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Articulation of Jurisprudential and Theoretical Approaches towards Safeguarding Interests of Victims of Crimes: An Analytical Study

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Abstract

Certain legal aspects also require looking back to the history of origin to analyze how they are being developed slowly and gradually to reach the present stage. One of such important aspects is safeguarding interests of victims of crimes which traces its origin rooted in different cultures, traditions, systems, etc. in different countries, particularly the countries of the world including the West, through jurisprudential demonstrations over time as the humanity progresses. The perception of victims of crimes as it exists in the modern criminal justice is simply a gradual transformation and reflection of jurisprudential contributions made by jurists living in their cultures, traditions, political philosophy and set-up, and systems of administering justice as determined. The history of classical criminal law and its philosophy fundamentally regarded crime as an offence committed against the State thereby relegating victims to the periphery of criminal justice processes. However, the contemporary victimological jurisprudential discourse emphasizes that criminal justice must not only punish offenders, but also be administered to protect, compensate, rehabilitate and empower the victims. This article aims at providing a jurisprudential analysis of conceptual foundation underlying victim protection, and examines the theoretical contributions like that of natural law theory, utilitarianism, positivism, etc. towards safeguarding the interests of the victims, along with international legal developments regarding the victim-centric approaches in criminal justice systems in Indian context. In short, the article displays that the modern victim jurisprudence is a reflection of a paradigm shift from the earlier offender-centric criminal law approaches towards a balanced framework recognizing victims' rights as stakeholders in the justice system. While dealing so, special emphasis is given in victimological jurisprudence in Indian criminal justice system. This transformation is very crucial for achieving the goals of substantive justice reinforcing the legitimacy of criminal justice institutions.

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Key Words: Victims' Rights, Victimology, Jurisprudence, Criminal Justice, Restorative Justice, Human Rights, Compensation, Rehabilitation.

Introduction

Safeguarding the rights or interests of the crime victims is one of the most sensitive issues linked with criminal justice system. Legal scholarships focused on it, but without going into deep ignoring influences of jurisprudential thoughts which offered the best root of its evolution shaping it and providing ideas to grow to suit the present system. The evolution of victim-oriented criminal jurisprudence is prolonging and has generated extensive academic discourse across the disciplines of jurisprudence, criminology, victimology, sociology, human rights law, and criminal justice administration. As is evident, the early criminal law scholarship predominantly focused upon offenders, punishment, and State authority, while victims remained largely invisible within theoretical frameworks. However, the emergence of victimology in the mid-twentieth century transformed legal scholarship by foregrounding the experiences, rights, and interests of victims.

It reveals that there has been a gradual transition from offender-centric criminal justice to victim-sensitive legal systems. Contemporary scholars examine victimization not merely as an individual injury but as a multifaceted phenomenon involving social, economic, psychological, and legal dimensions. Yet, jurisprudential insights are, in most cases, lacking which may prove to be more fruitful in explaining theoretical approaches towards safeguarding the interests of crime victims. It is equally important to articulate safeguarding victims' interests in the light of jurisprudential contributions by different jurists associated with schools of law.

The Objectives of the Study:

The prime objectives of the study are:

- (1) To examine the rights of victims of crimes in Indian context,
- (2) To assess the jurisprudential roots requiring victim protection in criminal justice system,

- (3) To evaluate conceptual contributions of different schools of law towards safeguarding victims' interests,
- (4) To analyze international legal developments towards protecting victims' rights, and
- (5) To suggest measures to strengthen victim-oriented criminal justice in India.

Literature Review

Since the doctrinal research method is adopted here to develop the present research article, certain literature has been studied which includes books, journals publications, etc. A few of such reviews of literature are as mentioned below:

(1) Hans Von Hentig, *The Criminal and His Victims*, Yale University Press, 1948

In this book, the author introduces the idea that crime results from the interaction between the offender and the victim which he calls the criminal-victim relationship and emphasizes on that the victims also play a very important role in understanding it. The book made a significant departure from the offender-centric criminal law and procedure by emphasizing the characteristics and circumstances that may increase a person's vulnerability to victimization. He introduced the concept that, in some situations, victims may unintentionally contribute to the circumstances leading to crime through their behavior or vulnerability. This idea later became known as victim precipitation theory. One of the most influential contributions of this book is its classification of victims according to their vulnerability. Hentig identified different categories of victims, such as the young, women, the elderly, persons with mental illness or disabilities, immigrants, racial and social minorities, the intellectually simple or inexperienced, the depressed, and the acquisitive (greedy), and so on.¹ These categories illustrate clearly how biological, psychological, and social conditions. The book is widely recognized as laying the intellectual foundation of modern victimology.

