

# **An Analysis of Indian Criminal Justice System with Special Reference to Protection of Victims and Their Human Rights**

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**ABSTRACT:** Crime is a standout amongst the most critical issues faced by modern society. No society – primitive or modern, no nation in the case of creating or created is free from its grip. Crime damages the social texture. Culprits are not conceived but rather made by circumstance of society. The conventional methodologies of treatment of crime have not modified the situation of casualties of crime for better in any case. In opposition to the basic conviction held by criminal equity authorities that casualties would anticipate that striking back or revenge will their off enders, numerous casualties are observed to be keen on remedial methodologies keeping in mind the end goal to manage debate instead of disciplines and punishments to the offender. Assistance to casualties of crime is of extraordinary significance since casualties have suffered hopeless damages and mischief because of crime. The issues of crime casualties and the effect of crime on them is fluctuated and complex. Consequently, the offices of the criminal equity framework ought to be open to the necessities of the casualties of crime also, address their issues genuinely and compassionately.

**KEYWORDS:** Crime, Criminal Justice, Victimization, Violence, society

## **I. INTRODUCTION**

Crime analysis across the globe reflects the fact that there cannot be a society without crime and criminals, tragedy and violence. Crime is a social phenomenon. Crime is one of the most important problems faced by modern society. No society – primitive or modern, no country whether developing or developed is free from its clutches. Crime damages the social fabric. Criminals are not born but made by situation of society. Many Criminals attempt criminal activities because of their extreme anger or lack of patience. Some criminals after the crime feel very bad about their activity and want to recover from it.

Hence, the prisoners have to be identified as sensitive human being. The criminal justice system must do more than punishing the criminal. It must seek to heal the wounds - emotional, physical and financial – cost by crime. This is difficult but essential goal. The subject of criminal justice reforms in India has received considerable attention in recent years, due to the high incidence of arbitrary arrest and custodial abuses – even for minor offences; undue delays in investigations, framing of charges and the conduct of trials – contributing to the growth of under-trials, and the chronic problem of under-reporting of crimes ignited by refusal to file First Information Report(FIR) as a deliberate measure to artificially keep the Crime-rates low. Under-reporting of Crimes is caused by the reluctance of police personnel to register a First Information Report purposefully for recording low-crime rates in their respective areas. More often than not, it is poorer people who are more likely to be arrested, detained and mistreated – even in the course of minor offences.

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## II. OBJECTIVES OF THE STUDY

1. To trace the protection of victims and their human rights under criminal justice system.
2. To ascertain the awareness about the victim's right and to be examined the various loopholes under the existing compensatory statutory provisions and rules framed there under.
3. To obtain the cases pending at different stages for the delay in administration of criminal justice system.
4. To assess the failure of state machinery to implement the Acts which provides safeguard to victims of crime.
- 5.

## NEED OF THE STUDY

Challenges faced by Crime Victims in India and care for special categories of Victims.

No separate law for crime Victims exists yet in India. But the recent enactments passed by the Parliament have a significant bearing on preventing victimization of certain vulnerable sections of the population such as women, children and elders, viz., The Protection of Women from Domestic Violence Act, 2005, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, etc. Making primary education a fundamental right – the spread of free and compulsory education to all children of the age 6-14 years and strengthening the Noon Meal Scheme in the schools for the children in Tamil Nadu and the introduction of this scheme in other states will have a bearing on Victimization of Child labour and child abuse. Continuous efforts are going on towards empowerment of children. Massive Victimization has claimed countless lives and blighted human prospects. The breakdown of the rule of law and of basic institutions in these desperate situations has made the establishment, or re-establishment, of an effective justice system an urgent priority in many countries. Many crimes involve threat but the victims suffer no physical injury. For example, a robbery victim may be threatened with a weapon but not physically injured. Also a stalking victim may be intimidated and harassed over the Internet but not physically attacked by the stalker. In all of these instances, persons may be seriously traumatized by a crime but not be physically injured. States are encouraged to consider the safety and mental health needs of these victims.

## SCOPE OF THE STUDY

The present study is to be covered up the statutory as well as constitutional provisions in the light of reported judgments of higher courts. Efforts may be made to review the compensatory provisions under criminal justice with a view to offer some suggestions which may helpful to the legislature as well as researchers in various ways. Endeavour shall be made to examine the awareness of general public towards the rights of victims. An attempt also is made to examine loopholes which need a fresh look in modern prospective in the light of other developed countries.<sup>1</sup> This research shall also approach the problem of backlogs and docket management leading to prolonged trials. The issue is whether existing provisions may help to deliver promptly an effective and cheap justice to the victims of crime or not.

