CHAPTER-I

VICTIMOLOGY:

1. INTRODUCTION

This Research work is related with various criminal laws, the statutes and rights of crime victims in the Indian perspective and in a variety of laws that are studied critically in the perspectives of victims of crimes, causes of crimes, the social approach, clinical approach etc.

Several laws and enactments have been provided to protect them and ensure their protection, however more practical approach is required and a change in laws will be appreciated. The present study is focused on the issue of crime victims in developing countries with special reference to India and also various efforts taken by Government organizations, and laws enacted for the benefit of crime victims like Criminal Procedure Laws, Human Right Laws, National statutes, State statutes, National Policies, International Declarations, Conventions and Articles, written by renowned writers and human rights activists of the world and to probe into reasons for the ineffective implementation of the laws to fight against crime victims and measures to protect victims will also be looked into in the present study.
1.2 VICTIMOLOGY:

“In the rush to examine a criminal behavior, it is not difficult to become distracted by the dangling carrot of that criminal’s potential characteristics and forget about the value of his victims.”

- by Wayne Patherick

Victims of crimes are considered as the weakest and most vulnerable section of human population of any country since they are unable to get justice and at times do not raise their voice against those who injure them. It is for this reason that a society must have concern over the state of these victims. The crime victims should be protected by law, from all sorts of exploitation, physical, mental and moral.

In the present study the researcher has addressed the basic issues of economic and social deprivation of victims, which gives rise to Victimology, and it will also give an idea of the magnitude of crime victims in the nation.

1.3 AIM AND OBJECTIVE OF THE STUDY

The aim and objective of this research study is to bring into focus the apathy of the Victims of Crimes in various aspects. The researcher has critically analyzed the following problems:

a) Various Problems faced by the victims of crimes.

b) Emerging awareness about the Rights of the victims

c) Human Rights awareness of the victims.

d) Changing National and International concepts about crime victims and

1 Victimology - The study of victims in Criminal Investigation, by Wayne Patherick.
e) Issues concerned with Victimology.

The Purpose and object of the present study is to throw light on the following issues of crime victims:

- To know the apathy of crime victims and social reaction to law victims.
- To study victimization and the view of society towards the victims of crimes.
- To understand the victim and offender relationship and throw light on the behavior of the victims after crime.
- To analyze the relationship between police, crime victims and the courts and to bring about a change in attitude of the reactions in the society with the crime victims.
- To explore and change and to promote awareness in the behavior and attitude of crime victims to approach correct institutions for justice.
- To improve the criminal justice system, governments, social organizations, NGO’s with respect to implementation and assessment of policies and organize programs and laws for crime victims.

1.4 HYPOTHESIS OF RESEARCH

This research study is an attempt to provide a brief introduction to the universal phenomenon of crime victims and to make improvement and take measures and steps to tackle problems related to crime victims. It has been continuously observed that the focus is more on the offender than on the victim of crime. Most of the laws which are there are to punish the offender and not many laws are there to protect the victim or his family.
The present study will draw attention to the helpless conditions of victims of crimes and their sufferings and will also focus on the practical situation in India where the society as well as the states will be held legally responsible for the survival, development and happiness of the victim. There must be adequate legislation to protect the rights of the victims and the social scenario must change to comfort the victims. Some important suggestions to protect and safeguard the interest of the victims or their family members are:

1. They should be treated with compassion and care.

2. They must be given compensation and respect for their dignity.

3. They are entitled to get easy access to the judicial mechanism.

4. The judicial, administrative and legislative mechanism must be properly established and strengthened.

5. Measures should be taken to minimize the hardship and inconveniences caused to the victims and protect their privacy and safety.

Persons needing special attention and those who are possible victims of crime need to be protected by the society and by the authorities. Certain categories of persons who are vulnerable and are victims of crime need special and more attention. The Problem with crime victims for e.g. Elderly persons, rape victims, women victims, child victims, sex-offences victims is that they are not properly guided and they are also not aware of the laws which are enacted to protect them and which they can utilize for themselves. The Administration of justice is not really much concerned with the victims of crime, except in few serious cases where some action has been taken to help the sufferer.

Recently it has been observed that a number of legislative and other social measures have been taken by the States to protect the crime victims and to provide them with technical, judicial and other assistance for appropriate assistance to the victim and their family members.
1.5 SIGNIFICANCE OF THE STUDY

The emergence of victimology is of recent phenomenon. Efforts have been made at various levels to the study of victims and the impact of crime of the victims by many known criminologists i.e. Lombroso, Garofalo, Ferri, Tarde and many others.\(^2\) Many programmes have been conducted to assist the victims of crimes in various manners like medical assistance, legal assistance, financial, assistance and giving them counseling in helping them to overcome their apathy.

