CHAPTER - I

INTRODUCTION
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1.1. INTRODUCTION:

The striking increase in attention to victims by the world's criminal justice systems may well have been the most significant development in those systems during the second half of the twentieth century. In earlier times, crime victims were consigned to a peripheral position, necessary as background players but of no true importance. Once their crime report and their testimony had been recorded, they typically were ignored.

Victims were raped, mugged, their homes invaded, their handbags or wallets stolen on the street. Then they were often "double victimized," the second insult being inflicted by the authorities. Law enforcement personnel, hardened from having dealt with so many crimes for so long, failed to understand that for most people victimization is rare, often a unique and novel experience, for example the recent Terrorist attack in Mumbai, in which six foreigners among 101 dead\(^1\) explains the magnitude of the plight and sufferings of the victims, and inadequate response of the state. Mumbai came under an unprecedented night attack as terrorists used heavy machine guns, including AK-47s, and grenades to strike at the city's most high-profile targets, the hyper­busy CST (VT) rail terminus; the landmark Taj Hotel at the Gateway and luxury Oberoi Trident at Nariman Point; the domestic airport at Santa Cruz; the Cama and GT hospitals near CST; the

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1. 27 Nov 2008, 0900 hrs IST, TIMES NEWS NETWORK & AGENCIES.
Metro Adlabs multiplex and Mazgaon Dockyard -- killing at least 101 and sending hundreds of injured to hospital,

The attacks appeared to be aimed at getting international attention as the terrorists took upto 40 British nationals and other foreigners hostage. The chairman of Hindustan Unilever Harish Manwani and CEO of the company Nitin Paranjpe were among the guests trapped at the Oberoi. All the internal board members of the multinational giant were reported to be holed up in the Oberoi hotel.

The Army and Navy in Mumbai were put on alert. 65 Army commandos and 200 NSG commandos were being rushed to Mumbai, Home Minister Shivraj Patil said. “The Navy commandos too have been asked to assist the police. Special secretary M L Kumawat is in constant touch with the state police.”

Some media reports attributed the attack to Lashkar-e-Taiba. There were also unconfirmed reports that some of the terrorists came in by sea. A boat laden with explosives was recovered later at night off the Gateway of India. The attacks occurred at the busiest places. Besides hotels and hospitals, terrorists struck at railway stations, Crawford Market, Wadi Bunder and on the Western Express Highway near the airport. Several of these places are within a one-km radius of the commissioner of police's office.

St George's Hospital and G T Hospital were said to have received 75 bodies and more than 250 injured people, additional
municipal commissioner R A Rajeev said. Bombay Hospital got two bodies and 30 injured people were admitted there; Cooper Hospital, Vile Parle, got three dismembered bodies.

Three of the deaths occurred inside the Taj and one G T Hospital attendant died in a shootout inside the hospital. There were reports of people cowering under tables and chairs at both the Taj as well as G T Hospital.

Metro Junction resident Manoj Goel said: "My brother, Manish, died in the firing at Colaba's Hamaal Galli." Cops fired back at the men -- probably from one of the Lashkar groups, dressed in black and with backpacks and SRPF, Crime Branch, ATS and teams of military commandos were summoned to the spot. Train services at CST were suspended and all roads leading to and from south Mumbai were blockaded.

Maharashtra Chief Minister Vilasrao Deshmukh cut short his Kerala visit and was returning to Mumbai. He described the situation in Mumbai as "very serious". Deshmukh promised "stringent action" against the assailants .There were reports of firing around several landmark buildings in the Colaba-Nariman Point area, including the Taj hotel, Oberoi and other tourist attractions and pubs like Leopold's. The top floor of Oberoi was said to be on fire amid reports of blasts in the area and blood-smeared bodies were being brought out of the Taj lobby.

The blast on the Western Express Highway -- near Centaur Hotel outside the airport -- occurred in a taxi, deputy commissioner of police Nissar Tamboli said. The firing and bombing started close
to the Gateway of India. The gunbattle then moved on towards CST and raged on for over an hour from 10 pm, sending commuters running out of the station.

The assailants also fired into the crowd at CST and people on the trains and then ran out of the station themselves and into neighbouring buildings, including Cama Hospital, after being challenged by cops.

"My wounds have never healed. The families of Mumbai terror attack victims are suffering from immense pain and I can feel every bit of it," Jayawati Devi, widow of Delhi police head constable Vijender Singh, told IANS.

