

## Submitted for the Requirement of the Award for degree of MASTERS OF LAW

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### Acknowledgment

First and foremost, I would like to thank our subject teacher **DR. SWETA THAKUR** Mam, for the valuable guidance and advice. He inspired us greatly to work on this interesting assignment. His willingness to motivate us contributed tremendously to our assignment. I also would like to thank him for showing us some sample assignments on how to go about the research assignment. It gave me an opportunity to analyze and learn about the operation of various Articles of Constitution of India relating to the topic. Besides, I would like to thank the Faculty staff for providing us with a good environment and facilities for completing this assignment. In addition, I would also like to thank my seniors who provided me with the valuable information acting as a source of guidance in making the assignment. Finally, an honorable mention goes to my family and friends for their understandings and supports in completing this assignment. Without the help of the particulars mentioned above, making of this assignment would not have been possible.

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Date of Submission: 25-05-2021

Date of acceptance: 07-06-2021  
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### I. DEVELOPMENT OF VICTIMOLGY IN INDIA

victim services and compensation can be found in ancient, formal attention to the issue is recent in India. In a 1969 seminar, a full session was devoted to victim compensation. The first empirical study, covering 184 victims of dacoit gangs, found that some individuals were more vulnerable to victimization than others and that situational factors played a critical role.

. In 1979, the Bureau of Police Research and Development published a text on victim compensation. Subsequent studies have examined victims of homicide and motor vehicle accidents. Victimology was also topic of a 1981 conference. Under the Criminal Penal Code, the court may use fines to compensate victims for loss or injury, and compensatory fines may be ordered against a person whose false allegations result in arrest.

Under the Probation of Offenders Act, the court may order the probationer to pay compensation to his victim. The Motor Vehicles Act also permits filing for recovery of accident-related damages. Although these provisions exist, they have rarely been applied, and the compensations they do provide are grossly inadequate. Further research and better enforcement of victim legislation is recommended. 33 references.

### Victim's Justice in India

At the International arena, the adoption by the General Assembly of the United Nations at its 96th Plenary on November 29, 1985, of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, hereafter UN Declaration) constituted an important recognition of the need to set norms and minimum standards in international and national legal framework for the rights of victims of crime. The UN Declaration recognised four major components of the rights of victims of crime: (i) access to justice and fair treatment; (ii) restitution (iii) compensation (iv) rehabilitation. i. Access to justice and fair treatment – This right includes access to the mechanisms of justice and to prompt redress, right to be informed of victim's rights, right to proper assistance throughout the legal process and right to protection of privacy and safety. ii. Restitution – including return of property or payment for the harm or loss suffered; where public officials or other agents have violated criminal laws, the victims should receive restitution from the State. iii. Compensation – when compensation is not fully available from the offender or other sources, State should provide financial compensation at least in violent crimes, resulting in bodily injury for which national funds should be established. iv. Assistance – victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary and community based means. Police, justice, health and social service personnel should receive training in this regard.

### **Nature and Extent of Victimization**

A second goal of victimologists is to measure the nature and extent of crime victimization in the general (or a specific) population. Crime victimization can be measured in various ways. A first source of information could be the official crime statistics gathered by the police and the criminal justice system. The problem with these data is that they only represent a certain (small) percentage of all the crimes that have occurred in reality. There is a so-called dark number: the number of crimes that –due to underreporting or some other reason –do not come to the attention of the police. Furthermore, official crime data seldom contain detailed information on the victims that were harmed by the crime, because this information is less relevant for prosecutorial purposes.

Crime victimization surveys also demonstrated that men have an increased risk of falling victim to a violent crime in comparison to women. Only in the case of rape and other forms of sexual violence are women more likely to be victimized. Females were also more likely to be victimized by an intimate partner, while violence perpetrated by a stranger was typically targeted at male victims. Furthermore, teenagers and adolescents run a higher risk of being victimized profession (police officers, taxi drivers, prison guards, prostitutes).

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**Access to justice and fair treatment** – This right includes access to the mechanisms of justice and to prompt redress, right to be informed of victim's rights, right to proper assistance throughout the legal process and right to protection of privacy and safety.

