

VICTIMOLOGY : A SUB-DISCIPLINE OF CRIMINOLOGY

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Abstract

Victimology could be defined as science of crimes and their victims; is a sub-discipline of criminology. Very task of victimology is to make victim and offender as '*penal-couple*' and victim is now no more a '*forgotten-man*' rather stands at the centre stage of entire criminal justice system. In the present paper an endeavor has been made to discuss history of victimology together with various theories related to it. Paper also discussed the concept of compensation to victim in western countries in general and India in particular.

Key-Words- Victim, Penal-couple, Forgotten-man, Compensation and Victimology.

Introduction

If Criminology could in nutshell be described as the science of crime i.e. '*the study of law making, law breaking and societal reaction to law breaking*, Victimology could similarly be defined as science of crimes and their victims¹.

Andrew Karmen who wrote a text on victimology entitled-“Crime victims: An Introduction to victimology,1990” broadly defined Victimology is the study of- a) Victimization, b) Victim offender relationship, c) Victim criminal justice system relationship d) Victim and media, e) Victim and the cost of crime and f) Victim and social movements².

The administration of criminal justice is not much concern with the victim of crimes. The entire focus of the criminal justice system is on the offender, either to punish him or to seek him reformation or rehabilitation. Thus, the liberal criminology unfortunately ignored the victim and concentrated mainly on protection of interest of criminals .Very recently the attention has been drawn to

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¹ Prof. E.H.Sutherland, Principles of Criminology (J.B.Lippincott Co.,1955) p.7

² Prof. R. Deb,“Victimology”*Cr.L.J.*1986 at 17

protection of interest of victims of crimes which has resulted into a new discipline commonly known as Victimology. Criminal law does not give separate identity to victim of crime. A victim is viewed in relation to offender and therefore, Mendelsohn describes victim and offender as “*Penal couple*”.³ However, the development of victimology has brought the victim of crime to centre stage and he is no more a “*forgotten man*.”

In order to protect the interest of victims of crime, President G.R.Ford⁴(U.S.A.) opined- For too long, the law has centered its attention more on the rights of the criminals rather than the victims of crimes. It is high time we reversed this trend and put the highest priority on the victims and potential victims.

History of Victimology

Victimology is the scientific study of victims of crimes, a sub-discipline of criminology. It seeks to study the relationship between victims and offenders; the persons especially vulnerable to crimes and the victim’s placement in the criminal justice system.⁵

At first (going back to the origins of criminology in the 1880s), anything resembling victimology was simply the study of crimes from the perspective of victims. The scientific study of victimology can be traced back to the 1940s and 1950s. Two criminologist, Mendelsohn and Von Henting, began to explore the field of victimology by creating “typologies”. They are considered the “fathers of study of victimology.”

These new “victimologists” began to study the behaviors and vulnerabilities of victims. Mendelsohn created a typology of six types of victims, with only first type, *the innocent*, the other five types are contributed somehow to their own injury, and represented *victim precipitation*.

³ Dr. A.K. Pandey, “Victimology (Review Article)” *Banaras Law Journal*, 2000 at 197.

⁴ A message to the American Congress, 1975.

⁵ Ahmed Siddique, *Criminology Problems and Perspectives*, 1993 p.505

Von Hentig (1948) studied victims of homicide, and said that the most likely type of the victim is the “depressive type” who is an easy target, careless and unsuspecting.

Wolfgang’s research (1958) followed this lead and latter theorized that “many victims –precipitate homicides were in fact caused by the unconscious desire of the victims to commit suicide.

Theories of Victimology

Followings are the few theories of Victimology-

1. Luckenbill’s Situated Transaction Model,
2. Benjamin & Master’s Threefold Model, and
3. Cohen & Felson’s Routine Model.

Definition and Concept of Victim

The concept of victim dates back to ancient culture and civilization. Original meaning was rooted in idea of sacrifice i.e. the execution of man or animal for the satisfaction of a deity.

During the founding of Victimology in 1940s, victimologists such as Mendelshon, Von Hentig and Wolfgang describe victims as helpless dupes who instigate their own victimization.

