CHAPTER III
PROBLEMS OF VICTIMS UNDER THE PRESENT INDIAN CRIMINAL JUSTICE SYSTEM

Victimology as a separate discipline, deals with the study of problems of victims of crime and their right to claim compensation, which includes rehabilitation and restitution from the offenders or from the State. The traditional concept of Criminal Justice System as applicable in India, connotes legislation of penal law by the State, enforcement of the law by the law enforcement agencies of the State and trial of the accused by the Court. But, it does not comprehend the duty of the State to alienate the suffering of victims of crime and or their family member’s for the loss of life or mental agony or injury suffered on account of commission of the offence by the offender.

(I) Victimization of the victims-

The victimization or in other words the agony and trauma of the victims of crime are two-fold. Firstly, at the time of the commission of the offence by the offender and its immediate consequences and secondly the victimization, which takes during the legal proceedings right from the stage of investigation till the conclusion of the trial of the accused due to lack of approach and insensitive attitude of those responsible for implementing the Criminal Justice System.
(a) Primary victimization-

As stated above, the commission of the offence brings about various problems for the victims. Besides the physical injury, it causes anxiety, mental stress, trauma and financial burden in particular in case of death of the earning member of the family, which can be termed as “Primary victimization”.

The financial impact of a crime can costs in the following ways:
(i) Repairing property or replacing possessions in cases where damage had been caused to the property,
(ii) Installing security measures,
(ii) Accessing health services,
(iv) Participating in the criminal justice process, for example, attending the trial, appeal and revision etc by the accused,
(v) Obtaining professional counselling to come to terms with the emotional impact of the crime,
(vi) Taking time off work or from other income-generating activities for proceedings against the accused.
(vii) Funeral or burial expenses.

This victimization is the worst for child victims and the victims of sexual offences. The victims of sexual offences face a life long trauma and agony as the offence of rape leaves a permanent mental scare on them, though the physical scars may heal up very soon. Many victims of
sexual offences also suffer from Post-traumatic stress disorder as a result of helplessness, which is also recognized as a disorder by the World Health Organization.

The shock waves from victimization, touches not only the victim but also the victim's immediate family members and relatives, neighbours and even acquaintances. This holds true for the emotional as well as the financial consequences, and the effects of the same can continue for years or even a lifetime. In the case of genocide, child abuse, exposure to violence and abuse of power, the effects can be passed on from one generation to the next.

The riot victims are a leading example of the effect a crime passing from generation to generation. While this is to be expected in connection with offences such as murder, torture and rape, the crimes of assault, robbery and burglary can also leave lasting feelings of powerlessness, insecurity anger and fear. Not only individuals but also communities and organizations can be victimized, leading to their deterioration over time as confidence reduces, fear increases and the economic burden of victimization becomes insupportable due to offences such as riots.

The effect of victimization strikes particularly hard at the poor, the powerless, the disabled and the socially backward. Those already affected by prior victimization are
particularly susceptible to subsequent victimization by the same or other forms of crime.

(b) Secondary victimization-

The term "Secondary victimization" can be well defined as the victimization, which is the result of the justice delivery system and the conduct and insensitive approach of those, who manage it including the law enforcement agencies, Courts and prosecuting department of the State etc.

The United Nations Office for Drug control and Crime Prevention in its handbook\(^1\) dealt with "secondary victimization" and described it in the following words\(^2\)

Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. Institutionalized secondary victimization is most apparent within the Criminal Justice System. At times, it may amount to a complete denial of human rights to victims from particular cultural groups, classes or a particular gender, through a refusal to recognize their experience as criminal victimization. It may result from intrusive or inappropriate conduct by police or other criminal justice personnel. More subtly, the whole process of criminal investigation and trial may cause secondary victimization, from investigation, through decisions on whether or not to prosecute,

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\(^1\) Hand book issued in the year 1999 by the Centre for International Crime Prevention for implementation of the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

\(^2\) Chapter I page 9 of the handbook.
the trial itself and the sentencing of the offender, to his or her eventual release. Secondary victimization through the process of criminal justice may occur because of difficulties in balancing the rights of the victim against the rights of the accused or the offender. More normally, however, it occurs because those responsible for ordering criminal justice processes and procedures do so without taking into account the perspective of the victim. Other agencies that come into contact with the victim may cause secondary victimization. Hospital policies and procedures may restrict relatives' access to the body of a loved one. The hurried schedule of the emergency room may intrude on the privacy of a sexual assault victim or offend his or her sense of dignity. School personnel may discount a child's disclosure of abuse. Doctors may not acknowledge signs of spouse abuse. Spiritual leaders may attempt to guide victims into paths forgiveness or accommodation before they are ready or against their wishes. Intrusive or inappropriate investigation and filming, photography and reporting by the media are also factors. Even agencies set up to help the victims of crime, such as victim services, victim compensation systems, refugee services and mental health institutions may have some policies and procedures that lead to secondary victimization. The attitude of individuals is also important. Some people with whom the victim has contact (e.g. family, friends and colleagues) may wish to distance themselves from the distress of the crime by blaming the victim for what has occurred. They may view the victim's behaviour as having contributed to, or even caused, the victimization. They may deny the impact of the crime on the victim by urging him or her to forget about the crime and continue with his or her life. Families can be a particularly powerful influence in this respect.
So far as secondary victimization in India is concerned, as stated hereinbefore the Indian Criminal Justice System does not consider the victims as a part of it. This approach of the Indian Criminal Justice System has created various problems for the victims of crime, which can also be described as “secondary victimization” as it takes place due to the drawbacks in the justice delivery system. Some of these to be discussed as follows:

A) Inadequacy of Existing laws in allowing victims to participate in investigation and trial proceedings.
B) Harassment of witnesses during investigation and recording of evidence.
C) Lack of compensation to victims of crime.
D) Lack of statutory right of the victims to file appeal against acquittal.

A) Inadequacy of the existing law in allowing victims to participate in investigation and trial proceedings:

The basic problem of victims of crime is that the victims principally have no right to participate in the trial proceedings initiated by the State against the accused. An accused is a privileged person under the Indian Criminal justice system. An accused enjoys various rights and privileges under the Indian Constitution such as Protection against self-incrimination under article 20(3) of
the Constitution, Protection against arbitrary arrest and detention under Article 22 of the Constitution.

