

MEASURES FOR CRIME VICTIMS IN THE INDIAN CRIMINAL JUSTICE SYSTEM

*Kumaravelu Chockalingam**



I. INTRODUCTION

A. Impact of Crime on Victims

Crime affects the individual victims and their families. Many crimes also cause significant financial loss to the victims. The impact of crime on the victims and their families ranges from serious physical and psychological injuries to mild disturbances. The Canadian Centre of Justice Statistics states that about one third of violent crimes resulted in victims having their day-to-day activities disrupted for a period of one day (31%), while in 27% of incidents, the disruption lasted for two to three days (Aucoin & Beauchamp, 2007). In 18% of cases, victims could not attend to their routine for more than two weeks. A majority of incidents caused emotional impact (78%). Irrespective of the type of victimization, one-fifth of the victims felt upset and expressed confusion and or frustration due to their victimization. Overall, victims felt less safe than non-victims. For example, only a smaller proportion of violent crime victims (37%) reported feeling very safe walking alone after dark than non-victims (46%). Just less than one-fifth (18%) of women who had been victims of violence reported feeling very safe walking alone after dark when compared to their male counterparts.

B. Extent of Crime

In most countries, officially reported crimes are only the tip of the iceberg as many crimes go unreported due to a variety of factors. Crimes such as family violence are hardly reported, for obvious reasons. Even in the case of crimes committed outside the home, offences relating to sexual assault or sexual harassment are also grossly under reported. The recent UN sponsored International Crime Victimization Surveys (ICVS) estimates showed that one in five of all adults will be victimized by a common crime each year, with some of them re-victimized. Violence against women is more prevalent than against men. About twice as many women will be victims of violence in Africa and Latin America as in Europe and Asia. In Africa, Latin America and Asia, victimization of women through violence is more prevalent than that of men. In large cities in Latin America and Africa, 10-15% of adult populations will become victims of violence each year - a rate 50% higher than that of affluent countries (Waller, 2003, p.13). The ICVS (2004) reports an interesting result: the 10 countries with the highest crime rates comprise both very affluent countries such as Switzerland, Ireland and Iceland, and less affluent nations (Estonia, Mexico). This goes against the common belief that poverty is the root cause of crime. Most of the high crime countries are relatively highly urbanized, excepting Ireland (van Dijk, Manchin, van Kesteren, Hideg, 2007 as cited in van Dijk, van Kesteren & Smit, 2007, p. 43).

C. Some Indications of Crime Statistics in India

The Code of Criminal Procedure of India divides offences as cognizable and non-cognizable. Cognizable offences are those for which a police officer can arrest a suspect without a court warrant. Non-cognizable offences are those for which a police officer cannot arrest a suspect without a court warrant. The recent "Crime in India" publication (Government of India, 2007) states that about 1.99 million cognizable offences were registered under the Indian Penal Code (IPC), whereas under the Special and Local Laws (SLL), 3.74 million cognizable offences were registered. In total, 5.7 million offences were registered under both the IPC and SLL. The rate of total cognizable crimes per 100,000 persons during 2007 was 504.5, which rose from 455.7 in 2006.

The percentage share of violent crimes reported was 10.8% of the total number of IPC crimes. Violent crimes have been classified under four categories: those affecting life, those affecting property, those

* Professor of Criminology and Victimology, Deputy Director, Tokiwa International Victimology Institute, Tokiwa University, Mito, Ibaraki, Japan.

affecting public safety, and those affecting women. Significantly, though the share of violent crimes of the total IPC crimes has been showing a declining trend, the share of violent crimes affecting women alone has increased continually from 2003 to 2007. A total of 185,312 incidents of crimes against women, both under IPC and SLL, were reported during 2007 as compared to 164,765 during 2006, recording an increase of 12.5% during 2007. For the total number of crimes under the IPC, the share of crimes against women was 8.8% in 2007. Of the total number of crimes against women, rape offences constituted 7.6%. The actual number of victims of rape was 20,771 out of 20,737 reported rape cases in 2007. Reported rape offences increased by 7.2% in 2007 over 2006. The number of dowry death offences (8,093) in 2007 also increased by 6.2% over the previous year.

II. OVERVIEW OF THE INDIAN CRIMINAL JUSTICE SYSTEM

India derived its criminal justice system from the British model. There is a clear demarcation of the role and powers and functions of the Legislature, Executive, and Judiciary. The judiciary is independent and there is a free press. The penal philosophy in India has accepted the concepts of prevention of crime and treatment and rehabilitation of criminals, which have been reiterated by many judgments of the Supreme Court. Victims have no rights under the criminal justice system, and the state undertakes the full responsibility to prosecute and punish the offenders by treating the victims as mere witnesses.

A. Constitution, Criminal Law and Procedure:

The Indian criminal justice system is governed overall by four laws:

- (i) The Constitution of India
- (ii) The Indian Penal Code
- (iii) The Code of Criminal Procedure of India
- (iv) The Indian Evidence Act

The legislative power is vested with the Union Parliament and the state legislatures and the law-making functions are divided into the Union List, State List and Concurrent List in the Indian Constitution. The Union Parliament alone can make laws under the Union list and the state legislatures alone can make laws under the State list, whereas both the Parliament and the State Legislatures are empowered to make laws on the subjects mentioned in the Concurrent List of the Constitution.

