



PROTECTION OF THE VICTIM, VICTIMIZATION AND VICTIMOLOGY OF THE CRIMES IN INDIA

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ABSTRACT

India's criminal justice system is not victim-centric, and the victim's pain, which might be immense, is sometimes disregarded out of misguided compassion for the offender. The study discusses the genesis, evolution, and appraisal of the victim idea, as well as the significance of various codes and laws from the Ancient Hindu Period, the Ancient Muslim Period, the Medieval Period, and the Modern Period. safeguards, safeguards under a variety of laws, including the Indian Constitution of 1950, the Indian Penal Code of 1860, the Criminal Process Code as amended, and the Indian Evidence Act of 1972.

Keywords: Criminal, Process, Evidence, Appraisal, Hindu, Genesis, Justice

1. INTRODUCTION

The legislature and courts in India have been working to establish the guidelines for compensating crime victims. The legislature has accomplished this by establishing both general and specialised statutes. Research in the subject of criminal law shows a consistent shift from protecting individuals' rights to protecting the public's. As if that weren't bad enough, victims of crime may also have to deal with the after-effects financially, including medical bills, lost wages, and mental distress that may last a lifetime. The goal of criminal law is both punishment and rehabilitation of offenders. The victim is a result of criminal activity. Any human who has been harmed physically, emotionally, or monetarily as a consequence of a criminal act, or any institutional body that has been harmed by an individual or authorised person/representative of another entity, qualifies as a victim. In this sense, a victim of crime is someone who has been harmed in some way by criminal action. This might be in the form of bodily pain, emotional harm, or financial loss. Appropriate laws and actions protect, help, retribute, and recompense

victims of crime. However in India, crime victims play just a minor part in the criminal justice process until recently.

Providing redress for wrongs done is fundamental to the administration of justice. Victims' rights may be safeguarded by ensuring that justice is fairly and swiftly administered. Without this system, victims can only watch helplessly while their offenders enjoy the benefits of the law. The criminal justice system has a long history of protecting defendant rights as part of its commitment to provide a fair and impartial trial. It has also given the accused new legal protections and benefits. The humanistic perspective on crime also dominates the administration of criminal justice. It uses all available resources to help rehabilitate and reconcile convicted criminals. A victim of crime's harm, anguish, and suffering at the hands of the perpetrator are not reflected in the criminal justice delivery system with the same level of compassion and care. The welfare of the innocent is largely ignored.

1.1 Origin of Criminal Law

Criminal science, which is the study of criminality, is the theoretical and empirical foundation of criminal law. Criminology, Penology, and Criminal Law all make up what is known as Criminal Science. The fields of criminology and penology study the many theories and approaches to criminal justice, whereas criminal law focuses on the substantive law and procedural rules governing criminal proceedings. The Indian Criminal Code, Special Laws, and municipal laws all fall under the category of "substantive law," whereas "procedural law" refers to the rules that govern how crimes are investigated, tried, and punished, as well as how victims and perpetrators may seek redress. Protecting citizens and the state from those who would break fundamental social standards is what criminal justice is all about. Only through punishing the guilty in line with the law is protection in the contemporary welfare state sought and secured. The accused has been given some fundamental rights and advantages to defend himself and establish his innocence before he is sentenced, so that the innocent person is not mistreated. If the defendant is convicted, he will serve out the necessary prison time and be subject to the prescribed punishment, all with the goal of rehabilitating and rehabilitating him upon his release. Judges have also periodically ordered state officials to provide inmates' access to all required resources and protections against arbitrary harassment and persecution by the police.

1.2 Genesis of Victimology

There has been a worldwide uptick in the interest of laws that compensate victims of crime financially during the last several decades. Compensation, though, is not a novel idea. Instead, the origins of the compensation system may be found in the Germanic common Laws, which date back to the Middle Ages. Human rights, particularly the rights of the victim, may be traced back to Babylonian law. "earliest mention to government recompense for crime victims" may be found in the ancient Babylonian Code of Hammurabi. Known now as Hammurabi's Code, it was enacted by the king of Babylonia. The aforementioned Code mandated trial proof of charges, set

minimum wage standards, and provided protections for personal property. According to the Code, if the brigand is not apprehended, the victim must "give an itemised declaration of his loss in the face of God, and the city and the governor, in whose province and authority the theft was perpetrated, should compensate him for whatever he lost."

