CHAPTER II

Conceptual Developments: Victim, Victimization and Victimology

2.1 Origin, Development and Evolution of the concept of the Victim:

Exploration of the historical origin and development of concept of victim, victimization and victimology shows the immense variations in understanding, recognition of concept of victim, victimization and victimology in the different eras of the evolution of human society. The historical development shows that in some of the eras the victim had the pre-dominant position in criminal justice system. However, in other eras the victims were treated as mere witness rather than a sufferer.

Chapter no. II is intended to trace the historical origin and development and analyze transition of position of victims. This chapter also aims to analyze various theories of victims and typology of victims, which will be useful to understand the victimization from different angles.

The historical evolution shows that the women were victimized in the name of religion, customs and ceremonial rituals. In the ancient time victims were permitted to choose the punishments for the offender. The logic behind permitting the victim to choose the punishment was to satisfy the revenge. The eras of effective implementation of Bot, Wergil and Deodand were known as golden eras of victim’s position and protection. The code of Moses, the Code of Hammurabi, ancient Roman Criminal and Civil Code etc. were instrumental in addressing the problems of victims of the crime from multiple angles.

2.2 The Importance of the Code of Hammurabi:

This code was considered to be one of the first attempts to bring the written code of conduct concerning the rights of the victims of crimes. This code has been treated as the first “victim rights statute” in history. The Kind Hammurabi (2000 B.C.) ruled the dynasty of Babylon which was well known for the trade and commerce, the King wanted to bring the peace and order

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17 H. Gordon, Hammurabi's code: Quaint or forward looking, (Rinehart, New York) 1957.
so he introduced the Code of Hammurabi. The code established rules regarding theft, sexual relationship and interpersonal violence, and it was intended to replace blood feuds with a system sanctioned by the state.\(^{18}\)

The Code of Hammurabi was divided into five sections:\(^{19}\)

1. A Penal or code of laws
2. A manual of instruction for judges, police officers, and witnesses
3. A handbook of rights and duties of husbands, wives and children
4. A set of regulations establishing wages and prices
5. A code of ethics for merchants, doctors, and officials.

The code established certain obligations and objectives for the citizens of Babylon to follow, these included:

1. An assertion of the power of the state. This was the beginning of state administered punishment. Under the code, the blood feuds that had occurred previously between private citizens were barred.

2. Protection of the weaker from the stronger. Widows were to be protected from those who might exploit them; elder parents were to be protected from sons who would disown them, and lesser officials from higher ones.

3. Restoration of equity between the offender and the victim. The victim was to be made as whole as possible and in turn forgave vengeance against the offender.

However Hammurabi Code was a nice code to take care of every section of society and it frames the code ethics for doctors, judges and fix the wages and prices also it states about to take care of weaker section of society including elders, widows and children. The most important feature of this side is to prevent blood feuds and the restoration of equity between the offender and the victim. But unfortunately it was relatively short lived. Victims were again to be neglected in society’s rushed to punish the offender with the result that victim’s rights would not resurface again until the present century. Babylonia law had a considerable influence on cannaites in Palestine and there are similarities between the code of Hammurabi and the restitution of the Old


\(^{19}\) Masters & Roberson, Inside Criminology, Prentice - Hall, Englewood Cliffs, N.J. 1985
Testament. Restitution and vengeance were the theme of punishment. It provided that a thief could not afford to compensate a victim, he becomes the victim’s property and could be sold as a slave, the victim keeps the sale proceed as compensation. Theft was discouraged by imposing a severe burden of restitution on the offender by compelling him to pay four or five times the stolen property.

2.3 Other Early Codes and Laws:
The Mosaic Code which is based on the assumption that God entered into a contract or covenant with the tribes of Israel, had a long –lasting impact on our collective consciousness. According to tradition, Moses returned from a mountaintop carrying the Ten Commandments, which were inscribed on two stone tables. These commandments subsequently became the foundation of Judeo-Christian morality. The Mosaic Code also becomes the basis for many of the laws in our modern society. The prohibition against murder, perjury and theft were all present in the Mosaic Code thousands of years before the founding of the United States. The Germanic tribes enjoyed more rights than those of Rome. By the 9th century A.D. and time of Alfred and his so called “Dooms of Alford,” the blood feud was invoked only if the victim’s request for monetary compensation was denied. Like Hammurabi Code, each crime had a price depending upon the types of crime committed as well as victim’s status, age, sex. Another important milestone in the development of law was early Roman law; Roman law was derived from the Twelve Tables which were written around 450 B.C. These laws had existed for centuries as unwritten law and applied only to the ruling patrician class of citizens. A protest by the plebeian class who were the workers and artisans of Rome caused commerce to come to a standstill. These workers wanted the law to apply to all citizens of Rome. As a result the laws were inscribed on twelve wooden tablets and prominently displayed in the forum for all to see and follow. These tables were a collection of basic rules relating to the conduct of family and religious and economic life.

In English turned Roman law when an offence was committed, compensation was paid to the victim or to the victim’s family. If the perpetrator failed to make payments, the victim’s family could seek revenge, usually ending in a blood feud. For the most part during this period, criminal law was designated to provide equity to what was considered a private dispute. In spite of the

fairly close relationship between the ancient Roman criminal and civil law; it is not easy to find reliable information concerning the position of the victim or restitution to him. However, it was only toward the end of the middle ages that the concept of restitution was closely related to that of punishment and was temporarily included in penal law. Still the victim’s role in the crime itself was not considered at all and his participation in criminal procedure served only to gain satisfaction for his injury. At the same time the influence of the king and the court grew, so did their share of the payment and the sums received by the victim steadily declined. This resulted in the total payment being taken by the Crown with the victim’s right to restitution being replaced by a fine decided by a tribunal.

2.4 Ancient Hindu Law:

In the early era of history, it is established that the emphasis was on compensation to the victim or the “spiritual” and material satisfaction of the victim, rather than on punishment of the offender. Reparation or the compensation as a form of punishment is found to be recognized from ancient time in India. In ancient Hindu law during sutra period, awarding of compensation was treated as a royal right. The law of Manu\textsuperscript{22} requires the offender to pay compensation and pay the expenses of cure in case of injuries to the sufferer and satisfaction to the owner where goods were damaged. In all cases of cutting of a limb, wounding or fetching blood the assailant shall pay the expenses of a perfect cure or in his failure both full damages and a fine of some amount. In ancient Hindu law, the law givers were fully aware of the necessity of directly compensating of victims of crime. Thus Manu in Chapter VIII, Verse 287 says:\textsuperscript{23} “If a limb is injured, a wound (is caused) or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual amercement and expenses as a fine to the king).” In Chapter VIII, Verse 288, Manu says:\textsuperscript{24} “He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay to the kind a fine equal to the damage.” Manu thus, provides direct reparation to the victim of crime apart from payment of fine to the king (the state). In Chapter XXI, Verse 10, Brihaspati says:\textsuperscript{25} “He who

\begin{itemize}
\item \textsuperscript{22} Manu, The Progenitor of the Human race and the giver of the religious laws of Manu according to Hindu Mythology
\item \textsuperscript{23} The Laws of Manu in Sacred Books of East, Max Muller, Vol. 25, Oxford University Press, Oxford (1886), p.304
\item \textsuperscript{24} Supra, f.n.18, p. 305
\item \textsuperscript{25} Brihaspati, i- Mex Muller, Sacred Books of East, Vol. 33, Chapter XXII, Verse-7, Oxford University Press, Oxford, (1886) P. 360
\end{itemize}
injures a limb, or divides it, or cuts it off, shall be compelled to pay the expenses of curing it; and (who forcibly took an article in a quarrel restore) his plunder”. In Chapter XXII, Verse 7, he says: “A merchant who conceals the blemishes of an article which he is selling or mixes bad and good articles together or sells (old articles) after repairing them shall be compelled to give a double quantity (to the purchaser) and to pay fine equal (in amount) to the value of the article”.