## III. RESEARCH METHODOLOGY

For the completion of this research work, primary as well as secondary sources of information have been utilized to collect data. The other sources of information have included standard reference books, law reporters (All India Reporter, Supreme Court Cases, Criminal Law Journal, Responsible Conduct of Research (Criminal) ), Committee and commission reports, journals, magazines and newspapers. The method of research used in the proposed study is analytical, comparative, critical and empirical in nature. For this purpose the survey of decided cases from (2008-2012) by Supreme Court as well as High Courts, as reported in different law reporters have been analysed and enlisted in tabular form. The present study also takes into account, the report of Law Commission of India and various other committees.

These are taken through different legislative measures. In India, as well there are different statutory provisions in criminal justice under which the compensation can be awarded to the victim of crime, viz., Fatal Accident Act, 1855, Probation of Offenders Act, 1958 and Code of Criminal Procedure, 1973. In pursuance of the

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<sup>1</sup>AIR 1983 SC 1986.

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recommendations of Law Commission of India in its report a comprehensive provision for compensation to victims of crime has been inserted in section 357 of the Code of Criminal Procedure, 1973 (herein after Cr. P.C.). According to sec.357, sub-s.(1) and sub-s(3), the court may award compensation to the victim of crime at the time of passing judgment, if it considers appropriate in a particular case in the interest of justice. These provisions make the trial courts and the appellate courts competent to award compensation to the victims of crime only after trial and conviction of the accused. These powers to award compensation are not subsidiary to other sentence, but it is in addition there to. It is left to discretion of the court to decide in each case depending on its facts and circumstances. However, the existing provisions of Code are not founding encouraging one. Any compensation awarded under the cover of this section at the end of normally protracted trial spanning over an average of 8 to 10 years is not immediately available to the victim as he must await the appellate round to conclude.<sup>2</sup>

This chapter deals with historical background of Victimology by different theories Victimologist, and development path of Rights of Victim and adaptation of victimology in India Criminal Justice System.

## Historical Perspective

The evolution of the concept can be traced both historically and theoretically. Historically the concept of victimology in crude sense was not only part of Hammurabi's code but also existed in developed sense in ancient Greek city-states.<sup>3</sup>

The concept of compensation was also not new to India and existed in more developed sense then the present.

**Manu in Chapter-VIII, verse 287** clearly says that:<sup>4</sup>

“If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole”.

He further in **verse 288** says that, “He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage.”<sup>5</sup>The quotes regarding the same can be found even in the works of Brihaspati. This is in brief the law relating to compensation to the victim of crime that even existed in ancient civilization of east as well as west.<sup>6</sup>

As far as tracing of gradual evolution of the concept is concern the whole era till mid of 1900 can be generally divided in to three parts. In initial year of human civilization when the human started living together especially after stone Age, because of absence of rule of law and authoritative political institution, right to punish or rather might to punish (in from of eye for eye or money) was with the individual and hence in crude sense the concept of compensation existed at that time even but line of caution that need to be bear in mind is the fact that in primitive society criminal victim relationship was based on brutal mentality of attack being the best defence. Then came the era in which the social control in terms of mechanical solidarity creped in the society and the offence against an individual lost its individualistic character and now the offence was considered to be against the tribe or clan to which individual belongs and from this era, due to advent of concept of collective responsibility clan or tribe started replacing the victim's right.

The third stage started with the advent of strong monarch after medieval period. In this stage on one hand criminal law saw far reaching change in all its discipline but on other the hand position of victim right to compensation remained unheard due to advent of more strong institution named state and crystallization of a notion that King/State is parent of his subjects and Crime is breach of peace of King or State. So it was King/State who had the right to punish and get monetary compensation. This position remained as it is even with advent of democracy and the cause of victim remained unnoticed until 1950 and after that a movement stared in U.S. and European countries and the concept again got prominence. Theoretically radical criminologist championed the idea of cause of victim, which was result of reaction against the then criminological thinking that was only concern with criminals and not the victims.

<sup>2</sup> <https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp>, Retrieved on 9<sup>th</sup> September 2014 at 9.30am.

<sup>3</sup> <http://www.legalserviceindia.com/articles/pun.htm>, Retrieved on 10<sup>th</sup> January 2015 at 3.19 pm.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

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Hence, the whole gamete of legislative framework about compensation can be summarized in following way:

- Compensation from State, which is outcome of Judicial Imposition or some times, even ex-gratia under Constitution of India.
- Compensation from an offender which is out come either as a part of fine or allocation of specific sum to victim either under Cr.P.C. or Constitution of India.