Besides this, an accused has various statutory rights conferred by Code of Criminal Procedure 1973. One of such right is to get a counsel to defend himself, at the expense of the State as per section 304 Cr.P.C. 1973. Though, this right of an accused emanates from Cr.P.C, it was given the status of a Constitutional right by the Apex Court in the decision of Hussainara Khatoon Vs. State of Bihar. ³

Various other rights have also been conferred on an accused as interpreted by the Supreme Court such as the right of speedy and fair trial and protection against handcuffing etc and all these rights of an accused shall be discussed later in detail in chapter V.

While on one hand, an accused enjoy such rights and privileges as mentioned hereinbefore, the victim of crime in Indian Criminal Justice System, neither has any recognition nor any right to participate in the trial proceedings. In fact, the victims of crime, do not find themselves mentioned either in the Constitution or in the Code of Criminal Procedure, 1973. The Code of Criminal Procedure has actually kept victims in isolation. They have no right to participate in the trial of the accused. The

³ (1980) I SCC 98
offence is regard, to be an offence against the State and not against the victims of crime.

This is perhaps the problem of approach and thinking towards the victims. The investigation is conducted by the Investigation officer, who has complete discretion and prerogative to carry out the investigation. The prosecution is initiated by the State, which is conducted by the Public Prosecutor or by the Assistant Public Prosecutor's. The victim of crime has no say either in the investigation or in the trial of the accused.

This problem of victims as stated above is one of the fundamental problem of the victims of crime. The Code of Criminal Procedure 1973 was drafted in such a manner that victims of crime, have been kept out of both the investigation as well as the trial of an accused. A brief reference to the statutory provisions, is necessary to point out this problem of the victims referred hereinafter.

(a) **Insensitive approach of the police**

As stated hereinbefore, the police has complete discretion regarding the investigation to be carried by it including filing of a charge sheet, which in fact is not victim friendly and this problem of the victims can be summarized as follows-
(i) **Investigation by the police**

The power to investigate the commission of a cognizable offence has been vested exclusively with the police under the provision of chapter XII of Cr.P.C. 1973, which provides for information to the police and their powers to investigate from Section 154 to 176.

Section 154 provides for the recording of information regarding the Commission of an offence in a book generally termed as first information report. The information so reduced into writing, authorizes the investigation officer to carry out the investigation in exercise of his powers u/s. 156 Cr.P.C. and the procedure is prescribed u/s. 157 of the Code. Sections 154, 156 and 157 read as under:-

**Section 154. Information in cognizable cases** (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid shall be signed by the person giving it and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.
(2) A copy of the information as recorded under sub-section (1) shall be given forthwith free of cost to the informant,

(3) Any person, aggrieved by a refusal of the part of an officer in charge of a police station to record the information referred to in sub section (1), may send the substance of such information in writing and by post to the superintendent of police concerned, who if satisfied that such information discloses the commission of a cognizable offence, shall either investigation the case himself or direct an investigation to be made by an office subordinate to him in the manner provided in this Code, and such officer shall have all the powers of an officer in charge of a police station in relation to that offence.

Section 156. police officer's power to investigate cognizable offence - (i) Any officer in charge of a police station may without the order of a Magistrate investigate any cognizable, which a court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.
(3) Any Magistrate empowered under sub section 190 may order such an investigation as aforesaid.

Section 157. Procedure for investigation- (1) If from information received or otherwise, an officer in charge of a police station, has reason to suspect the commission of an offence, which he is empowered u/s. 156 to investigate, he shall for with, send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall dispute one of his subordinate officer not below such rank as the State government may by general or special order prescribe in this behalf to proceed to the spot, to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender;

Provided that-

a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious matter, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot.

(b) If it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted
at the residence of the victim or in the place of her choice and as far as practicable, by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(1) If each of the cases mentioned in clauses (a) and (b) of the proviso to subsection (1), the officer in charge of the police station, shall state in his report his reasons for not fully complying with the requirements in that sub-section and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant if any, in such manner as may be prescribed by the State government, the fact that he will not investigate the case or cause it to be investigated

(ii) Non-registration of FIR by the police -

Section 154 Cr.P.C mandates the registration of an FIR on receipt of an information regarding the commission of a cognizable offence. As the legislature has specifically used the word "shall be reduced into writing", which implies that it is obligatory for the officer in charge of a police station to register an FIR and he has no discretion in this regard.

Besides this, the police cannot also conduct any inquiry regarding the commission of the offence in question nor can it question the truth or veracity of the allegations made, on the basis of which the FIR is to be
registered. Even the Supreme Court in the case of *Aleque Padamsee and others Vs Union of India and others* ⁴ has also held it to be mandatory for the police to register an FIR as it was held in Para 2 that

> Whenever a cognizable offence is disclosed, the police officials are bound to register the same and in case it is not done, directions to register the same can be given.

However, what generally happens is the contrary. It has become a common problem for the victims of crime that the police does not register an FIR and sometimes the victims, are forced to compromise the matter with the accused. In some other cases, the police does not register the FIR under the appropriate sections.

Though the victims or his dependents in case of his death, can approach the Court of a Magistrate u/s 156(3) Cr.P.C for a direction to the police to register an FIR or the High Court concerned in a writ petition under article 226 of the Constitution, but due to lack of awareness regarding such remedies, very few such instances reach the Court. As a result, the victims suffer further harassment at the hands of the police due to non-registration of the FIR. Often news reports are published in daily newspaper’s reporting non-registration of FIR by the police, due to which the victims have to run from pillar to post to seek registration of FIR. It is not the problem of high profile

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⁴ (2007) 6 SCC 171
cases, but the problem of a general tendency amongst the police force across the country not to register the FIR. Reference to few such newspaper reports will point out the harassment faced victims while getting the FIR registered.

For instance, non-registration of the FIR by police in Noida in U.P. regarding alleged rape of women in Bhatta village, who were protesting against land acquisition in that village. As per said news report,\(^5\) the police officials in Noida were refusing to register an FIR regarding the alleged occurrence of rape of women of the said village by certain police officials, which as per the version of the victims had taken place in the month of May. It was so inspite of interference by the National Commission for Scheduled Caste and Scheduled Tribes.

Further as per the news report \(^6\) the police officials in Ghaziabad (U.P.) refused to register an FIR in respect of the offence of rape committed by a father upon his own daughter. The FIR could be got registered by the victim after seeking intervention of the Court of the area Magistrate.

