

CRIMINAL JUSTICE DELIVERY SYSTEM AND RIGHTS OF VICTIM: NEED FOR INTROSPECTION¹

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I. Introduction

Indian Penal Code, Criminal Procedure Code and Indian Evidence Act which have its origin in the British era, as a whole encompasses Indian Criminal Justice System. The existence of these laws even after 70 years of Independence shows that the Indian Criminal Justice System is still a British colonial heritage. It may not be fair to condemn the whole system because, the essentials are modelled upon British law. Nevertheless, for over a century, ages the Indian laws have been suffering the colonial syndrome. Therefore, a transformation to bring the law in harmony with Human Rights, Social Justice and Constitutional values is a necessary operation. The Penal Code needs change to absorb the value system of Gandhian India and the Constitution of the country.⁴

One has to look at the Criminal Justice System and the Rule of law as side by side. The concept of rule of law as enumerated by late Professor A.V Dicey of Oxford is still taken with reverence for having given a

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⁴ Justice V.R. Krishna Iyer, "The Indian Criminal Justice System", as quoted in KD Gaur, "*Criminal Law, Criminology and Administration of Criminal Justice*", 2015.

reasonably workable definition of Rule of Law in his book “An Introduction to the study of law of the Constitution”.⁵Dicey’s Rule of Law is very essential for Criminal Justice System as the same was also observed by the framers of Constitution, based on which they incorporated Article 14, which says that, “The State shall not deny to any person equality before law or the equal protection of the laws within the territory of India.”⁶ Equality before law is the first step for Criminal Justice System, if the state cannot treat its entire citizen equally then there is no hope for criminal justice in society. And if we can’t provide criminal justice to common people then people will lose faith in the system and start depending on the emerging criminal elements themselves for protection and justice.

From the ancient time the criminal justice system has done much for the rights of the criminals, their rehabilitation and reformation, but victim has always been the ignored part of the criminal justice system. But now we are moving towards the victim oriented criminal justice system. Now the steps are being taken for the rights of victim, their participation in the criminal justice system and their rehabilitation.⁷

The Criminal Justice System in our country is in terrible shape. The common impression is that the wrong men do not get into prison, but those who should be there swiftly manages the system at considerable-expense to keep themselves out.⁸ President Venketaraman precisely points out the major deficiency in our criminal law, when he says that

⁵Chapter IV, ELBS Edition, Macmillan Press Ltd., London, 1968.

⁶P.M. Bakxi, “The Constitution of India”, Universal Law Publishing Co, New Delhi.

⁷ Dr Vikash Agrawal and Ms MeghaChachondia, *Participation of victim of crime in the criminal justice system: A need for paradigm change*, Indian Human Rights Law Review, June 1, 2016 at 56.

⁸ F. S. Nariman, “Fundamental Principles of Criminal Justice – A fresh look”as quoted in KD Gaur, “*Criminal Law, Criminology and Administration of Criminal Justice*”, 2015.

“The recording of confessions by a magistrate is a meaningless farce. Confessions should be rendered inadmissible as evidence. The accused if he wants could plead guilty to the charge in court. A great number of custodial deaths and brutality would disappear if confessions are rendered worthless.”⁹

The foundation of every successful law requires two-things. Firstly, the lack of scope of misinterpretation and Secondly, the provision of safeguarding the rights of victims (either accused or sufferer of crime), then only the said law will deliver justice in society, not in a procedural sense but in a substantive way. The establishment of such a model requires a great commitment from the law makers of the land. But instead of giving attention, our law makers since post-independence just made committees and commissions to buy time or avoid responsibilities. Those who are knowledgeable and aware of the flaw of system believe that the situation is so grave that nothing less than a drastic surgery can put the system back on track. *This paper, accordingly, seeks to check the contemporary criminal justice system with the help of different provision given in statutes and how the existing criminal justice system should be moulded in a way that it will serve its purpose by delivering justice to the common people of the country.*

II. Constitutional and Legal Provisions for Criminal Justice System

India became a nation under the British who arrived in the early Seventeenth Century as traders of East India Company. The Company slowly acquires territory across the sub-continent, strictly for commercial operations in the beginning, but gradually assumed considerable power of governance. Considering the Muslim Criminal

⁹ Delivered key note address on Human Rights Day on 10/12/1995.