(2) Jeremy Bentham's *An Introduction to the Principles of Morals and Legislation* (1789)

This book is a foundational text of modern political philosophy, jurisprudence, and ethics. In this book, Bentham formulates the doctrine of utilitarianism, arguing that the moral worth of

¹ Hans Von Hentig, *The Criminal and His Victims*, Yale University Press, 1948

actions, laws, and institutions should be judged according to their tendency to promote "the greatest happiness of the greatest number." Bentham sought to replace arbitrary customs and natural-right theories with a rational and measurable principle for evaluating morality and legislation. He begins by asserting that human beings are governed by pleasure and pain. Every human action is motivated by the pursuit of pleasure or the avoidance of pain. Bentham says that Nature has placed mankind under the governance of two sovereign masters, pain and pleasure.² For this purpose, he develops the Principle of Utility, according to which actions are morally right if they maximize happiness of the greatest number minimizing suffering and held that legislation should be designed to produce the greatest overall benefit for society rather than protect inherited traditions or abstract rights.

(3) Ezzat A. Fattah, "Victims and Victimology: The Facts and the Rhetoric", (1989) 1 International Review of Victimology, 43- 66

The article being a landmark in the theoretical development of victimology, the author, Fattah argues that while the advancement of victims' rights is considered essential, victimology must retain its objectivity as a social science and avoid becoming merely an instrument of activism. This article introduces an important distinction between scientific victimology and humanistic victimology. Scientific victimology is concerned with objective research into victimization, victim-offender relationships, and crime prevention while the humanistic victimology focuses on promoting victims' rights, compensation, assistance, and legal reforms. Fattah argues that both approaches are valuable, but they should remain conceptually distinct to preserve academic integrity. He maintains that victimology should remain intimately connected with criminology as both the disciplines aim to explain crime through the interaction between the offender, the victim, and the surrounding circumstances emphasizing on the understanding that victimization requires examining situational factors, social conditions, and victim-offender relationships rather than focusing exclusively on either the offenders or the victims.³

(4) Annemarie ten Boom and Karlijin F. Kuijpers, "Victims' Needs as Basic Human Needs", (2012) 18 (2), *International Review of Victimology*, 155 - 179

² Bentham, *An Introduction to the Principles of Morals and Legislation*, 1907, p. 1

³ Ezzat A. Fattah, "Victims and Victimology: The Facts and the Rhetoric", (1989) 1 *International Review of Victimology*, 43- 66

In this article, the authors examine the crime victims' needs through the lens of basic human needs theory conducting a systematic review of 33 empirical studies to identify the common needs of crime victims to determine whether these needs differ with varying types of crime, gender, ethnicity or repeat victimization. The authors find that the victims' needs are not merely legal or procedural, but are the fundamental human needs which should guide the criminal justice policy and the victim support services.⁴ The article focuses on that the victims seeks not only the justice, but also safety, dignity, emotional support, information, recognition and restoration after experiencing crime, and these needs are very important for their recovery and well-being rather than being merely optional services.

Research Questions

In order to achieve the goals of the study, certain research questions are set as put below:

- (1) What is the jurisprudential basis underlying safeguarding the interests of the victims of crimes?
- (2) What are different angles and how the schools of law jurisprudentially conceptualize it?
- (3) How does the concept of restorative justice transform conventional understandings of safeguarding and protecting victims' interests or rights?
- (4) To what extent, does human right jurisprudence help in it?
- (5) Is Indian criminal legal system adequately safeguarding victims' interests?

Methodology

The study is doctrinal, analytical, and interdisciplinary in nature. It primarily examines jurisprudential theories from books on jurisprudence and victimology, legal principles, statutory provisions, judicial decisions, international instruments, and scholarly writings collected from journals, research articles and internet concerning victims' rights and interests.

Definition of Victims & Victims' Rights

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) in Paragraph 1 defines victims as persons who individually or collectively have suffered

⁴ Annemarie ten Boom and Karlijin F. Kuijpers, "Victims' Needs as Basic Human Needs", (2012) 18 (2), *International Review of Victimology*, 155 – 179

physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights through acts or omissions that violate criminal laws. The Declaration further extends protection to family members, dependents, and individuals who suffer harm while assisting victims or preventing crime. One important innovation of the Declaration is the inclusion of victims of abuse of power, thereby extending protection beyond conventional criminal offences to encompass serious violations committed by public authorities.

The 1985 Declaration recognizes numerous victim rights, such as (a) right to dignity, (b) right to respect, (c) right to participation, (d) right to information, (e) right to speedy justice, (f) right to compensation, (g) right to restitution, (h) right to legal assistance, (i) right to rehabilitation, (j) right to privacy, (k) right to protection, (l) right against intimidation, and (m) right to social assistance. These rights have become the foundation of modern Victimology.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)

The traditional approach towards the issue of administration of criminal justice has remained concerned with investigation, prosecution, and punishing the offenders, if and when proved guilty beyond reasonable doubt, and for centuries, the victims' role was ignored and they remained a neglected participant in criminal proceedings, received little recognition only as serving witnesses. The emerging of international human rights law in the latter half of the twentieth century emphasized upon the need to recognize victims as independent holders of rights deserving of justice, restitution, compensation, and rehabilitation. The international instrument adopted by the United Nations General Assembly through Resolution 40/34 on 29 November 1985, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was a landmark in victim-oriented justice which set internationally accepted standards for the treatment of victims, and seeks to ensure that victims receive fair treatment, access to justice, restitution, compensation, and necessary assistance.

