CHAPTER - II

CRIMINAL JUSTICE SYSTEM
AND
VICTIMIZATION
2.1 THEORIES OF VICTIMOLOGY

i. The Study of Victimology

Before we can understand victimology, we need to appreciate that it is a fairly new subfield or area of specialization within criminology. Criminology is a rather broad field of study that encompasses the study of law making, law breaking, and societal reactions to law breaking. Victimology, much like criminal justice, falls into the third of these areas. Victimology doesn't have any subfields within itself; in fact, there are few theories, and little or no schools of thought. Going back to criminology, there are four subfields: penology (and the sociology of law); delinquency (sometimes referred to as psychological criminology); comparative (and historical) criminology; and victimology.

Andrew Karmen, who wrote a text on victimology entitled Crime Victims: An Introduction to Victimology in 1990, broadly defined victimology. "The scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system i.e., the police and courts, and corrections officials, and the connections between victims and other societal groups and institutions, such as the media, businesses, and social movements."

From this definition, we can see that victimology encompasses the study of (a) Victimization; (b) Victim-Offender relationships; (c)
Victim-Criminal Justice System relationships; (d) Victims and the Media; (e) Victims and the Costs of Crime and (f) Victims and Social movements.

At first (going back to the origins of criminology in the 1880s), anything resembling victimology was simply the study of crime from the perspective of the victim. With the exception of some psychological profilers who do this, nobody really advocates this approach to victimology anymore. The scientific study of victimology can be traced back to the 1940s and 1950s. Two criminologists, Mendelsohn and Von Hentig, began to explore the field of victimology by creating "typologies". They are considered the "fathers of the study of victimology."

These new "victimologists" began to study the behaviors and vulnerabilities of victims, such as the resistance of rape victims and characteristics of the types of people who were victims of crime, especially murder victims. Mendelsohn (1937) interviewed victims to obtain information, and his analysis led him to believe that most victims had an "unconscious aptitude for being victimized." He created a typology of six (6) types of victims, with only the first type, the innocent, portrayed as just being in the wrong place at the wrong time. The other five types all contributed somehow to their own injury, and represented victim precipitation.

Von Hentig (1948) studied victims of homicide, and said that the most likely type of victim is the "depressive type" who is an easy target, careless and unsuspecting. The "greedy type" is easily duped because his or her motivation for easy gain lowers his or
her natural tendency to be suspicious. The "wanton type" is particularly vulnerable to stresses that occur at a given period of time in the life cycle, such as juvenile victims. The "tormentor," is the victim of attack from the target of his or her abuse, such as with battered women.

ii. Theories in Victimology

Over the years, academics have come to think about victim and ways in which victims "contribute" to their own victimization is considered by victims and victim advocates as both unacceptable and destructive. Yet a few enduring models and near-theories exist. I'll mention two or three of them:

a. Luckenbill's (1977) Situated Transaction Model - This one is commonly found in sociology of deviance textbooks. The idea is that at the interpersonal level, crime and victimization is a contest of character. The stages go like this: (1) insult (2) clarification (3) retaliation (4) counter retaliation (5) presence of weapon - search for a weapon or clenching of fists; (6) onlookers - presence of audience helps escalate the situation.

b. Benjamin & Master's Threefold Model - This one is found in a variety of criminological studies. The idea is that conditions supporting crime can be classified into three general categories: (1) precipitating factors - time, space, being in the wrong place at the wrong time; (2) attracting factors - choices, options, lifestyles (the sociological expression "lifestyle" refers to daily routine activities as well as special events one engages in on a predictable basis); (3) predisposing factors - all the sociodemographic
characteristics of victims, being male, being young, being poor, being a minority, living in squalor, being single, being unemployed.

c. Cohen & Felson’s (1979) Routine Activities Theory - This one is quite popular today, and briefly, it says that crime occurs whenever three conditions configure or come together: (1) suitable targets - the presence of vulnerable potential victims; (2) motivated offenders - people who will try to get away with something if they can; and (3) absence of guardians - a lack of defensible spaces (natural surveillance areas) and the absence of private security, since the government can't do the job alone.

The phenomena that criminals and victims often have the same sociodemographic characteristics (e.g., are in relatively the same age group) is known as the propinquity hypothesis; and that criminals and victims often live in physical proximity to one another is called the proximity hypothesis.

Most victimological theories fall into one of three rough categories:

a. Psychopathology theory:
The offender is seen as a mentally disturbed individual, also usually suffering from alcohol or drug addiction, who is venting frustration or anger at a target. The victim is also seen as mentally disturbed who somehow induced the offender to harm them.

b. Feminist theory:
The offender is seen as acting upon the current patriarchal (male dominated) makeup of society. The victim is seen as historically
socialized to accept this, keep quiet about it, and take what they deserve.

c. Learning theory:

Three variations: (1) intergenerational transmission of violence - in which adults learn it by having seen it as a child; (2) learned helplessness - in which victimization occurs because of economic and emotional dependency; and (3) cycle of violence - in which both victim are caught up in a tension - disinhibition cycle.

There's no one good theory in victimology. The cycle of violence theory tends to apply well with repeaters, since one thing that both repeat victims and repeat offenders both share in common is denial and minimization, common to all addictive-like cycles. Scientific prediction of violence is a rather inexact science that cannot be done intuitively. To be done properly would require awareness on at least four different levels in recognizing events that trigger victimization. At the biological level, for example, brain activity would need to be monitored. At the psychological level, how a person processes and distorts information should be considered. At the macrosocial level, interpretation of certain events in news coverage might need to be looked at. At the microsocial level, deficits with communication and reality testing are probably the most important predictors.

2.2. CRIMINAL JUSTICE SYSTEM IN INDIA

The main concern of the Criminal Justice System, so far, has been offenders, their arrest, human rights, conviction, reformation
and rehabilitation. The criminologists and Penologists are also primarily concerned with them. The victims of crimes have received very little attention from them. The rising trend of crime and violence in the society can't be explained by anxiety for the offenders alone. Unless victims, who are the foundation stones of the Criminal Justice System, are given their due, and are duly compensated and rehabilitated, the society can not be at peace with itself. It calls for a paradigm shift, as has taken place in some countries of the world, and enforcement, in spirit and letters, of existing provisions of law for compensating the victims of crimes. It also calls for some amendments in the existing provisions of laws and some legal and social engineering.

"Criminal Justice Delivery System" in India which stems from the Anglo-Saxon system is essentially concerned with the offender, his activities, his rights and his correctional needs. The purpose of criminal justice system appears, at present, to be confined to the simple object of ascertaining guilt or innocence of an accused. Unfortunately rights of victim of crime are not given any importance. In order to find out whether the criminal justice system in India has so far been effective in imparting justice to all the stakeholders, it is necessary to introspect.

The main components of Criminal Justice Delivery System are detection & investigation of crime, enquiry, prosecution, defence, trial, punishment, correction, probation, parole and the like.
Broadly, the Criminal Justice System is constituted by the following processes: 

1) Investigation;
2) Prosecution;
3) Trial.

i. Investigation:

The victim of a crime sets the criminal justice mechanism in motion by giving information to the police which is expected to reduce it to writing. The victim as an informant is entitled to a copy of the FIR "forthwith, free of cost". Where the officer in charge of a police station refuses to act upon such information, the victim can write to the Superintendent of the Police who is then expected to direct investigation into the complaint. Failing these mechanisms, the victim can give a complaint to a Magistrate, who will in turn examine the complainant on oath and enquire into the case herself or direct investigation by the police before taking cognizance. The victim thereafter does not participate in the investigation except by being called to confirm the identity of the victim.