Today, the concept of victim includes any person who experiences injury, loss or hardship due to any cause.

The term crime victim generally refers to any person, group or entity who has suffered injury or loss due to illegal activity. The harm may be physical, psychological or economic thus, the victim of crime to be understood in a comprehensive and inclusive sense and not in its narrow sense. It must also include a collectivity comprising a group, a class, or a community of persons-racial, economic, political or religious to whom harm, damage, loss, injury both physical and psychological have been caused by an individual wrongdoer or

group including persons in lawful authority by abusing his or their lawful powers.

Victim participation in crime

Dr Hans Von Hentig made the first ever study of the role of victims in crime and found some general characteristics among them which may be summarized as follows-⁶

1. The poor and ignorant and those who are greedy are the victims of offences involving fraud.
2. The victim of larceny (theft) or intoxicated or sleeping persons.
3. Wanton or sensual persons may become victim due to situations precipitated by themselves.

Mendelsohn studied victim on the basis of their contribution to crimes and classified them into following categories⁷-

1. Completely innocent victim, e.g. children, person in sleep.
2. Voluntary victim, e.g. who commit suicide.
3. Victims who are more guilty than the offenders, e.g. who provoke others to commit crimes.

Persons needing special attention⁸

Certain categories of vulnerable persons and victims needs special and greater attention-

1. Elderly Victims

In western countries elderly persons tend to be in lower income groups and have, therefore, needs special attention. In U.S.A. the problem of crimes against

⁶ The Criminal and his Victim,(1948) pp.384-388

⁷ V.M.Rajan,Victimology in India,pp.10-11

⁸ Supra at 5, pp.506-510

elderly persons is sufficiently serious to have drawn the attention of White House Conference on Ageing held in 1973.

These factors may not be much relevant in traditional countries like India where elderly people by and large, live with their children and they do not generally have to face any peculiar problems of physical insecurity. Even though Indian Parliament have enacted legislation for protection of old age persons in 2007, namely- “Maintenance and Welfare of Parents and Senior Citizens Act, 2007.”

2. Child Victims

The problem requires attention regarding offences involving violence in general and sexual abuse in particular. They need special attention because inept handling by the law enforcement agencies may prove to be even more damaging than the crime committed against the child. Some special measure are, therefore called for which may do away with the appearance and cross-examination of the child in the law court. An innovation in this area has been introduced in Israel regarding the ‘Reception of the Evidence Revision (Protection of Children) Act, 1955. The purpose of law is to protect the child from the undesirable effects of testimony in the police station or the court. Under this law a child is examined by a young “interrogator” who decides as to under what conditions the child should, if at all, appear before the court.

3. Victim of Sex Offences

Offences against women in particular serious offences such as that of rape, have been increasing everywhere including in traditional societies like India and greater attention is now being given to the problem of victims vis-à-vis to the criminal justice system. Perhaps this class of victims, irrespective of the age factor, deserves the maximum consideration in view of the emotional, psychological and human problems involved. The police and court proceedings may be as traumatic as the offence itself which led to the proceedings. The feeling is almost universal among the victims that instead of being treated as

victims, they are treated by the police and law agencies as if they themselves are the culprits. The rules of criminal law and evidence, for all practical purposes are titled against the victim as evident by the requirements given below;

- It is for the prosecution to prove the lack of the consent on the part of the victim. The courts often insist that proof to be given of the resistance offered by the victim.
- The credit of rape victim may be impeached by showing that she was of generally immoral character. Highly humiliating and scandalous questions are often put to the victim despite the legal bar against the questions. Lastly, some legislative measures have been introduced in order to alleviate the sufferings of the rape victims.

