Until 1970s the victims of crime were a forgotten entity in the criminal justice system. The attitude began to change as the discipline of victimology came into its own. The past few decades have witnessed a revolution in the way society deals with victims of crime. Many countries have now recognized the need to provide services to victims to help them recover from the effects of crime and assist them in their dealings with the criminal justice system. But in India, there has not been any significant improvement in the position of victims in the criminal justice system. The present paper has attempted to examine the position of victims of crime in India and the criminal justice system. The paper also emphasizes the need to provide assistance to crime victims. The authors of the present paper have also suggested some of the immediate steps that are to be implemented by the law enforcement agencies in India to improve the position of victims in the criminal justice system.

**Keywords:** victims of crime, assistance to crime victims, victim justice, restitution, India

**Introduction**

Across the globe in different countries, victims of crime are protected, assisted, restituted and compensated by appropriate laws and acts. But in India the victims of crime play only an insignificant role in the criminal justice process. In recent times, among the many reforms canvassed for improving the criminal justice system is the one that advocates a victim-orientation to criminal justice administration. Victim-orientation includes greater respect and consideration towards victims and their rights in the investigative and prosecution process, provisions for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes (Madhava Menon, 2004: 362-363). Though there are some provisions under the Indian Constitution and some sections in the Code of Criminal Procedure, 1973 to protect the rights of the victims and for providing compensation, the criminal courts at the lower level in India have ignored those provisions for a long time and not utilized them during their sentencing processes. But it is heartening to observe that several judgments in both the High Courts and the Supreme Court in the last two decades or so have come to the rescue of victims of not only traditional crimes where the offender is another citizen but also in cases where the victimization has been caused by the instrumentalities of the state itself. In addition to the existing provisions under the Indian criminal laws, a considerable importance was given in the Report of the Committee on Reforms of Criminal Justice System, headed by Justice V. S. Malimath on the need to provide “justice to victims of crime”. Under these circumstances, the present paper includes an overview of the crime victimization and the present legal provisions which are available to protect the victims of crime in India. The paper
also has briefly analyzed some of the landmark judgments that have provided justice to victims of crime. Finally, the present paper provides certain practical suggestions taking into account the experiences at the international level to improve the condition of crime victims in India.

**Crime Scenario in India**

Table 1 provides an overview of the crime scenario in India. In the year 2004, there was a sharp increase in the number of cases registered and in the year 2005, the number of cases registered declined drastically by 16.7 percent when compared to the year 2004. In the year 2004, the Indian Penal Code (IPC) and Special and Local Laws (SLL) crimes constituted 30.4 and 69.6 percent, respectively and during 2005, 63.7 percent accounted for SLL crimes and 36.3 percent for IPC crimes. The rate (per 1,00,000 population) of total IPC and SLL crimes was 455.8 in 2005, showing a decline over the previous years.

Table 1 Cognizable crimes registered in India during 2001–2005

<table>
<thead>
<tr>
<th>S. No</th>
<th>Year</th>
<th>Number of offences</th>
<th>Ratio IPC:SLL</th>
<th>Rate per (1,00,000 population)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>IPC</td>
<td>SLL</td>
<td>Total</td>
</tr>
<tr>
<td>1.</td>
<td>2001</td>
<td>17,69,308</td>
<td>35,75,230</td>
<td>53,44,538</td>
</tr>
<tr>
<td>2.</td>
<td>2002</td>
<td>17,80,330</td>
<td>37,46,198</td>
<td>55,26,528</td>
</tr>
<tr>
<td>3.</td>
<td>2003</td>
<td>17,16,120</td>
<td>37,78,694</td>
<td>54,94,814</td>
</tr>
<tr>
<td>4.</td>
<td>2004</td>
<td>18,32,015</td>
<td>41,96,766</td>
<td>60,28,781</td>
</tr>
<tr>
<td>5.</td>
<td>2005</td>
<td>18,22,602</td>
<td>32,03,735</td>
<td>50,26,337</td>
</tr>
</tbody>
</table>

IPC, Indian Penal Code; SLL, Special and Local Laws.

