

PENOLOGY & VICTIMOLOGY

UNIT – IV

Victimology – European & American Experience
Victim-Witness Assistance · Restitution

20 explanatory slides · Comparative law and Indian links

ROADMAP

What this unit covers

1. Why comparative study

2. European starting point

3. Council of Europe

4. EU victims directive

5. UK model

6. American starting point

7. US Victims' Rights
Movement

8. CVRA & MAR

9. Restitution in US

10. Witness protection US/EU

11. Assistance programmes

12. What assistance means

13. Restitution concept

14. Restitution vs
compensation

15. UN 1985 principles

16. Lessons for India

17. Cases

18. Statute/policy map

19. Takeaways

20. Close

Why Europe and America matter for this paper

The syllabus asks you to study European and American experience because modern victim rights were first institutionalised there. Indian law later borrowed the language of participation, assistance and restitution.

Europe

Treaty standards, Council of Europe conventions, EU directives – a rights-and-services model.

United States

A political victims' rights movement, constitutional amendments in many States, federal CVRA.

Common tools

Information, presence in court, protection, restitution, compensation funds.

Caution

Do not copy-paste. India's legal aid, police and court capacity differ.

European starting points

Human rights frame

ECHR Arts. 2, 3, 8 – positive duties to protect life, against ill-treatment, and private life.

From witness to party

Victim is no longer only a source of proof.

Compensation funds

State funds where the offender cannot pay (e.g. UK CICA model).

Minimum standards

EU law later set a floor of rights for all member States.

Restorative justice

Stronger European interest in mediation for suitable cases.

Women and children

Istanbul Convention and child-victim directives added specialised duties.

Council of Europe contribution

The Council of Europe pushed victim policy before the EU legislated in a binding way for members.

1983 Convention

European Convention on the Compensation of Victims of Violent Crimes.

Recommendations

Soft-law recommendations on the position of the victim in criminal law and procedure.

Istanbul Convention

Violence against women and domestic violence – protection and support services.

ECtHR

Case law on effective investigation and protection of victims and witnesses.

EU Victims' Rights Directive (2012/29/EU)

Information

Victim must be told of rights, process and release of the offender in defined cases.

Understand

Communications in a language and form the victim can follow.

Participation

Right to be heard and to supply evidence.

Protection

Assessment of individual protection needs; special measures in court.

Support services

Access to confidential victim support, free of charge.

Restitution path

Decision on compensation from the offender in the course of criminal proceedings where national law allows.

United Kingdom as a concrete European example

Victim's Charter / Code

Administrative code of duties for police, prosecutors and courts.

CICA

Criminal Injuries Compensation Authority – State-funded awards for violent crime.

Victim Personal Statement

Victim may tell the court about impact at sentencing.

Special measures

Screens, live links, intermediaries for vulnerable witnesses.

Witness Service

Court-based support so that attending court is less traumatic.

Limit

The victim does not run the prosecution; the Crown does.

American experience – the movement

From the 1970s, US victim advocacy grew out of dissatisfaction with an offender-centred due-process system. The slogan was that victims had been forgotten.

Grassroots

Women's movement, homicide-survivor groups, child-protection advocates.

State action

Many States added victims' rights to their constitutions.

Federal statutes

Victims of Crime Act 1984 (VOCA) created a fund from federal fines and penalties.

Politics

Victims' rights became a bipartisan legislative theme – with critics fearing pressure on fair trial.

Crime Victims' Rights Act, 2004 (US federal)

To be reasonably protected

From the accused.

Notice

Of public court proceedings and of release or escape.

Not excluded

Right not to be excluded from public proceedings, with limited exceptions.

To be heard

At release, plea, sentencing and parole proceedings.

Restitution

Full and timely restitution as provided in law.

Fairness and dignity

To be treated with fairness and respect for dignity and privacy.

Restitution in American criminal courts

US federal law often requires the court to order the offender to pay the victim for actual loss – an order in the criminal case itself.

Mandatory in many felonies

The judge must order restitution for identified victims of specified offences.

What it covers

Medical costs, lost income, property damage, counselling, funeral expenses.

Collection problem

Many offenders are poor; an order on paper is not always money in hand.