The law of Vishnu and Yajnavalakyas also advocates compensation to the victim of crime for their injury. Yajnavalakya, Narada and Brihaspati fix compensation twice to the purchase (who paid the price) and a fine an equal amount, in case of fraudulent sale of one article to another, or knowingly, selling defective articles as free from defect. Again traders or business men who lost their property while travelling through the kingdom were also compensated.

According to Dr. Priyanath Sen, in the Hindu law of punishment of crimes occupied a more important place than compensation for wrongs. Payment of compensation to the individual injured was in addition to and not in substitution for the penalty. In ancient India, it was conceived that the King was under a duty to indemnify the individual who had suffered from a crime. As Dr. Sen has observed: “It is, however, remarkable that in as much as it was concerned to be the duty of the King to protect the property of his people, if the king could not restore the stolen articles or recover their price for the owner by apprehending the thief it was deemed to be his duty to pay the price to the owner out of his own treasury, and in his turn he could recover the same from the village officers who by reason of their negligence were accountable for the thief’s escape.”

Thus it can be said that in ancient Hindu law, the victim was placed in central stage and liability to compensate and satisfy the victim was on both offender and the king.

2.5 Ancient Muslim Law:

Not only in the time of the Greek, but in still earlier ages, where Mosaic dispensation was established among Hebrews, traces of restitution to the victim are apparent. That dispensation, in its penal department, took special and prominent cognizance of the rights and claims of the

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injured persons, as against the offender.\textsuperscript{28} For example, if two men were involved in a fight and one hit the other with a stone or with his fist with the result that the opponent was badly injured but did not die, the perpetrator was required to pay for the loss of the injured man's time and cause him to be thoroughly healed. For injuries both to person property, restitution or reparation in some form was the chief and often the only element of punishment. Among Semitic\textsuperscript{29} nations the death fine was the general practice and it continued to prevail in the Turkish Empire.

For every homicide, the Mosaic code bade the elders of the murder's own city "fetch him and deliver him into the hands of the Avenger of Blood."\textsuperscript{30} Sometimes the injured persons compounded the offences substantial money payments. Reparation and compensation as a form of punishment is found to be recognized in ancient times. So also during Islamic rule, restitution and atonement was a recognized form of punishment. The Law of Moses provided four old restitution for stolen sheep and fivefold for the more useful one.\textsuperscript{31} In state of Arabia, the tribes in the cities found it necessary to provide compensation for offences against the person in order to prevent the socially disintegrating effects of the blood feud.\textsuperscript{32}

Thus, it can well be asserted that in times of yore, the victims of crime were paramount figures on the stage of the criminal setting.

\textbf{2.6 Victim in the Medieval Period:}

The change from vengeful retaliation to composition was part of a natural historical process. As tribes settled down, reaction to injury or loss became less severe. Compensation to the victim served to mitigate blood feuds, which, as tribes became more or less stable communities, only caused endless trouble because injury would start perpetual vendetta.\textsuperscript{33} Composition offered an alternative that was in many ways equally satisfactory to the victim. In Arabia, the tribes in the cities found it necessary to provide compensation for offences against the person in order to prevent the socially disintegrating effects of the blood feud.\textsuperscript{34}

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\item \textsuperscript{28} William Tallack, Reparation to the injured, and the Rights of the victims of crime to Compression.
\item \textsuperscript{29} Semitic, constituting a sub-family of Afro-Asiatic language family that includes Hebrew, Aramaic (Aramaeans), Amtaric (Ethiopia) and Jewish of the ancient Hebrews.
\item \textsuperscript{30} Deut (XIX, 12) the fifth book of coronical Jewish and Christian scripture containing narrative and mosaic laws.
\item \textsuperscript{31} Margery Fry, Arms of Law (London) 1951, P. 124
\item \textsuperscript{32} E.B. Tyler, Anthropology, New York, (1989)
\item \textsuperscript{33} H.E. Bornes and N.K. Teeters, Neur Horizons of Criminology, Prentice Hall, Anglowood Cliff, New Jeriy, (1944)
\item \textsuperscript{34} E.B. Tyler, Anthropology, New York, (1989) C.F.J.L. Gillin, Criminology
\end{itemize}
Among the German tribes, the criminal was humiliated to some extent by compensation, which appeased the victim's desire for revenge. At this time it was assumed that the victim should seek revenge or satisfaction. This was the only aspect of the criminal - victim relationship that gained recognition. Among the ancient Germans, said Tacitus, “even homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state.” Composition combined punishment with damages. For this reason it could be applied only to personal wrongs, not to public crimes. This was only why, in its first stage of development, it was subject to private compromise. This supports the view that during the Middle Ages the penal law of Communities, in which crimes were paid for by restitution, was not a law of crimes, but a law of torts. Criminal victim relationships were viewed only in term of the victim's revengeful emotions and his claim for compensation. The injuring party offered monetary satisfaction or something else of economic value. If the injured party accepted it, he was fully avenged and the "criminal procedure" was complete. Payment was entirely to the victim or his family. The amount depended on the importance and extent of the injury. The amount of compensation varied according to the nature of the crime and the age, rank, sex and prestige of the injured party; "A free norm man is worth more than a woman and a person of rank more than a freeman.”

Thus the "value" of the human being and their social position were involved in determining compensation and a socially stratified composition developed. By the time of Alfred in 871, the feud was resorted to only after compensation had been requested and refused. The ‘Dooms of Alfred” provided a scale of monetary penalties whereby the knocking out of the front teeth was calculated at a rate of eight shillings to be paid to the victim, the knocking out of an eye tooth or a molar being calculated at four shillings and fifteen shillings respectively. These dooms detailed the compensation for a variety of crimes against the person.

It is difficult to pinpoint the start of new developments in community judicial control, since the community traditionally exercised a certain collective control over the extent of compensation. The bridge to state criminal law had as a support the system of composition and the settlement by periodical tribal assemblies of the amount to be paid provides an early example of judicial

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35 Hans Von Hentiry, Punishment, its origin, Purposes and psychology, London (1937) P. 215  
38 Ephrusim Emerton, Introduction to the History of the Middle Age Boston, (1888), P. 87-90.
proceedings. Soon after the emergence of composition, some laws elaborated an intricate system of compensation. Every kind of blow or wound given to every kind of person had its price.\footnote{Frederic Pollock and Frederic Willmon maitland, the History of English Law, Cambridge University Press, Vol. II, Cambridge, (1898), P. 451}

Because of the increasing importance of economic goods the edictal conditions started to change and the system of responsibility was transformed. Blood feud faded out and physical retribution began to be replaced by financial compensation. The criminal and his victim introduced the redemption of revenge and submitted the judgment of guilt to negotiation. In most cases, the agreement on the question of compensation still involved both interested political entities - the criminal's tribe, clan, or family and that of the victim. It took some time until the individual offender and the individual victim stood somewhat as they had in the era of private revenge, and negotiated guilt and punishment as two individuals. This was the emergence of a new era in the history of victim's position and compensation called Middle Age.

