“Justice, being violated, destroys; justice, being preserved, preserves: therefore justice must not be violated, lest violated justice destroy us.”\(^1\) The Founding Fathers of our Constitution placed ‘justice’ at the highest pedestal and the Preamble of our Constitution significantly noticed justice higher than the other principles i.e. liberty, equality and fraternity.\(^2\) In the present criminal justice system, does a person who:

- highlights the crime,
- becomes a prosecution witness,
- suffers humiliation under the circumstances,
- already a harassed man,

get back his former place and position by helping the law machinery in making the guilty punished? With the conviction of the offender, the ends of justice are met, but then do the ends of this harassed man are also really met?

The answer to both the above questions is a big NO. This harassed man is none else but a ‘VICTIM’ in legal terminology.

The Chief Justice of India Honourable Justice S H Kapadia in the ‘Golden Jubilee National Law Conference’ held on 08-09 May 2010 at Vigyan Bhavan, New Delhi, said, “It is very easy to be popular, to be correct is difficult.” In Mathematics two plus two is four but there is no such perfect calculation in law to bring out the exact result. In this scientific age, where one talks about rational and logical thinking, a balanced approach can be adopted to at least reach the approximation of four if not exactly four. Something needs to be changed in the ideology of law and which has already started changing but, at a snail’s pace. This change is that of adequate compensation to the victim of crime.


Neither there is a specific statute on compensation to victims of crime nor speedy delivery of justice. Inspite of various international instruments and national statutes containing various provisions as to compensation, victims are not being given their due share. In our present judicial system, where it takes number of years to decide over the matter, where the victim spends almost his whole life, especially his peak years in trauma and harassment in the long and endless wait for justice, that justice is incomplete without adequately compensating the victim. The victims may start taking law in their own hands to avenge themselves of their sufferings and the chain of criminal justice system may one day break if the concept of victim’s compensation and restitution is not duly recognized.

1.1 Victim

Who is a victim? This single line question is of utmost importance. Before dealing with the matter and issues relating to the victim it is essential to know the nature of that particular matter. Here the nature of the matter revolves around victim which makes it pertinent to know who a victim is. The word “victim” has its roots in many ancient languages that covered a great distance from northwestern Europe to the southern tip of Asia and yet had a similar linguistic pattern: *victim* in Latin; vih, wéoh, *wigin* in old European; *wih, wihin* in old High German; *véin* in old Norse; *wêls* in Gothic; and *vînak tîn* in Sanskrit.¹ In a layman’s language, the term victim can be understood as a person who suffers some harm or injury. According to the dictionary² meaning, the term victim has been given three connotations:

(a) A person, an animal or a thing that is injured, killed or destroyed as the result of crime, bad luck, an accident etc.

(b) A person who is tricked.

(c) A living creature killed and offered as a religious sacrifice.

According to Separovic³ “Victims are persons threatened, injured or destroyed by an act or omission of another man (man, structure, organisation or institution). Suffering

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¹ www.unafei.or.jp/english/pdf/PDF_rms/no70/p116-129.pdf accessed on 17-03-2007
may be caused by another man or another structure where people are also involved.” Separovic, therefore, interprets crime as the violation of basic human rights contained in the general universal concept of human rights as accepted by the international community with reference to right to life, health, security and well being. The etymological meaning of victim of crime suggests that it would mean and encompass “Anyone suffering physical, emotional or financial harm as a direct result of crime
(a) Spouses and children of the person who has suffered.
(b) Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims or victims of homicide.”
Apart from the above, the term has also been defined at international level because of the importance of the subject matter.

**Principle 1** of *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Powers* defines victim of crime as:

“Victims mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of Power.” **Principle 2** further elaborates the term victim as:

“A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term ‘victim’ also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” “Victims of Abuse of Power mean persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national

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7 G A Resolution 40/34 of 29th November 1985
criminal laws but of internationally recognized norms relating to human rights.”

Principle 8 of Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violation of International Human Rights Law and Serious Violation of International Humanitarian Law, 2005 defines victim as:

“Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” Principle 9 further elaborates by stating that: “A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.”

Under Indian Law, the term victim has nowhere been defined except in The Code of Criminal Procedure (Amendment) Bill, 2006 under Sec-2 (wa) as: “Victim means a person who suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘victim’ includes his or her guardian or legal heir.” The proposed amendment has yet not been incorporated. Under this Bill the victim may be permitted to appoint a lawyer to ‘co-ordinate’ with the prosecution.

In all the above meanings and definitions one thing is common and that is; ‘suffering.’ The degree and nature of suffering varies from case to case. This suffering is the result of somebody’s act or omission. In other words when the act or

8 Ibid at 384
omission of someone results in sufferings of the other, that other person becomes the victim.

1.2 Role Of Victim In Crime
Can there be any role of victim in the crime which is perpetrated against him? Crime in its totality not only includes crime and the criminal but also, all those factors which lead to the commission of that particular offence. One of the factors is the victim himself upon whom the offence is committed. The main contribution of the understanding of victim’s role in crime is to lead the way towards the study of crime in its totality and particularly where victim-risks and victim-precipitation are concerned.\(^1\) But to what extent he is responsible for the commission of offence upon him is a matter which varies from case to case. Though it is the victim who suffers because of the offence committed upon him but there may be circumstances when victim plays a contributory role in the commission of the crime. When the crime is studied in totality taking into account the contributory role of victim in causation of crime, will also assist the court in deciding the compensation to the victim. Victim is not just a passive object but an active component of his/her own victimization.\(^2\) For example: Killing of wife by the husband may involve a number of reasons such as low income, infidelity, marital mal-adjustment, domestic quarrel, wealth, drug-addiction, gambling, drinking habit, stressful family situations etc. But the focus is shifted to the offender and the crime committed by him. The doer-sufferer distinction does not mean the exclusive doing of one party and the exclusive suffering of the other.\(^3\) The role of victim in crime may be of varying nature. According to Schafer, victims are essential for crime.\(^4\) So directly or indirectly all victims are somewhat responsible for victimization. According to Silverman, ‘it is not logical to think that we are all somewhat responsible for our own victimization simply because we

\(^{12}\) Devasia, V.V., ‘Criminology, Victimology And Correction’, (1992) Ashish Publishing House, New Delhi, at 84
\(^{13}\) Ibid at 81
\(^{15}\) Devasia, V.V., ‘Criminology Victimology And Correction’, (1992) Ashish Publishing House, New Delhi, at 95
exist.’ Crimes committed against a willing victim are likely to provoke less resistance than crimes against an unwilling victim. The willingness of the victim to commit an offence upon him/her makes the offender legally stronger. According to Fattah, “victim solicitation, even more than victim’s consent, confers on the act a kind of legitimacy that is likely to breakdown the strongest moral barriers and to eliminate the deepest moral obligations, the person may have regarding the criminal act.” According to Hentig, “the relationship between the victimizer and the victim are very intricate. The victim, one who suffers and the victimizer, one who harms, appear in victimization in a close interpersonal relationship and the victim plays a determinant role with the victimizer.” According to Cho, “the victim and victimizer should be understood in terms of victimization incidence and relationship. Both ‘affinity’ and ‘propinquity’ factors should be considered for differentials in participation, commitment and involvement in victimization though not intended for creating an impression that the victim and victimizer are guilty by association. Interaction and relationship should be explored rather than assumed and the guilt should be understood objectively rather than assumed to be a hallmark of the victimizer.” The degree of stimulation varies depending upon various factors such as type of crime, personality of criminal and victim, their socio-economic situation, their relationship to each other etc. The victim’s activity is not necessarily precipitative in nature. It can either be more forceful and decisive in determining the offender’s crime, therefore only facilitating, shaping or increasing or fortifying the offender’s motivation. Thus while giving compensation to the victim; all these factors have to be considered in the legal system. Higher the degree of innocence of the victim, greater the amount of compensation should be given. A crime is a crime because it inflicts harm on another individual and therefore justice is incomplete until the criminal is made to pay for his act by way of punishment and compensation to the

