The Genesis of Victimology in India – Prospective and Retrospective View

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ABSTRACT

Emergence of Victimology from the criminology, need to study as separate branch, division of victimology into general victimology and penal victimology and classification of victimology in the three ages golden, dark and modern periods. In build protection of Statutory and Constitutional provisions for victims. The application of Victim Compensation Scheme as prospective or retrospective.

Keywords- Victim, victimology, general and penal victimology, victim compensation Scheme

Introduction:

‘Injustice anywhere is a threat to justice everywhere- Martin Luther King

Durkheim argued that crime is an inevitable and normal aspect of social life. He pointed out that crime is inevitable in all societies.

Crime is a social problem. it is in existence since the inception of Society. Therefore, it is to be studied with reference to the society in which crime is committed.

The sociology of crime (criminology) is the study of the legislating, violating, and enforcing of criminal laws. Its design is to understand empirically and to evolve the theories explaining criminal behaviour, the development and enforcement of laws, and the operation of the criminal justice system.

In the year 1890 the word Criminology is derived from Latin of two words combination,⁵ ‘Crimen ‘which means crime and “logos” which means study or knowledge. Criminology is an interdisciplinary field in both behavioural and social science. The study of nature of Crime and Criminals, Origin of Criminal law, aetiology of Crime, social reaction to Crime and the functioning of law enforcement agencies and the penal institutions.

The other side coin of the crime is ‘Victim’, our Indian judicial structure is based on the British pattern -the Anglo- Saxon-adversarial pattern⁶. The responsibility of the State to punish the wrong doer. In this process victim act as witness, the role victim is limited. Once crime constituted the state come under the Shoes of the Victim.

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http://ruoshijinshi.com/swlw/criminology-is-called-a-hard-science
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So, traditionally justice system has been understood to involve prosecution, conviction and punishment of guilty in order to restore public order, security and respect for rule of law\(^7\). Justice is basically to punish the criminal nature people to bring harmony to the State and to protect the society from such natured people hence justice is an integral part of victimization and criminology.

**Research Methodology;**

The present study work of all the existing literature available in shape of reports, judgments, books, research papers, Google etc. has been consulted. In brief, Doctrinal approach has been adopted.

**Aim and Objective :**

- To analysis the genesis of Victimology from the Criminology and
- To find the true intent of the Victim Compensation Scheme
- To analysis the operation of sec 357 A Cr.p.C retrospectively or prospectively.

*Justice, crime and victims are interrelated because victims are born from crime and justice are born for victims. -JJ Krishna Iyer*

Victimology which is derived from the branch of criminology deals exclusively with victims as they needed to be treated with empathy and justice under our criminal justice system. The administration of criminal justice the system is not much concerned with the victim of crimes. The concept of criminal justice the system is on the offender either to punish him or to seek his reformation or rehabilitation.

Thus, liberal criminology, unfortunately, ignored the victim & concentrated mainly on the protection of interest criminals very recently the attention has been drawn to the protection of the interest of victims of crimes which has resulted in a new discipline commonly known as victimology criminal law does not give separate identity to victims of crime. But the due to the new concept of victimology is which is concerned with victims of crimes who suffer mentally, physically, materially & psychologically in the hands of offenders & it is needed to compensate such victims in a deserving. In order to understand the term ‘Victimology’, it is crucial to understand the term ‘victim’.

Andrew Karmen broadly defined Victimology as the study of\(^8\)

a) Victimization,

b) Victim offender relationship,

c) Victim criminal justice system relationship

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\(^8\) [Crime victims: An introduction to victimology](https://www.researchgate.net › ... › Victimology)
d) Victim and media,

e) Victim and the cost of crime and

f) Victim and social movements.

HISTORY OF VICTIMOLOGY:

Victimology is derived from the Latin word ‘victima’ used to refer to those who were sacrificed to please a god and the Greek word ‘logos’ means study or knowledge.

Victimology has been recognised as a part of criminology only since 1940. Victimology is the scientific study of victims of crime a sub-branch of criminology. It deals with the study of the relationship between victims and offenders.

The scientific study of victimology is in the years of 1940s and 1950s. two criminologists Benjamin Mendelsohn, and Von Henting, began to explore the field of victimology. They are considered as the “Fathers of study of Victimology”.