**(iii) Non-participation of the victims in the investigation**

A mere reading of sections 154, 156 and 157 of Cr.P.C. 1973 reproduced hereinbefore, shows that

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though the informant/victim sets the criminal law into motion by giving information to the police regarding the commission a cognizable offence, he or he has no say thereafter in the investigation of the same. The police has undoubtedly complete power to investigate an offence in the manner, it likes. The accused may be arrested or not, the victim has no say whatsoever. Thereafter, an investigating officer can either strengthen the case by proper investigation or indirectly help the accused by deliberately conducting the investigation, in a manner to help him. The victim is not even informed about the progress of the investigation.

Similarly, as per section 173 Cr.P.C, the investigating officer, has to forward the final report to the Magistrate stating whether an offence appears to have been committed and if so committed, by whom. As such, the Investigating officer may submit a report that no offence appears to have been committed or that the offence has not been committed by the accused so arrested earlier or the one named in the FIR. In such a situation, the victims had no right to hearing, prior to the decision of Apex Court in *Bhagwant's Singh case* 7 discussed hereinafter in this chapter V.

7 AIR 1985 SC 1285
b) **Trial procedure and victim's Apathy**

The trial procedure prescribed by Cr.P.C. 1973 for different type of offences is also not victim oriented at all. On the contrary, it is totally accused friendly. The entire focus of the trial in a criminal case is on the accused, his rights under the Constitution and the statutory laws.

The Cr.P.C. 1973 provides for various types of trials for the various offences depending upon quantum of sentence for the particular offence namely Sessions trial, warrant trial, warrant instituted otherwise on a police report and summary trial and trial instituted on a private complaint.

Except in a private complaint case, the victim of crime cannot prosecute the accused or participate in the trial of the accused. Even in a private complaint case, if the offence alleged to have been committed is triable exclusively by the Court of Sessions, the case becomes a sessions case after a decision is taken on the question of charge in which situation, it ceases to be a private complaint case and such a case can be prosecuted only by a Public Prosecutor appointed by the State Government.

The complainant, who may be even the victim of the offence and as such may be very much aggrieved, can only engage an advocate, who has to work under the
instructions of the Public Prosecutor and assist him. In other words, the more serious is the offence, it causes more agony and pain to the victim, not only at the time of commission of the offence but also later on, when the accused is tried because the victim has no say in the trial of the accused in spite of having suffered a lot at the hands of the accused. A perusal of the procedure for Sessions trial and Warrant trial as provided under Cr.P.C. 1973 needs reference and the same are reproduced as under-

(i) Trial before a Court of sessions-

Section 225. Trial to be conducted by public prosecutor - In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Section 226. Opening case for prosecution - When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the Prosecutor shall open his case, by describing the charge brought against the accused and stating by what evidence, he proposes to prove the guilt of the accused.

Section 227. Discharge - If, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the
accused, he shall discharge the accused and record his reasons for so doing.

Section 228. framing of charge-(1) If after such consideration and hearing as aforesaid, the judge is of the opinion that there is ground for presuming that the accused has committed an offence which –

a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and by order transfer the case for trial to the Chief Judicial Magistrate and thereupon the Chief Judicial Magistrate, shall try the offence in accordance with the procedure for trial of warrant case instituted on a police report.

b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Section 229. Conviction on plea of guilty- If accused pleads guilty, the judge shall record the plea and may in his direction convict him thereon.

Section 230. Date for prosecution evidence – If the accused refuses to plead or does not plead or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of the witnesses and
may on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.

Section 231. Evidence for prosecution- (1) On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

Section 232. Acquittal- If, after taking the evidence for the prosecution examining the accused and hearing the prosecution and the defense on the points, the judge considering that there is no evidence that the accused committed no offence, the judge shall an order of acquittal.

Section 233. Entering upon defence (1) where the accused is not acquitted under Section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written Statement, the judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall
issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of Justice.

**Section. 234 Arguments.** When the examination of the witness (if any) for the defence is complete, the Prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply.

Provided that where any point of law is raised by the accused or his pleader, the Prosecutor may with the permission of the judge make his submissions with regard to such point of law.

**Section 235. Judgment of acquittal or conviction** (1) After hearing arguments and points of law if any, the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to Law.

**(ii) Trial of warrant cases before a Magistrate**-

The position is same so far as warrant trials are concerned to be conducted by Judicial Magistrates. The procedure for trial of warrant cases is as follows;

**Section 238. Compliance with section 207**- When, in any warrant case instituted on a police report, the accused
appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of section 207.

**Section 239. When accused shall be discharged.**- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

**Section 240. Framing of charge.**- (1) If upon, such consideration examination, if any and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, triable under this chapter, which such Magistrate is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall be, read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or claiming to be tried,
Section 241. Conviction on plea of guilty - If the accused pleads guilty the Magistrate shall record the plea and may in his discretion convict him thereon.

Section 242. Evidence for prosecution (1) If the accused refuses to plead or does not plea or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of the accused.

(2) The Magistrate may on the application of the prosecution issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witnesses for further cross-examination.

Section 243. Evidence for defence (1) The accused shall then be called upon the enter upon his defence and produce his evidence, and if the accused put in any written Statement, the Magistrate shall file it with the record.

Provided that, when the accused has cross-examined any witness before entering on his defence, the attendance
of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of Justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section(2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

A reading of procedure of Sessions trial shows that the trial is conducted by the Public Prosecutor. The persons to be given a right of hearing, are the public prosecutor and the accused or his pleader. The victim has not even been mentioned in the procedure for trial. They can neither conduct the investigation nor participate in it. Such a procedure increases the apathy of the victims of crime. So far as warrant cases are concerned, the position is not much different.

The limitation in this regard, is further clear from the provision of Section 301 Cr.P.C, which provides for the appearance by public prosecutor’s.

Section 301(1) provides that the Public Prosecutor or Assistant Public Prosecutor in charge of a case, may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.

Sub -Section(2) provides that if any such case any private person instructs a pleader to prosecute any
in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case, shall conduct the prosecution and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor and may with the permission of the Court submit written arguments after the evidence is closed in the case.

(iii) Lack of proper prosecution-

It is not only the trial procedure, which is a major road block in the rights of the victims but also the manner in which prosecution is conducted by the State. In criminal trials, as per procedure provided by Cr.P.C. 1973, the duty of conducting the prosecution of an accused, is vested with the Public Prosecutor or the Assistant Public Prosecutor’s, who are appointed by the respective State Governments. The conviction or acquittal of an accused depends not only on the quality of investigation conducted by the Investigating Officer, but also upon the manner in which, the prosecution is conducted by the Public Prosecutor’s.