The scientific study of victimology can be traced back to the 1940 and 1950. Two eminent Criminologist Mendelsohn and Von Hentig, began to explore the field of victimology by creating typologies. Mendelsohn and Von Hentig are considered the “fathers of the study of victimology”. Hans Von Hentig got the credit for initiating the study of criminal and the victim in his famous book – “The Criminal & His Victim”.

In his study of victims he has used the term terminology of doer-sufferer for understanding of the crime. According to him “\textit{Crime, for the most part, is injury inflicted on another person. Setting aside felonies directed against fictitious victims, the state, order health and so forth, there are always two partners: - the perpetrator and the victim}”\(^3\)

Von Hentig was the first one to study the role of victims in crime and found some common general characteristics among them which may be summarized as under:-

1. The poor and ignorant immigrants and victims of greed are victims of fraud.

2. The victims of larceny (theft) are intoxicated or sleeping persons.

\(^2\) Victimology & Compensatory Jurisprudence by Gurpreet Singh Randhawa
\(^3\) Hans von Hentig, The Criminal & His victim, Yale University Press 1948,p/383
3. The depressed or apathetic person is a victim as he is indifferent to harm or any injury.

4. Wanton or sensual persons may become victims due situations created by them.

5. A lonesome or heartbroken person may become victim because of some critical loss to them.⁴

The present study attempts to give a comprehensive overview of the underlying causes of victimology and its relationship with the society. The study also reflects the reaction of society, police, and judiciary against the victims of crimes, the sociological and penological view. The endeavors of various national and international organizations which are combating victimology are also presented. After having taken the overview of this aspect various legislators, executive and judiciary should take positive steps to enact different laws in this behalf and take all measures to implement them for protection of the victims.

In this introductory chapter the researcher has studied the problems of crime victims, which is more pervasive in developing countries.

In fact, the very purpose of this research study is to bring about transparency in the different ideological positions of the crime victims and the diverse practical approaches in order to discuss the processes about taking concrete steps in the interest of crime victims. A more unified co-operative approach of all factors and situations in this important area for the future of India and other developing countries. It is urgently required to eliminate the problems of crime victims and develop socialistic attitude towards them.

To understand victimology it must be appreciated that it is a totally new area of specialization within the subject of criminology. Criminology is a broad study of law making, law breaking and social reactions to law breaking.

⁴ Hans Von Hentig ,The Criminal and his Victim, Yale University Press (1948) pp 384-88
Victimology comes in the last category of criminal justice. It is the study from the victim's angle.

The aim of victimology as a science is to basically help the sufferers of crime and remove the social confusion by addressing the problems of the victims of crime. It is a new area which is considered in the field of specialization which is within criminology. It means that criminology encompasses in it the study of law making, law breaking and other social reactions to the law breakers. On the other hand victimology forms a part of specialized study in the field of the reaction of people socially.\(^5\)

The researcher after observation has come to the conclusion that he study of victimology and its importance has now emerged due the awareness of the society and the law makers that a major reform is required in the laws for protecting the victim, his family and the society at large. Hence after studying the various aspects the causes of victim apathy and the remedy available to overcome the grievance of the victim require to be emphasized in detail.

### 1.6 CONCEPT OF VICTIM

The concept of the term *victim* dates back to ancient cultures and civilizations, such as the ancient Hebrews. Its original meaning was embedded in the idea of sacrifice or scapegoat – it means the execution or casting out of a person or animal to satisfy a deity or hierarchy. Over the centuries, the word *victim* came to have many more additional meanings. During the founding of victimology in the year 1940s, eminent victimologists such as Mendelson, Von Hentig, and Wolfgang tended to use textbook or dictionary definitions of victims as unfortunate dupes who instigated their own victimizations. This

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\(^5\) Criminology and Penology Prof. N.V. Paranjape, 14\(^{th}\) edition, Central Law Publications
notion of "victim precipitation" was strongly attacked by feminists in the year 1980s, and was replaced by the notion of victims as anyone caught up in an asymmetric relationship or situation. "Asymmetry" basically means anything unbalanced, exploitative, parasitical, oppressive, destructive, alienating, or having inherent suffering.

The current interest in the relationship between the criminal and the victim indicates that the understanding of crime is now entering into a new and modern phase. This aspect of change reflects that the criminal justice system should consider the study of crime and therein treat the criminals as members of their group and include the victim in this group.6

Today, the concept of victim includes any person who experiences injury, loss, or hardship due to any cause. Also today, the word victim is used rather indiscriminately; e.g., cancer victims, holocaust victims, accident victims, victims of injustice, hurricane victims, crime victims, rape victims, sexually exploited victims and many others. The thing that all these usages and terms have in common is an image of someone who has suffered injury and harm by forces beyond his or her control. Many are victims due to the circumstances around them, while many fall prey to the tactics of others.

