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### RESEARCH ARTICLE

## CRIMINOLOGY AND VICTIMOLOGY: IN SEARCH OF JUSTICE

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### Abstract

Criminal administration, judicial processes and related jurisprudence revolves round the crime, criminal and punishment. This emphasis seems apt in retributive societies with punitive legal codes. But in the bargain, the judicial system loses sight of the plight of the victims of the crimes who remain neglected with apathy. The victims could be those directly affected by the crime and suffering pain and deprivation and indirectly, those family members and others dependent upon the incarcerated criminal who are affected for lack of financial support and sustenance provided by the imprisoned criminal as bread-winner. The tragedy is equally poignant and demands amelioration. Apart from sympathy and sensitivity, the directly affected also deserve monetary compensation or maintenance doles for their daily bread, if necessary. This article proposes a Relief Fund for the sustenance of these victims of crimes. It could begin with a corpus from the state exchequer which could be supplemented and replenished from the earnings of the respective prisoners in jail. This will be true distributive justice upholding the cause of victimology.

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### Introduction: -

Criminology and victimology are two faces of the same coin that strive for dispensation of justice to the society. But these take different routes and both only partially achieve their social objective or the avowed purpose of true justice. The lacking is not in the concepts but different approaches to justice and societal perception of the same. For example, humans have basic instincts of survival and possessiveness that find impulsive expression and behaviour due to a pent-up desire or grouse, with or without provocation. In other words, criminality is endemic to humans, because it is colloquially believed that birds and beasts commit no crimes. Even, the first so called criminal act was committed by Adam in defiance of the Commandment of the Lord to have eaten the forbidden fruit and in punishment was expelled from the Heaven. Thus, crimes and humanity have existed together, always.

The other facet of crime is the victim and the respective perceptions. Although, efforts continue to be made to rationalise the punishments, humanise the treatment of the criminals and ameliorate the conditions in prisons yet little attention and effort has been devoted towards the plight and rehabilitation of the victims of crimes. This hardly makes for equitable or distributive justice in civilized societies; and as Sigmund Freud said, "The first requisite of civilization is that of justice." Following this advice, we need to strive for legal codes and a judicial system that aim

to dispense equity in justice by rehabilitating the victim of the crime, if necessary, even at the state expense. This article will thus, flag the right approach to victimology in search of distributive justice for all those affected by the crime.

### **Sociology Of Crimes.**

Psychologists believe that humans have innate traits like fear, self-defence, pugnacity, greed, ego, etc for which reactions are wired into the genetics and responses are impulsive or instinctive. Some of these could be criminal in content or character. However, some sociologists like Boulding maintain that humans are neither innately aggressive nor genetically peaceful; this attitude is imbibed from community culture, in sympathetic learning...and partly inherited from familial predilections.”[1]Ironically, with industrial revolution and rise in affluence, a new genre of crimes has emerged that finds expression in gang-wars for killing or extortions for money or drug cartels or smuggling mafia that operate with impunity or complicity of authorities. This scenario fits into the Theory of Anomie that expounds that criminality stems from lofty ambitions and high aims of an offender which are unrealistic and unachievable yet are realised by tricks, chouse or illegal methods.[2]

It is believed that nobody is born criminal and Albert Bandura hypothesises that an occasional delinquency of a law-abiding person occurs because of a temporary cognitive reconstruction or a fleeting mental lapse with a misunderstanding of down-played consequences.[3] Other sociologists like David Cressey, Gresham Sykes and David Matza hypothesise occurrence of offences through a theory of neutralisation with delusional self-vindication and minimisation of fear for a remiss in conduct.[4] Again, bio-social study of criminology highlights the interdependence between behaviour genetics and societal factors in the aetiology of anti-social behaviours.[5] In conclusion, we may agree with Machado who integrates psychological factors, forensic biology and sociological approaches to establish that crimes are human responses to social circumstances.[6]

### **Approaches in Criminology.**

Crimes according to the legal codes: scripted, unscripted or normative, have always attracted punishment for the criminal, so prescribed or as deemed reasonable by the family, society or the state authority. However, the estimation of reasonableness relating to the quantum and quality of punishment have differed in societies, primitive to modern. And punishments have varied with the passage of time, the growth of civilisation and the evolving human values. Although, the philosophy of criminology highlights the aspects of behavioural correction, community security and societal protection yet the primary object of punishment has stood aimed at disciplining, controlling and standardising human behaviour. Thus, the dynamics of criminology and judicial adaptations offer different shades of punishment including incarceration, and its quantification.