The Constitution of India guarantees certain fundamental rights to all citizens. Under the Constitution, criminal jurisdiction belongs concurrently to the central government and the governments of all the states. At the national level, two major criminal codes, the Indian Penal Code, 1861 and the Code of Criminal Procedure, 1973, deal with all substantive crimes and their punishments, and the criminal procedure respectively to be followed by the criminal justice agencies, i.e. the police, prosecution and judiciary during the process of investigation, prosecution and trial of an offence. These two criminal laws are applicable throughout India and take precedence over any state legislation. All major offences are defined in the Indian Penal Code and these apply to resident foreigners and citizens alike. Besides the Indian Penal Code, many special laws have also been enacted to tackle new crimes. The Indian criminal justice system has four sub-systems which include: Legislature, (Union Parliament and State Legislatures), Law enforcement (Police), Adjudication (Courts), and Corrections (adult and juvenile correctional institutions, Probation and other non-institutional treatment). The legal system in India is adversarial.

III. HISTORY AND DEVELOPMENT OF VICTIMOLOGY IN INDIA

A. Evolution of Victimology in India

At present, a crime victim or a complainant is only a witness for the prosecution. Whereas the accused has several rights, the victim has no right to protect his or her interest during criminal proceedings. Sometimes, even the registering of a criminal case in the police station depends upon the mercy of the police officer: victims suffer injustice silently and in extreme cases, take the law into their own hands and seek revenge on the offender.

Though no separate law for victims of crime has yet been enacted in India, the silver lining is that victim justice has been rendered through affirmative action and orders of the apex court. Besides, many national level Commissions and Committees have strongly advocated victims' rights and reiterated the need for

a victims' law. Studies on crime victims by researchers started in India only during the late 1970s. Early studies were on victims of *dacoit* gangs (i.e. gangs of armed robbers) in the Chambal valley (Singh, 1978); victims of homicide (Rajan & Krishna, 1981); and victims of motor vehicles accidents (Khan & Krishna, 1981). Singh and Jatar (1980) studied whether compensation paid to victims of *dacoits* in Chambal Valley was satisfactory or not. Since the 1980s, many scholars have conducted studies in Victimology, which have been published.

B. Initiatives in Victimology in South India

In 1984, for the first time in India, an exclusive three day Seminar on Victimology was organized involving researchers, academics and practitioners from the CJS. I organized the Seminar when I was Head of the Department of Criminology of the University of Madras (Chockalingam, 1985b).

After 1990, the Department began to offer Victimology as one of the courses or electives for its Master's degree in Criminology and many students took interest and opted to study the subject of Victimology. Many students who joined for doctoral research under my supervision worked on victim related topics such as Fear of Crime Victimization, Rape Victims, Sexual Harassment of Women Victims, Victims of Human Rights Violations etc. to mention a few, and earned their doctoral degrees from the University of Madras. Besides, many Master's degree students in Criminology also did projects on victimological topics and made empirical investigations and added to the victimological literature. Some research projects I conducted under the grants sanctioned by the Indian Council of Social Science Research (Chockalingam, 1993b), Thiruvalluvar Criminology Research Foundation (Chockalingam, 1997) and the University Grants Commission (Chockalingam, 2001) etc. include Psycho-social and Legal Study of Rape Victims; Crime Victimization Survey in four major cities in the State of Tamil Nadu; and Victims of Corruption. Reports of each of these projects were produced.

C. Establishment of the Indian Society of Victimology (ISV)

In August 1992, with my initiative, a forum was founded to discuss the problems of victims, to disseminate knowledge and awareness of the plight of crime victims and to mobilize support for creating a new law for victims. The name of the organization was the Indian Society of Victimology, and it was located in the University of Madras. I was the Founder President and two other senior high ranking police officers, Dr. R. K. Raghavan and Mr. Venkatesan, were Vice Presidents. The ISV organized many seminars and symposia and biennial conferences in Chennai and other capital cities on subjects of topical interest in the field of Victimology. The major contribution of the ISV to the advancement of victimology in India was the organization of a workshop to draft a Victim Assistance Bill. This occurred in September 1996 with the support of the National Law School of India University, Bangalore under the leadership of Professor N. R. Madhava Menon and the National Human Rights Commission (NHRC) under the Chairmanship of the champion of human rights and victim justice, and former justice of the Indian Supreme Court, V. R. Krishna Iyer. The draft bill on Victim Assistance (Indian Society of Victimology, 1996) prepared by the ISV was sent to relevant Ministries, such as the Ministry of Law and Justice and the Ministry of Home Affairs and the Law Commission of India, NHRC, to consider enacting a national law on victim compensation/assistance in India. The UN Commission on Crime Prevention and Criminal Justice, Vienna also supported the initiative of the ISV by writing to the Home and Law Ministries of the Government of India to encourage it to consider enacting a victim law, treating the draft bill on Victim Assistance prepared by the ISV as a model.