1.3 Study of Victimology

The founder of victimology, Benjamin Mendelsohn, categorised victims according to their involvement in crimes. Innocent bystanders, such as young children, are the first kind. Second, a victim who is somewhat to blame. There's always that one third of the population who's just as complicit in the crime as the perpetrator. 4. the more-guilty-than-guilty victim. 5. The one who is most to blame Imaginary Victim, Number Six. The public tends to feel bad for the victim no matter what the category. The "Penal Pair" idea holds that there are often two parties involved in a criminal act: the perpetrator and the victim. The offender may have been able to perpetrate the crime because the victim gave them a chance to do so. Experts in the field of victimology have long been perplexed by the question of whether or not a victim's own actions may be taken into account in determining the severity of an injury, loss, or damage he has sustained, as in the instance of contributory negligence in Tort law. Nevertheless, contemporary victimological research has abandoned the pejorative term "victim precipitation" and come clean on the issue of victims' rights. A victim cannot be refused aid just because of their participation in the crime (more euphemistically termed as "vulnerability in an encounter"). Hans Van Hentig's hypothesis that most crime victims were the "depressive kind," who were an easy target because of their own negligence, holds water.

2. LITERATURE REVIEW

Gupta, Priyanshi & Gupta, Neeraj (2022) The Indian criminal justice system has adopted victim compensation as a fundamental symbolic practise (CJS). Unlike in ancient and mediaeval times, current CJS places the onus of protecting citizens from criminal activity on the states themselves. The victim's rights have been prioritised through the provision of aid and restitution for financial damages sustained as a direct result of the criminal act. There has been widespread support for the implementation of Victim Compensation Schemes (VCS) to compensate crime victims. Section 357A of India's Code of Criminal Procedure codifies its incorporation into the country's CJS. It is the responsibility of each every state under this clause to establish its own VCS. The issue of how well it can be implemented emerges here. The purpose of this study is to compare the VCS of the Indian states of Gujarat, Delhi, Telangana, and Kerala in order to highlight the areas in which they differ from one another and where clarity is needed.

Ashraf, Mohammad & Absar, Absar (2022) Recently, there has been discussion on how to reduce the backlog of pending cases without compromising the integrity of the judicial system. In addition to Plea Bargaining, criminal offences in India may also be compounded. Instead of using the innovative Plea Bargaining approach, which emerged in 2006, the parties involved

have always stuck to the tried-and-true method. With a concise summary of all the key Plea-Bargaining cases, this study examines the judicial perspective on the technique of Plea Bargaining. There are three distinct time periods involved in these cases: before and after the constitutional change. The favourable opinions of the court have been made meaningless by the fact that there is very little understanding of the Plea-Bargaining process among the stake holders, and an excessive reliance on the compounding of offences. The study contends that, despite the favourable reaction from the judicial system, plea bargaining is underutilised, which points to the need for a comprehensive revision of the process.

Chauhan, Sushila & Jain, Neeraj (2022) A nation's morals, logic, and judgement may be inferred from its approach to criminal punishment. A well defined penalty scale paves the way for a society's legal system to remove illegal behaviour via retribution, re-education, and other legitimate means. Nonetheless, laws governing criminal behaviour and incarceration have evolved throughout time. The gradual evolution of this strategy has led to inconsistencies in sentence. The inconsistent decisions and verdicts of the judiciary are the root of the problem. This leads to anomalies in the system and an always-present gulf between what is considered "punishment" and what is really appropriate for a certain offence. This study looks at the inconsistencies in India's judicial system and suggests ways to fix this age-old issue.

