

## **VICTIMS ROLE IN CRIME CAUSATION: A STUDY INTO THEORIES AND IMPLICATIONS**

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### **INTRODUCTION**

Consider the following scenarios:

Case 1: If A seduces B's wife and B on finding this out, kills or seriously injures A.

Case 2: If A is walking by a beautiful house on his way to the market without any intention of stealing; he sees a brand new phone kept on the verandah of a house unattended and takes it.

Case 3: A man under the influence of alcohol provokes a fight, either by verbal or physical abuse but gets beaten up.

Case 4: A woman voluntarily goes out drinking with a few men at their place and is friendly with them and gets sexually assaulted by the men.

Case 5: A covetous moneylender who in hopes of making extra profit enters into a dubious deal and loses his money.

These cases discuss some situations which illustrate a closer relationship shared between the offender and the victim. With the intention of understanding factors behind causation of crime, a closer look at this relationship was warranted. But victim's role in crime causation was not a topic of debate till the latter part of the twentieth century. Victims themselves were not involved in the debate either. In earlier times, trials would take place in front of village elders where the victim and offender would both plead their case. This changed due to the rise of the modern nation state. A new form of criminal justice system arose with its components being centralised police, investigation, and an adjudicatory system; a system was formulated to deal with the crimes committed in the society. Henceforth the state became the victim and the victim, a mere witness. This change was largely due to the formation of governments and formal legal codes.

Ironically, stronger focus on criminals encouraged renewed focus on victims. In the 1950s and 60s, there emerged a consciousness among activists, journalists, legal and social scientists that victims were being ignored in the criminal justice processes. Criminologists, lawyers, sociologists taking note of this ignorance, trained their attention towards victims

as a source to study crime and criminals further. The pioneering theories of Von Hentig, Benjamin Mendelsohn and others were primarily aimed at understanding the crime and the offender better and the relationship offenders shared with the victims. This interest eventually gave birth to 'Victimology' as a separate scientific endeavour. While Victimology took a life of its own with its focus on progressing victims' rights, it came to be known as general Victimology, but its origin lies in penal Victimology which was concerned with understanding the role which the victim played in crime, the relationship shared with the offender and guilt.

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The importance is reflected in the words of Ezzat Fattah, an Egyptian criminologist and a leading author on Victimology that "the study of victims and victimization has the potential of reshaping the entire discipline of criminology. It might very well be the long awaited paradigm shift that criminology desperately needs given the dismal failure of its traditional paradigms: search for causes of crime, deterrence, rehabilitation, treatment, just desserts, etc."<sup>ii</sup>

#### EARLY WORKS INTO UNDERSTANDING THE ROLE OF VICTIM IN CRIME CAUSATION

Von Hentig was a German criminologist who with the objective of devising better crime prevention techniques, he sought to find causes behind the making of a victim much like his earlier work on the making of a criminal. In his text *The Criminal and His Victim*<sup>iii</sup>, Hentig classified victims based on the biological, social and psychological factors into three classes: the general class, the psychological type and the activating sufferer. The general class of victims included the young, the female, the old, minorities, immigrants, the mentally challenged and weak individuals. The psychological class included the depressed, the lonely or heartbroken, the tormentor, the wanton, and the acquisitive. Hentig surmised that increasing number of victims were victimised due to their own behaviours or acts. This theory came under severe criticism later on and has since been repudiated but is nevertheless important due to its theoretical implications.

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<sup>i</sup> WILLIAM G. DOERNER & STEVEN P. LAB, VICTIMOLOGY (2002).

<sup>ii</sup> Ezzat Fattah, *Victimology: Past, Present, And Future*, 331 CRIMINOLOGIE, AT 17-49 (2000).

<sup>iii</sup> HANS VON HENTIG, THE CRIMINAL AND HIS VICTIM (1948).

Benjamin Mendelsohn, an attorney known as the father of Victimology by many, while preparing for a trial, conducted interviews with the victims, accused and witnesses and, came to the conclusion that there often exists a strong interpersonal relationship between the offender and the victim. Explaining these relationships further, he gave six typologies ranging from a completely innocent victim to most guilty victim. These six classes being:<sup>iv</sup>

1. The Completely innocent victim: Exhibits no provocative or contributory behaviour prior to the offender's attack for example a child or an unconscious person.
2. The Victim with minor guilt: Unwittingly does something that places him or her in a position to be victimized for example a woman who seriously injures herself while inducing abortion.
3. Voluntary victim or the victim who is as guilty as the offender: Those injured while participating in high-risk crimes such as drug abuse or prostitution; suicides.
4. Victim more guilty than the offender: where victim is the one who provokes a criminal act for example throws the first punch in a fight but ends up the loser.
5. Most guilty victim: The initial aggressor, but due to circumstances beyond his or her control ends up the victim for example a person attempts to rob a convenience store but is shot by the storeowner.
6. Simulating or imaginary victim: people who due mental health issues imagine themselves as victims, or a pretender, or false reporter.