According to Crime in India, 2005 (official crime statistics compiled and published by the National Crime Records Bureau, Ministry of Home Affairs, Government of India), 39 percent of the offences were crimes against body; crimes against property were 35.3 percent, crime against public order were 5.9 percent, economic crimes were 6.3 percent, 8.2 percent of the cases comes under burglary, theft comes to 24.8 percent and so on. There was an increase of about 31.1 percent in the number of cases registered under cheating, a high percentage of increase (67.4 percent) was seen in importation of girls (from foreign country)\(^2\), 15 percent increase was seen in cases registered under Narcotic Drugs and Psychotropic Substances Act, 1985, 13.7 percent increase in gambling, a huge percentage (119.6) of increase was seen in cases registered under Indecent Representation of Women (Prohibition) Act, 1986, also 63.5 percent increase was seen in copyright violations (National Crime Records Bureau, 2006:31–39).

Also, national crime statistics show a grim picture of women's status in India, which is driven by social, economic and cultural factors. An analysis of the official statistics for India for the period 1991–2001 shows an overall increase in the crimes committed against women. During the period, there was an increase in the offence of rape committed on women by 5.34 percent, cruelty by husband and relatives by 11.32 percent, and molestation by 6.8 percent (Srinivasan, 2004).

The above statistics provide a bird's eye view on the nature and extent of crime victimization in India. Besides, data about the loss of lives due to natural calamities and consequent misery is really mind-boggling. To cite an example, in December 2004, due to Tsunami, thousands of lives were lost and hundreds of people—particularly children and women—were orphaned in the State.

\(^1\) The Criminal Procedure Code (CrPC) divides all crimes into two categories. They are (a) cognizable (Sec. 2 (c)) (b) non-cognizable (Sec. 2 (i)). The CrPC defines a cognizable offence or a cognizable case as the one in which a police officer may arrest without a warrant. Non-cognizable crimes are defined as those regarding which a police officer has no authority to arrest without a warrant (Ranchhoddas and Thakore, 2002).

\(^2\) Section 366B, IPC defines importation of girl (from foreign country) as ‘whoever imports into India from any country out-side India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.’
of Tamil Nadu alone. Such people are also vulnerable to various forms of crime victimization. Thousands of children are being used in exploitative forms of labor and thousands of children are living and working in the streets where they have often been subjected to different forms of exploitation.

The impact of victimization on different kinds of victims due to different types of crimes has been varied such as physical, psychological and financial. Researchers have indicated that the impact of victimization not only affects the victim but also the victims’ immediate family and next of kin, relatives, neighbors and acquaintances. This holds true for the emotional as well as the financial consequences and the effects can last for a few months or years or in some cases for life long. Hence, the consequences of victimization emphasize the urgent need, not only to prevent victimization but also to protect the victims and provide them with all kinds of assistance during and after the criminal justice process. The traditional approaches of handling of crime have not altered the position of victims of crime for better in anyway. Contrary to the common belief held by criminal justice officials that victims would expect retaliation or retribution to their offenders, many victims are found to be interested in restorative approaches in order to deal with disputes rather than punishments and penalties to the offender. One recognized method of protection of victims is compensation to victims of crime. For providing monetary compensation and for protecting certain other rights of the victims, there are some provisions both in the Constitutional Law of India and in the criminal laws.

**Constitutional Law of India and Victims of Crime**

The Indian Constitution has several provisions which endorse the principle of victim compensation. The constellation of clauses dealing with Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) laid the foundation for a new social order in which justice, social and economic, would flower in the national life of the country (Article 38). Article 41, which has relevance to victimology in a wider perspective, mandates, *inter alia*, that the state shall make effective provision for “securing public assistance in cases of disablement and in other cases of undeserved want”. Surely, crime victims and other victimized people swim into the haven of Article 41. Article 51-A makes it a fundamental duty of every citizen of India “to protect and improve the natural environment … and to have compassion for living creatures” and “to develop humanism”. If empathetically interpreted and imaginatively expanded, we find here the constitutional beginnings of victimology (Krishna lyer, 1999). Further, the guarantee against unjustified deprivation of life and liberty (Article 21) has in it elements obligating the state to compensate victims of criminal violence (Basu, 2003).