Simultaneously, efforts were taken by the ISV to impress upon the State Government of Tamil Nadu the advantages of creating a Victim Assistance Fund for the benefit of crime victims within the state of Tamil Nadu. In consequence, the then Chief Minister of Tamil Nadu announced in the Legislative Assembly in April 1995 the introduction of a new scheme to provide monetary assistance to certain categories of victims of violent crime and allocated ten million rupees as a first step for the scheme (Government of Tamil Nadu, 1995; Government of Tamil Nadu, 1997). Under the scheme, victims of homicide or their bereaved relatives, victims of serious physical injuries including rape, and victims of grievous hurt were eligible for monetary

¹ Bajpai, 1988; Bajpai, 1997; Bajpai, 2006; Chockalingam, 1985a; Chockalingam, 1985b; Chockalingam, 1988; Chockalingam, 1992; Chockalingam, 1993a; Chockalingam, 1995; Chockalingam, 1999; Chockalingam, 2000; Chockalingam, 2003a; Chockalingam, 2003b; Chockalingam, 2005; Chockalingam, 2007; Chockalingam, 2008; Chockalingam & Srinivasan, 1993; Chockalingam & Srinivasan, 1995; Chockalingam & Srinivasan, 2007; Chockalingam & Srinivasan, 2008; Chockalingam & Srinivasan, 2009; Chockalingam & Vijaya, 2008; Jaishankar, 2007; Rajan, 1981; Senthilathiban & Chockalingam, 1984.

assistance from the government, though it is not a right of the victim as it is not a law but only an Executive order of the Government (Chockalingam, 2003a).

IV. BASIC CONCEPTS AND THEORY OF VICTIMOLOGY

A. Basic Concepts

Diverse views exist on the focus and place of the discipline of Victimology. While some believe that Victimology should function as an independent area of enquiry, others view it as a subfield of Criminology. A second issue concerns the breadth of victim related issues to be covered in the field of Victimology. Some scholars advocate that Victimology should limit itself to the study of victim-offender interaction. Others argue that the needs of crime victims, functioning of the organizations and institutions which respond to these needs, and the emerging roles and responsibility for crime victims within the CJS are important areas of inquiry for Victimology. A third issue is the breadth of the definition of the term 'victim'. One approach is to limit the concept to victims of traditional crimes such as murder, rape, robbery, burglary etc. However, it has also been proposed to include a broader definition of the concept by covering groups such as prisoners, immigrants, subjects of medical experimentation, and persons charged with crime but not proved guilty (Doerner & Lab, 2005; Karmen, 2005).

Victim-offender study was the central focus of early pioneers in the field of Victimology, like Hans von Hentig. Hentig explained the concepts of 'victim vulnerability' and 'victim culpability' and gave a typology of victims. 'Victim vulnerability' refers to susceptibility of certain groups of people to victimization, through no fault of their own, but based on certain demographic or other characteristics (e.g. children, elders, women), as these people are more vulnerable to becoming victims. 'Victim culpability' refers to actions on the part of victims that may either invite or precipitate victimization. Deriving from the concept of victim culpability, Wolfgang (1958, p. 254) proposed the concept of 'Victim Precipitation', and in his classic study of homicide victims in Philadelphia, he found that in 26% of homicides, victim precipitation occurred. Although some behaviour of victims may be partially responsible for their victimization, Victimologists are also talking of the danger of '*victim blaming*'. Besides, in Penal or Criminal Victimology, where only the crime victims were included, Benjamin Mendelsohn proposed a new approach called 'General Victimology', to include a wide variety of victims, as he felt that human beings suffer from many causal factors and focusing on the criminal victimization alone under Victimology is too narrow a perspective. According to Mendelsohn (1976:21), "Just as medicine treats all patients and all diseases, just as criminology concerns itself with all criminals and all forms of crime, so Victimology must concern itself with all victims and all aspects of victimity in which society takes an interest".

Victimology institutionalized by the World Society of Victimology could be defined as "the scientific study of the extent, nature and causes of criminal victimization, its consequences for the persons involved and the reactions thereto by society, in particular, the police and the criminal justice system as well as voluntary workers and professional helpers" (van Dijk, 1999). This is a comprehensive definition encompassing both penal or interactionist, and general or assistance oriented Victimology. The UN Declaration (UN General Assembly 1985) on victims describes victims thus: "*Victims* means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws, including those proscribing abuse of power." In the recent decades, many scholars also express the view that while the General Victimology of Mendelsohn is too broad an approach, criminal victimology is too narrow a perspective and suggest that Victimology should evolve as a science of victims of human rights violations, including crime.

B. Theories in Victimology

Victimology does not have many theories exclusively from the perspective of victims. However, some of the theoretical explanations from Criminology of crime causation are borrowed by Victimologists to understand crime victimization. One such theory is the Routine Activities Theory (Cohen & Felson, 1979).

C. The Routine Activities Theory

This theory says that crime occurs whenever three conditions come together: (i) suitable targets; (ii) motivated offenders; and (iii) absence of guardians.

D. Psycho-social Coping Theory

Psycho-social coping is a general theoretical model from which any form of victimological phenomena can be explained. The model uses behavioural versus legal concepts. Phenomenology, Control Theory, Stress Theory, Symbolic Interactionism and Behaviourism are the primary roots of this theoretical model. Most part of the literature on coping has evolved from psychology, dealing with just cognitive responses to various forms of stress (Dussich, 1988). According to Pearlin and Schooler (1978), coping refers to “things that people do to avoid being harmed by life-strains”. To understand how and why some victims are able to overcome life’s problems and some others not, a psycho-social coping model was developed in order to comprehensively deal with psychic, social and physical variables.

