

Crime Victims and Victimology

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Abstract

Victimology is the scientific study of crime victims and the psychological aftermath of the victim's experience. This paper focuses on the theory of victimology from the perspective of various jurists including Mendelsohn, Hans von Hentig and Marvin Wolfgang. Victimology is a division of the broader field of criminology and hence, victimology with reference to criminology is explained. The key concepts of Victimology in general such as the definition of Victim, Crime Victim, Victimogenesis, Victim Precipitation, Victim rights etc.

The paper also envelops the nature and extent of victimization and the way is it perceived throughout the world. The victim rights in International Law with reference to Declaration of 1985 and United Nations Draft of 2006 is elaborated. Further, the Indian laws in context with the precedents relating to victim compensation are also explained and finally how the laws in India are inadequate and how laws in India are just confined to compensation to the victim are elaborated.

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Introduction

The surfacing of the study of Victimology started back in 1937 when Benjamin Mendelsohn initiated the study of “the science of the victim”. Victimology, the term that has been emerged as a part of criminology, is about the scientific study of the victims of crime and the psychological aftermath of the experience that they encountered. Of late, our law has become more focused on the “offenders” as a whole and what we tend to forget is the condition of the victims after a crime has happened, including the psychological effects on the victims. Victimology studies this and helps us ascertain the conditions of the victims in a society. It also helps us determine the different facets of offenders.

Benjamin Mendelsohn, Hans von Hentig and Marvin Wolfgang are considered as the founders of Victimology. Benjamin Mendelsohn derived the word ‘victimology’ from the latin word ‘victima’ and Greek word ‘logos’. In Victimology, the main alert area is the state of victims, their relationship with the criminal justice system and the aspects of victimization. Victimology, thus, is the study of the etiology of victimization, its consequences, how the criminal justice system helps out victims and it also interprets the conditions of the victims in the society. Victimology as a field of study began in 1950s with the work of Hentig and Mendelsohn. Interested in understanding crime, they examined the relationship between victims and the offenders. Their early work was especially focused around victim action and weaknesses. These scholars were of the view that victims had a role to play in victimization. In its infancy, work produced by victimologists was scant and overshadowed by the coming out of Criminology. As such, little recognition was given either to the field of Victimology or the scholars who studied crime victims. It was not until 1970s that victimology was formally recognized as a subfield of criminology. One of the important milestones in the history of Victimology was the establishment of the World Society of Victimology in 1979 by criminologist Hans Schneider. It is now a not-for-profit, nongovernmental organization with Special Category consultative status with the Economic and Social Council (ECOSOC) of the United Nations and the Council of Europe.

Victimology as the word suggests is the study of victims. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 defines the expression “victim of crime” as person(s) who, individually or collectively, have suffered harm, including physical and mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of

criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

The victim as defined by Section 2 (wa) of Code of Criminal Procedure is as follows:

“Victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.

Victims could be classified into:

1. Primary or Direct Victims
2. Secondary or Indirect Victims

Primary Victims are those who had the first-hand experience of crime and secondary are those who are indirectly or in the course of action subsequently affected, such as the victim’s family.

Mendelsohn had also categorized victims into six²:

1. Completely innocent victims
2. Victims with minor guilt
3. Voluntary Victim
4. Victim more guilty than offender
5. Victim who has lone guilt
6. Imaginary Victim

The classification’s focal point is the ‘behaviour’ of victims. Earlier, victims had a good role to play in order to punish the offenders. They were given liberate rights to decide the punishment. Then with the Rule of Law, Modern Justice System made specific changes regarding the same and the law began to focus on the ‘offender’ as a whole. Hence, the offenders became the center point of concentration of law and subsequently, victims somehow were not taken care of. Generally the whole attention is paid by the crime investigators and the Courts on the criminals. They are concerned with the victim of the crime only for detention of the crime and to substantiate or falsify the prosecution story. Criminology is mainly concerned with the criminals, their social background, the causes of criminality, the methods of punishment and crime prevention etc. Little attention has been made on the victim either as instigator of crime or as deserving protection of administration

