forensic Science, Dr. Harisingh Gour Vishwavidyalaya Sagar
(M.P), India, E-Mail- simha.karna@gmail.com

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Abstract

Criminal Justice System in a democracy has to give equal importance to the rendering of justice to the victims as well as prevention of injustice to the suspected accused in crimes but victims of crime has been a forgotten person in the administration of criminal justice. The entire focus of the criminal justice system has been based on the offender, like to punish him or to his reformation and rehabilitation with all resources and good will available through the agencies of administration of justice, the courts and other governmental and non-governmental agencies. So long as there was no clear cut demarcation between the criminal procedure and civil procedure, the victims of the crimes were also taken care of. In India despite there being no separate laws framed to improve the status of victims of crime. One of the basic principles of the Criminal Justice System is that crimes are wrongs against the State, but probably an over-emphasis on their principle has led to a situation where we fail to see the plight of the victims. Therefore, this present article mainly seeks to give information on genesis of the victims of crime, concept and meaning, victim categories, victim rights and role of victims in the Indian Criminal Justice System.

Key word: *crime, victim, rights of the victims, victims of crime, criminal justice system.*



Introduction

While the judiciary is generally concerned with protecting the interests of society, like the justice is the first and foremost virtue of a social institution. Justice can be ensured in any ordered society if there is an atmosphere conducive to peaceful and undisturbed existence of the society. Such an atmosphere can be provided if the state is able to ensure its basic justification and commitment of maintaining order in society and providing security to all. In view of the requirement of security and justice as fairness the administration of justice has to take care of the benefits, rights and dignity of all segments of the society. The administration of criminal justice needs to take care of the law breaking offenders and the victims of offences committed by the offenders alike. It is common experience what Durkheim exposed in his celebrated work *Crime as a natural phenomenon* that “a society composed of persons with angelic qualities would not be free from violation of norms of that society” It is a natural phenomenon. People differ in their values, goals and aspirations. It is not possible for all people to share sentiments to the same degree. Durkheim expose the problem by commenting that even if it were possible “crime would not thereby disappear, it would drag up the source of criminality would immediately open up new one”, (Durkheim, et.al., 1966).

Criminal Justice System in a democracy has to give equal importance to the rendering of justice to the victims as well as prevention of injustice to the suspected accused in crimes but victims of crime has been a forgotten person in the administration of criminal justice. The present criminal justice system has been based on the offender, like to punish him or to his reformation and rehabilitation with all resources and good will available through the agencies of administration of justice, the courts and other governmental and non-governmental agencies. So long as there was no clear cut demarcation between the criminal procedure and civil procedure, the victims of the crimes were also taken care of. In India despite there being no separate laws framed to improve



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the status of victims of crime. As Mr. Justice V.R. Krishna Iyer in his foreword to Bharat B.

Das's book *Victims in Criminal Justice System* made clear that, "Victimology do not dawn one fine day but has been part of the code of Hammurabi and has been hinted at in ancient texts, Greek, Roman and Indian". But with the emergence of clear division between the criminal procedure for criminal acts viewed as an act against the state and civil procedure dealing with civil wrongs, the right of victims of crime disappeared and lost sight of. But probably an over- emphasis on their principle has led to a situation where we fail to see the plight of the victims. So long as there was no clear-cut demarcation between the public law and private law, the victims had their due in administrative of justice, (Sen & Singh, 2010).

The concept of a fair trial and justice was noted in the case of *Mohd. Hussian @ Julfikar Ali vs. The State (Govt. of NCT) Delhi* (2012) as entailing a triangulation of the accused's, victims, and society's right and interests. The right of the community and the accused are meticulously delineated under the adversarial system, and they frequently supersede those of the victim, whose rights are procedurally non-existent. It has been claimed that regulations and processes have been put in place in various countries to provide for more humane treatment of victims. Greater acknowledgement of victims' rights, the importance of their role in the process, and their vested interest in the case and its conclusion are examples of such policies and procedures. In many nations, Court-related support to victims, particularly in criminal procedures, is still quite rare.

The Genesis of the victims of crime

In ancient cultures, the concept of victim was connected to the notion of sacrifice. In the original meaning of the term, a victim was person or an animal put to death during a ceremony in order to appease some supernatural power or deity. Over the centuries, the word has picked up additional meanings. Now the term commonly refers to individuals who experience injury, loss, or hardship for any reason. People can become victims of accident, natural disaster, diseases, or social problems like warfare, discrimination, witch



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hunts, or other injustices. Crime victims are harmed by illegal acts.