**Provisions in Indian Criminal Laws**

The Code of Criminal Procedure, 1973 has recognized the principle of victim compensation. Section 250 authorizes magistrates to direct complainants or informants to pay compensation to people accused by them without reasonable cause. Again Section 358 empowers the court to order a person to pay compensation to another person for causing a police officer to arrest such other person wrongfully. Finally, Section 357 enables the court imposing a sentence in a criminal proceeding to grant compensation to the victim and order the payment of costs of the prosecution. However, this is on the discretion of the sentencing court and is to be paid out of the fine recovered.

Though the principle underlying Section 357 of the Code of Criminal Procedure, 1973 is very much the same sought to be achieved by the UN Basic Principles of Justice for Victims of Crime, its scope is extremely limited as:

1. The section applies only when the accused is convicted;
2. It is subject to recovery of fine from the accused when fine is part of the sentence;
3. When fine is not imposed as part of the sentence, the magistrate may order any amount to be paid by way of compensation for any loss or injury by reason of the act for which the accused person has been so sentenced (Sec. 357(3)); and
4. In awarding the compensation, the magistrate is to consider the capacity of the accused to pay.
Given the low rates of conviction in criminal cases (less than 10 percent), the inordinate delay in the conclusion of proceedings and the relatively low capacity of the average accused persons, it is preposterous to say that a victim compensation scheme really operates in administration of justice in India (Madhava Menon, 2004: 363). Besides the above provisions relating to restitution to victims under the Code of Criminal Procedure, 1973, Section 5 of the Probation of Offenders Act, 1958 has also empowered the courts to require released offenders to pay the restitution and costs as under:

1. The court directing the release of an offender under Section 3 or Section 4 may, if it thinks fit, make at the same time a further order directing him to pay:
   a. Such restitution as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and
   b. Such cost of the proceeding as the court thinks reasonable.

2. The amount ordered to be paid under subsection (1) may be recovered as a fine in accordance with the provisions of Sections 357 and 358 of the Code.

3. A civil court trying any suit out of the same manner for which the offender is prescribed, shall take into account “any amount paid or recovered as restitution under subsection (1) in awarding damages” (Ranchhodadas and Thakore, 2002).

In addition to the existing provisions under the Indian criminal laws, a considerable importance was given in the Report of the Committee on Reforms of Criminal Justice System, headed by Justice V. S. Malimath on the need to provide “justice to victims of crime”.

Committee on Reforms of Criminal Justice System

The Government of India, Ministry of Home Affairs by its order dated 24 November 2000 constituted the Committee on Reforms of Criminal Justice System to consider measures for revamping the criminal justice system. One of the objectives of the committee was “to suggest ways and means of developing synergy among the judiciary, the prosecution and the police to restore the confidence of the common man in the criminal justice system by protecting the innocent and the victim and by punishing unsparring the guilty and the criminal”. While referring to the position of victims in the criminal justice system in India today, the committee observed “that victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in the criminal justice administration” (Government of India, 2003: 75). With this general observation the committee reviewed the position of victims under the criminal justice system, including the present role that the victim is assigned under the existing criminal law; provisions for compensation of victims of crime and so on. The report has also highlighted how the Supreme Court and the High Courts in India have evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. The report stated “medical justice to the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of the liberal package of reliefs and remedies forged by the apex court. The decisions in Nilabati Behera v. State of Orissa (1993 2 SCC 746) and in Chairman, Railway Board v. Chandrima Das (2000 Cr LJ 1473 SC, cited in Government of India, 2003: 81) are illustrative of this new trend of using constitutional jurisdiction to do justice to the victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the state for the failure to protect the rights of the victims”. The committee also examined the rights of the victims of crime in different criminal justice systems worldwide. The committee was impressed with the report on “Criminal Justice: The Way Ahead” presented to the British Parliament in February 2001, as the report proposed various amendments and recommendations.

The Committee on Reforms of Criminal Justice System was of the opinion that the strategies being introduced in the United Kingdom for reforming the criminal justice system to give a better deal for victims should be considered for adoption in India. Taking into account the UK Report of 2001,
the Committee made the following recommendations:

1. The victim, and if he/she is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the charge is punishable with 7 years imprisonment or more.

2. In select cases notified by the appropriate government, with the permission of the court an approved voluntary organization shall also have the right to implead in the court proceedings.

3. The victim has a right to be represented by an advocate of his/her choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.