A psycho-social coping model is an attempt to explain the dynamics of how people deal with problems in their environment. The term “environment” used in this model is referred to as ‘Coping Milieu’. The main term in the Coping Milieu is the Coping Repertoire, which is made up of a person’s coping skills and supported by four other interacting resources: (i) time; (ii) social assets; (iii) psychic assets; and (iii) physical assets. The coping process is the dynamic component of the model and is made up of four sequential phases:

- Prevention
- Preparation
- Action, and
- Reappraisal

The result component of the coping model is concerned with: (i) either the elimination, (ii) reduction, or (iii) retention of stress. The information obtained from the coping process is fed back to the coping repertoire and in turn the original coping repertoire is altered. The repertoire, problems, coping processes and the products are the key elements of coping (Dussich, 1988; Dussich, 2006). Both social and physical resources help the individuals to deal with stress in specific situations.

V. CURRENT SITUATION OF VICTIMS OF CRIME AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS IN INDIA IN COMPARISON TO INTERNATIONAL STANDARDS

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN General Assembly, 1985), considered the ‘*magna carta*’ for victims, provides the basic framework of principles which in the last two decades have been vociferously debated and converted as victims’ rights by some of the developed countries. The international standards expected of the countries in the treatment of victims by the CJS agencies at different stages of the criminal process have been elaborately detailed in the UN Handbook on Justice for Victims (United Nations Office for Drugs and Crimes, 1999, chapter III, pp.56-76). The police play a pivotal role in victim assistance as it is the first agency victims come into contact with after being victimized by a crime. The attitude of the victims towards the entire CJS will be based on the kind of treatment the victims get from the police whom they first encounter. Unfortunately, in India the police are still not oriented to meet the expectations of the victims as per the UN Handbook on Justice for Victims. The police at the field level who are in actual contact with the victims in day-to-day crime situations are blissfully ignorant of the international developments in the field of Victimology and the better treatment victims deserve from the police. The treatment of victims by the police also forms the basis for a negative perception of the CJS, more particularly, the police, because the “treatment with compassion and respect for their dignity”, emphasized by the UN Declaration, is missing completely. Because of the police behaviour and their attitude in general, the legal community opposes any criminal law reforms which bestow trust on the police and enhance their powers. Even today, Section 25 of the Indian Evidence Act, “No confession made to a police officer shall be proved as against a person accused of any offence”, remains in force. But the Government and the Police Academies pursue a policy of sensitizing the police to a better treatment of victims. The Handbook says that “victims have a valid interest in the prosecution of the case and should be involved at all stages of the proceedings”. In practice, the entire court proceedings protect the rights and interest of the accused, neglecting the victims’ interest. Excepting that the victims are summoned to tender evidence in courts, the various services and assistance to be rendered by the prosecution to victims (p.66-68) are not practiced in the criminal courts in India. In a nutshell, victims are alien to the criminal proceedings as they have no rights excepting to be a witness when summoned by the court. With regard to the role of the judiciary in justice for victims, though judges are by and large sympathetic towards victims, on many of the requirements, such as separate waiting halls, information about the criminal proceedings,

special services and support, ordering of restitution to victims, victim participation, victim protection etc. (p.69-72) we have a long way to go to realize victim justice in India.

However, in the last decade, there is greater awareness on the part of the higher judiciary of the need for a better treatment of crime victims by the criminal justice agencies at different stages in India and this is reflected in the recommendations of the different committees and commissions calling for reforms in the criminal justice system to improve the existing conditions and situations of victims during the criminal justice process and some of the landmark judgments of the apex court in India.

A. Affirmative Action by the Higher Judiciary

1. Restitution to Victims

Despite the absence of any special legislation to render justice to victims in India, the Supreme Court has taken a proactive role and resorted to affirmative action to protect the rights of victims of crime and abuse of power. The court has adopted the concept of restorative justice and awarded compensation or restitution or enhanced the amount of compensation to victims, beginning from the 1980s. (*Sukhdev Singh vs. State of Punjab* (1982 SCC (Cr) 467), *Balraj vs. State of U. P.* (1994 SCC (Cr) 823), *Giani Ram vs. State of Haryana* (AIR 1995 SC 2452), *Baldev Singh vs. State of Punjab* (AIR 1996 SC 372).

2. Justice for Rape Victims - Guidelines for Victim Assistance

In *Bodhisattwa Gautam vs. Subhra Chakraborty* (AIR 1996 SC 922), the Supreme Court held that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, the Court also has the right to award interim compensation. The court, having satisfied the *prima facie* culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date of the complaint. It is a landmark case in which the Supreme Court issued a set of guidelines to help indigenous rape victims who cannot afford legal, medical and psychological services, in accordance with the Principles of UN Declaration of Justice for Victims of Crime and Abuse of Power, 1985:

- (i) The complainants of sexual assault cases should be provided with a victim's Advocate who is well-acquainted with the CJS to explain to the victim the proceedings, and to assist her in the police station and in Court and to guide her as to how to avail of psychological counselling or medical assistance from other agencies;
- (ii) Legal assistance at the police station while she is being questioned;
- (iii) The police should be under a duty to inform the victim of her right to representation before any questions are asked of her and the police report should state that the victim was so informed;
- (iv) A list of Advocates willing to act in these cases should be kept at the police station for victims who need a lawyer;
- (v) The Advocate shall be appointed by the Court, in order to ensure that victims are questioned without undue delay;
- (vi) In all rape trials, anonymity of the victims must be maintained;
- (vii) It is necessary, having regard to the Directive Principles contained under Art. 38 (1) of the Constitution of India, to set up a Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment;
- (viii) Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

