

Introducing General Theory of Victimology in Criminal Sciences

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Abstract

One of the most important necessities that victimology requires at least within criminal sciences is to create a general theory describing and explaining all concepts, theories and hypotheses which may be used in this scientific sphere. The present article seeks to introduce such a theory, using key terminologies formed the literature and content of victimology from beginning of its emergence since mid of the twentieth century. The new discipline of criminal sciences that I argue in this article has emerged in the light of two criminological and legal approaches. The work of the victimology theory is to incorporating these approaches into a unified field of study which is based upon three key concepts: active personality of victim, nature of victimhood/victimization and passivity of victim. In my final considerations, I conclude that the victimology theory can have virtues and advantages including in criminal etiology, preventing victimization and offending and overall formulating a better criminal policy and criminal justice system in practice.

Keywords: Victim; Victimology Theory; Victimhood/Victimization; Victim's Rights.

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1. Introduction

Today, victimology as a field of study relating to victims of crime, it can be said, has become a branch of criminal sciences. Although the pioneers of criminologists have sought to regard victimology as a subfield of criminology [17: p. 1] and this trend has still continued in this scientific sphere, the fact shows that victimology has not restricted to a criminological framework. It has significant aspects which connect the victimology to other scientific spheres- including law. Thus, victimology, not as a social science which is called by some academics as *general victimology* [17: p. 2-3], is a field of study that its terminologies, hypotheses and methodologies relate to legal scientific spheres such as international human rights law and humanitarian law, and to the criminal sciences including criminal law, criminal procedures, international criminal law, and of course, criminology. The reality does not conflict with independency of victimology as a discipline because it enjoys terminologies and methodologies which distinguish it from other disciplines.

The most important effort to incorporate the victimology into the sphere of criminal sciences is to formulate a general theory

that can explain its hypotheses and findings. This is a fundamental endeavor in every science. Therefore, if victimology is as science and requires a scientific methodology, it is necessary to create a single theory that governs the victimology. Such a theory, as other disciplines of criminal sciences (e.g. criminal law), must meet two requirements: it must describe accurately all relevant events without using any random elements and it must predict accurately all relevant future events [6: p. 2].

Since some exceptions may always arise which render the theory to be inconclusive, consequently, amendments or changes in the primary theory are seems to be inevitable. Furthermore, if the theory can no longer explain the exceptions, it must be replaced by a new one [6, p. 2].

Taking into account the mentioned considerations, I seek to introduce a general theory of victimology in the sphere of criminal sciences. The victimology theory not only places in the framework of the above sphere, but also has interaction with legal scientific branches including human rights law. It is also about the victim and his/her victimhood/victimization. Thus, the victim and his/ her

victimhood/ victimization form the core of the victimology theory that is the highest level of the theory in question. From the essence of the theory derive other components which are lower levels subordinated to the higher ones. I introduce all the levels in four figures.

In Fig. 1, I show a schematic structure of victimology theory. The schematic structure consists of the personality of the victim and his/her victimhood/ victimization. Indeed, in this figure, I seek to illustrate the main bases of the theory that indicate two fundamental mainstreams of victimology, i.e. criminological victimology (in my opinion) and assistance-oriented victimology (according to *Van Dijk*) [17, p. 3].

In Figs. 2 and 3, I separate the components of the core level to explain the general theory in a better manner. Accordingly, the personality of victim is transformed into the typology of victims

including natural and legal victims. The fundamental hypothesis of the theory in this level is the activity of victim which is explained by a sub-theory called "victim precipitation" (Fig. 2). Fig. 3 is designated to the nature of victimhood/ victimization which explains the effects of crime in the form of a harm that may have several forms.

Finally, in Fig. 4, I illustrate the components of another mainstream of victimology which is based on the concept "passivity of victim". This concept, indeed, elucidates development of victimology from a criminological approach to an assistance-oriented one and also explains justifications of victim's rights.

According to the above explanations, the article is organized based on the components of the theory concerned which are documented, where appropriate, by samples or manifestations at international or national levels.

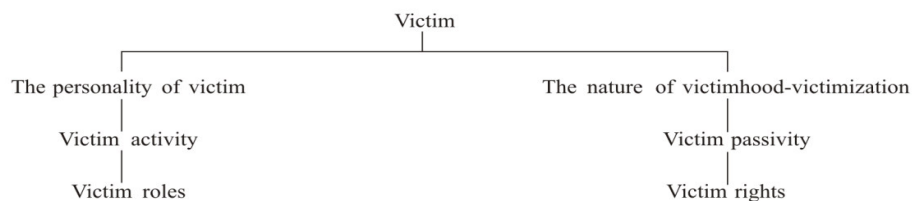


Fig. 1.A Schematic Structure of Victimology Theory

2. The Notion of Victim

The notion of victim in the theory of victimology is a person-centered concept which is defined based on the personality of the victim. The definition must be designed in such a manner that covers all forms of victimhood/victimization derived from criminal conduct and other behaviors which may be criminalized even though at the international level.

2.1. The Person-based Definition of Victim

Considering the international standard definition of victim which is reflected in several documents, particularly the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power [GA/Res/40/34- 29 November 1985] (Hereinafter *1985 Declaration*), the "victim" can be defined as:

"persons who, individually or collectively, have suffered harm __ including physical or mental injury, emotional suffering, financial or economic loss or substantial impairment of their fundamental rights, through conducts that are criminalized by national laws or through other behaviors that are not criminalized by national laws but violate internationally recognized norms of human rights and as such they are internationally criminalized".

As can be seen, the above definition involves some significant points including individual and collective or group victimhood/victimization, and criminalizing the violations of human rights as criminal abuses of power. Meanwhile, the essence of the definition is highlighted in its person-centered feature that can be analyzed into typologies of victim and victim activity (Fig. 2).

