CHAPTER-II
CONCEPT OF VICTIMOLOGY

Victimology is not confined in studying the doer-victim relation only, but payment of compensation is also gaining importance. A person sustaining injuries or his dependents in the case of his death may be provided compensation. In certain primitive societies and in medieval period the compensation was given to the victim or his family by the offender or the clan to which he belonged. The wrongdoer may not be competent enough to provide the compensation, so the need arises of the state responsibility to pay compensation to the victim. Under Article 21 of the Constitution, it is the duty of the state to protect life and liberty, which are the most precious human rights of every citizen. It is the primary duty of the state to maintain law and order and peace in the society. The state has the duty to protect the weak against the strong, law-abiding against law breakers, peaceful against the violent. It is to achieve this object that the present criminal justice system was evolved. On the one hand the person injured is the victim and on the other, the society is the victim, because it is the transgression of the values which the society cherishes. The state represents the society and assumes responsibility to vindicate justice. To prevent retaliation by the victim or his people the states assure the injured that it would trace the offenders, collect evidence against them, place them before the impartial court and get them punished. With this expectation the states expects the injured not to retaliate, but to carry out his normal life. This is how state promises to vindicate the right of the injured and the society to maintain law and order and peace in the society.

Our criminal justice system is based on Anglo-Saxon adversarial pattern. Burden of proving the case beyond reasonable doubt against the accused is on the prosecution. The accused has the right to silence and cannot be questioned or compelled to be a witness against himself. It is the common law adversarial system that governs the adjudication of the criminal cases. Though in the earlier period this pattern of the criminal justice worked reasonably satisfactorily, it now appears to have out lived its utility. The rate of conviction in criminal cases has come down to about 41%and the serious crimes like murder, dacoity, rape etc have come down to about 6 to 7%. Thus
large number of crimes goes without the guilty being punished. That means large number of victims fails to get justice. The law breaker has emerged stronger than the law enforcer and dictates terms to the systems. As the risk factor is low, crime has become a profitable business. Criminality and brutality have increased and new types of atrocious crimes are emerging. Organized crimes have assumed global proportions. We are drifting towards the law of jungle, where brutal might is right. Peace and tranquility are vanishing. Citizens are living under constant fear. Criminals are becoming the strong arm of the politicians for gaining and retaining power. Hence the state is fast losing its credibility. People have lost confidence in the system and we seem to be dangerously racing towards anarchy.

Victimology is the scientific study of the victims of crimes, a sub-discipline of criminology. It seeks to study the relationship between the victims and offenders, the persons especially vulnerable to crimes and the victims' placement in the criminal justice system.

The word 'victimology' was coined in 1947 by a French lawyer, Benjamin Mendelsohn, later a citizen of Israel, by deriving from a Latin word 'victima' and a Greek word 'logos'. Victimology is basically a study of crime from the point of view of the victim, of the persons suffering from injury or destruction by the action of another person or a group of persons. In times of yore, the victims of crime were paramount figures on the stage of the criminal setting. There are references in Manusmriti, the Book of Exodus, and Homer's Iliad to compensation being paid to victims of criminal offences. Even in recent times, but before the Anglo-Saxon system of criminal justice was introduced in India, the victim was not completely neglected.

A story is told how Emperor Jehangir was faced with a problem in one of his daily "darbars" and how he solved it. One day the Empress in a fit of anger hit her launderer whose work was not satisfactory. The washer man fell down dead. Somebody persuaded the widow to attend the Jehangir "darbar" the next morning.

The laundress waited trembling till all the others had mentioned their grievances and received redress from the Emperor. Finally, Jehangir looked at her and said, "Who are you? What do you want?"

In great trepidation she replied that she was the court laundress and recapitulated the
previous day's calamity. "Your husband was killed? By whom?" queried Jehangir.  "By the Empress," replied the woman.

It is said that Jehangir was stunned and leaned back on his throne, but only for a moment. He then came down the steps of his throne and faced the laundress. Drawing his sword from the gilded holster, he held it out to her and said, "Hold it." The woman did not know what she was being led up to. But she obeyed the command of the Emperor. Then he spoke to her along the following lines" "The Empress killed your husband. Now, with that sword, you kill the Empress's husband. I command you to do it."

The laundress was nonplussed. She fell at the Emperor's feet, recovered her equanimity soon enough, and said, "Sire, I have suffered, but I do not want either the Empress or the country to suffer by my obeying Your Majesty's command. I am prepared to take any punishment for this disobedience."

The story goes that Jehangir was so touched by the words of the washerwoman that he made her a baroness and showered her with riches beyond measure. It is perhaps one of the earliest known cases of victim compensation in modern Indian history.

References to victim compensation are also found in the code of Hammurabi. It is said that it was quite common for the early civilizations to extract payments for the victims from the offenders, which process is now known as restitution.