3. State Compensation for Victims of Abuse of Power

As early as 1983, the Supreme Court recognized the need for state compensation in cases of abuse of power by the State machinery. In the landmark case of *Rudul Sah vs. State of Bihar* (AIR 1983 SC 1086), the Supreme Court ordered the Government of Bihar to pay to Rudul Sah a further sum of Rs.30,000 as compensation, which according to the court was of a "palliative nature", in addition to a sum of Rs.5,000, in a case of illegal incarceration of the victim for long years. Similarly in *Saheli, a Women's Resources Centre through Mrs. Nalini Bhanot vs. Commissioner of Police, Delhi Police* (AIR 1990 SC 513), the Court

awarded a sum of Rs.75, 000 as state compensation to the victim's mother, holding that the victim died due to beating by the police. In another landmark case of *D. K. Basu vs. State of West Bengal* (AIR 1997 SC 610), the Supreme Court held that state compensation is mandatory in cases of abuse of power and said that "To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience".

B. Recommendations of Commissions and Committees on Justice to Victims in India

During the last decade, there has been significant change in the thinking of the judiciary about the human rights of victims. The concern of the courts and the judicial commissions and committees about the need to have a law on victim compensation or a comprehensive law on victim justice has been reflected in their judgments and reports.

1. The Law Commission of India, 1996

The Law Commission, in its report in 1996, stated that, "The State should accept the principle of providing assistance to victims out of its own funds, (i) in cases of acquittals; or (ii) where the offender is not traceable, but the victim is identified; and (iii) also in cases when the offence is proved" (Law Commission of India Report, 1996).

2. The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003)

The Justice V. S. Malimath Committee has made many recommendations of far-reaching significance to improve the position of victims of crime in the CJS, including the victim's right to participate in cases and to adequate compensation. Some of the significant recommendations include:

- The victim, and if he is dead, his or her legal representative, shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with seven years' imprisonment or more;
- In select cases, with the permission of the court, an approved voluntary organization shall also have the right to implead in court proceedings;
- The victim has a right to be represented by an advocate and the same shall be provided at the cost of the State if the victim cannot afford a lawyer;
- The victim's right to participate in criminal trial shall include the right: to produce evidence; to ask questions of the witnesses; to be informed of the status of investigation and to move the court to issue directions for further investigation; to be heard on issues relating to bail and withdrawal of prosecution; and to advance arguments after the submission of the prosecutor's arguments;
- The right to prefer an appeal against any adverse order of acquittal of the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation;
- Legal services to victims may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization;
- Victim compensation is a State obligation in all serious crimes. This is to be organized in separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration;
- The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. (Government of India, 2003).

3. The National Commission to Review the Working of the Constitution

The Commission to review the working of the Constitution (Government of India, 2002) has advocated a victim-orientation to criminal justice administration, with greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choices to victims in trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.

VI. RECENT LAWS TO CARE FOR AND PROTECT SPECIAL CATEGORIES OF VICTIMS

There are also significant developments in the form of new laws to promote the cause of victims and to mitigate the sufferings of potential victims of vulnerable sections of the population such as women, children

and elders. The recent enactments passed by the Parliament have a significant bearing on preventing victimization and giving relief to victims:

A. The Protection of Women from Domestic Violence Act, 2005

“The Protection of Women from Domestic Violence Act, 2005” is a major achievement of the women’s movement towards protection of domestic violence victims after a struggle of 16 years. This Act aims to provide for more effective protection of the rights of women guaranteed under the Constitution. The definition of domestic violence is wide enough to include physical, sexual, verbal and emotional abuse. The unique feature of the Act is that it prohibits denying the victim “continued access to resources or facilities which the aggrieved person (victim) is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household”. A police officer, protection officer or a magistrate who has received a complaint of domestic violence has a mandatory duty to inform the victim of her right to obtain a protection order or an order of monetary relief, a custody order, a residence order, a compensation order or more than one such order and the availability of the services of service providers, protection officers, and the right to free legal services under this Act. A violation of the protection order by the respondent is an offence which can result in imprisonment for one year or a fine up to Rs.20,000 or both. If the protection officer refuses to discharge his duties, he shall be punished with imprisonment for one year or with a fine of 20,000 rupees or with both.

B. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This is also an innovative law aiming to protect elders and prevent elder abuse and victimization, which is a growing problem in many countries, including India. Under this law, an obligation is created of the children or adult legal heirs to maintain their parents, or senior citizens above the age of 60 years who are unable to maintain themselves out of their own earnings, to enable them to lead a normal life. If children or legal heirs neglect or refuse to maintain the senior citizen, the Tribunal can pass an order asking the children or legal heirs to make a monthly allowance for their maintenance.

C. Prevention of Child Abuse and Victim Protection

Empowering the child is the road to prevention from abuse and victimization. To empower the child, education is the tool. Therefore, primary education for children has been made a fundamental right as per the decision of the Supreme Court of India in *Unnikrishnan’s Case* (1993). Article 21-A of the Constitution states that “The State shall provide free and compulsory education to all children of the age 6-14 years in such manner as the State may by law determine”. The proposal also will have a positive impact on eradication of child labour. The spread of elementary education through constitutional measures would have a good impact on other social indicators like population growth, health and women’s development as well as enhancement of productivity of the economy and reduction in unemployment.