While studying victimology we must understand that victimology and criminology have now undergone radical changes. At one time when criminology was only restricted to the study of criminology and their characters and is called classical study of criminology. In the modern times criminology has expanded its scope of study and now studying victimology as it is another side of the coin. We are studying from the perspective of the victim of the crime rather than only emphasizing only on the wrong doer and his punishment. The person who has suffered has been neglected till date but now the point is what about the sufferings of the victim or his family.

The term "crime victim" generally refers to: -

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6 Parkash Talwar, victimology. Isha Books, p.1
• any person, group, or entity who has suffered injury or loss due to illegal activity. The harm can be physical, psychological, or economic.

• The legal definition of "victim" typically includes the following:

• A person who has suffered direct, or threatened, physical, emotional or pecuniary harm as a result of the commission of a crime; or in the case of a victim being an institutional entity, any of the same harms by an individual or authorized representative of another entity. Group harms are normally covered under civil and constitutional law, with "hate crime" being an emerging criminal law development, although criminal law tends to treat all cases as individualized.

Besides "primary crime victims", there are also "secondary crime victims" who experience the harm second hand, such as intimate partners or rape victims or children of a battered woman, children of prostitutes, sexually harassed victims, and many more. It may also make sense to talk about "tertiary crime victims" who experience the harm vicariously, such as through media accounts or from watching television.

Many victims feel that defining themselves as a "victim" has negative connotations, and choose instead to define themselves as a "survivor." This is a very personal choice that can only be made by the person victimized. The term "survivor" has multiple meanings; e.g. survivor of a crime, "survivor benefits." It remains to be seen whether this terminology for victims of crime will endure.

"Victim defenses" i.e. the defenses by the victims who have committed some crime because they were victims have recently emerged in like in cases of sexual abuse to children or women, rape, parricide (killing one's parents) and homicide of batterers by abused spouses etc. Advocates for battered / domestic violence women were among the first to recognize the issue, and promote the "battered woman syndrome" to defend women who killed or seriously injured a spouse or partner after enduring years of physical, emotional and/or sexual abuse. Attorneys have also drawn upon theories of Post-traumatic Stress Disorder to defend their client's behavior. From time to
time, media attention to these defenses becomes intense, and certain "high profile" cases tend to influence public opinion and spread confusion over who is the "victim" and who is the "victimizer." One of the goals of victimology as a science is to help end this state of societal confusion.

In the primitive society the responsibility to protect oneself was with the individual himself against crime and to punish the offender, the same is reflected in the retributive and restitutive justice system. As time passed the societies got themselves organized into States and the responsibility to protect the members against the crime and criminals and to punish the persons who violated the law shifted to the authorities. The remedy was mostly to compensate the victim or his family.\(^7\)

It is to be observed that crimes are sometimes committed by victims themselves when they are trying to defend themselves the victim becomes the offender. In such cases rather than punishing the victim the cause of committing the crime needs to be understood if required the victim may be treated clinically.

### 1.7 VICTIMOLOGY

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

a) penology (and the sociology of law);

b) delinquency (sometimes referred to as psychological criminology);

c) comparative (and historical) criminology; and

\(^{7}\) Ahmed Siddique's Criminology and Penology, 6\(^{th}\) edition, 2009 Eastern Book Company
d) Victimology

Andrew Karmen, who wrote a text on victimology\(^8\) entitled *Crime Victims: An Introduction to Victimology* in 1990, broadly defined victimology as:

"The scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system -- that is, the police and courts, and corrections officials -- and the connections between victims and other societal groups and institutions, such as the media, businesses, and social movements."\(^9\)

From this definition, we can see that victimology encompasses the study of:

- victimization
- victim-offender relationships
- victim-criminal justice system relationships
- victims and the media
- victims and the costs of crime
- victims and social movements

Von Hentig (1948) carried the work of Medelson further and he placed the victims in five main categories:-

1. The innocent who fell a victim in crime in the wrong time
2. The depressive types who are an easy target
3. The greedy type who are easily duped
4. The vulnerable and juvenile types
5. The tormentor types\(^10\)

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\(^8\) Crime Victims: An Introduction to Victimology in 1990,
\(^9\) Andrew Karmen, Crime Victims: An Introduction to Victimology, Pacific Grove, Brooks/cole, 1990
\(^10\) Criminology and Penology Prof. N.V. Paranjape, 14th edition, Central Law Publications
Victimologists often use surveys of large numbers of people about the crimes that have been committed against them because official police statistics are known to be incomplete.