Anthropologists believe that a similar interest in placating the offended and in deterring the possible offender in order to maintain harmonious social life underlies the almost ubiquitous provision in preliterate societies for payment of money or goods by the family of an offender to the victim of violent depredation. It is presumed that, without such payment, a state of social unrest would be created, marked by unremitting vendettas. 1

However, the picture began to change with modern criminal justice in which the government assumed responsibility for dispensing justice by bringing the offender to book, but it also meant that, with the appropriation of the fines to the state coffers, the victim was left with ineffective remedies. Compensations were the means by which humanity moved slowly from the practice of private vengeance to the enforcement of

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public justice. As the modern state emerged and the government took on itself the responsibility of enforcing justice, the offender gradually became the central figure in the criminal arena. It is, of course, true that the evolution has not been uniform throughout the world; there are countries where eye for eye, tooth for tooth, cutting off the hand for committing theft, and death penalty for adultery still prevail, but they are the exceptions. The general tendency is the other way. Therefore, with the criminological theories becoming more and more sophisticated, the victim is getting almost forgotten. Victimology seeks to rectify this omission and resurrect the victim from oblivion. It looks at the crime from the victim's point of view.

2.1 The Concept of Victimology

Victimology is the scientific study of victims. It seeks to study the relationship between victims and offenders: the persons especially vulnerable to crimes and the victim's placement in the criminal justice system. Some pioneering work in the area was done in the late thirties and forties. B. Mendelsohn is credited with being the first to study the relationship between the Victim and the Doer (offender) and taken together; he termed the two as the "penal couple."²

Victimology focuses on the victim's condition and the victim's relationship to the criminal. Hence, there can be two major sub areas of victimology. The one relating to the scientific study of criminal behavior and the nature of the relationships which may be found to exist between the offender and the victim; and the other relating directly to the administration of justice and the role of system of compensation and restitution to the victim.

The concept of victimology can be better understood if we analyze the meaning, issues and aims of victimology.

2.2 Meaning of Victimology

In a narrow sense, victimology is the empirical, factual study of victims of crime and as such is closely related to criminology, and can be regarded as part of the general problem of crime. In a broad sense, victimology is the entire body of knowledge regarding victims, victimization and the efforts of society to preserve the rights of the victim. Hence, it is composed of knowledge, psychology, psychiatry, social work,
politics, education and public administration.

Victimology is the study of victims of crime as criminology is the study of crime and criminals. Victimology is the Cinderella of criminology. B. Mendelsohn coined the term 'Victimology' in 1947 by deriving from a Latin word 'Victims' and a Greek word 'logos' meaning 'the study of victims'. Since the publication of the pioneering works of Hans Von Hentig and B. Mendelsohn in 1940s, numerous scholars have focused their attention on the criminal-victim relationship.

The subject matter of victimology can broadly be classified into:

1. Victim typology,
2. Victim participation in crime, and
3. Compensation to victims of crime.

The first aspect, victim typology, attempts to classify the characteristics of victim based on psychological, biological and sociological factors. It helps us to understand better the crime problem and the offender-victim relationship. The second aspect of victimology victim participation in crime focuses attention on the degree to which the victim could be considered responsible for his own victimization. The third and most important aspect of the study of victimology, compensation to victims of crimes is concerned with is restitution or compensation to victims and their dependants for pecuniary loss, bodily injury or death resulting from crime.

Victimology claims that the offender has responsibility for the reparation of injury caused to the victim. It also emphasizes that if the offender is not in a position to indemnity for his act. State must come forward in making compensation to the victim.\(^3\)

Victimology, as a separate discipline deals with the study of the problems of victims of crimes and their rights to claim compensation which includes rehabilitation and restitution, from the offender or the authorities of the State. The traditional concept of criminal justice administration which connotes, legislation of penal law, enforcement of the law and detection of the crime, trial of offenders and execution of sentence passed by a court of law does not comprehended the duty of the State to alleviate the suffering of the innocent victims and/or their families for the loss of life, property and reputation and for bodily mental injury in consequence of a crime.\(^4\)
2.3 Definition and Scope of Victimology

The province of criminology has experienced a remarkable territorial expansion during the 20th Century. Since the mid 18th century criminology has been concerned with criminal behavior and, since the end of 19th century, with the personality of the criminal. Cesare Baccaria (1738-94) and the other 18th century classical authors on criminology emphasized the constitutionality and morality of penal law, criminal procedure and law enforcement. A criminal offence, as they understood it, was a violation of moral order and the legal system in an act of free will on the part of the law-breaker. Rationality, guilt and responsibility became key issue. The 19th century positivist, such as Cesare Lombroso (1835-1909) concentrated their attention on the law-breaker's personality disorder, a flaw which was either hereditary (according to criminal biology) or, in the terms of psychoanalysis, due to traumatic experience suffered during the socialization process in the early childhood. The prominent idea was that of social defence against the criminal, and, his treatment and rehabilitation, deterrence or detention became key issue. For classical writers and positivists alike, victims and offenders were mechanical, static concepts. They came to be used by either school as mere stereotypes. Criminal behavior and treatment of offenders are perennial issues of public concern, and have traditionally constituted the core of criminological inquiry. Intellectual and Government concern for victim of crime, however, are of recent vintage. The victim of crime did not become a subject of criminological research until after the end of 2nd world War. The pioneering work of Benjamin Mendelsohn, Hans Von Hentig and Stephen Schafer has remedied this glaring defect in the field of criminology and appropriately made criminology 'total' in this respect. Thus, the study of the victim, the analysis of his relationship and interaction with the criminal, his possible contribution to his own victimization and his responsibility for crime prevention was taken up. Having traced its beginning to 1940’s, victimology remained surprisingly on the periphery of the criminological research until recent years.