Von Henting (1940) originally classified victims into one of 13 categories, which could easily target due to the victim vulnerability or exposure to danger studied and 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 theorized that “many victims precipitate homicide was in fact caused by the unconscious desires of the victims to commit suicide.

Jan Van Dijk, a professor of victimology at Tilburg University differentiates Victimology into two groups

A) General Victimology – victimising is in a broader sense as harm caused due accident, natural disaster, war, bomb blast etc not dependent on causations.

B) Penal Victimology – victimising is a narrower sense as harm caused by persons depends on the causation such as rape, murder all the penal sections.

UN 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,” constitutes the basis of international standards concerning the treatment of victims. It is “designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power” India signatory of this declaration;”

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Victimology in India:

The concept of victim study is classified into three ages, they are

Golden Age: In this era, the victim is involved in the justice system as he has the right to punish the offender and the community supports the victim. In this period traditionally atonement and restitution are in the ambit of the victim only. The king had the right to determine the compensation. In the Manu Smriti provided laws for reparation “to the victim and payment of fine” to the King. The victim plays an important role in the Justice System in this period.

Dark Age; In the advent of British rule in India the laws of Manu were taken over by the dictates of Moses ‘Crime is to be regarded as the offence against the king’s peace by this principal victim were become back seated in the justice system, State has taken power to punish the wrongdoer and victim remains as a witness in the justice system. in this period ‘victim becomes a victim of the criminal justice system’.

Modern Age (Re-emergence of the victim); The genesis of victimology evolved from Criminology in the 19th century by scholars in their works and judiciary in their judgements.

STATUTORY PROVISION OF COMPENSATION TO VICTIMS IN INDIA:10

“Ubi Jus ibi remedium” (where there is right there is a remedy) principle was traditionally applicable for awarding compensation principle is now applicable. The concept of compensation is that no one should be left without a remedy.

In India, there is some general and specific legislation containing provisions relating to the compensatory relief apart from the Constitution of India discussed as below.

a) Compensatory relief under Criminal Procedure Code 1972: Sec. 357 (1) and (2) of Cr.P.C. empower the trial court to award compensation to the victims of crime. The compensation provided in sec.357(1) includes costs, damage or injury, suffered or loss caused due to death or monetary loss incurred due to theft or destruction of property etc. Similarly, Sec.357-A is inserted by Amendment Act 2008 in Cr.P.C. and it provides a scheme relating to victim compensation. Accordingly, every State Government is required to prepare a scheme for providing funds for the purpose of payment of compensation to a victim or his dependent who have suffered any loss or injury due to the crime.

b) Compensation under Probation of Offenders Act, 1958: Sec.5 of this Act empowers the Court to make an order directing to pay compensation.

c) Compensation under the Motor Vehicles Act, 1988: Secs.142 and 163-A of this Act provide the manner of procedure for and the quantum of compensation.

d) Compensatory relief under the Constitution of India: The concept of compensatory relief has been introduced by the Apex Court by interlinking the issues with Articles 14, 20, 21 etc which

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are related to Fundamental Rights while dealing with the cases of rape, custodial torture or death, environment pollution etc. by making the State primarily liable to compensate the victim

In Rattan Singh v. State of Punjab\(^{11}\), Krishna Iyer, J. held that: “it is a weakness of our jurisprudence that the victims of the crime do not attract the attention of law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the legislature.”

In Maru Ram v. Union of India \(^{12}\) Krishna Iyer, J. held that: “while social responsibility of the criminal to restore the loss or heal the injury is a part of the punitive exercise, the length of the prison term is no reparation to the crippled or bereaved but is futility compounder with cruelty. Victimology must find fulfilment not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted not by giving more pain to the offender but by lessening the loss of the forlorn”.

In Dayal Singh v State of Uttaranchal\(^{13}\) The Supreme Court held that: “The criminal trial is meant for doing justice to all- the accused, the society and the victim. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that the guilty man does not escape”.