If there is any such thing as a method to victimology, the problem can be identified and steps are to be taken as under:

1. Define the problem - find the asymmetry, analyze responsibility, explore the kinds of harm
2. Measure true dimension of the problem - analyze statistics, see what kind of people are involved, accurately gauge extent of harm
3. Investigate how CJ system handles the problem - look at what CJ system ignores, ask what victim wants, analyze effects, chronicle emergence of victim's movement
4. Examine societal response to problem - look at issues of constitutional rights, analyze proposed legislation, analyze media reaction, see if anyone is cashing in on the problem.

1.8 History of Victimology

“The History of crime and punishment in the whole civilized world reveals a steadily increasing concern with the treatment of criminal and a virtual blackout of attention to the situation of the victim.”

- Michael Fooner

At first, going back in the medieval times and going back to the origins of criminology in the 1880s, anything which resembled victimology and was termed as victimology was simply the study of crime from the perception of the victim and no further thought was given to it, the next step was to punish the offender. With the exception of some psychological profilers who do this, nobody really advocates this approach to victimology anymore. The scientific

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study of victimology which was traced back to the 1940s and 1950s; the two eminent criminologists, Mendelsohn and Von Hentig, began to explore the field of victimology by creating "typologies". They were considered the "fathers of the study of victimology."

These new "victimologists" began to study the behaviors and vulnerabilities of victims, such as the resistance of rape victims and characteristics of the types of people who were victims of crime, especially murder victims.

Mendelsohn\(^\text{12}\) during his study interviewed victims to obtain information, and his analysis led him to believe that most victims had an "unconscious aptitude for being victimized." He created a typology of six (6) types of victims, with only the first type, the *innocent*, portrayed as just being in the wrong place at the wrong time.\(^\text{13}\) The other five types all contributed somehow to their own injury, and represented *victim precipitation*.

Mendesohn studied victims on the basis of their contribution to the crimes and he classified them into the following categories:

1. Completely innocent victims eg. Children
2. Victims with minor guilt and victims of ignorance eg. Pregnant women who go for abortion
3. Voluntary victims. Eg. Persons who commits and in turn themselves get hurt or killed suicide
4. Victims who are more guilty than the offenders who provoke them to commit crimes
5. The criminal type of victims who commit offences\(^\text{14}\)

\(^\text{12}\) B.Mendelsohn, the Victimology, p.25
\(^\text{13}\) Ibid
\(^\text{14}\) V.M.Rajan, Victimology in India at pp 10-11
Von Hentig studied victims of homicide, and said that the most likely type of victim is the "depressive type" who is an easy target, careless and unsuspecting. The "greedy type" is easily duped because his or her motivation for easy gain lowers his or her natural tendency to be suspicious. The "wanton type" is particularly vulnerable to stresses that occur at a given period of time in the life cycle, such as juvenile victims. The "tormentor," is the victim of attack from the target of his or her abuse, such as with battered women.

Von Hentig's work provided the foundation for analysis of victim-precipitation that is still somewhat evident in the literature today. Wolfgang's research followed this lead and later theorized that "many victim-precipitated homicides were, in fact, caused by the unconscious desire of the victims to commit suicide."¹⁵ Schafer's theoretical work also represented how victimology invested a substantial amount of its energy to the study of how victims contribute - knowingly or unknowingly -- to their own victimization, and potential ways they may share responsibility with offenders for specific crimes. In fact, Schafer's book, *The Victim and His Criminal*, from this approach, is supposed to be a corrective to Von Hentig's book, *The Criminal and His Victim*.

1.9 CHARACTERISTICS OF VICTIMS OF CRIME

They began to study the behavior and vulnerabilities of victims. Mendelsohn interviewed victims to obtain information and came to the conclusion that most victims had an unconscious aptitude for being victimized. He created six types of victims, only the first type i.e. innocent ones portrayed as being at the wrong place at the wrong type. The other five types contributed to their own injury and represented victim precipitation.

Mendelsohn was the first to study the relationship between the victim and the offender and together he termed them as penal Couple. In his book *Victimology* he has focused his attention on the role of the victim and his

¹⁵ Henting, the Criminal and his victim, New Haven, Yale University Press 1948
surrounding circumstances. He has identified four factors in rape crime and crimes against morality. The four factors are:

1. The familial, authoritative and hierarchical relations which are existing between the victim and the accused.

2. The temperament of the victim

3. The social surroundings of the victim

4. The social superiority of the accused and the victim\(^\text{16}\)

To study the problem of crime victims we need to first understand what is the concept and meaning of victimology.