The Basic Principles of the Declaration

The 1985 Declaration was structured based on four key themes: (a) access to justice and fair treatment, (b) restitution, (c) compensation, and (d) assistance. First of all, victims should be treated with compassion, dignity, respect throughout criminal proceedings, and they should have

prompt access to justice, and can receive information concerning their rights, participate appropriately in the proceedings, and are protected from intimidation and unnecessary inconvenience.⁵ Secondly, restitution should be considered as an integral component of criminal proceeding. To achieve this, the Declaration encourages the offenders or responsible third parties to provide restitution including the return of property, re-imbursement of expenses, compensation for losses, and restoration of legal rights.⁶ Thirdly, where restitution is unavailable or insufficient, States should establish national compensation schemes to assist victims suffering serious bodily injury of families of deceased victims. Such compensation should include medical expenses, rehabilitation costs, loss of income, and financial supports for dependants.⁷ Lastly, the victims should receive appropriate medical, psychological, legal and social assistance, and for this purpose, the governments are also encouraged to establish specialized victim support services, crisis centers, and undertake rehabilitation programs.⁸ Thus, the Declaration enabled transforming criminal justice system by shifting its focus from an exclusively offender-oriented model to a balanced system that acknowledges the victims' rights. The Declaration recommends that restitution should become a sentencing option in criminal cases.

Categories of the Victims' Needs

In an article, the authors, Annemarie ten Boom and Karlijn F. Kuijpers⁹ have classified victims' needs under several broad categories as those victims who need (a) emotional support and counseling, (b) information about legal proceedings, (c) protection and personal safety, (d) recognition and respectful treatment, (e) financial compensation and restitution, (f) practical assistance, and (g) participation in the criminal justice process. The authors argue that these needs should guide both the criminal justice agencies and victim support organizations.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) is one of the most significant international instruments recognizing and protecting the rights of victims within criminal justice systems. Although the Declaration is not

⁵ The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), *Para 4 – 6*

⁶ Ibid. Para 8 -1

⁷ Ibid. Para 12 -13

⁸ Ibid. Para 14 – 17

⁹ Annemarie ten Boom and Karlijn F. Kuijpers, "Victims' Needs as Basic Human Needs" (2012) 18(2) *International Review of Victimology* 155–179

legally binding, it has greatly influenced national legal systems, judicial reforms, victim compensation schemes, and restorative justice initiatives across the world, including India. It is, no doubt, true that India has not till now enacted any single comprehensive Victims' Rights Act, yet many of the principles of the Declaration have been adapted and incorporated into the Indian law including the Constitution.

Victims of Abuse of Power

The Declaration also recognizes victims of abuse of power. These include persons harmed by illegal detention, torture, police brutality, arbitrary arrest, discrimination, human rights violations, corruptions, and misuse of governmental authority. This provision is particularly significant because many domestic legal systems historically ignored state-inflicted victimization.

Now, in the light of the above Declaration, Victims' Rights and Victims of Abuse of Powers, let's highlight how, from jurisprudential point of view, different theories of law support safeguarding the victims' rights and what are their contributions towards it. Let's start with the natural philosophy of law.

The Natural Law Theory

Natural Law theory of Jurisprudential thought maintains that law derives its legitimacy from the universal moral principles inherent in human nature. According to natural law thinkers including Thomas Aquinas, John Finnis, etc, every human being possesses inherent dignity and certain inalienable rights that exist independently of State recognition. This theory holds that crime constitutes a violation of these natural rights and thus creates a moral obligation upon the State to restore and protect the victims of crime. From this point of view, criminal justice should not only focus on punishing the offenders, it must also restore the victim's violated rights. For example, X committed murder due assault and battery committed against his person by Y or provoked by him. X had the right not to be assaulted, but in fact Y did it and was killed by X, even though he did not intend to commit. X is the offender as murder was proved. But what about X's natural right? Therefore, the victim's entitlement to justice, compensation, protection, and respect flows from the intrinsic worth of the human person. Thus, victim compensation schemes, witness protection mechanisms, and rehabilitative measures are justified as

requirements of moral justice. The Natural law scholars argue that a legal system which neglects victims of crime fails to fulfill its fundamental purpose of achieving justice and protecting human dignity. Contemporary human rights jurisprudence, which recognizes victims' rights to remedy and reparation, largely reflects natural law ideals.

The Utilitarian Theory

Jeremy Bentham and John Stuart Mill are the eye-openers to support safeguarding of interests of crime victims under the utilitarian philosophy of law. Utilitarianism evaluates the legal institutions including having concern with criminal justice system according to their ability to maximize overall social welfare. This has direct link with the fact that protection of crime victims serves many important social purposes by reducing their sufferings, enhancing their confidence in the criminal justice system resulting in increase of welfare, encouraging crime reporting and promoting social stability. This theoretical approach supports victim assistance programmes which contribute to the welfare of both the individuals, i.e. crime victims and the society. If the victims are neglected, public faith in the legal institutions would decline and social costs increase. Therefore, victim-oriented measures are justified because they generate greater overall happiness and social utility.