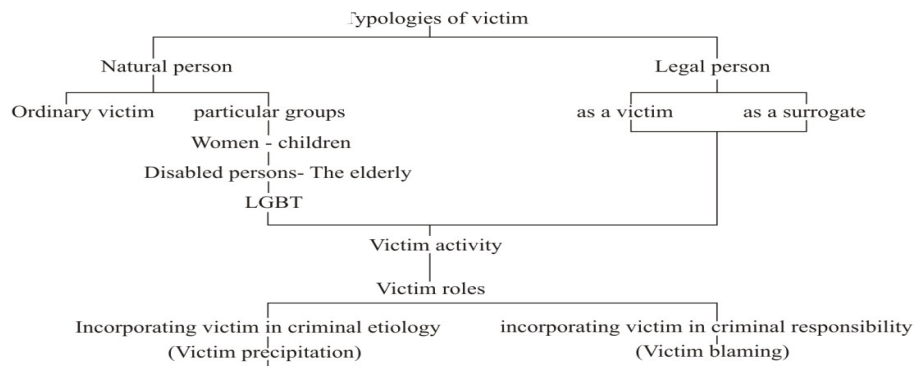


Fig. 2. The Personality of Victim

2.2. Typologies of Victim

Although the notion of victim usually denotes a single individual (*ordinary victim*), the personality of victim requires that it can be divided into various typologies. I examine the typologies from two perspectives within the structure of the victimology theory.

2.2.1. Victim as a Natural and a Legal Person

From a viewpoint, victim can be divided into natural and legal person. Of a legal terminological perspective, the term "person" may be interpreted to an individual (i.e. a human being or existing as an indivisible entity) or an artificial or moral person (such as company, organization, etc. as an abstract entity) [4: p. 789, 1178]. However, inclusion the definition of victim to the legal person has been controversial. *The draft of the UN Convention on Justice and Support for Victims of Crime and Abuse of Power* (2010) [16: p. 1] only recognizes natural person as victim (Article 1). Although the legal persons may be representative of individuals and the distinction, as some academics as Bassiouni note, has procedural significance [1: p. 21], but then, recognizing legal person as a

victim can play a key role in certain cases such as environmental damages in which the organizations (e.g. NGOs) could bring an action to obtain remedy or redress.

2.2.2. Particular Groups of Victim

Another typology of victim in the general theory consists of particular groups of victims based on some state of affairs or variables such as childhood, femininity, disability, elderly and being minority. I classify these particular victims into six groups:

Child Victims:

From an international perspective which is reflected in the *UN Convention on the Rights of the Child* [A/RES/44/25, 20 Nov.1989] (*1989 Convention*) and the ECOSOC Resolution (2005/20) entitled *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (The 2005 ECOSOC Resolution)*, child victims mean all persons under eighteen who are suffered harm through criminal behavior oriented to their childhood such as child abuse or child maltreatment, child-kidnapping, child exploitation etc.

This particular group of victims is usually recognized within the juvenile justice system throughout the world. For example,

the Juvenile Protection Act of Iran (2002) provides special provisions protecting all persons under eighteen against child abuse based on Iran's obligation to *the 1989 Convention*.¹

Female Victims:

From a criminological perspective, women are particularly victimized by men in situations such as sexual assaults or other abuses. These criminal behaviors often discussed as "violence against women". The most significant concept by which we can study the victimization of females is "*domestic violence*". It denotes violence between members of a household usually spouses [4: p. 1601] and often divided into criminal femicide and spousal abuse.

From an international perspective, *the UN Convention on the Elimination of All Forms of Discrimination against Women* [A/RES/34/180, 18 Dec. 1979] which its origins trace back to the *Declaration on the Elimination of Discrimination against Women* [A/RES/22/63/XXII, 1967], is the most significant instrument protecting

female victims of discrimination. *The Declaration on the Protection of Women and Children in Emergency and Armed Conflict* [A/RES/3318/XXIX, 14 Dec. 1974] also provides some forms of protections for female victims of violations of human rights and humanitarian law.

Disabled Victims:

More particularly, this group indicates the person-centered concept of victim. In general terminology, "disabled person" is an individual who has a mental or physical impairment, and "disability" means "an objectively measurable condition of impairment, physical or mental" [4: p. 494]. Thus, it can be said that whenever the physical or mental impairment derive from a criminal behavior, the disabled person is described as a victim.

At the international level, the most important document relating to the disabled persons is the *UN Convention on the Rights of Persons with Disabilities* and its optional Protocol [GA/Res/61/106, 13 December 2006]. Article 1 of the Protocol denotes the term "victim" in the context of victimization samples contained in the Convention:

"1. A State Party to the present Protocol ("State Party") recognizes the competence

1. Notwithstanding, despite about two decades after the approval of the *1989 Convention* in Iranian Parliament, problems such as increasing rate of street children indicate that enjoyment of domestic child victims of support mechanisms has been in doubt.

of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention".¹

Elder Victims:

They are old persons who are suffered criminal harm as a result of a domestic violence or other abuses usually occurred in Home for the Elderly. In the criminal sciences literature, "abuse of the elderly" or "elder abuse" means "any abuse of a senior citizen by a caregiver" [4: p. 10] such as deprivation of food or medication, beatings, oral assaults and isolation.

From a comparative perspective, support for elder victims does not seem to be developed as much as disabled victims at the international level, such that there is no considerable binding instrument as an international convention to protect this group of persons. In Iran, as I have already said, there is not a considerable

development except some provisions in the *Islamic Penal Code* that criminalize behaviors including homicide and intentional physical injuries against elder persons (Articles 206-c and 271-c)² [13, p. 191].

Minority Victims:

The victimization of minorities is often connected to the concept "collectively" in the above definition. In other word, minorities are usually victimized because they are minorities and/or they belong to a particular group or collectivity. As will be seen, this feature has resulted to an international principle entitled "*non-discrimination*" which is reflected in the Paragraph 3 of the *1985 Declaration*.

In recent decades, victimization of minorities has been conceptualized as "hate crime" or "hatred crime" which is criminalized in some domestic legal systems as the USA or materialized in policy discourse as in the UK [10: pp. 194-5]. It is defined as a crime motivated by the victim's race, color, ethnicity, religion, or

1. Following be approved the *2006 Convention* in Iranian Parliament in November 2008, it seemed that domestic disabled victims could enjoy support mechanisms, but then it does not appear to do so.

2. Other examples of a study on elder victims can be found in the collection of essays published by the Max-Planck Institute in which the position of elder abuse and victimization of elderly persons are discussed in Greece and Japan. For further study, see: [9: pp. 311 and 339].

national origin [4: p. 399] and from an offender-oriented perspective, its victimizers called "the perpetrators of hate" [19: p. 85]. In recent years, some groups, especially in the USA, have sought to expand the statutory definition of hate crime to include a crime motivated by the victim's disability, gender, or sexual orientation [4: p. 399]. From an international viewpoint, protecting minority victims can be seen in crimes against humanity particularly in genocide in which some individuals or communities such as ethnical or racial groups victimized as a result of a discriminatory policy or practice.¹

LGBT Victims:

A new group of particular victims drawn some attention to themselves in some countries, are lesbian, gay, bisexual and transgender (LGBT) victims [19: p. 102]. The harm which they have suffered reflects homophobic and transphobic violence as well as the secondary victimization by certain persons or agencies such as police.