4. The victim shall have the right to participate in criminal trial.

5. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.

6. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

7. Victim compensation is a state obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by the Parliament. The draft bill on the subject submitted to the Government in 1996 by the Indian Society of Victimology provides a tentative framework for consideration.

8. The victim compensation law will provide for the creation of a victim compensation fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.

The above analysis of the provisions in the Constitutional Law of India, criminal laws and the recommendations of the Committee on Reforms of Criminal Justice System has provided the current status of victims of crime in India. In this context it is also important to discuss some of the judgments wherein the principle of restitution to victims of crime has been introduced or were upheld by the courts in India. But in all these cases discussed below the word “compensation” has been used to refer to “restitution” which is the accepted terminology by the international scholars for payment made by offenders to victims of crime. As observed by Chockalingam (1993: 74), the Indian courts use the term “compensation” to refer to restitution as well as the real compensation, wherein the money is paid to the victim by the state or other agency for abuse of power.

Case Laws – Towards Victim Justice

The first landmark judgment where compensation to the victim ordered by the Madras High Court and upheld with some modifications by the Supreme Court of India was Palaniappa Gounder v. State of Tamil Nadu (AIR 1977 SC 1323). In this case, the High Court after commuting the sentence of death on the accused to one of life imprisonment, imposed a fine of Rs.20,000 on the appellant and directed that out of the fine, a sum of Rs.15,000 should be paid to the son and daughters of the deceased under Section 357 (1) (c) of the Code of Criminal Procedure, 1973. The Supreme Court while examining the special leave petition of the appellant observed that there can be no doubt that for the offence of murder, courts have the power to impose a sentence of fine and directed that out of the fine, a sum of Rs.15,000 should be paid to the son and daughters of the deceased. The court further observed, “the first concern of the court, after recording an order of conviction, ought to determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and sentence including the sentence of fine must not be unduly excessive.” In fact, the primary object of imposing a fine is not to ensure that the offender will undergo the sentence in default of payment of fine but to see that the fine is realized, which can happen only when the
fine is not unduly excessive having regard to all the circumstances of the case, including the means of the offender. The Supreme Court thus reduced the fine amount from Rs.20,000 to a sum of Rs.3,000 and directed that the amount recovered shall be paid to the son and daughters of the deceased who had filed the petition in the High Court. This is a case wherein the Supreme Court reduced the amount of fine and achieved a proper blending of offender rehabilitation and victim compensation. The important point, which emerged in the case, was the Supreme Court upholding the order of compensation (Chockalingam, 1993: 76–77).

In the case of Sarwan Singh v. State of Punjab (AIR 1978 SC 1525), the Supreme Court not only reiterated its previous standpoint but also laid down, in an exhaustive manner, points to be taken into account while imposing fine or compensation. The Honorable Court observed that while awarding compensation, it is necessary for the court to decide whether the case is fit enough to award compensation. If the case is found fit for compensation, then the capacity of the accused to pay the fixed amount has to be determined.

And the court also observed that:
It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation. After consideration of all facts of the case, we feel that in addition to the sentence of 5 years rigorous imprisonment, a fine of Rs. 3,500 on each of the accused under Section 304 (1), IPC should be imposed.

In Guruswamy v. State of Tamil Nadu (1979 Cr LJ 704), the accused was convicted on a charge of murder. The victims were his father and brother. While reducing the sentences, the Supreme Court held that the offence was committed during a family quarrel and though the victims are the father and brother of the appellant, in the circumstances of the case, the extreme penalty was not called for. The accused had also been under sentence of death for a period of six years. But in reducing the death sentence to imprisonment for life, it was held that the widow and her minor children should be compensated for the loss they have suffered by the death of the second deceased. The court imposed a fine of Rs.10,000 to the appellant and ordered the same to be paid as compensation to the dependents of the victim.

The case of Hari Krishnan and the State of Haryana v. Sukhbir Singh and others (AIR 1988 SC 2127) is the most important case after Sarwan Singh where the court repeated its firm understanding once again in the following words:
The power under Section 357 Criminal Procedure Code is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a recompensatory measure to rehabilitate to an extent the beleaguered victims of the crime, a modern constructive approach to crime, a step forward in our criminal justice system … The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case.