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16 Ibid at 95
17 Ibid at 90
18 Ibid at 93
19 Ibid at 93
victim. Justice not only means justice to accused and society only but it also means justice to the victim. So degree of innocence of the victim will help the legislature and the judiciary in deciding a balanced quantum of compensation for him.

### 1.3 Purpose Of Criminal Justice System

Legally, a crime is an act made punishable by law. A criminal is one who has committed a legally forbidden act. Crime is as eternal as society. Human fallibility has manifested itself in all forms of human organisation. Everywhere some human beings have fallen outside the pattern of permitted conduct. It is better to admit the fact that crime cannot be abolished except in a non-existent utopia. Weakness, anger, greed, jealousy; some form of human aberration, has come to the surface everywhere, and human sanctions have vainly beaten against the irrational, the misguided, impulsive, and ill-conditioned. No way of drawing the scheme of the good life has yet been discovered which will fulfill the needs of all human beings at all times. Crime is therefore an ever-present condition, even as sickness, disease and death. It is as perennial as spring and as recurrent as winter. The more complex the society becomes, the more difficult it is for the individual and the more frequent the human failures.\(^2\)

Crime is a social aberration which exists in every society. Though crime is inevitable and can never be eradicated but can be reduced by the administration of criminal justice. The criminal justice system provides a way to protect the society from wrongful activities. Criminal law is defined conventionally as a body of specific rules regarding human conduct which have been promulgated by political authority which apply uniformly to all member of the classes to which the rules refer and which are enforced by punishment administered by the state.\(^2\) Criminal law may be regarded as an instrument of formal social control whereby an organized effort is made to regulate certain areas of behaviour.\(^2\)

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\(^1\) www.du.ac.in/course/material/ug/llb/Criminology.pdf accessed on 16-09-2007


The law of crime is as old as our civilization. In every organized society certain acts or omissions are prohibited on pain of punishment. Criminal law is the mirror or reflection of the public opinion of the particular time because an act or omission which is a crime in one country may not be a crime in another country. Criminal law provides the ultimate means to society for the protection of its individuals. Criminal law is the achievement of criminal justice. The early man was often forced to use violence for the protection of his person, his family, his group, his possessions. Due to such circumstances, the weaker groups were unable to protect themselves from the clutches of the stronger ones. ‘Might’ became the ‘Right’ and the weaker section had no other option but to submit to exploitation. Gradually the task of protecting the weak passed on to the state. The role of the state was enumerated in the basic law and its activities were to be in conformity with the basic law. Thus, laws became the collective desire of the society in order to ensure peaceable conditions. Crime was the wilfull violation of the codes of society and to control this menace, criminal justice system came into being. The basic objectives of the criminal justice system are to:

(a) Prevent growth of deviant behaviour in society
(b) Detect deviant behaviour
(c) Evaluate the extent of the deviance
(d) Adjudicate the damages and consequences of the aberration to the society
(e) Prescribe the quantum of punishment needed to correct the deviance and
(f) Administer the corrective steps

Criminal justice system consists of four wings dealing with different aspects of crime control in the society. Components of criminal justice system are:

(a) The law givers
(b) The law enforcers
(c) Judiciary-adjudicators of guilt
(d) Correctional administration

(a) The Law Givers:

25 Ibid at 220
They delineate the parameters of behaviour in society and define a crime according to the perceptions and needs of the society. They also prescribe the procedures for:

- Verification of the deviance-investigation;
- Determining the guilt, nature and quantum of punishment; and
- For correction.

All laws are to be in consonance with the basic law—the Constitution.

(b) The Law Enforcers:
All societies do enforce the laws, have a police organization and the primary law enforcement machinery. The enforcement machinery is charged with:

- The maintenance of peace in society
- To prevent and detect the occurrence of a crime.
- To collect and present material evidence in proof of violation before judicial adjudicators and
- To assist in the administration of justice.

Law enforcers have no authority to pronounce the guilt or punish a wrong-doer.

(c) Judiciary—Adjudicators Of Guilt:
This wing aims to ascertain and determine whether a breach of law has in fact taken place and evaluate the facts and circumstances on the basis of evidence adduced and determine the guilt and extent of violation and prescribe such quantum of punishment, which would serve the purpose of reforming the citizen.

(d) Correctional Administration:
It carries out the punishment awarded by the judiciary. The aim is to reform the citizen and recycle him back into society. Indian criminal justice system is not victim-oriented but accused-oriented. Following safeguards have been provided to the accused:

- Presumption Of Innocence:
  As opposed to the inquisitorial system we follow the adversarial system in which an accused is presumed to be innocent till his guilt is proved. Also, the

26 Chakrabarti N.K. Dr., ‘Victim Assistance And Compensation To Crime Victims Under Indian Criminal Justice System’, Legal News and Views, Vol-14 No. 5 May 2000, at 11

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burden of proving his guilt beyond reasonable doubt lies on the prosecution. The accused also enjoys the ‘right of silence’ and cannot be compelled to answer the queries.

- Prevention Of Ex-Post Facto Operation Of Criminal Law:
  Under Article 20 (1) of the Constitution no person can be accused and convicted of an offence for an act which was not an offence under the law in force on the date when it was committed.

- Protection Against Double Jeopardy:
  Article 20 (2) of the Constitution provides that no person can be punished for the same offence twice.

- Protection Against Self Incrimination:
  Article 20 (3) of the Constitution provides that no person can be compelled to be a witness against himself.

- Right To Life And Personal Liberty:
  Under Article 21 of the Constitution no person shall be deprived of his life and liberty except according to the procedure established by law.

Today it appears that the purpose of criminal justice system is just to ascertain the guilt or innocence of an accused. Since the criminal justice system is not victim-oriented, the role of the victim of a crime is restricted to that of a witness for the prosecution. Hence in order to promote, maintain and retain public confidence in the administration of justice, the victim needs to be given a well-defined status.