It will not be out of context to say that a wrong acquittal of an accused can be very harmful to the society as it sends a wrong message that the State is in-effective in not punishing the guilty. Besides this, it also increases the agony and trauma of victims of crime and becomes a travesty of justice for them. In these circumstances, the
role of a Public Prosecutor in a criminal case, becomes very relevant. In other words, whether a victim will get justice or not largely depends upon the manner in which, a Public Prosecutor conducts the prosecution of the accused.

As stated hereinbefore, Public Prosecutor’s are appointed by the respective State Government’s to conduct prosecution of the accused persons. Their efficiency and working, becomes very relevant factor in ensuring that the guilty are punished. In many States, directors of prosecution have been appointed to head the prosecution branch. However, practically the director of the prosecution has no control over the individual prosecutor’s.

It is not so that all Public Prosecutor’s are inefficient, but with lack of transparency in their selection process, inefficiency creeps into the system, thereby putting the efficiency of the Criminal Justice System at stake. As a result, the ultimate sufferer is the victim, who is further victimized due to the wrong acquittal of the accused.

Undoubtedly, a Public Prosecutor enjoys an important position in Indian Criminal Justice System. Though appointed by the State, they are regarded as officers of Court. Just as the purpose of a criminal trial is find out of the truth, the duty of a Public Prosecutor is to assist the Court in the process of finding out the
truth. His position, therefore, is different from a defence
counsel of an accused. A Public Prosecutor is not
supposed to suppress or conceal any document or fact
from the Court, even in favour of the accused and must
present all facts before the Court as they are.

At the same time, it is also the duty of a Public
Prosecutor to properly conduct the prosecution against the
accused. Any lacuna on his part, resulting in wrong
acquittal of an accused, is a travesty of justice for the
victim of crime. If a Public Prosecutor does not get all the
witnesses examined or does not bring on record all
necessary documents as part of the prosecution evidence,
it can result in wrong acquittal of the accused.

The victim, however, has no say as to how a Public
Prosecutor should conduct the prosecution. It is the
discretion of the Public Prosecutor to decide as to who has
to be examined as a witness and what other evidence has
to be produced and proved on record. Such procedural
flaws of trial only add to the agony of the victims. In fact,
there is no mechanism for keeping a check over the Public
Prosecutor's except transferring them or removing them
service, which even if resorted to does not end the
trauma and suffering of the victims as the evidence once
recorded affects the credibility of the case at all stages of
the case including the stage of appeal.
B) Harassment of Witnesses during investigation and recording of evidence-

(i) Harassment of Witnesses during investigation-

Bentham said "witness are the eyes and ears of justice." Under the Indian Criminal Justice System, the burden of proof always heavy lies upon the prosecution to prove the guilt of the accused. In order to prove the guilt of the accused, the prosecution has to produce cogent evidence beyond reasonable doubt. The evidence so produced may be either documentary, circumstantial evidence or oral evidence of the witnesses, who have witnessed commission of the offence by the accused.

It is where the prosecution case is based upon the evidence of the eye witnesses, that the problem starts and if the eye witness is the victim, the trauma of the victim only increases.

The agony of the victim here is two-fold. Firstly, during course of investigation. The police officer conducting the investigation, has the power u/s. 160 Cr.P.C., to summon a person as a witness, for recording his Statement u/s. 161 Cr.P.C. Interestingly, Section 160 Cr.PC. does not provide any specific time limit of day or night for recording the statements of witnesses. So, therefore, a witness may be called up in the morning and may have to wait for hours in the police station, for the investigating officer to turn up and record his statement,
which perhaps happens. Besides this, victims are even threatened by accused persons or somebody else on their behalf, not to give evidence against them, in the Court and the police generally does not take any action against the accused.

(ii) Harassment of Witnesses during recording of evidence

It is a normal practice that in our criminal Courts, particularly Magistrate Court's which are already over-burdened, on each working day a large number of cases are listed for recording of evidence, besides the other cases listed for framing of charges and arguments etc. Witnesses are summoned in all such cases listed for recording of evidence.

Though, all witnesses summoned are generally not served with summons, but they turn up in at least some of the cases. But, due to paucity of time the recording of evidence takes place in one or two cases and is postponed in most of the cases as recording of evidence is a time consuming process and practically it is not possible to record evidence in all cases, where the witnesses turn up.

As a result of such delay in recording of evidence, witnesses especially victims undergo unnecessary harassment. They are time and again summoned for giving their evidence and then sent back after waiting for
hours in Courts. The witnesses are not even treated with dignity and honour. They are not provided proper space to sit nor are given any sufficient travelling allowance.

The procedure prescribed for recording of evidence, by the Indian Evidence Act, 1872, involves various stages namely examination-in-chief, cross-examination and re-examination, if any of the witnesses. The statement of a witness, cannot be read in evidence, unless cross-examination is complete or where an opportunity for the same is given but is not availed off by the accused. As such, even in those cases, where evidence by way of examination-in-chief is recorded, but cross-examination is not recorded or remains incomplete, the witnesses are called up again and again for their cross-examination.

Many times, various delaying tactics are adopted by accused persons to delay recording of prosecution evidence particularly cross-examination of prosecution witnesses on one pretext or the other. Such delaying tactics adopted by the accused to delay recording of evidence, causes unnecessary harassment to the victims, when they appear as witnesses in the Court for giving their evidence.

Besides this, it also results in delay in completion of the trial. Such harassment of victims of crime, further increases their mental agony and trauma. This is the prevailing state of affairs inspite of the fact that section
309 Cr.P.C. 1973, specifically provides for speedy trial of the accused including speedy recording of evidence. Section 309 Cr.P.C. reads as follows:

**309. Power to postpone or adjourn proceedings** (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible and in particular when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

Section 309 is a part of Cr.P.C. right from its enactment in the year 1973. However, in spite of this statutory provision, recording of evidence is postponed by criminal Courts and that too without recording reasons for such postponement of recording of evidence.

(iii) **Insensitive approach of the Courts towards the victims**

The problem is not only that of paucity of time for recording of their evidence, but also of the approach of criminal Courts towards the victims. As the criminal Justice System in the country is accused oriented, the entire focus of a criminal trial remains centered on the accused due to which the harassment of the victims during the recording of their evidence because of repeated adjournments taken by the accused or his advocate, does
not get noticed by Courts. In these circumstances, victims while giving their evidence have no option, but to come again and again to the Court for recording of their evidence.