The Social Contract Theory

Thomas Hobbes, John Locke, and Jean-Jacques Rousseau are the supporters of this theory. According to the Social Contract theory, the State has the obligation toward victims of crime based on the idea that individuals initially surrender certain freedoms to the State in exchange for protection of life, liberty, and property. When the State fails to prevent crime, it incurs a responsibility to assist those harmed by criminal conduct. The theory emphasizes on that the citizens trust the State as agreed to maintain public order and security and protection of their rights. If a crime occurs, the victim suffers despite the arrangement made by the State. Therefore, the State owes a duty to provide effective remedies, compensation, access to justice and protection the victims from further victimization.

The Right- Based Theory

The main supporters of this theory are Ronald Dworkin and H. L. A. Hart. This is also subsequently supported by the United Nations through its “Basis Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law” in 2005. The Rights-based jurisprudence views that the victims are the holders of enforceable rights rather than becoming the passive participants in criminal proceedings. Under this approach, victims possess rights to dignity, participation, information, restitution, protection, and effective remedies. The emergence of victims' rights movements across world-wide jurisdictions clearly reflects a shift from offender-centric criminal justice toward a more balanced model recognizing the interests of all stakeholders in the criminal proceedings. This theory supports procedural rights such as victim impact statements, legal representation, and compensation.

The Corrective and Restorative Justice Theory

Aristotle,¹⁰ are the eminent supporters of Corrective Justice Theory while Howard Zehr¹¹ supports the Restorative Justice Theory. Both the theories place the victims at the centre of the justice process. The Corrective Justice Theory focuses on rectifying wrongful losses caused by one person to another. Since the crime creates an imbalance by inflicting harm upon the victim, justice therefore requires restoration of the victim's position as far as possible. This theory favors restitution and compensation, and the offender should repair the harm caused, and if the offender is unable to do so, the State may provide compensation to ensure justice is achieved.

In the same way, the traditional retributive models that focus primarily on offenders and punishment, the restorative justice also seeks to repair harm through dialogue, accountability, restitution, and reconciliation. The restorative justice theory further recognizes that victims have emotional, psychological, and material needs that punishment alone cannot satisfy. Victim participation becomes essential in determining how harm should be repaired.

Feminist Jurisprudence

¹⁰ Nicomachean Ethics (Terence Irwin trans., Hackett Publishing 1999) Book V and Ernest J. Weinrib [The Idea of Private Law (Oxford University Press 2012) 56–83

¹¹ Changing Lenses: A New Focus for Crime and Justice (Herald Press 2015) 181–209

Catharine A. Mackinnon¹² and Martha Albertson Fineman¹³ are the profounder and supporter of the feminist movement. The feminist jurisprudence highlights how traditional legal systems have often marginalized victims, particularly women and vulnerable groups. It argues that criminal justice must recognize power imbalances and the lived experiences of victims. This approach supports victim-sensitive procedures, protection against secondary victimization, trauma-informed investigations, and recognition of psychological harm. The feminist scholars contend that safeguarding victims promotes substantive equality and human dignity.

Jurisprudential and Theoretical Analysis: An Explanation

The theoretical study on safeguarding victims' rights has gradually developed through several jurisprudential perspectives over time including natural law theory, legal positivism, restorative justice theory, therapeutic jurisprudence, feminist jurisprudence, critical victimology, human rights jurisprudence, and procedural justice theory. These theoretical perspectives collectively seek to redefine the relationship between the victim, the offender, and the State.

As is observed, the earliest philosophical foundations concerning victims can be traced to Aristotle's conception of corrective justice. In *Nicomachean Ethics*, Aristotle argued that justice requires rectification of losses suffered through wrongful conduct.¹⁴ This perception became the philosophical precursor of modern compensation and restitution principles.

It has also been seen that the philosophy of safeguarding the interests of crime victims receives strong support from several jurisprudential traditions, theories and legal literatures. For e.g. the Natural Law theory emphasizes upon the human dignity and moral rights. Thomas Aquinas further developed the idea that justice requires restoration of moral equilibrium disturbed by wrongful acts. Aquinas viewed law as an instrument for securing common good and protecting individual rights.¹⁵ The British positivism initiated by John Austin's substantially influenced criminal law by emphasizing sovereign authority and legal certainty. Austin's framework, however, offered limited space for victim participation because criminal law was conceived primarily as an instrument of State control. H.L.A. Hart similarly focused upon legal structure and institutional legitimacy rather than victim experiences. Although Hart

¹² *Toward a Feminist Theory of the State*, (Harvard University Press, 1989), pp. 237-249

¹³ *The Autonomy Myth*, The new Press, 2004, pp. 47- 68

¹⁴ Aristotle, *Nicomachean Ethics* (Terence Irwin trans., Hackett Publishing 1999) Book V.