### **The Punitive and Retributive Approach.**

Traditionally, societies and states have adopted retributive methods to handle crime and, in this approach, the sentencing factor has been “eye for eye”, and condign the criminal to almost equivalent of that as suffered by the victim. Saudi Arabia still punishes the thieves by cutting of a hand that steals. Thus, retribution is conceptualised as a moral necessity with a tinge of legitimate vengeance and imaginable deterrence against the criminal for the perpetrated crime.[7]No wonder death sentence was the natural consequence of murder. In a way, it also betrayed an element of revenge against the guilty and mercy was rare.

There are other advocates of this philosophy who recommend that the punishment of the criminal had to be proportionally equalised or balanced with the gravity of the crime or matching the loss and suffering of pain by the victim.[8] The espoused equivalence may not always be possible yet punishment remains a categorical imperative highlighting the accountability of individuals for their actions and activities which happen to be a self-selection.[9]Such punitive treatment seems equally imperative to maintain the rule of law, deter prospective offenders, curb recidivism and restore security equilibrium in the society.[10] More so, the state has a bounden duty for broad-based societal protection and removal of threats to individuals, institutions and communities. The US and many Anglo-Saxon countries follow the practice of punitive criminal justice as indicated by the high incarceration rate in the US at 698 per 100,000 population.[11]

**Deterrence for Curbing Crimes.**

Deterrence seeks to deter criminal behaviour by fostering a fear of punishment of incarceration among potential perpetrators of crimes. It functions at two levels: general and specific. At general level, deterrence is a measure directed at the broader populace with intention to curb criminal acts by demonstrating the consequences of such delinquent actions. Thus, the hypothesis is that it will engender fear through social learning and accordingly diminish crimes in society. However, this approach will require a clear visibility of stringent enforcement of laws, severe sentences and stricter law enforcement to maximise the deterrent effect of such measures. Despite apparent gains, there are sceptics who find this correlation contentious and tenuous for reasons of poverty, social inequality and limited work opportunities.[12] Critics also flag possibilities that such measures may engender an unhealthy climate of fear, and mistrust among communities, especially those already marginalised or perceived to be victimised.[13] Take the case of a notification from the British era that listed certain communities with prominently habitual offenders as 'criminal tribes.' This order was annulled after independence of India.[14]

At specific level, deterrence aims at retardation of recidivism with higher punishments for repeat offenders. Empirical observation of crimes has flagged frequency of similar crimes or repeats by the same offender. Thus, criminal enforcement agencies have acknowledged recidivism as a malady in society where there is relapse by the criminal for revenge or to settle an old account after sympathetic learning from the prison-mates or in isolated cases by sheer compulsion of psychological reversion. For whatever reasons, the crime tends to be repeated and have to be controlled by deterrence of higher and extreme punishments. The results of this approach towards punishments may not be duly justified by statistics but believably, use of deterrence had benign effect in reducing recidivism and inducing better social order.

**Reformist and Rehabilitative Approach.**

The punitive models of justice had their weaknesses and often reproached for high-handed use of power and authority that dehumanised the criminal. And now for over a century, there has been increasing awareness of human rights and dignity for life, humanitarian treatment and value of freedom leading to improved conditions in prisons and of prisoners. This trend has also led to a reformist movement that has shifted focus on the root causes of criminal behaviour as well as rehabilitative measures seeking to reintegrate the released criminals into mainstream society as useful members and law-abiding citizens through basic education, vocational facilities and psychological support.