1. Protecting minority victims in Iran can be found, for example, in the Note added in Article 298 of *Islamic Penal Code (Amended 2003)* in which blood money (compensation) of all minorities recognized in the Iranian Constitution is determined as equal.

One of the most significant consequences of above typologies concerns with the activity of victim. It indeed explains roles that victim may play in occurrence of a crime.

2.3. Victim Activity

Undoubtedly, certain victims, specifically the particular groups of them, play a significant role in precipitation of crime. In the victimology theory, this activity can be analyzed into the victim status in criminal etiology (*a criminological approach*) and his/her role to form the criminal liability (*a legal approach*).

2.3.1. Incorporating Victim into Criminal Etiology

In this level of victimology theory, I discuss some sub-theories that, in certain criminal sciences textbooks, also considered as victimization theories.

2.3.1.1. Victim Precipitation

From a criminological approach, victim precipitation is an important factor that causes the criminal behavior. Early references to the role of victims and their precipitation in the criminal event could be found in the works of Von Hentig and

Mendelsohn [19: p. 13]. It seems that Von Hentig, as a pioneer of criminological victimology, was the first theorist who sought to treat victims as an active participant in criminal occurrence in the 1940s. He believed that victims played a causal role in crimes by consenting, facilitating, encouraging or provoking the offence [12: p. 175]. Hentig applied the hypothesis only to violent victimization. According to Hentig, victims initiate a chain of events that lead to their victimization by acting in certain provocative ways [18: p. 532].

Hentig's hypothesis was then followed by Mendelsohn in the 1950s. He argued that victims could be differentiated according to their degree of culpability for the crime committed against them [18: p. 532]. The idea was resulted to categorization of victims. In later studies, other researchers such as *Wolfgang* and *Amir* consider the victim as a precipitating factor in occurrence of crime [17: p. 1]. Their studies on *Patterns in Criminal Homicide* (1958) and *Patterns of Forcible Rape* (1971) indeed continued the idea of victim precipitation [19: p. 13].

2.3.1.2. Routine Activities/Lifestyle Theories

Although routine activities and lifestyle are two concepts of crime opportunity theory in criminology, in the sphere of victimology they seem to be similar enough to warrant being into one [18: p. 532].

The basic premise of the former is that crime occurs when three variables reflecting individual's routine activities interact with each other: (1) the presence of a motivated offender; (2) the availability of a suitable target;¹ and (3) the absence of a capable guardian [18: p. 532]. Thus, the theory is connected with victim activity particularly because of the second variable in question.

The basic idea of the latter is that there are certain lifestyles which disproportionately expose people to higher risk for victimization. According to the theory, these lifestyles (such as work, recreation etc.) may lead to re-victimization [18: p. 533].

Both concepts tend to describe the individuals at risk (potential victims), even

1. In criminology, "target" means an object or individual against it-him/her a crime occurs. The definition does not correspond with the person-centered definition of victim in the victimology theory, because to be recognized as a victim, not only a person must exist but also he/she must potentially capable to get remedy or reparation.

though they involve actual victims when denote re-victimization.

The idea of victim activity, emphasizing upon *victim precipitation*, has proven politically controversial because it effectively blames the victim by suggesting that they have brought crime upon themselves [12: p. 175]. Some victimologists reject the theory of victim precipitation arguing that victims deserve our sympathy even if they somehow provoked or facilitated their victimization [18: p. 534]. Thus, victimology does not blame victims, but it explores the victimization process based on a model considered as a continuum that consists of complete innocence and full responsibility.

2.3.2. Victim Blaming: The Role of Victim in Formation of Criminal Liability

As Van Dijk explores from a historical perspective, Mendelsohn and other victimologists analyzed the involvement of the victim in the commission of the crime to explain the dynamics of criminal behavior without any intent to inculcate the victim [17: p. 2]. However, the notion of victim precipitation can be exploited by others for the purpose of victim blaming.

In the victimology theory, victim blaming indicates a legal perspective which incorporates the role of victim into formation of criminal liability. According to the criminal law theory, personal liability is a fundamental principle subordinated to a supra-principle, i.e. free choice. The principle of free choice requires that no criminal liability can be imposed on an individual unless he/she has chosen to commit an offence. Consequently, if an individual is compelled to commit a crime, imposing criminal liability could not be justified [6: p. 3]. Meanwhile, the perpetrator may be influenced by some factors in which he/she is still responsible for the crime committed. These factors are sometime related to "*diminished responsibility*" that in some jurisdictions (as common law systems) is used to determine the degree of the offence or the severity of the punishment [4: p. 220]. They may also be linked to the facts or situations called "*mitigating factors*" or "*mitigating circumstances*". The concept denotes a fact or situation that reduces the degree of culpability and "thus may reduce ... the punishment" [4: p. 260].

One of the mitigating factors that may lessen the severity of a sentence is the role of victim in the occurrence of a crime. In the victimology theory, victim blaming means that some individuals who are victimized facilitate or precipitate committing the criminal behavior by the victimizer. Therefore, victim's behavior is a mitigating circumstance that reduces the degree of offender's culpability and may lessen the severity of criminal sentence.¹

A significant example of victim's role in formation of criminal responsibility is to be found in Article 22 [3] of the *Islamic Penal Code* of Iran which provides that certain circumstances in which the defendant has committed the crime __ such as provocative conducts or statements of victim __ are considered as a mitigating factor that may reduce the

degree of criminal sentence or may change the type of punishment.

3.The Nature of Victimhood/ Victimization

Another component of the core structure of victimology theory is the nature of victimhood/victimization which can be transformed into the concept "harm". This aspect of the theory has grammatically a hybrid conceptualization [Fig. 3]. It consists of a double terminology.