The term victim connotes "\textit{any person who experiences injury, loss or hardship and suffering due to any cause}"\(^\text{17}\). Victimology in developing countries, more particularly the conditions in India are prevalent where the apathy of the victim is pitiful. In more simple words one can define that the study of victims is known as Victimology. The study will also include the role of police and courts in the victimization process, and also the connections between victims and other social groups e.g. media, social movements, NGO’s, other laws etc.\(^\text{18}\)

The aim of victimology as a science is to help such sufferers of crime and remove the social confusion by addressing the problems of victims of crime. It is a new era in the field of specialization within criminology. Criminology forms a part of specialized study in the field of social reaction to law breaking.

The term "crime victim" generally refers to any person, group, or entity who has suffered injury or loss due to illegal activity. The harm can be physical, psychological, or economic.

\(^{16}\) V.M.Rajan, Victimology in India, pp. 10-11
\(^{17}\) Victimology - The study of victims in Criminal Investigation., By Wayne Petherick
\(^{18}\) Victimology & Compensatory Jurisprudence by Gurpreet Singh Randhawa
The legal definition of "victim"\textsuperscript{19} typically includes the following:

\textit{A person who has suffered direct, or threatened, physical, emotional or pecuniary harm as a result of the commission of a crime; or in the case of a victim being an institutional entity, any of the same harms by an individual or authorized representative of another entity. Group harms are normally covered under civil and constitutional law, with "hate crime" being an emerging criminal law development, although criminal law tends to treat all cases as individualized.}

Besides "primary crime victims", there are also "secondary crime victims" who experience the harm second hand, such as intimate partners or significant others of rape victims or children of a battered woman. It may also make sense to talk about "tertiary crime victims" who experience the vicariously, such as through media accounts or from watching television.

\section*{1.10 THEORIES IN VICTIMOLOGY}

Over the years, ideas about victim precipitation have come to be perceived as a negative thing; "victim blaming" it is called. Research into ways in which victims "contribute" to their own victimization is considered by victims and victim advocates as both unacceptable and destructive. Yet a few enduring models and near-theories exist. The theories are mentioned herein:

1. Luckenbill’s Situated Transaction Model - This one is commonly found in sociology of deviance textbooks. The idea is that at the interpersonal level, crime and victimization is a contest of character. The presence of audience helps escalate the situation.

2. Benjamin & Master's Threefold Model - This one is found in a variety of criminological studies, from prison riots to strain

\textsuperscript{19} http://www.crimelibrary.com/criminal_mind/profiling/victimology/2.html
theories. The idea is that conditions that support crime can be
classified into three general categories: (1) precipitating factors -
time, space, being in the wrong place at the wrong time; (2)
attracting factors - choices, options, lifestyles (the sociological
expression "lifestyle" refers to daily routine activities as well as
special events one engages in on a predictable basis); (3)
predisposing factors - all the socio-demographic characteristics of
victims, being male, being young, being poor, being a minority,
living in squalor, being single, being unemployed.20

3. Cohen & Felson's (1979) Routine Activities Theory - This one is
quite popular among victimologists today who are anxious to test
the theory. Briefly, it says that crime occurs whenever three
conditions come together: (1) suitable targets - and we'll always
have suitable targets as long as we have poverty; (2) motivated
offenders - and we'll always have motivated offenders since
victimology, unlike deterministic criminology, assumes anyone
will try to get away with something if they can; and (3) absence of
guardians - the problem is that there's few defensible spaces
(natural surveillance areas) and in the absence of private security,
the government can't do the job alone.21

The phenomena that criminals and victims often have the same socio-
demographic characteristics (e.g. are in relatively the same age group) is
known as the propinquity hypothesis; and that criminals and victims often live
in physical proximity to one another is called the proximity hypothesis.22

After studying the above theories it may be concluded that there cannot be
any one particular reason where a person is a victim of crime. There are
several theories developed by various criminologists who have taken into

20 http://www.chow.com/facts_7185129_victimology-theory.html
21 Victimology & Compensatory Jurisprudence, Gurpreet Singh Randhawa, Central Law
22 Mendelsohn, B. (1963) "The Origin of the Doctrine of Victimology" Excerpts
Criminological
account all aspects of crime victims. Each person has studied the theory causes of victimology and have put forward their views in their own aspect. It can be analyzed that the victims of crime are vulnerable sects who need to be protected by the society and the State. The society has to support and take care that these victims are protected and they must be made aware of their rights to get justice. The State has to enact various laws to protect these victims and judiciary must make all efforts to implement the laws enacted by the legislature.

After summarizing all the various theories of victimology it is observed that there can be a number of causes of victimology and each researcher or criminologist gives various views in respect of the causes, it may be summarized that these victims are very much in need of protection from the society and they are to be tackled in a very sensitive manner.