This approach also advocates that the prisoners should not remain incarcerated indefinitely, lazily and idly and be given an opportunity for catharsis of guilt to gain self-esteem and to overcome remorse for self-reform by psychological counselling. They should be rewarded for good behaviour and encouraged to keep themselves and their mind usefully and constructively occupied by offering mutual help in barracks, social work in institutions and educational improvement of self so that the prisoners are, eventually or sooner, normalised in psyche and mind to be able to integrate back into their families and society as dutiful members and responsible citizens respectively; and live normally as ever.[15]

**Requital Approach.**

In the requital approach, there is an effort to recompense the victims and counterbalance the impact of the crime so that the convicts can be set free after complying with the decreed conditions. For example, in certain judgments of rape, if the culprit marries the raped person, then the crime lapses post facto with the concurrence of the court. This approach to justice, however, has apparent weaknesses and is not taken as judicial precedent in all cases. It is only applied circumstantially and selectively. Similarly Muslim Law has a provision of 'blood money' to condone murder. According to Shariat law, if a person or persons accused of a murder pay a mutually agreed amount to the kin of the murdered person then the convict/s can be set free on discharge of blood money and approval of the court. Such cases are on record for reference in annals of countries with Muslim religious codes.

**Open Prisons and Community Service.**

However, a possible challenge to reformative approach will be whether the corrected and reformed prisoners so released will be able to walk free without being pointed at and without stigma or disdain. Society still remains conservative, suspicious and withdrawn from their company and companionship, and they remain singled out and isolated. Mostly, return to society and integration with family is not complete as desired or back as usual. A dark spot remains in the mind and memory, not to vanish even with time. Maybe, we will have to educate and prepare the society to shed such reluctance and to effusively welcome this reformative experiment. Empathy should be the

slogan-word. Although, it is honestly conceded that its viability and success may not be so sanguine and sudden, as to become apparent immediately yet the effort seems well worth the cause. Perhaps, the best example in this regard is the success of judicial and prison systems of Norway and ready acceptance of such ex-prisoners back into the mainstream of society.

In traditional communities, the acceptance and amalgamation of reformed prisoners will be a gradual and steady process to bring about a change of mindset in the society and shedding of the angst for recidivism. India has carried out an experiment in some states with open jails where prisoners during the day go about their chores, vocations and duties and report back to the prison at night. This makes for gradual indoctrination, reconciliation and re-induction into the social groupings with socio-economic benefits. Norway has undertaken a paradigmatic shift by advocating compatibility of rehabilitation as a complementary measure to incarceration and it is effectuated for re-entry by community service. This strategy has worked well in a liberal and open-minded western society and has significantly reduced incarceration rates as compared to the USA.[16]

### **Espousing the Cause of Victimology.**

The Reformist movement has also brought to the fore the plight of the victim/s of the crime, who suffer the most, in many ways, and yet had been ignored so far. In fact, the victim is the true sufferer of the hurt; physical, mental, emotional and psychical, and deserves to be the focus of the process of justice. In fact, some of the sexual offences, particularly with children, leave deep and disgusting impression on the mind of such an unnatural injury, abominable happening, lifelong debasement of personality, dent on dignity and lowered self-esteem. This ignored aspect of victim's prolonged pain, persistent memories, feeling of depression, intermittent nightmares and social withdrawal have only recently been acknowledged and taken up by advocates of victimology for necessary and suitable remedies.

Suffering has its own individual analogues and holistic syllogism. The victims, direct or indirect, may face social stigmatisation with fingers pointing at them which are unnerving. Embarrassment and withdrawal are often obvious reactions. Additionally, indirect victims from the offender's family may find their bread-winner incapacitated from earning livelihood and thus face pitiable economic plight of dependence and destitution. To take up the cause of these victims is a hard task that requires will, persistence and perseverance to fight for their 'not-self-inflicted' woes.