"My country is like my family. Thinking of families of those who died in the Mumbai attack, I feel very sad. If possible, I would even go to Mumbai to support those grieving families," said Jayawati, who lives in Badarpur area.

Maharashtra announced to give 2.5 million rupees to the families of the victims killed in the terror attack. Deshmukh also announced a special package for the police personnel and their families. The attack in India's financial capital is one of the biggest in the history of the country. Among the dead were 134 Indian civilians (including 17 policemen) and 30 foreigners.

Twelve staff members of the Taj Mahal Palace & Tower Hotel were killed and seven were injured. Their medical treatment and counselling needs will be provided and fully paid for by Taj Hotels.
The Government of Maharashtra announced Rs. 5 lakh (about 10,000 USD) compensation to the kin of those killed in the terror attacks and Rs. 50,000 (about 1,000 USD) to the seriously injured.

Only when incidence is sensationalized by the media and public outcry, the Government responds for the sake of legitimacy. But, the criminal justice system in general is basically concerned with criminals, whether it is their conviction, treatment, reformation or rehabilitation. The purpose of criminal justice system appears, at present, to be confined to the simple object of ascertaining guilt or innocence of an accused. The role of the victim of a crime in the present criminal justice system is restricted to that of a witness for the prosecution — even though he or she is a person who has suffered harm — physical, mental, emotional, economical or impairment of his/her fundamental rights. Since, the central object of legal process is to promote and maintain public confidence in the administration of justice, there is an urgent need for giving a well-defined status to the victim of crime under the criminal law. His interest in getting the offender punished cannot be ignored or completely subordinated to the social control by the State. It is necessary to give a role to the victims of crime, as otherwise, the victim will remain discontented and may develop a tendency to take law into his own hands in order to seek revenge and pose a threat to the maintenance of Rule of Law, essential for sustaining a democracy. This challenge was noticed by the Supreme Court in P. Ramachandra Rao Vs. State of Karnataka\(^2\) when it expressed

\(^2\) (2002) 4 SCC 578 (at 596).
its concern for the plight of the victims of crime who, if left without a remedy might "resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals".

1.2. Statement of the problem:

The constitution protects rights of the offenders at the cost of victims. In the public mind the interests of the offender seems to be receiving greater attention than the interests of the victims. This subject is now a growing area, which is recognized in every country. A much different aspect of victimology emerges, when instead of focusing attention on the role of the victim in the study of criminal behavior, now the focus is placed on restitution or compensation to victims and their dependents for pecuniary loss, bodily injury and death resulting from the crime. The victims face many problems in getting their legitimate dues under the present system. The main impediment is the non-recognition of the rights of the victims of crime by police, prosecutors and judicial officers particularly and the society generally. It includes lack of definition and description of the term crime victim; Victim's rights are not codified and Victims are excluded in the process of fair trial. The modern world has almost discouraged the reimbursement to the victim by the offender or his family; because the state sponsored punishment supplanted victim and family reparations. The restitution has been replaced by punishment. It is therefore, proposed to study the status, role, rights of the victims. Since, the judiciary has evolved compensatory jurisprudence and elevated it to the status of constitutional right, further the focus of the study will be on the compensation to the victims of crime and the need for institutionalise it into law.
1.3. Literature review

Dr. Hans Von Hentig in his book "The Criminal and His Victims" (1948) drew first the attention of interested public and researchers about the need to understand the dynamics of socio-legal interaction between penal couple to protect the interest of victims of crime. Following an attempt of Mendelson (1956), a broad coverage was made by Khan and Singh (1980). Accordingly, victims of crime are 'those persons who have sustained psychological, physical or material, or social damage on account of being the object of depredations". At the take-off stage, victimology was mainly interested about the protection, well-being and compensation of legally ascertained person adversely affected as the object of crime, caused by a doer of crime propelled by mens reas for his personal material gains. Later, Schafer (1977) remarked that typology of victims "remains a meaningless speculation if it is not linked to a theoretical model and if it has no responsibility and directive power". Later, "The policy-focus has been more and more on the social structure which generates crime in society. A concerted attack on these conditions, rather than on individual criminal, holds the key to the problems, howsoever, difficult the task may appear" (Srivastava, 1982).