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2. S.154 (1) of the Code of Criminal Procedure, 1973 (Cr. PC). This is registered as the (the first information report (FIR).
3. s.154 (2) Cr. PC.
4. S.154 (3) Cr. PC.
5. S.190 Cr. PC.
6. S.200, 202 Cr. PC. The failure by a public servant to willfully neglect to act upon the complaint of member of the Scheduled Caste (SC) or Scheduled Tribe (ST) is itself a punishable offence under s. 4 of the SC and ST (Prevention of Atrocities) Act, 1989("SC/ST Act").
The foundation of criminal trial is the investigation by the police. The investigation machinery is set into motion, by the victims of crime, as soon as the commission of a cognizable offence is brought to the notice of the police. This is when the victim of a crime gets his first contact with the justice delivery system. The atmosphere in the police station is generally hostile and indifferent. The police officers are rude, insensitive and callous towards the victim or the witness who are given an impression that they have committed some wrong by approaching the system for redressal. Not only this, there is a tendency amongst the police officials to avoid registering an FIR with a view to manipulate crime data. Even if the person succeeds in getting the FIR registered, it is often recorded for lesser offences. This frustrates a victim of crime. Even the amendments made to the Code of Criminal Procedure in the matter of registration of cases does not appear to have produced the desired results because the mind set of the police has not changed.

**ii. Prosecution**

Prosecution is a very important component of the criminal justice delivery system. The quality of prosecution and capability of the prosecutor has great impact on the outcome of a criminal trial. The prosecutor is expected to marshal the facts and place the evidence before the Court in a competent and a systematic manner so as to

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7. The evidence gathered by means of a test identification parade is relevant and admissible: S.9 Evidence Act 1872.
recreate the scene of crime before the Court with a view to fix the identity and culpability of the offender. It is a pity that importance of prosecuting agency in the system has not been adequately realized. There has not been any sincere effort on the part of the State to introduce any systematic reforms in order to strengthen and streamline the prosecution wing. It has ignored the fact that prosecution is the Achilles heel of the Criminal Justice System.

**iii. Trial**

In the criminal justice delivery system, the courts have the most important role to play. The primary function of the court is to conduct the trial in a free and fair manner. The main crisis being faced by the criminal justice system stems from intimidation or allurement of the victims or witnesses during the trial leading to inevitable consequence of collapse of the trial. An important responsibility rests on the judge to ensure that the witnesses depose without any fear, force or pressure in the court. Unfortunately, judges with a view to protect their image of impartiality have a tendency to avoid taking active part in the trial. This reduces a criminal trial into battle of wits between prosecutor and the defence counsel. Court trials are reduced into mind games like chess, with judge assuming the duty of only an umpire or referee. As a result, the focus is shifted from justice – quest for truth to – advocacy skills. There is an urgent need for a paradigm shift from adjudication to quest for justice. This can be achieved only if the judges take active part in the trial to ensure that course of the trial is directed towards the ends of justice. They cannot sit as silent spectators. They must control the recoding of evidence and ensure that the witnesses are not unduly harassed. The
tendency to consider themselves only as umpires and not their responsibility to quest for truth must be avoided.

Too liberal a recourse to “benefit of doubt” to take to the easy course of deciding cases is a poor reflection on the working of the system. Large-scale acquittals (almost 80%) are eroding public confidence in the effectiveness of criminal justice delivery system. It is natural also because when people see persons accused of heinous and ghastly offences getting acquitted, they believe that either courts are too liberal or pro-criminal or are not functioning the way they ought to function. Unfortunately, they do not know nor do they try to know the reasons for such acquittals. When a crime goes unpunished, the criminal is encouraged, the victim of crime is discouraged and the society in the ultimate analysis suffers, which has an adverse impact on the law and order situation in the country. However, the rising crime rate in the post independence era and the inadequacy of the law in balancing individuals liberty and State’s duty to ensure protection of life and liberty has made the criminal justice system a subject of heated debates but despite the concern over the shortcomings of the system to check the growing crime rate, we are still unable to check the rise in crime. But what appears to be certain is that unless the reforms are made in respect of each of the components of the criminal justice delivery system the system would not become effective.

The position of victims who happen to be women or children has not merited the attention it deserves in the procedural statute. The protection under s.160 Cr. PC that “no male person under the age of 15 years or women shall be required to attend any place
other than the place in which such male person or woman resides" does not apply to a woman or a child who is picked up as a suspect. The plight of rape victims is compounded by their being held in 'protective custody' in jails or in the nari niketans (women's shelters), on the pretext that they are required for giving evidence although such detention has no legal basis.

The law's response to the needs of victims of rape and other violent crimes against women has been both predictable and inadequate. In imposing severe and minimum punishments for the offence and in shifting the burden of proof, the law fails to address the needs of the victim to be treated with dignity, to sustained protection from intimidation, to readily access the justice mechanisms, to legal aid and to rehabilitation. There is yet no

8. The Supreme Court emphasised the mandatory nature of this requirement in Nandini Satpathy Vs. P.L.Dani (1978) 2 SCC 424. The Rule that an arrest of woman should not be detained beyond sunset was evolved judicially: Christian Community Welfare Council of India Vs. Government of Maharashtra (1996) 1 Bom CR 70 but even this has been held not to be mandatory by the Supreme Court in State of Maharashtra v. Christian Community Welfare Council of India (2003) 6 SCC 546.


10. S.376 (2) prescribes a minimum sentence of ten years and a maximum sentence of life imprisonment for certain severe forms of rape.

11. For e.g., S. 114 A, Evidence Act 1872 raises a presumption as to the absence of consent where the woman raped says in her evidence before the court that she did not consent. Recently some token amendments have been made recognising the need for preserving the dignity of the victim: S.155 (4) Evidence Act 1872 which permitted the impeachment of the credibility of a prosecutrix by reference to her general "immoral character" now stands repealed. S. 228 A prohibits the disclosure of the identity of the victim in any publication concerning the offence.
provision in the law mandating 'in-camera' trials particularly when the victim is a child.\textsuperscript{12} There is also no statutory scheme recognising the rehabilitative needs of the victims of rape.\textsuperscript{13} The legislative and executive apathy to the problem stands in contrast with the response of the Supreme Court in Delhi Domestic Working Women's' Forum v. Union of India.\textsuperscript{14} The case arose out of an incident in which six women, working as domestic servants in Delhi, were raped by eight army personnel in a moving train between Ranchi and Delhi. The members of the petitioner forum, when prevented by the employers from meeting the victims, sought the court's directions for expeditious and impartial investigation of the offences. The court indicated the following "broad parameters for assisting the victims of rape":\textsuperscript{15}

- The complainants in sexual assault cases had to be provided with legal representation. It was important to have someone well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police

\textsuperscript{12} An attempt is being made through a PIL in the Supreme Court (Sakshi v. Union of India (2001) 10 SCC 732) to get the legislature to remedy this lacuna.

\textsuperscript{13} Societal support to victims of sexual crimes is seldom available. From a victimological perspective, studies show that in sexual crimes against females and children of both sexes, the greater damage is often done by the reactions of others. This is termed as secondary victimization: Gerd Ferdinand Kirchhoff, "Victimology - History and Basic Concepts" in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 1at 51.

\textsuperscript{14} (1995) 1 SCC 14.