The present case occurred due to a civil dispute pending between the deceased and the appellant. The deceased obtained an interim order pertaining to the civil dispute. This in turn led to a fight between the deceased and the appellants. The first appellant armed with a gun and the second appellant armed with a rifle along with three other accused attacked the deceased. The first and second appellant fired shots at the two deceased and they received two bullet injuries each and died on the spot. The Sessions Judge after considering the materials placed before him, found the appellants guilty and convicted and sentenced the first two appellants to death for an offence under Section 302 IPC and the other accused to life imprisonment. They were also sentenced to varying terms of imprisonment with fine with regard to other offences. Against this order the accused preferred an appeal challenging the convictions and sentences. The complainant separately preferred a Criminal Revision Petition praying for compensation under Section 357 CrPC. The High Court concurred with the findings of the Sessions Court on the convic-
tion imposed but held that the imposition of capital punishment was uncalled for as the case was not one of the rarest of rare case and hence their sentence was reduced to imprisonment for life. With regard to the other three accused, they were acquitted under Section 302 read with 148 IPC. However, the conviction under Section 449 IPC was maintained but the period of sentence was reduced to the period undergone. Considering the revision petition, the High Court held that it was a fit case for exercising the jurisdiction under Section 357 CrPC and directed each of the appellant to pay a sum of Rs. 2,00,000, totaling Rs. 4,00,000 and in default, was to undergo a sentence of five years rigorous imprisonment. Against this order the appellants filed an appeal before the apex court. The Court after hearing the learned counsels, held that there was no ground to differ from the reasoning of the court below and upheld the conviction and sentence.

With regard to the award of compensation under Section 357, the Court held that the High Court in the instant case did not have sufficient material before it to correctly assess the capacity of the accused to pay compensation but keeping the object of the Section, it is a fit case in which the court was justified in invoking Section 357. The court after having gone through the records and materials found that the appellants were reasonably affluent. Hence, the appellants were capable of paying at least Rs.1,00,000 per head as compensation. Therefore, the order of the High Court is modified by reducing the compensation payable from Rs.2,00,000 each to Rs.1,00,000 each.

Further the Supreme Court in Mangilal v. State of Madhya Pradesh (AIR 2004 SC 1280) held that the power of the court to award compensation to the victims under Section 357 is not ancillary to other sentences but in addition thereto. The basic difference between subsection (1) and (3) of the Section 357 is that in the former case, the imposition of fine is the basic and essential requirement, while in the latter even the absence thereof empowers the court to direct payment of compensation. Such power is available to be exercised by an appellate court, the High Court or the Court of Sessions when exercising revisional powers.

Bipin Bihari v. State of Madhya Pradesh (2005 Cr LJ 2048 MP)

The facts of the present case is that the complainant while grazing his ox in his field heard his sister-in-law’s cry and rushed towards her. He found that the appellant had entered into an altercation with his sister-in-law and restrained her from cutting the crop. The appellant was carrying a gun and threatened of dire consequences. Despite the threat, the complainant tried to get hold of the gun and in the scuffle the appellant threatened to kill him. He fired a shot which struck on the right calf of the complainant and as a result the flesh was ripped off. Further, the appellant tried to load the gun again but was not able to do so as the complainant was grappling with him. At this point of time, some persons arrived on the spot and on seeing them the appellant fled from the scene leaving the gun. The incident was reported and charge was framed under Section 307 IPC against the appellant. The trial court convicted the appellant under Section 307 IPC and sentenced him to undergo rigorous imprisonment for life and pay a fine of Rs. 5000 in default of which he was to undergo two years of simple imprisonment. The trial court directed that the fine amount be paid to the complainant as compensation under Section 357, Criminal Procedure Code (CrPC). The appellant preferred an appeal against this order in the High Court. The court after hearing the learned counsels held that it was not justified to impose sentence of life imprisonment on the appellant. Further, it was held that it would be proper to impose two years rigorous imprisonment. Regarding the award of compensation, the court referred to the case of Bhaskaran v. Sankaran Vaidyan Balan (AIR 1999 SC 3762), in which the apex court while considering the scope of Section 357 CrPC laid down that the Magistrate cannot restrict itself in awarding compensation under Section 357(3), since there is no limit in sub-section (3) and therefore the Magistrate can award any sum of compensation. Further, it was also held that while fixing the quantum of compensation, the Magistrate should consider what would be the reasonable amount of compensation payable to the complainant. In Hari Krishnan and the State of Haryana v. Sukbir Singh and others (AIR 1988 SC 2127), the court held “that the power of imposing fine intended to do
something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is to some extent a constructive approach to crime and a step forward in a criminal justice system. It is because of this that it was recommended that all criminal courts should exercise this power liberally so as to meet the ends of justice, by cautioning that the amount of compensation to be awarded must be reasonable’. The court held that "in order that collective may not loose faith in criminal adjudication system and the concept of deterrence is not kept at a remote corner we are disposed to enhance the amount of compensation to Rs.30000/-".