From the many differences in the amount of damages and in the "value" of the victim, a complicated system of regulation evolved that culminated in the earlier codified law of many people particularly that of the Anglo-Saxons. Several aspects of the law of Aethelred and of Alfred are mentioned by a Clarence R. Jeffery:

"\textit{Henceforth, if any one slays man, he shall himself bear vendetta, unless with the help of his friends he pays compensation for it within twelve months to the full amount of the slain man's wergild, according to the inherited rank.....}” The authorities must put a stop to the vendettas. First, according to the public, the slayer shall give security to his advocate and the advocate to the kinsmen of the slain man, that he the slayer will make reparation to the kindred. If a man has spear over his shoulder, and anyone is transfixed thereon, he shall pay the wergild without the fine. If a bone is laid bare, 3 shillings shall be paid as compensation. If a shoulder is disabled, 30 shillings shall be as compensation.\footnote{Clarence R. Jeffery, The Development of crime in early English society. Journal of crime law, criminology and police science, vol.47, (1957) pp. 645-66.}

Presumably outlay, which resulted from a failure to provide composition, developed in connection with these tariffs regulation. If the wrongdoer was reluctant to pay or could not pay the necessary sum, he was declared a outlaw, he was to be ostracized, and anybody might kill him with impunity.\footnote{Pollock and Maintland Supra, Page 78, F.N. 1, P. 451}
A share is claimed by the community or king as a commission for its trouble in bringing about a reconciliation between the parties, or perhaps, the price payable by the malefactor either for the opportunity that the community secures for this of redeeming his wrong by a money payment, or for the protection that it affords him after he has satisfied the award against further retaliation on the part of the man whom he had injured.\textsuperscript{42} Gradually, however, the power of the community exceeded the strength of the individual and the community began receiving. Part of the compensation went to the victim-wergild and another part went to the community- Friedensgeld. In Saxon England, compensation for criminal offences consisted of two payments that is, one to the victim's family (War, for homicide, Bot for injuries) and the other to the ruler of kind (Wite).

The next step was for the State to claim all monetary compensation due to a victim. The growth of royal and ecclesiastical authority in the middle ages contributed to a sharpening division between tort law and criminal law. By the twelfth century the victim's right to compensation was largely replaced by fines assessed be a state tribunal against the offender. More offences came to be considered crimes against the society or breaking the "king's peace" so that punishment was to be malded out by the king, and the king would be compensated. The Anglo-Saxon adopted the Germanic system of splitting fines between victim and the ruler but whenever a crime was termed as a "breach of king's peace" the king received the entire amount originally for a crime to breach the king's peace. It had to affect the king's household and property directly. The double payment continued, but gradually the king took all off it. Discretionary money penalties took the place of the old wit, while both gave way to damages, assessed by a tribunal.\textsuperscript{43} As the state monopolized, the institution of punishment, the rights of the injured were slowly separated from the penal law. Composition as the obligation to pay damages became separated from the criminal law and became a special field in civil law. Thus, the victim was stripped off the financial compensation and psychological satisfaction of avenging crime. With this development, the "Golden Age" of the victim came to an end. It had been an era when his possible participation in any wrong doing was not taken into consideration. During that time, in fact, it seems inconceivable that the victim's relationship with the criminal could have helped to develop or precipitate the crime. The criminal victim - relationship was strictly divided between the active

\textsuperscript{43} Pollock and Mantland Supra, Page 78, F.N. 1, P. 458-491
role of the doer and the passive role of the sufferer. The criminal alone was responsible for the crime. The victim was merely the injured party; he was not thought to be involved in any psychological intricacies of crime causation and pushed his every advantage as the object of a crime that was allegedly, caused by the criminal. He had almost dictatorial power over the settlement of the criminal case; at no other time in the history of crime has the victim occupied such an advantageous position in criminal procedure. The state of affairs marks the closing phase of the centuries long period during which criminal procedure was the private or personal concern of the victim or his family and was largely under their control. The injury, harm, or other wrong done to the victim was not only the main or essential issue of the criminal case; it was the only issue. In the criminal procedure there was no room for societal or other considerations. The survival and power of the group, so often the real reason behind the criminal procedure remain almost always behind the scenes. The procedure was exclusively aimed at the private compensation of the victim, which took the form of private revenge.

It was indeed the golden age of the victim. Criminal justice served only his private interests. No other aspects of crime could compete with this concept in this privately owned and privately administered criminal law.

2.7 Victims in the Modern Age / Period:

As we seen the position of victim during the ancient and medieval period in which the victim enjoyed the central position under existing criminal justice system. But when we talk about modern age the situation is going to be changed as in Middle Ages the person harmed must have recourse through the common law, rather than taking the law into his or her own hands. Unfortunately, the picture began to change with modern criminal justice by bringing the offender to book or arrest and to impose fine on wrongdoer to left the victim with ineffective remedies. Some time Government allows compensation to the victims of crime to move slowly from the practice of private vengeance to the enforcement of public justice. As the modern state emerged and the Government took on itself the responsibility of enforcing justice, the offender gradually become the central figure in the criminal arena. It is, of course true that the evolution has not been uniform throughout the world, there are countries where eye for eye, tooth for tooth, cutting-off the hand for committing theft, castration for offence of rape and death penalty for adultery still prevail, but they are the exceptions. The general tendency is the other way.
Therefore, with the criminological theories becoming more and sophisticated, the victim is getting almost forgotten. Whenever the criminal act was treated as a crime against society, the civil remedy for damages was delayed until after the offender’s trial, conviction and sentencing. All too frequently, this resulted in the denial of any monetary or tangible personal compensation to the victims. By the end of the Middle Ages, restitution, as a concept separate from punishment, seem to have been on the wane. Little as we know about crime today, even less was known then. No other possible aspect of the victim's role was taken into consideration, and the victim became the "poor relation" of the criminal law. The decline of restitution as a criminal sanction has been traced to several developments in the criminal justice system. Even in recent times, but before the Anglo-Saxon system of criminal justice was introduced, the victim was not completely neglected.

A story is told how Emperor Jahangir was faced with a problem in one of his "darbars" and how he solved it. One day the Empress in a fit of anger hit her launderer whose work was not satisfactory. The washer man fell down dead. Somebody persuaded the widow to attend the Jahangir "durbar" the next morning. The laundress waited trembling till all the others had mentioned their grievances and received redress from the Emperor. Finally, Jahangir looked at her and said, "Who are you? What do you want?" In great trepidation she replied that she was the court laundress and recapitulated the previous day's calamity. "Your husband was killed? By whom?" queried Jahangir. "By the Empress," replied the woman. It is said that Jahangir was stunned and leaned back on his throne, but only for a moment. He then came down the steps of his throne and faced the laundress. Drawing his sword from the gilded holster, he held it out to her and said, "Hold it." The woman did not know what she was being led up to. But she obeyed the command of the Emperor. Then he spoke to her along the following lines: "The Empress killed your husband. Now, with that sword, you kill the Empress's husband. I command you to do it." The laundress was non-plussed. She felt at the Emperor's feet recovered her equanimity soon enough, and said, "Sir, I have suffered, but I do not want either the Empress or the country to suffer by my obeying in Your Majesty's command. I am prepared to take any punishment for this disobedience."

44 Anglo-Saxon, A members of chermanic people that entered and conquered England with the Angles and Jutes in the 5th century A.D. and merged with them to form the Anglo-Saxon people.
The story goes that Jahangir was so touched by the words of the washerwoman that he made her a baroness and showered her with riches beyond measure. It is perhaps one of the earliest known cases of victim compensation in modern Indian history. However, whilst the victim’s right to compensation may have diminished in the middle Ages, victims continued to play a vital role in the process of prosecution until the mid-nineteenth century. With the growth of centralized legal systems, however, restitution was gradually phased out. Government took over; crimes seen as act against the State, and the State assumed the role of the Prosecutor. It was the State that decided what punishment the offender should undergo and in a sense in return for taking upon itself the major task of dealing with the criminal offences. In the process of transfer from a personalized system to an impersonal state-run system, the victim was virtually forgotten by the system. In the evolutionary process, the government became stronger familial groups which were replaced by the sovereign as the central authority in matters of criminal few. During this process the interest of the state gradually overshadowed and supplanted those of the victim. The connection between restitution and punishment was severed. Restitution to the victim came to play an insignificant role in administration of criminal law. The victims rights and the concept of compensation and restitution were separated from the criminal law instead became incorporated into the civil law.\textsuperscript{45} The decline in the penological importance of restitution and non recognition of the victim's functional role in crime gained theoretical support from the endeavor to find different bases for penal and civil liability. Victims who want that offender should make good of the losses are left to the civil justice system.

