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Website: [www.ijlae.com](http://www.ijlae.com)

Email: [editor@ijlae.com](mailto:editor@ijlae.com)

**VICTIMIZATION AND CRIME: IMPACT ON RECIDIVISM IN INDIA*****Arshpreet Kaur******Ms. Harmanpreet Kaur******Rayat Bahra University, Mohali*****Abstract**

*Victimology studies not only the relation between victimization and crime, but also emphasizes the victim-offender overlap in which people who suffer from abuse or social exclusion are likely to commit crimes themselves. This paper analyses the systems and policies on victim rights within India, the USA, and the European Union and their implications on the criminal justice systems of these nations. It analyzes the impact of victimization on future offending using criminological accounts such as the Routine Activity Theory, Social Learning Theory, and General Strain Theory. The study also examines certain judicial practices, landmark cases, and other legal instruments, including the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power. Through analyzing these cases from a comparative legal approach, this study reveals the gaps within victim care and rehabilitation strategies that call for the decriminalization of supportive measures and legislative measures aiming to break the crime cycle. Their emphasis makes it clear that the law must be put in place to guarantee a victim-focused and rehabilitative approach to justice.*

**Keywords:** *Victimology, victimization, Crime, Justice, Abuse of Power.*

**Introduction**

Victimology is a branch of both criminology and legal studies. It analyses the position and rights of victims within the context of the criminal justice system and examines the societal phenomenon of victimization. There is a growing legal and criminological discourse on the victim-offender nexus due to the amazing propensity of some individuals who have been victimized to offend. The intersection of victimization and violence committed by the victim

raises important questions of whether the law as it is known is adequate in providing for the rights of victims and preventing their transformation into offenders. Such thorough analysis of case law is essential for understanding the legal relations that deal with victim's rights, especially in victim's restoration and legal consequences of victimization<sup>1</sup>.

Life-course criminology assumes that this overlap of victims and offenders will be accounted for in the framework of systems of social and situational prevention of crime, in the same way as Routine Activity Theory or Social Learning Theory or even General Strain Theory does account for it. It is argued that abused or neglected children and those suffering systemic disenfranchisement can exhibit behavioural changes that increase their likelihood of committing crimes. Research has shown that abusive treatment of children plays a crucial role in the development of youth delinquents and adult criminals. Yet still, the level of abuse of children is treated differently in various societies. In some countries, prior abuse is considered an excuse for some of the criminal actions, while in others, the focus is mainly towards punishment and completely ignoring the rehabilitative aspect of the individuals who are entangled within this cycle<sup>2</sup>.

This research seeks to assess the laws on victim's rights and their connections to the criminal justice systems on a national and international scale from a legal perspective. In particular, it focuses on case studies of India, the United States, and the European Union, and how these countries deal with and legislate the intersection of victims and offenders. The analysis will additionally cover important legal cases in which courts have considered victimization in sentencing and criminal responsibility. In addition, understanding international consensus on victim protection through exploration of international documentation like the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power will be discussed.

Some categories of victims have been promised protection by the law but have been let down for reasons such as loopholes that make re-victimization and subsequent criminal activity too easy. I am pursuing a doctrinal study oriented towards existing laws, judicial policies, and policies meant to help break the crime cycle. The study will push for changes in the legal policies that are centered on victims, with the aim of understanding how the legal policies can

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<sup>1</sup> Finkelhor D and others, 'The Victimization of Children and Youth: A Comprehensive, National Survey' (2005) 10 Child Maltreatment 5

<sup>2</sup> Fattah EA, 'Victimology: Past, Present and Future' (2000) 33 Criminologie 17  
<<https://www.erudit.org/fr/revues/crimino/2000-v33-n1-crimino142/004720ar/>>

be strengthened to provide justice for the victims and at the same time deal with the larger criminogenic effects of victimization.

### **Theoretical Framework in Victimology**

As victimology emerged as an academic field, its basic goal was to study and understand the place that victims have within the criminal justice system, their corresponding legal rights, and the overarching impact of victimization on individuals and communities. Each of these layers can be studied using various criminological and legal frameworks, which provide a basis for understanding the link between victimization, and its consequences: offending behaviour. The best way to demonstrate the victim-offender cycle is by restating it using existing models that capture the psychological, sociological, and legal foundations of crime causation. These models are crucial when developing legislative responses to victimization that do not pave way for new offenders.