The significant influence of unhealthy socio-political environment and inadequate social prophylactics, due to unplanned urbanization, on the formative years of life and of socialization in "poor quality of environment for living" are found to be retained by several researchers in contemporary criminology (Leather and Mathews, 1973, Pablant and Baxter, 1975; Mawby,
1977; Waller and Okinhiro, 1978). Likewise, "social disequilibrium, property and land disputes, caste rivalries, personal vengeance and enmity, rural factionalism, and deteriorating police administration have normally been found to be the cause of becoming victims of crime " (Paramguru, 1984). The first Indian study in this areas was conducted by Sivamurthy (1981) at Madras City, in South 24-Paraganas, West Bengal by Ghosh (1988) and in North 24-Parganas, West Bengal by Datta (1996).

Today, Victims of crime need access to a private or public mechanism that induces government officials and other citizens to respect their rights. They need 'paths to justice'. Walking these paths is costly. Disputants, for instance, spend money; time and effort when they bring their case forward in negotiations, in a court action, or in other dispute resolution procedures. In this regard, this is aimed at developing compensatory justice for victims of crime as tool for measuring access to justice, Furthermore, to explore some of the difficulties that will arise during the development of an actual measurement framework.

Globalization poses new challenges for access to compensation for victims of crime. The number of cross-border interactions between people increases. This also increases the number of instances where different jurisdictions interact, compete or conflict with each other. Moreover, national laws and national procedures may be applicable in addition to international regulation and procedures. This may enhance, but also complicate access to justice for the users of the multilayered legal system.
The methodology of Economic Analysis of Law\(^3\) poses a more significant challenge to traditional accounts of law. The "economic" model ties the duty to compensate to loss. The reason for this focus is because economic analysis of law is necessarily instrumentalist. The instrumentalist approach sees liability rules as tools for achieving one or several goals, such as compensation, deterrence, and loss spreading. Since Justice Traynor's concurrence in Escola, this approach has been dominant; today, normative discourse about the economic analysis evaluates tort law by determining its effectiveness in maximizing wealth. Although economic analysis has undeniable value, it is not normatively appealing; efficiency is not a morally attractive goal.

In contrast, the "moral" model focuses on wrongful conduct. Liability rules, like criminal sanctions, are a form of punishment for "wrongful" behavior. Unlike the economic model, the moral model looks backward to the injurious incident rather than forward to the achievement of favored social goals. This conceptual structure better describes tort law. However, this model fails to explain why tort law requires injurers to compensate victims for the full degree of loss in situations where the extent of the loss was neither intended nor foreseen. Similarly, it cannot explain why we do not attach liability to negligence that fortuitously does not result in harm.

Clearly, tort law contains elements of both contract and criminal law. Each of the two models explains various aspects of

tort law, but neither can describe the entire practice. Instead, tort law must be viewed as a unique institution; there is an imperative need to strengthen the law to provide compensation to the victims of crime.

The above analysis leaves two unanswered questions. First, what types of losses are compensable? Must they be "wrongful," "unjust," or are all injurers strictly liable regardless of moral culpability? In other words, what are the grounds of recovery? Second, how do we compare the parties to determine who, if anyone, has a duty of repair. In other words, what are the grounds of liability? The following five chapters answer these two closely related questions.

The threshold question in any case is whether the victim / complainant deserve to be compensated. Only after this is answered affirmatively do we need to determine who should pay. Fletcher attempted to answer this question with his theory of reciprocal risk. This theory posits that "a victim has a right to recover for injuries caused by a risk greater in degree and different in order from those created by the victim and imposed on the defendant--in short, for injuries resulting from nonreciprocal risks." This "paradigm of reciprocity" expresses the principle that "all individuals in society have the right to roughly the same degree of security from risk."

Thus, according to Fletcher, any loss resulting from exposure to a nonreciprocal risk deserves compensation. The purpose is to distinguish nonreciprocal risks from "background risks that must be borne as a part of group living." Fletcher's paradigm of reciprocity
serves this function by holding that "we may be expected to bear, without indemnification, those risks we all impose reciprocally on each other."

The strength of Fletcher's theory is its ability to account for almost all aspects of the modern tort system, encompassing intentional torts, negligence, and strict liability.

Building on Fletcher's theory of reciprocity, Jules Coleman has postulated that corrective justice requires that wrongful losses be annulled. A wrongful loss is one resulting from an injurer's wrongdoing or wrong. A wrongdoing is an unjustified or impermissible harming of a legitimate interest. A wrong is an action that invades, or is contrary to, a right. A wrong can be justifiable or unjustifiable.