\textsuperscript{15} Infra note 47 at 19-20.
station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It was important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represented her till the end of the case.

- Legal assistance would have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station; the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.

- The police was under a duty to inform the victim of her right to representation before any questions were asked of her and the police report should state that the victim was so informed.

- A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable. An advocate would be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be
authorised to act at the police station before leave of the court was sought or obtained.  

The victim's right of participation in the post-trial stage of the proceedings stands on a better footing. An appeal against an order of acquittal can be preferred, with the prior leave of the High Court, by both the State Government and the complainant. The right of a victim's near relative, who was not a party to the proceedings, to file a Special Leave Petition under Article 136 of the Constitution in the Supreme Court challenging an order of acquittal by the High Court was expressly recognised by a Constitution Bench in P.S.R. Sadhanantham v. Arunachalam. Telescoping the requirement of fair procedure implicit in Article 21 into Article 136, the court declared: "When a motion is made for leave to appeal against an acquittal, this court appreciates the gravity of the peril to personal liberty involved in that proceeding. It is fair to assume that while considering the petition under Article 136 the court will pay attention to the question of liberty, the person who seeks such

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16. The other parameters included the payment of compensation to victims of crime by the constitution of a Criminal Injuries Compensation Board. The National Commission for Women was asked to evolve a scheme for victims of rape. However, that is yet to come about. Meanwhile the incidents of crimes against women has shown a steady increase. From 1,21,265 in 1997 it had risen to 1,35,771 in 1999. Of these, torture constituted 32.4%, molestation 23.8%, kidnapping and abduction 11.7% and rape 11.4%. Crime in India 1999, National Crime Records Bureau (2001), 203.

17. S.378(1) read with s. 378 (3) Cr.PC.

18. S.378(4) Cr.PC.


20. Id. at 146.
leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave."21

Apart from these three important processes of criminal justice administration, there are five vital issues that necessitate a re-look:

(i) Taking Victim's plight seriously Ignoring victims of crime is a factor which adversely affects the justice delivery system in criminal cases.

At present the criminal justice delivery system is loaded heavily in favour of the accused. It has failed to strike a balance between the rights of the accused and that of the victim. Insensitivity towards the rights of the victim of crime is fast eroding the faith of the society in the criminal justice system and has already given rise to increased incidents of crime and lawlessness. There is a growing tendency amongst the people to settle these disputes through extra judicial means. There is need to arrest this tendency for otherwise the maintenance of Rule of Law would be at stake. Since the central object of any 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 under the criminal law. After all he is the one who has been wronged.

21. The judgment of Krishna Iyer, J., for the court was concurred with by Pathak, J. (as he then was) in a separate opinion who sought to restrict the right of a private party other than a complainant to file a special leave petition "in those case only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petition for special leave for reasons which do not bear on the public interest but are prompted by private influence, want of bona fide and other extraneous considerations."
The victim has a say in the grant of bail to an accused. S. 439 (2) Cr.PC, as interpreted by the courts, recognises the right of the complainant or any "aggrieved party" to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused. A closure report by the prosecution cannot be accepted by the court without hearing the informant. Also, compounding of an offence cannot possibly happen without the participation of the complainant. In S.A. Karim v. State of Karnataka the Supreme Court acted on the plea of the father of a policeman killed by a dreaded forest brigand and set aside the order of the trial judge that had allowed the prayer of the State for withdrawal of prosecution.

While the victim of a crime may move the government to appoint a special prosecutor for a given case, there is no scope

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24 S.320 Cr.PC.
26 In P.Ramachandra Rao v. State of Karnataka (2002) 4 SCC 578, the Supreme Court reversed its earlier orders in Common Cause v. Union of India (1996) 4 SCC 33 and (1996) 6 SCC 775 permitting closure of petty criminal cases the trial in which had not commenced even after the lapse of two to three years after institution. The Court noted the concern expressed 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."
27 S.24 (8) Cr.PC. The trial of offences under the SC/ST Act is to take place in Special Courts (s.14) and for each such court a Special Prosecutor is required to be appointed (s.15). Nevertheless the effective conviction rate for
under the Cr.PC for the victim or informant or her lawyer to directly participate in the trial. S. 301 (2) Cr.PC mandates that such lawyer of the private party "shall act under the directions of the Public Prosecutor...and may, with the permission of the court, submit written arguments after the evidence is closed in the case." Further, though there is no provision in the Cr.PC for providing legal aid to the victim of a crime,28 S.12 (1) of the Legal Services Authorities Act, 1987 (LSAA) entitles every person "who has to file or defend a case" to legal services. A victim of crime has a right to legal assistance at every stage of the case subject to the fulfillment of the means test and the `prima facie case' criteria.29

After setting the criminal justice mechanism in motion, the victim is reduced to the status of being merely an "informer". He has hardly any role to play in the whole proceedings except that he may, if alive, be examined by the prosecution as a witness. It is strange that in spite of the fact that a victim of crime, who suffers at the hands of the accused and moves the State through the police or the courts to seek justice is given the impression that after having lodged the report or the complaint, he is a "Mr. Nobody". A victim of crime is, thus, a mute witness to the whole drama. If alive, he may appear as a witness and there again the provisions of

28 S.304 Cr.PC provides for legal aid only to the accused.

29. S.12 (1) (h) and s. 13 (1) of the LSAA respectively. Under s. 12 (1)(b) every victim of trafficking in human beings or begar; under s. 12 (1) (e) every person under circumstances of undeserved want such as a "victim of a mass disaster, ethnic violence, caste atrocity." is entitled to free legal services irrespective of the means test but subject to the prima facie case test.
Evidence Act of relevancy of facts not withstanding, he is subjected to continual questioning, with the court almost silently watching. The law, today, fails to address the needs of the victims to be treated with dignity, to protection from intimidation, inside or outside the court room. Expressing concerns particularly about the treatment of victims of sexual offences in the courts during their cross-examination.

"There has been lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the creditability of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime."

ii) Expeditious Justice
Inordinate delay during investigation and thereafter not only denies to an accused his constitutional right of speedy trial but also leads to many other drawbacks. One of the fall out of the delay in trial is the prolonged detention of an under-trial prisoner in jail, despite the fact that under law “everyone is presumed to be innocent unless proven guilty”. The plight of under-trial prisoners in this country is a distressing tale. Despite several pronouncements of the Hon’ble Supreme Court of India and certain High Courts on the subject, under-trials are languishing in jails in large numbers all over the country. The UTPs constitute almost 75% of the prison population in the country as a whole.

The Cr. PC also does not effectively address the growing menace of intimidation of victims of witnesses during the pendency of trial at the instance of the accused and other vested interests. Even the few provisions that exist are not creatively used for meeting the challenge. Recently the Supreme Court took judicial notice of the fact that “the conviction rate has gone down to 39.6%

30. The provisions that exist offer protection against intimidation by the police. S.162 Cr. PC makes the statement made by a witness to the police during the course of investigation inadmissible in evidence consistent with the statutory bar under s.25 Evidence Act, 1872. S.163 Cr. PC seeks to protect a witness against inducement threat or promise offered or made by “police officer or other person in authority”. S.171 Cr. PC mandates that “no complainant or witness on his way to any Court shall be required to accompany a police officer, or shall be subject to unnecessary restrained or inconvenience.”