law to be irrational and draconian, the company brought about several reforms through a series of regulations which modified or expanded the definitions of some offences, introduced new offences and altered penalties to make them more logical and reasonable. The India Penal Code¹⁰ defining crime and prescribing appropriate punishments was adopted in 1860, following the painstaking work of the First Law Commission, particularly its chairman Lord Macaulay. The Indian Penal Code has stood the test of time. As a sequel to the IPC, a Code of Criminal Procedure was enacted in the year 1861 and established the rules to be followed in all stages of Investigation, trial and sentencing. This code¹¹ was repealed and a new code came into effect in 1974. These two Codes, along with the parts of the Indian Evidence Act, 1872, form the essence of India's criminal law. A large number of special and local laws such as the Arms Act, Prohibition Act, Immoral Traffic (Prevention) Act, etc., take care of various other anti-social activities.¹²

The purpose of the criminal justice system is to deliver justice equally for all, by convicting the offender and punishing the guilty and helping them to stop offending other crimes, while protecting the innocent persons. The executive has job to detect the crime and bring justice to the affected persons. And carry out the orders of court, such as collecting fines, and supervising community and custodial punishment. The key goal for criminal justice system is to provide justice as quick as possible and as easily as possible to the citizen people of the country who want to live peacefully in peace full country like India.

¹⁰Indian Penal Code (IPC), 1860.

¹¹Code of Criminal Procedure, 1861.

¹² Justice P. N. Bhagwati, "Growing Crimes – Deterrent Punishment – Search for appropriate Theory of Punishment" as quoted in KD Gaur, "*Criminal Law, Criminology and Administration of Criminal Justice*", 2015.

The Constitution of India guarantees to the people certain basic human rights and freedoms, *inter alia*, such as equal protection of laws, freedom of speech and expression, freedom of worship and religion, freedom of assembly and association, freedom to move freely and to reside and settle anywhere in India, freedom to follow any occupation, trade or business, freedom of person, freedom against double jeopardy and against *ex post facto* laws.¹³ And the Constitution of India makes the honourable Supreme Court as a guardian of the Constitution. The Constitution of India establishes well-ordered judicial system, Article 124¹⁴ talks about the establishment of Supreme Court and Article 216¹⁵ talks about the establishment of High Courts. The judiciary has given power under Article 32 and Article 226, to protect people's fundamental rights from any undue encroachment by any organ of the government.

Transparency and accountability in justice administration are required to be ensured under our constitutional scheme. And the laws on criminal justice administration have been delivered in consonance with the constitutional scheme. In administering justice the Judges have a social accountability. Though it is the duty of the judiciary to see that no innocent person suffers the indignity of an unjust conviction, it is also the duty of the judiciary to see that no guilty person escapes the law and thereby puts social defence into jeopardy.¹⁶

¹³ Rights given under part III of the Constitution of India.

¹⁴ Article 124 – Establishment and Constitution of Supreme Court, A. 124(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and until Parliament by law prescribes a larger number, of not more than seven (subject to the amendment) other judges.

¹⁵ Article 216 – Constitution of High Courts – Every High Court shall consist of a Chief Justice and such other judges as the president may from time to time deem it necessary to appoint.

¹⁶ *Id* at 9.

Article 21 of the Constitution lay down provision for protection of life and personal liberty. It says, *inter alia*, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Here, the Constitution in one hand protects right of life and also takes away a person’s life “according to procedure established by law”. But, the procedure necessarily to be reasonable, fair and just.¹⁷ Under Article 21 of the Constitution, the right to speedy trial is a fundamental requirement. A procedure prescribed by law for depriving a person of his life and liberty cannot be termed as ‘reasonable, fair and just’, unless it ensures a speedy trial for determination of the guilt of the accused. Breach of this fundamental right has the potential of making the entire prosecution liable to be quashed and closed and the accused in all such cases will have to be declared innocent and set free. Speedy trial is hence the essence of criminal trial and there can be no doubt that a delay in trial by itself constitutes denial of justice.¹⁸

There can, therefore, be no doubt that speedy and reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty provided in Article 21 of the Constitution of India. Right to speedy trial encompasses all the states, namely the stage of investigation, inquiry, trial, appeal, revision, and re-trial and is applicable not only to proceeding before a court but also to police investigation proceedings.¹⁹

Often it happens that after spending so many years in prison, a person is acquitted not because there was not enough evidence on record or because material witnesses turned hostile but because he was actually innocent. Can the state compensate him for the lost years, for the time

¹⁷*Maneka Gandhi v. Union of India* AIR 1978 SC

¹⁸*Hussainara Khatoon (III) v. Home Secretary of state of Bihar*, (1980) 1 SCC 98.