² H.J. Schneider, *Victimological developments in the world during the past few decades I: A study of comparative victimology*, 45(4) *International Journal of Offender Therapy and Comparative Criminology* 449, 449-468 (2001).

and society for rehabilitation in an honourable and dignified way. *Payne v. Tennessee*³ was a United States Supreme Court case (the first case of its kind) which held that testimony in the form of a victim impact statement is admissible during the sentencing phase of a trial.

Penal Couple: the Relation between Criminal and Victim

Mendelsohn, a Romanian barrister deserves to be noted for identifying first of all the victim-doer relationship which he termed as the “penal couple”. He did his research with bio-psycho-social point of view, studied some cases of rape and some other offences against morality in which he noted that the resistance of the victim may be lessened by the following circumstances-

1. A familiar, authoritative or hierarchical relation existing between the accused and the victim.
2. The volcanic temperament of the victim, which may obscure reasoning faculty.
3. The liberative social surroundings of the victim.
4. The superiority of the social milieu of the accused in relation to that of the victim.

He has stated as to how he started to elaborate the doctrine of victimology while preparing for the trial of Stephen Codreanu in 1945. The accused, after divorce continued to live with his wife. He was invited on the first and fifteenth of every month by his wife under the pretext to prepare lessons with their little daughter. He used to dine with the family and the wife provided comfort at night. After taking all his money, he was turned out from the house the next morning and her lover, a young soldier ridiculed him. He therefore, killed his wife and her lover with premeditation. From the facts we could easily infer that he would have never killed his wife but for that behaviour.⁴

Hentig and Ellenberger consider the victim as a subject-matter of criminology. B. Mendelsohn considers it as separate science. According to Dutch criminologist, Nagel, the study of victim should necessarily be a part of criminology.⁵

Hans Von Hentig's work, 'The Criminal and His Victim' published in America, 1948 attracted the attention towards the “victim-doer” relationship in which a criminal by taking advantage of his victim committed the crime. Thus the poverty and ignorance breeds a peculiar kind of fraud, larceny from the sleeping of intoxicated person is easy; the criminals prefer people who often suffers loss and cannot breathe a word of it; the lingo of the criminal indicates the vulnerability of some kinds of people to become victims, in many burglaries and

³ 501 US 808 (1991).

⁴ B. Mendelsohn, *The Origin of Victimology*, 3 *Excerpta Criminologica* 239, 239-241 (May-June 1963).

⁵ W.H. Nagel, *The Notion of Victimology and Criminology*, 3 *Excerpta Criminologica* 245, 245-246 (May-June 1963).

arson cases, the victims are really perpetrators and winners and more serious being the burglaries staged by the victims themselves who are merchants of jewellery, furs, silks and similar valuables and hold-ups arranged by the banks in default. Victimology is more apparent in murder and in rape or sex assaults but Hentig does not present a clear image of victim in these personal crimes. The female is frequent victim of murder and still more of sexual assault. Certain types of victims are so weak and vulnerable so as to be easily preyed by the criminals e.g., young, old, females, mentally challenged, intoxicated, immigrants, a dull normal person, members of the minority group. Some of the victims are instigators by their attitudes, personalities and desires.

Taking into account psychological aspects of the doer-victim relationship, he described some victims as real instigators. In some cases the victim may desire injuries and in some cases even lustfully longed for someone or something. In some cases as a price of greater pain, the detrimental effect may come due to concurrent effort of the victims and the detriment would not come without instigation or provocation of victims.

Victimization and its effects

The victim is the forgotten man of our criminal justice system. He sets the criminal law in motion but then goes into oblivion. Crime affects the individual victims and their families. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances.

