CHAPTER I

INTRODUCTION

The purpose of a criminal justice system, is to punish the offender of a crime. It is for the State to punish the wrong doer i.e. the offender. The violator’s of the laws are punished by the State for the maintenance of good order in the society and safety of the people. At the same time, since times immemorial, very harsh punishment for the offender’s finds mentioned in old Hindu scriptures of Manusmriti. The concept of deterrent punishment for the offender’s was considered important to control the crimes in those by gone days.

Subsequently, with the advent of the Industrial revolution, Renaissance and French revolution, a sea change took place in the thinking towards the offender’s. The criminologist and jurists changed the focus from giving a deterrent punishment to the offenders, towards their reformation and improving the living conditions of the prisoner’s in jails etc. The doctrine of fair play and justice and human rights of the offender’s of crimes was emphasized. At the same time, the fact that the offender’s were the persons, who had perpetrated the injustice to the other members of the society, was ignored. Accordingly, anxiety was shown for the reformation and rehabilitation of the offender’s so that they may come back in the mainstream of the society.
In other words, the human rights of the offender's came into focus. However, with this change in the focus and thinking towards the offender's especially from deterrent punishment to reformation of offenders, the victims of crime though actually affected by the commission of the crime, became the unforgotten one.

The Indian Criminal Justice System right from its inception with the enactment of Code of Criminal Procedure 1898 followed by the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872 has been accused friendly. Even framers of our Constitution emphasized upon the rights of the accused persons. The Indian Constitution by virtue of its part IIIrd has conferred various rights and privileges on a person accused of committing an offence for e.g. Article 20 (3) provides for the protection against self-incrimination. A person accused of an offence cannot be compelled to be a witness against himself. He cannot be forced to disclose any information, which incriminates him or may prove his guilt. Unfortunately, though the framers of the Constitution introduced the concept of welfare State, but did not provide any specific provision for the welfare of the victims of crimes. In other words, the Constitution and the statutory provisions under Cr.P.C 1973 dealing with the offender's are heavily loaded in their favour.
As stated hereinbefore, the Indian Criminal Justice System, is primarily based upon the due process model in which, the interests of the offender's of crime, are protected by many statutory provisions already referred above. An accused enjoys many rights and privileges under the Code of Criminal Procedure Code 1973 and the Indian Evidence Act 1872. An accused is presumed to be innocent, till it is proved by the prosecution beyond reasonable doubt, that the offender is guilty of the offence charged with. An accused may even remain silent as the burden of proof, is always on the prosecution to prove that he is guilty. He can even get a lawyer at the State expense to defend himself. On the other hand, a victim of crime has no such right to get a lawyer at the State expense, to defend his rights. He can appoint a lawyer, who can only function under the instructions of the Public Prosecutor. It will not be out of context to say that the offender is a privileged person in the Indian Criminal Justice System enjoying various rights and privileges, whereas a victim of crime is regarded to be an alien to the same criminal justice system.

While on one hand an accused enjoys various rights and privileges under the Indian criminal justice system, including the constitutional rights referred hereinbefore, the victims of crime are not recognized as a part of it. The victims of crime do not have any right to either participate
in the investigation process, the same being the exclusive purview of the police nor have any right to participate in the trial proceedings. The prosecution is conducted by the Public Prosecutor. A victim of crime cannot do anything except watching the Court proceedings, even if the police and prosecution may be helping the accused in one way or the other.

Earlier not only this, a victim of crime could not even file an appeal against the acquittal of the accused, the same being vested only with the State. The only remedy available to a victim of crime against the acquittal of an accused was to file a revision petition, which was limited to the questions of law and re-appreciation of the evidence on record was not permissible. Moreover, when the victim/complainant, approached the Court in a revision petition, the Court heard the viewpoint of the State before deciding the case.

The result is that in case the accused is acquitted and the State did not file an appeal against such acquittal of the accused, the possibility of the victim getting justice became very remote. Justice has always been accused oriented, whereas the victim has remained to be mere victim of crime. However, the legal position has changed after the year 2008 amendments in Cr.P.C. 1973.
One cannot doubt that when a crime is committed, the real injury is caused not to the State and its prosecuting agency, but to the victim of the crime against whom the offence has been committed by the offender and in some cases to the family members of the victim also, especially when the victim dies. It is on the oral or written complaint of the de facto complainant/victim that first information report is registered by the police and the accused is prosecuted by the State. But under our criminal justice system it is only the State, which prosecutes the accused and decides the legal action to be initiated against him. The trauma, social stigma and financial burden, especially when a human life is lost is not noticed by State.

The victims of crime have been, therefore, ignored both by the State as well as by the society. Victims being victimized and ignored, face various problems especially the victims of offences of rape and molestation, who undergo life long trauma and social stigma. Immense harassment is caused to the victims, at the time of recording of their statements on oath in the trial Courts. Repeated adjournments forcing them to visit Courts again and again, makes them traumatized and increases their mental agony. The victims are also threatened by the accused persons to not give evidence against them or are lured with money power for the said purpose.
Another aspect, which shall be deliberated upon will be the emerging need for more comprehensive law for adequate compensation to the victims of crime. Earlier there was no proper mechanism or specific law to give adequate compensation, either by the State or by the accused. The only provision was section 357 Cr.P.C. 1973, which provided for payment of the compensation by the accused. But, this provision had been hardly invoked by our criminal Courts to properly compensation the victims. Acquittal of the accused by the Court extinguished the right of the victim of crime to claim compensation either from the accused from the State. With the Courts already over burden, the remedy for filing of a civil suit against the accused for claiming damages of compensation, is such a long drawn process that a victim cannot even think of resorting to such a remedy. In fact, such a remedy is worst that the disease.