¹⁵ Thomas Aquinas, *Summa Theologica*, translated by Fathers of the English Dominican Province (Benziger Bros., 1947) Part I-II, Q. 95, Art. 2.

acknowledged social interests, victim rights remained peripheral to positivist legal theory.¹⁶ As opposed to it, John Locke's social contract theory significantly influenced modern victim protection jurisprudence. Locke argued that governments are instituted primarily to secure life, liberty, and property.¹⁷ Criminal conduct violating these rights creates a corresponding obligation upon the State to provide remedies and protection. Under this theory, the State's responsibility extends beyond prosecuting offenders to ensuring that victims receive meaningful support and redress. With a similar tune, the Rights-Based theory further recognizes victims as rights-holders. It aligns closely with constitutionalism and international human rights law, both of which emphasize access to justice and effective remedies for rights violations. The Utilitarianism promotes victim welfare for social benefit. It also supports modern criminal justice policies that provide counseling, compensation, and rehabilitation for beneficial consequences of society as a whole.

In addition to the above, the Corrective Justice theory demands restoration of harm while the Restorative Justice theory centres the victim in the justice process. In support of Restorative justice, Howard Zehr's *Changing Lenses* revolutionized criminal justice thinking by conceptualizing crime as harm to persons and relationships rather than merely violations of law.¹⁸ John Braithwaite also expanded restorative justice theory through his concept of reintegrative shaming and responsive regulation.¹⁹ It is agreed that restorative processes enhance victim participation, empowerment, healing, and satisfaction compared to conventional criminal justice mechanisms. Thus, both the theories shifts attention from abstract punishment to the concrete injury suffered by the victim and emphasizes restoration of rights and interests. Victim-offender mediation, family group conferencing, and community-based reconciliation processes are practical manifestations of restorative justice principles.

The Feminist Jurisprudence further addresses structural inequalities, and has significantly influenced laws concerning sexual offences, domestic violence, and victim protection mechanisms. In this context, Catharine MacKinnon argues that traditional legal doctrines frequently obscure structural harms suffered by women.²⁰ Susan Estrich's scholarship on rape law exposes historical biases within criminal justice systems. Martha Fineman's vulnerability theory reconceptualizes State obligations toward victims by emphasizing universal human vulnerability and dependency.²¹ Feminist victimology, thus, demonstrates that victimization frequently reflects broader social inequalities and power structures. The human rights

¹⁶ H. L. A. Hart, *The Concept of Law* (3rd edn., Oxford University Press 2012) 183–200

¹⁷ John Locke, *Second Treatise of Government* (Hackett Publishing 1980) 66–75

¹⁸ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Herald Press 2015) 181–209

¹⁹ John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989)

²⁰ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, 1989)

²¹ Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State* (2010) 60 *Emory Law Journal* 251

approach regards victims' interests as part of the broader framework of fundamental rights. Victims possess rights to dignity, security, participation, remedy, and reparation. International instruments increasingly recognize that States have positive obligations to protect victims and provide effective remedies. The philosophy of victim protection therefore becomes an essential component of human rights governance. This approach has influenced constitutional courts and international tribunals in developing victim-centred standards of justice.

It is, thus, seen that collectively, these theories provide a robust philosophical foundation for modern victim-centric criminal justice systems and support the development of laws ensuring compensation, participation, protection, rehabilitation, and access to justice for victims of crime. Therefore, the modern philosophy of victim protection is not merely a policy choice but is supported by several jurisprudential schools of thought. Different theories of law provide distinct justifications for recognizing and safeguarding the rights, dignity, participation, compensation, and rehabilitation of victims of crime.

It is to be noted here that the foundations of modern victimology were laid by Hans von Hentig, Benjamin Mendelsohn, and Marvin Wolfgang. Hans von Hentig's work *The Criminal and His Victim* challenged offender-centred criminology by emphasizing the role and characteristics of victims in criminal events. He argued that victimization could not be understood without examining interactions between offenders and victims.²² Benjamin Mendelsohn, often described as the father of victimology, developed classifications of victims and advocated recognition of victim interests within criminal justice systems.²³

The modern victims' rights movement is extensively documented by Andrew Ashworth, Sandra Walklate, Jo-Anne Wemmers, and Douglas Evan Beloof. Andrew Ashworth's writings emphasize balancing victims' rights with defendants' rights while maintaining procedural fairness. He argues that victims deserve meaningful participation without compromising due process.²⁴ Sandra Walklate examines victimization from sociological and feminist perspectives and critiques State-centric criminal justice structures that marginalize victims. Jo-Anne Wemmers' scholarship highlights victims' psychological needs, procedural justice, and the importance of respectful treatment by criminal justice institutions. Douglas Beloof further argues that victims should be recognized as constitutional participants in criminal proceedings rather than passive witnesses.