The court referred to the case of Sarup Singh v. State of Haryana (AIR 1995 SC 2452), wherein the apex court while reducing the sentence for the period already undergone by the accused under Section 304 IPC, directed to pay a sum of Rs. 20000 by way of compensation. The court further emphasized that the amount of compensation was enhanced taking into consideration the gravity of the injury, the strata to which the accused belongs, the milieu in which the crime has taken place and further keeping in view the cry of the society for the victims at large. The entire amount shall be paid to the injured on proper identification. The amount shall be deposited before the trial court within four months failing which the appellant shall have to undergo further rigorous imprisonment of four years. The sentence of conviction of the appellant under Section 307 IPC is maintained with modification in the sentence.


In this case, the appellant–accused had voluntarily caused simple hurt to the complainant. The appellant was also said to have assaulted the complainant with a stone resulting in grievous injuries to the complainant. Moreover, the appellant–accused intentionally insulted the complainant by using abusive language thereby provoking him, knowing fully well that such provocation would make the complainant to break public peace or to commit other offences. The charge was framed against the accused for offences punishable under Sections 323, 325 and 504 of the IPC. The trial court, after appreciating the prosecution evidence, by its judgment, dated 8 March 1999 held that it was proved by the prosecution that the accused caused simple as well as grievous injury to the complainant, and thereby, he had committed offences punishable under Sections 323 and 325 IPC. However, regarding the third charge—that the accused committed an offence punishable under Section 504 IPC—according to the court, the prosecution was not able to establish it and the accused was ordered to be acquitted. So far as sentence was concerned, the trial court awarded simple imprisonment for three months and a fine of Rs. 500, in default to undergo simple imprisonment for fifteen days for the offence punishable under Section 323 IPC. He was also ordered simple imprisonment for one year and fine of Rs. 3000, in default to undergo simple imprisonment for three months for the offence punishable under Section 325 IPC. The court also ordered that out of the fine amount so received, the injured-complainant will be paid compensation of Rs. 2000 under Section 357(1) (b) of the CrPC, 1973. Against this order of conviction and sentence, the appellant preferred an appeal in the court of Sessions Judge. The Sessions Judge, after considering the evidence and hearing the arguments, acquitted the appellant for the offence punishable under Section 323 IPC and set aside the order of conviction and sentence. He, however, confirmed the order of conviction of the accused for the offence punishable under Section 325 IPC. The appellate court, however, was of the view that it was a fit case to reduce sentence of simple imprisonment from one year to six months. The appellate court also directed the accused to pay compensation of Rs. 3000 to the complainant who had sustained grievous injuries, independently of what the trial court awarded. The sentence of fine and compensation passed by the trial court was confirmed. The appellant filed a revision petition in the High Court challenging the order of the Court of Sessions. The High Court confirmed the order of conviction. The High Court also partly allowed the revision by reducing sentence and ordering the appellant to undergo simple imprisonment for one month and to pay a fine of Rs. 1000 in addition to what was ordered by the courts below. The appellant then approached the Supreme Court against the order passed by the High Court. The Honorable Judges of the Su-
Supreme Court in their order stated that “keeping in view all the facts and circumstances, in our opinion, ends of justice would be met, if we order that the substantive sentence which the appellant has already undergone is held sufficient. We are also of the view that it would be appropriate if over and above the amount which the appellant herein has paid towards fine and also towards compensation to the injured victim, the appellant is ordered to pay an additional amount of Rs.10000/- to the complainant by way of compensation.”