Under common law as well as ancient Hindu law or Muslim law offenders of certain types of crimes were required to reimburse victims for their losses. Beginning in the twelfth century, however, crimes were increasingly considered offences against the king's peace rather than against individual victims (VanNess, 1990). As a result wrongdoers were more often ordered to pay fine to the state than restitution to the victim, and direct interaction between victims and offenders waned. The focus on the state as the victim eliminated the victim from the justice process (Hudson and Galaway, 1975). The initial ideas which gave the impetus to the development of victimology arose in the late 1940s during postwar settlement an age of conformity. Mendelsohn coined the term 'Victimology' in 1940 and Von Hentig's 'The Criminal and his Victim' was published in 1948. The ideas of Von-Hentig and Mendelsohn although not really at the forefront of policy concerns in the post war years, nevertheless reflected the essential nature of how victims of crime were conceived in the 1950s (Elias, 1986, Walklate, 1989).

Victim's right was secured as private enterprise in early age. It was settled as a private matter. With a view to avoid blood feud the state tended to provide a framework in law for victims to pursue compensation for injuries through courts. Offenders could redeem themselves through the payment of compensation. It was known as bot or wergild (Pollock and Mitland, 1898). However the system underwent seismic shift during the Middle Age and state grasped and usurped the role of the victim. The civil liability was converted into criminal liability and there was clear shift from local to centralized law (Coak and Jonathan, 2008). In words of Ashworth in 1986, the transition probably owed "less to doctrinal legal distinction than to the usefulness of criminal jurisdiction as a source of funds for the Crown and to the social significance of the administration of Criminal Justice as a mark of royal authority". It was also so as criminal law began to be recognized as a useful tool for the state to regulate the behaviour of the citizens with a view to promote peace and the security of the nation. The shift also made private law affair the public law enforceable by law. Still victim



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had important role to play as initiator and late twelfth and early thirteenth century was marked by victim's private action through the "appeal of felony". The victim was restituted the loss suffered. That is reason why Schafer was prompted to describe the middle ages era" as the golden age of the victim (Schafer, 1968).

Broadening concept and meaning of the victim

The term victim did not attract much of research under the traditional work of criminologists. It attracted serious thought after the end of the Second World War when victimology came to be the discussed as a crime relating to victims. The term 'victim' is one of moral approbation

It lacks descriptive percesion in respect of actual human behaviour. *Webster dictionary* (1968), defines 'victim' as the person who is acted upon and usually adversely affected by a force agent. *Oxford English Dictionary* (1933) gives the definition of 'victim' by way of inclusion of certain categories of persons. According to it (i) victim is a person who is put to death or subjected to misfortune by another; (ii) one who suffers severally in body or property through cruel or oppressive treatment; (iii) one who is reduced or destined to suffer under some oppressive or destructive agency; and (iv) one who perishes or suffers in health etc., from some enterprise or pursuit voluntarily undertaken. In a weaker sense, one who suffers from some injury, hardship or loss, is badly treated or taken advantage of, etc.

Das (1997) has very aptly pointed out that the word 'victim' may be attributed five fundamental factors, namely, nature, society, energy supply, motorization and criminality. The factor of nature plays its role by causing disasters such a earthquake, flood, droughts and famine. The society factor holds a collective potential for starting mass conflict that may generate genocide, terrorism and abuse of powers. Among other aspects of socially determined victimity are the consequences of over population and occupational diseases. Motorization and energy resources are causing innumerable traffic accidents on land, at sea, and in the air, apart from industrial and domestic accidents.



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The term victim is defined by the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)* which is the *Magna Carta on Victims' Rights*:

Section 1: “Victim means person who has suffered any mental, physical, emotional, economic, or substantial impairment of their fundamental rights, individually or collectively, as a result of acts or omissions that are in violation of criminal laws operative within member states, including those laws prescribing criminal abuse of power.”