1. The National Commission for Protection of Child Rights (NCPCR)

This Commission was set up in March 2007 and its mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child (see at Government of India, 2009). India ratified the United Nations Convention on the Rights of the Child in 1992 and this Act was passed as one of the necessary steps to protect the rights of children in the country. The National Commission for Protection of Child Rights has been taking up various issues brought forth in the area of child abuse. After inquiry, the National Commission can recommend initiation of proceedings for prosecution or any other action it may deem fit.

D. Prevention of Caste-Based Victimization and Protection for Victims: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

This is an act to prevent atrocities against the members of the Scheduled Castes and Scheduled Tribes. Under this Act, compensation to victims is mandatory, besides several other reliefs depending on the type of atrocity. The victims are entitled to receive monetary compensation ranging from Rs. 25,000 to 200,000 depending on the gravity of the offence.

VII. CONCLUSION:

CHALLENGES AND PROPOSAL FOR MEASURES FOR VICTIMS IN INDIA

In the process of prevention of victimization and the protection of victims, there are many challenges faced in India which are being tackled through some positive measures. Some of the challenges and the countermeasures include:

A. No Separate Law for Crime Victims Yet

But continuous efforts are going on to enact a national law for victims. The ISV's Victim Bill is a model draft Bill.

B. Corruption in the Indian Criminal Justice System

Corruption by public officials erodes the entire health of the society and victimizes people in all sections of the population. Many steps to reduce the level of corruption and accumulation of illegal wealth have been taken by the Government. Declaration of assets and wealth by judges of the higher judiciary and ministers of the government is a recently introduced example.

C. Empowerment of Women to Prevent Victimization of Women

Serious efforts to change the traditional submissive and victimized role of women have been taken up by NGOs and the Government. One attempt is the consistent struggle and active efforts by women's organizations to get more political power for women in the form of representation in the Parliament, state legislatures and local bodies through a 33% reservation of seats for women in these bodies. Women have already succeeded in getting representation in local self-government but the struggle continues to get reservations for women in Parliament and state legislatures. Many concessions, special privileges and tax rebates are provided for female students to encourage them in higher education and employment, and to encourage senior women citizens in economic self-reliance. The Cradle Baby scheme of the Tamil Nadu State Government is a step towards protecting female babies and preventing female infanticide.

D. Empowerment of Children

Making primary education a fundamental right under the Constitution is a leaping step to empower children as education is the tool for development. The implementation of this right will have a bearing on other kinds of victimization such as child labour. Strengthening the Noon Meal scheme in the schools for the children in Tamil Nadu and the introduction of this scheme in other states will attract more children from the disadvantaged sections of the society to schools to pursue study.

E. Major Challenge is Implementation

Transparency and honesty among the politicians who make policies and the commitment of government officials who are charged with the responsibility for implementation are the big challenge. Whereas the situation of victims has not been satisfactory in India, developed countries, including the United Kingdom, have gone far ahead to render victim justice, but the expectations and aspirations of victims remain high even in those countries which do not match the accomplishments made elsewhere. The UK enacted the Criminal Injuries Compensation Act in 1995. The Home Office in the UK, in its report "Criminal Justice: The Way Ahead", in 2001, found that "many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings". During the long proceedings of investigation and trial, victims are not kept informed or provided with a sense of security. Very often, victims are expected to appear in courts for cases, which are adjourned even without their notice, or they are subjected to unnecessarily stressful courtroom experiences. The agencies meant to help victims do not always understand and respond effectively to their needs. This revelation has made the UK recommend some measures to balance its system of justice. Hence, victim justice has not been achieved in full even in countries where lots of developments have been made. We have to pursue the matter vigorously with the governments and with civil society to realize the basic provisions envisioned in the UN Declaration of Victims in the majority of developing countries.