1.4 Victimology

Victimology is the study of criminal-victim relationship. Doer and sufferer often appear in crime in a close interpersonal relationship. After the crime, there is a minimal relationship wherein the doer stands far apart from the suffering of his victim.27 Victimology can be understood in two senses:

(a) Narrower sense
(b) Broader sense

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In a narrower sense, victimology is the empirical, factual study of victims of crime and as such is closely related to criminology and thus may be regarded as a part of the general problem of the crime. In a broader 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 drawn from such fields as criminology, law, medicine, psychology, psychiatry, social work, politics, education and public administration. In other words since victimology focuses both on victim’s condition and his relationship to the criminal, there can be two major areas of victimology:

(a) Scientific study of criminal behaviour and the nature of the relationships which exist between the offender and victim.

(b) Administration of justice and the role of systems of compensation to the victim.

Victimology As An Academic Term Contains Two Elements:

(a) One is the Latin word “victima” which translates into “victim”.

(b) The other is the Greek word “logos” which means a system of knowledge, the direction of something abstract, the direction of teaching, science and a discipline.

The Aim Of Victimology Is To:

(a) Analyse the magnitude of the victim’s problems

(b) Explain the causes of victimization and

(c) Develop a system of measures to reduce victimization

Although writings about the victim appeared in many early works by such criminologists as Beccaria (1764), Lombroso (1876), Ferri (1892), Garófalo (1885), Sutherland (1924), Hentig (1948), Nagel (1949), Ellenberger (1955), Wolfgang (1958) and Schafer (1968), the concept of a science to study victims and the word “victimology” had its origin with the early writings of Beniamin Mendelsohn (1937; 1940), these leading to his seminal work where he actually proposed the term “victimology” in his article “A New Branch of Bio-Psycho-Social Science, Victimology” (1956). It was in this article that he suggested the establishment of an

28 Devasia, V.V., ‘Criminology, Victimology And Correction’ (1992) Ashish Publishing House at 82
International Society of Victimology which has come to fruition with the creation of the World Society of Victimology, the establishment of a number of victimological institutes and international journals. Mendelsohn provided his victimology vision and blueprint. He is also referred to as “the father of victimology.” The pioneers of victimological studies are mainly three scholars from different parts of Europe:

(a) Hans Von Hentig
(b) Beniamin Mendelsohn
(c) Stephen Schafer

Born in Berlin, Hans Von Hentig considers victimology as a part of criminology. There is a mutual connection between victim and victimizer. He defines victim as ‘the doer-sufferer.’ The main contribution of the understanding of the victim’s role in crime is to lead the way towards the study of crime in its totality. He treated victimology as a part of criminology since it relates to causation and prevention of crime.

Born in Rumania Beniamin Mendelsohn considers victimology as a social science. The victim can be anyone, physical or moral person who suffers either as a result of ruthless design or accident. According to him ‘the destructive of harmful factors which produce victims cannot be limited to one element (the criminal) but are instead numerous (the environment, sometimes even the personality of the victim, the level of technology, social trends), victimology must then investigate all the factors that cause victims.’ Mendelsohn treated victimology as a separate discipline having regard to its aim and structure.

Born in Hungary, Stephen Schafer considers that victim’s importance reflects the offender’s and victim’s joint existence in victimization. The victim-offender relationship stresses the necessity to acknowledge the role and responsibility of the victim. The victim is not simply the reason for victimization but has an important part to play in search for an objective criminal justice and a solution to the victimization

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29 www.unafei.or.jp/english/pdf/PDF_rms/no70/p116-129.pdf accessed on 17-03-2008
30 Ibid at 84
problem.\textsuperscript{32} The victim is a part of crime, often playing an esoteric and not an exoteric role.\textsuperscript{33} Crime should be seen in its functional dynamics. An all-dimensional view of crime cannot accept the criminal’s behaviour and the victim’s behaviour as two distinct and separate forms of conduct.\textsuperscript{34} The central problems of victimology are:

(a) Contribution Of Victim To The Genesis Of Crime:
According to Hentig, the reciprocity between criminal and the victim means that their study, independently of each other is not possible. He often found a mutual connection between killer and killed, duper and duped.\textsuperscript{35} Mendelsohn calls the victim and his offender the ‘penal couple’. Though it is the offender who is charged of the offence but his guilt should be understood objectively rather than as a hallmark of the offender. There is a possibility that the victim himself is responsible for his sufferings. For example:

- The consent/willingness of the victim to commit an offence upon him makes the offender legally stronger.
- Sometimes, while remaining a victim, the victim co-operates with the criminal. The victim sustains and defends the victimization while at the same time suffering from it and disliking it. For example: money-lending at exorbitant rates.
- The provoking victim, consciously or unconsciously invites victimization.

Hence the offence of the offender has to be seen from all the dimensions in order to bring a clear picture of the offence by understanding the guilt of the accused thoroughly.

(b) Contribution Of State And The Criminal To The Reparation Of The Consequences Of The Crime:
The question of compensation and restitution to victim is a part of victimology. The victim is a productive member of the society which fails in protecting him/her against

\textsuperscript{32} Devasia, V.V., 'Criminology, Victimology And Correction' (1992) Ashish Publishing House at 84
\textsuperscript{33} Schaefer Stephen, 'Introduction To Criminology' (1976) Reston Publishing Co., Inc., Reston Virginia at 146
\textsuperscript{34} Ibid at 146
\textsuperscript{35} Ibid at 145
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victimization. In this way society owes an obligation to provide compensation and restitution to the victim.

The system of ‘composition’ (compensation) in the Germanic common laws can be remembered as an era of compensation and punishment since the basis of primitive and early western law penalties was the personal reparation by the offender or his family to the victim. An offence against the individual was an offence against his clan/tribe. The punishment was neither codified nor always standardized as the political institutions were largely based on kinship ties or tribal organizations. In addition to some forms of revenge, vendetta or blood feud, pecuniary compensation was a common practice of punishment. Compensation in its first stage of development was subject to private compromise i.e. if the injured party accepted the economic value offered by the offender, the criminal procedure was considered as complete. The amount of compensation varied according to the nature of crime, age, prestige of the injured party etc. Later the influence of the state power over compensation gradually increased. State also claimed a share in victim’s compensation as a commission for the trouble of the community. One part of the share went to the victim and the other to the state. This marked the beginning of fines paid to the state. Slowly the state took over the exclusive right to punish the offenders and the victim had to obtain satisfaction for being injured from the punishment awarded to the doer by the courts according to the penal laws. In the modern era, the stress is on compensating the victim and his restitution. Rationally, if the state has the right and power to punish and rehabilitate the criminal, it should also take up the responsibility of looking after the victim. India, unfortunately, is very backward on administrative and legislative sides of victimology. Though the Indian heritage has instances of compassion for example; Buddha, Emperor Ashoka, Mahatma Gandhi preached kindness, mercy and non-violence, victimology is still distances away from Parliament.\(^6\) Article-41 of the Indian Constitution has relevance to victimology in a wider perspective which provides that ‘State shall within the limits of its economic

capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want.’ Article-51 A (g)\textsuperscript{17} and (h)\textsuperscript{18} of the Constitution make it a fundamental duty of every citizen of India to protect and improve natural environment and to have compassion for living creatures and to develop humanism. If interpreted and expanded we can find the constitutional beginning of victimology. Article-21 also tries to protect the victims by providing compensation to the victims in case of violation of their fundamental rights. Constitution of India is committed to restructuring of providing justice to victims which is an important facet of social justice. Social justice, being rule of law in action, has also been found under Indian Constitution like a golden thread. But justice itself is considered as truth in action. Ignorance is the enemy of this truth. Victims of crime being component of criminal justice administration are entitled to share the promises of social justice contained in the Constitution. Novel concept of victimology is a step towards fulfilling the demands of the Constitution. The present law relating to victim compensation is inadequate and fragmentary in nature and justice seems to be a distant possibility. The solution lies in conferring a more active role on the State. Understanding of different victim compensation schemes of various countries can help in understanding the issues but they are not exactly viable in our own criminal justice means. Under the Indian criminal justice system, offence is regarded as offence against the state. In our below the poverty line economy where majority of criminals are from such background, compensation recovery seems to be an unequal provision. It benefits those with financial means and remains unrealistic in majority poor society with little material benefits. The basic problem involved in our compensation law is the inability to meet the essence of compensation due to poor socio-economic environment. In this era of open global market economy, hazardous industries are playing a major role in the economic development and in the

\textsuperscript{17} Article-51A (g): It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

\textsuperscript{18} Article-51A (h): It shall be the duty of every citizen of India to develop the scientific temper, humanism and the spirit of inquiry and reform.
advancement of the economy, but simultaneously they are causing the problem of risk to human life and environment. The developing countries like India suffer from the acute problem of environmental pollution. In India, the Union Carbide case also known as Bhopal gas tragedy decided by Chief Judicial Magistrate Mohan P. Tiwari on 07-06-2010\textsuperscript{39} has shown the hollowness of criminal justice system in giving relief to the victims. The total compensation disbursed was rupees 1548.93 crore,\textsuperscript{40} which is very meagre taking into account the loss and sufferings of the victims. The facets of victimology, therefore need to be tackled by having a creative jurisprudence, both substantive and procedural beyond the adversarial procedure. Often the prosecution fails and the offenders escape leaving tears in the eyes of the victim making him/her a living corpse. When criminals freely maim or murder or burn property or commit rape, victimology under such circumstances imposes a clear obligation on the state to reform and rehabilitate the offender. But the person who has actually suffered the pain of that particular crime is completely ignored or is not treated appropriately. Victimology must be shaped to suit the specific conditions of the victims. The philosophy of victimology can be justified in the words of Winifred A. Elken:\textsuperscript{41}

\begin{quote}
To many people it has always seemed a matter of common sense that an offender should be expected to make good the loss or damage he has caused, as far as it lies within his power. This is a very different matter from imposing a fine, though both involve a payment of a sum of money. A fine is simply a punishment and the money is handed over to that impersonal entity, the court. Compensation, paid to the person who has suffered from the offence may help the offender to realize the harm he has done and forces him to take some measures of responsibility for it. As a matter both of expediency and ethics, the principle of restitution should play an integral part in any system of re-education.”
\end{quote}

Even victimological law must be fertilized by the soil on which it grows. Therefore, India’s development in victimology must get to grip with

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\textsuperscript{39} The Tribune dated 08-06-2010
\textsuperscript{40} Ibid
\end{flushright}
conditions and problems of the people of the country within the broader parameters of international victimological jurisprudence. The Restorative and Reparative theories aim at restoring the harm done and calculated accordingly. Restorative theories are therefore victim-centred and envisage less resort to custody requiring offenders to compensate the victims. The victim’s right to receive compensation from the offender is surely undoubted. It is important to understand the ways in which a proper place for victims in the criminal justice process with an emphasis on their rights can be secured. Victimology, therefore, needs to be studied from the point of view of the rights of the victim, awareness of the needs and understanding the process of victimization. Hence victims deserve attention and help and they have a right to expect that the individuals responsible for labelling the tag of victim on them be fully punished and the victims will be adequately compensated.

1.5 Categories Of Victim

A victim is a victim irrespective of the degree of his sufferings. Nevertheless, attempts have been made to categorise victims depending upon their degree of guilt, psychological, social or biological factors etc. According to Beniamin Mendelsohn, a Roumanian Barrister, victims can be grouped in the following categories:

(a) ‘Completely innocent victim’ such as children or those who suffer a crime while they are unconscious.

(b) ‘Victim with minor guilt’ and ‘ignorant victim’ such as the woman who provokes a miscarriage and as a result pays with her life.

(c) ‘Voluntary victim’ and ‘victim as guilty as the offender’ such as in certain cases of suicide and euthanasia.

(d) ‘Victim guiltier than the offender’ such as those who provoke or induce someone to commit a crime.

(e) The ‘most guilty victim’ and the ‘victim who is guilty alone’, such as aggressive victim who kills the attacker in self defence.

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42 Ibid at 214
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(f) The ‘simulating or imaginary victim’ such as paranoids, hysteric or senile persons.

Hans Von Hentig, a German criminologist has given a sociological classification of victims thereby giving psychological, social and biological factors. He has given thirteen classes of victims.\(^{44}\)

(a) The Young victim
(b) The Female victim
(c) The Old victim
(d) The mentally defective and other mentally deranged
(e) Immigrants
(f) Minorities
(g) Dull normals
(h) Depressed
(i) Acquisitive
(j) Wanton
(k) The lonesome and the heart broken
(l) The tormentor

(m) The blocked, exempted and fighting

According to Hentig

> Since young are weak, inexperienced and mentally immature, they are easy victims of kidnappings and sexual assault.

> In case of female victims, males have advantage of greater physical strength in crimes against women, mainly in sexual offences.

> ‘Old’ are physically and mentally weak mainly in crimes against property.

> Mentally defective and mentally deranged persons include insane, drug addict, alcoholic, psychopath and others suffering from mental deficiency and are therefore handicapped in any struggle against crime.

> Immigrants also face difficulties while adjusting to new culture. This may evoke hostility of certain groups in the new country.

\(^{44}\) Ibid at 154
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- The minorities face racial prejudice which may lead to violent crimes against them.
- Dull normals are born victims. Here crime is committed by the criminal not by way of his skill but due to the folly of the victim.
- The depressed lack in fighting qualities and are psychological victim type. His attitude is characterized by feelings of inadequacy and hopelessness, apathy and submission and lack of fighting qualities.
- Acquisitive is an excellent victim and his desires motivate crime as well as lead him to being victimized.
- The Wanton are obscured by rough generalization of laws and social conventions.
- Lonesome victims offer advantage to criminals by their desire for companionship and happiness.
- The tormentor tortures others to the extent that ultimately he himself becomes the victim of tormented.
- Blocked victims try to save themselves.