The theories that distinguished between civil and penal liability reveal two trends. According to the subjective view, penal liability results from deliberate infringement of the law. It differs from civil liability in that the latter does not involve strong deliberate opposition to the will of the state. This theory fails to take into account criminal offences committed through negligence. On the other hand, there are certain kinds of deliberate infringement that give rise to civil liability only. According to the objective view, however, penal wrongs involve a direct injury to the victim, which exists in and of itself, apart from any statement made by the victim. This differs from civil liability, which is an indirect injury solely dependent on the victim’s statement. This theory fails to consider that infringement of the civil law can exist independently of the statement

\textsuperscript{45} Joceylyne A. Scutt, "Victims, offenders and Qestitution Real Alternative or Panacer?" The Australian Law Journal, Vol. 56 (1987), P. 156.
of the victim. On the other hand, *volenti non fit injuria* has some application to criminal law. Generally speaking, since the era of composition, the conventional view is that a crime is an offence against the state, while a tort is an offence only against individual rights.\textsuperscript{46} Also, in accordance with this thinking crime means only the offender and his offence and the victim's relationship to the crime are viewed in a civil rather than in a criminal point of view. However, this may be, the system of compensation surrendered only after a struggle; even after the Germanic-Busse Penal law there are records of victims who, in spite of the common law character of the criminal law, asked for indemnification and personal satisfaction as well as public punishment.

The connection between crime and restitution might have lessened but could not completely disregarded, even after the introduction of the procedure of inquisition, in which the theoretical and practical distinction between the demands of penal law and those of the victim are most acute. Court practice in the 16th and 17 centuries made possible the so called adhesive procedure which opened the way for discretion by a court concerning the victim's claim for restitution, within the scope of the criminal proceedings. Though the original rationale for victim restitution diminished over the years, the potential for restitution itself never completely disappeared as a criminal sanction. Penal codes of the 19th century also seemed to give some support to the idea of restitution in the form of the adhesive procedure. The procedure appeared in the laws of the some states. Later on, however, the situation got worse, and even in the criminal procedure, the idea of restitution was kept alive only by the force of tradition.

The revival of restitution and compensation was considered during the nineteenth century movement for penal change. Jeremy Bentham\textsuperscript{47} advocated the return of compensation, holding that, "satisfaction" should be drawn from the offender's property, but if the offender is without property. It ought to be furnished out of the public treasury, because it is an object of public good.\textsuperscript{48} The restitution of crime victims was also discussed at each of the five International Prison Congresses held during the latter part of that century. Almost all eminent criminologists hailed various forms of restitution as desirable, generally in the form of direct payment from the criminal to his victim, either immediately or through prison wages. Garofalo noted that "a fund


\textsuperscript{47} Jeremy Bentham, 1748-1832, English Jurist and Philosopher; expounded doctrine that morality of action is determined by utility, that the object of all conduct and legislation is "the greatest happiness of the greatest number."

of this sort existed in the Kingdom of the Two Sicilies\footnote{Two Sicilies, Former Kingdom consisting of Sicily and S. Italy} as well as in the Duchy of Tuscany, but it never appears to have been of much service to claimants, as the treasury always put it under contribution to defray the expenses of the courts.\footnote{Rafaele Garfalo, "Criminology" (1958), P. 434}

The emergence of the 'new' police especially after 1856 when forces were beginning to be established throughout the countries saw the demise of pro victim associations. This resulted ultimately in a fundamental change in the relationship of the victim to the criminal justice process. The introduction of the 'new' police conversely had the effect of increasingly removing the victims from that process. The police forces not only took on the role of searching for and apprehending offenders but also took over the victim's role in prosecution.

In modern societies, the state has assumed the responsibility to protect its citizens from crime and has taken over the exclusive rights, in the collective interest of the community, to punish offenders. However, the state accepts no responsibility for injury to victim. Though retribution occupies a subordinate position in the present day administration of criminal justice, its importance is undeniable. The emotion of retributive indignation is even now the mainspring of criminal law. Solan rightly replied when asked how men might most effectively be restrained from committing injustice: "If those who are not injured feel as much indignation as those who are." By the beginning of the twentieth century, it can be seen that the status of victim in the criminal justice process was minimal. Victims played a role obviously in reporting crime to the police and there was some minimal legislative provision for compensation. They did not however have a right to compensation, neither were they implicated in the process of prosecution. Means in the beginning of the twentieth century the victims of crime becoming the neglected object in the criminal justice system.

As we discuss the history of victims of crime and how his status is going to be changed during ancient period to medieval and modern period. In earlier days the victim enjoyed a central position as victims were an integral part of the criminal process, but during the beginning of the twentieth century his status going to be deteriorated as we then moved away from that model and the state become the representative of the victim. And this thing invited the attention of different jurist to see towards this problem with a different angle to improve the position and status of victims of crime to bring him at par with the accused person.
The academic study of the victim of crime can however be dated back to the theoretical and empirical work of Hans Von Henting (1948) and Benjamin Mendelson (1973) whose first study on victim was published in a Belgium Criminology Journal in 1937. The result of the study suggested that the personality of the victim was crucial in attracting the criminal. Hans Von Henting also took a similar approach in his article “Remark on the Interaction of Perpetrator and Victim”. They advanced a dynamic conception of the genesis of crime where victim of crime is no longer considered a passive subject but an active object in the process of criminalization and decriminalization. Victimology as a distinct field of study has indeed emerged in recent years and is a derivative of its parent discipline criminology. The word ‘Victimology’ was invented in 1947 by Benjamin Mendelsohn by deriving from the Latn “Victim” and the Greek “Logos” meaning science of victim. The primary object of interest of victimology therefore is the person of victim. Marvin, E.Wolfgang defines victimology as the scientific study of the victims and process of etiology and consequence of victimisation. Victimology is also taken to mean the study of social process by which individuals or group are maltreated in a manner likely to give rise to social problems.

2.8 The first problem which encountered in victimology is to define, who is a victim?

**Meaning and Definition of ‘Victim’**: The term “victim” is often one of moral approbation lacking descriptive precision in respect of actual human behaviour. It implies more than the existence of an injured party, in that innocence or blamelessness is suggested as well as a moral claim to a compassionate response from others. The etymological meaning of phrase suggests that it would mean or will encompass: i anyone suffering physical, emotional or financial harm as a direct result of a Crime. ii Spouses and children of the person who has suffered. iii Parents, foster parents, siblings, guardians or other custodians of minor victims, mentally or physically incapacitated victims, or victims of homicide. Oxford Dictionary of Current English defines the ‘Victim’: “A person or thing injured or destroyed in pursuit of an object, in gratification of a passion, etc. or as a result of event or circumstances (the victim of disease, of a road accident).” The term ‘Victim’ is defined in Oxford English dictionary as: "Victim is a person who is put to death or subjected to misfortune by another; one who suffers severely in body or property through cruel or oppressive treatment: one who is destined to suffer under some

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oppressive or destructive agency: one who perishes or suffers in health etc. from some enterprise or pursuit voluntarily undertaken. "As per Collins English Dictionary ‘Victim’ means: “A person or thing that suffers harm, death etc from another or from some adverse act, circumstance etc. ” According to New Webster's Dictionary ‘Victim’ means: "A person destroyed, sacrificed or injured by another or by some condition or agency one that is cheated or duped a living being scarified to some deity, or in the performance of a religious rite”.