Within this setting, one of the most relevant theories is the Routine Activity Theory by Cohen and Felson. This theory says that crime takes place when these three elements are all present at the same time: the motivated offender, the active target, and lack of capable guardians. People who are socially or environmentally deviant may repeatedly become a victim of crime, and in turn may engage in deviant activities as a coping mechanism<sup>3</sup>. This is most often seen in child delinquency when abused children tend to act in a promiscuous and delinquent manner as an attempt to cope with their abuse. From a legal standpoint, this theory has implication in the sense that crime control measures should not be strictly punitive but also proactively minimize victimization and increase safety measures.

Another important angle is Bandura's Social Learning Theory, which illustrates how people acquire skills and practices by observing others. People, especially people exposed to domestic violence and child abuse tend to adopt aggressive or antisocial reactions to conflicts. The dynamic is often recognized in law where abuse victims are said to have committed offenses against their abusers. In such cases, defenses like "battered woman syndrome" are invoked to explain the effects of extended victimization. Nevertheless, legal recognition of victimization

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<sup>3</sup> Turanovic, Jillian J. "Victimization and Its Consequences over the Life Course." *Crime and Justice* 52, no. 1 (2023): 265-342.

is not uniform across borders which calls for greater attention on the intricacies of the victim-offender overlap.

General Strain Theory, developed by Agnew, gives another narrative as to how being a victim would put someone in a place where crime becomes an option. It believes that people that face some kind of strain be it physical, economical, emotional or even racism will engage in criminal activities to release their frustration. People suffering through the diabolical effects of systemic oppression, social ostracism or poverty are indeed more likely to commit crimes when they feel that sections of society do not want them to succeed<sup>4</sup>. Legal systems that ignore these psychosocial pressures risk reinforcing crime instead of ameliorating it. Therefore, there is an increasing need to provide programs that blend victim rehabilitation with economic development objectives to discourage crimes to such an extent.

From a legal perspective, Victim Precipitation Theory analyses the possible acts events performed by the victim that could have caused self-victimization. This idea is controversial, but it has been used in other legal jurisdictions to assess the culpability in certain offenses, particularly within self-defence cases. Nonetheless, misuse of this principle may lead to poverty itself victim blaming which works against the protection of victims. Courts have to integrate the results of this theory with a form of a strategy, which is also, victim protective and ensures justice is done more complexly and revealing factors behind victimization are shielded<sup>5</sup>.

From the perspective of international law, concepts of victimology formed the basis of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The declaration and resolution give prominence to victims and their rights for rehabilitation, and protection against subsequent victimization and further criminal acts. These principles, alongside restorative justice in which the relationship between victim(s) and offender(s) for the purpose of healing is built, stem from these concepts with the intention of reducing crime.

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<sup>4</sup> Zinsu, Olha I. "Victimological aspects of the behavior of victims of domestic violence." *Scientific Journal of the National Academy of Internal Affairs* 27, no. 1 (2022): 80.

<sup>5</sup> DeCamp W and Zaykowski H, 'Developmental Victimology' (2015) 21 *International Review of Victimology* 255

The crime victim's profile highlights the relationships and interdependencies of victimization and crime. This concept has been gaining wider acceptance in legal frameworks, although it remains to be seen if many jurisdictions will adopt policies or laws based on it. The social constructivist approach to victimology can assist in framing proper legal definitions of victims, bringing the needed normative changes to satisfy justice and fairness.

### **Legal Perspective on the Victim-Offender Cycle**

The perpetrator – victim relationship, owing to its complexity, remains one of the fundamental concerns in criminology. It presents classical legal controversies several of which revolve around the expected level of legal protection provided to the people defined as the offenders. For instance, it is possible to classify a former victim as an offender if such person resorts to violence as a means of resolving conflicts. On the outset, it is easy to portray this scenario as straightforward, though extensive examination reveals the sad reality that the enforcement and judicial arms of government may resort to excessively harsh measures for so-called justice.