The list may include other forms of victims too such as reporting and non-reporting victims. According to the First International Symposium on Victimology held in 1973 in Jerusalem, there are no ‘born’ victims, there are indeed biological types of victims who, compared with temporary ‘situational’ victims, seem to be continuously and excessively prone to becoming victims of crime. To be young, to be old or to be mentally defective, are not ‘situations’ but biological quality that indicate some degree of vulnerability to crime.45

1.6 Grievances Of Victim

“... Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.”46 Remedies can be suggested only when we know what the

45 Ibid at 156
46 D.K. Basu Vs State of West Bengal 1997 AIR SCW 233
problem is. Victim is the core of the whole criminal justice system. If victims refuse to co-operate, the criminal justice system would collapse and ignorance of this fact may have a dangerous outcome. The best example can be rape cases where few women are willing to co-operate. When the crime is committed upon the victim, the victim goes behind the scene and state comes in the limelight for the protection of the victim and fights on his behalf for providing justice to him. In this whole process, from the commission of crime till the conviction of the offender there are lot many stages through which victim has to willy-nilly pass. Though the offence is committed upon her once but the grievances and the pains which she undergoes during the whole process of litigation, make her undergo the torture again and again and it is a pity that most of the grievances are the outcome of the tardy, cumbersome and time-consuming justice delivery system. This system is sometimes seen as a second victimization which is more unpleasant than the original crime. The basic object of the criminal justice is to protect the society against crime and to punish the offender. However, criminal justice system does not show equal concern to the victims of crime, who have suffered loss or injury. The list is not exhaustive but a victim faces following basic grievances which need to be redressed as soon as possible:

(a) Marginal Role In Criminal Justice Process:
In criminal justice system, the legislature provides the law which has to be in consonance with the basic law i.e. the Constitution and which has to be obeyed by everyone. Then comes the law enforcers i.e. police-the primary law enforcement machinery entrusted with the responsibility of maintaining peace in society. If it fails in its duty, the society may suffer and when an individual suffers, he becomes a victim. Then comes the judiciary, which aims at determining whether law has been violated on the basis of the evidence produced before the court or not. The basic objective of criminal justice system is to protect the society against crime and to punish the offender. At the time of reporting of crime, the offender is searched for. The focus is shifted to conviction of the accused. In this system the accused is given

various rights and all possible help is provided by following the adversarial system in which an accused is presumed to be innocent until he is proved guilty. Even after conviction the stress is on reforming the offender. The state through police carries out most of the prosecution functions. In the whole process victim’s role is shrinked to that of a person reporting the offence and giving evidence if it is requested for. His role has been limited to ascertain the guilt or innocence of an accused. The role of the victim of a crime is restricted to that of a witness for the prosecution even though he or she has suffered harm- physical, mental, emotional, economical or impairment of fundamental rights.48 “The Criminal Procedure Code (Amendment) Bill, 2006 is aimed at helping the litigants and victims… when the Bill becomes an Act, the prosecution won’t be able to grill the victims like before. Questioning of the victim in the presence of her parents or a social worker of the locality or at the location of their choice will help reduce the psychological pressure on the victim. The Bill also empowers the victims to appeal against acquittals.”49 Though the Bill provides probable solace to the victim but lot more is still left to be done in this regard. The victims are not informed about the procedure of criminal justice system and if informed on the request of victim, the legal language is difficult to understand. Whether it is the progress of the investigation or arrest of offenders or case status in the court or legal advice and assistance etc, hardly any proper information is provided to the victim. Victims feel ignored. It appears that rights of the offender are unaffected by the plight of victims. Lack of understanding of the criminal process is a big grievance of the victims. At all stages, information is hardly provided:

a. At police level- regarding the possibility of material or legal assistance, outcome of police investigation.
b. At prosecution level- regarding decisions concerning prosecution of offender.
c. At trial level- regarding the date and place of hearings concerning the offence, the opportunities of obtaining compensation and the outcome of the case.

(b) Inadequate Compensation:

49 The Tribune dated 05-05-2008
Justice should not only be done but must be seen to have been done. Punishing the offender qualifies the former part but the latter part that justice must be seen to have been done requires something more to be done. The full stop should not be put after punishing the offender. Steps are taken for reformation of accused after his conviction but no relief or restoration is provided to victim after the conviction of the offender. Is justice complete after convicting the offender? Victim is also a human who deserves to be redressed but usually fails to get it. Where the victim spends almost his whole life in the endless wait for justice, that justice will remain incomplete without adequately compensating him. An award of fair compensation to the victim will act as a balm on his wound. But the victim reparation is perhaps like a magic which in certain cases appears and in certain cases disappears because there is no comprehensive legislation providing for compensation by state or offender to the victim of crime. Neither it is mandatory for the court to compensate the victim nor has victim been conferred with any legal right to be compensated. It is entirely the discretion of the court to compensate or not to compensate the victim and also as to the quantum of compensation. Section 357 of Criminal Procedure Code of 1973

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Section 357: Order to pay Compensation:

1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied:
   a) in defraying the expenses properly incurred in the prosecution;
   b) in the payment of any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person is a Civil Court;
   c) when any person is convicted to any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the person who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death;
   d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

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

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

- To a person for meeting expenses properly incurred in prosecution.
- To a person who has suffered loss or injury by the offender, when he can recover compensation in civil court.
- To a person entitled to recover the damages under the Fatal Accident Act when there is a conviction for causing death or abetment thereof.
- To a bonafied purchaser of property which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating or receiving or disposing stolen property and which is ordered to be restored to its rightful owner.

Here compensation can be ordered only out of fine realized and not otherwise. Compensation is allowed if it is recoverable in a civil court. Moreover, quantum of compensation is limited to the fine levied and not in addition to it or exceed the fine imposed. Further, under Section- 358\(^1\) the limit of compensation ‘not exceeding one thousand rupees’ even after amendment is unjustified and need to be further amended. Section- 482\(^2\) gives inherent power to High Courts to make necessary orders to secure ends of justice. But hardly any compensation to the victim has been provided under this section.

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4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.
5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

\(^1\) Section-358: Compensation to persons groundlessly arrested: 1) Whenever a person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

\(^2\) In such cases, if more person than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one thousand rupees, as such Magistrate thinks fit.

\(^3\) All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

\(^4\) Section 482: Saving of inherent powers of High Court-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of process of any court or otherwise to secure the ends of justice.
Compensation under Section-357, Criminal Procedure Code cannot exceed the fine imposed on the offender. The procedure under Section- 421 and 422 of the Criminal Procedure Code for realization of fine is lengthy and cumbersome. Due to this courts feel reluctance in awarding compensation. In the 154th Report, the Law Commission recommended for Section 357-A in Criminal Procedure Code to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the courts53 which was later incorporated in the code.

(c) Inconvenience During Interrogation And Investigation:
The victim’s role is just that of a witness who has no role to play except when required by the law. Due to the faulty criminal justice system, victims face hardships and inconvenience during interrogation by police and further investigation and lengthy court proceedings. Victim has to undergo lot of trauma and sufferings during the pendency of the proceedings.

(d) No Provision For Restitution And Rehabilitation:
The concept of compensation is itself discretionary in nature and is not followed in all the cases. There is no provision for rehabilitation of victims. This leads to existence of one very basic problem of survival of the victim in the lack of his rehabilitation. On one side accused is treated as a privileged person and is provided with all possible help. Even after conviction, emphasis is laid on reformation of offenders but it is not so for victims on the other side.