As per Macmillan dictionary ‘Victim’: Someone who has been harmed injured or killed as the result of a crime”.

2.9 Victim under The UN Declaration on Justice to Victims of Crimes and Victims of Abuse of Power, 1985’ (29/11/1985) under Article 1 and 2:

Article 1.- "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

Article 2. – “A person may be considered a ‘Victim’, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.”

The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

International Criminal Court Statute defines ‘Victim’ as: “Natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC. The term include “legal entities that have sustained direct harm to any of their property, which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.”

The Department of Justice Canada defines a ‘Victim’ as “Any person who is harmed, killed, or suffering as a result of an accidental or intentional act or situation. The victim may experience

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53 Rule 85 (Definition of Victims) of the Rules of Procedure and Evidence of ICC.
suffering and loss, e.g. physical, psychological, emotional, financial, social, medical, and others.” The important points of this definition include: Any person - anyone can become a victim and there may be one victim or many victims from any situation. Harmed, killed or suffering - there can be primary, secondary or tertiary victims involved in any situation. Primary victims include those directly involved in the critical event - the dead, the injured and their loved ones. Secondary victims include those who are in some way observers of immediate traumatic effects on primary victims - eyewitnesses, rescuers, and converging rescuers. Tertiary victims include those removed from the critical event but who are impacted through encountering a primary or secondary victim - immediate neighbors, community members, and former victims. Accidental or intentional act or situation – victimization may result from acts or situations which may or may not be a crime and may or may not have a perpetrator.

In view of the above definitions, the term “victim of crime” can thus be defined as a person who has suffered injuries and material losses as a result of breach of criminal law. Therefore, a victim is a person who is murdered, assaulted, raped, robbed or whose property is destroyed. The Indian Penal Code of 1860 defines such act as offences against person, property and reputation and prescribed punishments thereof. However in 2008 by the Amendment of the Criminal Procedure Code the statutory attempt of the definition of victim was made as follows u/s Sec.2 (wa) Cr.P.C. 1973 defines the term ‘Victims: “Means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression ‘Victim’ includes his or her guardian or legal heir.”

2.10 Classification of Victims:

Different criminologists have given different types of victims on the basis of different criteria. Mendelsohn (quoted by Krishna and Singh, 1982: page 48) has given six types of victims according to the degree of their contribution guilt in crime. These are: (i) Completely innocent victims (e.g. small infants/children who are raped or murdered or kidnapped without their realising what is being done to them);(ii) Victims with minor guilt (such as pregnant women who go to quacks for abortion and pay for it with their lives);(iii) Victims as guilty as offenders;(iv) Victims more guilty than the offenders (such as those who provoke others to commit crime);(v) The most guilty types of victims who commit offences against others and get harmed or killed
themselves (e.g., a rapist who gets killed by his victim who acts in self-defence); and (vi) Simulating (or pretending) victims (such as paranoids, hysterical and senile persons) who give evidence in the courts in order to obtain sentence against an accused person. However the researcher opined that these types are also depend upon the multiple cumulative factors operating together and may involve more un anticipated factors like mistake of person, miscommunication etc.

**Walter Reckless (1961)** has talked of two types of victims: *reporting and non-reporting victims*. The latter is one who is unwilling to report because he/she fears reprisals or social consequences of doing so; the former is one who does not bother for the consequences of reporting his victimisation but is rather interested in getting the offender punished or getting some relief for his suffering. In these category , the non reporting victims may have multiple reasons which may be discussed during the trial as the factors of exceptions for the prosecution and may be allowed subject to the interests of the justice.

**Marvin Wolfgang (1967)** has outlined five types of victimisation:

(i) Primary victimisation, involving personalised or individual victims
(ii) Secondary victimisation, *where the victim is an impersonal target of the offender*
(iii) Tertiary victimisation, which affects the public or the administration of society;
(iv) Mutual victimisation, which concerns those victims who themselves are offenders in a given mutually consensual act (e.g., adultery); and
(v) No victimisation, which is an act of negligible significance where there is no immediately recognisable victim.

**Categories of Victims: There are 3 victim categories:**

1. Primary victims
2. Secondary victims
3. Related victims able to apply for financial assistance.
1. Primary victims: A primary victim is a person who is injured as a direct result of an act of violence committed against them.

2. Secondary victims: A secondary victim of violence can be a parent secondary victim or a witness secondary victim.

2. a) Parent secondary victim: A parent secondary victim is a parent who is injured as a result of an act of violence against their child.

2. b) Witness secondary victim: A witness secondary victim is a person who is injured as a direct result of witnessing an act of violence against another person. They may be a witness to either a more or less serious act of violence. A more serious act of violence may involve murder, manslaughter or dangerous driving causing death.

3. Related victims: A related victim is a close family member or dependant of a primary victim who has died as a direct result of an act of violence against them. A close family member of a primary victim must have had a genuine personal relationship with the primary victim when they died. A close family member of the primary victim may be a: spouse, child, parent or stepparent, brother, sister, stepbrother or stepsister, person who, under Aboriginal or Island custom, is regarded as a person mentioned above.

A number of studies indicate that the relatives or intimate partners of crime victims may experience many of the same symptoms reported by the victims themselves, such as anxiety, depression, intrusive thoughts and memories, and diminished self-esteem. A case in point involves the surviving family members of homicide victims, who not only experience the stress resulting from the loss of a loved one but also have anxiety and other clinical symptoms associated with the cause of death and criminal justice processing of the case. Some theories help to explain the reactions of indirect victims of crime. Attribution theory suggests that indirect victims may change their basic perception of the world as a predictable and safe place and may believe they have also become more vulnerable to criminal victimization. Learned-helplessness theory predicts that indirect victims experience problems because they feel that the crime was out of their control, and they feel further out of control in their contacts with the criminal justice system. According to learning theory, victims may become anxious and depressed by sharing the experience of the crime vicariously with direct victims. Persons who administer victim services...
should be aware of the difficulties of indirect victims and offer them diagnostic and treatment services as well as information on case processing.

2.11 EVOLUTION OF VICTIMOLOGY IN INDIA AND STATUS OF VICTIM VIS ACCUSED:
As evident from the history of Victims of crime in India, the victims of crime enjoyed a central position in the criminal justice system during the period of Ancient and Medieval Period. But during the Modern period victims of crime become neglected object and subject under criminal justice system, especially after the emergence of concept of Welfare State. As a crime considered as public wrong and only state has power to punish the wrongdoer or offender and the accused having number of rights to prove his / her innocence. Hence focus shifted towards the accused and victims of crime neglected under criminal justice system. At present, a crime victim or a complainant is only a witness for the prosecution. Whereas the accused has several rights, the victim has no right to protect his or her interest during criminal proceedings. Sometimes, even the registering of a criminal case in the police station depends upon the mercy of the police officer: victims suffer injustice silently and in extreme cases, take the law into their own hands and seek revenge on the offender. This sea change observed by various jurists in India and they start a study from different angle to improve the status of victims of crime. Many national level Commissions and Committees have strongly advocated victims’ rights and reiterated the need for a victims’ law. Though no separate law for victims of crime has yet been enacted in India, the silver lining is that victim justice has been rendered through affirmative action and orders of the apex court. Studies on crime victims by researchers started in India only during the late 1970s. Early studies were on victims of dacoit gangs (i.e. gangs of armed robbers) in the Chambal valley (Singh, 1978); victims of homicide (Rajan & Krishna, 1981); and victims of motor vehicles accidents (Khan & Krishna, 1981). Singh and Jatar (1980) studied whether compensation paid to victims of dacoits in Chambal Valley was Satisfactory or not. Since the 1980s, many scholars have conducted studies in Victimology, which have been published.