31. S.284 Cr. PC provides that a witness can be directed by the court to be examined on commission thus dispensing with the need for such witness to attend the trial. In addition, where the court finds that the key prosecution witnesses have turned hostile it can under s.309 Cr. PC and for reasons to be recorded, postpone the trial. Also, under s.311 Cr. PC it can recall and re-examine a witness if “his evidence appears it to be essential to the just decision of the case”. However, these provisions are seldom used even when the court finds that the witness is under obvious threat and intimidation.
and the trial in most of the sensational cases does not start till the witnesses are won over."32 One response is to get the court trying the case to hold sittings in camera or shift the venue of the trial to a safer place in the interests of ensuring a fair trial.33 The other, and a less frequently invoked option, is to seek a transfer of the trial to another state by petitioning the Supreme Court under s.406 Cr.PC. In G.X. Francis v. Banke Bihari Singh,34 the Supreme Court transferred the trial of a criminal defamation case filed against Christians by a non-Christian from a court in Madhya Pradesh, where the atmosphere was palpably hostile, to one in the neighbouring state of Orissa. The judgment of Vivien Bose J's explained the grounds for transfer thus:35 "In a case of defamation against Christians by a non-Christian, bitterness of local communal feeling and the tenseness of the atmosphere afford good grounds for transfer under this section. Public conference in the fairness of trial held in such an atmosphere would be seriously undermined, particularly among reasonable Christians all

32. Order dated August 8, 2003 in W.P.(Crl.) No. 109/2003 (National Human Rights Commission v. State of Gujarat). The court also took note of the fact that "No law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses." In a 1984 case from Calcutta, the entire trial was held vitiated because all the key witnesses had been won over. A re-trial was ordered by the Supreme Court: Sunil Kumar Pal v. Phota Sheikh (1984) 4 SCC 533.

33. S. 9(6) Cr.PC states: "The Court of Sessions shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Sessions is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the Sessions Division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein".

34. AIR 1958 SC 309.

35. Id. at 310.
over India, not because the judge was unfair or biased but because the machinery of justice is not geared to work in the midst of such conditions”.

A serious challenge which stares the judiciary in its face is its failure to deliver justice expeditiously particularly in the subordinate courts. It has brought about a sense of frustration amongst the litigants. Human hope has its limits and waiting endlessly is not possible in the current lifestyle.

iii) Rationalising the Sentencing process:

"Sentencing Process" also plays a crucial role in the Criminal Justice Delivery System. The sentence being the end result of all trials culminating into a conviction, it should be commensurate with the offence committed. It must reflect the court's condemnation of the crime and response to the loud cry of the society for justice. The sentence must neither be whimsical, nor uncertain. A balance between the deterrent effect and the reformatory theory of the sentencing process has to be achieved. For certain offences, the approach should be to rehabilitate and reintegrate into the mainstream of social life such offenders who have committed the offence out of compulsion or passion and are not habitual criminals so as to reclaim them as useful members of the society. The State should need to consider improving the correctional facilities to the convicts. That would be in tune with the current thinking in the field of penology.

There are laws and procedure in place to deal with the crime. The requirement is to improve the human resource and to infuse
motivation in them. The actors of the criminal justice delivery system are required to have a victim oriented approach. There is also a necessity of a paradigm shift from convicting the offenders to the redressal of grievances and payment of compensation to the victims, wherever possible. All stakeholders like the police, the lawyers and the judges can certainly improve the existing criminal justice delivery system by putting in sincere and honest efforts – State must, however, make the environment conducive to develop a proper work culture for all the stakeholders if the criminal justice delivery system is to be reformed towards victims rights.

2.3. CRIMINAL JUSTICE SYSTEM AGENCIES' ROLES AND RESPONSIBILITIES

i. Law Enforcement

As "first responders" to most crimes, police departments serve a critical and primary role in providing immediate intervention and assistance to victims of crime. Unlike most social service agencies, police departments are typically open every day of the year, 24-hours-a-day. As such, there is tremendous responsibility on the part of law enforcement officers and civilian personnel to provide sensitive and supportive victim services. Although police departments tend to provide more and better victim services, these services were not always part of traditional policing. Many police officials have perceived their victim assistance responsibilities as a secondary responsibility, at best.

Historically, police academies have not provided adequate training for law enforcement personnel regarding victimization and the effect violent crime has on crime victims. This means that
undertrained law enforcement personnel come into contact with emotionally distraught victims, which results in a decrease of the victim's confidence and willingness to participate in the criminal justice system. The move toward community policing in many jurisdictions has important implications for victims and those who serve them. With more officers visible and active on the street and in neighborhoods, the delivery of victim services can be provided more swiftly, and involve supportive advocacy from all facets of a neighborhood or community (such as businesses, churches and social services).

Police-based services provide essential assistance to victims of crime. These include on-site crisis intervention and securing emergency medical assistance. Additionally, law enforcement programs may provide information and referrals to services and resources that can aid in a victim's short and long-term reconstruction. Essential services should include, but are not limited to:

i. Orientation to the law enforcement and investigatory process.

ii. Provision of or referral and accompaniment to crisis intervention and psychological first aid.

iii. Accompaniment to emergency medical services in cases involving injury.

iv. Contacting a victim service professional to provide on-site assistance and support, upon request from the victim.
v. Providing information to crime victims about their constitutional and statutory rights, and the availability of crime victim compensation.

vi. Securing the victim's property if personal safety has been compromised as a result of crime.

vii. Personally contacting the victim by telephone or in person 24-to-48 hours following the initial response to see if assistance has been sought and/or received.

viii. Immediate referrals (verbally and in writing) to community agencies that offer emergency services to victims, as well as information about financial assistance, should be provided to all victims. For example, a brochure should be developed in different languages and given to victims that includes information about emergency and long-term services and victim compensation.

Perhaps most important, every law enforcement agency -- at the state and local levels -- should assign a staff member to serve as a liaison to crime victims and victim services. This designation will enhance all roles and responsibilities described above, and will coordinate and streamline the victims' rights and the delivery of victim services.

ii. Prosecution

When law enforcement has investigated a crime and a suspect has been arrested, the cases are then referred to prosecutors. Although each state's laws and procedures provide for different ways to initiate a criminal action, this is usually handled through either an initial court appearance or some process leading to
charging and arraignment. At this point, information regarding the investigation and facts of the crime is presented by law enforcement to the court with the assistance of prosecutors, and appropriate charges are levied against the defendant. When appropriate, he or she is "bound over for trial" on the charges levied.

There is tremendous motivation to utilize the typically limited resources made available to prosecutors to dispose of each case in the most just, yet efficient manner possible. The motivation to dispense cases due to the typically overwhelming work load handled by most prosecutors' offices often comes into direct conflict with the needs and desires of individual victims, who want their particular perpetrator prosecuted to the full extent of the law. However, victims' expectations are often not fulfilled.

iii. Trial

Assuming a case goes on hearing the prosecution case to trial, the accused continues to receive basic protections found in the procedural code, state constitutions and various case law holdings. Volumes of materials are available on accused rights. These include, for example, the right to obtain all exculpatory evidence from the prosecution, which would tend to prove the innocence of the accused. Also, the accused has the right to confront and cross-examine his or her accusers. Often, this is very difficult for the victim, who must be well prepared to withstand the onslaught of cross-examination by often aggressive defense counsel. Accused counsel typically use methods that involve the strategy of "defense by distraction". This approach is based on the notion that in order
to place any possible "reasonable doubt" within the minds of the jury, an accused lawyer will attempt to focus attention on any other possible factor than the accuser's own actions. If the accused is not released on various technical violations of his or her rights that may arise (for example from search and seizure issues), attempts will be made to blame others for the situation. The police will be accused of other violations, society may be implicated as the true cause of the problem, and especially victims are often blamed for their "contribution" to their own victimization.