(e) No Immediate Relief:
There is no mechanism for award of immediate relief and compensation to the victims. Statutory provision relating to compensation can only be invoked after the matter is decided finally under Section-357 or 357-A of Criminal Procedure Code, 1973. Interim compensation of rupees 1000 per month was infact awarded by Supreme Court in the case of Shri Bodhisattwa Gautam Vs Shubra Chakraborty54 considering the violation of fundamental right to life and personal liberty under the Constitution. Immediate relief is of more value which is required by victim to prevent

54 AIR 1996 SC 922
him/her from further torture and sufferings. Delay in providing relief may not be of much help as it will only be a mockery of justice. Immediate relief acts as first aid when the victim is more in need of the monetary and other aids. Moreover, if the compensation is awarded in the end, there is lack of comprehensive machinery to realize the amounts/costs ordered in favour of the victim if the offender refuses to pay the fine.

(f) Lack Of Legal And Medical Assistance:
Legal assistance is hardly provided at police station especially to the victims of sexual assault who might be in a distressed state upon arrival at the police station. Medical assistance, guidance and counselling services are also avoided except from getting done the medical examination of the victim. The police do not take it as their responsibility or duty to inform the victims of their right to representation.

(g) No Provision For Protecting Privacy:
There is no provision to minimize the inconvenience to victims or protecting their privacy and ensure their safety as well as that of their families and witnesses from intimidation and retaliation. The poor victims may fall an easy prey for the dominant accused who may threaten the victims and force them to change their stand. Such kind of criminal justice system will result in travesty of justice.

(h) Slow Judicial Process:
Another factor which contributes to the grievance of victim is the seeking of never-ending adjournments by the lawyers of both sides. There is no time bound mechanism for hearing, arguing and deciding the cases including appeals. No reason is assigned in writing for deciding the matters lately. Efforts are hardly made to avoid unnecessary delays in the disposal of cases. This is mainly due the adversarial system in India in which accused is presumed to be innocent until proved guilty. Moreover crime has to be proved beyond reasonable doubt. Due to flaws in the criminal justice system, there is unnecessary delay in the litigation resulting in endless adjournments.

(i) Hostile Witnesses:
Witnesses take oath to speak the truth for any of the two reasons that they either:

- Love God or
Introduction

- Fear punishment
When both these break for any reason; the result is perjury and distortion of facts resulting in a perverse judgement. The unfortunate victim therefore suffers finally, as the conviction or acquittal of the accused depends upon the statement of the witnesses. The witnesses turn hostile due to fear of the accused or due to inducements of different types. Whatever be the reason, the ultimate sufferer is the victim, for no fault of his own.

(j) Post-Humous Grievances:
It is the victim who suffers the most. His family is ruined particularly in case of death or disability. This is apart from factors like loss of reputation, humiliation etc. The problem is even more when the victim was the sole bread winner of his/her family. It is double victimization. First the victim suffers and then his family after his death. It augments the economic strain of the family. Sometimes frustration and helplessness lead to suicide also due to the social stigma or lack of monetary assistance during the pendency of the case. The family may be looked down upon by the society. This stigma disturbs the peace of the victim’s family.

(k) Lack Of Technology:
Criminal justice system can better support the victims of crime if victims receive timely and accurate information regarding offenders and relevant criminal proceedings through modern information and communication technology. But due to lack of such facilities victims have to suffer as the main agencies within the criminal justice system namely-police, courts and prosecution services. All have poor information and communication technology system. Due to lack of effective information exchange victims have to wait endlessly to obtain justice. Justice includes removal of grievances because unless the cause is removed, the ailment cannot be cured. Preventive and curative steps are required to be taken to improve the criminal justice system with focus on victims of crime because if the disease is not cured in time, it may prove fatal.

(l) Secondary Victimization:
Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. It may amount to a complete denial of human rights to victims from particular class or a particular gender. It may result from inappropriate conduct by police or other personnel. The whole process of criminal investigation and trial may cause secondary victimization, starting from investigation, passing through decisions on whether or not to prosecute, the trial itself and the final conviction or acquittal of the accused. Other agencies coming into contact with the victim may also cause secondary victimization. For example; hospital policies and procedures may restrict the relatives to have an access to the body of a loved one. The hurried schedule of the emergency room may intrude on the privacy of a sexual assault victim or offend his or her sense of dignity. Inappropriate investigation and filming, photography and reporting by the media may also lead to secondary victimization. Even agencies which may be set up to help the victims of crime may have some policies and procedures that lead to secondary victimization. People with whom the victim has contact for example; family, friends and colleagues may wish to distance themselves from the victim or may blame the victim for what has occurred.

1.7 Compensation To Victim

The Rule of law requires that whenever there is a wrong, remedy must be provided. In other words, the wrongs should not remain unredressed. Every injury must have a remedy. A person who has suffered, including the dependants, must be compensated. Though it is the accused who should compensate the victim but it might be that the accused is too poor to pay. In such circumstances, the state whose duty was to protect the life and liberty of its subjects and which failed in performing this duty must compensate the victim for his loss and sufferings. The concept of victimology deals with the study of the problems of victims of crime and their right to claim compensation which includes rehabilitation and restitution from the offender or the state. The traditional criminal justice includes legislating laws, enforcement of laws, detection of crime, trial of offender, execution of sentence but unfortunately does not talk about the duty of the state to mitigate the sufferings of the victims and their
families for loss of life, liberty, property, reputation, bodily or mental injury as a result of crime. Compensation cannot undo the wrong but can mitigate the injury. Punishing the offender without asking him to compensate the victim will only make him aware of the wrong he has done to the state. “Restorative justice... aims for healing and restoration of all concerned.” Restorative justice is a new term for an old concept. Throughout the history of humankind restorative justice approaches have been used in order to solve conflicts between parties and to restore peace in communities. Retributive and rehabilitative approaches to crime are comparatively new approaches. In recent years, however, dissatisfaction with the retributive and rehabilitative approaches has given rise to a renewed interest in restorative justice. Restorative justice represents a paradigm shift in the way justice is dispensed in criminal justice systems. The framework for restorative justice involves the offender, the victim and the entire community in efforts to create a balanced approach that is offender-directed and at the same time, victim-centred. Victim compensation has become a key feature of restorative justice in many developed and developing countries. The framework of restorative justice can best be described as a combined emphasis on the following:

Restoration: Concern for providing services and support to victims, whether or not an arrest takes place, is central to restorative justice. Restoration of community and social bonds are essential to victim support as well as to prevention of future victimization. Restoration of offenders to community life is a goal predicated on offenders’ acknowledgment of the harm done and their willingness to be accountable for their actions and their victims;

Accountability: Restitution, community service and victim-offender mediation create an awareness in offenders of the harmful consequences of their actions for victims, require offenders to take action to make amends to victims and to the community and, whenever possible, involve victims directly;

56 Ibid
Community protection: Intermediate, community-based surveillance and sanctioning systems channel the offender’s time and energy into productive activities. A continuum of surveillance and sanctions provides a progression of consequences for non-compliance with supervision requirements, together with incentives that reinforce the offender’s progress in meeting the objectives of competency development and accountability.