1.11 VICTIMS OF CRIME AND INDIAN CONDITIONS
The Indian context of victimology and compensation theory can be studied as under:-

1.12 Vedic Period:-
In the early Vedic Period of civilization retribution was the main element in criminal law. The law was designed to award compensation to the victim and not to punish the offender. The state played a major role as arbitrator in the matter. The offender as an individual was not taken into consideration. 23Narada was the first to recommend compensation to the victims by the offender as repentance to his wrong doing. The Smiritis also prescribed corporal punishment and money compensation to the victims or their family members for offences like theft, assault, adultery, rape and manslaughter. 24 Under the Shastric laws criminals were required to pay a fine as well as to undergo corporal punishment for their offence. In Buddhism caste did not play any role while giving punishment and compensation. It was more

23 S.P. Singh Makkar, Global Perspectives of victimology in India, ABS Publication, 1st Ed. 1993, p. 148
24 Ibid
in favour of equality of all before the law. In ancient times caste played a major and predominate role while awarding punishment and compensating the victim. Kautilya’s Arthashastra lays down many principles to determine the compensation. The aim of Punishment served four major purposes i.e.

- to meet the urge of the person who suffered.
- for revenge or retaliation
- for deter or prevent the crime in future
- or to reform the wrong doer.\textsuperscript{25}

In the Vedic period emphasis was given more to the offender and to give him punishment and the innocent person should not be made the victim of law. \textit{"By not punishing the guilty and punishing those not deserving to be punished by arresting those who ought to be arrested and by failing to protect from thieves etc. Through these causes decline, greed and disaffection are produced among subjects."}\textsuperscript{26}

The major defect in the ancient system was that it was based more on caste system. Sudras became the victims of this caste ridden legal system. The most severe punishment was inflicted upon them whereas Brahmin offenders used to enjoy certain kind of privileges in the society. Gautama and Manu prescribed the details of penalty to be paid by the Sudras, Vaishyas, Kshatriyas, Brahmins and upper class persons. Among all these four categories heavy fine was imposed on Sudras for violation of any law even though it was a trivial offence. Hence they were made victims of abuse of law.

\textsuperscript{25} P.V. Kane, History of Dharmasastral Vol. IIIrd Bhandarkar Oriental Research Institute, Poona, (1953), p. 388.
\textsuperscript{26} Ibid
1.13 The Muslim Period:

Muslim period marked the beginning of a new era in the legal history of India. The social system of the Muslims was based on their religion Islam. The Muslims followed the principles of equality for men and they had no faith in the graded or sanctified inequality of the case system.\textsuperscript{27} The Quran was the absolute authority and all things centered around the interpretation of Quran from which their Muslim law or Shariat arose. In the Mughal period a unified system of judiciary came into existence and the litigants were represented before the courts by professional legal experts known as \textit{vakils}.

The legal profession flourished during the Mughal period. The Great Mughal Emperor Akbar by his foresight displayed a policy of tolerance by removing the discriminating the laws regarding the Muslims and the non-muslims. He treated them as equal before the eyes of laws. He created common citizenship and a unified system of law and justice for all.\textsuperscript{28}

After Akbar his successor Jahangir also was a justice living person and he dispensed with justice to all. After him his successors Shah Jahan and Aurangzeb were fanatic Muslim Emperors. They had adopted the discriminatory policy towards the non-Muslims. Hindus and Sikhs were made the victims of draconian laws. They had no right to get full citizenship and they were not treated equally to Muslims in law and were called Zimmis.\textsuperscript{29}

1.14 The British Rule - Modern Period

The East India Company came to India for trading and transformed into a sovereign body. The British government gradually introduced their own legal system and started giving justice according to their laws which were not

\begin{footnotes}
\item[28] M.B.Ahmed. “the Administration of Justice of Muslim Law”, p. 102
\item[29] The History and Culture of the Indian People, Bhartiya Vidya Bhavan, Vol.7 & 8 pp. 538 & 539
\end{footnotes}
known to our land. The British period, however consisted of a major and fundamental break from our past practices and traditions. The British common law introduced in India the Adversary system of law that relies of the skill of the advocate who represents his party and involves an impartial person.

Due to this system there was a transformation in the criminal justice system from victim to accused. The role of the victim was to only initiate the criminal proceedings and assist prosecution proceedings. It was Lord Cornwell who introduced some very important reforms in several laws i.e. Mohammedan Criminal Law. Punishment for murder was now given on the basis of the intention of the parties rather that the manner in which the crime was committed. Blood money was abolished. Cruel punishments were also abolished, evidence given by a non-Muslim was admitted as valid. The British period constituted a major and fundamental breakthrough from our past practices and traditions followed by us for ages.