The attention which has been directed in recent years to that" 'poor relation' of criminal law", has led to crystallization of professional and public opinion in favour of alleviating the predicament of this forgotten figure of the contemporary criminal justice system. The impetus for reform has concentrated primarily on improving the material
situation of the victim by means of schemes for compensation or restitution and
reducing his psychic trauma - particularly where victims of sexual assaults are
concerned - by means of crisis intervention and the provision for other services for the
victim.6

The credit for founding the study of victim is usually given to Benjamin
Mendelsohn7 a Romanian attorney, whose first study on victim was published in a
Belgium Criminology Journal in 1937. This study was based on the result of a survey
that he made among the criminals, their families and their victims. The results
convincing him that the personality of the victim was crucial in attracting the criminal.
Hans Von Hentig took a similar approach in his article "Remarks on the Interaction of
Perpetrator and Victim",8 in which he wrote, possession of money has certainly to do
with robbery and similarly, pretences of youth are contributing factors in criminal
assaults ... If there are born criminals, it is evident that there are born victims, self-
harming and self-destroying through the medium of a pliable outsider.

In this article he advanced a dynamic conception of the genesis of crime.
According to him, the victim of crime no longer a passive objects but becomes an active
but becomes an active object in the process of criminalization and decriminalization.

The point at issue is no longer exclusively the human rights of the offender but
definitely and quite seriously the human rights of the victim too. Jeremy Bentham,9
(1748-1832) the classical writer had pleaded for victim compensation with a view to
provide additional punishment and deterrence for the offender. For Raffael Garofolo10
(1852-1934), the positivist, restitution had become indeed a distinct shift of emphasis-a
forceful means of social defence against the law-breaker. Finally, reflection of Sara
Margury Fry11 on restitution centered around the reconciliation of the offender with the
victim. Victimology as a distinct field of study has only really emerged in recent years,
although its parent discipline; criminology originated in the nineteenth century. But over
the last decades or so there has been growing community interest in the plight of victims
and there is every indication that this is gathering momentum.

2.4 Victimology

The word "Victimology" was coined in 1947 by Benjamin Mendelsohn by deriving
from the Latin "Victim" and the Greek "Logos", meaning, science of victims. The primary object of interest of victimology therefore is the person of the victim. Marvin E. Wolfgang\textsuperscript{12} defines victimology as the scientific study of the victims and process of etiology and consequence of victimization. Victimology is also taken to mean the study of social process by which individuals or group are maltreated in a manner likely to give rise to social problems. The first problem encountered in victimology is to define, who is a victim?

The term "victim" is often one of moral approbation lacking descriptive precision in respect to actual human behavior. It implies more than the existence of an injured party, in that innocence or blamelessness is suggested as well as a moral claim to a compassionate response from others. One dictionary defines victim as one that is acted and usually adversely affected by a force agent.\textsuperscript{13} Another dictionary defines that a victim is a person who is put to death or subjected to misfortune by another; one who suffers severely in body or property through cruel or oppressive treatment: one who is reduced or destined to suffer under some oppressive or distinctive agency: one who perishes or suffers in health etc., from some enterprise or pursuit voluntarily undertaken. In a weaker sense: one who suffers from some injury, hardship, or loss, is badly treated or taken advantage of etc.\textsuperscript{14} These definitions are laden with value interpretation in relation to the definition of adversity, oppression and suffering.

Hence, by victimology we mean that branch of science which is concerned with all socially relevant categories of victims, individual or collective, with regard to different types of damages\textsuperscript{15}, the word damages in turn being used in a most comprehensive sense: physical, mental, social, economic etc.

\textit{2.5 Meaning of Victim}

To the word 'victim' may be attributed five fundamental factors, namely, nature, society, energy supply, motorization and criminality. Nature causes disasters such as earthquakes, floods, droughts and famine. Society holds a collective potential for starting mass conflict that may generate genocide, terrorism and abuse of power. Among other aspects of socially determined victimity\textsuperscript{16} are the consequences of over population, poverty, illiteracy, alcoholism, drug addiction, prostitution and occupational diseases.
Motorization and energy resources are causing innumerable traffic accidents on land, at sea, and in the air, apart from industrial and domestic accidents. Last but not the least, the most important categories of victims is crime victims.

Victims can be broadly divided into two categories, criminological and non-criminological. The character that makes a person definable as a crime victim is the suffering of adversity due to contravention of criminal law by another person or entity. Therefore, victim for our purpose of study deals with injury or damage resulting from criminal activity. The criminal activity may take the form of direct or indirect interaction between the perpetrator and the victim.

2.6 Task and Scope of Victimological Studies

Victimology is that of science which deals with all socially relevant categories of victims, with regard to different type of damages. It also investigates the causes of victimization, in search of effective remedies. Thus, it follows the example set by medicine and criminology, the former dealing with different categories of diseases, the latter different categories of criminality. Therefore, the tasks of victimology are similar to those which every science, though in various ways, has to fulfill. They are to make diagnosis of the prevailing situation, to give an interpretation of it to prevent undesired situations, and to suggest ways and means of creating desired ones. They determine the reasons justifying the existence of this science. Traditionally the victims of crime have not been the object of any detailed investigation. The only discipline which devoted some attention to it was criminal law where, in the course of detection, it would be necessary to analyze the condition as a whole of which would be more or less help in tracing the perpetrator of the Act. Thus in criminal law the role of the victim is considered only as far as it can be established that it has some influence on the act itself and the way of committing it.