There are a number of services that can and should be provided by prosecutor-based victim assistance programs. The most important of these are appropriate notification programs regarding the status of the case and the delays that often occur in the progress of a criminal prosecution. Victims are most often distressed by the lack of progress in their cases and the need to rearrange their personal and work lives repeatedly to attend court hearings that are often delayed. Also, victims may require assistance in attending and participating in court proceedings, protection from intimidation and harm, basic orientation to the criminal justice system and their appropriate role within it, as well as other services and interventions that are described at length in other chapters. Of course, referrals to appropriate victim assistance and victim compensation programs should be made by the prosecutor's office.

Although prosecutors are not the "victim's lawyer," they have opportunities to keep victims informed and involved, to provide appropriate accommodations in the pre-trial and court settings,
and to follow-up with information and referral, as needed. These opportunities should include, but are not limited to:

i. Providing orientation to the criminal justice process.

ii. Providing information about the criminal justice system and proceedings in simple, layperson's terms to help victims understand the maze of the criminal justice system. Victim information should be available in multi-lingual formats.

iii. Providing notification of case status at key stages of the criminal justice system.

iv. Sponsoring witness alert programs to place witnesses on "stand-by" to come to court appearances, thus saving victims time and money.

v. Coordinating witness appearances, i.e. scheduling witnesses, providing witness fees, per day fees and accommodations for out-of-town witnesses, as well as assistance with transportation.

vi. Sponsoring victim/witness information telephone lines to provide up-to-date information after hours to subpoenaed witnesses.

vii. Providing educational and accompaniment programs to familiarize victims with the courtroom.

viii. Providing a waiting area for victims and witnesses and their families in the courthouse that is separate by sight and sound from the offender. These areas must be "child-friendly," safe and secure.

ix. Offering assistance to victims in completing victim compensation applications.
x. Coordinating the inclusion of victim impact information, i.e. written statements, allocution, audio or video statements, into court proceedings (including plea of guilty convictions, pre-sentence reports and sentencing) with probation and the judiciary.

xi. Offering employer, landlord, and/or creditor intervention services.

xii. Expediting the prompt return of property, closely coordinating such efforts with law enforcement.

xiii. Providing intervention, protection and recourse to victims and witnesses who are being intimidated or harassed by perpetrators.

**Conviction on Plea of guilty (Sec.253 Cr.P.C.):**

Conviction on Plea of guilty allows the defendant to avoid a trial and the possibility of a verdict that may result in a more severe sentence by agreeing to plead guilty to a lesser offense. Victims are often most distressed at the perceived ability of the defendant to "get off easy" by bargaining with the prosecutor to lower the offenses of which they may actually be guilty. Many victims and advocates rightfully consider victim participation in the plea negotiation process as essential to providing victims with a voice in the system. Any plea negotiation should include an opportunity to present the impact of the crime on the victim -- a victim impact statement.

**iv. Judiciary**

Judges can provide essential protections to victims. For example, when cases involve children, certain accommodations such as allowing the victim to testify through close circuit television
or granting orders requiring defense counsel to lower themselves to the child's eye level and not raise his or her voice, as well as other methods of making the courtroom less intimidating to a child, can be ordered. Judges can also expedite trials so as not to further victimize the crime victim due to additional delays during an already difficult process. Judges can deny motions by the defense that are clearly aimed at offending the victims.

One common technique is for a defense counsel to subpoena the victims' family members as potential witnesses, request that the court order that witnesses be excluded from the courtroom and then never call the victim's family to testify - thereby preventing their attendance in the courtroom. However, the accuser's family is allowed to sit in the courtroom, showing support for their family member who is on trial, while the victim's family is not allowed in the courtroom. Such motions can, and should, be denied.

Judges are empowered to sentence convicted criminals for the crimes for which they have been convicted. It is important that judges include information regarding the impact of the crime on the victim in their assessment of appropriate sentences. Often this information is provided through the prosecutor-based victim assistance program, a probation office, or another official source, and is typically referred to as a victim impact statement (VIS). VIS information is often the only comprehensive assessment of the injuries caused by the offender available to the judge; it is crucial that this information be conveyed to the sentencing court.
v. Probation

Prior to any agreement of probation, the probation officer should interview victims as part of the pre-sentence investigation to determine the physical, financial and emotional impact the crime had on them. When an offender is sentenced to probation, he or she submits to community supervision from a probation officer. The probationer may be required to fulfill certain requirements -- called conditions of probation -- that might include: no contact with the victim; payment of monetary obligations to the victim, such as restitution, child support, mortgage payments, etc.; payment of fines (that often support law enforcement and victim services); no use of alcohol or other drugs (with an agreement to submit to random testing); specific treatment that addresses the probationer's criminal activities (such as sex offender treatment, alcohol or other drug counseling, anger management, etc.); and/or community service. While restitution payments are monitored by probation agencies, they are usually collected by the court.

Probation officials' roles and responsibilities to victims should include, but are not limited to:

i. Contacting victims to assess the psychological, financial and physical impact the crime had on them as part of the pre-sentence investigation.

ii. Incorporating any victim impact statement (allocution, written, audio or visual) into the official PSI report to the court.

iii. Determining any specific conditions of probation that will ensure the victim's safety and security.
iv. Soliciting victims' opinions relevant to appropriate community service sanctions for the probationer.

v. Determining the amount of appropriate restitution payments, and developing a realistic schedule for the collection and disbursement of restitution to the victim. In some jurisdiction, probation officers are charged with physically collecting restitution payments, and forwarding them to victims.

vi. Supervising the probationer's involvement in any victim/offender programming, such as victim impact classes or panels, victim/offender mediation or conciliation, or "Impact of Crime on Victims" classes, that victims choose to participate in on a strictly voluntary basis.

vii. Notifying the victim of any probation violations that result in an offender's incarceration.

viii. Monitoring probationers to ensure full compliance with all conditions of probation that affect the victim's rights, safety and security, as well as the general orders of probation.

ix. Providing information and referrals to victims who require assistance.

x. Participating in multidisciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

vi. Corrections

When a convicted offender is sentenced to a term of imprisonment, the state Department of Corrections or of Prisons assumes responsibility for his or her supervision. The offender's file that contains details from the crime, court case and sentence, victim impact statement (when applicable), recommendations for
treatment and services during the period of incarceration and personal information, is utilized as a basis for offender classification. The purpose of classification is to place the offender in the most appropriate incarceration setting (minimum, medium, maximum, or super-maximum facility). The Department of Corrections and prisons the offender for his or her period of incarceration; implement and monitor work, educational and treatment activities available to inmates; and coordinate any release into the community with paroling authorities.

Obtaining relevant victim information -- including victim impact statements and protection orders -- from court documentation for inclusion in the offender's file.

Protecting the confidentiality of victim information through protected automated databases or "flags" on paper files that delineate that this information is not available to inmates or their counsel.

Providing victims and witnesses with information and recourse relevant to inmates who attempt to intimidate, harass, or harm the victim during their period of imprisonment.

Upon request, notifying victims of an offender's status, including but not limited to: current location, classification, potential release date, escape, or death.
Implementing and monitoring victim/offender programming, such as victim impact panels, victim/offender mediation or conciliation, or "Impact of Crime on Victims" programs.