1.15 The Adversarial System

The adversarial system of trial developed late during the English legal History. For centuries the defendants were not allowed lawyers as their legal councils. The changes took place in about the 18\textsuperscript{th} century, where the adversarial system got fully developed. The adversarial system of law is the system that relies on the skill of the advocate who represents his or her party and it involves an impartial person that is the jury who tries to determine the truth of the case. As against that the inquisitorial system has a judge who job is to investigate the case. The prosecution lawyer and the defense lawyer had a very important role to play. Due to the emergence of adversarial system, a change came into the criminal justice system. It underwent a change from victim oriented to accused oriented. Many legal rights of accused also came into existence during this era. The role of the victim was only to initiate the
legal proceedings thereafter the judiciary took over. The major fallback of this system was that it was all about winning the case by hook or by crook.

In India Adversary system is the legal of the British Common Law. The Code of Criminal Procedure of 1882 which was consolidated for the whole of India as a uniform law for the whole country. The procedure in it is the adversarial system which was not known to us before the British came to India and implemented their laws. 30

The researcher has studied the various phases of the system of justice in the Indian context. It has been seen that each system had its own peculiarity and the justice was given to the victim according to the laws prevalent at that time. As the society developed and the views of the people changed the justice system also changed according to it. Earlier the concentration was more on the offence and the offender and the victim was taken care of. The after effects of the incident were not considered by anyone.

1.16 RIGHTS OF VICTIM

The victims have their rights which need to be conveyed to them so that they can use them. Many of the rights have slowly become part of criminal law in relation to abusers and their victims a few of them have been mentioned below. Legislations affecting victims and witnesses include:

- The Victim & Witness Protection Act of 1982
- The Victims of Crime Act of 1984
- Victims’ Rights & Restitution Act of 1992
- Violence Against Women Act of 1994

30 Victimology & Compensatory Jurisprudence, Gurpreet Sungh Randhawa, Central law Publications First edition. pp 14, 15
A number of states have enacted "victims' bills of rights." At least 34 states have provisions which are designated as "Victims' Bills of Rights," "Rights of Crime Victims," or something similar. Twelve other states have legislation which might be considered a compilation of rights, protections or special guidelines for the treatment of victims.

Twenty states have passed constitutional amendments for victims' rights.

1.17 A VICTIM'S BASIC RIGHTS ARE:

- The right to attend and/or participate in criminal justice proceedings: The victim can attend the trial, sentencing, and/or the parole. Many states also allow the victim to make an oral or written statement to be considered by the court or parole board at such proceedings. Some of you may remember the televised statements from families of victims of serial killer Jeffrey Dahmer. Victims are increasingly being given the right to attend and sometimes address the court at other critical proceedings in the criminal justice process, such as:
  - Hearings on bail or pre-trial release of the offender;
  - Entry of plea agreements;
  - Post-trial relief or release hearings;
  - Probation hearings;
  - Commutation or pardon hearings.

- The right to notification of the stages/proceedings in the criminal process: This may not only include notification to the victim or victim's family of scheduled criminal proceedings and their outcomes, but also advance notice of proceedings where the victim has the right to attend and/or make a statement, as well as when hearings have been canceled and rescheduled.
The right to be notified is a crucial one, because without it, victims cannot adequately pursue their other rights.

- The right to notification of other legal remedies: Victims may also have the right to be informed of the option to sue the offender for money damages in the civil justice system, to collect witness fees for their testimony, as well as other rights.

1) The right to protection from intimidation and harassment: The right to protection from intimidation and harassment by the offender or the offender's family or associates may be extended to the victim's family members, as well as the victim. In the event you receive threats, bribes, or other attempts to persuade or intimidate you into testifying untruthfully, to forget, or to make yourself unavailable as a witness, report it immediately to the Sheriff's Office.

2) If you are the victim of domestic violence (violence within the family) or repeat violence (two incidents): One can file an injunction for protection with the Clerk of the Circuit Court. Other kinds of protection include:

   o Police escorts to and from court;

   o Secure waiting areas separate from those of the accused and his/her family during court proceedings;

   o Witness stands that are shielded from the direct view of the offender; especially if the victim is a child, in which case many courts now allow videotaped testimony to be used to protect the child from the trauma of the courtroom and further exposure to the accused.
o Closing the courtroom to those who are not parties to the case; and

o Residence relocation.

o The Right to Notification of Employer and Creditors: At your request, the State Attorney's Office or Sheriff's Office will inform your employer that your cooperation in their investigation and prosecution of the case may necessitate your absence from work. At your request, they can also contact your creditors to seek their consideration if you are unable, temporarily, to continue payments as a result of the crime. Credit card companies are usually willing to suspend interest and payments if notified of the situation by an authority.