3.1. Victimhood

I use the term "*victimhood*" as a status in victim that describes his/her harm suffered based on personal circumstances regardless the role of victimizer. Thus, victimhood means the status in which the person is a victim; i.e. the state of being victim. This conceptualization has various aspects: It involves not only *potential victims* who have not yet suffered harm through the crime, but also includes *actual victim* against him/her a crime is committed. The former denotes different variables such as gender and race which cause a potential victim become an actual one. The latter indicates that how one of the variations

1. The notion of victim blaming raises some arguments about philosophy and justifications of punishment. For example, in their essays, *Michael Moore* and *George P. Fletcher* (American professors of philosophy of law and jurisprudence) discussed together about the place of victim in the theory of retribution [11: p. 65 and 3: p. 51]. According to Van Dijk, in criminological victimology, which of course called "penal victimology" by him, there is an intrinsic interest in non-punitive solutions to criminal incidents (such as mediation) which, at least in theory, empower both victims and offenders [17: p. 3].

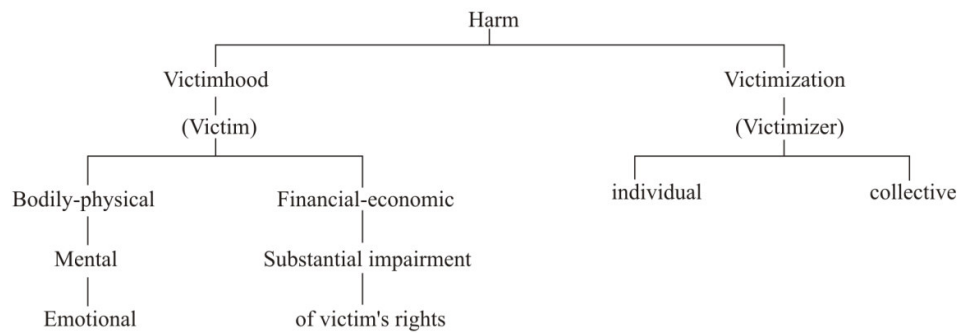


Fig.3. The Nature of Victimhood-Victimization

plays a role as a main factor in criminal occurrence. Both describe the victimhood based on the personal status of the individual. A major consequence of this distinction relates to crime prevention because they require proactive and reactive measures that can be adopted to curtail the criminogenic situations or to prevent crime.

In the victimology theory, *victimhood* can be analyzed into several kinds as follows: physical or bodily injury, mental injury, emotional suffering, financial or economic loss, and substantial impairment of fundamental rights (See Fig. 3). Each kind of victimhood requires an aspect of assistance or support for victim. I have already introduced a six-level model of victim assistance [13: p. 198]. It consists of:

- **Penal protection** that means protecting victims through criminalization and penalization based on the deterrent, denunciative and preventive functions of criminal laws and criminal sanctions.
- **Procedural support** that means providing specific rights in criminal procedural statutes by which all victims can access to the justice and obtain reparation or remedy.
- **Financial/economic support** that is implementation of justice to obtain reparation and remedy, usually in the form of restitution and compensation.
- **Medical/Medicine assistance** which means providing aid and all expenses for physical or mental injuries that require medical support, such as hospitalization expenses, or medical assistance in crisis

intervention cases, such as ambulance in urgent situations.

- **Emotional assistance** that denotes the emotional sufferings, less than mental injuries, which require psychological intervention by professionals or even victim's family members or his/her friends.

- **Social support** that means utilizing all capacities of society, particularly civil society, for aiding victims through measures which are not judicial, such as establishment of associations to help the victims of certain crimes (e.g. violent crimes or terrorist activities).

In the literature of victimology, the term "victimhood" is rarely seen [15: p. 14] and the term "victimization", regardless any distinction with the former, is used in most textbooks of criminal sciences.

3.2. Victimization

The term "*victimization*", from the transitive verb "*to victimize*", explains the effect of crime according to the interaction between offender and victim such that the transitive verbs grammatically indicate the relation between subject and object. In the victimological terminology, the term "victimizer" has been conceptualized to explain this aspect of crime effect. Thus, it

can be said that "victimizer" is a technical term in victimology which uses as "criminal" or "offender" in other branches of criminal sciences including in criminal law and criminology. This is the perpetrating cause of victimization through which an individual or a collectivity and/or a group of individuals suffered harm.

In the victimology theory, *victimization* can be analyzed into "*individual and collective/group victimization*" (See: Fig. 3). *Individual victimization* describes harm suffered by an individual victim through perpetrator whose conduct is proscribed by a criminal statute. Individual victimization can be seen in most such crimes including offences against the person (murder, battery, assault ...), offences against property (theft, burglary, robbery ...) and other offences usually criminalized in national laws. The victimization of such individuals is not prompted by their belonging to a given category or directed at them because of a group affiliation [1: p. 183]. Collective victimization, here, may be an exception that is often related to number of victims, and not belonging to a given category.

Collective victimization denotes harm suffered by a group or groups of victims

through perpetrators whose conduct is proscribed by internationally recognized norms of human rights. Collective victims, as Bassiouni said, are persons who belong to a certain group or collectivity [1: p.183]. In other word, they are targeted because they are a member of a group. Collective victimization can be found in international crime, particularly in core crimes

(genocide, crimes against humanity and war crimes). In all such crimes, group victimization is linked to conduct of victimizers violating international human rights and humanitarian law.

The double division is connected with the passivity of victim in the structure of victimology theory (Fig. 4).

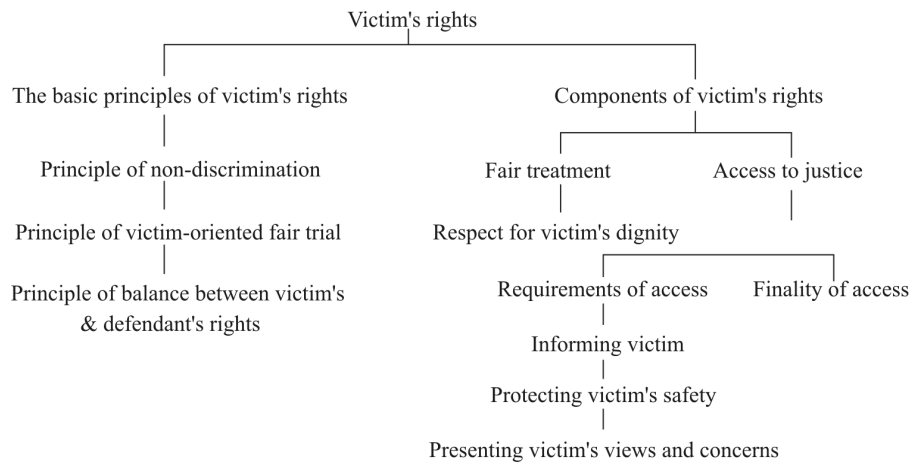


Fig.4. Victim Passivity

4. Victim Passivity: Recognizing Victims' Rights

Victimization of persons suffered harm from violations of human rights requires recognition of special rights for them at international and national levels. The victims' rights are primarily based upon

basic principles that determine how those rights do recognize and implement.