An analysis of the above case laws gives an indication that the courts in India, at least at the higher level, have started realizing the importance of the victim and the necessity to ameliorate the plight of the victim to the extent possible by restitution.

**Victim Justice – An International Perspective**

In 1985, virtually simultaneously two powerful documents were issued urging the international community to enhance the status of victims. The first one was the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The second one was the Council of Europe Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure which was also adopted in 1985. Although differences in language and in details cannot be overlooked, the content of the Declaration and the Recommendation were to a large extent overlapping and had subsequently been echoed and expanded on in other international documents of a similar nature, such as the Statement of Victims’ Rights in the Process of Criminal Justice, issued by the European Forum for Victim Services in 1996, and the European Union Framework Decision on the Standing of Victims in Criminal Proceedings. The most recent and most comprehensive example is the Council of Europe Recommendations (2006)8 on assistance to crime victims, adopted on 14 June 2006 (Groenhuijsen and Letschert, 2006:2-3).

The Basic Principles included in the UN Declaration for Victims are:

1. Access to justice and fair treatment;
2. Restitution;
3. Compensation; and
4. Assistance.

With regard to the restitution and compensation in the above Declaration, it is stated that offenders should make a fair restitution to victims or their families; restitution should be part of the sentencing in criminal cases; and when compensation is not fully available from the offender, the state should provide monetary compensation to victims who suffered serious physical or mental injury for which a national fund should be set up (United Nations, 1985).

Some of the important recommendations of the Council of Europe Recommendations (2006)8 on the assistance to victims and prevention of victimization include the following elements: assistance, role of the public services, victim support services, information, rights to effective access to other remedies, state compensation, insurance, protection, mediation, raising public awareness of the effects of crime and so on. It has also recommended for provision of restitution and compensation to victims of crime. It recommends provision of compensation by the state for victims of serious, intentional, violent crimes, including sexual violence. It further states that the state compensation should be awarded to the extent that the damage is not covered by other sources such as the offender, insurance or state-funded health and social provisions (Groenhuijsen and Letschert, 2006: 170-171).

It is also important to learn from the experiences of the United States in providing justice to victims of crime. Without the report of the victims or witnesses, most crimes would not come to the attention of the police. Without the cooperation of the victim or witness in identifying the offender, most crimes could not be solved, and the offender could not be brought to justice. In the United States, during the late 1960s, the Federal Government launched a series of surveys designed to estimate the number of crime victims. This research showed that, while arrest rates are high, many victims failed to report crimes. Other studies noted that once an arrest had been made, many victims failed to co-operate in the prosecution of offenders. Victims cited poor treatment by the criminal justice system—long waits for trials, confusing instructions and inadequate child care and trans-
transportation resources as the reasons for their reluctance to co-operate. The victim assistance movement began shortly thereafter to respond to these needs. In the United States, spurred by research on victims’ needs, grassroot activism, substantial legislation and victim assistance programs now number more than 10,000. Further, victim/witness programs in the United States became a major feature of victimological development more than three decades ago (Lynch, 1976; Bolin, 1980; Dussich, 1981; Schneider and Schneider, 1981; Mawby and Gill, 1987; Young, 1990). Furthermore, the statutory approach is typified by the United States, where almost all states and the federal government have adopted statutory guidelines on how the police and other officials in the criminal justice system should deal with victims of crime.

**Steps to Provide Assistance to Crime Victims in India**

The analysis of the existing legal provisions in India for providing justice to victims of crime shows that there is a long way to go. The experiences at the international level, including the experience of the United States show that there is a lot needs to be done at the macro level. But at the micro level certain immediate and possible measures may be taken to help the victims of crime in India. Therefore, the first priority in the whole scheme of things is an all round sensitization of everyone concerned. The natural sequence of rendering meaningful justice, social and legal should proceed as follows:

1. Fair, considerate and sympathetic treatment by the police, hospitals, welfare organizations, prosecution and courts;
2. Prompt restitution/compensation to the victim for the injury or loss suffered by using the existing provisions; and
3. Security to victims and potential victims against victimization in future.

The various assistance and services to victims during crime investigation include the following:

1. The first step in assisting the crime victim is
   a. to facilitate their access to services that already exist; and
   b. to get redressed from the impact of crime

   This is partly a question of getting information from the victims, partly encouraging the victims to apply for services and partly sensitizing the service to the victim’s needs.