A “crime victim” is someone who has been physically, financially, or emotionally wounded, or whose property has been taken or damaged by someone who has committed a crime. A “general victim” is someone who has been physically, financially, or emotionally wounded, or whose property has been taken or damaged by someone, an event, an organization, or a natural phenomena

Section 2: “A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term victim also includes where appropriate, the immediate family or dependents of the direct victim and person who have suffered harm in intervening to assist victims in distress or to prevent victimization”.

The concept of victim adopted under Section 2 (wa) of the Criminal Procedure Code of 1973, on the other hand, is at odds with international standards. In order for a victim to be involved, the accused must be identified and charged; and despite the Supreme Court’s affirmative steps, victims of power abuse have not been recognized. The aforementioned definitional difference is the first step toward a miscarriage of justice (Kishta Gupta, 2021).

Categories of victims

Regehr and Bober (2005) has categorised victims of crime as *direct* or *primary* victims experience the criminal act and its



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consequences firsthand. Some people prefer the term survivors rather than victims because it is more upbeat and empowering,

emphasizing the prospect of overcoming adversity. (However, the established usage of the term is to refer to close relatives of people killed by murderers). **Indirect** or **secondary victims** (such as family members) also suffer rescue workers who race to crime scenes (such as police officers, forensic evidence technicians, paramedics, and firefighters) are exposed to emergencies and trauma on such a routine basis that they also can be considered secondary or indirect victims who periodically might need emotional support themselves, (Karmen, 2007).

The Growth and Development of Victim's Concerns

It was the inception of the welfare state in the post-war years which centered on how to rebuild societies and their economics. Historically the value of ideas of Marshall (1981) in mapping an understanding of what the inception of this welfare state represented. He argued citizenship in the eighteenth century was focused on debated around civil rights, in the nineteenth century around political rights, and in the twentieth century social rights. Various analyses have considered the range of influences, which led to the establishment of the 'Welfare State'. Rock (1990) has detailed some of the influences on Margery Fry's ideas on victim compensation.

The publication of *Arms of the law* in 1951 by Fry made a significant input into the debates on criminal justice policy in 1950s and 1960s. One of the major concerns was that there must be some better way of reconciling the victim and the offender which would be both educative for the offender and meaningful for the victim. This concern had crystallized latter on into a campaign for the establishment of a criminal injuries compensation scheme.

Another crucial aspect is the acknowledgement of victims of power abuse. If a person is harmed as a result of a government act, he is a victim of an abuse of power. In the case of *Rudul Shah vs. State of Bihar (1983)*, the Supreme Court, in dealing with the



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suffering of under-trial inmates and those in correctional institutions, referred to them as victims of abuse of power, allowing them and their rights to be protected to a large extent. Furthermore, in *Alister Anthony Pareira vs State of Maharashtra (2012)*, the Court held that the legal system owes it to such victims of crime and abuse of power to safeguard them, thus expanding the state's role in the justice system.

The Crystallization of the victim of crime

Since beginning in the 1970s reformers sought to change the emphasis of the criminal justice system from the offenders' rights to the victims needs. Thus the development of victimological thoughts and movements throughout the world was discernible during the 70s of the last century. This movement culminated in the creation of the World Society of Victimology (WSV) in 1979, an exclusive international organization to plead for the cause of victims to improve the status of victims in the Criminal Justice Systems of the world and to promote scientific research on various issues relating to victims justice (Raine and Smith, 1993). The crime victims has attracted the attention of criminologists all over the world in the last quarter of this century, in many countries, victims assistance and victim compensation have been provided in the criminal laws. The importance of inclusive provisions whereby offenders may compensate the victims for their wrong doings have also been recognized in the United Nation Declaration in the following works- "Offenders or third parties responsible for their behavior should, where appropriate make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights." (Quoted in Joutsen, 1987). With this effect the radical criminologists have now started talking of protecting the interests of the victims of crime.