At first (going back to the origins of criminology in the 1880s), anything resembling victimology was simply the study of crime from the perspective of the victim. With the exception of some psychological profilers who do this, nobody really advocates this approach to victimology anymore. The scientific study of victimology can be traced back to the 1940s and 1950s. Two criminologists, Mendelsohn and Von Hentig, began to explore the field of victimology by creating 'typologies'. They are considered the "fathers of the study of victimology." These new 'victimologists' began to study the behaviours and vulnerabilities of victims, such as the resistance of rape victims and characteristics of the types of people who were victims of crime

## THEORIES OF VICTIMOLOGY

**Mendelsohn (1937)** interviewed victims to obtain information, and his analysis led him to believe that most victims had an "unconscious aptitude for being victimized." He created a typology of six types of victims, with only the first type, the innocent, portrayed as just being in the wrong place at the wrong time. The other five types all contributed somehow to their own injury, and represented victim precipitation.

**Von Hentig (1948)** studied victims of homicide, and said that the most likely type of victim is the "depressive types" who is an easy target, careless and unsuspecting. The 'greedy type' is easily duped because his or her motivation for easy gain lowers his or her natural tendency to be suspicious. The 'wanton types' is particularly vulnerable to stresses that occur at a given period of times in the life cycle, such a juvenile victims. The 'tormentor', is the victim of attack from the target of his or her abuse, such as with battered women. Von Hentig's work provided the foundation for analysis of victim - precipitation that is still somewhat evident in the literature today.

## LEGAL ENACTMENTS AND CONSTITUTIONAL PROVISIONS REGARDING RIGHTS OF VICTIMS

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

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, 1860 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 subsystems 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

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## SECONDARY VICTIMIZATION FROM CRIMINAL JUSTICE AND SOCIETY

Having suffered primary victimization in the form of physical, financial or emotional impact of crime, the crime victim, more often than not is also subjected to secondary victimization from tiresome court proceedings and also the society as whole. The victim suffers from secondary if his/her human or legal rights are refused by the court due to manipulated evidence put forth by the criminal and the court gives its decision against the victim on the basis of that evidence.

This institutionalised victimisation is more painful for the victim. Even at the investigation and trial stage of the case, the victim may have to suffer secondary victimization at the hands of police and investigation personnel. It is mainly due to procedural processes and procedure of the criminal justice system which shows little concern for the mental torture and suffering of the victim and concentrates more on the prosecution of the offender.<sup>7</sup>

Other agencies which may cause secondary victimization may be hospital procedures, especially in case of victims of rape and sexual offences and the relatives and friends of the deceased in murder cases. The victim is generally refused immediate medical care and treatment until the matter is taken up by the police and they approach the hospital authorities. Obviously the victim's treatment is delayed for this reason.<sup>8</sup> The society's attitude towards the crime victims also accounts for his secondary victimization. Instead of sympathising and helping the victim, his relatives, friends, neighbours etc., may squarely put the entire blame on the victim himself. They attribute victim's own behaviour to the occurrence of crime, of which he is the victim.<sup>9</sup>

## INTERNATIONAL INSTRUMENTS

The three core international instruments on victims' rights:

- The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power.
- The United Nations basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of humanitarian law – the “*Van Boven / Bassiouni Principles*”.
- The United Nations principles for the protection and promotion of human rights through action to combat impunity – the “*Joinet / Orentlicher Principles*”.
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### **The United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power**

The adoption of the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration on Justice for Victims) by the General Assembly, on 29 November 1985, represented a major step forward in the recognition of victims' rights. The UN Declaration on Justice for Victims was the first international instrument to specifically focus on the rights and interests of victims in the administration of justice. This instrument is primarily concerned with the position of victims before national criminal justice systems, but the general principles are equally applicable to the international system. Guidelines on the use and application of the Declaration are provided in the Handbook on Justice for Victims.

## IV. CONCLUSION

The policy of our criminal justice system is victim - oriented and the researcher has to a certain extent incorporated the idea of compensatory criminal jurisprudence. The problem arises in implementation of this policy. The attitude of the judiciary needs change. The provisions being discretionary, it neither imposes a legal obligation on the judge to order compensation in all suitable cases to the victim of crime, nor does it require reasons to be recorded for not doing so. Similarly, these provisions do not vest in the victims a legal right to be compensated either by the accused or the state for loss or injury caused by the commission of the offence.

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58. Paranjape, N.V. “Criminology and Penology with Victimology”, Central Law Publication, 15th, p.672.