Initiatives in Victimology in South India:
In 1984, for the first time in India, an exclusive three day Seminar on Victimology was organized involving researchers, academics and practitioners from the Criminal Justice System. This Seminar was organized by Mr.Chockalingam, Head, Dept of Criminology, Univsersity of
Madras. Mr. Chockalingam had a great contribution in the development of victimology, who have a lot of work and research on victimology. During his tenure as Head, Dept. of Criminology, University of Madras has conducted many programs as in 1990, the Department began to offer Victimology as one of the courses or electives for its Master’s degree in Criminology and many students took interest and opted to study the subject of Victimology. Many students who joined for doctoral research under his supervision worked on victim-related topics such as Fear of Crime Victimization, Rape Victims, Sexual Harassment of Women Victims, Victims of Human Rights Violations, etc., to mention a few, and earned their doctoral degrees from the University of Madras. Besides, many Master’s degree students in Criminology also did projects on victimological topics and made empirical investigations and added to the victimological literature. Mr. Chockalingam conducted some research projects under the grants sanctioned by the Indian Council of Social Science Research (1993), Thiruvalluvar Criminology Research Foundation (1997) and the University Grants Commission (2001) etc. include Psycho-social and Legal Study of Rape Victims; Crime Victimization Survey in four major cities in the State of Tamil Nadu; and Victims of Corruption. Reports of each of these projects were produced. However, few issues were left to be discussed on multidimensional angles which were analyzed in the present study.

**Working of the Indian Society of Victimology (ISV):**

Indian Society of Victimology (ISV) is a nonprofit, nongovernmental organization created to advance victim justice process and practices in India. An assembly of eminent academicians, social scientists, criminal justice functionaries, research scholars, and students from social and behavioral sciences met at the Department of Criminology, University of Madras, on August 14, 1992, and established a forum in the name of the ‘INDIAN SOCIETY OF VICTIMOLOGY’, to advocate the cause of victims of crime. The Indian Society of Victimology was formally inaugurated by the eminent jurist Hon’ble Mr. Justice V.R. Krishna Iyer, Former Judge of the Supreme Court of India on September 18, 1992, in Chennai in a grand function. Prof. Dr. K. Chokalingam was elected as the Founder President of the ISV with Dr. R. Thilagaraj as the first Secretary. The society at the moment has about 400 members on its role. The ISV organized many seminars and symposia and biennial conferences in Chennai and other capital cities on subjects of topical interest in the field of Victimology. The major contribution of the ISV to the advancement of victimology in India was the organization of a workshop to draft a Victim
Assistance Bill. This occurred in September 1996 with the support of the National Law School of India University, Bangalore under the guidance of Professor N.R. Madhava Menon and the National Human Rights Commission (NHRC) under the chairmanship of the champion of human rights and victim justice, and former justice of the Indian Supreme Court, V. R. Krishna Iyer. The draft bill on Victim Assistance (Indian Society of Victimology, 1996) prepared by the ISV was sent to relevant Ministries, such as the Ministry of Law and Justice and the Ministry of Home Affairs and the Law Commission of India, NHRC, to consider enacting a national law on victim compensation/assistance in India. The UN Commission on Crime Prevention and Criminal Justice, Vienna also supported the initiative of the ISV by writing to the Home and Law Ministries of the Government of India to encourage it to consider enacting a victim law, treating the draft bill on Victim Assistance prepared by the ISV as a model. Simultaneously, efforts were taken by the ISV to impress upon the State Government of Tamil Nadu the advantages of creating a Victim Assistance Fund for the benefit of crime victims within the state of Tamil Nadu. In consequence, the then Chief Minister of Tamil Nadu announced in the Legislative Assembly in April 1995 the introduction of a new scheme to provide monetary assistance to certain categories of victims of violent crime and allocated ten million rupees as a first step for the scheme (Government of Tamil Nadu, 1995; Government of Tamil Nadu, 1997). Under the scheme, victims of homicide or their bereaved relatives, victims of serious physical injuries including rape, and victims of grievous hurt were eligible for monetary assistance from the government, though it is not a right of the victim as it is not a law but only an Executive order of the Government. Hence the working of Indian Society of Victimology has a great contribution to protect the rights of victims of crime, as the draft Victim Assistance Bill prepared by ISV appreciated and supported by UN Commission on Crime Prevention and Criminal Justice. The researcher thinks this is a step towards to enact a legislation to assist the victims of crime in India. So we may say that the point at issue is no longer exclusively to protect the human rights of offender but definitely the human rights of victims of crime should be taken into consideration. Government in a democratic and welfare society by its nature must serve and protect the individual from being victimized at one instance and importantly at the same time must look after the needs and requirements of the victims. The plight of the victims today clearly depicts our legal and criminal justice system. The legal and procedural provisions contained in our statute book have been quite meager in contrast to the large scale sufferings of the victims.
Although ‘Victimology’ is now emerging as one of the important branch of criminology though not as a separate science. Criminological research has so far been restricted in connection to crime and the personal characteristics of criminal and there is least attention towards the rights of victims of crime or to formulate the penal policy that would encompass the relationship between the criminal and the victim. It is only recently that society has woken up to a realization of the victims plight and his concern. The U.N. Congress on Prevention of Crime and Treatment of Offenders took up the cause and has contributed substantially in drafting a declaration of the victim’s right and placed it on the agenda of the 7th U.N Congress in Milan in September 1985. On 29 November, 1985, the General Assembly of United Nations adopted the Declarations of Basic Principles of Justice for Victims of Crime and Abuse of Power. This declaration, the first specifically concerned with societal responses to the needs of the victims, which establishes standards that take into account the variety in the legal system, social structures, and stages of economic development of member-states.

Victimology is concerned with the wide range of problems. It investigates the relationship between offender and victim in crime causation. It also deals with the process of victimisation, of being a victim, and in this context directs much of its attention to the problems and miseries of victim. The victim suffers various problems during the course of investigation, prosecution, restitution etc. there is utter disappointment on the part of victims of crime and ultimately this whole process results into violation of human rights of victims.

**Theories of Victimology:** The concept of victim dates back to ancient cultures and civilizations, such as the ancient Hebrews. Its original meaning was rooted in the idea of sacrifice or scapegoat -- 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 additional meanings. During the founding of victimology in the 1940s, victimologists such as Mendelson, Von Hentig, and Wolfgang tended to use textbook or dictionary definitions of victims as hapless dupes who instigated their own victimizations. This notion of "victim precipitation" was vigorously attacked by feminists in the 1980s, and was replaced by the notion of victims as anyone caught up in an asymmetric relationship or situation. "Asymmetry" means anything unbalanced, exploitative, parasitical, oppressive, destructive, alienating, or having inherent suffering. In this view, victimology is all about power differentials. 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, and others. The thing that all these usages have in common is an image of someone who has suffered injury and harm by forces beyond his or her control.

As in the early 1940s the victimology emerged as a new branch of criminology the number of thinkers try to study the victimology from various angles as it has been an interdisciplinary approach to violence and its effect on victims. Some of the thinkers try to throw a light on victim-offender relationship, typology of victims so it is essential one to study the various theories of victimology.