These typologies were one of the first attempts at understanding the role of the victim in the crimes. These typologies tried to attribute some part of the guilt onto the victim itself. Categories which held victims responsible for some portion of the guilt were subsequently criticised, but sought to explain crime as a complex social function rather than an event happening in vacuum.

Stephen Schafer, an American professor of sociology, in 1968 published *The Victim and His Criminal: A study in Functional Responsibility*<sup>v</sup>, often considered as the first textbook

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<sup>iv</sup> CLAIRE FERGUSON & BRENT TURVEY, VICTIMOLOGY: A BRIEF HISTORY WITH AN INTRODUCTION TO FORENSIC VICTIMOLOGY (2009 ).

<sup>v</sup> STEPHEN SCHAFFER, VICTIMOLGY: THE VICTIM AND HIS CRIMINAL (1968).

of Victimology. He examined the works of both Hentig and Mendelsohn and classified victims according to their responsibility rather than risk factors. He theorised that the criminal justice system should take note of the dynamics of crime within the contours of the relationship between victim and his criminal. The title of the book was itself reflective of the bias, that it was the victim which made the offender the criminal and not the other way round, which is the popularly held belief. He went to state that “the study of criminal-victim relationships emphasizes the need to recognise the role and the responsibility of the victim, who is not simply the cause of, and reason for, the criminal procedure, but has a major part to play in the search of an objective criminal justice [system] and a functional solution to the crime problem”.<sup>vi</sup> He summarised that it was the functional responsibility of the victim to not instigate others into harming him and at the same time actively resist any such attempt.

The first empirical research finding that supported the role of victims in crime causation came through “*Patterns of Criminal Homicide*”, the research work of Dr. Marvin Wolfgang, published in 1958.<sup>vii</sup> Wolfgang studied homicide records for the city of Philadelphia between 1948 and 1952. He concluded that over a quarter of the homicides involved victim contribution. He went further and labelled ‘victim-precipitated’ as a form of homicide. Such a homicide happens when the initial physical violence or threat of physical violence came from the victim, not the offender. This concept has been utilized in the examination of many violent crimes. However, when applied to property and sex related criminal activity the argument loses ground due to the subjective nature of provocation in such instances.

Inspired from these were studies such as that of Menachem Amir, who in his book ‘*Patterns in Forcible Rape*’<sup>viii</sup>, observes that about 20% of rapes are victim precipitated. Reasons for such precipitation were drinking, being acquainted by the offender etc. Attempts such as these were held to be harbouring some sort of offender bias and concerns were raised that these could get translated into biased legislations. This study particularly came in severe criticisms by feminists.

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<sup>vi</sup> *Id.*

<sup>vii</sup> MARVIN E. WOLFGANG, *PATTERNS IN CRIMINAL HOMICIDE* (1958).

<sup>viii</sup> Menachem Amir, *Patterns in Forcible Rape*, 80 AMERICAN JOURNAL OF SOCIOLOGY, 785-790 (1974).

Theories on victim precipitation have also led to alternate thinking such as the ‘contributory fault’ of the victim.<sup>ix</sup> It believes that an incentive mechanism should be devised which could be called ‘contributory fault’, in which the onus is on the victim to take certain appropriate measures that would deter criminals. Even though crime prevention is the function of the state, it believes that if prospective victim would take certain optimal precautions it would lead to better crime prevention and thereby deterrence. And to enforce this certain optimal precaution, it is also willing to impose certain sanctions on the victims or reduce the sanction of the offender correlative to the decreased levels of these optimal precautions.

### THEORIES OF VICTIMISATION

Much like the theories on the behaviour of criminals, behaviour of victims was also attempted to be theorised. The most favoured theories are: lifestyle exposure and routine activity theory.

#### A. Lifestyle Exposure Theory of Victimization:

The principle underpinning this theory is that the demographic variations in the probability of victimization are consequential of the idiosyncratic lifestyles of the victims. Hindelang, Gottfredson, and Garofalo, early contributors towards the theorization of victimization, define lifestyle in this scenario as “routine daily activities, both vocation activities (work, school, keeping house, etc.) and leisure activities”.<sup>x</sup> The activities performed daily may bring them in closer proximity with crime or increase the risk of being a victim of crime. Time spent at home decreases the risk of victimization while time spent in public forums and spaces increases it. Variations in lifestyle occur due to structural limitations and responses to diverse role expectations sociologically. Status characteristics such as age, gender, race, financial health, literacy, and profession, are contributory to predatory criminal behaviour as these characteristics create an expectation regarding decision making and form different structural realms which can hinder or catalyse actions or behavioural choices. Aligning with such characteristics leads to the establishment of patterns, routine activities, and associations. These patterns and associations,

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<sup>ix</sup>Omri Ben-Shahar and Alon Harel, *Blaming the Victim: Optimal Incentives for Private Precautions against Crime*, 1995, 11 *Journal of Law, Economics, & Organization*, 434-455 (<http://www.jstor.org/stable/765005> Accessed: 18-11-2017 04:54 UTC).