59. *Ibid.*

60. *Ibid.*



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The victim remains at the mercy of the discretion of the judge for the award of compensation because of the word 'may' in Sections 357(1) and (3) of Cr.P.C. this being the vanishing point of victim compensation in India. Mere punishment to the accused though it may exhaust the primary function of criminal law, is not fulfilment of the Rule of Law. Hence, the court should be liberal in utilising the discretion vested in them in granting compensation to the injured in a criminal case. It is imperative to convert the discretionary power of the court into a legal mandate requiring it to in all suitable cases, pass compensation orders and when it decides not to do so, make it obligatory to record reasons for not doing so. From the aforesaid cases, the researcher may conclude that the Apex Court in India has set a trend of compensatory criminal justice jurisprudence, which in effect is developing the ground towards restorative justice in our criminal justice system.

There is no doubt that Code of Criminal Procedure provided for the compensation to victim in the year 1898, when even the concept has not developed properly but now it submitted that the whole scheme under Cr.P.C. or P.O.A. needs renovation. The most important attack on the present legislative framework lies on the discretion given to the courts i.e. it depends upon them to grant compensation and absence of recording any reason when they abstain themselves from granting compensation. Another criticism of the present legislative framework lies in the absence of right of victim to claim compensation. Critics also argue for the absence of any institutional scheme under the present legislative framework that has now become the important part of victim - Crime relationship in countries of southern hemisphere such as USA, UK, New Zealand, France etc. The laxity on the part of Indian legislature is so much so that India has not made any legislation to give compensation to victim of crime when accused is acquitted despite of its obligation under various International Covenants. In this regard, even Hon'ble S.C. in the case of *Delhi Domestic Working Forum v UOI* has shown its concern in following words.

It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board . . . 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 child birth if this occurred as a result.

So this in brief set out the major defaults in the present legislative framework due to which the whole concept of compensation has become akin to flop show in India. However, it is to be noted that part of responsibility of being the concept flop show lies on Indian judiciary as well, especially the lower courts. In this regard, the observation of Hon'ble S.C. in the case of *State of Gujarat v Hon'ble High Court of Gujarat* is relevant where following was stated:

**Section 357 of the Criminal Procedure Code, 1973** provides some reliefs to the victims as the court is empowered to direct payment of compensation to any person for any loss or injury caused by the offence. But in practice the said provision has not proved to be of much effectiveness. Many persons who are sentenced to long term imprisonment do not pay the compensation and instead they choose to continue in jail in default thereof. It is only when fine alone is the sentence that the convicts invariably choose to remit the fine. But those are cases in which the harm inflicted on the victims would have been far less serious. Thus the restorative and reparative theories are not translated into real benefits to the victims.

Unfortunately the incorporation of the majority of Justice Verma recommendations into the criminal law amendments is not enough to change the fundamentals that drive anti-women discrimination. Stories of harassment, the rape of women, including of children as young as five or six years of age – and governmental incompetence or apathy continue to make their way into the front pages of Indian newspapers on a regular basis.

### **Laws on paper give little protection, if they are not enforced effectively**

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

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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.

In the current decade of victimological research, there is a substantial interest in the study of impact of crime on victims and ways to assist them. Assistance to victims of crime is of great significance because victims have suffered irreparable damages and harm as a result of crime. The problems of crime victims and the impact of crime on them is varied and complex. Therefore, the agencies of the criminal justice system should be receptive to the needs of the victims of crime and address their issues sincerely and empathetically. Like in the United States, Europe and the other developed countries, both the Government of India and the State Governments should enact exclusive legislations for victims of crime, as the existing provisions in the criminal laws are not sufficient.

A ray of hope is the recommendations of the Committee on Reforms of Criminal Justice System headed by Justice V.S. Malimath. The Committee has emphasized the need for a paradigm shift in the justice system. Hence, the Government of India may have to take efforts to implement the recommendations of the Committee on Reforms of Criminal Justice System. There should also be a change in the focus from criminal justice to victim justice, but victim justice should be perceived as complementary and not contradictory to criminal justice.

## SUGGESTIONS

It is need less to point out that the whole legislative paradigm coupled with lack of judicial determination has exposed numerous flaws of the present legal system about the compensation therefore there is need for revamping the whole legal system once.

The mandatory changes that are needed are as follows:

1. The suggestions given by the Law Commission of India in its 42<sup>nd</sup> report on Indian Penal Code must be taken in to consideration and it would be better if the legislature also take in to account the separate note of Justice R.L. Narsimha a member of the commission.
2. The law must also provide recording of reason for not providing or providing the compensation as in the case of death sentence in Cr.P.C.
3. The law must also provide for institutional set-up as in western countries.
4. If possible it would be better to give the compensation as the right to victims.

Some unique recommendations regarding Rights of Victims and their human rights are given by **Kumaravelu Chockalingam Commission**, which, if followed strictly will be highly beneficial.

It recommended that, 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.

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### 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. The researcher scholar 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.

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