Calabresi states that:

"Economic efficiency asks that we choose the set of entitlements which would lead to the allocation of resources which could not be improved in the sense that a further change would not so improve the condition of those who gained by it that they could compensate those who lost from it and still be better off than before." This is often called Pareto optimality.

Criminal law represents a problem for the law and economics school in a different, but related, way, in that the right of action is taken away from the individual victim and put in the hands of the State. In simple terms this seems to be moving the law away from the economics of the market place, where the principles of contract
law and tort law as formulated by the famous Hand formula, mimic the responses of individuals as rational maximisers.

The economic analysis makes sweeping assumptions about the nature and function of law. By isolating the economic factors, which no one can doubt do play a significant role in the law, and explaining their influence or more accurately their total dominance, the Chicago school has simply ignored the myriad of other factors which shape the law. What can be a useful tool in helping to explain the workings of the law, more useful in some areas of the law than others, becomes a straitjacket into which every aspect of the law is forced, in many cases kicking and screaming.

Coleman identifies three possible ways the justifiability of an injurer's conduct can affect a victim's claim to repair:

(1) Compensation is due if the loss is caused by the injurer's unjustifiable or unreasonable conduct, that is, if the injurer acts with fault.

(2) Compensation is due even though the injurer acted justifiably.

(3) The injurer's conduct is justifiable only if the injurer pays compensation for the losses he causes.

According to Coleman, compensation is due in category (1) because the injurer has done something wrong. In the second category, compensation is owed because, although the injurer's action was justifiable, he still infringed the rights of another. In the third case, "compensation changes the moral character of what the injurer does. Compensation rights what in its absence would be wrongful conduct."
The first two categories can be referred to as fault and necessity, respectively. Both of these are grounded in corrective justice. The third category is referred to as legitimate pricing and is best explained as a remedy for market failure. Thus, Coleman concludes that tort law is a mixture of markets and morals.

There are some weaknesses. First, most liability cases rely on negligence principles, and therefore could fit in category (1). Also, although Coleman is able to describe by relying on an economic rationale for liability. Most significantly, Coleman does not explain why the duty to repair extends only to wrongful losses. In other words, Coleman fails to explain why corrective justice does not allow the victim a remedy when the injurer acts without fault.

One commentator Finkelstein has proposed a refinement of Coleman's theory that concentrates on the comparative nature of tort law. Under this modification, a victim ought to be compensated for any loss (not just a wrongful loss) he suffers so long as the defendant was more outcome responsible for the loss than was the plaintiff.4

In sum, a comparative analysis yields a system where the right to compensation is derived from being less outcome responsible for the loss than any other relevant party. A system that compares the injurer's and the victim's degree of involvement best reflects the dictates of corrective justice which require a focus on the relationship between the parties and equitably restore the balance of interests.

This exploration of such a framework is the first step in the process of setting up compensatory justice that will develop ways to measure compensation for victims of crime. This is the starting point of research and deals with the preliminary issues that arise when trying to measure compensation as access to justice.

The adoption by the General Assembly of the United Nations, at its 96th plenary on November 29, 1985 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (hereafter 'U.N. Declaration') constituted an important recognition of the need to set norms and minimum standards in international law for the protection of victims of crime. The U.N. Declaration recognised four major components of the rights of victims of crime – access to justice and fair treatment, restitution, compensation and assistance. In the first part of this

5. Clauses 4 and 5 of the U.N. Declaration read thus:

"4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms."

6. This contemplates deprivations both by State and non-State actors. Under Clause 8 of the U.N. Declaration, restitution includes "the return of property of payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights." Clause 11 provides that "where the government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims."

7. Under Clause 12 of the U.N. Declaration the onus is on the state to "endeavour to provide financial compensation to both victims who have
piece it is proposed to examine how far the prevailing legal framework in India conforms to the norms and standards that were sought to be set by the U.N. Declaration nearly two decades ago. It also notices relevant judicial dicta that have sought to address the needs of the victims of crime. In the second part the prevailing international trends and recent local developments are briefly noticed. The concluding part offers certain suggestions as regards the nature of the changes that are required in order to make the system respond effectively to the needs of victims of crime.