Following are the brief description of effects on crime victims:

1. **Physical** - Victims of crime of violence suffer physical injury ranging from minor to fatal injuries. The physical injury is the worst kind of pain that not only hurts externally but also leaves scars internally. The victim has the right to defend himself. In some cases, the right extends even to the extent of causing death. Section 96 to 102 and 106 of Indian Penal Code provides the right of private defence.
2. **Financial** - Victims of financial loss are those who suffer loss financially due to the nature of the offences committed. The offences against property are the offences in which victim sustain the loss of the property. In offences involving violence and offences against human body also victims suffer financial losses. Thus in a riot, there happens to be enormous looting and destruction of immovable and movable property both. In offences against human body, the victims who become physically handicapped sometimes become incapable of doing employment or self-employment. Besides, they also incur expenses for their medical treatment and high cost of litigation. When the victims suffer fatal injuries, their families have to bear the

expense in funeral or burial and follow on social traditions. The dependants of an earning member in the family who loses his life are more vulnerable. The financial stringency and the poverty in such situation bring mental agony and traumatize the entire family.

3. Psychological - The mental torment and trauma suffered by the effect of crime may be such as no reparation can make it up. The crimes against violence, sometimes, affect victim as to permanent incapacitating them to behave like a responsible persons of the society and they out of feeling of revenge become hardened criminals. There are illustrations when not only the immediate affected victims turn into criminals but their future generations also become involved in family-feuds. Similarly, the rape tarnishes the whole personality of a ravished woman and she either has to console herself with the circumstances or may take extreme steps such as suicide or she may become bandit in the revenge. Brutalization of the children results is such act that thousands of them, as the researches show, that “little victims grow into big terrorists”.⁶

Hypothesis

1. Victim Precipitation Theory - The theory with a negative outlook towards the victim holds the victim’s own contribution for his victimization. This theory has been subjected to criticism and often disregarded as a theory of victimology being anti-victim. Wolfgang, has said it is the ‘victim facilitation’ not the ‘victim blaming’ that makes the victim because of victim interactions’ vulnerable to crime and therefore opposed this theory. According to Schater, the lack of care and vigil among the victims are the factors that contribute substantially to the victimization.
2. Three Model Theory - According to Benjamin and Mendelsohn, there may be three conditions for precipitating the crime, the first one being the victim’s presence at the wrong place at a wrong time, secondly the factors and the life style which attract and make the fertile ground for crime and finally, the pre- disposing factors of victimization e.g., poverty, childhood, minority, unemployment, etc.
3. Routine Activities Theory - Cohen and Felson who propounded this theory describe the occurrence of crime on satisfying of three conditions; a suitable target, a motivated criminal and no security, parental care or guardianship.

Right of victims in International law

⁶V.N. RAJAN, VICTIMOLOGY IN INDIA 175(1st ed. 1995).

In order to curb the issue of victimization and to reduce crime victims, various organizations all over the world have come up with one or the another measure. The promulgated various rights to victims including the right to participate in the legal proceedings to receiving compensation for the injuries and damages, such as the French legal system allows all parties who suffered injury to implead in legal proceedings. The United Nations handbook on justice for Victim has given a comprehensive victim assistance scheme for the rehabilitation of victims of crime. The two of the major Declarations/Drafts prepared by the World Society of Victimology are as follows:

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985

The General Assembly adopted in November 1985, 'U.N. Declaration of Basic Principle of Justice for Victims of Crime and Abuse of Power.' The draft was proposed and prepared by the World Society of Victimology. It affirmed the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and of abuse of power. It further called upon the Member States to take necessary steps to give effect to the provision contained in the Declaration and, in order to curtail victimization. After this Declaration, considerable progress has been made by many nations including India in safeguarding the rights of victims.