**Restitution** – including return of property or payment for the harm or loss suffered; where public officials or other agents have violated criminal laws, the victims should receive restitution from the State.

**Compensation** – when compensation is not fully available from the offender or other sources, State should provide financial compensation at least in violent crimes, resulting in bodily injury for which national funds should be established.

**Assistance** – victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary and community based means. Police, justice, health and social service personnel should receive training in this regard.

### **Remedial Measures to Victim's Empowerment**

Over a period of time, the following measures have been initiated in India for empowerment of victims of crime and human rights violations:

### **Legislative and Administrative Measures**

Victims' Compensation in the Criminal Procedure Code, 1973 u/s 357-59 Section 357(1) concerns itself with the grant of compensation out of the fine imposed on the offender at the time of sentencing the convict. Sub-clause 1(a) of Section 357 empowers a criminal court to indemnify the prosecuting agency against expenses incurred in the prosecution by way of fine imposed on the convict. Sub-Clause 1(b) of Section 357 entitles the court to award compensation for any loss or injury caused by the offence to the victim.

Section-358 of the Criminal Procedure Code, 1973 provides for payment of compensation up to Rs. 100/- to persons groundlessly arrested. While sub-clause of Section 359 of the criminal procedure code, 1973 empowers a court to award costs in non-cognisable cases to the complainant who is generally a victim of the crime, from the offender, providing further that if the offender did not pay costs as ordered, he shall suffer simple imprisonment up to 30 days.

### **Compensation to the Victims in the Special Laws**

Under the Probation of Offenders Act, 1958 According to Section 5 of Probation of Offenders Act, 1958, a court directing the release of an offender under Section 3 or under Section 4 of the Act may, if it thinks fit, at the same time, a further order directing him to pay such compensation as the court thinks reasonable for the loss or injury caused to any person due to the commission of the offence by him.

### **Domestic Violence Act, 2005**

This Act provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family setting as domestic violence. In this context, Sections 20 to 24 are relevant in protection of victims of domestic violence through compensatory justice. The trial court may on an application being made by the aggrieved person, pass an order

directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent

#### **The Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006**

The proposed bill aims to prevention and protection against custodial crimes and also provides compensation to the victims of custodial offences.

#### **The Communal Violence Bill, 2005**

The Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 provides for (a) prevention and control of communal violence, (b) speedy investigation and trials, and (c) rehabilitation of victims. Currently, the National Advisory council( NAC), Government of India has constituted a core group of human rights activists to examine the efficacy and effective of the bill in the context of rights based approach to the victims of communal violence.

#### **Recent Development**

More recently, Government of India, Ministry of Home Affairs has issued two advisories for all for all States and Union Territories to prevent – victimisation of vulnerable sections of society such as women, children and marginalised people etc. Broadly, the advisories focused on the following measures to be taken into considerations by the criminal justice functionaries in safeguarding the human rights of the victims of crime.

I) Set up exclusive „Crime against Women/Children“ desks in each police station. There should be no delay, whatsoever, in registration of FIRs in all cases of crime against children. All out efforts should be made to apprehend all the accused named in the FIR immediately so as to generate confidence in the victims and their family members. The administration and police should play a more proactive role in detection and investigation of crime against children and also ensuring that there is no under reporting.

II) Cases of crime against children should be thoroughly investigated and charge sheets against the accused persons should be filed within three months from the date of occurrence without compromising on the quality of investigation. Proper supervision of such cases should be ensured from recording of FIR to the disposal of the case. Speedy investigation should be conducted in heinous crimes like rape, murder etc. The medical examination of rape victims should be conducted without delay.

III) Steps may be taken not only to tackle such crimes but also to deal sensitively with the trauma ensuing the crime. Counselling to the victim as well as to the family may be provided by empanelling professional counsellors. Exploring the possibility of associating NGOs working in the area of combating crime against children and other vulnerable sections of the societies. Developing a community monitoring system to check cases of violence, abuse and exploitation against children and take necessary steps to curb the same;