²² Hans von Hentig, *The Criminal and His Victim* (Yale University Press, 1948)

²³ Benjamin Mendelsohn, "A New Branch of Bio-Psycho-Social Science: Victimology" (1956) *International Review of Criminology*

²⁴ Ashworth, Andrew, *Sentencing and Criminal Justice* (Cambridge University Press, 6th edn., 2015)

Constitutional Framework: Reflection of Jurisprudential Theories

Let's first consider it from Constitutional jurisprudential point of view. Even though the Indian Constitution was enforced much before the Declaration was made, yet it has been found that there are several provisions in the Indian Constitution which directly or indirectly support victims' rights. In simple words, the Constitution of India provides the normative foundation for victim protection. For example, Article 14 of the Constitution guarantees equality before law, i.e. law treats all equal and is entitled to equal protection by law. Therefore, the victims are also entitled to equal protection of laws, i.e. equal treatment within the criminal justice process. Similarly, Article 21 of the Constitution has guaranteed protection of life and personal liberty as per procedure established by law, and therefore, the victims are also to derive benefits out of it. Victims' rights have now formed a part of the constitutional jurisprudence in India under the Article 21. The Supreme Court of India has also interpreted Article 21 in many of its judicial pronouncements to include significant victims' rights like right to fair investigation, fair trial, compensation, dignity and rehabilitation, and protection against arbitrary State action.²⁵ These two Articles form an important part of Part-III of the Indian Constitution dealing with Fundamental Rights guaranteed to the citizens of India. In Part-IV of the Constitution comprising Directive Principles of State Policy also, certain provisions are made available to the victims of crime belonging to weaker sections to receive legal assistance. For instance, under Article 39 A, free legal aid at the expense of the State is to be provided to the categorized victims to ensure equal justice. In other words, Article 39A directs the State to ensure equal justice through free legal aid, thereby facilitating access to justice for economically disadvantaged victims.

Legislative Measures: Reflection of Jurisprudential Theories

Besides the constitutional provisions, there are statutory provisions also made available to the crime victims in India. These are the remarkable adaptations of the UN Declaration concerning victim compensation scheme. Recently, through the criminal procedure reforms, it has been made more effective and clear on this point. For example, the Bharatiya Nagarik Suraksha Sanhita, 2023, which was earlier known as the Code of Criminal Procedure, 1973, introduced provisions enabling State Governments to establish Victim Compensation Schemes, and accordingly, compensation may be awarded even where the offender is not identified or cannot pay. The criminal courts may also direct compensation to victims in appropriate cases in addition to imposing punishment. Even the Supreme Court of India has repeatedly emphasized

²⁵ Nilabati Behera v. State of Orissa, (1993) 2 SCC 746

that compensation is an important element of criminal justice. Even in many cases, the victims have been given limited rights to appeal against acquittal, lesser punishment and inadequate compensation. This indicates a major departure from the earlier offender-focused criminal procedure.

Again, under the Legal Services Authorities Act, 1987 the victims have been provided with certain opportunities to be availed as to free legal aid, legal counseling, victim assistance, mediation and awareness programmes. The National, State and District Legal Services Authorities assist victims in obtaining compensation. Furthermore, under certain situations, the victims frequently face threats from the offenders. To overcome such situations, India has introduced measures like witness protection scheme, identity protection, police security, relocation in exceptional cases, and in-camera proceedings. These measures reflect the Declaration's requirement of protecting victims from intimidation.

Apart from these, some special legislation has also been operating in this area to protect the victims incorporating the victim-oriented principles. For example, the Protection of Women from Domestic Violence Act, 2005 provides the victims with protection orders, residence rights, monetary relief, counseling and shelter homes. The Protection of Children from Sexual Offence Act, 2012 also provides child-friendly procedures, confidentiality, speedy trial, compensation and psychological support to the child victims. Similarly, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 further provides compensation, rehabilitation, protection, special courts and relief measures. In the same way, the Sexual Harassment of Women at Workplace Act, 2013 provides necessary complaint mechanism, compensation, confidentiality and protection against retaliation.

Judicial Contribution and Jurisprudential Developments

Now, let's examine how far Indian judiciary supports following and incorporating the basic philosophy of these theories and principles of the 1985 Declaration reflected in its pronouncements. Throughout its long journey, particularly since independence of the country, the Supreme Court of India has consistently expanded victims' rights through progressive interpretation which reflects in most of its cases the messages carried forwards by these theories and placed from time to time by different international instruments including the 1985 Declaration for safeguarding victims' rights. In *Rattan Singh*

vs. State of Punjab,²⁶ the Court observed that compensation to victims is an important aspect of criminal justice. This clearly reflects the influence of corrective and restorative justice with due recognition given to the victim's right to receive compensation. In short, in this case, the Court emphasized that compensation forms an integral part of criminal justice.

In *Bodhisattwa Gautam vs. Subhra Chakraborty*,²⁷ the Court recognized that rape is not merely an offence against an individual but a violation of fundamental rights and awarded interim compensation to the survivor under Article 21. This judgment is a reflection of jurisprudential articulation of multiple theories belonging to legal thoughts like that of the Natural Law Theory, Utilitarian approach, Right-based theory including the influence of the feminism which is one of the most current waves found in the present-day world.

In *Delhi Domestic Working Women's Forum vs. Union of India*,²⁸ the Supreme Court directed the State to provide legal representation, counseling, compensation, and support services to victims of sexual offences, laying the foundation for a victim-centred approach. This judgment is a clear reflection of the Social Contract theory which provides that the State has the obligation toward victims of crime based on the idea that individuals initially surrender certain freedoms to the State in exchange for protection of life, liberty, and property apart from influence of other philosophies including feminist views.