Disclosing the identity of the victim of the offence of rape has been made punishable.⁹ Proceedings in a rape trial are to be held in camera.¹⁰ A new provision has been introduced in the Evidence Act, 1872 laying down the presumption that there is no consent of a victim of rape if the offence was committed by the husband during judicial separation from the victim and in cases where the offence was committed while the victim was in custody of the police or were in hospital or in a rehabilitation home.¹¹

In USA one significant development has been the creation of 'Rape Crisis Centers', these Centers' have all female participants including some Rape Victims whose common concern is the problem of Sex Crimes and they aim at providing counseling and other therapeutic measures to the victims.¹²

4. Female Victims

In western society, the issue regarding criminality against women generally pertain to and are confine to sexual offences but in Indian setting, women are exposed to gang rape by police men or by dominant cast groups, sati, wife

⁹ Section 228-A, The Indian Penal Code, 1860

¹⁰ Section 327 (2), The Code Of Criminal Procedure, 1973

¹¹ Section 114-A, The Indian Evidence Act, 1872

¹² William MacDonald, Criminal Justice and the Victim 1976, pp 24-25

beating, prostitution and even occasional witch-hunting. Legislation exists but effective enforcement of the laws is not forthcoming.

Dowry death caused by the husband and in-laws of the helpless women, who are unable to fulfill their husband's or in-laws' demand based on greed, are quite often given the color of suicide.

5. Weaker section

Members of ethnic, religious or linguistic minorities in pluralistic societies may be especially vulnerable to crime, in conflict resulting from socio-economic imbalance and political factors. A number of caste and communal riots occur each year in the country and lead to the murder, rape and looting of property on a large scale in which the main sufferers obviously are those belonging to minority and weaker sections. Hardly any administrative or legal action is possible and even lesser is the possibility of the protection of victims and of punishment to the perpetrators of the ghastly crimes.

Concept of compensation to victim

It may be discussed under two heads-

- Traditional concept and
- Modern concept.

a) Traditional concept

“Ubi remedium ibi jus”¹³ principle was traditionally applicable for awarding compensation. Almost in all primitive society the concept of true criminal law was unknown. Every crime including murder could be paid for by way of pecuniary redress. Indeed every crime was a civil wrong and not an offence against society at large. All old codes- Roman, German, English or Islamic gave emphasis on the question of compensation and restitution.

¹³ Where there is remedy there is right.

b) Modern concept

“Ubi jus ibi remedium”¹⁴ principle is now applicable. Modern concept of compensation is that no one should be left without remedy.

In U.K, Compensation is payable under the ‘criminal injuries compensation scheme, 1964.’ The basis of quantum of compensation is same as that of damages in civil injuries and the money payable is for pain and suffering & loss of earning capacity. Under the revised scheme of 1973, it is now possible to give compensation for injuries caused by one family member to another. The Criminal Justice Act of U.K. provides that if a court contemplates to impose both fine and compensation order, and the offender lacks the capacity for both the payments, the court is to issue compensation order only. Since 1988, the law requires the court to record reason if no order for compensation is passed.

In U.S.A, California was the first State to introduce laws to compensate victims of violent crimes in 1965 and as of now, 45 out of 50 States have such programmes and restitution. Legislations have been passed by all the states to empower the courts to order compensation by the offender to the victim and reasons must be recorded when the compensation order is not passed.

In India following legislations are there which talk about victim compensation scheme.

i)- Code of Criminal Procedure, 1973-

Section 357 is the main provision dealing with compensation to crime victims¹⁵. It says that whenever criminal court imposes a fine...the court may order the whole or any part of the fine recovered to be applied 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 in a civil court. Further sub section (3) of section 357¹⁶ provides that when a court imposes a sentence of which fine does not form a part, the court may, when passing

¹⁴ Where there is right there is remedy.

¹⁵ Other related provisions are sections 237, 250 and 358 of the code.

¹⁶ Added as recommended by the Law Commission in its forty-first report.

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 reasons of the act for which the accused person has been sentenced. Again section 357-A¹⁷ lays down the “Victim Compensation Scheme.”

The court has very limited discretion u/s 357(1); it can give compensation only out of the fine if imposed on the offender. The court has, however, much more discretion u/s 357(3); though only if fine does not form a part of the sentence. Theoretically the power of the court is unlimited, though practical consideration would prevail. A Magistrate can order for higher compensation than the amount of fine he can impose.