In some departments should be in monitoring, collecting and disbursing restitution payments to victims and/or fines to state victim compensation programs.

Ensuring that inmates receive programming that is commensurate with court orders relevant to victims, such as sex offender treatment, alcohol and/or other drug counseling, anger management, etc.

Coordinating the physical location and logistics of parole release hearings with paroling authorities, victims, and victim service providers. Providing information and referrals to victims who require assistance.

Participating in multidisciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

vii. Parole

When an inmate is released from prison, his or her reintegration back into the community is accomplished through the parole process. Parole is the early release of prisoners, with conditions attached to that release that are designed to protect the safety of both the victim and the public. Parole is considered part of the prison sentence, but is served in the community. In most states,
Paroling authorities are separate from the Department of Corrections. Parole board members in most states are appointed by and serve at the pleasure of the Governor. In some states victims of violent crime serve as parole board members; each state varies in its number of board members.

Similar to probation, successful candidates for parole must agree to abide by certain rules, which include but are not limited to: not committing any crimes during the period of parole; honoring protective or "stay away" orders that prevent contact with the victim; submitting to random testing for alcohol or other drugs; finding and maintaining employment and housing; paying restitution and other financial obligations, including child support, fines and costs associated with their parole supervision; and/or limited driving privileges.

In most states, victims have the statutory and/or constitutional right to provide parole boards with victim impact information about how the crime affected them. Since many offenders are sentenced for the crimes, it is imperative that parole boards know the facts of the crime that was actually committed. This important input also provides victims with an opportunity to request certain conditions of parole that make them feel safer, such as protective orders or requests that the offender be paroled to a geographic location that is a certain number of miles away from where the victim resides. In most states, victim impact statements are not confidential, offenders can access the statements (with protections afforded to the victim’s contact information).
These programs serve many important purposes, including providing victims with information and notification about a parolee's status, as well as with overviews of how the parole process works (and victims' rights that are inherent in this process). Such programs serve to make a system that has traditionally been "offender directed" also "victim centered."

It is essential that victims know who their offender's parole agent is, and how the agent can be reached 24-hours-a-day. Parole officials' roles and responsibilities to victims should include, but are not limited to:

Providing victims with an overview of the parole process, including parole board hearings, community supervision, parole revocation, and all related victims' rights and services.

Providing victims with the opportunity to submit victim impact statements to the parole board, including allocution, written, audio or video statements.

Asking victims about any specific concerns they have related to their personal safety and security if an inmate is released to parole, and incorporating these reasonable concerns into parole conditions.

When possible under state law, providing victims with the opportunity to personally present victim impact information to the board without the inmate present, and without providing access to such information by the inmate and/or his or her counsel.
Continuing restitution orders emanating from judges or, in states where parole has authority, ordering restitution payments (and ensuring that such payments are collected, disbursed to the victim, and enforced).

Ordering important payments that help victims in interfamilial cases seek financial independence, such as child support, money for legal counsel or mental health counseling, mortgage or rent payments, etc.

Providing victims with contact information for parole agents and paroling board members. Providing information and referrals to victims who require assistance.

Participating in multidisciplinary efforts with other entities that comprise the criminal justice system to ensure a seamless delivery of rights and services to victims of crime.

viii. Allied Professionals

In addition to the core criminal justice system professionals discussed above, various allied professionals have a significant impact on the criminal justice system response to involving victims. These include, but are not limited to:

i. Medical personnel

ii. Mental health service providers

iii. Child protection professionals
Doctors, nurses and other hospital personnel provide tremendous assistance to victims of crime. In addition to police officers, medical personnel, who are often also available 24 hours a day, seven days a week, are commonly the first ones to come into contact with crime victims who have experienced some form of injury. In their roles, they are uniquely suited to make careful documentation of the condition of the victim and objectively report these findings (much of which can be utilized as evidence in criminal cases).

Of course, the immediate and appropriate treatment of the victim is paramount; however, in the course of treatment, appropriate documentation provides useful information for prosecutors and victims in forwarding various criminal and other legal actions against the perpetrator. Of particular importance is the use of appropriate evidentiary collection kits to gather information in sexual assault and sexual abuse cases for later evidentiary use at trial. This needs to be done sensitively, but competently, so that the trauma of the rape examination is minimized and evidence is accurately collected.

2.4. INSTITUTIONALISATION OF VICTIMS' STATUS AND RIGHTS

The assumption that by punishing the offender the victim receives "Justice" is of doubtful value today because of the decreasing number of successful investigations and convictions. Given the inconvenience, delays, corruption and harassment, many victims tend to keep away from reporting crimes and sometimes there is a tendency to take law into one's own hands.
Among the many reforms canvassed for improving criminal justice is one that advocates a victim-orientation to criminal justice administration. 'Victim orientation' includes greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

The case for a viable, social justice-oriented and effective scheme for compensation victims is now widely felt. The Government at the Union level and in the states are well advised under the directive principles as well as under International Human Rights obligations to legislate on the subject of an effective scheme of compensation for victims of crime without further delay.

The tremendous support which the criminal justice might derive from the people once the compensation scheme is introduced even in a modest scale, and the possibilities of advancing the crying need for social justice in a very real sense, are attractive enough for the State to find money to float the scheme immediately.

Under our constitution, it is the primary responsibility of the State to maintain law and order so that the citizens can enjoy peace and security. The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of
peace as well as law and order in the society. It is, therefore, an obligations of the State to identify and apprehend the offender, subject him to a fair trial and if found guilty, to punish him. Substantive penal laws enacted, prescribe punishment, whenever there is an invasion of those rights of the citizens. In the prevailing system of criminal justice whenever a crime is reported, it is the State, which gets the crime investigated by its agency, move the Court for trial of the offender and prosecute him in a Court of Law. The right to a fair trial is a constitutional imperative.

Since the early studies in the 1940s by Beniamin Mendelsohn and Hans von Hentig, increasing attention has been turned to the problems faced by victims, both in society in general, and in their interaction with the criminal justice system in particular. Many victims face insensitive treatment by the police, prosecutors and court officials, causing a second injury. This applies particularly to certain especially vulnerable categories of victims, such as migrants, minorities and victims of sexual offences, as well as refugees, prisoners of war, and civilian victims of war and civil strife. Even if the offender is apprehended and brought to trial, the experience of victims in many jurisdictions is that they have been marginalized, and that they do not have the opportunity to express their views and concerns in the criminal justice process or in human rights courts or international tribunals. Many systems do not allow the victim to present his or her civil claim in conjunction with criminal proceedings. Even if the offender is convicted, the sanctions (often, a fine, probation or imprisonment) have little relevance to the victim, other than the satisfaction of seeing the offender punished.
The right of a victim of crime to restitution has not yet merited statutory recognition. In this area, the constitutional courts have been inclined to examine the plea of victims for redressal of the losses suffered during violent incidents including riots and caste clashes. The principle that is evoked is that of 'culpable inaction' under which the state and its agencies are expected to anticipate the losses or damage to public and private property in certain situations over which the potential victims have no control. The courts have gone as far as to find the state liable only where a definite failure on its part act has resulted in the loss. The outbreak of riots in the wake of the assassination of the Prime Minister Indira Gandhi in October 1984, resulted in large-scale damage to the properties of members of the Sikh community in several places of the country.