2.12 Mendelsohn’s Theory of Victimization

Benjamin Mendelsohn was a practicing attorney. In the course of preparing a case for trial, he would conduct in-depth interviews of victims, witnesses and bystanders. He would use a questionnaire that was prepared in simple language and contained more than 300 questions concerning the branches of criminology and associated sciences. The questionnaire was given to the accused and all others who had knowledge of the crime. Based on these studies, Mendelsohn came to the conclusion that there was usually a strong interpersonal relationship between the offender and the victim. In an effort to clarify these relationships further, he developed a typology of victims and their contribution to the criminal act. This classification ranged from the completely innocent victim to the imaginary victim. (supra classification of victims)

Hence Mendelsohn have a great contribution in the development of victimology as many scholars credit Mendelsohn with coining the term “victimology” and still others consider him the father of victimology. His typology was one of the first attempts to focus on victims of crimes rather than to simply examine the perpetrator. However, Mendelsohn was only one of two early scholars who explored the relationship between victims and offenders. The other noted early researcher in victimology was Hans Von Hentig.

54 B. Mendelsohn, ”The origin and Doctrine of Victionology”, 3 Excespta criminological, June 1963, pp. 239-244
55 S. Schafer, The viction and his criminal (Random House, New York) 1968
2.13 Hentig’s Theory of Victimisation: In an early classical text, *The Criminal and His Victim*, Von Hentig explored the relationship between the ‘doer’ or criminal and the ‘sufferer’ or victim. Von Hentig also established a typology of victims. This classification was based on psychological, social, and biological factors. Von Hentig established three general classes of victims: the general classes of victims, the psychological types of victims, and the activating sufferer. His classification identified victims by examining various risk factors. The typology includes:

**A. The General Classes of Victims**

1. The Young. They are weak and the most likely to be a victim of an attack. Youth is the most dangerous period of life.

2. The Female. The female sex is another form of weakness recognised by the law, because numerous rules of law embody the legal fiction of a weaker (female) and stronger (male) sex.

3. The Old. The elder generation holds most positions of accumulated wealth and wealth-giving power, and at the same time is physically weak and mentally feeble.

4. The Mentally Defective. The feeble-minded, the insane, the drug addict, and the alcoholic form another large class of victims.

5. Immigrants, Minorities, and Dull Normal’s. Immigration means more than a change in country. It causes a temporary feeling of helplessness in vital human relations. The

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56 Hans Von Henting, *The criminal and His victim*, (First Published by Schocken Books, New York, 1979, Republished by Yak University Press 1984)
57 Some Scholars have subdivided Von Henting’s original typology (Probably for ease of understanding). See, for example, Doerner and Lab, *Victionology* (West Publishing, St. Paul, Minn. 1994) where the authors list thirteen classifications, They arrive at this number by listing immigrants, minorities, and dull normals as separate categories instead of one subdivision as von Hensig did.
58 Von Hentiry, *The criminal and his viction*, P. 404
59 Id. at P. 406
60 Id. at P. 410
61 Id. at P. 411
inexperienced, poor, and sometime dull immigrant, minority, or other are easy prey to all kinds of swindlers.62

B. The Psychological Types of Victims

6. The Depressed. These victims may suffer from a disturbance of the instinct of self-preservation. Without such an instinct, the individual may be easily overwhelmed or surprised by dangers or enemies.63

7. The Acquisitive. This type of person makes an excellent victim. The excessive desire for gain eclipses intelligence, business experience, and inner impediments.64

8. The Wanton. Often a sensual or wanton disposition requires other concurrent factors to become activated. Lonliness, alcohol, and certain critical phases are “process-accelerators” of this type of victim.65

9. The Lonesome and the Heartbroken. Loneliness causes critical mental facolities to be weakened. These individuals become easy prey for criminals.66 The heartbroken victims are dazed by their loss and therefore become easy targets for a variety of “death rackets” that might, for example, charge a widow an outlandish fee for a picture of her late husband to be included in his biography.67

10. The Tormentor. This victim becomes a perpetrator. This is the psychotic father who may abuse the wife and children for a number of years until one of the children grows up and under extreme provocation kills him.68

11. The Blocked, Exempted, and Fighting. The blocked victim is so enmeshed in such a losing situation that defensive moves become impossible. This is a self-imposed form of helplessness and an ideal condition for a victim from the point of view of the criminal.69

62 Id. at P. 415
63 Id. at P. 420
64 Id. at P. 422
65 Id. at P. 427
66 Id. at P. 428
67 Id. at P. 431
68 Id. at P. 431
69 Von Henting, The Criminal and His Victim, P. 433
C. The Activating Sufferer

12. The Activating Sufferer. This occurs when the victim is transformed into a perpetrator. A number of factors operate as activators on the victim: certain predispositions, age, alcohol, and loss of self confidence.\(^70\) Von Hentig through his theory stated that a large percentage of victims because of their acts or behavior, were responsible for their victimization. This concept has since been repudiated by modern studies which have more closely examined and defined the relationship between the victim and the offender.

Schafer’s Functional Responsibility:

Using Von Hentig’s approach a third scholar has been instrumental in establishing another classification of victims. Stephen Schafer examined both Mendelsohn’s and Von Hentig’s work in his text, The Victim and His Criminal, and attempted to classify victims on a basis of responsibility instead of risk factors.\(^71\) Schafer believed that the study of the criminal-victim relationship indicated an increasing recognition that the criminal justice system must consider the dynamics of crime and treat both criminals and victims. Schafer went on to state that “the study of criminal-victim relationships emphasizes the need to recognize the role and responsibility of the victim, who is not simply the cause of, and reason for, the criminal procedure, but has a major part to play in the search for an objective criminal justice system and a function solution to the crime problem.\(^72\) He stated that responsibility is not an isolated factor in society; rather it is an instrument of social control used at all times by all societies to maintain them.\(^73\) Schafer believed responsibility was a critical issue in the problem of crime.

According to Schafer, crime was not only an individual act, but also a social phenomenon. He believed that not all crimes simply “happen” to be committed, but that victims often contribute to crime by their act of negligence, precipitate actions, or provocations. Schafer concluded that the functional role of a victim is to do nothing to provoke others from attempting to injure him and at the same time to actively prevent such attempts. In other words, this is the victim’s functional

\(^70\) Id. at P. 445
\(^71\) S. Schafer, The Victim and His Criminal (Rondom House, New York) 1968
\(^72\) Id. at P. 5
\(^73\) Id. at P. 139
responsibility. 74 One of the criticism of this theory can be that the victim is mistaken, misunderstood and the subjective element can’t be a common factor to generalize the all victims interests. Victim’s role is artificially implicated to ease the accused person’s interest than the victim.

Marvin Wolfgang’s Study of Homicide:

From 1948 to 1952 in Philadelphia, Marvin E. Wolfgang conducted the first major study of victim precipitation.75 He focused on homicides, studying both the victim and the offender as separate entities and as “mutual participants in the homicide”.76 Wolfgang evaluated 588 homicides and found that 26 percent (150) of all the homicides studied in Philadelphia involved situations in which the victim was a direct positive precipitator in the crime the first to use force during the acts leading to the homicide.77 This theory has the limitation of the situations where the grave provocation is from the accused person to instigate the victim.

Karmen’s Theory of Victimology

Scholars have continued to expand their scope of inquiry and explore other aspects of the victim’s role in society. Karmen discusses the development of victimology and points out that those who study this relatively new discipline have three main areas of concentration:

1. Victimologists study the reasons if any of why or how the victim entered a dangerous situation. This approach does not attempt to fix blame on the victim, rather it examines the dynamics that resulted in the victim being in the risky situation.

2. Victimology evaluates how police, prosecutors, courts, and related agencies interact with the victim. How was the victim treated at each stage in the criminal justice system?