During the British Rule, Sessions trial in practice use to mean the trial of the accused in sessions i.e. recording of evidence in the morning session and thereafter to continue in the post lunch session and used to continue on the next day unless completed. But after independence, the Indian Judiciary has completely forgotten the very concept of "Sessions trial". The recording of evidence of witnesses gets postponed again and again bringing in serious contradictions in the same, due to which accused persons are acquitted even in cases of heinous offences.-

The Supreme Court in State of U.P. Vs Shambhu Nath Singh highlighted this problem of witnesses while giving evidence and the harassment faced by them. While expressing its displeasure about the common practice of advocates taking unnecessary and repeated adjournments for recording of evidence of the eyewitnesses before trial Courts, the Supreme Court held in Para 9 of the judgment that-

We make it abundantly clear that if a witness is present in court, he must be examined on that
day. The Court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping side their own avocation. Certainly, they incur suffering and loss of income. The meager amount of Bhatta (allowance), which witnesses may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a said plight in the trial Courts that witnesses, who are called through summons or through other process, stand at the doors step from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice, must be reformed by presiding officer of trial Courts and it can be reformed by everyone provided the presiding officer concerned has a commitment to duty. No sadistic pleasure is seeing, how others person summoned by him as witness are stranded on account of the dimension of his judicial powers, can be persuading factor for granting adjournments lavishly and that too in a casual manner.

It was further held by the Supreme Court in Para 12 of its judgment that

Thus the legal position is that once examination of witnesses has started, the Court has to continue the trial for day to day, until all witnesses in attendance, have been examined except those whom the party has given up. The Court has to record reasons for deviating from the said course. Even that is forbidden, when witnesses are present in the court as the requirement, then is that the court has to examine them. Only if there are special reasons, that should find place in the order for adjournment. That alone can confer jurisdiction on the Court to adjourn the case, without examination of witnesses, who are present in the Court.
Though, Supreme Court took exception to unnecessary delay in examination of witnesses by the trial Courts due to repeated adjournments taken by advocates for accused persons, but unfortunately, harassment of victims continues in spite of decision of the Apex Court.

(iv) Harrasment of victims of sexual offences-

The harassment, which a victim faces in a criminal Court at the time of recording of evidence is worst for victims of sexual offences or molestation. The character of a victim of rape or molestation as the case may be is challenged during the trial. Questions are often asked by the lawyers appearing for the accused about the character of the victim. Embarrassing and humiliating questions are put to the victims of sexual abuse by the counsels for the accused persons. Though the trial Judge has the power to regulate and control the cross-examination of the witnesses and can also direct for not putting any particular question to the witness, but in practice their honour and self-esteem, is considered secondary to the right of the accused to prove his innocence. As a consequence, while the victim had undergone physical trauma at the hands of the accused at the time of commission of the offence, she undergoes mental harassment due to the insensitive attitude of our justice delivery system.
Shri K.K. Bajpai in his article 9 highlighted this problem of victims of sexual offences in the following manner-

There are crimes that cannot be measured or made up in terms of monetary compensation especially in cases of rape that affects the victim psychologically as much as physically. These cannot be weighed to be sufficiently avenged but to consider such means one can never draw the line. In case of rape, the trauma which the victim of the crime undergoes in our society or the stigma which a women feels after being victimized of rape is ineffable but the practical problems, which comes for as aftermath of rape is loneliness and desertion by husband and family. Consequently a woman is left to starve, just due to being victimized and now she is left in such a condition where there may be chances of repeated several abuse. It is true that money cannot repair the chastity and purity which is most precious asset of Indian women, nevertheless if sufficient compensation is granted to her, she would not have to depend on the mercy of anybody.

The Supreme Court in case of Delhi Domestic Working Women’s Forum Vs Union of India 10 pointed out this problem of victims as it held in Para 14

We will only point out the defects of the existing system. Firstly, complaints are handled roughly and are not given such attention as is warranted. The victims, more often than not, are humiliated

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9 Compensation & restitution to the victims of crime published in PUCL Bulletin, March 2005
10 (1995) 1 SCC 14
by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in Court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the Court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself.

(v) In action of the Courts in protecting the victims-

As stated hereinbefore, victims if acting as eye-witnesses in the case are often threatened by the accused person not to give evidence against them in the Court or are otherwise lured and won over by money power. However, due to insensitive attitude as well as in difference of the Courts towards the rights of the victims, the accused persons resort to such illegal methods. Even, when a witness or a victim approaches the police for complaining against threatening by the accused, the police does not take action against the accused by taking the excuse of pendency of the case before the Court.

Courts often impose conditions on the accused persons while granting bail to them that witnesses shall not be threatened and that the evidence in general, shall not be tampered with etc. But in reality such conditions imposed by the Courts while granting bail, are given a go-by, by the accused persons as victims are threatened not to give evidence or are lured by money power. Though,
the bail granted to an accused can be cancelled later on, if the witnesses are threatened or the evidence is tampered with by the accused or by somebody else for them, but the Courts hardly resort to such legal action against the accused.

The agony and trauma, which a victim of crime faces right from the stage of registration of FIR till the end of trial, was rightly described by Punjab and Haryana High Court in the case of *Santok Singh Vs. State of Punjab*\(^\text{11}\) wherein a division bench of the Court observed in Para-66 of its judgment that-

The State has the responsibility to protect the people and their property. When it fails to perform its duty, the crime occurs. The victim suffers. Inspite of the sufferings that the victim faces the society expects the victim to support the justice delivery system. The agony begins when the person goes to lodge the report. It continues till the end of the trial. The victim is made to go through the sole crushing job of repeating the glory details of the crime. He is subjected to anguishing his agony of a ruthless cross-examination. At the end, he has to often bear the ignominy and indignation of being disbelieve inspite of having told the whole truth.

It was further observed by the High Court in Para 67 of its judgment that

The plight of the victim under our system is pitiable. In the present day world it is not the criminal but the victim who shirks and dodges the

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\(^{11}\) 2000(3) RCR (Crl) 637
public eye. He is angry and insecure. Even venerable. He suffers alone the physical, physiological and financial hardships that follow the crime. The physiological wounds last longer than the physical injuries the post crime distress does not end with the conviction of the criminal. Mere punishment to the criminal does not give full justice to the victim.