¹⁹*Madheshwardhari Singh v. State of Bihar*, AIR 1986 Pat. 324.

spent away from children, for the loss of livelihood and for the loss of reputation and dignity or for the life and liberty?²⁰ This brings that in order to preserve the rights of victims in the society, where our criminal justice system is highly biased towards preserving the rights of accused, the rights of victim needs to be properly discussed and elaborate.

III. Rights of Victims in Criminal Justice System

The purpose of Criminal Justice is to protect the rights of individuals, society and state from the criminals by punishing the accused for violating the law. To ensure that the innocent persons may not be victimized, the accused has been granted certain basic rights and privileges to defend and prove their innocence²¹ before the accused is condemned. In case the accused found guilty, accused must be punished and kept in prison with an object of reforming them and provide proper rehabilitation after their release from the jail. The courts have from time to time directed the State to provide all necessary facilities and ensure that Human Rights of prisoners are not violated so that no person is harassed and becomes the subject of oppression at the hands of the State authorities.²²

Indian Criminal Justice System defines the victim as “a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim”

²⁰*Rudul Shah v. State of Bihar*, AIR 1983 SC 1086.

²¹ Some of the rights of an accused that has been guaranteed under the Constitution of India, namely, equal protection of laws, freedom of speech and expression, freedom of worship and religion, freedom of assembly and association, freedom to move freely and to reside and settle anywhere in India, freedom to follow any occupation, trade or business, freedom of person, freedom against double jeopardy and against *ex post facto* law.

²²*D. K. Basu v. State of West Bengal*, AIR 1997 SC 610.

include his or her guardian or legal heir.” But the mere definition of the victims, do not mean that our Criminal Justice System is sympathetic towards victim. After all victims do not mean the sufferer of crime it can also be the accused as well.

Moreover, in our existing criminal justice system, victim has to suffer daily because of crime committed against him and also because of exploitative nature of existing system. The guilty men is lodged, fed, clothed, warmed, lighted, and entertained in a model cell at the expense of the state, from the taxes that the victims of crime do not attract due attention. As stated by Justice V. R Krishna Iyer in *Rattan Singh v. State of Punjab*.²³

“It is a weakness of our jurisprudence that victim of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature”.

IV. International Scenario

Perhaps realising the gravity of the problem, the United Nation General Assembly (UNGA) in 1985 adopted a “Declaration of the Basic Principles of Justice for the victim of Crime and Abuse of Power”.²⁴ The declaration envisages the basic norms to be adhered to for the recognition of victim’s right to information and treatment, consideration of their views, restitution and compensation and the provision of the victim’s service.²⁵ To ensure that the victims are not neglected by the society, 7th United Nations on Prevention of Justice to

²³*Ratan Singh v. State of Punjab*, (1979) 4 SCC 719.

²⁴ Luca Zender, “Victims” 1207-40, p. 1208 Mike Maurieet *al (ed.)* The Oxford Handbook of Criminology: (Oxford: Clarendon Press, 1994).

²⁵(1985) 39 YUN 743.(General Assembly Resolution 40/34, 29th November, 1985).

Victims of Crime and Abuse of Power gave a compensation definition of “Victims of Crime”²⁶ to ensure that victims are adequately protected, compensated and rehabilitated.

When one examines the role of the victim in the criminal justice system, especially in the countries that follow the adversarial system, it appears that the society seeks to sympathize with the victim, but does not consider it important enough to give victim a role in the prosecution of the crime committed against him or her.²⁷ In fact there would normally be no need for victim participation, if the State and its instrumentalities consider it to be their bounden duty to get offender punished. However, what is seen in actual practice is that prosecution is conducted in most of the states in an inefficient and indifferent manner due to political appointment of prosecutors despite the regular efforts by Central Government for entrusting the task to regular cadre of prosecuting officer of State with the result that high percentage of cases ends in acquittal. This failure to get the offender punished for their crime on the one hand generate contempt towards the state and its Criminal Justice System, and on the other hand compel the victim to look for extra legal avenues to settle his score with the offender.²⁸ Thus, in the light of above given perspective, there is an alarming need for reviewing the existing provision relating to position of victim and their rights.

The role of the victim is just like a viewer in entire criminal justice system and in most of the cases victim is just called as a witness to that

²⁶Penal Code of California, (USA) 1873, Section 679.01(b) Gould’s Penal Code Handbook of California, (2002), p. 256.

²⁷ M.L. Kalicharan&Dr. T. R. Maruthi, The role of the victim in the Indian Criminal Justice system, Vol. III Cr. L. J. (2011), 235.