2. The police could improve their support for crime victims by ensuring the responding officer to provide the victim with a card that identifies key telephone numbers of organizations available in the community. The card should also contain:
   a. the file number (crime number) of the case;
   b. the name of the officer investigating the case; and
   c. the phone number to contact regarding enquires about the progress of the case.

3. A victims support unit should be located in the police department, preferably at the sub-divisional level to co-ordinate matters relating to crime victims.

If the above stated steps are implemented by the law enforcement agencies in India, the position of victims in the criminal justice system will be improved substantially.

**Conclusion**

In the current decade of victimological research, there is a substantial interest in the study of impact of crime on victims and ways to assist them. Assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of crime. The problems of crime victims and the impact of crime on them is varied and complex. Therefore, the agencies of the criminal justice system should be receptive to the needs of the victims of crime and address their issues sincerely and empathetically. Like in the United States, Europe and the other developed countries, both the Government of India and the State Governments should enact exclusive legislations for victims of crime, as the existing provisions in the criminal laws are not sufficient. A ray of hope is the recommendations of the Committee on Reforms of Criminal Justice System headed by Justice V. S. Malimath. The Com-
committee has emphasized the need for a paradigm shift in the justice system. Hence, the Government of India may have to take efforts to implement the recommendations of the Committee on Reforms of Criminal Justice System. There should also be a change in the focus from criminal justice to victim justice, but victim justice should be perceived as complementary and not contradictory to criminal justice.

References


List of Cases


Žrtve i krivičnopravni sistem u Indiji: nužnost promene paradigme unutar sistema pravosuđa


Na osnovu podataka Nacionalnog biroa za registriranje podataka o kriminalitetu 39% krivičnih dela u Indiji 2005. godine činili su delikti protiv života i tela, 35.3% krivična dela protiv imovine, 5.9% krivična dela protiv javnog reda, 6.3% krivična dela protiv privrede; 8.2% činile su krađe izvršene provaljivanjem, 24.8% obične krađe, itd. Posledice viktimizacije na žrtve različitih vrsta krivičnih dela bile su raznovrsne, uključujući fizičke, psihičke i materijalne. Emocionalne, kao i materijalne posledice viktimizacije mogu trajati nekoliko meseci ili godina, a u nekim slučajevima do kraja života. Stoga, posledice viktimizacije upućuju na urgentnu potrebu namesto tačnijeg prepoznavanja viktimizacije, već i zaštite žrtava i pružanja svih oblika pomoći i podrške za vreme i nakon krivičnog postupka.

Analiza sudske prakse sadržana u ovom radu nagoveštava da sudovi u Indiji, makar oni višeg stepena, počinju da uzimaju u obzir potrebe žrtava i neophodnost ublažavanja njihovog stanja i gubitka, u meri u kojoj je to moguće, naknadom štete. Ipak, obuhvatnija analiza postojećih propisa u indijskom zakonodavstvu koji se odnose na obezbeđivanje pravde za žrtve krivičnih dela pokazuje da Indiji još uvek pretrpeli dug put ka tom cilju. Iskustva na međunarodnom nivou, uključujući i iskustvo Sjedinjenih Američkih Država, govore da mnogo toga treba učiniti na makro-planu. Ali, postoje određene neposredne i izvodljive mere koje se mogu preduzeti na mikro-planu kako bi se pomoglo žrtvama kriminaliteta u Indiji. S toga je prvi prioritet u čitavom spektru obuhvatne senzitizacija svih uključenih aktera.

Prirodni redosled mera kojima se obezbeđuje sadržajna pravičnost trebalo bi da bude sledeći:
1. Fer, obazrivo i saosećajno postupanje zaposlenih u policiji, bolnicama, socijalnim službama, tužilaštvu i sudovima;
2. Brza restitucija/kompenzacija žrtava za povrede odnosno štetu koju su pretrpele primenom postojećih propisa, i
3. Mere zaštite žrtava i potencijalnih žrtava radi izbegavanja viktimizacije u budućnosti.


Ključne reči: žrtve kriminaliteta, pomoć žrtvama kriminaliteta, pravda za žrtve, restitucija, Indija