Meharia, Akshat (2020) The amount of compensation awarded under the plan must be determined by either the District Legal Service Authority (DLSA) or the State Legal Service Authority (SLSA). However, the plan is not being fully implemented, despite the fact that Section 357A was a necessary law and is advantageous since the victim need not establish his case to collect compensation under this provision. In this study, we examine the difficulties faced by crime victims in India's criminal justice system and the role that Section 357A plays in securing those victims' rights. It goes on to say that the system is being executed incorrectly and that there is a lack of consistency in the statutes of each state. Only if it does not prevent recompense for a real victim does the vetting process of these nations have any justification. It discusses why it's crucial that victims get compensation right once, and how the judicial system plays a part in the process of putting any programme or law into effect. Finally, this article proposes modifications to the Indian criminal justice system that will strengthen victim rights and benefit Indian society as a whole.

Yadav, Mukesh & Thakur, P.S. & Rastogi, Pooja (2014) The Supreme Court of India made the observation not too long ago that no compensation can be adequate nor can it be of any respite for the victim, but because the State has failed in protecting such a serious violation of a victim's fundamental right, the State is duty bound to provide compensation, which may help in the victim's rehabilitation. Although money can't bring back a lost reputation or the dignity that comes with it, it may help ease the financial burden of the situation. Notwithstanding post-Nirbhaya modifications to the Criminal Code in 2013 and the implementation of additional special statute, the number of reported cases of rape and sexual abuse against women and

children in India continues to rise. This article discusses a contemporary perspective on penology and victimology that seeks to strike a balance between the needs of offenders and those of victims and communities. In order to demonstrate that providing reparations and services to those who have survived rape is a constitutionally mandated human rights commitment, many statute provisions and Supreme Court rulings have been examined in depth. Considerations for determining the amount of compensation, a system to expedite the distribution of that pay, and a plan for both short-term and long-term recovery and reintegration, all of which have been examined, as have implementation recommendations.

3. VICTIM, VICTIMIZATION AND VICTIMOLOGY

The afflicted individual is known as the victim. The question of who exactly constitutes a victim of crime was originally explored in "The criminal victim," written by C. Bard and released in 1979. In an effort to provide a picture of what it's like for crime victims, "Bared and Surgery" makes the claim that everyone who has been the target of an act of personal violence at the hands of another has been forced to face an unjust reality. The victim might have been a victim of murder, rape, robbery, burglary, vehicle theft, or a pocket/purse snatching. Recent events have rattled the globe to its roots, yet the mental and physical assaults suffered by the victims remain the same. Victimology refers to the branch of law that deals specifically with victims. A relatively new branch of criminal law is victimology. The law itself injures the innocent victim in addition to the wrongdoer's illegal behaviour. As a field of study, victimology³⁴ has advanced but has not yet accomplished its goals. Crime and the criminal justice system have gained attention, but victims' voices have not been adequately represented. There has been a steady increase in both the total number of victims and the variety of victims. Around 1.6 million people are died at an early age as a result of violence, and approximately 1 billion people are affected annually. Each year, up to a million girls and women are sold into prostitution. Each victim has a group of loved ones, whether large or tiny, that also takes a severe hit. There has to be an outlet for these people's opinions. There are many types of victims: those who have been publicly identified, those who have been anonymously reported, victims of crime, victims of terrorism, victims of war crime, victims of abuse of power, victims of sexual offences, victims of accidental injuries, victims of social injustices, and so on. The victims, like the criminals, may be found in every sector of society. The time has come when solving victim issues is essential for achieving societal harmony. As a result, efforts have gradually turned away from focusing on offender care and towards victim advocacy, aid, rehabilitation, and compensation.

Victimology, in its most basic definition, is the study of victims of crime. This concept has just recently emerged. Two criminologists, Mendelsohn and Von Henting, in the 1940s and 1950s, are credited with the development of this hypothesis. These researchers, known as "Victimologists," set out to learn more about the experiences and perspectives of crime victims, focusing particularly on those who had lost loved ones to violent crime. The victim had been denied his rights under today's legal system. Modern criminologists and legislation have

forgotten the work of Mendalohn and Von Henting, who in the years after World War II worked on the same issue—putting the victim in his or her proper context. Our laws centre on the accused. The victim has no home here. So, it was criminologists who, via their writings and research, advanced these beliefs and sought to have the victim supplanted.