C) Lack of Compensation to the victims of crime:-

(i) Compensation to victims u/s 357 Cr.P.C. 1973:-

As already stated hereinbefore, the Indian Criminal Justice System is not victim oriented, but is accused oriented providing various rights and privileges to them. The accused as per the C.r.P.C, 1973, is tried by the Court and is convicted if found guilty of the offence with which he has been charged with.

Though, there cannot be any evaluation of the agony and trauma, a victim of crime undergoes due to the commission of the offence or the trauma his family members undergo, yet in order to make them not feeling isolated and duly compensated, the legislature has provided for various provisions in our procedural laws to duly compensate them.

But, either due to some inherent flaws and technicalities in such laws or due to improper implementation of such laws by the Courts, the victims do not get compensated properly. As a result, the victims feel isolated and further victimized. It is this problem of
lack of adequate compensation to victims, which is being analyzed herein.

At this juncture, before deliberating upon this problem of the victims of crime, it is necessary to refer to the statutory provisions, which provide for payment of compensation to the victims of crime. Firstly, section 357 Cr.P.C. 1973. The same read as follows:-

**Section 357. order to pay compensation**-(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may when passing judgment order the whole or any part of the fine recovered to be applied-

a) In defraying the expenses properly incurred in the prosecution.
b) In the payment to any person of compensation for any loss or injury caused by the offence, when compensation in the opinion of the Court recoverable by such person in a civil Court.
c) when any person is convicted of offence for having caused the death of another person or of having abetted the commission of such offence, in paying the compensation to the persons, who are under the fatal accidents act (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to there from such death.
d) when any person is convicted of any offence, which includes theft, criminal misappropriation, criminal breach of trust, cheating or of having dishonestly received or retained or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property, for the loss of the same, if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or if an appeal has been presented, before the decision of the Appeal.

(3) When a Court imposes a sentence of which fine does not form a part, the Court may when passing judgment order the accused to pay by way of compensation, such amount as may be specified in the order, if the person who has suffered any loss or injury by reason of the act for which a the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Sessions when exercising its power of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the
Court shall take into account any sum paid or recovered as compensation under this section.

(ii) Scope of Section 357 Cr.P.C. 1973-

Section 357 Cr.P.C. 1973, is itself a comprehensive provision providing for payment of compensation to the victims of crime. However, as mentioned hereinbefore, there are certain inherent flaws and technicalities in this section, which makes it ineffective in either compensating the victim or adequately compensating them.

(i) Firstly, compensation can be awarded to the victim only when the substantive sentence is imposed in case of conviction of the accused. If the accused is convicted, he can be subjected to payment of compensation to the victim. But if he is acquitted, he cannot be forced or directed to pay any compensation to the victim and the victim has no option but to wait for the acquittal order to be set aside in appeal and that too only if the State decides to file an appeal.

(ii) Secondly, amount of compensation awarded by the Court, which tried accused and convicted him, can only be realized after the period of limitation for filing an appeal against the order of conviction and sentence is over or after the appeal so preferred, has been decided by the Appellate Court. This provision in section 357(2) Cr.P.C, frustrates the very purpose of awarding the compensation. Appeals are filed in most of the cases. It is
also a fact that criminal Courts are overburdened due to which appeals remain pending for decision both before the Court of Sessions and High Courts for a long period of time. As a result, though there may be an order passed by the trial court, granting compensation to the victims of crime, the same cannot be implemented, unless the appeal is decided by the Appellate Court.

(iii) There is third aspect of this provision. If the appeal is accepted, the accused will not be liable to pay any compensation to the victim. Thirdly, the court has a very limited discretion under section 357. It can award compensation only out of the fine if imposed, on the offender and the quantum of compensation has to be limited to the fine leveled and not in addition or exceeding the fine imposed. If the fine imposed by the Court is limited, then the victim will not be adequately compensated. Compensation can be paid otherwise only when fine does not form a part of the sentence as the provision of section 357(3) Cr.P.C. Even sub section (3) uses the word “may” which gives a discretion to the Court to decide as to whether compensation should be granted or not.

However, if fine is imposed, the quantum of compensation has to be paid only out of amount of fine so imposed. The situation will be worse for the victim, if the accused is unable to pay the amount of fine imposed upon
him. Though the accused may undergo additional sentence in default of payment of fine, but that will not compensate the victim.

(iv) Fourthly, the amount of fine to be paid by the accused as compensation to the victim has to be decided keeping in view various parameters such as nature of the offence, conduct of the accused, capacity of the offender to pay the compensation. The legal consequence of such a situation is that, if the accused is not able to pay the compensation, he cannot be forced to pay the same.

This is amply clear from decision of Supreme Court in *Sarwan Singh Vs. State of Punjab* 12 wherein it was held that while awarding compensation, it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person, who has suffered the loss. The purpose will not be served, if the accused is not able to pay the fine or compensation, imposing a default sentence for non-payment of fine, will serve the purpose. If the accused is not in position to pay compensation, the victim cannot take any action in the criminal proceeding.

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12 1978 Cr.I.J 1598
(vi) Besides this, the trial Court convicting the accused if decides to direct the accused to pay compensation to the victim, it has to hear the convicted accused on question of compensation also.

This aspect was clearly highlighted by the Apex Court, in the decision of *Mangilal Vs. State of Madhya Pradesh* 13 wherein it has held that Court is required to hear the accused before fixing amount of compensation and the said proposition of law is based upon the principles of natural justice.

In the said case, appeal was entertained by Supreme Court limited to the question of law relating to grant of compensation as done by the Madhya Pradesh High Court. The accused along with other accused persons was tried and convicted u/s. 302 IPC. His appeal against the conviction, was dismissed by Madhya Pradesh High Court.

However, at the time of dismissal of the appeal, the High Court without hearing the appellant directed him to pay compensation of Rs. 30000/- in terms of 357 (3) and (4) of Cr.P.C. 1973, out of which 2/3 was to be paid to the legal heirs of the deceased and the remaining amount was to be paid to the injured person. The appellant challenged the said order before the Supreme Court. The Supreme Court by referring to the principles

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13 2004 Crl.J. 880
to be given to the accused as it is a part of natural justice that hearing should be given to parties whose rights and interest are likely to be affected.

Ironically, Supreme Court referred to the principles of natural justice to hold that an accused has to be heard before he is directed to pay compensation u/s. 357 Cr.P.C, to the victim.