4.1. The Basic Principles of Victim's Rights

In the victimology theory, there are at least three fundamental principles which govern

the victims' rights: The principle of non-discrimination against the victim, the principle of victim-oriented fair trial and the principle of balance between victims' and defendants' rights (See Fig. 4).

4.1.1. The Principle of Non-discrimination against the Victim

The first basic principle of victims' rights which is subordinated to the international fundamental principle of non-discrimination¹ denotes the applicability of recognized rights to all victims, without distinction of any kind — such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The basic principle can be found in the Paragraph 3 of the *1985 Declaration* which expresses the application of its provisions to all victims of crime and abuses of power.

1 . The international fundamental principle of non-discrimination has been recognized in Article 7 of *Universal Declaration of Human Rights* (1948) which states that ... All ... are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination" [14: p. 337].

4.1.2. The Principle of Victim-oriented Fair Trial

The second basic principle of victims' rights in the victimology theory denotes an important concept in the contemporary criminal justice systems, i.e. fair trial. The term is another expression of *due process*, particularly in the common law systems. Due process means "the conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice, and the right to a fair hearing before a tribunal with the power to decide the case" [4: p. 538]. In the mid of 20th century, fair trial gradually became a recognized norm in international human rights instruments based on defining the defendants' rights, especially the right to the defense in the criminal proceedings. The *Universal Declaration of Human Rights* [A/RES/217 A (III) 10 Dec. 1948] (*1948 Universal Declaration*) provides the right to "a fair and public hearing by an independent and impartial tribunal" (Article 10) and "the right to be presumed innocent until proved guilty according to law in a public trial at which he [/she] has all guarantees necessary for his [/her] defense" (Article 11-1) [14: p. 337].

Since 1980s, when victimology internationally developed, *fair trial* has extended to the rights of victims and thus, has been orientated towards a victim-centered approach. The basic principles derived from the new approach require that victims' rights become an element of a fair trial. In other word, criminal process is due and criminal proceedings are fair and impartial not only when the defense rights are provided but also if special rights for victims are recognized, implemented and guaranteed by criminal procedural provisions and practices.

4.1.3. The Principle of Balance between Victims' and Defendants' Rights

The third basic principle of victims' rights in the victimology theory is the principle of balance between victims' and defendants' rights. I, indeed, infer the principle from international victim-oriented instruments including the *1985 Declaration*, the *Rome Statute of the International Criminal Court* [1998] (*1998 Rome Statute*), the *United Nations Convention against Transnational Organized Crime* [15 Nov. 2000] (*2000 Palermo Convention*), the *United Nations Convention against Corruption* [31 Oct. 2003] (*2003 Merida Convention*) and the

basic principles and guidelines on the right to a remedy and reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law [A/RES/60/147, 16 Dec. 2005] (*2005 Basic Principles and Guidelines*).¹

The principle concerned is based on an international fundamental principle entitled "*non-derogation*" which is best defined in the *2005 Basic Principles and Guidelines*. Accordingly, non-derogation principle means nothing in international law shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law, particularly without prejudice to special rules of national or international law including the victims' and defendants' rights [8: p. 12]. Thus, the principle of balance between victims' and defendants' rights indicates that nothing is to be construed as derogating from internationally or nationally protected rights of others, in particular the right of a crime victim or an accused person to benefit from applicable standards of due process or fair trial.

1. See, for example, Articles 24 and 25 of the *2000 Palermo Convention*, Article 32 of the *2003 Merida Convention*, and Articles 26 and 27 of the *2005 Basic Principles and Guidelines*.

All mentioned three principles govern components of victims' rights. In the victimology theory, the components can be divided into *fair treatment* and *access to justice*. Each component involves concepts, methods and mechanisms by which victims' rights are recognized, enforced and guaranteed.

4.2. The Components of Victims' Rights

Fair treatment and access to justice, as two main components of victims' rights, include two key concepts based on human rights: Respect for victim's dignity and getting remedy/redress/reparation.

4.2.1. Respect for Victim's Dignity in Light of Right to Fair Treatment

The most fundamental right for victim that underlies the paradigm of victims' rights is to respect for victim's dignity. It has been overall reflected in the international human rights instruments, particularly in two important documents: *the 1948 Universal Declaration and International Covenant on Civil and Political Rights* [1966] (*1966 Civil and Political Rights*). According to the first document: "*All human beings are born free and equal in dignity and rights. They are endowed with reason and*

conscience and should act towards one another in a spirit of brotherhood" (Article 1) [14: p. 336]. The preamble of *the 1966 Civil and Political Rights* recognizes that the rights contained in this Covenant "derive from the inherent dignity of the human person" [14: p. 371].

This fundamental right which is expressed as the rule of fair treatment within the context of victim-oriented human rights is contained in the first part of Paragraph 4 of the *1985 Declaration* as follows: "*Victims should be treated with compassion and respect for their dignity...*". Thus, it can be said that fair treatment is the basis of victims' rights in a criminal process accompanied by the defendants' rights are generalized into a fair trial.¹

4.2.2. Getting Remedy/ Redress/ Reparation in Light of Right to Access to Justice

Another component of victims' rights in the victimology theory is to access to justice which is compartmentalized into several

¹ The international findings including *International Crime Victim Survey* contained in the UN reports show that more than a third of victims in some countries (as in Latin America and Africa) have been dissatisfied with the police practice in dealing with their complaint [5: p. 17]. It can be said consequently that victims' satisfaction with their treatment by the police is an important measure of their satisfaction with the criminal justice system.

forms and methods. According to the international standards relating to victims, there are various terminologies indicating the forms and methods of access to justice. I use a triple terminology based on international instruments: remedy, redress and reparation. Access to justice involves requirements which result in its finality emphasizing upon above three forms.

4.2.2.1. Requirements of Access

Access to justice requires mechanisms by which the responsiveness of judicial and administrative processes to the needs of victims can be facilitated. I, at least, divide these mechanisms into four main forms: Information, protecting safety, presenting views and concerns, and providing assistance.