In the criminal law the whole task of investigation rests on the study of the perpetrator and his act, while the victim is taken into consideration merely casually, and for a long time no specific attention has been devoted to him. Since the moment when prophylactics has been included as one of the major aims into all spheres of social policy the penal sciences, too, have experienced a distinct shift towards preventive activity. In
penal sciences, the prophylactic role in relation to the victim has been taken over by the specific science of victimology, while investigations on the person of the perpetrator have developed rather early and has until now passed through various states of sociological, psychological and genetic interpretations based on statistical interpretation of features of persons who had violated the law. The studies on problems, rights, miseries and damages of the victim are still rather a young discipline. Victimology has a task to perform. It must enter upon a phase of systematic investigation into the problems, miseries, injuries and damages of the victim are still rather young discipline and have merely entered into initial stage of diagnostic interpretation.

The current interest in the criminal-victim relationship indicates that the understanding of crime has entered a new phase, and may mean the objective responsibility of the offenders.

There has been increasing recognition of the fact that criminal justice must consider the dynamics of crime and treatment of criminals as members of their total group which includes victims. The study of criminal-victim relationship emphasizes the need to recognize the role and responsibility of the victim, who is not simply the cause and reason for initiation of criminal procedure and its operation but has a major part to play in the search for an objective criminal justice and functional solution to the crime problem. Victimology also claims that the offender has responsibility for reparation of any harm, injury or any other disadvantage caused to him.

In the structure of criminal law, criminals and victims refer to two categories. But, Hentig states, experience tell us that this is not all and that the relationship between perpetrator and victim are much intricate than the rough distinction in criminal law. Criminal and victim appear in crime in a close interpersonal relationship where the victim may be one of the determinants of criminal act. After the crime there is a minimal relationship, the criminal stands far apart from the suffering of his victim. The contribution of the victim to the genesis of crime which is otherwise known as victim precipitation and contribution of the criminal to the reparation for his offence are virtually the central problem of victimology. This, in essence, is the problem of responsibility. An immense volume of information has been accumulated about crime,
but we have little knowledge about the criminal and even less about the victim and his
connection to the crime and criminal and still lesser about victim’s problems, miseries
and sufferings.

But the study of criminal-victim relationship, however, had always suffered from
want of proper conceptualization, method and organization. This subject was treated by
early criminologists with merely vague and over simplified allusion, which have not shed
any clear light upon the nature of the criminal-victim relationship. They, on the other
hand, adverted to the problem of victim participation in the perpetration of the particular
crime. With the result, the problem of victim and his perception of the criminal justice
system have not received proper attention and systematic study. Therefore,
victimological study should include, to discuss its scope, defining the term victim,
analyzing the magnitude of victims problem, to explain causes of victimization, victims
right to assistance, compensation and restitution and to suggest a system to reduce
victimization.

2.7 Victim Precipitation

The underlying concept of the victim causing or contributing to a crime by
intentionally or unintentionally provoking the offender is known as Victim
Precipitation. In some crimes the victim is often a major contributing factor to the
criminal act. Silverman says victim Precipitation occurs when the offender’s action in
committing or beginning to commit a crime is initiated after and directly related to an
action (be it physical or verbal, conscious or unconscious) on the part of the victim. The
offender perceives the victim’s behavior as a facilitating action (including temptation,
invitation) to the commission of crime. The action of the victim might be said to have
triggered the offender’s behaviour. This clearly places the main burden of determining
whether a crime is victim precipitated on the perception of the offender.

In a very insightful article Robert says "a victim precipitated crime is an offence that
would not have occurred except for the participative action of the victim. Victim
Precipitation refers to some overt act, identifiable conduct, or commission on the part of
the victim which provokes an individual to commit a crime".

One of the assumption of victimology is that victim of crime are peculiar kind of
people. This supposition has led to search for distinctive character of victims of crime. Using these characteristics typologies were constructed by Hans Von Hentig, Mendelson, Abdel Fattah, Sallin and Wolfung, Silverman and others.²⁴

Victim precipitation endeavors to ascertain the mode of active participation of victims in the commission of a criminal offence because it conceives that victim as a subject in the crime causation. Its primary aim, though, is not to blame the victim and exculpate the offender, even if it must be conceded that establishing some degree of responsibility, in a given case, will lead to more adequate, more realistic application of penal law to the individual offender (Functional responsibility).

There are some instances in which victims do provoke crime and therefore, should carry part of the blame. But unfortunately many victimologists have accepted and perpetuated the anti-victim prejudice. In strict etymological terms victimology should mean "the study of the victims". Instead narrow goals: the contribution of the victim to the criminal act.²⁵

2.8 Victimization

But victimology is concerned with a wide range of problems. It investigates the relationship between offender and victim in crime causation. It also deals with the process of victimization, of being a victim, and in this context directs much of its attention to the problems and miseries of the victim.

The significance of victimological prediction for crime prevention is as striking as its current neglect. The crime victim's readiness to report to the police, legal status of the victim in the criminal justice system and other aspects of restitution and compensation are totally neglected. The interrelation between the victim and the criminal justice system and his attitude towards criminal justice system remains as yet largely open to question; yet these are problems of utmost importance.