The word "victim" has ancient origin and finds its roots in various languages of certain parts of Europe and Asia with almost similar meaning and connotation. It traces its genealogy to the word *victima* in Latin, *vihi* in old German and *veoh* in European languages. Closer home, victim is called *Vinakti* in Sanskrit. Believably, the plight of the victim of a crime was recognized by early criminologists like Beccaria, Lombroso and others but victimology as a proper scientific study and movement appeared in the last century. In fact, Benjamin Mendelsohn in his writing in 1937 coined this term and is euphemistically referred to as the Father of Victimology.[17]

In modern times, conscious attention and genuine concern towards victims of crimes is becoming visible but its impact on the ground and the judicial process is rather limited and handicapped. The modern criminal codes of most of the countries do not directly recognize in law the persona of the victim of the crime and afford no popular remedies for amelioration or even sustenance. Therefore, the solution may lie beyond the legalese and a purist orientation of the judges and it may require an addendum to the legal codes for evidencing such considerations with due privacy, sensitivity and empathy.

### **The Types of Victims.**

It will not be correct to assume that the harmed person or the aggrieved party is the only victim of crime. Of course, that one remains the main and direct victim of the committed offence and the core consideration for victimology because being the prime sufferer, has vital interest in the judgment, whether for vengeance, retribution or reform. And it is the gravity of grieve against the perpetrator and perception of the victim towards justice dispensed that are material to the society and to the reputation of the judicial system, which is partly reflected in the recourse to appeals to the higher courts.

However, under circumstances where the bread-winner is murdered, the resources of livelihood and sustenance of the dependant family are dried up and normal judicial pronouncements hardly consider the plight of the those left behind and their fate in destitution. Even the law is weak and meek on granting monetary compensation, ad-hoc or doled and the affected family is most often left in the lurch. The lawyers should be aware and conscious of the

enabling section 357 (3) of Criminal Procedure Code that empowers the courts to award compensation payable by the person sentenced. Further, section 5 of the Probation of Offenders Act is another powerful legislative provision that helps both, the criminal and the dependent victims.

Ironically, this prayer is rarely pleaded and still more rarely granted to the victim because this requires the judges to go into the nature of the crime, the extent of injury suffered, the capacity of the accused to pay and other relevant factors.[18] Article 21 of the Constitution of India is witness to this possibility of remediation and courts have, in the past, granted monetary relief. Besides, compensation for loss of reputation, agony and suffering, apart from medical expenses, have also been awarded to the sufferer/s of the crime.[19] But such cases are few and this cause has not entered the mainstream of legal practice.

The second type of victims, likewise, are the ones who were dependent as a family on the accused, held in custody or as guilty sentenced to imprisonment. Most of the countries, including India, have the tradition of male bread-earner for the family, and if he is prevented or disabled from earning for the family by incarceration, pre- or post-sentencing, the family is often led to starvation, dependence or begging, or even petty crimes for its sustenance needs. Such indignity on bonafide citizens is a social curse for which society and the state are directly responsible and accountable.

Paradoxically, while the accused or the culprit is well looked after by the state in prison for his basic needs of shelter, food, clothing and other minor amenities, their innocent dependents with no fault whatever are suddenly left to fend for themselves or to wallow in poverty and hunger. Most such families have no source of income, no provision of savings or mental preparation for a debased life of indignity. It is this category of persons who are literally helpless, deserving of sympathy and empathy in treatment qualify to be included within the ambit of victims of crimes meriting espousal by the cause of victimology. Maybe, the state needs to create a dedicated fund and an institution to look after the destitute-victims from the crimes and the dependants of the criminals to provide them sustenance allowance or survival doles. A partly similar suggestion was made by Justice C. S. Nair of the Kerala High Court in 1993.[20]

#### **A Point to Ponder.**

Another category of the victims of the system of criminal justice are the ones punished by sheer delay in the delivery of justice. It is a well-known legal dictum, "Justice delayed is justice denied." We all swear by it yet contribute, in one manner or the other, to cause delays and stall delivery of judgments for whatever reasons, noble or ignoble. Pendency of cases in courts at all levels is well-known to the lawyer fraternity and bureaucracy to need no statistics. And the judges are unduly pliant and equally complicit in the scourge of adjournments. Although, the bane of delays in the progress and clearance of cases is well-appreciated collectively, yet equally ignored individually by all. Surprisingly, this malaise not only afflicts the Indian judiciary but also the courts of many other countries. A reported case from Japan is cited.