<sup>x</sup>M. J HINDELANG et al , *VICTIMS OF PERSONAL CRIME: AN EMPIRICAL FOUNDATION FOR A THEORY OF PERSONAL VICTIMIZATION* (1978).

according to the lifestyle exposure theory, are suggested to bolster an individual's propensity for risk or vulnerability thereby promoting victimization.

#### B. Routine Activity Theory:

Cohen and Felson's routine activity perspective shares many commonalities with the lifestyle exposure theory.<sup>xi</sup> The two theories both emphasize the role patterns of routine activity or lifestyle choices influenced by society and reduce the importance of offender motivation and other facets of criminal behaviour to delineate an individual's risk of victimization. A viewpoint is also shared between the theories regarding the "criminal opportunity" perspective as they both argue that supply of criminal opportunities is mostly ascertained through the daily rhythmic patterns of behaviour.

The theories differ in their origin and their terminology. The lifestyle exposure theory was developed to help understand difference in risks of victimization across various social strata. The routine activity theory started from the question of describing why changes of crime rates occur over time. Cohen and Felson attribute three central characters in "direct-contact predatory crimes":<sup>xii</sup>

1. Motivated offenders
2. Suitable targets
3. Absence of capable guardians against a violation

Variations in the structures of routine activity cause the three elements to have greater proximities at certain times and spaces. A failure of all three elements to combine will prevent criminal behaviour. An interesting point made by Cohen and Felson over the course of the theory is that the increase in the number of suitable targets will cause an increase in crime even if the number of motivated offenders remains the same. This assertion is drawn from a historical criminal analysis in the United States during the 1960s and 70s. Throughout this period, the factors which were thought to be major enablers of crime (e.g., failing job market, racial inequalities, and unequal economic opportunities) were declining. Yet, crime

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<sup>xi</sup>L. E. Cohen and M Felson, *Social Change And Crime Rate Trends: A Routine Activity Approach*, 44(4) AMERICAN SOCIOLOGICAL REVIEW, 588–608 (1979).

<sup>xii</sup>*Id.*

remained largely constant. During this period, the number of suitable targets increased while due to general economic prosperity. Variations in lifestyles occurred for individuals moving through social groups.

At this juncture, it is necessary to understand what is meant by routine activity. Cohen and Felson define them as “any recurrent and prevalent activities that provide for basic population and individual needs”.<sup>xiii</sup> Routine activities are similar to lifestyle choices. They include systemic patterns of work, leisure, food consumption behaviour, dwellings, social bonds and interactions, and sexual expression among many other human socio-cultural connections. The influence of work in human ecology is prevalent on the routine activity theory. Cohen and Felson contend that humans are all part of particular socio-ecological purloins having their own defining factors and patterns. They attribute predatory crime as being a way of securing the same basic needs or desires through a violation of other’s rights. Individuals style their patterns of behaviour and social interactions in a manner which dissuades motivated offenders from targeting them. In such predatory scenarios, routine activities of suitable targets either increase or decrease their opportunities for becoming victims of crime.

## POSITIVIST AND CRITICAL VICTIMOLOGY

Positivist Victimology is often also known as conservative or conventional Victimology. This kind of Victimology focussed on the traditionally understood sources of victimisation; crimes such as murder, theft, etc. as against the crimes committed in the private domain home or business corporations, etc. which were veiled. This went well with the conservative understanding and politics of what was understood as the crime problem. David Miers identifies positivist Victimology as having three main components: the identification of factors that conduce to a non-random risk of victimization, a concentration on interpersonal crimes of violence, and the identification of victims who may have contributed to their own victimization.<sup>xiv</sup> Walklate adds a fourth component that is the neglect of the private as an area of criminal victimisation.<sup>xv</sup> This domain of victimisation has been the sphere of most of the work done by early criminologists.

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<sup>xiii</sup> *Id.*

<sup>xiv</sup> DAVID MIERS, RESPONSES TO VICTIMISATION(1978).

<sup>xv</sup> SANDRA WALKLATE IMAGINING THE VICTIM OF CRIME. (2007).