Need of the victim orientation to criminal justice

The Indian criminal system is build around the age old principles of "Let hundred guilty be acquitted but one innocent should not be



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convicted?”. Throughout the years, the legislators have reformed and developed various rights, safeguards and mechanisms for criminals, to reform and rehabilitate and back them into society. But the most affected party of the crime, the victim, has been neglected. Just imprisoning the criminal, the society can become free from crime but does that provide any real, substantial relief to the victim. A lot of the time, no proper support or assistance is given to the victims. Their rights have been discussed in many law reports like the *154th Law Commission Report and the Malimath Committee Report*. The Government of India, Ministry of Home Affairs by its order dated 24 November, 2000 constituted the Committee on Reforms of Criminal Justice System to consider measures for revamping the criminal justice system. One of the objectives of the committee was “to suggest ways and means of developing synergy among the judiciary, the prosecution and the police to restore the confidence of the common man in the criminal justice system by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal”. While referring to the position of victims in the criminal justice system in India, the committee observed “the victim do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in distortions in the criminal justice administration” (Government of India, 2003). Every report on criminal justice reform and all informed writings by experts on the subject have uniformly canvassed for re-orienting criminal justice by putting justice to victims as one of the central principle in criminal justice administration. In spite, in India the process is slow and uncertain partly because of an unstated assumption that the sole object of criminal justice is to give a fair trial to the accused and nothing should be done including justice to victims which even remotely tend to dilute that object. The universal complaint against the system is that in its concern for fair trial to the accused, criminal proceedings have totally ignored the victim and is left to suffer his/her fate. What is fair to the accused need not necessarily be unfair to the victim and there should be a balance of interests of the two sides if the system were to be credible and sustainable. The need of victim-oriented Criminal Justice System is attracting not only national concern but also the international concern.



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The Rights of the Victims

The pro-victim movement was started in 1985, when the United Nation adopted a Declaration of the Basic Principles of Justice for The Victims of Crime and Abuse of Power which was ratified by many countries including India. This declaration gave a

comprehensive and the importance of the victims' rights was recognized globally. It made people realize that though many efforts have been made to understand the psyche of the criminals through criminal justice system, the victims were often aware the declaration of basic principle of justice for the victims of crime abuse of power 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 provides protection to the victims by making a provision for fair restitution to victim or their families; restitution should be part of the sentencing in criminal cases; Also, if compensation is not adequate from the offender, the state should provide monetary compensation is not adequate from the offender, the state should provide monetary compensation from national fund to victims who suffered physical or mental injury. Victim should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community based indigenous means. As a matter of fact the wide range of remedies covered by U.N. Declaration is culmination of the victim oriented thinking from the start of the Universal Declaration of Human Rights, 1948. Section 18 of the Declaration spoke of the right of an effective remedy give to everyone.

Further, the United Nations Declaration of 1985 has categorised about victims' rights that which are follows:-

Right of Access to Justice and Fair Treatment i.e., (1) Right to be treated with dignity, (2) Right to access the justice mechanism and to get prompt redress, (3) Right to procedural (formal or informal) fairness, (4) Right to get a responsiveness system of judicial and administrative processes, (5) Right to seek redress through informal mechanism.



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Right to Restitution i.e., (1) Right to return of property, (2) Right to payments for the harm suffered, (3) Right to reimbursement of expenses and relocation expenses, (4) Right to restoration of right, (5) Right to reconstruction of infrastructure and (6) Right to replacement of community facilities.

Right to Compensation i.e., (1) Right to compensation to the victim in case of significant bodily injury or impairment of physical or mental health, (2) Right to compensation to family members or dependents of the victim in case of death or permanent incapacitation.

Right to Assistance i.e., (1) Right to get material, medical, psychological and social assistance,
(2) Right to get information about the availability of such assistance services, (3) Right to get easy access to these services.

Legal Rights of the Victims

Legal rights serve as a remedy for injustice and abuse as well as a basis for independent and autonomous action. These are the basic rights of the victims', which are follows:

1. Right to registration of FIR
2. Right to be heard
3. Right to be notified or informed of their various legal rights
4. Right to be notified of the events and proceedings in the Criminal Justice Process.
5. Right to protection during the criminal justice process. This can be police escorts to and from court, witness protection programs, residence relocation etc.,
6. Right to speedy trial



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7. Right to be treated fairly, with respect and dignity
8. Right to file appeal (under provision to section 372 of Criminal Procedure Code).
9. Right to Plea-bargaining
10. Right to protection from intimidation
11. Right to Privacy

These rights are the basic minimum required for enabling the victim to restore their life back to normal, by making the aftermath of the crime a little bit easier to deal with. The Supreme Court observed in the *Nirmal Singh Kahilon v. State of Punjab* case that Article 21 of the Constitution.

of India provides the right to a fair investigation and speedy trial and it is applicable to the accused as well as the victim. Therefore, a victim of the crime has right to a fair investigation and speedy trial.