- **Information:** one of the requirements of victims' access to justice is to inform them of their rights in seeking redress through such mechanisms, including "their role and the scope, timing and progress of the proceedings and the disposition of their cases", particularly in important cases (Paragraphs 5 and 6-a of the *1985 Declaration*). The use of information is seen as a victim assistance program which has several aspects including informing

victims about how information will be used and making the professionals aware what information is necessary [7: p. 16].¹

Informing victims, as documented in the *Guide for Policy Makers*, has several aspects in many jurisdictions. For example, in Brazil, France, Nigeria and UK, this right involves publications on victims' rights [5: p. 19]. But in Iran, the right to information can rarely be found in some procedural regulations such as Article 177-c of *Criminal Procedure Act* (declaring the determined hearing time to the plaintiff by the court), or article 185 same Act (noting the hearing time to the plaintiff).²

1. Other forms of information that should be ensured in a victim-oriented criminal justice system are as follows: information on the progress of the investigation, information on the criminal justice process, and information on the rights of the victim at the scene of the crime; later in the criminal process, information on detention of the suspect, bail and bond, measures to assure reparation, the protection of evidence for forensic examination, information on medical assistance at the forensic examination and information on the prevention of further victimization [See for further study: 7: p. 19].

2. The term "victim" uses in several forms in the legal literature. For instance, terms such as "plaintiff" and "civil party" are two significant examples in the criminal procedure indicating the notion "victim". In the sphere of substantive criminal law, as *Islamic Penal Code* of Iran, it can be seen concepts such as "injured party" or "*Majnoon-Alayh*, *Majnoon-Alayha*" (i.e. a person a crime is committed against him/her). Thus, the word "victim" is a generic term which covers all word and terms used in the literature of criminal sciences.

- **Protecting Safety:** another requirement of victims' access to justice is to protect privacy of victims and to ensure their safety from intimidation and retaliation. This right is of importance by reason of secondary victimization, because "[o]ne particular source of" this kind of victimization "is unwarranted negative consequences that publicity may have on the victim" [5: p. 22]. Providing safety and security for victims is considered as a main component of crisis intervention program in which the physical and emotional safety of the victim is too important. In some situations the victim may feel unsafe even if there are police officers or security personnel present [7: p. 21].

Regarding intimidation or harassment of victims and witnesses, many international instruments and legal systems recognizes penal and other legal forms of protections for victims and witnesses, including through the police. For example, in Paragraph 6 (d) of the 1985 Declaration, protecting victims' privacy and safety is considered as a mechanism by which the responsiveness of their needs can be facilitated.¹ At national level, in Austria and

the USA, according to "anti-stalking" legislation, intrusive following and harassment of a person have been criminalized [5: p. 23]. In Iran, Article 619 of Islamic Penal Code criminalizes assault or public nuisance against children and women. But, there is not proper legislation that recognizes and guarantees the right to privacy and safety of victims.²

- **Presenting Views and Concerns:** The third mechanism of requirement of access to justice that can be considered as a right for victims in the light of victimology theory is presentation of their views and concerns at appropriate stages of the proceedings. Thus, criminal procedural laws must provide measures to allow victims to do so. Victims' right to present their views and concerns is a form of victim participation in the justice process [7: p. 34].

In many international instruments, the right to be presented and to be considered

87 and 88 of the *Rules of Procedure and Evidence of ICC (2002)*, Articles 24-1 and 2 and 25-1 of *2000 Palermo Convention* and Article 32-1 and 32 (b)-4 of *2003 Merida Convention*.

2. Regarding publication of victims' or witnesses' names or addresses, Article 188 of the *Iranian Criminal Procedure Act (1999)*, based on the Principle 165 of the *Constitution*, criminalizes publicity of trial cases in the media before the final sentence has been passed.

1. For other international documents, for example, see: Article 68-1 and 2 of *1998 Rome Statute*, Rules

the views and concerns of victims is recognized as a mechanism to respond to the needs of victims.¹ Meanwhile, the United States provides "the victim a right to be heard on the appropriate sentence of the defendant and their release from prison on parole" [5: p. 21]. In many jurisdictions where the victim does not have the right to prosecute,² the victim is allowed to provide information through a method called "victim impact statement" or "victim statement of opinion". The information is generally provided to the judge prior to sentencing [7: p. 39]. In the Iranian legislation, there has been a right to allow victims to give evidence and introduce their witnesses as well as a right to allow victims to hear the restitution claim³.

- **Providing Assistance:** The last mechanism of requirement of access to justice that I consider as another component of victims' right in the victimology theory is used with several terminologies. While the term "protection" from the verb "to protect" is sometime oriented to the right to privacy

and safety of victim (as it can be seen in many international instruments mentioned before), the words "assistance", "support", "aid", "help" and "service" are used in a same meaning of context. Among them, the first seems to be more conventional than others in the literature of victimology.⁴ Accordingly, the *1985 Declaration*, under the title "Assistance", provides four paragraphs which explain various aspects of aid and support for victims, including kinds of assistance — material, medical, psychological and social (Paragraph 14), informing victims from availability of all services and other relevant assistance (Paragraph 15), training personnel and agencies concerned with assistance (Paragraph 16) and helping particular groups of victims (Paragraph 17). The national legislation on victim assistance seems to be comprehensive and progressive.⁵ Nevertheless, as I have otherwise said in further reference [13: p. 194], it can not be found a victim-oriented system of assistance and services in the Iranian criminal justice system.

1. For See, for example, Paragraph 6 (b) of the *1985 Declaration*, Article 68-3 of *ICC Statute (1998)*, Article 25-3 of *2000 Palermo Convention*, Article 6-2 (b) of *2003 Merida Convention*.

2. For example, in Canada, New Zealand, the United States and parts of Australia and Ireland.

3. See, for example, Articles 73 and 192 of *Criminal Procedure Act* [13: p. 193].

4. Two publications of the UN which are in turn referenced in this article are two significant examples in which the conventional terminology can be found [See 5: pp. 27-32; 7: pp. 11-53].