Iwao Hakamada was accused of murder of a company manager and three of his family members and having set fire to their home in 1966. Iwao outright denied the accusations initially for lacking motive but later confessed under coercive investigation and violent interrogation with threats. He was consequently convicted of quadruple murder and was sentenced to death in 1968. He resorted to appeals and made a plea for retrial and was not executed pending judicial process.[21] All this took long in a slow-paced criminal justice of Japan which can though boast of a conviction rate of 99% of the prosecutions.

Ultimately, a Judge in a retrial of the case found that the conviction was based on false accusations and fabricated evidence that was not reliable at all. He acquitted the convict of false charges. Thus, Iwao was exonerated at the age of 88, after having remained in prison for 48 years and on the death row for 45 years. The agony and anguish of this man to have lived under uncertainty is imaginable. According to Amnesty International, he turns out to be the world's longest-serving death row inmate.[22]

The prisoner's predicament can be least empathized, and the insensitivity of the system least condonable. Who can give him back his years of incarceration to relive? Responsibility and accountability of authorities is absent from mandates. It is cruelty of falsehood perpetrated by the enforcement agency and tyranny of delay by the judicial system, both of which are hardly pardonable. And this is victimisation by the criminal justice system that clamours

for attention from scholars of victimology to press for early disposal of pending cases by fast-track courts and dispensation of reasonably prompt justice in the future.

### Conclusion: -

The present-day policing, enforcement agencies and judicial systems are obsessed with rule of law, prosecution procedures and generally tend to focus on apprehending the criminal, collection of evidence and a judicial trial. Although the victims of the crime are called for evidentiary statements during investigation and trial yet their physical pain, emotional suffering and psychical scars are rarely handled with sensitivity and due empathy. The emphasis is on the crime, the criminal, and procedures for prosecution. Rarely does the plight of the victims of the crime gets recognised and that they are treated with privacy, sympathy and sensitivity.

This predicament draws attention to the ideals of victimology that flag the need for privacy of the victim, sensitivity to the pain and suffering and empathy for psychological and emotional scars. Another tenet of victimology is to ensure provision of monetary compensation and sustenance for a dignified living in the absence of the bread-winner. Provisions for such a plea exist in the Constitution and laws, which may need to be slightly improved for clarity, visibility and effect. This relief can surely be pleaded with greater awareness and better advocacy because the law is no longer blind.[23]

However, the criminal may not always be in a position to pay for such damages and recurring charges. Therefore, it is suggested to create a Fund for the victims of the crimes with a corpus from the state exchequer to begin with and occasionally as necessitated. Thereafter, a part of the earnings of the respective criminal from work in the prison be credited to replenish this Fund. Besides, all the stakeholders in the dispensation of justice would need a change of mindset to appreciate the gravity of the problem, its sensitive handling and empathised treatment of traumatised humans involved in the process of justice.

A caveat in conclusion; criminology and victimology create no binary choices between themselves; nor is the predicament so simple to handle. Even neutrality between the two may be difficult to poise because the justice works in the minds of humans, and humans are after all human with instinctive frailties. Therefore, while steadfastly protecting democratic values and following a humanitarian approach, the vision should be to dispense total and distributive justice to the community and it is perceived to be just and fair by all the parties and society at large. Sheer legalese, puritanical interpretations and purist attitudes will not help. To achieve success in search of true justice, the advocated ideology needs simpler articulation, better tonality and higher vocalisation.

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