²⁸J.S. Rahawat, “Victim Participation in Criminal Justice System”, Vol.I Cr. L. J. (2012), 56.

offence and nothing more, even though the victim is the person who suffers the physical, mental, emotional, and economical impairment in the whole process. Many reforms canvassed for improving the criminal justice advocates a victim orientation to criminal justice administration. 'Victim-orientation' includes greater respect and consideration towards victims and their rights in the investigative and prosecution processes, provision for greater choice to victims in the trial and disposition of the accused, and a scheme of reparation/compensation particularly for victims of violent crimes.²⁹

Despite of various committee recommendations that there is a need of necessary and immediate action for the protection of victim, our entire legislation of criminal justice system talks about the protection of accused persons and in order to protect the accused, few rights were also given to the victims of crime (sufferer of the crime). This proves that the right of the victim has always been seen in respect of the accused person. Victim of crime has to face two problem simultaneously, namely, firstly pain from the crime and secondly from the justice delivery system where the victim is just the spectator of the whole scene.

Criminal justice came to comprehend all about crime, the criminal, the way he is dealt with, the process of proving his guilt and the ultimate punishment given to him. The civil law was supposed to take care of the monetary and other losses suffered by the victim. Victims were marginalised and the State stood forth as the victim to prosecute and punish the accused.³⁰ State treating itself as victim cannot be taken as a shield by state for not evolving the concept of victimology, rather it

²⁹ K I. Vibhte: Criminal Justice: A Human Right Perspective, 362 (first Edition 2004, Eastern Book Company)

³⁰ "Victim under the Existing Criminal Justice System – From the Malimath Committee Report"

needs to collaborate with sufferer of crime for dispensing the justice in society.

V. Curbing of Rights of Victims-

There are few rights given by the legislation to the victims, but these rights are actually exploitative in nature. This is because the process is so lengthy and a long hierarchy is being maintained by the state which often results into exploitation. Beside this, the given rights are at the mercy of state and its machineries, which are often misused by it and serves no good to victims. These are-

V. I. Victim at the stage of filing FIR

The police play a pivotal role in victim assistance as it is the first agency to which victims come into contact with after being victimized by a crime. The attitude of the victims towards the entire criminal justice system will be based on the kind of treatment the victims get from the police whom they first encounter. Unfortunately, in India the police are still not oriented to meet the expectations of the victims as per the United Nation Handbook on Justice for Victims. The police at the field level who are in actual contact with the victims in day-to-day crime situations are blissfully ignorant of the international developments in the field of victimology and the better treatment which victims deserve from the police. The treatment of victims by the police also forms the basis for a negative perception of the criminal justice system, more particularly the police, because the “treatment with compassion and respect for their dignity”, emphasised by the United Nation Declaration, is missing completely. Because of the police behaviour and their attitude in general, the legal community opposes any criminal law reforms which bestow trust on the police and enhance

their powers. Even today, section 25 of the Indian Evidence Act, “No confession made to a police officer shall be proved as against a person accused of any offence”, remains in force. But the government and the police academies pursue a policy of sanitizing the police to a better treatment of victims.³¹

Primarily, police officer often refuse to write First Information Report (FIR), but the Code of Criminal Procedure talks about few remedies like one can go to the Superintendent of Police and if SP also refused to write FIR than in that case one can go directly to the Judicial Officer presiding in that particular territorial jurisdiction and magistrate may direct the police officer if magistrate thinks fit.

V. II. The Process of Investigation and the Role of Victim

Investigation is done by the respected police officer of that particular police station where crime is being committed.³² In the investigation procedure, victim just act as an informant to the police officer. If we look at the definition of investigation given in section 2(h) and the provisions relating to process of investigation given in chapter XII of Criminal Procedure Code along with the definition given by the Supreme Court in the case of *H. M. Rishbud v. State of Delhi*³³, it is clear that there is no reason why the police cannot involve the victim in the process of investigation. In fact, assistance of victim might help the police in the process of Investigation because, it is the victim who first witness to prosecution and it is victim who knows the occurrence very well.

³¹ K.. Choockalingam, measures of Crime Victim in the Indian Criminal Justice System, (15th October, 2016) <http://www.unafei.or.jp/english/pages/RMS/No81.htm>

³²Section 154 of the Code of Criminal Procedure, 1973.

³³AIR 1995 SC 196.

The Malimath Committee Report suggests that the victim should play an active part during investigation. The victim can assist the investigation in finding the offender and in collecting evidences to prove the commission of the offence by the criminal. The committee also suggest that the victim should be allowed to offer suggestions with respect to the investigation and should be given the power to move the court for appropriate direction, to ensure proper investigation of the case.³⁴

V.III. Rights of the Victim at Judgement

After the pronouncement of the judgement in a criminal case victim has no active role to play in the existing criminal justice system. The victim should be given the following rights after the judgement for the complete justice with victim.³⁵

- a) Compensation to victim – This is an important right of victim, at pronouncement of the judgement, i.e. victim has right to get compensation.