3. Victimologists evaluate the effectiveness of efforts to reimburse victims for their losses and meet the victims personal and emotional needs.78 Karmen correctly points out that

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74 Id. at P. 152  
75 M.E. Wolfgang, Patterns of Criminal Homicide (University of Pennsylvania Press, Philadelphia, Penn) 1958  
76 M.E. Wolfgang, Analytical categories for Research in victimization, (Kriminologische Wegzeichen, Munich, Germany) 1967, P. 17  
77 Id. at pp. 24, 72  
victimologists view the dynamics of the victim’s role in society from a multidisciplinary perspective. There is still debate among scholars, however, regarding the correct or predominate role for the victimologist. Similar to the development and study of criminology, a number of different perspectives regarding victimology have also developed throughout the years. However to comment on this theory would be how can we blame the victim? being at wrong time and place, which doesn’t entitle the accused person to take the undue advance of the conditions to wash away the blame of the accused and puts social blame on the victim.

Henceforth we have seen the different theories of victimology which try to focus on victim-offender relationship and which develops typology of victims. Ultimately the evolution of such theories leads to the rise of the Victims Right Movement. The various social forces were developed in order to protect the rights of victims of crime. A series of events took place at different part of the world to raise the consciousness of the victims themselves regarding their impact on the criminal justice system.

During the late 1960s and early 1980s at International level the victims of crime began volunteering to serve within various victim assistance programs. As these crime victims continued to speak out, the Government of various countries reacted by establishing commissions to study crime and its consequences. In U.S.A. on June 25, 1996, President Clinton proposed a Victim’s Rights Constitutional Amedment to the U.S.Constitution. In a speech made in the Rose Garden announcing the Victim’s Rights Constitutional Amendment, President Clinton stated:“Having carefully studied all of the alternatives, I am now convinced that the only way to fully safeguard the rights of victims in America is to amend our Constitution and guarantee these basic rights – to be told about public court proceedings and to attend them; to make a statement to the court about bail, about sentencing, about accepting a plea if the victim is present, to be told about parole hearings to attend and to speak; notice when the defendant or convict escapes or is released, restitution from the defendant, reasonable protection from the defendant, and notice of these rights.”79

Hence a number of social forces affected by the development of victimology. The feminist movement raised our awareness of the plight of women. The civil rights movement resulted in a

number of laws being passed which afforded individuals certain rights. As crime increased, our society became increasingly conservative and became more aware of the trauma suffered by victims of crime.

2.14 Victimization:

There is a large body of evidence that demonstrates a close relationship between offending and victimization. One reason for this is that some kinds of crime arise out of mutual interactions between people, to the extent that victims and offenders are almost interchangeable: the clearest example would be fights in and around pubs on a Saturday night. Even where crimes do not arise immediately out of interpersonal interactions, people often tend to commit offences on others within their social circle, because these people are most accessible to them, or because they are paying off an old score. This way we can say that victimization is the relation between victim and the accused, there is no exact definition available on it.

Types of Victimization:

There are different types, approach, theories of victimization which are as follow:

*Primary victimization
*Secondary victimization (post crime victimization)
*Re-victimization (repeatedly became the victim)
*Self-victimization (variety of reason to justify abuse)

Victimization is a highly complex process encompassing a number of possible elements. The first element (often referred to as ‘primary victimization’) comprises whatever interaction may have taken place between offender and ‘victim’ during the commission of the offence, plus any after effects arising from this interaction or from the offence itself. The second element encompasses ‘the victim’s’ reaction to the offence, including any change in self-perception that may result from it, plus any formal response that s/he may choose to make to it. The third element consists of any further interactions that may take place between ‘the victim’ and others, including the various criminal justice agencies with whom s/he may come into contact as a result of this response. Where this interaction has a further negative impact on the victim, it is often referred to as ‘secondary victimization’
Primary victimization:
The ‘primary victimization’ phase of the process, it may be helpful to begin by distinguishing between the ‘effects’ or consequences that are known to result from crimes of different kinds and their ‘impact’ on victims themselves. Certain crimes entail physical effects, which are likely to involve some degree of pain and suffering, and may also entail loss of dexterity, some degree of incapacity and/or possible temporary or permanent disfigurement. Many crimes also have financial effects, which may be either direct. Very often crime can result in additional costs that might be incurred, for example, in seeking medical treatment or legal advice, or loss of income as a result of attending to the crime and its aftermath, or possible loss of future earning potential. Certain crimes can also have psychological and emotional effects upon victims including depression, anxiety and fear, all of which can adversely affect their quality of life.

Secondary victimization:
Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. Institutionalized secondary victimization is most apparent within the criminal justice system. At times it may amount to a complete denial of human rights to victims from particular cultural groups, classes or a particular gender, through a refusal to recognize their experience as criminal victimization. It may result from intrusive or inappropriate conduct by police or other criminal justice personnel. More subtly, the whole process of criminal investigation and trial may cause secondary victimization, from investigation, through decisions on whether or not to prosecute, the trial itself and the sentencing of the offender, to his or her eventual release. Secondary victimization through the process of criminal justice may occur because of difficulties in balancing the rights of the victim against the rights of the accused or the offender. More normally, however, it occurs because those responsible for ordering criminal justice processes and procedures do so without taking into account the perspective of the victim.

Re-victimization
Crime is not distributed randomly. According to a recent estimate, based on data from the British Crime Survey, 44% of all crime is concentrated on 4% of victims. (Farrell and Pease, 2001) the proportion of victims who will be a victim of a similar offence within a year of the event.
Some of the repeat victimization is due to the victim living or being associated with the offender. Wife battering tends to happen more than once to the same victim who continues to live with the same man. This is also true of sexual incidents. Some of the repeat victimization in property offences is due to the location of the victim or their residence. Those who live close to a concentration of potential offenders in residences that are unprotected are particularly at risk of repeat victimization. Repeat victimization is disillusioning to victims who report their experience to the police and the criminal justice system because they were not protected. Being victimized a second time increases the psychological trauma of the event.

**Self victimization**

In this category person himself commits such act which result in his own victimization we can say up to certain extent that it can be included in repeat victimization only as it result from wrong persons company, wrong habit, etc.

**Conclusion:**

**2.15 Shift away from accused-centric to victim centric Criminal Justice**

In a modern welfare state, the purpose of criminal justice system is to protect the rights of individuals and the state against the intentional invasion of criminals who violate the basic norms of society. To insure that innocent persons may not be victimised the accused has been granted certain basic rights and privileges to demand itself before he is condemned. In case the accused found guilty he is punished and kept in prison with an object of reforming him. Courts have from time to time directed the state authorities to provide all necessary facilities and ensure that human rights of criminals are not violated. The Constitutional and legislative protections were given to accused person to avoid any kind of injustice with him or to save him from becoming the scapegoat during the process of trial. In fact, it is a short coming of our criminal jurisprudence that crime do not attract due attention to victim, perhaps the criminal justice system is arbitrary and operates to the disadvantage of the victim. Krishna Iyer J. in Rattan Singh V/s state of Punjab\(^{80}\) aptly highlighting the apathy of law to a victim of crime, observed: "It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point

\(^{80}\) (1979) 4 SCC 719
of our criminal law. This is the deficiency in the system, which must be rectified by the legislature." In this way the researcher found there is a inadequate theorization to address the issues of the victims of violent bodily crimes and subserve the interests. The theories discussed are limitedly elaborate upon the futuristic concerns of the victims of crimes are more interdependent upon multiples factors which limits the scope of these theories. The researcher feels that there is a need to re-develop the adequate theorization to deal with the victims of crimes.

In the next chapter three the researcher has analyzed the overall legislative protection in general and criminal law in particular.