The right of a victim of crime to receive compensation was recognised even under the Code of Criminal Procedure, 1898 but was available only where a substantive sentence of fine was imposed and was limited to the amount of fine actually realised. S.357 (3), Cr. PC 1973 permits the grant of compensation even where the accused is not sentenced to fine. However, this provision is invoked sparingly and inconsistently by the courts.

suffered bodily injury or impairment of physical or mental health as a result of serious crimes as well as the family of those who have died as a result of victimization."

8. This includes “the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous means” (Clause 14) Part B of the U.N. Declaration concerns victims of abuse of power “that do not yet constitute violations of national criminal laws but of internationally recognised norms relating to human rights.”

9. Though the U.N. Declaration may not have the binding effect of a Covenant, its clauses serve as useful benchmarks.

10. S.545 (1 & 2) and s.546 Cr. PC 1898.

11. S.357 (3) “When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to
The 152nd Report of the Law Commission had recommended the introduction of s.357-A prescribing inter alia that compensation be awarded at the time of sentencing to the victims of the crime – Rs.25,000/- in the case of bodily injury, not resulting in death; Rs.1,00,000/- in the case of death. The 154th Report of the Law Commission of India noticed that its earlier recommendation had still not been given effect to by the government. It went one step further and recommended that it was necessary to incorporate “a new s.357-A in the Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts. Heads of compensation are for (i) for injury, (ii) for any loss or damage to the property of the claimant which occurred in the course of his/ her sustaining the injury and (iii) in case of death from injury resulting in loss of support to dependants”. This recommendation also has not been acted upon by the government.

12. In Hari Singh Vs. Sukhvir Singh (1988) 4 SCC 551, the Supreme Court had to exhort the criminal courts to use this provision since “this power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system”. Recently, in Pamula Saraswathi Vs. State of A.P., (2003) 3 SCC 317, the Supreme Court, while affirming the conviction of the four assailants of the appellant’s husband, directed them to pay a fine of Rs.10,000/- each which was then directed to be paid to the appellant.


Absent a viable, effective statutory regime for compensation, the courts in their constitutional law jurisdiction have had to forge new tools to give effect to the right of victims of crime to be compensated. In the Delhi Domestic Working Women Forum Case, the court directed payment of Rs.10,000 as ex gratia to each of the victims. In Gudalure M.J. Cherian Vs. Union of India the State of U.P. was directed to pay a sum of Rs.2,50,000/- as compensation to two Sisters on whom rape had been committed by unidentified assailants. The question of payment of compensation to victims of crime from the wages of prison labour came up for consideration in State of Gujarat Vs. Hon'ble High Court of Gujarat. The court recommended that the State should make a law “for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in another feasible mode”.

15. The earliest of these cases was Rudul Sah Vs. State of Bihar (1983) 4 SCC 141. The inadequacy of the provisions in criminal law to deal with custodial torture is reflected in the judgment in State of M.P. Vs. Shyamsunder Trivedi (1995) 4 SCC 262.
17. (1995) Supp 3 SCC 387. This was notwithstanding the fact that the persons who had been arraigned as accused were found by the CBI not to be involved in the offence. The report pointed out grave lapses on the part of the investigating officers. See also Chairman Railway Board Vs. Chandrima Das (2000) 2 SCC 465.
The constitutional right of victims to receive compensation was reiterated by the Supreme Court in Nilabati Behera Vs. State of Orissa. The court pointed out that it was not enough to relegate the heirs of a victim of custodial violence to the ordinary remedy of a civil suit. The right to get relief of compensation in public law from courts exercising their writ jurisdiction was explicitly recognised. This was further developed in D.K. Basu Vs. State of West Bengal, where it was explained that “the award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is law-fully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the state... the relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them.”

In order to develop a comprehensive statutory scheme redressing the needs of victims of crime, it may be useful to examine some of the current practices elsewhere. The European Convention on Compensation of Victims of Violent Crime, 1983 provides for many

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19. The concurring judgment of Wadhwa J., however, opined that “any amount of compensation deducted from the wages of the prisoner and paid directly to the victim or his family may not be acceptable considering the psyche of the people in our country”. (at 435).