3.1 Origin, Development and Evolution of the Concept of the Victim

The use of the legal system to ensure victims' rights are upheld is something that may be encouraged in certain jurisdictions. Some courts recognise victims' "legal standing" to pursue justice. Legal standing for crime victims is not inherent but must be established by legislation or judicial judgement since a victim is not a "party" to the case, whose status is confined to the defendant and the prosecuting authority (such as the state). Victims may lack standing in certain jurisdictions, yet prosecutors or other officials may be able to pursue enforcement of victim rights in court. Several countries provide additional restricted judicial tools for enforcement outside of general "standing" to claim rights. A victim may have limited recourse, such as filing for a writ of mandamus to force an agency to follow the law. Some states have established agencies to accept, investigate, and seek to settle complaints from crime victims. There could be an ombudsman or state victim advocate in charge of this in certain places, while in others it might be a board or committee. According to data gathered from those states, the vast majority of calls from victims of crime are addressed by giving information or referrals. The official complaint and inquiry phases, however, are reached by a sizable minority. In certain jurisdictions, the investigative body may also have the authority to take disciplinary action against the erring organisation or official. In several victim's bills of rights, it is stated that if a victim's rights are violated, they have no legal recourse against the government. However, the majority of these statutes state explicitly that a defendant cannot use a violation of a victim's rights as a basis for an appeal.

3.2 Evolution of Criminal Law

An atmosphere of tranquilly is essential to the flourishing of any community. There must be zero crimes in this society, which is obviously not feasible. Criminal activity has been around since prehistoric times. Crime trends fluctuate throughout time and space, and even between different regions and countries. Below is a stage-by-stage breakdown of evolution:

3.2.1 The Primitive Period

Most scholars agree that the patriarchal family was the first social unit in human history. Throughout the centuries, loosely connected groupings of families evolved into clans and tribes. Primitive man didn't have any ethical reservations about putting others in jail. As no one had yet conceived of society as an organisation with the power to regulate individual behaviour, all punishments had to be meted out one by one, with each individual responsible for his or her own safety, freedom, and possessions. The only criminal law that amounted to anything more than

individual vendetta was the law of self-help. In prehistoric communities, such transgressions were kept strictly between the perpetrator and the victim. Others at the time claimed to be on a personal crusade for retribution. Spiritualistic or demonological criminogenesis dominated the criminology of preliterate societies, and the inevitable corollary of this supermental faith was that there was no explanation other than an all-powerful spirit could do anything it wanted to do. This may have been the basis for the arbitrary and generally inhuman nature of violations committed during this time period.

3.2.2 Medieval Period

Blood feuds and other forms of organised retaliation stemmed from the widespread adoption of clan or family responsibility for resolving interpersonal grievances in prehistoric societies. It exists inside the realm of retribution. A definite limit on individual revenge was established by these novel types of retribution. During the end of the Middle Ages, there was a return to more severe punishments. The era's criminalization and the ensuing penology were the unsung heroines of feudalism and colonial expansion. While feudalism loomed over Europe from the ninth through the fifteenth centuries, societal conflicts were minimal. Relationships between lord and serf were restrained, regulated, and defined in some way. The feudal lord may acquire more serfs and sell his existing ones, but he was forbidden by law from killing his serfs. It was always a goal of the ruling class to further their economic looting of the peasants and other oppressed social strata as feudal relations evolved. Those who broke the rules or deviated from the norm were met with harsh penalties since that was the prevailing social ideology. The political-legal framework of the time was designed to make feudalism a victim class, while economic need and colonial ambition drove the era's penology. "Galley ship" exile to penal colonies, often known as "Transportation of life," and other precursors to modern-day incarceration emerged during this time period.