Not only this, a National policy for rehabilitation of victims has not seen the light of the day till date. Unfortunately, the victims of crime in our criminal justice system after suffering mental and physical pain, are left and have to reconcile with their fate, as the law has been completely inadequate to compensate him.

The State has now come up with a hope for victims by introducing Section 357-A Cr.P.C.1973 for victim compensation. Various State Governments have also
framed and notified the victim compensatory schemes under the new provision of section 357-A C.r.P.C, which shall be discussed in this research work. As the State has repeatedly failed to not only punish the offenders, but also adequately compensate the victim, instances of victim's taking law in their own ends or even committing suicide are heard now and then. The case of Ruchika in Chandigarh, being harassed and sexually abused by a former senior police officer leading to her committing suicide later on and false implication of her brother, is an instance of victims trauma and harassment. Actually, the need to properly look after the victims of crime is one of the emerging trends in our Criminal Justice System.

The accused persons of Indian origin during the British rule, were in a disadvantageous position. They were humiliated and seen with contempt by the Judges of the English origin due to which, a mockery was made of "fair trial". Keeping in view these circumstances, various rights and privileges were given to an accused after India gained its independence. Part IIIrd of the Constitution is a hallmark in this context.

The aim of the criminal justice system is, therefore, has always been to protect the accused against false implication and ensure a fair trial for them, due to which, our Courts are described as "Court of law" meant to administer the law and not "Court of justice." The rights
and privileges given, came to be misused by the accused, especially by those who have political patronage or are otherwise influential by one way or the other. The Criminal Justice System has been undoubtedly circumvented by the accused persons in their favour, thereby denying the victims of their legitimate rights. As a result, the police hardly informs the victim about the progress of the case against the accused.

However, with the Criminal Justice System failing to deliver the desired results and its misuse increasing day by day, a demand has arisen for recognizing the victims of crime as an integral part of our Criminal Justice System so that justice can be done in the true sense.

Various new trends have, therefore, started emerging regarding the victims and their rights under the Indian Criminal Justice System. The whole scenario is, therefore, changing. It is being argued and emphasized that the victims of crime should be allowed to participate in the criminal proceedings and prosecute the accused. They have been given a right to file an appeal against the acquittal of the accused as per the year 2008 amendments in C.r.P.C 1973. As such, the need for a balancing act between the rights of an accused and the need for protecting the victims of crime, is being emphasized.

Another emerging trend of Victimology in our Criminal Justice System has been a change in the
thinking of the State towards the needs of the victims. The State has also realized that the victims of crime have been ignored for a too longer period and have been denied of their legitimate rights to seek justice and get properly compensate.

Realizing the need to bring the changes in our criminal justice system and in order to make it more victim friendly, the Central Government in the year 2000 constituted a committee on criminal reforms under the chairmanship of justice V.S. Malimath. The Committee since then has been popularly known as Malimath Committee on reforms of criminal justice system. The notification issued by the Central Government constituting the Committee clearly pointed out the intention of revamping the Indian Criminal Justice System. The Committee while submitting its final report in the year 2003, recommended for the need to give the victims a right to participate in the trial proceedings, grant of compensation to the victims of crime and various other suggestions, which shall be discussed in this research work in the later chapter's.

Besides this, the Central Government further constituted a Committee in the year 2006 to prepare a draft National Policy on Criminal justice under the chairmanship of Prof. (Dr.) N.R. Madhava Menon, former Director of the National Law University at Bangalore and
Kolkata and Director of the National Judicial Academy, Bhopal. The draft presented by the Committee shall also be discussed.

Not only the State, even the Judiciary particularly the Higher Judiciary is becoming sensitive towards the rights of the victims by granting adequate compensation, which is another emerging trend in Victimology in our criminal justice system.

The Supreme Court, has now laid great emphasis on the trial Courts not acting as mere tape recorders but they should play a pro-active role in ensuring that justice is done and that they should be sensitive towards the rights of the victims. The High Courts have developed new tools for making the fundamental rights of the victims of crime, more meaningful. The concept of public law remedy has been developed based on American concept, where under a writ petition is entertained by the Supreme Court and High Court's under article 32 and 226 of the Constitution respectively, for awarding compensation to the victims, particularly where the officials of the State are evolved.

This new trend of victimology shall also be discussed in detail in this research work. Needless to say that the public law remedy is being used inspite of an alternative remedy being available to victims to claim compensation by approaching the civil court. The Supreme Court has
Court has also enhanced the scope of entertaining appeals against acquittals by the High Courts, in exercise of its jurisdiction under Article 136 of the Constitution.

Another emerging trend of Victimology in our criminal justice system has been the pro-active role being played by NGO's such as Indian Society of Victimology and statutory bodies particularly National Human Rights Commission in protecting the rights of the victims. The case of Best Bakery, has been in the hallmark of this emerging trend of Victimology to be discussed in detail in this research work. The laws applicable for the victims in countries such as U.S.A, England Australia, Canada and France regarding victim compensation can also play a vital role in the growth of Victimology in India, which shall be discussed.

At the same time, there has also been a change in the approach of the Judiciary towards the sentencing of the accused. Contrary to the earlier emphasis merely on reformation, the Courts now emphasize the need to keep in mind the plight of the victims while awarding the sentence to an accused particularly in heinous crimes and do not consider mere pendency of the case against the accused, for a long period of time as a ground to reduce the sentence.
Besides this, the trial Courts have now been empowered by section 265-A Cr.P.C 1973 regarding plea bargaining, which was introduced in the Act in the year 2006 to look after the interest of the victims in a given case, where the accused seeks plea bargaining, as grant of compensation by the trial Court at the time of the disposal of the case is mandatory. All these emerging trends in our Criminal Justice System referred hereinbefore shall be analyzed in detail.