5. For further study, see: [5: pp. 21, 27-32].

4.2.2.2. Finality of Access to Justice

Access to justice through a fair trial requires a finality for which the victim complains before a competent court or forum. There are several terminologies to explain the finality which can be divided into three main words: redress, remedy and reparation.¹ From a legal terminological perspective, they are defined with some similarities and differences. *Remedy*, as a term often used in private law, is "the means of enforcing a right or preventing or redressing a wrong" [4: p. 1320]. *Redress*, as a main synonym with remedy, is defined as "a means seeking relief or remedy" [4: p. 1305]. Meanwhile, *reparation* is defined as "the act of making amends for a wrong". At international level, it is also used as a "compensation for an injury or wrong, esp. for wartime damages or breach of an international obligation" [4: 1325].

In the victimological literature which is connected to the victimology theory, there

1. In his contribution, *International Recognition of Victims' Rights*, Bassiouni regards "redress" (even though he uses the triple terminologies mentioned above) as a fundamental legal principle constituting a general principle of law and a customary rule of law in all legal systems [2: p. 207]. But, as seen before, victims' rights introduced in the structure of victimology theory are distinguished from the fundamental principles governing them. Indeed, the distinction between Professor Bassiouni's view and my opinion concerns the way through which we describe the triple concepts.

are various approaches to the mentioned terms. For example, in *1985 Declaration*, "redress" is used as a generic term relating to harms or injuries that victims of crime within a domestic criminal law system suffered (See Part A of *1985 Declaration*). "Remedy", on the contrary, is used in Part B where harms or injuries involve victims of human rights' violations described as *abuses of power*. Both terms include two main forms called "restitution" and "compensation" which their distinction is significantly related to the person or entity that is responsible for the resulted victimization. Accordingly, *restitution* is defined as a form of redress or remedy and includes "the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights" (Paragraph 8 of *1985 Declaration*). Conversely, *compensation*, as a technical term inspired from *the European Convention on the Compensation of Victims of Violent Crimes (1983 European Convention)* is performed when redress or remedy is not fully available from the offender or other sources. If so, States should endeavor to provide financial

compensation to victims (Paragraph 12 of *1985 Declaration*).

In *1998 Rome Statute*, the term "reparation" has been used in a different way from *1985 Declaration*. It is divided into three forms, none of them defined: restitution, compensation and rehabilitation. Despite lack of definition, it seems that "restitution" and "compensation" can be explained based on the *1985 Declaration*. But "rehabilitation", can be said, involves any reparation relating to mental injuries and/or emotional suffering that is particularly important in international crimes and human rights' violations.¹

The 2005 Basic Principles and Guidelines seems to be the most significant instrument relating to the right of remedy/ redress/ reparation for victims. Although its language concerns with human rights, the provisions contained in it can be expanded to all victims whether domestic or international. It is considered as an international bill of rights, as Bassiouni said

1. *The 2005 ECOSOC Resolution* uses the term "reparation" similar to *1985 Declaration*, but different with *1998 Rome Statute*. According to the Resolution, the finality of reparation is to achieve full redress, reintegration and recovery [Article 35]. This reparation "may include restitution from the offender ordered in the criminal court, aid from victim compensation programs administered by the State and damages ordered to be paid in civil proceedings" (Article 36).

[2: p. 203] and, in parallel with the *1985 Declaration*, as international charter of victims' rights. Part VIII of the *2005 Basic Principles and Guidelines* is entitled "Access to Justice". It is recognized as a right expressed with the same triple terminologies (See, for example, Articles 12 and 13). Meanwhile, the most important distinction between *2005 Basic Principles and Guidelines* and other international instruments relates to the typology of this kind of victim's rights. The typology which differs with *1985 Declaration* and *1998 Rome Statute* includes the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Addition to the forms of redress/remedy/reparation (Article 18) the definition of each concept has some differences with the former instruments (Articles 19 and 20). Also, each one has several methods and mechanisms to enforce and implement [8: p. 33].²

All forms mentioned above will be respected, ensured and enforced when equal access to an effective judicial remedy and

2. Although the remedy for material damages and accessible benefits has been recognized in *Criminal Procedure Act* of Iran, but restoration of emotional suffering, contrary to Principle 171 of *the Constitution*, has not been provided [See for further study: 13: p. 196].

other remedies available to the victim including access to administrative and other bodies, as well as mechanisms, modalities and proceedings all provided for and conducted in accordance with domestic and international law.

5. Conclusion

In this article, I tried to outline a general theory of victimology, using key concepts, theories and principles that all can form a new discipline within the criminal sciences. Although criminologists have doubted and even opposed the independency of victimology as a discipline, but it appears that victimology can be seen as a scientific sphere or a field of study in criminal sciences if it is explained by a general theory describing all concepts, theories and principles based on scientific methodologies and hypotheses. The theory has several virtues and advantages. It takes into account of both the victim himself/herself and his/her victimhood/victimization. It considers the victim's role in the criminal etiology which can lead to preventive measures not only for all victims but also for particular groups who are vulnerable to recurring victimization or offending. The theory also seems to be

applicable for cases in which finding an individual as a victim is not easy (e.g. environmental crimes or offences against cultural heritage); then a legal person can be recognized as a surrogate victim. Such an approach has been adopted in *Islamic Penal Code* of Iran in which, for example, the Organization of Cultural Heritage is recognized as a plaintiff or civil party in offences against historical and cultural properties (Article 567).

In addition to criminological aspect, the theory has legal dimensions, particularly linked to international human rights and humanitarian law. Here, the nature of victimhood/victimization leads us to recognizing special rights for victims which can become an essential part of a fair trial. Consequently, both mentioned aspects can be incorporated into a unified discipline within the sphere of criminal sciences. The new field of study interacts with other branches of the sphere as the branches themselves interact with each other and all may practically reflect in criminal policy.¹

1. In regard to recent point, many examples can be found at national and international levels of criminal policies. Several international instruments which mentioned in this article indicate the reflections of a victimology theory in practice and policy. The United Nations publications including *Guide for Policy Makers* and *Handbook on Justice for Victims*