This school of Victimology has been criticised due to its narrow concern with the culpability of the victim and its closeness to the functionalist idea of the society. According to Miers the essential failing of victimology is its inability to explain “the everyday social process of identifying and responding to victimizing events.”<sup>xvi</sup> He argues for a Critical Victimology since, “the process of labelling individuals victims starts with a statement of values, it is essential to analyse how, when, and why some who sustain injury are labelled and others not.”<sup>xvii</sup>

Sandra Walklate in her book, *Imagining the victim of Crime*<sup>xviii</sup> does attempt at formalising some theories on this subject. The problem with theories for all types of victimisation is that none theorise all factors well but does help us understand the universe of this subject that is the victim. While anybody can be a victim of crime, not everybody is at an equal risk to be victimized. For example, in 2007, 91 percent of those murdered in Baltimore, Maryland, had prior criminal records. Similar findings came from Newark, New Jersey (85 percent), and Philadelphia (75 percent).<sup>xix</sup>

Miers draws predominantly from social psychological framework and tacitly from symbolic interactionism. Symbolic interactionism is the understanding of how individuals react with each other, the symbols they incorporate into their worlds and the incorporated worlds influence individual behaviour. Miers, after consulting these sources, says that the social functions of victimization, the process of labelling victims, as well as the impact of such a label needs to be addressed. However, Miers’s suggestions are not without their drawbacks. There is no background given to the creation of labels and what provides legitimacy to the labels. Traditional social psychology and symbolic interactionism, primary sources for Miers’s views, do not have any jurisdiction over the contextual process of victim labelling. While this context is understood, Miers does not make any reference to scholarly work done with a structural understanding of the process of victimization such as feminist research or more recently, radical left realism. The creation of a critical victimology mandates the re-exploration of points contributed from both positions.

Feminists represent an acceptance and resistance towards powerlessness created by the real context of women’s and children’s structural positions within victimology. One of the

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<sup>xvi</sup>Miers, *Supra* note 13.

<sup>xvii</sup>*Id.*

<sup>xviii</sup>SANDRA WALKLATE IMAGINING THE VICTIM OF CRIME. (2007)

<sup>xix</sup> Kevin Johnson, *Criminals Target Each Other, Trend Shows*, USATODAY, Aug. 31, 2007, at A1.



major contributions of feminist research in critical victimology is the recognition of the impact of structural realities where victims and survivors are identified in subliminal ways. Yet, to make a 'feminist Victimology' label would be contradictory. Rock says, "Feminists have been markedly hostile, redefining "victim precipitation" as "victim blaming" and portraying victimology as a weapon of ideological oppression."<sup>xx</sup> This hostility is justifiable as feminist concerns have been repeatedly overlooked within mainstream male driven victimological work. The collection of readings edited by Fattah represents a typecast perspective on the victimological issues about women and children. Feminist research has a vital role to play in criminology as well as in victimology.

### CONCLUSION

The stream of penal victimology is the result of the interests of the criminologists. This is different from the supposed general victimology in that its purview is decided through criminal law and therefore victimology becomes a study of the victims of illegal criminal acts which are delineated in criminal legal codifications. This method of studying victims finds correlation between information on crime causation and victim's contributory role in crime generation. The irresolute interactions between victims and offenders are explored. In this spirit, a substitute name for this method would be interactionist victimology.

General victimology was first elaborated on by Mendelsohn in 1956. He voiced his idea on "victimity" which he said could be curbed through preventive action and victim aid. Mendelsohn's interests moved from crime and its prevention to the emaciation of victimity. In his opinion, the subjects of victimology research should be extended to victims of accidents, natural disasters, and catastrophes. He envisioned victimology as a sphere helping societies reduce human pain, detached from criminology and criminal law. There have been notable results through many legal provisions regarding criminal procedure being adopted to facilitate stronger legal positions for victims.

Criticisms levied on general victimology vary. Van Dijk notes that the criminal law aspect of the victim's hardship is often ignored by clinical studies of victims of crime. Focus is given to the clinical symptoms exhibited by the patient. Other arguments target different spheres of victimology. Cressey in 1992 said of victimology that it is, "a non-academic

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<sup>xx</sup> SANDRA WALKLATE, *IMAGINING THE VICTIM OF CRIME* (2007).

program arbitrarily assembling a “hodgepodge” of diverse ideas, interests, ideological attitudes and research methods...; it is characterized by the incompatibility between two equally advantageous approaches to human hardship – the humanistic and the academic...(however), the humanistic approach is likely to be blamed for being more of a propaganda than a scientific study, whereas the academic approach is blamed for being insufficiently focused on social action. It might be better to exclude all the assumptions which are detached from other and which are associated with some other area outside the umbrella of Victimology.”<sup>xxi</sup> Cressey's thoughts were reverberated by Fattah, who pointed out that victimology had strayed away from the theory and scientific research too much, and "started leaning towards ideology, activism and politics.”<sup>xxii</sup>

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<sup>xxi</sup>ROBERT ELIAS, PARADIGMS AND PARADOXES OF VICTIMOLOGY, 9  
(<http://www.aic.gov.au/publications/proceedings/27/elias.pdf>).  
<sup>xxii</sup>*Id.*