But, it totally lost sight of the fact that a victim against whom the offence has been actually committed, is also a necessary party and that while interpreting the term “necessary party”, the victim cannot be regarded to be not a necessary party. Moreover, compensation has to be paid to the victim and non-else. In these circumstances, the victim should also be heard to ascertain his grievances and sufferings in order to decide as to how much amount of compensation shall be sufficient to be directed to be paid to him. The reason for such legal proposition is that the criminal justice system has been accused friendly and the entire system works in a manner to protect his rights, wherein a victim traditionally had no place to stand.

It is not only lack of proper payment of compensation to the victims, which creates problems for them, but also the lack of proper approach of the legislature, towards victim compensation as there was no comprehensive law to compensate the victims, till the
no comprehensive law to compensate the victims, till the amendments to Section 357 Cr.P.C. by introduction of section 357-A Cr.P.C, to be discussed later on. Otherwise, the problem has been in the approach of the legislature itself towards the victims.

(iii) In-sensitive approach of Courts towards victim compensation-

The problem of victims does not end here. The other co-related problem, is the insensitive attitude of the Courts, in not directing payment of compensation to the victims while conducting the trial of the accused. Past experience shows that though section 357 Cr.P.C. empowers a criminal Court to award compensation out of the fine imposed as compensation, when the fine is not a part of the sentence, the Courts have hardly resorted to it, as provision of section 357 Cr.P.C is directory and not mandatory, due to which it is the discretion of the Court to award compensation or not to the victim.

Due to this insensitive approach of the Courts towards victims, the victims of crime are not all compensated. The Supreme Court also in Hari kishan and State of Haryana Vs. Sukhbir Singh and anr 14 highlighted the lack of approach on part of the criminal Courts, in ordering payment of compensation to the victims, wherein, it was observed that

14 AIR 1988 SC 2127
It is an important provision, but Courts have seldom involved it, perhaps due to ignorance of the object of it. It empowered the Courts to award compensation to victims while passing the judgment of conviction.

The law Commission of India in its 42nd report also pointed out the non-payment of compensation, to the victims by the criminal Courts at the time of conviction of the accused. It was observed in para 3.17 of the report that

We have a fairly comprehensive provision for payment of compensation to the injured party under Section 545 of the Criminal Procedure Code. It is regrettable that our Courts do not exercise their statutory powers, under this section as freely and liberally as could be desired. The section has no doubt its limitations. Its application depends in the first instance, on whether the Court considers a substantial fine proper punishment for the offence. In the more serious cases, the Court may impose a heavy fine in addition to imprisonment for a long term and it is not justifiable especially when the Public Prosecutor ignores the plight of the victim of the offence and do not press for compensation on his behalf."

Bharat. B. Das in his book highlighted the problem of lack of compensating the victims of crime and the need to compensate them in a very lucid manner in the following words on page 73:

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15 Law Commission's 42nd report on IPC
In India, though the criminal justice system is elaborate and expensive, it aims almost entirely to protect the accused but not the accuser/victim. The system practically gives little or no attention to the victim oriented approach, that is, compensating the victim or restoring losses of money or property and providing compensation for loss of life, physical injury and pain and suffering resulting from the criminal conduct. Compensating for loss of life may be impossible in terms of money or otherwise, but that impossibility should not absolve the transgressor from moral and legal responsibility for the damages he has caused, requiring to be translated, evaluated and paid to the survivors in his family.

Similar view was expressed by Shri K.K.Bajpai in his article 17 in the following words -

The whole problem engrained in our Compensation Law is the inability to meet the essence of it in light of our socio-economic environment. Compensation means funds and mobilization of such and earmarking avenues for payment is a major need. Victim compensation is a new horizon is settling claims for losses incurred and quenching the thirst for retribution, the reformatory basis of such a punishment is debatable, but what cannot be questioned is the novelty of this.

(iv) Probation of Offenders Act 1956 and victim compensation-

Just like section 357 Cr.P.C 1973, section 5 of Probation of Offenders Act 1956, also provides for

17 Ibid page 66
payment of compensation to the injured, while directing release of the offender on probation. It reads as follows:

5 (i) the Court directing the release of an offender under section 3 or section 4, may if it thinks fit make at the same time a further order directing him to pay;

a) Such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence and;

b) Such costs of proceedings as the Court thinks reasonable.

2) The amount ordered to be paid under sub-section (1) may be recovered a fine in accordance with the provision of section 356 and 357 of the code.

After considering the language of the aforesaid section of the Probation of Offenders Act 1958, an inference can be drawn that the provision is inadequate from the victim's points of view. The award of compensation as well as the quantum of compensation is completely at the discretion of the Court. Just like section 357 Cr.P.C., this provision is also hardly resorted to by the courts, while releasing the accused on probation. Unfortunately, in our legal system, accused may be convicted or acquitted, the victim, who has suffered mental and physical agony, is left in the lurch and has to be reconcile to his fate as law is inadequate to protect him and adequately compensate him.
D) Lack of statutory right of the victim to file an appeal against the acquittal of the accused-

(i) Legal Position prior to 2008 amendment-

Under the Indian Criminal Justice System, as mentioned hereinbefore, the accused is tried for the offence with which he has been charged by the concerned court. The investigation is carried out by the police, as per chapter XII of the C.r.P.C 1973. It provides for the prosecution, to be conducted by the prosecution branch of the State, which consists of the Public Prosecutors, and the assistant Public Prosecutors. If upon the trial of the accused, the Court finds that the accused has committed an offence, he is held guilty and punishment is imposed upon him in the form of sentence or fine or both as may be prescribed. After such conviction, the accused can file an appeal before the appellate court. If he acquitted, then the State can file an appeal before the High Court against his acquittal. Both the appeals filed by the accused and the one filed by State are considered at par so far as re-appreciation of evidence is concerned.

However, the position is entirely different so far as the right of complainant to challenge the acquittal of an accused is concerned. However, before discussing this limitation on the right of a victim of crime to challenge the acquittal of an accused, it is necessary to refer to various
provisions contained in the Code of Criminal Procedure 1973 relating to appeals. Firstly, section 374 Cr.P.C., which provides for the right of an accused to challenge conviction order passed by the Court, which tried and convicted him. Section 374 Cr.P.C., reads as follows-

374. Appeals from conviction (1) Any person convicted or trial held by a High Court in its extra ordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2) any person-

a) Convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class or.

b) sentenced under section 325 or

c) In respect of whom, an order has been made or a sentence has been passed under section 360 by any Magistrate,

May appeal to the Court of Session.
One of the distinctive feature and perhaps also an advantage, available to the accused in filing an appeal against his conviction is that there is proper and independent re-appreciation of the evidence and materials, which have come on record during the course of his trial. On the contrary, there cannot be re-appreciation of the same evidence, if the complainant or the victim approaches the Court against the acquittal of the accused. This limitation shall be discussed in detail hereinafter.