References

- [1] Bassiouni, M. Cherif [ed.] (1988); *International Protection of Victims*; Paris, Association Internationale De Droit, èrès.
- [2] Bassiouni, M.C., (2006), "International Recognition of Victims' Rights", *Human Rights Law Review* 6: 2.
- [3] Fletcher, G. P., (1999-2000), "The Place of Victims in the Theory of Retribution", *Buffalo Criminal Law Review*, vol. 3: 51.
- [4] Garner, Bryan A. Garner, (2004), *Black's Law Dictionary*, Eighth Edition, Thomson-West.
- [5] *Guide For Policy Makers on the Implementation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, United Nations Office for Drugs Control and Crime Prevention, Centre for International Crime Prevention, New York, 1999.
- [6] Hallevy, Gabriel, (2010), *A Modern Treatise on the Principle of Legality in Criminal Law*, Springer.
- [7] *Handbook of Justice for Victim on the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, UNODCCP, Centre for International Crime Prevention, USA, 1999.
- [8] *Implementing Victims' Rights*, (2006), *A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation*, London: The Redress Trust.
- [9] Kaiser, G., Kury, H., and Albrecht, H.-J., (1991), *Victims and Criminal Justice, Particular Groups of Victims*, Part 1, Eigenverlag Max-Planck Institute.
- [10] McLaughlin, Eugene, and John Muncie, (2006), *The Sage Dictionary of Criminology*, Second Edition, Sage Publications.
- [11] Moore, Michael S., (1999-2000), "Victims and Retribution: A Reply to Professor Fletcher", *Buffalo Criminal Law Review*, Vol. 3: 65.
- [12] O' Brein, Martin, and Yar, Majid, (2008), *Criminology: The Key Concepts*, Routledge Key Guides.
- [13] Rayejian Asli, Mehrdad, (2006), "Iranian Criminal Justice in Light of International Standards Relating to Victims", *European Journal of Crime, Criminal Law and Criminal Justice*, Vol. 14/2.
- [14] Shirley, V. Scott (ed.) (2006), *International Law & Politics, Key Documents*, Lynne Rienner Publisher, London: Boulder.
- [15] Spalek, Basia, (2006), *Crime Victims, Theory, Policy and Practice*, Palgrave Macmillan.
- [16] *The draft of the UN Convention on Justice and Support for Victims of Crime and Abuse of Power*, WSV & TIVI & INTERVICT of Tilburg University, 8 Feb. 2010.
- [17] Van Dijk, Jan J.M., (1999), *Introducing*

(both referenced here) are other examples in which many victimological reflections in national legal systems throughout the world may be found.

- Victimology, in: Van Dijk et.al [eds], *Caring for Crime Victims*, Selected Proceedings of the Ninth International Symposium on Victimology, Amsterdam, August 25-29, 1997, Criminal Justice Press, Monsey, New York, USA.
- [18] Walsh, Anthony, and Hemmens, Graig, (2008), *Introduction to Criminology: A Text/Reader*, Sage Publications.
- [19] Wolhuter, Lorraine, and Olley, Neil, and Denham, David, (2009), *Victimology: Victimization and Victims' Rights*, Rutledge Cavendish.
- International Documents**
- [1] Council of Europe, *European Convention on the Compensation of Victims of Violent Crimes*, Strasbourg, 24 XI 1983.
- [2] ECOSOC Resolution 2005/20, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, 22 July 2005.
- [3] General Assembly Resolution 217, *Universal Declaration of Human Rights*, A/RES/217 A (III) 10 Dec. 1948.
- [4] General Assembly Resolution 22/63, *Declaration on the Elimination of Discrimination against Women*, A/RES/22/63/XXII, 1967.
- [5] General Assembly Resolution 2200, *International Covenant on Civil and Political Rights*, 2200 A XXI, 16 Dec. 1966.
- [6] General Assembly Resolution 3318, *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, A/RES/3318/XXIX, 14 Dec. 1974.
- [7] General Assembly Resolution 34/180, *UN Convention on the Elimination of All Forms of Discrimination against Women*, A/RES/34/180, 18 Dec. 1979.
- [8] General Assembly Resolution 40/34, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA/RES/40/34, 29 November 1985.
- [9] General Assembly Resolution 44/25, *UN Convention on the Rights of the Child*, A/RES/44/25, 20 Nov. 1989.
- [10] General Assembly Resolution 55/25, *United Nations Convention against Transnational Organized Crime*, A/RES/55/25, 15 Nov. 2000.
- [11] General Assembly Resolution 58/4, *United Nations Convention against Corruption*, A/RES/58/4, 31 Oct. 2003.
- [12] General Assembly Resolution 60/167, *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 International Humanitarian Law*, 16 December 2005.
- [13] General Assembly Resolution 61/106, *UN Convention on the Rights of Persons with Disabilities and its optional Protocol*, GA/Res/61/106, 13 December 2006.
- [14] The Assembly of State Parties, *Rules of*

Procedure and Evidence, ICC – ASP/1/3, 3-10 Sep. 2002.

[15] The United Nations Diplomatic Conference of Plenipotentiaries on the

Establishment of an International Criminal Court, *Rome Statute of the International Criminal Court*, A/Conf. 183/9, 1998.

درآمدی به نظریه عمومی بزه دیده شناسی در علوم جنایی

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یکی از مهم‌ترین اقتضائات بزه‌دیده‌شناسی در پهنه علوم جنایی ایجاد نظریه‌ای عمومی است که بتواند همه مفهومی‌ها، نظریه‌ها و فرضیه‌هایی را که ممکن است در این پهنه مطرح شوند، پوشش دهد. این مقاله می‌کوشد با به‌کارگیری ترمینولوژی‌ای که نوشتگان و درون‌مایه بزه‌دیده‌شناسی را از آغاز پیدایش آن در نیمه سده بیستم تاکنون تشکیل داده است، چنین نظریه‌ای را معرفی کند. قلمرو مطالعاتی جدیدی که نویسنده در این مقاله معرفی می‌کند، در پرتو دو رهیافت جرم‌شناسانه و حقوقی پدیدار می‌شود. کار نظریه بزه‌دیده‌شناسی عبارت است از تلفیق این دو رهیافت در قلمرو مطالعاتی یکپارچه‌ای که بر سه مفهوم کلیدی پامی‌گیرد: شخصیت کنش‌گر بزه‌دیده، ماهیت بزه‌دیدگی بزه‌دیده‌سازی، و کنش‌پذیری بزه‌دیده. نویسنده در پایان نتیجه می‌گیرد که نظریه بزه‌دیده‌شناسی امتیازها و مزیت‌هایی از جمله بدین شرح دارد: علّت‌شناسی جنایی، پیش‌گیری از بزه‌دیدگی و بزه‌کاری، و به‌طور کلی، طرح‌ریزی یک سیاست جنایی و سامانه دادگری جنایی بهتر و کارآمدتر در عمل.

واژگان کلیدی: بزه دیده؛ نظریه بزه دیده شناسی؛ بزه دیدگی / بزه دیده سازی؛ حق های بزه دیدگان

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