In R. Gandhi v. Union of India, the Madras High Court, acting on the report of a commissioner appointed by it to assess the losses, directed payment of varying amounts of compensation for the losses to property of the Sikh community in Coimbatore. However, in Sri Lakshmi Agencies v. Government of Andhra Pradesh, the Andhra Pradesh High Court declined to accept the prayer for compensation to the loss of life, injury, destruction and loss of property as a result of the violence that


37. AIR 1989 Mad 205.

38. (1994) 1 Andh LT 341.
followed the murder of a sitting member of the legislative assembly. The court explained that: 39 "it is only when the officers of the state do any act positively or fail to act as contemplated under law leading to culpable inaction, that the state is liable to pay the damages. There should be a direct nexus for the damage suffered on account of state action and if that is absent, Article 21 of the Indian Constitution is totally inapplicable". 40 This is a still evolving area in which the courts are seen to be treading cautiously. 41

The work of individuals, organizations, Governments and international bodies to restore victims to their rightful place in legal systems and increase the amount and quality of assistance available to victims has not been easy. Legal systems have evolved gradually over the centuries, and proposals for reforms to benefit victims have raised concerns that they may detract from the legitimate rights of others, such as suspects and defendants. Furthermore, it has often proven difficult to sensitize key representatives of the criminal justice system, policy-makers, legislators and members of the community to the fact that change is needed.

39. Id. at 351.


At first contact with the criminal justice system and the suspect (as appropriate in the jurisdiction) provide information on the progress of the investigation, information on the criminal justice process, information on the rights of the victim at the scene of the crime; later in the criminal process, provide information on detention of the suspect, bail, bond, measures to assure reparation, the protection of evidence for forensic examination, information on medical assistance at the forensic examination, and information on the prevention of further victimization.

VICTIMS' RIGHTS IN THE PROCESS OF CRIMINAL JUSTICE

i. Guiding Principles

- The rights of victims of crime must be accorded the same priority as those of the defendant.

- The process of dealing with the offender must not increase the distress or add to the problems of the victims of crime.

ii. Principles for the establishment of victims’ rights

- The rights of victims of crime must be accorded the same priority as those of the defendant.

- In taking account of the interests of victims, all sections of the criminal justice process must ensure that the process of dealing with the offender should not increase the distress or add to the problems of victims of crime in “secondary victimisation”.

- Professional experience in victims’ services and recent research has demonstrated beyond doubt that crime can
have long-term and detrimental consequences for victims and their families, not only for their physical, financial and emotional wellbeing, but also for their attitudes towards society as a whole, and to the criminal justice authorities in particular.

- Uninformed or insensitive treatment by the criminal justice process, or by individual professionals within that process, is likely to increase or prolong these negative effects. By contrast, victims who are given proper recognition and respect are more able to make a healthy and informed adjustment to their experience of crime, to understand the crime in its proper context, and to be reassured by the experience of solidarity within their community. Protection from secondary victimisation is as important as protection from the original crime, particularly because the power to provide this protection is within the competence of the authorities.

- Crime, and the fear of crime, affects not only the individuals involved but also the many people who become aware of events through personal contact with the victim or through the media. Accounts of secondary victimisation by the criminal justice process are likely to undermine confidence and possibly decrease co-operation. Procedures which properly recognise the position of the victim and which take steps to avoid secondary victimisation should therefore be regarded as essential to social solidarity and to the interests of justice as it is more widely understood. The provision of rights to victims of crime is therefore essential to the wellbeing of society as a whole.
the State has assumed responsibility for prosecuting the offenders and has removed from the victim the burden of responsibility for determining any action to be taken in respect of the offender. The acceptance of responsibility by the State should be recognised as a fundamental right of victims of crime, and no attempts should be made to erode this by returning the responsibility for decision making to victims.

It should be recognised, however, that the removal of responsibility from the victim may also have detrimental consequences. Victims may be denied the opportunity to protect themselves from the offender, to exact fair restitution, or to be fully informed about the procedures which will apply in their case, including the application of the law or the factors taken into account when decisions are made. Steps should be taken to ensure that victims' interests are protected and that justice is seen to be done by all parties with a legitimate interest in the case.

It is the responsibility of the State to ensure that suitable steps are taken, although a variety of remedies may apply, involving, for example, service providing organisations, the criminal justice authorities, the courts, or the offender.

iii. Victims' Rights

This statement acknowledges the importance of the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power in the Framework of Criminal Law and Procedure and on Assistance to Victims and Prevention of Victimisation. It also acknowledges the importance of the work of
those involved in crime prevention, including those who work with offenders.

Victims must have the right to:

- respect and recognition at all stages of the criminal justice proceedings
- receive information and explanation about the progress of their case
- provide information to officials responsible for decisions relating to the offender
- have legal advice available, regardless of their means
- protection both for their privacy and for their physical safety
- compensation both from the offender and from the State

a. Respect and recognition

- Victims have a right to be recognised and acknowledged as having legitimate interests which must be taken into account at all stages of criminal justice proceedings.
- The questioning of victims and other witnesses at all stages of the investigation and court hearings should be carried out with respect for the dignity of the individual. Special care should be taken with provisions for children or witnesses who are disadvantaged mentally, who should always be questioned in the presence of a parent, guardian or other supporter.
b. Right to receive information

- All victims, when reporting a crime, should have the right to 'opt in' to procedures for being kept informed of all developments relating to their case – eg., the arrest of the offender, the decision to prosecute, dates of hearings, bail, final decisions, and any release from a custodial sentence. Victims should be given clear information to enable them to opt in or out of being kept informed at any stage of the case.
- For those victims who choose to be kept informed, all information should be provided at the earliest possible opportunity, with full and clear explanations of the decisions which have been taken, the information upon which they were based and, where relevant, any legal issues which had to be taken into account. Victims should have the right to inspect the case file by appointment. As far as possible, information should be given to victims by the authorities who were responsible for the decision, as they will have clearer information about the reasons. In all cases where particular distress may be expected – eg., a decision not to prosecute or to reduce charges in cases of bereavement, sexual assaults, domestic violence or any form of harassment, an opportunity for a personal interview should be provided, to enable them to fully understand the decision.

c. Right to provide information

Victims frequently feel that they have information which is ignored by the authorities because it does not form part of the specific evidence needed to prove the case. This problem may be
less acute in an inquisitorial system of justice. In all jurisdictions, victims should be able to provide information, in their own words, directly to the police and prosecution services who are responsible for decisions.

The information may include the extent of the financial, physical or emotional damage caused by the crime, the existence or otherwise of any prior or continuing relationship with the offender, and any fears for personal safety or intimidation from the offender. Victims should be free to include any information they wish, although they should recognise that the information will be disclosed to the defendant and can be challenged if necessary.

The purpose of the statement should be to:

- ensure that the victim has a right to be heard
- provide information needed for any award of financial compensation
- alert the authorities to any continuing risk to the victim which could affect release from custody
- enable the professional parties involved to take the victim's interests into account at any stage at which the public interest may be relevant to a decision
- inform the prosecutor about the wider circumstances of the case, which may alert him to potential secondary victimisation during the management of the case both before and during the court hearing
- provide the prosecutor with information which could be used to refute misleading statements made by the defence
- enable the prosecutor to provide additional relevant information to the court - for example, prior to sentence
d. Legal Advice

Legal advice should be available to all victims, regardless of their means. In jurisdictions in which a victim or their bereaved relative may play an active role in the prosecution, both advice and representation should be available during criminal procedures.

e. Protection

- Consistent with the principles of justice, the privacy of victims and other witnesses should be protected. The names of victims should not be published in the press or media, and details which would identify them should be withheld. The address of victims and other witnesses should not be made available to the defendant or read out in open court, unless the address is of specific relevance to the charge.