Competency development: Work experience, active learning and service provide opportunities for offenders to develop skills, interact positively in conventional society and demonstrate publicly that they are capable of productive competent behaviour.

Article 75 of the Statute of International Criminal Court provides three forms of reparation:

(a) Restitution
(b) Compensation
(c) Rehabilitation

(a) Restitution:
Restitution in kind is the obvious method of performing the reparation, since it aims to re-establish the situation which existed before the wrongful act was committed. Restitution may include:

- The return of property
- Payment for the harm or loss suffered
- Reimbursement of expenses incurred as a result of victimization
- The provision of services
- Restoration of rights

The idea of restitution is to restore the victim to the original situation prior to the violation of his rights occurred. Restitution is the victim’s restoration of his place in the society and rights that were injured or extinguished in the process of

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59 Article 8 of Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Resolution 40/34 of 29th November 1985
Restitution in criminal-victim relationship concerns reparation of the victim’s loss or better restoration of his position and rights that were damaged due to the crime. It is an indication of the responsibility of the offender. It can be said that it is a claim for restitutive action on the part of the offender. Restitution should be used to provide a way of offsetting some of the harm done to the victim and to provide a socially constructive way for the offender to be held accountable, while offering the greatest possible scope for rehabilitation. The idea of restitution is also to provide a sense of personal accountability to the victim. Restitution can be implemented in a number of ways throughout the criminal justice process: as a condition of probation, as a sanction in itself or as an additional penalty. Although restitution is often imposed in a mandatory fashion, it may be entered into voluntarily by the offender as well. Several jurisdictions have made special arrangements to encourage early restitution by the offender, for example, in Netherlands, the prosecutor may request that the court imposes a partially suspended fine calculated at 20 per cent more than the amount of the victim’s loss. The fine is then suspended in full if restitution is paid.\textsuperscript{60}

Types Of Restitution:\textsuperscript{61}

\textit{Financial Restitution:} Financial restitution refers to payment of money by the offender to the actual victim of crime. This is how restitution is most commonly defined and is probably also the type most widely used.

\textit{Individual Service:} Individual service by the offender requires that the offender performs a service for the actual victim. Examples of this type of restitution programme might include the offender personally repairing the damage done to the victim’s personal property through work or the completion of other specified services. This type of restitution usually involves some form of third-party mediation and requires the consent of the victim.

\textit{Financial Community Restitution:} Monetary community restitution involves the payment of money by the offender to some other entity, such as a community

\footnotesize{\textsuperscript{60} www.uncjin.org/Standards/9857854.pdf accessed on 16-02-2008
\textsuperscript{61} Ibid}
programme. Examples of this type of restitution include such mechanisms as court orders for payment to specifically designated institutions.

**Community Service:** Community service requires the offender to perform some beneficial community service. In this type of restitution, society serves as a symbolic victim and the practice is often referred to as “symbolic restitution”.

**Restitution Fines:** Restitution fines differ from actual restitution in that they are imposed and collected for the purpose of depositing money in a state fund for victim compensation and services. Once deposited, the money is then used to reimburse victims for financial losses through the state compensation scheme or to support assistance services.

(b) **Compensation:**

There may be circumstances where it becomes quite difficult to provide restitution to the victim. Even where restitution is made, it may be insufficient to ensure full reparation. In such circumstances, the role of compensation is to fill in gaps to ensure full reparation for damage suffered. In the case of Factory at Chorzow\(^62\) the Permanent Court of International Justice held, ‘restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.’ Compensation is usually assessed on the basis of the fair market value of the property lost.\(^63\) Compensation is the counter balancing of victims suffering and loss that result from the victimization.\(^64\)

Compensation means anything given to make things equivalent, a thing given or to make amends for loss, recognition, remuneration or pay. The expression compensation is not ordinarily used as an equivalent to damages although

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\(^{62}\) PCIJ Series A, No. 17, 1928


\(^{64}\) Devasia, V.V., *Criminology Victimology And Correction*, (1992) Ashish Publishing House, New Delhi, at 97
compensation may often have to be measured by the same rule as damages in an action for a breach. Compensation is a return for a loss or damages sustained.\textsuperscript{65} Compensation, in criminal-victim relationship, concerns the counter balancing of the victim’s loss that results from the criminal attack. It means making amends to him. It is compensation for the damage or injury caused by a crime against him and is an indication of the responsibility of the society. It is a claim for compensating action by the society.

(c) Rehabilitation:
It is also one of the important forms of reparation. In circumstances where restitution is not possible the victim needs to be rehabilitated. Rehabilitation may be required in addition to compensation. It may also include medical and psychological care as well as legal and social services. It focuses on the steps needed to improve the lives of individual victims, their families and communities. It is closely linked to the holistic goals of repair and restoration.\textsuperscript{66}

1.8 Conclusion
Man lives in the short run, but litigation lives in the long run.\textsuperscript{67} In this long run of litigation, it is very difficult to express in words, the sufferings and pains of the victim unless they are themselves suffered. A victim remains a victim all through even after the conviction of the offender. First, he does not have much stamina left to start his life afresh. Second, even if he somehow gathers sufficient stamina to restart his life, he may or may not be having adequate monetary sources, which are very essential to survive. Third, along with all these difficulties he/she also needs to face the societal stigma which is affixed on him/her forever as a reward of that crime of which he was a victim and not criminal. Fourth, he needs to overcome his past trauma which he underwent and suffered when crime was committed upon him. Lastly, he needs to

\textsuperscript{67} Kalam, A.P.J. Abdul, Former President of India, 'Delay In Administration Of Criminal Justice', (2007) Cri.L.J., Vol I, J.1
strive continuously all through his life to get back his former position. It is now the duty of the legislature and judiciary to further develop the jurisprudence of compensation for the benefit of society.

1.9 Problem Profile:
The problem profile revolves around finding answers to the following questions:

1. What is the meaning of justice? Whether the purpose of criminal justice system is only to punish the offender or to punish the offender as well as compensating the victim?
2. To what extent active participation of victim in the court proceedings required?
3. Whether the duty of the state to defend the community from crime and criminal equally extend to restitution of victim as an act of justice?
4. Is compassion for victim a mere sentimental consideration towards a person in distress or far more than that?
5. Should compensation be made a mandatory right?
6. Are legislative provisions sufficient in providing justice to victim?
7. On whom lies the responsibility to compensate?
8. What should be the criteria of awarding compensation to the victims?
9. Whether a permanent mode of compensation is required and if yes, to what extent?

The aforesaid issues and other related problems set the boundaries of the present work.

1.10 Research Hypothesis:
The present hypothesis rests on the presumption that an ideal system of criminal justice provides compensation to victim of crime along with punishing the offender. If the victim’s compensatory rights are not catered to, he may choose not to report the crime and may take law in his own hands to avenge himself leading to further socio-legal complications. Compensation is a must in India where most of the victims are financially poor. Compensation must be provided as a mandatory right of the victim rather than treating it as a discretionary remedy by the courts. Working on the
research hypothesis is an attempt to determine the true nature and place of victim in criminal justice system. The notion of compensation is a sound concept and a society which recognizes its responsibilities is an incentive for law enforcement. Justice itself is truth in action and ignorance is the enemy of this truth. Victim of crime being a component of criminal justice administration, is definitely entitled to social justice contained in our Constitution in which compensation does play a vital role to help the victim start his/her life afresh and adjusting in the society again.