The victim suffers short-term or long-term damage of an economic, a social, a physical, mental or moral nature, a damage which is almost totally overlooked by institutionalized social control, such as Law, Courts, Public Prosecutors and last but not The least by the system itself. The victim of crime is remarkably reluctant to openly put forward demand for his redress or relief for violation of his rights.
Only recently society has woken up to a realization of the victim's plight and related unfairness of the whole situation. The U.N. Congress on Prevention of Crime and Treatment of offenders took up the cause and has contributed substantially in drafting a declaration of victim's Right (Ottawa, 1984), and placed it on the agenda of the 7th U.N. Congress in Milan, Aug-Sept. 1985. On Nov. 29, 1985, the General Assembly of United Nations adopted the Declaration of Basic Principles of justice for victims of crime and abuse of power. This declaration, the first specifically concerned with societal responses to the needs of the victims, establishes standards that take into account the variety in the legal system, social structures, and stages of economic development, of member states. It also establishes standards for access to justice and fair treatment, restitution from the offender, compensation from the State and legal assistance towards recovery.

The declaration defines, "victim is a person, who has suffered physical and mental injury or harm, material loss or damage, or other social disadvantages, as a result of conduct by an individual or group, in violation of penal laws of the Nation".

The term "victim of crime" can be defined as a person who has suffered injuries and material losses as a result of breach of criminal law. Therefore, a victim is a person who is murdered, assaulted, raped, robbed or whose home is burgled, or who is defamed, or whose property is destroyed. The Indian Penal Code of 1860 defines such act as offences against person, property and reputation and prescribes punishments.

The death of homicide victim is rarely preplanned and the result of accidental circumstances. From the moment next-of-kins are informed about the tragedy and summoned to the spot to identify the corpse, a victim's family and dependants begin to suffer. They suffer emotionally, psychologically and economically, if the deceased was the only bread winner of the family and in such a case the problem of the family is beyond imagination.

Homicide and assaults basically manifest the same kind of aggressive criminal behavior. Unlike homicide, assault is rarely committed for profit. And unlike rape, assaults are premeditated. The result from heated arguments, long standing but volatile feuds, and minor disagreements. Assault by strangers is indicative of a society whose
members seem to use physical means too quick and too often to settle their differences.

Violent crimes are also invasions of privacy and person. Apart from murder, the crime of rape is the ultimate invasion, the one with the most severe physical and psychological consequences for its victims. Burglary is the violation of a home - an extension of the victim's identity. A robbery victim loses his independence, not only must he surrenders money and possessions, but also must follow the dictates of the robber.

Rape is a crime of violence, only incidentally it is a crime of sex. Rape is a hostile act in which the sexual assault is used as a weapon to invade, control, and humiliate victim. Rape is probably the most under reported of all crimes. Rapes are not reported because of the victim's anxious desire to keep it a secret from family, neighbors and relatives, generally out of fear of gossip, fear of the press or media on disclosure of her identity, since the society looks down on the victim of rape, even where sympathy is extended.

Further, the victim firmly believes that the hospital, police and court will treat her without respect; possibly she may be blamed for the crime. Rape may result not only in physical and mental harm, but also social problems in the victim's prospect of marriage or married life, problems of her family, and there are cases in which it may end up in divorce and suicide.

It would seem that the victim would head the list of priorities in our formula for justice. After all the victim is one who was shot, beaten, raped, robbed or perhaps killed, leaving shattered family to pick up the pieces. The victim is one who has to pay the hospital and doctor bills while missing work and may suffer serious psychological as well as physical pain. They also suffer from tangible material losses including loss of reputation.

Apart from material loss and physical harm, the victim of crime also suffers from emotional and psychological wounds that often cause him more damage. The people who suffer from emotional and psychological consequences are not necessarily feeble or prone to mental instability. Even the most physically and mentally strong are likely to experience shock, anxiety, depression, shame and a host of psychomatic symptoms after being victimized.  

Above and beyond the immediate problems posed by physical injury loss of valued
property, and demeaning interaction with the criminal justice system, the victim is at risk of delayed psychological reactions with unexplained "flashbacks" of the events continuing fear and a sense of loss, with depression and physical disabilities not necessarily related to injuries that occur at the time of victimization, together with much greater probability of premature ageing and death. 28

Psychological trauma is very much present in all cases of victim of crime. The victim and his family suffer from this either on long-term or short-term basis depending upon the nature and gravity of the crime. Victims usually suffer from psychological damage in direct proportion to the amount of personal violation that occurs. Property lost as a result of burglary causes some psychological stress because one's home and possession are symbolic extension of one's self. Apart from the psychological trauma the economic loss may also very depending upon the nature of crime. Crimes involving force such as dacoit and robbery, case even greater stress as people lose their sense of personal safety. Assaults and sexual assaults are the severest violation of a person's sense of security. These "invisible wounds", the psychological after math and the victimization and loss, injury and damages need to be understood, remedied by assistance and compensation or restitution.