- Special provisions should be made available for children and other vulnerable witnesses to give their evidence without the presence of the defendant or the general public (e.g., in camera, recorded evidence, video link or screens). The decision as to how evidence will be given should be made in advance of the hearing with the advice of expert advisers.

- Where there is a reason to believe that a victim or other witness may be subjected to further threats, violence or harassment, everything possible should be done to provide protection and reassurance. Full use should be made of technology – e.g., by providing personal alarms linked directly to the local police and listed for a priority response – and additional resources should be made available for this purpose.
• Where appropriate and possible, conditions constraining defendants or convicted offenders from contacting a victim or witness should be included in the provisions of bail, non-custodial sentences and parole. Victims should always be told the details of these conditions and should have clear information regarding the action to be taken if they are breached.

• The police should give priority to the protection of victims during the course of their investigations and adopt procedures – for example, in relation to home visits and identity parades – which will not enable the offender to identify witnesses.

f. Compensation

• Victims should always be offered an opportunity to apply in advance for compensation from the offender when cases are dealt with in a criminal court. Where their wishes have not been made known, their views should always be obtained before an order of compensation is made.

• Before compensation is reduced or refused on the grounds of the offender’s means, the means of the victim should also be taken into account.

• When an offender is given time to pay, compensation ordered should be paid directly from public funds to the victim, so that the offender’s debt is owed to the State, and assistance should always be given by the State in the collection of compensation from the offender.

• In cases of violent crime, victims should receive compensation from public funds for their injuries, emotional
distress, loss of earnings and loss of maintenance as soon as possible after a crime has occurred, regardless of whether or not an offender has been identified.

Where death has occurred, compensation should be paid for loss of dependency, funeral expenses and for bereavement for those most closely related to the victim.

g. General Conditions

- Clear complaints procedures should be established and made known to victims of crime to enable them to seek redress.
- All rights should apply equally to all victims of crime, and where relevant to their immediate family, regardless of age, sex, sexuality, race, disability, occupation, religious belief or political opinion of the person concerned.
- All individuals who come into contact with victims of crime should receive training to make them aware of the most up-to-date information regarding the effects of crime and secondary victimisation. Training should pay particular attention to the use of clear, unemotive language and the need for legal terminology and procedures to be explained.
- Sufficient resources should be provided to both statutory and voluntary organisations involved to enable them to honour their responsibilities.
- All rights should apply equally to all foreign nationals travelling or residents, regardless of the status of reciprocal arrangements with their own country of origin.
The brief review of the existing legal framework in relation to rights of victims of crime reveals that except in the area of providing compensation, very little has been done either statutorily or through schemes to address the entire range of problems faced by victims of crime. There is need to take a fresh look at the position in which the victim of a crime is placed in our criminal justice system.

The role of the victim of a crime in our criminal justice system, which follows the common law colonial tradition, is restricted to that of a witness in the prosecution of an offence. This stems from a negative perception of the victim of a crime as a person who has "suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights." Resultantly, the criminal justice system acquires a "vertical dimension" and becomes "a means of formal social control" by the state which takes over the prosecution of the offender to the exclusion of the victim. From a criminological and victimological perspective, these are "value laden judgmental labels that serve no useful research function and thus can be easily replaced by more neutral designations, such as 'participants to the conflict', 'parties to the dispute', 'protagonists' and so forth." This view advocates replacement of the vertical criminal

42. Clause 1 of the U.N. Declaration.


justice system by a "horizontal line of justice" where the punishment system is sought to be substituted by a mediation system which gives a central role for the victim.\textsuperscript{45} Our system however has persisted with the vertical dimension model.

The reorienting of the criminal justice system to address the needs of a victims of crime need not and perhaps should not be exclusive of the need to enforce and protect the rights of suspects as well as the rights of the accused. It should be possible to accommodate both requirements as has been done in countries like United Kingdom and the United States of America. To begin with it is essential to acknowledge that our legal system is not equipped at present to effectively deal with mass crimes, including the crimes of genocide and crimes against humanity.\textsuperscript{46} The setting up of a witness and victim protection unit under the control of an independent and accountable agency by suitably modifying the available models, e.g., the one provided by the Statute for the terminology represents a much needed return to the notion of crime as a conflict and the notion of conflict as an interaction. He points out that "normative designations of "criminal" and "victim" imply such a judgment and therefore preempt a thorough and objective investigation into the real and actual roles each party played in the genesis of the crime."

\textsuperscript{45} Gunther Kaiser, "Comparative Prospective Concerning Victim Orientation in Criminology, And Criminal Justice" in Kirchhoff et al (eds.) International Debates of Victimology, WSV Publishing (1994), 104 at 137.

\textsuperscript{46} For a detailed analysis of the failure of the legal system to deal with the mass killings of 2733 Sikhs in Delhi in November 1984 in the wake of the riots following the assassination of the Prime Minister, Vrinda Grover, "Quest for Justice 1984 Massacre of Sikh Citizens in Delhi" (2002) (mimeo).
creation of the ICC, becomes imperative. This ought to be built into the statutory legal framework itself.

Although the Malimath Committee has recommended that "the victim has a right to be represent by an advocate of his choice; provided that an advocate shall be provided at the cost of the state if the victim is not in a position to afford a lawyer",\(^\text{47}\) this fails to acknowledge that the present state of implementation of the statutory provisions concerning free legal aid in the criminal justice system leaves much to be desired.\(^\text{48}\) The reform of the criminal justice system as a whole will have to be simultaneous with the reform of the legal aid system before a victim of crime can be guaranteed an effective right of representation in a criminal trial.

The limitation of the resources of the State in making adequate provision in the form of a victim assistance fund ought not to be countenanced any longer.\(^\text{49}\) The attempt at devising a statutory scheme of witness protection will have to be preceded by a wide range of consultations by the law making body with not only victims of crime but other statutory bodies like the National Human Rights Commission which are plagued with a rising number of complaints.\(^\text{50}\) The approach would also have to be multi-

\(^{47}\) Report of the Malimath Committee, 270.

\(^{48}\) See generally S. Muralidhar, "Legal Aid and the Criminal Justice System in India", thesis submitted to the degree of Doctor of Philosophy (April 2002).

\(^{49}\) The Supreme Court has time and again negatived such a plea: See State of Maharashtra v. M. P. Vashi (1995) 5 SCC 730.

\(^{50}\) The Annual Report of the NHRC for the year 1998-99 reveals that the number of deaths in police custody and judicial custody were 183 and 1,114
disciplinary involving, inter alia, sociologists, law persons and professionals from the field of medicine. Given the endemic delays faced by litigants in the present legal system, it would be appropriate to develop alternative forms of dispute resolution without diluting the need for providing fair and equal justice to victims of crime. The U.N. Declaration continues to serve as a useful benchmark in reordering the criminal justice system to address the needs of victims of crime. There is also an urgent need for recognition and institutionalization victims' right in Indian Criminal Justice System. A model bill "The Victims Of Crime (Prevention, Protection And Compensation) Bill, 2007 is given in Appendix-1.

respectively. There were 436 cases of illegal detentions and 2,252 cases of other police excesses. The official statistics of the National Crime Records Bureau also acknowledges that there were as many as 78 deaths in policy custody and over a 100 deaths during "production/ process imports/ journey connected with investigation": Crime in India, 2000, 355-356.