There are so many cases of different High Courts of India and the Supreme Court which reflect influences of jurisprudential theories directing the State to pay compensation to victims. These are only the examples like large drops of water in the vast ocean. In *Nilabati Behera vs. State of Orissa*,²⁹ the Court further held that constitutional compensation may be awarded for custodial death and violations of fundamental rights, thereby extending protection to victims of abuse of power. Similarly, in *Laxmi vs. Union of India*,³⁰ the Court directed all States and Union Territories to establish compensation schemes and provide free medical treatment for acid attack survivors. Again, in *Ankush Shivaji Gaikwad vs. State of Maharashtra*,³¹ the Supreme Court emphasized that compensation is an essential component of sentencing and that courts must

²⁶ (1979) 4 SCC 719

²⁷ (1996) 1 SCC 490

²⁸ (1995) 1 SCC 14

²⁹ (1993) 2 SCC 746

³⁰ (1993) 2 SCC 746

³¹ (2013) 6 SCC 770

actively consider awarding compensation to victims. Thus, the Supreme Court has consistently expanded the scope of victims' rights.

Supreme Court of India Judgments on Victim Compensation

The Supreme Courts explains the evolution of victim compensation and expands it setting up norms under Sections 357 and 357A of the Code of Criminal Procedure, 1973 (now reflected in the victim compensation framework under the Bharatiya Nagarik Suraksha Sanhita, 2023) in different cases from time to time exercising constitutional powers.

(1) Hari Singh vs. Sukhbir Singh, (1988) 4 SCC 551

In this case, the accused assaulted the complainant and caused injuries. The trial court convicted the accused but did not award compensation to the victim. The issue before the Supreme Court was whether compensation should accompany punishment.

The issues involved in the case were that whether criminal courts have power to award compensation to victims, and whether compensation should be considered in every criminal case.

Based on the reasons, the Supreme Court observed that punishment alone is often insufficient. The Court stated that the victim suffers physical, financial and emotional loss, compensation helps repair the injury suffered, and Section 357 CrPC was enacted to make criminal justice more meaningful. The Court criticised courts for rarely using Section 357.

The Supreme Court held that courts should liberally exercise power under Section 357 CrPC., compensation should become an integral part of sentencing, and Trial courts must consider compensation in every appropriate case. The importance of this case lies in that this is regarded as the first landmark judgment encouraging victim compensation in India.

(2) Bodhisattwa Gautam vs. Subhra Chakraborty (1996) 1 SCC 490

In this case, a woman alleged that the accused had sexual relations with her on the false promise of marriage, and criminal proceedings were pending. She sought financial assistance during the trial. The issue involved is whether compensation can be granted before completion of trial. The Court held that

rape violates Article 21, and a rape victim deserves dignity and rehabilitation. Since criminal proceedings often take years, and waiting until conviction would defeat justice. Therefore, the Supreme Court ordered interim compensation during the pendency of trial as Compensation is part of protection of fundamental rights. This case introduced the concept of interim victim compensation, especially in sexual offences.

(3) Ankush Shivaji Gaikwad vs. State of Maharashtra (2013) 6 SCC 770; Criminal Appeal No. 689 of 2009

In this case, the accused was convicted. The trial court imposed sentence but failed to consider compensation. The Supreme Court examined the scope of Sections 357 and 357A Cr. P. C. Therefore, the main issue before the Supreme Court was that is awarding compensation discretionary? And must courts consider compensation in every case? The judgment appeared on 3 May 2013. Justice T.S. Thakur forwarding certain reasons held that compensation is not an afterthought, and Section 357(3) creates an obligation on courts. And courts cannot ignore compensation without recording reasons, and it is also to be remembered that victim rehabilitation is an important goal of criminal justice. The Court analyzed the UN Declaration of Basic Principles of Justice for Victims (1985), Law Commission recommendations, and evolution of victimology. The court pronounced its ruling and held that every criminal court must apply its mind regarding compensation, and if compensation is not awarded, reasons should be recorded. As Section 357A supplements Section 357, victim rehabilitation is a constitutional responsibility. This is the most important judgment on victim compensation in India because it transformed compensation from a rarely used discretion into a judicial duty to consider.

(4) Laxmi vs. Union of India, (2014) 4 SCC 427

This is a case relating to Public Interest Litigation concerning acid attacks in which victims suffered permanent disability and enormous medical expenses. The main question involved in this case were whether acid attack victims are entitled to compensation and whether it is the responsibility of State Governments. Grounded on reasons the Court observed that acid attacks destroy lives permanently. As victims require lifelong rehabilitation, medical expenses are enormous. Section 357A required States to compensate victims. Giving its ruling, the Supreme Court directed that every acid attack victim should receive at least ₹3 lakh compensation and out of this amount, ₹1 lakh should be paid immediately. Free medical treatment should also be

provided. This judgment strengthened State responsibility under Section 357A CrPC for rehabilitation.