o The right to confidentiality of records: Unlike many other criminal cases, police and court records are not public record if they involve a juvenile or if the case deals with sexual assault or rape. These records are usually only available to the attorneys and parties to the case.

o The right to speedy trial provisions: A Usually, this Constitutional right is used as a tactic by defense attorneys to rush the prosecution to court before they have all their ducks in a proverbial row. But it's a two-edged sword. As a victim, YOU have the right to a speedy trial also.

o The right to prompt return of the victim's personal property seized as evidence from the offender. This can include photos, clothing, recordings, letters etc.

o The availability of the offenders' profits from the sale of the stories of their crimes;
- Victim compensation and restitution. State victim compensation programs are designed to provide financial assistance to victims and, in some cases, to family members and other eligible persons. Usually, a victim must have suffered actual physical harm or other tangible loss. Keep track of your losses such as destroyed or stolen property and cost of any emotional counseling. This includes medical bills and lost wages as a result of the abusers actions.

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In most states, a victim must fully cooperate with law enforcement and prosecution efforts in order to qualify for compensation. Restitution, on the other hand, is ordered by the court or in some states, by the paroling authority making the offender pay for the financial loss of the victim. However, as a rule, neither victim compensation nor restitution include punitive damages for injury or loss suffered by the victim. A lawsuit in civil court is usually required to recover punitive damages.\textsuperscript{31}

Due to the emergence of the Adversarial system, a transformation came into the criminal justice system. It underwent a major transformation from being victim oriented to accused oriented. Many legal rights of the accused came into existence during this period. The role of the victim was confined only till initiating the proceedings, thereafter he had no role to play except giving evidence and giving assistance to the prosecution.

In the ancient period criminal law was victim oriented and they enjoyed a dominant position in the criminal legal system. Even certain trees were considered sacred i.e. peepal, tulsi, chandan and banyan and animals like cow and ox were considered sacred and cutting and killing them were considered

\textsuperscript{31}Hentig, von, Hans (1948) \textit{The Criminal and His Victim}. New Haven: Yale U. Press. 
as heinous sin and the criminal had to pay a very compensation and was given rigorous punishment.

Later in the 16th and 17th century due to Industrial revolution and French revolution a major change took place. More attention was given by the criminologist to the rights of criminals and conditions of the prisoners. It gave birth to adversarial system of law.

The next development in the field of victimology was recognized in the writings of Edwin Sutherland in the chapter on “The Victim of Crime” in the book “Criminology” in 1924. The book by Von Henting “The Criminal and his Victim” is now regarded as an authority in developing victim’s studies. In New Zealand a victim compensation system came into force in 1964, and thereafter many states and countries introduced various schemes for compensation to the victims.

In the 20th century after the end of Second World War some criminologists focused their attention to understand the study the criminal victim relationship and the victim’s movement gained momentum. Because of their efforts the U.N. passed a charter for victim’s rights. Thereafter many states of Europe and America made laws for the victim’s compensation in the criminal justice system. Thereafter the victim’s movement has been regaining momentum in the whole world but with different shapes and nature. And it has been termed by Stephen Scafer as the Revival of Victimology.

Victimology in the modern times is greatly affected by the social influence which recognizes the public concern about the crime and rights of the victims. In U.S.A. many laws have been passed for predicting the rights of victims and to provide them with compensatory justice. In India also the

32 Sutherland, Criminology , Philadelphia and London, 1924, first edition pp 62-71
33 Hans Von Henting, the Crime and His Victim, New Haven 1948
34 Perspectives of Victimology in India S.P. Makkar (ed) ABS Publication I. Ed 1993 p. 147
judicial trend is to provide relief to the victims by awarding them with damages and to ensure that they are rehabilitating them. A number of legislations have been passed both at the Centre and at the State level for the protection and welfare of the crime victims.

One important basic factor in the administration of criminal justice system is the decision of the victim to invoke the judicial process. In every victimization upon survey being conducted it has been stated that the total crime is always 2 to 3 times higher than the amount of crime which is reported or know to the police. The crime rate which is reported to the police largely depends on the victim’s relation with the police and the trust with the police. Therefore what is required is good and trustworthy relation with the victim of crime and the police administration for them to approach the authorities. Once that is established, the crimes will be reported and proper action will be taken by the authorities. There is a need to bring about an awareness and easy approach to the victims towards the police and other authorities.

In India we have many enactments to protect the victims and the judiciary and other organizations are also established to make aware and for guiding the victims of crime. After studying into various theories of victimology it may be said that time has now advanced to such an extent that focus is now shifted from the offender to the victim of crime.