3.3 Nature and Kinds of victimization

3.3.1 Victimization

Wolfgang, while analysing homicides in Philadelphia, established perhaps the first hypothesis to explain victimhood. According to the hypothesis of victim precipitation, some victims are responsible for starting the fight that ultimately results in their own injuries or deaths. The concept that victims may potentially have a part in the criminal activity was first suggested in this research, even though it only included that one form of crime.

The victimisation process is complex, including many factors. The first component (often referred to as "primary victimisation") includes any contact between the offender and "victim" during the commission of the offence, as well as any consequences resulting from that contact or the offence itself. The second component is "the victim's" reaction to the offence, which includes the victim's view of him or herself as a consequence of the incident and any formal response to

the crime. As a consequence of this reaction, 'the victim' may have subsequent contacts with others, including with different criminal justice authorities, which make up the third component. Secondary victimisation refers to situations when the victim experiences further harm as a result of this contact.

3.3.2 Primary victimization

Beginning with the 'primary victimisation' phase, it may be useful to differentiate between the 'effects' or repercussions that are known to emerge from various types of crime and the 'impact' on victims. For victims of some crimes, the physical repercussions might include not just anguish and distress, but also the loss of motor skills, disability, and even the possibility of long-term scarring. The financial consequences of many crimes may be either direct or indirect. There are frequently unanticipated expenses associated with crime, such as the price of medical care or legal representation, the loss of income from having to deal with the aftermath of the crime, or the possibility of a person's future earning potential being permanently altered. Depression, worry, and terror are just some of the psychological and emotional impacts that victims of certain crimes may experience.

3.3.3 Secondary victimization

When people and organisations respond to a crime victim, the victim may end up being victimised again, even if they weren't directly affected by the crime itself. The criminal justice system is the most prominent example of institutionalised secondary victimisation. Refusing to acknowledge the criminal victimisation of members of certain ethnic groups, socioeconomic levels, or genders might amount to a full rejection of human rights. That might happen because of the police or other criminal justice workers' improper behaviour. Subtly, secondary victimisation may result from the whole criminal justice process, beginning with the investigation and continuing through prosecution choices, the trial, and the offender's release. It may be difficult to strike a fair balance between the rights of the victim and those of the accused or the offender, which can lead to the victim being victimised again via the criminal justice system. As a rule, however, this happens because those in charge of regulating the criminal justice system do not consider the victim's point of view.

3.3.4 Re – Victimization

There is no uniform distribution of crime. A recent estimate using data from the British Crime Survey found that just 4% of victims accounted for 44% of all crime. This has been shown by (Farrell and Pease, 2001). The percentage of this source's victims who fall victim to a similar crime within a year after the first incident is shown in the table below. The victim's proximity to or association with the criminal may be to blame for certain instances of victimisation. Statistics show that battered wives are more likely to stay in abusive relationships with their abusers. The same holds true for sexual assaults. Part of the high rate of recidivism in property crimes may be

attributed to the victim's geographic location or the place where they choose to make their home. The likelihood of being victimised again increases when a person lives in an unprotected dwelling adjacent to a high population density of prospective criminals. Victims who go to the police and the legal system only to be victimised again lose faith in such institutions when they see that they were not able to provide any relief. The psychological toll of seeing a crime unfold a second time is far higher.