State funds

VOCA-funded programmes fill gaps when the offender cannot pay.

Witness and victim protection – comparative

Identity protection

Withholding address and, in extreme cases, identity.

Relocation

US federal witness protection (WitSec) for high-risk organised-crime witnesses.

Court measures

Screens, video testimony, in-camera proceedings.

No-contact orders

Bail conditions forbidding approach to the victim.

Special prosecutors' units

Domestic violence and sexual-offence units with trained staff.

India parallel

Witness Protection Scheme, 2018 – studied in UNIT-V.

Victim–witness assistance programmes

Assistance is practical help so that the victim can participate without being harmed again by the process.

Information

What happens next, dates, outcome, release of the accused.

Court support

Someone to accompany the victim; a separate waiting room.

Counselling

Trauma support, especially after sexual and violent crime.

Logistics

Travel, interpreter, child care, protection of employment leave.

Who typically runs assistance programmes

Police units

First contact; risk assessment; emergency shelter referral.

Prosecutor offices

US model – victim-witness coordinators inside DA offices.

Independent NGOs

Rape crisis centres, shelters, legal-aid clinics.

Courts

Witness service desks and vulnerable-witness suites.

Health systems

Forensic examination with dignity (one-stop centres).

Hybrid

Best systems combine State duty with independent support.

Restitution – concept

Restitution is the offender's duty to restore the victim, so far as money and return of property can, to the position before the crime.

Source

The offender, not the taxpayer (that is compensation / State fund).

Form

Return of property, payment of loss, sometimes a service to the victim or community.

Criminal or civil

Can be ordered in the criminal case or left to a civil suit. Comparative systems prefer the criminal case for speed.

Limit

Cannot replace imprisonment where desert and public safety require custody.

Restitution and compensation distinguished

Restitution

Paid by the offender. Tied to the particular crime and loss.

Compensation

Often paid by the State when the offender is unknown, acquitted, dead or poor.

Both possible

A good system uses restitution first and compensation as a back-stop.

India

CrPC 357 / BNSS equivalent + 357A victim compensation scheme – both ideas exist.

Fine is not restitution

A fine goes to the State. Restitution goes to the victim.

Proof of loss

The victim must be able to show the loss with reasonable particularity.

UN 1985 Declaration – the shared charter

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is the common ancestor of European, American and later Indian policy language.

Access to justice

Fair treatment, information, and to present views.

Restitution

Offenders or third parties should make fair restitution.

Compensation

When restitution is not fully available from the offender, States should endeavour to provide compensation.

Assistance

Material, medical, psychological and social assistance.

What India took – and still lacks

Taken

Compensation schemes, some victim-impact practice, one-stop centres, witness scheme.

Weak

Reliable information to victims about dates and release.

Weak

Enforcement of restitution orders against poor or absconding offenders.

Weak

Professional victim-witness officers in every court complex.

Risk to copy

US-style politicisation of sentencing in the name of victims.

Keep

Fair-trial guarantees for the accused – Art. 21 is not optional.

Comparative markers and Indian bridges

UN Declaration 1985

Soft law, but the vocabulary of later statutes and judgments.

2012/29/EU Directive

European statutory floor of victim rights.

CVRA 2004 (US)

Federal list of enforceable victim rights in federal cases.

Bodhisattwa Gautam (1996)

Indian court using interim compensation – a local echo of restitution thinking.

Ankush Shivaji Gaikwad (2013)

s.357 CrPC compensation must be considered in every case.

Suresh v. State of Haryana (2015)

s.357A scheme invoked; State liability to operationalise funds.

Key takeaways

- 01** Europe: convention + directive model of minimum victim rights and services.
- 02** America: movement + State constitutions + CVRA + VOCA fund + restitution orders.
- 03** Assistance means information, protection, counselling and court support.
- 04** Restitution is paid by the offender; compensation is often paid by the State.
- 05** UN 1985 Declaration is the common philosophical source.
- 06** India has borrowed the ideas; delivery on the ground is still uneven.

End of UNIT – IV

Next: UNIT-V • Indian experience, legal framework, Courts, NHRC

20 slides • Light academic edition