**Prospective and Retrospective Effect of Victim Compensation In India**

“The Concept of the victim compensation scheme inserted in the code in the year 2009 but farbefore rooted their in the foundation of Indian constitutional jurisprudence. The Part III and part IV of the Indian Constitution laid the principles of Victimology in their articles of fundamental rights and the directive principles of state policy respectively. The triangular Articles 14,19&21, social and economic justice provided in Article 38 and Article 41, and Article 51A which makes it a fundamental duty to have compassion for living creatures and to develop humanism. According to the Law Commission of India, if the above Constitutional provisions are expanded and interpreted imaginatively, they could form the constitutional underpinnings for victimology in India.” \(^{14}\)

The Malimath Committee Report (2003) laid foundation of the idea of justice to victims. This Report laid paradigm shift in the Criminal Justice system, re-emergence of victim rights and recommended the constitution of a Victim Support Service Coordinator to safeguard the interest of the victim at the trial stage. In the year of 2008 Sec 357A was incorporated and set up victim compensation scheme

Further, Court reproduced the language of Section 357A Code of Criminal Procedure, 1973 as introduced by the Code of Criminal Procedure Amendment Act, 2008 (No. 5 of 2009).

\(^{11}\) 1979 SCC(4) 719  
\(^{12}\) 1981 (1) SCC 107  
\(^{13}\) 2012 (8) SCC 263  
\(^{14}\) 2020 SCC OnLine Ker 8292
357A Cr.P.C -Victim Compensation Scheme $^{15}$

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in subsection (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under Section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”

**Analysis of Judgements on the Retrospective effect on the Victim Compensation Scheme**

**District Collector vs District legal Service Authority** $^{16}$ Bechu Kurian Thomas, J., “... While interpreting Section 357A(4) CrPC, this Court cannot be oblivious of the agony-stricken face of the victim and the trauma and travails such victims have undergone, especially when their offenders have not even been identified or traced out or a trial conducted.”

Generally, procedure laws are retrospectively in application but whereas the substantial laws are prospective in their application. While amending the proviso sec 357 A is not mention the application of this section retrospective or prospective, the provision is remedial. Remedial statutes or provisions are also known as welfare, beneficent or social justice-oriented legislation.

Sec 357 A provide correctional right of the victim and collaterally it is the obligation of the state to restore the victim especially in those cases where offender not traced and cases were not trailed as it is the duty of the state to give the justice to the victim, otherwise it is the responsibility of the state to compensate the victim. But the legislation enacted in the 2009 the applicability only after the date, not before as it is substantive piece of legislation operate as

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$^{15}$ The criminal procedure code 1973- KN Kelakar
$^{16}$ 2020 SCC OnLine Ker 8292

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prospectively is violation of basic human right. As this proviso is not penal law it is beneficial law, then it is duty of the state to compensate the victim Prior to this legislation victim can seek compensation in the Art 21 of Indian Constitution

**Decision of Kerala HC:**

“(i) The provisions in Section 357A(1)(4)&(5) Cr.P.C are substantive in character.

(ii) The victims under Section 357A(4) of the Cr.P.C. are entitled to claim compensation for incidents that occurred even prior to the coming into force of the said provision.

(iii) By giving the benefit to victims under Section 357A(4) Cr.P.C., for crimes that occurred prior to 31.12.2009, the statutory provision is not given retrospective effect, and instead a prospective benefit is given based on an antecedent fact.”

In the judgment in Piyali Dutta v. State of West Bengal and Others17, the Calcutta High Court held that "Section 357A is time neutral, i.e, it does not distinguish between victims of a crime happening before the introduction of the section in the statute with those incidents of crime happening post its introduction in the statute book. It was also held that the section does not make any distinction between victims on the basis of the time of occurrence of the crime and also that, segregation on the basis of time, is unacceptable and would militate against the right to equality and equal treatment by the State guaranteed under the Constitution of India.”

As per the above judgements While expounding sec 357 A( 4) a provision brought as a remedial measure, for the welfare of the victims of crimes, in which the assassin or offenders have not been traced and in which trial has not taken place, in such case the Court must always be wary and vigilant of not defeating the purpose of the legislation. The true intent of the remedial statute is to restore the victim.

**Conclusion**

The study of Victimology evolved in the 19th century, this re-emergence the rights of the victim in the criminal justice system but still a long way to reach complete justice for the victim. While applying the Victim Compensation Scheme the courts have to apply the legislation with compassion towards the victim is the true nature of the legislation.

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