One of the major legal issues with the victim-offender pattern is the self-victimization within the cycle as a specific consideration that reduces one's criminal liability. Many jurisdictions have considered prior traumatic experiences such as child neglect, spousal abuse, or even trafficking as factors in decimation of responsibility and sentence. In other jurisdictions, concepts like Battered Woman Syndrome (BWS) have been accepted as defences for women who suffer prolonged physical violence from their husbands and retaliate by inflicting bodily harm. Some important cases, notably *R v Ahluwalia* from the UK, reveal how courts have progressively moved towards the inclusion of the victim's psychological harm in the assessment of the perpetrator's behaviour. Still, the patchy application of such considerations tends to place victims' offenders in the realm of unquestionable punishment<sup>6</sup>.

Within the realm of juvenile justice, the legislation regarding minors and their confrontation with the law has placed stronger emphasis on rehabilitation rather than punishment, primarily because many juvenile offenders are victims in most cases. The United Nations Convention on the Rights of the Child (UNCRC) and other national laws like the Juvenile Justice Act, (Care and Protection of Children) 2015 in India, expect a more humane approach for handling cases

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<sup>6</sup> Wittebrood, Karin, and Paul Nieuwbeerta. "Criminal victimization during one's life course: The effects of previous victimization and patterns of routine activities." *Journal of research in crime and delinquency* 37, no. 1 (2000): 91-122.

of juvenile offenders as opposed to ordinary criminal prosecution. Scholars say that most of the adolescent offenders have been victims of physical abuse, negligence, or exploitation and therefore require a legal solution that is more restorative than repressive<sup>7</sup>.

Another major legal issue is the systematic violence and abuse that occurs which leads to criminal actions. Victims of human trafficking often resort to committing illegal acts like prostitution, drug dealing, or even swindling due to duress. The non-punishment principle in international law seeks to protect individuals who have been trafficked from suffering punishment for crimes which are a direct consequence of their victimization. The 2000 United Nations Trafficking in Persons Protocol requires states to ensure that trafficked persons are not punished for illegal acts committed because of their trafficking.

The intersection of victimization and criminal law also reaches those facing discrimination on the basis of race, gender, and even socio-economic status. Many marginalized groups undergo systematic victimization, which results in greater incarceration rates for certain groups because of socio-legal injustices. In countries like the United States, the conversation around the school-to-prison pipeline serve to explain how abused children coming from low-income families are over-criminalized instead of being offered the needed support. There are calls for greater restorative justice processes which involve resettlement and not punishment, as a way to heal from trauma and reduce the chances of lifelong imprisonment.

The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) outlines international legal obligations, which put emphasis on victim's rights and protective measures against being a victim of a crime or further criminal activity. Additionally, the concept of restorative justice is becoming more popular in different legal systems, allowing engagement between the victim and the perpetrator with the hope of bringing an end to crime. Restorative justice practices, which have been employed in Norway and Canada, have lessened the rates of reoffending while providing more legal options that center around the victims<sup>8</sup>.

Legal issues still remain despite the advancements made in the system. The absence of homogeneity in recognizing victimization as an aspect of criminology creates variation in legal

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<sup>7</sup> Godsoe, Cynthia. "The victim/offender overlap and criminal system reform." *Brook. L. Rev.* 87 (2021): 1319.

<sup>8</sup> van Gelder J-L and others, 'Unpacking the Victim-Offender Overlap: On Role Differentiation and Socio-Psychological Characteristics' (2014) 31 *Journal of Quantitative Criminology* 653

repercussions. Also, punitive legal systems tend to lack in providing essential social, psychological, or even economic aid to victim-offenders, thus perpetuating the crime cycle. This is why, within legal scholarship, there is a need to address this issue in order to construct coherent legal systems that provide for justice while also taking rehabilitation and victims' rights into consideration. Legal systems that are more sophisticated and integrate the concepts of victimology can enable the achievement of justice that is more balanced and effective.

### **Comparative Legal Analysis**

This response, as noted above, includes the victim who becomes an offender and vice versa, particularly in the context of legal systems of the world, is as diverse as the systems themselves, which differ in the perceptions of crime and responsibility, rehabilitation, and protection of the victims. A holistic analysis of India, United States, and European Union legal systems reveal major gaps, more so in acknowledging and dealing with the trauma and subsequent criminal behavior of these individuals.