22. Id at 443. (emphasis in original) For a later decision of the Supreme Court reiterating the same principles, see State of A.P. Vs. Challa Ramakrishna Reddy (2000) 5 SCC 712.
of the rights recognised in the U.N. Declaration. The statutes on the topic in certain other countries include the Criminal Injuries Compensation Act, 1995 in the United Kingdom,\(^\text{23}\) the Victims of Crime Assistance Act, 1996 of Victoria in Australia,\(^\text{24}\) and the Victims and Witnesses Protection Act, 1982 of the USA.\(^\text{25}\) Courts in some of these countries make use of a "victim impact statements" to take on board the victim's feelings regarding the offence.\(^\text{26}\) Outside of the formal legal system, there are associations formed in some of the countries, which are central to the provision of all forms of the assistance to victims of crime.\(^\text{27}\)

South Africa has enacted a Witness Protection Act, 1998 (WPA) which provides, inter alia, for the establishment of a central office for witness protection, which will function under the control

\(^{23}\) The working of the Criminal Injuries Compensation Board in the United Kingdom has not been found to be satisfactory. A recent report titled "Criminal Justice: the Way Ahead" makes a key recommendation that "we will put the needs of victims and witnesses at the heart of the criminal justice system and ensure they see justice done more often and more quickly."

\(^{24}\) Under s.3 of this Act, the family of the witness could also seek protection or other assistance.

\(^{25}\) Despite many states creating programmes responding the needs of victims of crime which include restitution by the offender, compensation by the state, assistance by government and private organisations and the promulgation of "bills of rights", the actual implementation of these schemes appears to have not been adequate: See LeRoy L Lamborn "The Constitutionalisation of Victims' Rights in the United States: The Rationale" in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 280.


\(^{27}\) Among the prominent ones are the Weisser Ring established in Germany in 1977, the Scottish Association of Victim Support Schemes and the National Organisation for Victim Assistance in the USA.
of the Minister of Justice and Constitutional Department. This office will be responsible for the protection of witnesses in terms of the WPA and regulations made in terms thereof, and will perform all duties relating to protection of witnesses.\textsuperscript{28} It may be recalled that simultaneous with the making of the Constitution of South Africa, a Truth and Reconciliation Commission (TRC) was also established.\textsuperscript{29} One of the key functions of the TRC was to examine the claims of victims of the apartheid regime to compensation.\textsuperscript{30} An important aspect of the functioning of the TRC, as explained by one of its members, Justice Albie Sachs, was to give the victim a voice and encourage a dialogue between the victim and the perpetrator. He explains that "if you are dealing with large episodes, the main concern is not punishment or due compensation after due process of law, but to have an understanding and acknowledgment by society of what happened so that the healing process can really start. Dialogue is the foundation of repair."\textsuperscript{31}

The need for setting up separate victim and witness protection units in the trial of mass crimes has been acknowledged in the setting up of international tribunals to deal with them. The International Criminal Tribunal for Rwanda has formulated rules for

\begin{itemize}
\item \textsuperscript{28} Ss. 2 to 6.
\item \textsuperscript{29} The TRC was constituted under the Promotion of National Unity and Reconciliation Act, 1995.
\item \textsuperscript{30} S.23 of the 1995 Act constitutes a Committee on Reparation and Rehabilitation. The TRC has since submitted its final recommendations.
\end{itemize}
protection of victims and witnesses. Similar provisions exist in the Statute for the creation of an International Criminal Court (ICC).

Recent local developments require to be noticed. The notification of the Government of India constituting the Committee on Reforms of Criminal Justice System, chaired by Justice V.S. Malimath (hereafter ‘Malimath Committee’) was uncharacteristically candid in its lamentation that “People by and large have lost confidence in the Criminal Justice System... Victims feel ignored and are crying for attention and justice...” In its turn the Malimath Committee, after making extensive recommendations to ensure that “the system must focus on justice to victims”, has concluded that “criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognised by law and restitution for loss of life, limb and property are provided for in the system.” While largely concurring with the recommendations of the Law Commission of India in relation to

32. Article 21 of the Statute of ICTR provides for rules to be made for protection of victims and witnesses and further states that such rules shall not be limited to conducting an in-camera trial.

33. Article 68 of the Statute provides for ‘protection of the victims and witnesses and their participation in the proceedings’. Article 43(6) of the same Statute requires the Registrar of the ICC to set up a ‘victims and witnesses unit’ within the Registry which shall provide “protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.”

witness protection the Malimath Committee concludes that "Time has come for a comprehensive law being enacted for protection of the witness and members of his family".  