(5) Suresh & Another vs. State of Haryana, (2015) 2 SCC 227

In this case, the accused were convicted of murder. During the hearing, the Supreme Court examined whether compensation should be awarded under Section 357A. The issues include the scope of Section 357A, whether courts can recommend State compensation, and also includes whether interim compensation is permissible. The judgment was pronounced on 28 November 2014 and reported in 2015. Grounded on reasons, the Court explained that victims possess independent rights, and compensation is part of restorative justice. Even if the accused cannot pay, the State must compensate. Compensation may be granted even where the accused is acquitted, accused is not identified, and prosecution fails, provided rehabilitation is necessary. In this case, the Court laid down factors for determining compensation: (a) seriousness of offence, (b) nature of injury, (c) loss suffered, (d) medical expenses, (e) rehabilitation, (f) earning capacity, (h) dependency. Giving its ruling, the Court directed that every criminal court must consider Section 357A, and the District Legal Services Authorities should assess compensation. The court further held that interim compensation may also be granted. The importance of this case lies in the fact that this judgment is considered the leading authority on Section 357A Cr. P. C and clarified the State's obligation to rehabilitate victims.

(6) Nipun Saxena vs. Union of India, (2019) 2 SCC 703; Writ Petition (civil) No. 565 of 2012

This case relates to the PIL primarily concerned protection of identity of rape victims in which the Court also examined victim compensation schemes across India. The issues revolve around the uniformity of compensation schemes, adequacy of compensation and rehabilitation of sexual offence victims. The judgment appeared on 11 December 2018. The Court observed that States followed different compensation policies, and amounts varied widely. The Court further observed that victims required medical, psychological and financial rehabilitation. Giving its ruling, the Supreme Court held that there should exist an approved a Model Victim Compensation Scheme, and directed States to implement uniform standards. The Court further held that it should also be expanded compensation for rape victims, and recognized counseling and rehabilitation as essential. This judgment standardized victim compensation schemes across India and strengthened implementation of Section 357A CrPC.

The key principles emerging from these judgments, if summarized, it has been found that victim compensation is an important component of restorative justice. The Courts should actively consider

compensation at the time of sentencing and record reasons if it is not granted. The State-funded compensation under Section 357A is available where compensation from the offender is inadequate or unavailable, including certain cases ending in acquittal or where the offender is not traced, if rehabilitation is warranted. Interim compensation may also be granted in appropriate cases, particularly to aid rehabilitation during the pendency of proceedings. Compensation is intended not merely as financial relief but also to support medical care, psychological assistance, and social rehabilitation. Additionally, victims of serious offences such as rape and acid attacks are entitled to special protection and rehabilitation measures. These Supreme Court decisions collectively established victim compensation as a substantive aspect of India's criminal justice system, shifting the focus from punishment of the offender alone to recognition of the rights, dignity, and rehabilitation of victims

Conclusion and Suggestions

The above discussion has established that safeguarding of victims' rights cannot be thought of without philosophical and jurisprudential background and influences at the broad level and at national level, and also without constitutional and statutory recognition complying with the international guidelines. It has further become obvious that traditionally, criminal justice systems primarily focused on particularly prosecuting offenders and maintaining public order only, while victims were not given any regard and they often remained passive participants with limited rights. Before 1985, it is evident; criminal law primarily aimed protecting the interests of the State. Victims were not deprived from enjoying certain rights and had limited participation in criminal proceedings. Even, compensation was rarely made available to be paid to the crime victims. Emotional and psychological injuries received little attention, and victims of abuse by public authorities lacked effective remedies. But the 1985 Declaration recognized that victims also deserve access to justice, fair treatment, restitution, compensation, assistance, and protection. The Declaration mainly emerged from growing international concern and influence of jurisprudential teachings and thoughts that the crime victims frequently suffered due to insensitive legal procedures may be called "secondary victimization", lack of compensation, intimidation by offenders, and inadequate support services. Recognizing these deficiencies, the United Nations adopted the Declaration to establish internationally accepted standards for protecting victims. India has gradually been incorporating many of these principles through its constitutional provisions, judicial decisions, legislative reforms, and policy initiatives.

Nevertheless, India has several challenges still to face in achieving its goals in safeguarding the rights of the victims of crime.

Towards achieving its goals and to overcome the existing shortcomings, certain legal reforms are suggested as follows:

- (1) Studying victimology and criminal justice from jurisprudential angles may help minimizing several gaps safeguarding rights of crime victims.
- (2) It is not fair examining victims' rights from criminological view point as is done today rather than considering jurisprudential perspectives.
- (3) Since limited efforts have been made to integrate philosophy of natural law, positivism, utilitarianism, corrective justice, restorative justice, feminist jurisprudence, therapeutic jurisprudence, and human rights theory, additional efforts are required towards formulation of a unified analytical framework.
- (4) There is still inadequate examination of how competing jurisprudential theories collectively contribute to contemporary victim-centred criminal justice systems, so its limits should be widened.
- (5) India should go for enacting a comprehensive Victims' Rights Act that consolidates procedural rights, compensation, rehabilitation, and participation of crime victims. Victim support centres should be established in every district. Compensation must be awarded promptly through simplified procedures. Police officers, prosecutors, and judges should receive specialized training in victim-sensitive approaches. Greater emphasis should also be placed on restorative justice, mediation in appropriate cases, and coordinated rehabilitation services involving legal, medical, and social welfare agencies.

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