4. PROTECTION OF THE VICTIM OF THE CRIMES IN INDIA LEGISLATIVE FRAMEWORK

Many crimes in most nations go undetected for a variety of reasons, therefore the numbers recorded by the government are simply the tip of the iceberg. Domestic abuse, for example, is seldom reported because of its evident stigma. Offenses involving sexual assault or sexual harassment are also substantially underreported even when they occur outside of the home. According to current estimates from the United Nations-sponsored International Crime Victimization Surveys (ICVS), one in five persons will be the victim of a common crime each year, with some of these individuals becoming repeat victims. There are more incidents of violence against women than males. Women in Africa and Latin America are about twice as likely to be assaulted than women in Europe and Asia. More women than males are victims of violence in Africa, South America, and Asia. The annual rate of violent crime in big cities in Latin America and Africa is 15–20%, which is 50% more than in wealthy nations. Very wealthy countries like Switzerland, Ireland, and Iceland sit with less prosperous countries on the ICVS's top 10 list of countries with the highest crime rates (2004). (Estonia, Mexico). This contradicts the widely held view that economic hardship is at the heart of the crime problem. Except for Ireland, most of the nations with high crime rates are heavily urbanised. In India, crimes are classified as either "cognizable" or "non-cognizable" under the country's Code of Criminal Process. An officer may make an arrest for a cognizable offence even without a warrant from a judge. Law enforcement officials cannot make an arrest for a non-cognizable offence without a warrant from a judge. There were 51.5 million crimes reported in 2019, 32.2 million under the Indian Criminal Code and 19.4 million under Special and Local Laws. An rise from 383.5 in 2018 to 385.5 in 2019²⁷⁷ indicates a yearly increase in the number of reported crimes of 1.6% (50,7 lakh cases). Violent crimes such as murder, abduction, assault, and death by carelessness made up almost a fifth of all reported crime (10.5 lakh).

Both the legislature and the courts in India have made efforts to create the requisite regulatory principles under which compensation might be granted to victims of crime. The criminal justice system in India was inspired by the British system. Separation of powers among the legislative, executive, and judicial branches is well-defined. There is a free press and a functioning judiciary. Several Supreme Court rulings have reaffirmed the importance of focusing on crime prevention as well as treatment and rehabilitation for offenders in India's penal philosophy. The criminal justice system treats victims as mere witnesses and assigns all responsibility for prosecuting and

punishing the perpetrators to the state. The Indian Constitution divides the ability to make laws into three categories: the Union List, the State List, and the Concurrent List, with the Union List including powers specifically delegated to Parliament, while the other two lists are for state and local governments respectively. Only the Union Parliament has the authority to enact legislation under the Constitution's Union List, while only the state legislatures have that authority under the State List. However, both the Parliament and the state legislatures have authority to enact legislation under the Constitution's Concurrent List. This has been accomplished by the legislature via the enactment of General Laws and Special Laws.

4.1 Legislative Protection:

The Indian government has not bothered to draught a legal definition for "Victim of Crime," and the Indian judicial system is likely to take this lack of definition as read. The phrase's etymological roots imply that it means or will include:

- Spouses and children of victims; parents, foster parents, siblings, guardians, or other custodians of underage victims, victims who are mentally or physically incapable, or victims of murder;
- and anybody else who has suffered as a direct consequence of a crime.

Consequently, when taken as a whole, these Articles cover pretty much everything that should have been included in the phrase's definition. The definition of the term "compensation" is "anything that compensates or is provided to compensate (for); a counterbalancing characteristic or aspect; amends, recompense," with the financial connotation referring to monetary compensation for damage or loss, or for property that has been seized. The term "Compensation to the Victims" refers to monetary or other forms of assistance offered to victims as a kind of restitution. It's important to keep in mind that the main point of compensation is to rectify the wrong done to the victim or the legal representative of the dead. Thus, the term "compensation" almost often refers to monetary damages, which are broken down into two categories: "pecuniary loss" and "non-pecuniary loss."

5. CONCLUSION

There isn't a lot of focus on victim issues and rights violations while they're playing that job. The Justice Millimath Committee's proposals for speeding up the judicial system's processing of victim compensation claims are essential. There is no mechanism for appeal when compensation is rejected or suggested, and Section 372 of the Criminal Process Code is silent on the matter when the compensation has not yet been given in full. The Supreme Court of India and the different High Courts have taken the initiative in protecting victims' rights by compensating them and have provided several directions to the Sub-ordinate Courts on how to do so. It is clear that the appelland courts in India have a responsibility to reduce the substantive sentence and shall grant enhanced compensation to the victims because the legislature and judiciary have

demonstrated a strong interest in promoting and protecting the legal rights of the victim despite lapses on the part of the executive. The Supreme Court's directives holding the state and its agencies responsible for victim rights violations must be carried out in their entirety.

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