Changing Judicial Outlook

The administration of criminal justice requires reconciliation between the conflicting values.

V.O. Leary and Ryane once commented on the affairs of the criminal justice system by observing, “Rarely are conflicts openly explored, and even more rarely are they handled successfully. The notion that criminal justice is a system whose parts must effectively articulate is more often employed as a moral aspiration that as something to be applied seriously” (Leary and Ryane, 1967). However, the necessity of keeping a balance has been felt by the courts. In 1934, the great American Supreme Court Judge Mr. Justice Benjamin N. Cardozo observed in “*Synder v. Massachussetts* that, justice, through due to accused, is due to accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep balance true.” (122 U.S 97, 1934).

The Committee on Reforms of Criminal Justice System was of the opinion that the strategies being introduced in the United Kingdom for reforming the criminal justice system to give a better for victims should be considered for adoption in India. Taking



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into account the UK Report of 2001, the Committee made the following recommendations:

1. The victim, and if he/she is dead, his legal representative 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. In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in the court proceedings.
3. The victim has a right to be represented by an advocate of his/her choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer. The victim shall have the right to participate in criminal Trial.
4. The victim shall have the right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall be the court of which an appeal ordinarily lies against the order of conviction of such court.
5. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.
6. Victim compensation is a state obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted.
7. The victim compensation law will provide for the creation of a victim compensation fund to be administered possibly by the Legal Services Authority. They should provide for the scale of compensation in different offences for the guidance of the court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.

The above analysis of the provisions in the Constitutional Law of India, criminal laws and the recommendations of the Committee



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on Reforms of Criminal Justice System has provided the current status of victims of crime in India (Srinivasan and Mathew, 2007).

This misbalance in criminal justice system was felt by the great Indian Supreme Court Judge Mr. Justice V.R. Krishan Iyer. In Rattan Singh v. State of Punjab exposing the apathy of law to a victim of crime, the learned judge, observed. "It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact the victim reparation is till the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature." The judiciary is also favoring restorative justice in the place of earlier punitive justice. The object of traditional administration of justice has been to punish the criminal so as deter him from criminal acts and thereby to protect the society. In this planning retributive, deterrent, preventive, denunciatory and reformative theories of punishment are applied. Now the courts have come to think of restorative justice which concerns with the restoration of victim, offender and community. It keeps into mind the healing i.e, restoration rather than hunting. It is primarily concerned with repairing damage done and restoring harmony. In this process the role of victim becomes very important. Restorative justice is achieved by restitution and compensation to victims of Crime.

Conclusion and suggestive measures

An in-depth consideration of all these facts underscores the vital necessity for the criminal justicesystem, the victim's right to access to justice and fair treatment is a central obligation by governments towards victims of crime. In the twenty-first century, victims will pursue three very different courses of action. Most will seek to exercise their recently granted rights within the formal criminal justice process. Some will explore the possibilities that are opening up in a new approach called restorative justice. A relative few will turn to retaliatory violence to try to get even with the offenders who harmed them. The victims' movement has secured important new rights that pledge information, protection, and opportunities to participate in decision making. As victim seeks more right from criminal justice system agencies, officials will try to defend their privileges and fend off outside interference and imposed costs. Victim advocacy should become institutionalized and professionalized as the options and obligations become more extensive, complicated, and contested.



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Victims should be provided with information about where they can get further assistance including protection, support, legal aid and compensation. In this connection the police, who should take initiative in organizing systematic community-based programme of educating the potential victims, to re-orient their attitudes and approaches towards the victim, and learn to treat them with due consideration, bearing in mind the obligations of the State, stemming principally from its social contract with the citizens to protect their life and property. The court too should re-orient them likewise. What is provided to the citizen by the criminal justice system should not merely be legal justice but social justice ultimately. And social justice can never achieve its fullness without appropriate justice being done to the victim. It is, therefore, high time that we put the highest priority in our scheme of things to victims and potential victims. (Gerald Ford's Message to the Congress, 1975 Cited Diaz, 1985).

Despite we have in our Criminal Justice System, it is not always possible for them to prevent and protect victims of crime. In this context members of community and non-governmental organizations and the mass media can play a significant role in educating the public to prevent becoming victims of various crimes as well as should come forward and provide assistance to victims of crime and safeguarding their Rights.

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