United Nations Draft Convention, 2006

A U.N. Convention on Justice and Support for Victims of Crime and Abuse of Power was held on 14th November, 2006. A draft was developed by the World Society of Victimology in partnership with the International Victimology Institute. The draft convention is subject to ratification by the States. This was drafted keeping in mind that even after the 1985 declaration, millions of people, including women and children, throughout the world were still suffering harm as a result of crime, abuse of power and terrorism, and that the rights of these victims have not been adequately recognized. The general considerations of the draft included Access to Justice and Fair Treatment (Article 5), Protection of victims, witnesses and experts (Article 6), Medical, Psychological and Social Assistance to victims (Article 8) and Adequate Compensation (Article 11).

Victim Rights, Compensation and Victimology in India

Setting the Law in Motion

The victim or any other person sets the law in motion by filing an F.I.R. under Section 154 of Code of Criminal Procedure or by filing a complaint before the Magistrate under Section 200. The victim has the right to attend the proceedings during bail application, investigation, inquiry, trial and thereafter at the stage of sentencing, parole, etc. By it, the harm to the victim and his interest both are recognized.⁷

Right to know where Investigation not to be done

Where F.I.R. is lodged, the investigation is started by the police and in case of a report of a non-cognizable offence investigation cannot be started by the police without the order of the Magistrate having power to try such case or commit the case for trial. In case of a cognizable offence where the information is given against any person by name and the case is not of a serious nature, the officer in charge of Police Station need not proceed in person or depute a subordinate officer to make an investigation on the spot. If it appears to be officer-in-charge of police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. In both the cases, the officer-in-charge of the police station shall state in his report to the Magistrate the reasons for it and in the latter case, he shall also forthwith notify to the informant, if any, in such manner, as may be prescribed by the State Government, the facts of not investigation of the case. Thus, the informant has been given the right to know that the case shall not be investigated by the police.

Hearing of Complainant when complaint to the Magistrate

The right has also been given to file a complaint before the Magistrate. A Magistrate taking cognizance of an offence on complaint shall examine the complainant and the witnesses present.

Engagement of lawyer by the victim

Under Section 301(2) a private person which includes a victim is entitled to instruct a pleader as prosecutor in any Court. If it is so, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution.

Legal aid

Section 12 of The National Legal Service Authority Act, 1987 enshrines the principle of free legal aid. It states that every person who has to file or defend a case shall be entitled to legal services under this Act if that person is a member of Scheduled Caste or Scheduled Tribe, A victim of trafficking, a woman or a child, a mentally ill or otherwise disable person, an industrial workman, a victim of mass disaster, a person in custody of protective home within

⁷DR. S.S. SRIVASTAVA, CRIMINOLOGY, PENOLOGY AND VICTIMOLOGY 649-650 (5th ed. 2017).

the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 and individuals in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

Protection of Rape Victims

Victims have been given certain statutory and judicial protection and rights. Under Section 154 of Cr.P.C by lodging an F.I.R, the criminal law is set in motion regarding the alleged offence. It is an important document on the basis of which investigation proceeds in a criminal case and it is used to support or contradict evidence of informant.⁸

In *State of Himachal Pradesh v. Prem Singh*,⁹ the Supreme Court has held that the delay in lodging F.I.R in case of sexual assault cannot be equated with the case involving other offences. There are several matters that weigh the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint and in such cases of sexual assault, the victim's psychological and mental torment should definitely be considered.

Indian Judiciary and Victim Compensation

Indian laws only have meagre ways of awarding compensation to the victims. The provisions involving the compensation to victims of crime are enclosed in sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359 and 250 of the Code of Criminal Procedure, 1973. Constitution of India also provides for certain safeguards to the victim of crime. Article 14 and 21 of the Constitution supports the argument. Section 5 of Probation of Offenders Act, 1958 states that the court may if thinks fit at the time of release of the offender may order payment of reasonable compensation to victims. The amount ordered to be paid can be recovered as fine. Under Section 5 of the Motor Vehicles Act, 1988 the victims of motor vehicle accident or their legal representatives are entitled to claim compensation from the offender.