REFERENCES

- Aucoin, K. & Beauchamp, D. (2007). Impacts and consequences of victimization, GSS 2004, Canadian Centre for Justice Statistics. *Juristat*, Vol, 27, No, 1. Retrieved on 14 December, 2009 from <http://www.statcan.gc.ca/pub/85-002-x/85-002-x2007001-eng.pdf>
- Bajpai, G.S. (1988). Patterns of Criminal Victimization in Sagar city, unpublished Ph.D. dissertation, University of Sagar, India.
- Bajpai, G.S. (2006). Psycho-social consequences of victimization in rape. *International Perspectives in Victimology*, Vol. 2, No. 1. pp. 67-81.
- Bajpai, G.S. (1997). *Victim in the Criminal Justice Process*, Uppal Publishing House. New Delhi: India
- Chockalingam, K. (1985a). Problems of victims of crime and their families, in *Readings in Victimology*, (Ed.) Raviraj Publications. Chennai: India, pp.73-90.
- Chockalingam, K. (1985b). *Readings in Victimology*, Raviraj Publications, (Ed.) Chennai: India.
- Chockalingam, K. (1988). Victimological research in India, in *Victimology-International Action and Study of Victims*, (Ed.), Paul Separovic, University of Zagreb, Zagreb, Vol.1, pp.141-150.
- Chockalingam, K. (1992). Vulnerability characteristics among victims of crimes and non-victims, in *International Faces of Victimology* (Ed.) by Ben David, S. & Kirchhoff, G.F, WSVN Publications, Monchengladbach: Germany, pp.440-449.
- Chockalingam, K. (1993a). Restitution to victims of crime – recent developments in India, *Indian Journal of Criminology*, Vol.2 (2), pp. 72-81.
- Chockalingam, K. (1993b). *A Psycho-Social and Legal Study of Rape Victims – a Research Project Report* submitted to the Indian Council of Social Science Research, New Delhi.
- Chockalingam, K. & Srinivasan, M. (1993). Attitude of the student community towards police functioning in Tamil Nadu, *Police Research and Development Journal*, July-September 1993, pp.9-14.
- Chockalingam, K. (1994). An analysis of the trends of rape victimization in India in *International Debates in Victimology* (Ed.) Kirchhoff, G.F., Kosovski, E & Schneider. H.J., WSVN Publications, Monchengladbach: Germany, pp.437-449.
- Chockalingam, K. (1995). A review of victimological developments in India, *Japanese Journal of Victimology*, March 20, 1995, pp. 78-95.
- Chockalingam, K. (1997). *Victims of Corruption among the people seeking various kinds of licenses in Transport Department – a Research Project Report* submitted to Thiruvalluvar Criminological Research Foundation, Chennai, India.
- Chockalingam, K. & Srinivasan, M. (1995). Child abuse by parents – a study among the school-going children in Madras, *Trends in Social Research*, Vol. II, No.1, pp. 135-144.
- Chockalingam, K. (1999). Victims of abuse of power, *Journal of the Australasian Society of Victimology*, 2(1), pp.19-30. Adelaide Australia.
- Chockalingam, K. (2000). Female infanticide - A victimological perspective, in *Victimology at the Transition from the 20th to the 21st Century*, (Ed.) Friday, P.C & Kirchhoff, G.F., WSV Publishing, Monchengladbach: Germany, pp. 273 - 287.

THE 144th INTERNATIONAL SENIOR SEMINAR
VISITING EXPERTS' PAPERS

Chockalingam, K. (2001). *Victimisation Survey in four Major Cities in Tamil Nadu* – a Research Project Report submitted to the University Grants Commission, New Delhi.

Chockalingam, K. (2003a). The position of victim support schemes in India, in *Victims and Criminal Justice: Asian Perspectives*, (Ed.) Tatsuya Ota, Hogaku-Kenkyu-Kai Keio University, Tokyo, Japan, pp.63-82.

Chockalingam, K. (2003b). Crime victimization survey in four major cities in Southern India, *Forum on Crime and Society*, Vol.3, No.1 & 2, pp.117-126.

Chockalingam, K. (2005). Impact of the UN Declaration on victims- developments in India, in *Victims of Crime and Abuse of Power*, (Ed.) Vetere, E. & Pedro, D. Bangkok: Thailand, pp.118-125.

Chockalingam, K. & Srinivasan, M. (2007). Perception of victim vulnerability and victim treatment: a preliminary study of college students in Chennai (India), *International Perspectives in Victimology*, Vol.3, No.1, pp.34-41.

Chockalingam, K. (2007). Victimology and victim justice: human rights perspectives, in *Human Rights, Justice, & Constitutional Empowerment*, (Ed.) Kumar, C.R. & Chockalingam, K., Oxford University Press: UK, pp.437-461.

Chockalingam, K. (2008). Evaluation of the implementation of the “victims assistance fund in Tamil Nadu”, *The Indian Journal of Criminology & Criminalistics*, Vol.XXIX, No.1, pp.8-19.

Chockalingam, K. & Srinivasan, M. (2008). Perception of victim treatment by police and courts: a study among university students in India and Japan, *TEMIDA*, September 2008, p.p.63-78.

Chockalingam, K. & Vijaya, A. (2008). Sexual harassment of women in public transport in Chennai city: a victimological perspective, *The Indian Journal of Criminology & Criminalistics*, Vol.XXX, No.3.

Chockalingam, K. & Srinivasan, M. (2009). Fear of crime victimization: a study of university students in India and Japan, *International Review of Victimology*, Vol.16, No. 1, pp.89-117.

Cohen, L. E. & Felson, M. (1979). Social change and crime rate trends: a routine activity approach. *American Sociological Review*, Vol. 44, pp. 588-608.

Diaz, S.M. (1987). Comprehensive victim assistance - Indian situation. *Indian Journal of Criminology*, 15, pp. 84-88.

Doerner, W. G. & Lab, S. P. (2005). *Victimology*. 4th Edition. Lexis Nexis - Anderson Publishing. Newark, NJ.

Dussich, J. P. J. (1988). Social coping: a theoretical model for understanding victimization and recovery,” in Zvonimir Paul Šeparovic(Ed.), *Victimology: International Action and Study of Victims*. Zagreb, Croatia. Zagreb University Press, pp.95-105.

Dussich, J. P. J. (2006). *Psycho/Social Coping: a Theoretical Model for Understanding General Victimization and Facilitating Recovery*. Presentation made at the 2006 American Society of Criminology Conference. Los Angeles, CA.