(ii) Appeal by the State against acquittal of the accused

Just like the appeal filed by accused against his conviction, the State can also file an appeal against the order of acquittal of an accused passed by any Court. Section 378 (1) provides for the Appeal against acquittal and the same reads as under-

Section 378. Appeal in case of acquittal (1) save as otherwise in sub-section (2) and subject to the provisions of sub-sections (3) and (5) -

(a) The District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) The State Government may in any case direct the Public Prosecutor to present an Appeal to the High Court
from an original or appellate order of acquittal passed by a Court other the High Court or an order of acquittal passed by the Court of Sessions in revision.

However, the situation changes thereafter. In a complaint case, where an order of acquittal of the accused is passed by the trial Court, the complainant can present appeal only before the High Court and has to also seek special leave to file the appeal at the first instance, though practically the grounds of appeal are also filed along with the application, seeking special leave to file the appeal.

But so far as the right of complainant or to say that the victim to approach the High Court against acquittal of the accused is concerned, the scope is very limited. At the first instance, the victim of crime cannot file an appeal against the acquittal of the accused, though the order may be against law or based upon mis-appreciation of facts. The victim can either request the State Government to prefer an appeal before High Court or can only file a revision petition on his own before High Court u/s. 401 of Cr.P.C. 1973.

But there also, scope of hearing of the same is very limited. The evidence cannot be re-appreciated in a such a revision petition of the victim as is done in an appeal of the State or appeal filed by the accused against his conviction.
It is here that the problem for the victims starts. The victims feel helpless when the accused, who has committed the offence goes Scott free away after being acquitted by the trial court. In most of the cases, the State does not chose to file an appeal against the acquittal of the accused and the victim cannot do anything except filing a revision petition.

Interesting, the scope of hearing of such a revision petition filed by the complainant /victim, is very limited than a revision can filed by the accused against the order of dismissal of the appeal by the Sessions Court. A perusal of section 401 Cr.P.C. will show the position in this regard. It reads as follows:-

**Section 401. High Court's power of revision**

(1) In the case of any proceeding, the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may in its discretion exercise any of the powers conferred on a Court of appeal by section 386, 389, 390 and 391 on a Court of Session by session 307 and when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed in the manner provided by section 391.

(2) No order under the section shall be made to the prejudice of the accused or other person unless he had an opportunity of being heard either personally or by the pleader in his own defence;
3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.;

(4) Where under this code an appeal lies and no appeal is brought no proceeding by way of revision shall be entertained at the instance of the party, who could have appealed.

(5) Where under this code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

As per Section 401 (3) Cr.P.C, re-produced above, a High Court is not authorized to convert a finding of acquittal into one of conviction. In other words, the scope of interference in a revision against acquittal of an accused is very limited. The Supreme Court in its various judgments, has specifically made the legal position in this regard very clear that the revisional jurisdiction is to be exercised only in exceptional cases, where there is a glaring error or flagrant mis-carriage of justice. Reference to a few leading cases, will show the very limited scope of a
revision petition filed by victim against acquittal of the accused.

The leading case of the Supreme Court is the decision in K. Chinnaswamy Reddy vs. State of Andhra Pradesh. In this case, two persons were accused and were convicted. One under section 411 IPC and other u/s. 457 and 380 IPC. But, they were acquitted by Session's Court. The persons, who had suffered on account of the burglary filed a revision against acquittal of the accused persons. The revision petition was allowed by the High Court and it directed re-trial of both the accused persons. The accused K. Chinnaswamy Reddy alone filed an appeal before the Supreme Court. The Supreme Court observed in its judgment that

Though it was open the High Court in a revision petition, to set aside an order of acquittal even at the instance of private parties, although the State may not have thought fit to appeal, the jurisdiction should be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is manifest error on a point of law, and consequently there has been a flagrant miscarriage of justice. Subsection (4) of 439 (old code) forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering re-trial, when it cannot itself directly convert a finding of acquittal into a finding of conviction.

18 AIR 1962 SC 1788
The Supreme Court indicated following cases justifying interference by the High Court with a finding of acquittal in revision petition namely-

i) The trial Court has no jurisdiction to try the case but still tried and acquitted the accused; or

ii) The trial Court has wrongly shut out evidence, which the prosecution wished to produce or

iii) The appeal Court has wrongly held evidence, which was admitted by the trial Court to be inadmissible or

iv) The material evidence has been overlooked either by the trial Court or the Appellate Court or

vi) The acquittal is based on a compounding the offence, which is invalid under the law.

Secondly, Akalu Ahir Vs Ram Deo Ram. In this case, Supreme Court held that in a revision against acquittal by a private complainant, High Court cannot re-appreciate evidence for itself as if it was acting as a Court of appeal and then order a re-trial. It is an extraordinary discretionary power vested in superior court to be exercised for the ends of justice. The High Court in fact exercises the power of appeal in the face of statutory

19 AIR 1973 SC 245
prohibition. It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial Court in the course of trial of the accused, that High Court is empowered to set aside order of acquittal and direct re-trial of the accused persons. Therefore, the scope such revision petitions filed by a victim against the acquittal of the accused was very limited and there could not be re-appreciation of evidence as can be done in an appeal filed by the State or the accused.

Further, the legal position regarding the limited scope of a revision petition filed by a victim against the acquittal of the accused, was re-affirmed by the Supreme Court in later decisions of *Bindeshwari Prasad Singh and others Vs State of Bihar (Now Jharkhand) and another* 20 and *State of Maharashtra Vs Sujay Mangesh Poyarekar*. 21

The aforementioned legal position laid down by the Supreme court long back continued to be good law for a very long period of time. However, the legal position in this regard changed after the 2008 amendment in Cr.P.C 1973, as per which an appeal can be filed against acquittal by the victim also under the amended section 372 not only against the acquittal of the accused but also in case the

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20 (2002) 6 SCC 650
victim is not granted sufficient compensation by the trial Court.

Therefore, the legislature has now given a statutory right to the victims to file an appeal as stated herein. All these legislative developments regarding the rights of the victims anfd the emerging role of victimology in the Indian criminal justice system shall be discussed in chapter IV.