With regard to domestic violence and juvenile offending, the Indian legal system has, over the years, recognized the relevance of prior experience of trauma in criminal behavior. The Juvenile Justice (Care and Protection of Children) Act, 2015 provides for rehabilitation since it recognizes that a good number of juvenile offenders have been physically or emotionally abused, neglected, or otherwise exploited<sup>9</sup>. Moreover, the provisions under the Bhartiya Nyaya Sanhita (BNS) and Bhartiya Nagrik Suraksha Sanhita (BNSS) also give judges the power to decide on some mitigating factors like continuous beating in the course of sentencing. But, within India, there are no precise mechanisms in the legal framework that deal with the victim offender overlap in adult criminal cases, other than general sentencing discretion.

On the other hand, the United States has made appreciable progress towards developing legal defenses for victimized offenders with, for example, the Battered Woman Syndrome (BWS) or post traumatic stress disorder (PTSD) based defenses. Many courts in the U.S. accept the concept of prior victimization as one of the reasons for lessened criminal responsibility, especially for people suffering from internal domestic violence and human trafficking. Furthermore, the TVPA assists a trafficking victim who was forced to commit crimes. At times,

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<sup>9</sup> Choi JJ, Green DL and Kapp SA, 'Victimization, Victims' Needs, and Empowerment in Victim Offender Mediation' (2010) 17 International Review of Victimology 267



however, the nature of the US justice system leads to severe penalties, especially for the underprivileged who are unable to afford legal assistance.

In the European Union, however, the legislations tend to lean towards rehabilitation of the offenders and safeguarding the victims. The EU Directive on the Rights of Victims (2012/29/EU) ensures that victims are provided necessary materials and monetary aid at law in order to avoid further victimization. Also, restorative justice in countries like Norway and the Netherlands tend to focus on offender's rehabilitation rather than punishment accepting that victimization plays a huge part in crime commission as well<sup>10</sup>.

To conclude, within the global legal systems, there is increasing recognition of a victim-offender angle to crimes, but differences inevitable in practice point to the need for a better integrated and compassionate legal system.

### **Policy and Legislative Responses**

Governments and global authorities have become aware of the 'victim-offender circle', which has led to a policy and legal framework being designed to stop re-victimization and enhance victim recovery. Nevertheless, these measures have different impacts in different regions, as some countries are more supportive while others are more punitive. For instance, India has taken steps through The Juvenile Justice (Care and Protection of Children) Act, 2015, which takes a rehabilitative approach to juveniles, given that many young offenders were victims themselves. Moreover, there are some provisions under the Protection of Women from Domestic Violence Act, 2005, and Immoral Traffic (Prevention) Act, 1956, that provide protective aid for potential offenders. In addition, India does not have an adequate law that recognizes the victim-offender gap for adult criminal law and instead depends on judges' discretion for mitigation. In the US, the non-punishment rule is recognized under some policies like the Trafficking Victims Protection Act (TVPA), which makes sure that human trafficking victims are not charged for committing crimes against them. Alongside some state legislations allow Battered Woman Syndrome (BWS) as a defense argument, providing legal relief to chronic domestic violence victims who perpetrate crimes against their aggressors. Nevertheless, these developments have and continue to remain insufficient due to the largely

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<sup>10</sup> WITTEBROOD K and NIEUWBEERTA P, 'Criminal Victimization during One's Life Course: The Effects of Previous Victimization and Patterns of Routine Activities' (2000) 37 Journal of Research in Crime and Delinquency 91

punitive character of the American judicial system that does not facilitate rehabilitation of the harmed criminals<sup>11</sup>.

In the European Union, the Victim's Rights Directive (2012/29/EU) obliges the member countries to offer legal aid, psychological care, and protection from further victimization. Furthermore, restorative justice programs in countries like Norway and the Netherlands facilitate victim-offender mediation, focusing on rehabilitation as opposed to punishment. As the cycle of victimization and offending is increasingly becoming a global concern<sup>12</sup>, nuances in application highlight the importance of having robust frameworks that are victim-oriented, restorative, and rehabilitative while punitive in a balanced proportional manner.