The criminal justice system seems indifferent to whether the victim lost employment, whether the wage earner has been killed, or whether there has been already outlay of funds for medical bills. Little attention has been paid to the problems and miseries of the victim, that is, restoring his losses of money or property, and or providing compensation for loss of life, physical injury (with consequent loss of earning power and cost of medical care), and pain and suffering resulting from the criminal assault. Apart from this the criminal justice system, unfortunately, not merely fails to focus on the real needs of victims, but in many cases, victims have been shabbily treated. With a significant insight Mary Mac Carthy wrote: "uncertified case of injustice has a terrible way of lingering, restlessly, in the social atmosphere like an 'unfinished question'. The unfinished question of growing number of victims in India is a floating iceberg which can tear as under the luxury liner of the criminal justice system, of however, Titanic dimension the liner may be. The essence of criminal justice system lies in timely responding to the changing social needs and realities, in making criminal justice system respond to social anguish".

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The criminal justice's interest in victims, however, quiet naturally arises from a system need, not just a humanitarian and social need. And issue of victim suffering, reparation and rehabilitation and essentially criminal justice issues as well as social issues.

During the past three decades, several justifications for initiating victim compensation programs have been advanced in victimological literature in the West. Sometimes they are contradictory as, for instance, when victimologists argue that the victim of the offence of rape contributes to the aggravation of the offence when she resists, for such resistance is likely to make the offender more violent, and that if she does not resist, she contributes to the offence by being a willing victim (as most of our lawyers argue), and she is an accessory to the crime. These rationales are generally reflected in the state's victim compensation statutes and may serve as justification for the adoption of specific program procedures and daily operations. Thus, although the particular rationale cited for the development of any given victim compensation program is unimportant in itself, knowledge of the various and contradictory justifications for victim compensation may at least help explain the development of certain provisions in compensation statutes and particular procedures adopted by victim compensation administrators.

The best raison deter for victim compensation is the theory of the state. The state is a complex of rulers and ruled, politically conceived, territorially organized, and seeking by the conferment of powers on the rulers the effective maximization of the individual and social welfare of the ruled. The state achieves its purpose through enactment and promulgation of laws and it enforces obedience to the laws by the exercise of power. Power is the capacity to produce intended effect. If the intended effect can not be produced in respect of any law, the state has to assume responsibility for the loss, pain, or damage caused to any law abiding citizen by someone's disobedience of the law. The assumption of power by the state means the automatic deprivation of the citizen of his right to private vengeance or personal retributive action. Such deprivation is a sine qua non of modern society's civilized existence. But for that, we would be reverting to the law of the jungle. In return for that deprivation the citizen gets the protection of the state. In cases in which the state fails in its obligation to protect the individual it has broken its agreement, and should thus be liable for the damage done to the victim of crime. Such a rationale will argue for the most liberal type of compensation program, as all citizens,
regardless of income or degree or type of loss, in principle have equal right to place a
claim against the state for its failure to protect him/her.

Another functional justification for victim compensation is the "welfare" theory
arising from the assumption that the government exists and functions for the people. This
approach holds that, just as the state has a humanitarian duty to the poor, the sick, the
unemployed, the underprivileged, the disabled veteran, and so on, it has a duty towards
the victims of crime also. However, this duty is based not on any contractual obligation on
the part of the state, but on the social conscience of its rulers and its citizenry. Hardly any
state victim compensation legislation admits of this orientation; yet, such provisions as
financial need requirements or minimum loss requirements are clearly based on the
theory of welfare state.

Related to the welfare theory is the "mercy of the government" theory. Under this
rationale, it is argued that the state has the power to "deal mercifully with certain
individuals". Thus it may, by legislative grace, grant compensation to individuals who
have been unfortunate to become victims of specified criminal incidents. The "mercy of
the government" theory is less general and inclusive than the social welfare theory.

Yet another justification offered for victim compensation is the 'shared risk'
argument. In a sense, the government may be viewed as an entrepreneur or an employer
who includes the cost of the risk service he renders to the consumer in the price of the
product. Thus, each consumer contributes towards the payments made to those few
individuals who will be compensated for damages. The taxes paid by the citizens are seen
as payment of premia to cover the insurance against the risk of crime victimization which
every citizen shares with every other citizen and compensation to crime victims as the
payment given to any unfortunate, injured individual or deceased individual's next-of-kin
under the 'insurance' scheme.

Sometimes, crime is held to be the result of certain conditions of modern civilization:
unemployment, squalor, wants of affection, ill-treatment during adolescence, lack of
equal opportunities, poor education, and so on. If so, the argument may be added that
society itself is to blame for any criminal victimization. Reasoning, it is easy to argue that
crime is "society's responsibility", and that it is the government which ought to pay the
victim of crime for the injury caused to him. But, how this theory relates to another type of criminality which becomes more complex with the march of modern civilization is a moot point. Socio-economic offences, white-collar crime, and gilded crime which are mostly perennial, as smuggling, black-marketing, food adulteration, racketeering in drugs and narcotics, tax evasion, misuse of position by public servants (including corruption and nepotism), trafficking in licenses and permits, under-invoicing and over-invoicing, and crimes by transnational corporations and other offences which come in waves, such as passport racketeering, cheating on overseas jobs, and theft of cultural property do not arise from "conventional" motives. Victimology has yet to focus its attention on this type of criminality for here the entire society, the whole nation, is the victim, though its impact in terms of hardship falls on the economically weaker segments of the population.