Government of India. (2002). Report of the National Commission to Review the Working of the Constitution, Vol.1, Chapter 7.15. pp.143-144.

Government of India. (2003). Report on the Committee on Reforms of Criminal Justice System, Vol.1. Ministry of Home Affairs, New Delhi: India. Retrieved on January 5, 2010 from http://indialawyers.files.wordpress.com/2009/12/criminal_justice_system.pdf

Government of India. (2006). The Protection of Women from Domestic Violence Act of 2005, No.43. *The*

Gazette of India, Ministry of Law and Justice, New Delhi: India.

Government of India. (2007). *Crime in India*, National Crime Records Bureau, Ministry of Home Affairs, New Delhi.

Government of India. (2009). The National Commission for Protection of Child Rights. Retrieved on 5 January 2010 from <http://ncpcr.gov.in/>

Government of Tamil Nadu. (1995). Creation of Victim Assistance Fund. G.O. M.S. NO.12 dated 21 August 1995, Home (Police-XII) Department.

Government of Tamil Nadu. (1997). Victim Assistance Fund-Working of the System Reviewed. G.O. M.S. NO.89 dated 24 January 1997, Home (Police-XII) Department.

Indian Society of Victimology. (1996). The Victims (Criminal Injuries) Right to Assistance Bill: Draft Bill Approved by the II Biennial Conference of the Indian Society of Victimology at Bangalore in October 1996.

Jaishankar, K. (2007). Victims of stalking in India: A study of girl college students in Tirunelveli city. *TEMIDA*. pp.13-21. Retrieved on 10 January 2010 from <http://www.doiserbia.nb.rs/img/doi/1450-6637/2007/1450-66370704013J.pdf>

Karmen, A. (2005). *Crime Victims: An Introduction to Victimology*, 5th Edition, Thomson Wadsworth. California: USA.

Khan, M.Z. & Krishna, K.P. (1981). *Victims of fatal Motor vehicle accidents*, Institute of Criminology and Forensic Science, New Delhi: India.

Law Commission of India Report. (1996). Victimology in 154th report on the code of criminal procedure 1973 (Act No. 2 of 1974) Chapter XV, pp. 57-65.

Madhava Soma Sundaram, P. (1996), Experience of fear of crime and victimization, *Indian Journal of Criminology*, Vol.24 (1 & 2) Jan. & July.

Mendelsohn, B. (1976). Victimology and contemporary society's trends. *Victimology* 1: 8-28.

Pearlin, L. I. & Schooler, C. (1978). The structure of coping. *Journal of Mental Health and Behaviour*, 19, 2-21

Rajan, V. N. (1981). *Victimology in India- An Introductory Study*, Allied Publishers, New Delhi: India.

Rajan, V. N. & Krishna, K.P. (1981). *Problems of victims of homicide in Bangalore and Delhi*, Institute of Criminology and Forensic Science, New Delhi: India.

Senthilathiban, K. & Chockalingam, K. (1984). Victims of crime and their interaction with the Police – a preliminary study of their problems and perceptions, *Indian Journal of Criminology and Criminalistics*. Vol. No.3 & 4, pp.113-121.

Singh, D.R. (1978). *Victims of Dacoit gangs in Chambal Valley*, Unpublished Ph.D. thesis, University of Sagar, Madhya Pradesh, India.

Singh, D.R. & Jatar, D.P. (1980). Compensation to the victims of dacoit gangs in the Chambal Valley, *Indian Journal of Criminology*, 8, (1), 21-30.

Singh, D.R. (1985). Development of Victimology in India, *Indian Journal of Criminology*, Vol.13, No. 2, pp.144-150.

United Nations General Assembly. (1985). Declaration of Basic Principles of Justice for Victims of Crime

and Abuse of Power, New York.

UN Office for Drug Control and Crime Prevention. (1999). *Hand Book on Justice for Victims on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, New York: Centre for International Crime Prevention.

van Dijk, J. (1999). Introducing Victimology, in *Caring for Crime Victims*, Selected Proceedings of the 9th International Symposium on Victimology (Eds.,) van Dijk, J., van Kaam, R.G.H., & Wemmers, J. Criminal Justice Press, Monsey, New York.

van Dijk, J., van Kesteren, J., & Smit, P. (2007). *Criminal Victimization in International perspective-Key findings from the 2004-2005 ICVS and EU ICS*, UNODC & UNICRI. WODC, Den Haag: The Netherlands. p. 43

Waller, I. (2003). *Crime Victims: Doing Justice to their Support and Protection*, HEUNI Publication, Series No.39, p.13.

Wolfgang, M. E. (1958). *Patterns in Criminal Homicide*. Montclair, NJ: Patterson Smith.

CASE LAW

Bodhisattwa Gautam vs. Subhra Chakraborty (AIR 1996 SC 922)

Balraj vs. State of U.P. (1994 SCC (Cr) 823)

Baldev Singh vs. State of Punjab (AIR 1996 SC 372)

D.K. Basu vs. State of West Bengal (AIR 1997 SC 610)

Giani Ram vs. State of Haryana (AIR 1995 SC 2452)

Mrs. Nalini Bhanot vs. Commissioner of Police, Delhi Police (AIR 1990 SC 513)

Rudul Sah vs. State of Bihar (AIR 1983 SC 1086)

Sukhdev Singh vs. State of Punjab (1982 SCC (Cr) 467)