The higher judiciary in India was always keen in assuring compensation to the victims of crime. In *Rudul Shaw v. State of Bihar*,¹⁰ the Supreme Court observed that a person is entitled to compensation for the loss or injury caused by the offence and it includes wife, husband, parents and children of the victims. Rudul Shaw's case is a landmark judgment in the jurisprudence of state liability. It is considered particularly significant as it led to the emergence of compensatory jurisprudence for the violation of fundamental rights under the

⁸Damodar Prasad v. State, AIR 1972 SC 629.

⁹2009 Cr LJ 789 (SC).

¹⁰AIR 1983 SC 1086.

Constitution. It is noteworthy in this context that there is no express provision for awarding compensation in the text of the Indian Constitution, and that this judgment was on the basis of the Court's interpretation of the extent of its remedial powers. This was the first case since the inception of the Supreme Court that awarded monetary compensation to a person for the violation of his fundamental rights guaranteed under the Constitution. The grant of such monetary compensation was in addition, and not to the exclusion, to the right of the aggrieved person to bring an action for damages in civil law or in tort. Following this case, the Supreme Court awarded compensation in several cases. In the subsequent early cases in which this remedy was considered, the Court held that compensation would be awarded only in 'appropriate cases' which seemed to primarily involve life and liberty rights and were mostly cases relating to illegal detention and unlawful deaths. Nonetheless in later cases, it became clear that the scope had become significantly wider. Since economic and social rights are often considered by the Supreme Court under the ambit of Article 21 of the Constitution (the right to life which is a fundamental right), compensation as a constitutional remedy may be available for violations of these rights. In another case¹¹ wherein a Member of Legislative Assembly was maliciously and deliberately arrested and detained by the police in order to prevent him from attending the assembly session, the Court observed that the malicious intention of the arrest and detention is not washed away by his being set free later and hence ordered a compensation of Rs. 50,000 to the petitioner for the violation of his legal and constitutional rights. In *State of Andhra Pradesh v. Challa Ramakrishna Reddy*,¹² the Supreme Court while affirming the judgment of the Andhra Pradesh High Court which awarded compensation to the survivor of a bomb attack in police custody which killed the head of the family observed as under- "so far as Fundamental Rights and human rights or human dignity are concerned, the law has marched ahead like a Pegasus but the Government attitude continues to be conservative with regard to compensation to the affected victims and it tries to defend its action or the tortuous action of its officers by raising the plea of immunity for sovereign act or acts of State, which must fail".

Conclusion

In the Modern Criminal Justice System, mainstream victimology continues to focus solely on the study of crime victims. This emphasis has resulted in an increased awareness and understanding of not only victims of crime, but also has impacted the way crime is measured and also the role that victims play. Also, the society as a whole has a moral responsibility

¹¹Bhim Singh v. State of Jammu and Kashmir, AIR 1986 SC 494.

¹²(2000) 5 SCC 712.

because the crime is a result of certain undesired conditions existing in the society. If the State fails to remove these conditions from the society, it is bound to compensate. Although the laws are still feeble and needs a strapping hold up in order to help the victims to cope up with what has happened to them and thus, implementing more stringent laws with regard to the compensation is the need of the hour.

Every crime produces a victim. Crime rate is growing at a rapid pace in India especially in organized crimes such as drug trafficking, gun culture, money laundering, murder for lease, extortion, fraud, and human trafficking. As per survey, crime against women is being reported every two minutes in India. The data highlights the urgent need to ensure proper law and order situation in the country and also, schemes for victim compensation. Although a silver lining could be seen in the recent changes made to Code of Criminal Procedure, 1973 and also in the judicial response - there need to be enforcement of more stringent laws for compensation as mere forgiveness to the criminal would do no good. Forgiveness has no part in absolving a criminal of his crime but compensation to an extent plays a vital role in relieving oneself of the burden of being a victim.