In *Sarvan singh v/s State of Punjab*¹⁸ it was said by the court that in awarding compensation the court should just consider what compensation ought to be awarded to the heirs of the deceased and then impose fine which is higher than the compensation. The court laid down that the amount of fine should be determined on the basis of various factors including *the* nature of crime, number of injuries and the paying capacity of the offender. In *Mohammed Shah v/s Emperor*¹⁹ the offender was awarded one years’ imprisonment and a fine of Rs 500 out of which Rs 400 was awarded to the heirs of the victim. The judicial attitude is, however, reflected somewhat differently in *Guruswami v/s State of T. N.*²⁰ it was held that in a case of murder it is only fair that proper compensation should be provided for the dependents of the deceased. A perusal of a subsequent case, *Baldev Singh v/s State of Punjab*²¹ also indicates that quite often Supreme Court prefers to substitute a severe punishment given to offender in award of compensation to the victim in death resulting due to family feud. Further, in *Dr Jacob George v/s State of Kerala*²² where a homeopath attempting to procure an abortion by operating upon a woman caused her death, the Supreme Court

¹⁷ Added by the Code of Criminal Procedure(Amendment) Act,2008

¹⁸ (1978)4 SCC 111

¹⁹ AIR 1934 Lah. 519

²⁰ (1979)3 SCC 799

²¹ (1995)6 SCC 593

²² (1994)3 SCC 430

reduced the imprisonment to the two months already undergone. The fine imposed upon the petitioner was increased from Rs 5000 to one lakh required to nurse the child of the deceased reasonably well.

ii)-The Probation of offenders Act,1958-

The Act lays down that while releasing an accused on probation or on admonition the court may order offender to pay compensation and cost to the victim concern.²³

iii)-The Motor Vehicles Act,1939-

Act empowers the Government. to establish and administer a “Solatium Fund” out of which compensation can be paid in cases of death or grievous hurt.²⁴

iv)- Fatal Accident Act, 1955²⁵

v)- Indian Railway Act, 1890²⁶

vi)- Workmen’s Compensation Act,1923²⁷ also talks about the victim compensation scheme.

vii)-Article 21 of the Constitution of India-²⁸ Supreme Court has expanded article 21 and incorporated new branch of study from Rudal shah²⁹ to Chandrima Das³⁰ wherein Supreme Court evolved the “Victim compensation scheme.” Although it has been criticized by various scholars³¹ in the name of unbridled expansion of life and personal liberty.

²³ Section 5 of the Act.

²⁴ Sections 109-110 of the Act.

²⁵ Section 1-A of the Act

²⁶ Chapter VII of the Act.

²⁷ Section 2 of the Act.

²⁸ Expansion of article 21: Compensatory Jurisprudence.

²⁹ (1983)4 SCC 141

³⁰ AIR 2000 SC 988

³¹ N.Dharmadan,(Senior Advocate H.C. of Kerala),”Unbridled Expansion of Life and Personal Liberty- Whether to be curtailed?”(2004)8 *AIRJ*.pp234-237 & Justice V.N. Reddy,”Article 21-Has the Supreme Court gone too far?”(2001)8 *AIRJ* p289.

Concluding observation

Criminology is mainly concern with the criminals, their social backgrounds, the causes of criminality, methods of punishment and crime prevention setc. Little attention has been made on the victim either as instigator of crime or as deserving protection of administration and society for rehabilitation in an honorable and dignified way. Victimology is not confined now in studying the 'Penal-couple' relation only, the compensation to victim is also gaining importance. A person sustaining injuries or his dependents in case of his death may be provided compensation. Western countries like U.K. &U.S.A. have enacted a separate branch of law in this regard. In New Zealand, the provision has been made for "indemnity fund" in the State Treasury. In India, various legislations in general and The Code of Criminal Procedure, 1973 in particular which talks about the compensation to victims of crime. A new provision in the code has been added in 2008 i.e. section 357-A which incorporates 'victim compensation scheme'. Even though various legislative measures are there for the protection of victim of crime but writer is of the view that "**Victimology**" should be a separate branch of study as a sub-discipline of "**Criminology**".