Benjamin Mendelsohn has constructed a typology predicated on the basis of the victim's contribution to criminality. He refers to:

(a) Completely innocent victims, such as children and people who are the victims of crime when they are unconscious (the children of the Pandavas who were murdered by Ashwathama during the Mahabharata war, and people who are killed when they are asleep or drunk typify these);

(b) Victims with minor guilt and victims of ignorance, such as pregnant women who go to quacks for miscarriage, and pay for it with their lives;

(c) Voluntary victims, such as the ones who commit suicide or are killed by euthanasia;

(d) Victims who are guiltier than the offenders, such as persons who provoke others to commit crime; and

(e) The most guilty type of victims who commit offences against others and get killed by others in self-defence (e.g., rapist who gets killed by his victim who acts in self-defense ).

Another victimologist, Abdel Fattah of Canada, has outlined a rather complicated scheme which has five major categories of victims - the non-participating, the latent, the provocative, the participating, and the defiant.
Until a few years ago, in Europe the victims of crime had no means of obtaining compensation other than what might be called conventional means through courts of law. In India, even now the position remains so. Though the following isolated provisions are contemplated in the criminal law of India, they remain for the most part a dead letter and no institutionalized system to compensate the victims of criminal offences exists.

In India, the courts are empowered under Section 357 of the Criminal Procedure Code to pay compensation to the victims of crime from out of the fine imposed by the court on the offender. Section 357 Cr-PC lays down that whenever, under any law in force for the time being, a criminal court imposes a fine or confirms in appeal, revision, or otherwise, a sentence of fine or a sentence of which fine forms part, the court may, when handing down the judgment, order the whole or any part of the fine recovered to be used (a) for defraying the expenses properly incurred in the prosecution, (b) in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is recoverable by such person in a civil court, (c) when any person is convicted for an offence of murder or for abetment of murder, in paying compensation to the persons who are, under the Fatal Accidents Act, entitled to recover damages from the person sentenced, and (d) when any person is convicted of any offence including theft, criminal misappropriation, criminal breach of trust, cheating, etc., compensation given to a bonafide purchaser of such property before any restitution is ordered.

Under Section 359 Cr.P.C., when any complainant of a non-cognizable offence is made to a court, the court may, on conviction of the accused, order him to pay to the complainant, in whole or in part, the cost incurred by him in the prosecution, in addition to the penalty imposed upon him.

Under Section 5 of the Probation Offenders Act, 1958, the offender may be required, on release on probation under Section 3 or 4 of the Act, to pay compensation to the victims of crime. The Indian Penal Code (Amendment) Bill has a clear provision for compensation to victims of crime as a specific punishment in certain offences. Section 110(B) of the Indian Motor Vehicles Act, 1939, provides for the award of
compensation to the injured or the deceased. The Workmen's Compensation Act, 1923, provides a scale of compensation for injury by accident.

The conventional means include:

(a) The institution of civil proceedings against the offender,

(b) Participation as separate party in criminal proceedings against the offender,

(c) Indirect method such as obtaining an order from the court ordering the restitution of goods stolen or proceeds from their sale,

(d) Allocating to the victim a part of the fine imposed on the offender, and

(e) Diverting to the victim any income earned by the offender in prison or elsewhere.

But these channels do not always enable the victim to obtain compensation, and the inadequacy has been confirmed by research in the U.K., the U.S.A, and West Germany. It is estimated that in the U.K., the offender could have been successfully sued by the victims in less than one per cent of the total number of cases referred to the Compensation Board, had there been no victim compensation legislation. No such research has been conducted in India, but a beginning has been made at the National Institute of Criminology and Forensic Science. The reasons for the inadequacy of the conventional criminal law the world over in providing adequate recompense for the victim are the same and can be listed as follows:

1. Many victims do not make a complaint. This in turn has its own reasons:
   (a) Popular impression about the futility of making a complaint
   (b) The harassment to which a complainant has to subject himself/herself if a case is

       Charge-sheeted in a court of law on the basis of the complaint
   (c) The rigors of vexatious cross-examination in court
   (d) The inconvenience caused by numerous adjournments.
   (e) Fear of the offender's vengeance.

2. When a complaint is made, in many cases, the offenders are not either identified or found.

3. Even if identified and found, they are not convicted.

4. On conviction, the offender may not be in a position to afford compensation.
The result is an impression that society is indifferent towards the plight of the victim, an impression that has been gaining strength all over the world by the tendency of modern penology to attach less importance to the punitive or the compensatory aspects of sanctions than to their rehabilitation value.

Civil proceedings are often too slow, complex, and expensive and are a source of harassment more to the victim than to the offender. Besides, many people are not aware that there is a provision for such proceedings. These and the following connected problems have now become live:

(a) The failure of the criminal justice systems in the various countries of the world to pay compensation to the victims,

(b) The thought that the state which lays down rules of behaviors should not only punish violation thereof but also insure compensation to victims of such violation, and if the state prohibits all private revenge, it should compensate the victim of a crime the perpetration of which it failed to prevent, and if the state introduces new criminal measures, it should also shoulder the responsibilities if they prove ineffective,

(c) The emphasis on the theory that compensation and restitution are extremely desirable in the interests of equity and social solidarity and compensation helps liberate victims from feelings of injustice and from thoughts of revenge,

(d) The fact that existing social security schemes are inadequate for insuring payment of adequate compensation to the victims,

(e) The feeling that the financial outlay for better policing does not justify neglect of the victims,

(f) The necessity to undertake crime victimization surveys with a view to helping reorientation of criminal justice policy,

(g) The inter-relationship between the prosecution policy and the reporting of crime by victims,

(h) The increasing tendency in practically every country to report criminality less and less,

(i) Suggestions for the treatment, counseling, and help for victims of crime to be
established on an experimental basis,

\( (j) \) The desirability or otherwise of imposing limitations on the availability of legal remedies to victims of family violence,

\( (k) \) Social disabilities of migrant groups and their helplessness as victims of criminal behavior,

\( (l) \) rising crime trends in every country in the world, with the exception of Japan.