The government of the day, on August 14, 2003, tabled in the Parliament the Criminal Law (Amendment) Bill, 2003 proposing a series of changes including the insertion of new Ss. 164-A and 344-A in the Cr. PC to deal with the problem of witnesses turning hostile. Further, s.195-A is proposed to be introduced in the Indian Penal Code making the threatening or inducing of any person to give false evidence a cognizable and non-bailable offence punishable with imprisonment for seven years or fine or both. This response of the government is not only ad hoc but also inadequate as it fails to address the whole range of issues raised by victims of crime.

35. The principal criticism of the Malimath Committee is that in its single minded focus on shifting the system from being accused-centric, an assumption not borne out by any systematic empirical analysis, and in its over eagerness to make it address the needs of victims, it adopts the 'either/or' approach. It jettisons the principle of presumption of innocence which it views as a barrier to discovering the truth. Prof. Upendra Baxi criticism is that "Instead of doing any sustained empirical work bearing on so crucial a matter, the Report relies merely on 'commonsense' expressed and nauseum in judicial reiteration of the maxim: 'it is better that ten guilty persons may escape rather than one innocent person may suffer": Prof. Upendra Baxi, Introductory Critique to The (Malimath) Committee on Reforms of Criminal Justice System: Premises, Politics and Implications for Human Rights, Amnesty International India (September 2003), 19.

36. The new S.164-A, as suggested by the Law Commission of India, provides for production by a police officer of "all persons whose statement appears to him to be material and essential for proper investigation of the case, to the nearest Metropolitan Magistrate or Judicial Magistrate, as the case may be, for recording their statements". This will apply to cases involving an offence "punishable with death or imprisonment for seven years or more". S.344-A provides for a summary procedure for trial of witnesses deposing contrary to the statements recorded under S.164-A.
1.4. Conceptual framework

Criminal Justice System is sensitized only from the point of view of rights of the accused and the judiciary enforcing the Criminal procedure with human rights jurisprudence. But, democratization of criminal justice system necessarily involves the protections and safeguards to the accused as well as victims of crime. In a society where caste system and patriarchy denies equality to the dalits and the women this denial extends even to the criminal procedure and trial. What is important is taking cognizance of the rights, and claims of the injured person, as in due process model in understanding the victims instead of crime control model as against the offender and deceptively subtle forms of inequality should also be taken into account for structural inequalities in the society quite often creep into the machinery of Criminal Justice System.

1.5 Objectives

1. to discuss the role and status of the victim in the Criminal Justice System.
2. to critically analyse the laws relating to compensation to victims in India in the light of common law systems.
3. to evaluate the judicial trend towards victims right and compensations.
4. to develop argument for justification and institutionalisation of victims rights.
5. to suggest ways and means for active role of the state and civil society safeguarding the victims rights.
1.6. Hypotheses

1. The laws are not recognizing the need for victim compensation.
2. There is no scope for the intervention of the victims in the criminal administration of justice.
3. Special legislative provision guaranteeing compensation to victims is immediately needed.

1.7. Methodology

The present study is descriptive and analytical one based only on the secondary data. Apart from references shown, researcher also referred to many Articles by learned authors published in different journals and also had extensive sittings with academics and jurists for thorough discussion to gain valuable insights in this area of research.

1.8. Scope of study

Though the area of victimology is very wide and embraces various facets of victimization the present study mainly concentrates on victims of crime with special reference to compensatory laws and abuse of power by lawful authority. Further In dealing with “Victimisation” issues for an emphasis on the importance of enhancing basic rights to the victims of crime irrespective of castes, gender and communal riots.

1.9. Plan of the Study

The present study is divided into six chapters and again divided into the sections. Introductory Chapter (one) deals with General
Introduction, Statement of the problem explaining the importance to compensate the needs of the victims. Chapter II gives detailed information about the responsiveness of judicial and administrative process in the Criminal Justice System and Victimization in India. Chapter III, discusses about the concept of compensation of various participants such as claimants, defendants, complainant and other participants (witnesses, victims in criminal proceedings) Where a new vision on compensation to victims of crime emerges. Chapter IV discusses compensation practices in India and in other countries where in involved the procedures of the judiciary, the state and other stake holders. In the next Chapter V explains the details of Victims Rights, Trauma and Expectations and Chapter VI is Conclusion and Suggestions makes some well considered and worth while suggestions and role of State and Civil society towards victims of crime with suggestions / conclusions. Finally Appendix provides a bill for the prevention and protection against the impact of victimization on crime victims Moreover compensation in different ways to quantify access to justice are explored.