1.11 Objective Of The Study:
Victims have been a neglected section in the process of justice. The failure to consider the plight of victim is nearly universal. Compensation system either works on a very limited scale or does not work at all. While punishment of crime is regarded as the State’s concern, it therefore receives ample official and public support, crime is regarded almost as a private matter as the source of victim’s loss.

The objective of the study is to have a comprehensive analysis of the existing laws, government policies and schemes and evaluating the effectiveness of both laws and schemes. It is very essential to have a detailed legislation on compensatory rights of the victims of crime along with a continuous monitoring of the existing laws. It is with this view that the present research work has been undertaken.

1.12 Research Methodology:
The present research work required theoretical, analytical and descriptive study. The research work deals with the literature relating to compensation to the victims of crime in its historical and modern perspective. Examination of constitutional and legislative provisions relating to compensation to victims of crime, various international conventions, conferences and other international instruments affecting the national scenario have also been analysed. Case law study has also been done to critically analyse the concept of compensation to victims of crime in India to determine the true nature and place of victims in criminal justice system and identifying the grassroot level deficiencies. Study has also been conducted to ascertain the drawbacks existing in the implementation of the laws relating to compensatory rights of the victims of crime. International instruments have been
studied to ascertain the lacunas in their implementation in domestic laws of India. 
Compensatory laws of United Kingdom and United States of America have also been 
analysed and explained to have an indepth knowledge of the subject. An attempt has 
also been made to examine the law in its various dimensions focusing on its socio-
legal implications which provide an indepth understanding of the concept.

1.13 Analysis Of The Literature:
The present study is based on historical, theoretical, analytical and descriptive 
methods. The literature resource for analysis has been collected from various sources 
such as statutes, journals, books, magazines, newspapers, articles, discussions, 
reports, international instruments, information on the internet etc. The literature 
relating to compensation to the crime victims, the traditional and historical 
perspective, international documents, conventions, covenants, protocols, treaties, 
conferences in relation to the national scenario, foreign compensatory laws, 
government policies and schemes have been studied in detail.

All sources of information have been cited in the footnotes to the main text that may 
serve as useful tools to guide those desiring to undertake indepth research in any of 
the areas that the work contains. The internet had a substantial effect to the research 
work as it made the research more wide and convenient. Websites being transient in 
nature, there is a possibility that some links might have lapsed. The footnotes only tell 
of those websites that existed at the time of writing the research matter along with the 
date when they were accessed.

1.14 Universe Of Study:
A lot has been said about compensating the victims of crime as a basic human right of 
the victim who, if refuses to co-operate, the whole criminal justice system may 
collapse. There is almost lack of national will to deal with the rights of the victims 
especially their compensatory rights which is the most important one in helping the 
victims start their lives afresh specially those belonging to the lower strata of life. 
Various commissions are appointed, suggestions and recommendations are made, 
discussed, debated and subsequently ignored or implemented with number of flaws 
and lacunas. In this era where number of rights have been provided to the accused, the
victim is still ignored and treated just like a prosecution witness. Though the problem is not localised, the study has been carried out in universal context due to the very delicate and important nature of the subject.

**1.15 Plan Of Study:**

The present research has been presented schematically by dividing into the following chapters:

**Chapter-1: Introduction**

Chapter-1 deals with the concept of criminal justice system and problems connected therewith. This chapter also describes the concept of victimology, victims and their relation. An attempt has also been made to examine the role of victims in crime. Various categories of victim and notion of compensation to victims have also been dealt with. It also covers research methodology adopted, analysis of literature, universe and plan of study.

**Chapter-2: Quest For Justice To Victims Of Crime**

Chapter-2 is concerned with the evolution of the concept of compensation to victims, commencing from Vedic times, passing through ancient, medieval and reaching the modern era. The Law of Twelve Tables, Code of Hammurabi, Laws of Manu, Anglo-Saxon, Roman and British period dealing with compensation to victims have also been discussed.

**Chapter-3: Compensation At International Level**

Chapter-3 revolves around international aspect of compensation to victims and related Declarations, Conventions and Protocols such as Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985, Convention against Torture and other Cruel and Inhuman or Degrading Treatment or Punishment, 1987. The European Convention for Protection of Human Rights and Fundamental Freedoms, 1950 and many other have also been discussed in detail.

**Chapter-4: Compensation To Victims Of Crime In India**

Chapter-4 is devoted to the compensation to victims of crime in India under various statutes such as Fatal Accidents Act, 1855, Motor Vehicles Act, 1988, Criminal Procedure Code, 1973, Probation of Offenders Act, 1958, Scheduled Castes And
Scheduled Tribes (Prevention of Atrocities) Act, 1989, Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005, National Green Tribunal Bill, 2010, Civil Liability for Nuclear Damages Bill, 2010, Protection of Women against Sexual Harassment at Workplace Bill, 2010. Compensation for murder and sexual assault has been specifically dealt with keeping in view the serious nature of the crime and the plight of victims. Related appendices have also been included in the end for a comprehensive study.

Chapter-5: Judicial Attitude Towards Compensation To Victims Of Crime
Chapter 5 highlights the judicial aspect and its approach towards the grant of compensation to the victims of sexual assault and murder. The concept of compensation is constant and changes as per the facts and circumstances of each case. The chapter also highlights compensation awarded to victims under the Constitution of India for violation of fundamental rights and under Criminal Procedure Code and tries to find out the causes as to why judiciary is reluctant in providing compensation to the victims under Criminal Procedure Code. This chapter includes various case laws dealing with compensation and their socio-legal implications. The chapter also covers judicial attitude towards the victims of various tragedies and riots.

Chapter-6: Compensation To Victims Of Crime Under Other Legal Systems
Chapter-6 elucidates the system of compensation in United Kingdom and United States of America. The legal systems of the two countries have been explained with the help of charts and relevant appendices for easy understanding of the matter. Since India has borrowed its legal system mainly from these two nations therefore UK and USA have been chosen for detailed analysis in regard to compensation to victims of crime.

Chapter-7: Victim Compensation Fund: Proposed Paradigm
Chapter-7 enumerates the concept of Compensation Board and computation of compensation. It critically examines the proposed paradigm which is relevant for victims who seek compensation. Various schemes proposed by the National Commission for Women and other schemes initiated by the government have also
been dealt with along with the requisite appendices in the end for a comprehensive study.

Chapter-8: Conclusion And Suggestions
Based upon research Chapter-8 focuses on suggestions which can be helpful in examining the concept of rights of victims and compensation to them. It concentrates on duty of the state and judiciary in this regard. It also makes a comprehensive evaluation of laws relating to rights of victims and suggests the legislative amendments and changes required in the judicial thinking.