The arguments adduced for state financial compensation being paid to the victims of crime may be summarized in the following manner:

\( (a) \) The state is morally bound to compensate the victims:

- If the state lays down the rules of behavior, it should not only punish violations thereof but also look after persons who suffer by the violation of such rules;
- If the state prohibits all private revenge, it should go to the rescue of the victim of a crime the perpetration of which it failed to prevent;
- If the state introduces new reformatory measures, it should also shoulder the responsibility if they prove ineffective (e.g., commission of further offences by offenders conditionally released or placed on probation, escaping of offenders from new types of prison, and so on);
- if the state reduces an offender's means by fining him or sending him to prison where his earnings are minimal, it should make good the resultant decrease in the victim's compensation in offences which are now punishable by restitution;

Juridical, the state's liability may be founded in contract (breach of implied duty to protect citizens), in tort (breach of a duty to take reasonable care to protect citizens), or in the theory of "risk" (society being considered as an "enterprise" whose beneficiaries, i.e. its citizens, bear the risks inherent therein).

\( (b) \) As some people are at greater risk than the others, the effect of crime is not evenly spread throughout society. There is considerable sympathy for the innocent victims of violent crime, and even if the state does not accept liability for the actions of the offender, the compensation of victims is extremely
desirable in the interest of equity and social solidarity.

(c) Compensation helps liberate the victims from a feeling of injustice, a feeling which might lead to an impression of being rejected by society. Furthermore, a satisfactory compensation scheme also facilitates the rehabilitation of the offenders, as the victim will react less emotionally and aggressively towards the offender if he has been compensated.

(d) It would be just and appropriate to compensate the persons injured while helping the police in doing their duty - an attitude which also encourages a more altruistic behavior.

(e) Victim compensation will better insure citizens' participation in community crime prevention effort and thereby insure better response to the functioning of the criminal justice system.

The arguments adduced against the institution of state compensation schemes are the following:

(a) The existing social security and insurance schemes are adequate for the purpose of compensating the victims of crime. This argument has been accepted by the U.K. and many other European countries and hence their exclusion of property offences from the purview of the extent of victim compensation programs. But the argument has not been accepted by most of the States in the U.S.A which have legislated on this.

(b) The financial outlay would be better spent on preventing crime by augmenting police manpower, more and better technical aids for the police. The state has a duty to give priority to this task rather than to remedy the effects of crime. Prevention and enforcement are to be considered more important than post facto remedial action.

(c) As such schemes are a form of state paternalism, they might lead to increase in crime, as offenders would lose all sense of responsibility and no longer care about their victim's fate. -This is far from being accepted by any country.

(d) State compensation schemes, especially if they covered damage to property,
would make the potential victims careless and discourage prevention efforts. The victim would no longer have any incentive to cooperate in the prosecution of the offender.

(e) Instituting a state compensation scheme is contrary to the principle that it lies primarily with the offender to make amends for the damage he has caused. This is not applicable in most cases since the offenders are in no position to pay restitution.

f) State compensation schemes are too expensive. In the United Kingdom a sum of approximately £6 million was paid in 1976 as compensation for 16,000 claims. The number was expected to increase by 15 per cent annually and administrative expenses account for 11 per cent of total disbursements.

The Federal Republic of Germany estimates the cost of her scheme at 10 million DM at least for the first year of operation. The Netherlands is envisaging an initial outlay of 1 million guilders. The scheme's cost naturally depends on its scope.

Some scholars have suggested that compensation schemes may be financed from fines or prison wages. This has already been done in Italy where, under a 1974 Act, three-tenths of the prisoner's earnings go to the victim of the crime. However, these funds are not adequate. Besides, deductions from a prisoner's wages are liable to be detrimental to his rehabilitation and involve hardship for his family. Furthermore, there are bound to be considerable discrepancies between contributions from the various categories of prisoners to the scheme's financing. Recourse to taxation may therefore be regarded as inevitable, with the various political problems it involves. The establishment of a special compensation scheme is fairly likely to result in economies being made elsewhere, such as on civil court administration, legal aid, and social security.

Most victimological experts do not consider it necessary to pronounce on each of the arguments for or against state compensation schemes. Nevertheless, it is felt that the level at which the forces of law and order function in a free society can not be expected to prevent crime completely and so equity and social solidarity justify state compensation for victims of crime.
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24. For detailed discussion on typology see Stephen Schafer, supra, page 10, f.n.2, pp.35-48; Marvin E. Wolfgan, supra, page II, f.n.1; Silvennan, supra, page II, f.n.2; Gobert, supra.