## **Challenges and Recommendations**

### **Challenges**

1. **Lack of Legal Recognition:** The cycle of victim-offender is almost completely unacknowledged by many countries and can lead to inadequate legal regulations or overreliance on judicial interpretation to address such issues.
2. **Punitive Legal Systems:** Countries with harsh punitive measures like the US and India readily punish broken offenders without acknowledging their pain which leads to great suffering and further crime.
3. **Limited Access to Rehabilitation:** There is little provision for psychological help, legal assistance, and reintegration for socioeconomically disadvantaged groups, making it harder for victimized offenders to cope with life outside crime.
4. **Inconsistent Application of Non-Punishment Principles:** Many of the frameworks such as EU Victims' Rights Directive and TVPA are implemented superficially, if at all, which leads to inappropriate prosecution of real crime victims who are in fact offenders due to circumstance.
5. **Social Stigma and Marginalization:** Offender victims are more likely to suffer bias and therefore have a harder time reintegrating into society, making them more prone to reoffending.

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<sup>11</sup> Kaur H, 'Victimology in the Penal Justice System with Special Reference to Women and Children' [2011] Shodhganga

<sup>12</sup> Daigle LE, *Victimology : A Text/Reader* (Sage 2012)

**Recommendations**

Every government needs to legislate clear legal measures that incorporate the victim-offender cycle. This would allow the courts to consider a person's victimization history while making sentencing and rehabilitation decisions. Broadening restorative justice techniques, for example victim-offender mediation, can assist in breaking the crime cycle by focusing more on healing and reconciling rather than just punishment. Increasing the effectiveness of rehabilitation services by incorporating mental health, job training, and community reintegration services is very important in curbing recidivism. Furthermore, international cooperation needs to be strengthened in sharing lessons from countries that successfully implement non-punitive measures and victim-sensitive justice systems. Finally, efforts should be directed at eliminating stigma and advocating for policy reforms on justice, rehabilitation, and social reintegration so that the affected persons are not treated as offenders but rather as respondents who need assistance in rehabilitation.

**Conclusion**

Legal systems and theories in criminology regarding crime and punishment tend to oversimplify a multifaceted issue that involves the victim-offender cycle. Such a phenomenon is often intricately associated with the cycle of abuse. Studies have shown that neglected, abused or severely traumatized individuals tend to construct behavioural patterns that increase their chances of committing the crime. This cycle can be most prominently seen in cases that consist of domestic violence, human trafficking, and youth crime. They sequentially affect each other. Even with the increasing awareness of this phenomenon, it remains devoid of accurate and appropriate solutions within the punitive judicial structures around the world. This complex issue tends to be brushed aside instead of provided compassionate understanding of rehabilitation.

Examining this issue in context of these three legal frameworks, India, United States and the European Union, reveal shocking gaps in how they understand the victim-offender cycle. For instance, while there are some rehabilitative measures provided to minors and children victims of domestic abuse in India, there are no laws that accept primary abuse as a mitigating circumstance for adult defendants. The United States remain with some defenses like Battered Woman Syndrome (BWS), PTSD, but still assert a deep rooted punitiveness that is detrimental

for the marginalized. On the other side, the European Union emphasizes restorative justice with a focus on rehabilitation rather than punishment. However, there are still issues with how non-punitive measures are understood and applied across different countries. Counter-offending requires a delicate blend of justice, rehabilitation, and reintegration. Legislative changes need to properly identify previous victimization as a relevant legal fact for punishment and broaden restorative justice frameworks to include provisions for the rehabilitation of convicted offenders. Improving the availability of therapy, legal assistance, and employment skills training can aid in breaking the cycle of offending and targeting recidivism. Offenders with psychopathy can be supported through public education campaigns that erase stigma against them, which will push for legal and policy changes to improve the system.

In the end, it is necessary to have a victim-offender focus in the justice system to achieve humanity to people who are victim offenders. It is possible to combine the legal, psychological, and social support and thus allow legal systems to become more sensitive and effective in preventing further victimization, facilitating healing, and enabling the flourishing of society.