According to provision given under section 357(3) of the Code of Criminal Procedure, the court is empowered to award compensation for loss or injury suffered by a person, even in cases where fine does not form a part of a sentence.³⁶

Courts in India, however, have hardly resorted to these statutory provisions to compensate victim of crime. The Supreme Court of India in *Harikishan & State of Haryana v. Sukhbir Singh*³⁷ also observed that

³⁴*Id* at 33.

³⁵*Id* at 4.

³⁶Section 357(3) of Cr. P. C.

³⁷(1998) 4 SCC 551.

courts in India have seldom invoked section 357, Cr. P. C., to compensate victims of crime. It Observed:

“It is an important provision but courts have seldom invoked it. Perhaps due to ignorance of the object of it – It may be noted that this power of courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as of reconciling of the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the end of justice in a better way”

b) Victim’s Right to file appeal – Before the enactment of the Criminal Procedure (Amendment) Act, 2008 victim was an ignorant part of Criminal Justice System. Victim role was limited only to the filling of the FIR or the complaint and after that he had no active role to play. Even if the judgement of acquittal is passed in the case, he had no right to challenge the decision of the court and under section 378 of the Code the right to file the appeal against the judgement of acquittal was limited to state, which is also subject to the leave of High Court.³⁸

The Malimath Committee has also recommended for the insertion of provision in the Code providing the victim’s right to appeal in the following words:

³⁸Section 378(3) of Code of Criminal Procedure, 1973.

*The Victim or his representatives who is a party to the trial should have a right to prefer an appeal against any adverse order passed by the trial court. In such an appeal he could challenge the acquittal, or conviction for a lesser offence or inadequacy of sentence, or in regard to compensation payable to victim. The appellate court should have the same powers as the trial court in regard to assessment of evidence and awarding of sentence.*³⁹

Earlier the Law Commission in its 154th Report⁴⁰ had also addressed the need for the victim orientation in criminal justice administration.

Keeping in view the recommendations of the Malimath Committee and the Law Commission, the legislature has inserted a provision after section 372 of the code by the Amendment Act of 2008 for providing the victim's right of appeal which is as follows:

“Provided that the victim shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation and such appeal shall be to the court to which an appeal ordinarily lies against the order of conviction of such court”.

³⁹ Government of India, Report: Committee on Reform of the Criminal Justice System (Ministry of Home Affairs, 2003) http://mha.nic.in/sites/upload_files/mha/files/pdf/criminal_justice_system.pdf.

⁴⁰ Law Commission of India, 154th Report on the Code of Criminal Procedure, 1973, Vol. I, Chapter XV (1996).

VI. What needs to be done?

VI.I. Justice to Victims

It has been seen in the criminal proceeding that the one who initiates the proceeding is the most neglected person in the entire criminal proceeding. The person who initiates the proceeding is called as informant, and the informant has no substantial right to participate in proceedings. The Malimath Committee felt this imbalance and gave the various recommendation regarding recognition of rights of victims for better and quicker dispense of justice.

Recommendations of the committee on the right of victims are as follows:⁴¹

(i) Victim or his legal representative to have the right to be impleaded as a party in serious crime punishable with 7 year's imprisonment or more; in select cases even a court-approved NGO also implead;

(ii) Participation includes right to produce evidence (with leave of court), to ask questions to witnesses, to know status of investigation, to be heard in respect of grant or cancellation of bail, to be heard if prosecution seek to withdraw and to offer continuance, to advance arguments after prosecutor submitted his and participate negotiated settlements;

(iii) Legal services to victim to include medical help, interim compensation and protection against secondary victimization;

(iv) Victim compensation in serious crimes is to be organised under a separate legislation by parliament. This law will provide for creation of

⁴¹ N. R. Madhava Menon, Criminal Justice Reform – A Fresh Look on Malimath Committee Recommendations”

victim compensation fund to be administered by the legal services authority.

Today the victim is harassed by the crime and also from the system of justice delivery, and the State has to work on both part of problem, as it is state's duty to maintain law and order; and to make justice delivery system easily accessible to common people.

VI.II. Changes in Investigation

The Malimath Committee has also talked in length about the 'changes in investigation processes'. There are few recommendations which must be adopted immediately by the Government of India, these are, *inter alia*,

- Investigation wing to be separate from Law and order wing;
- Removal of difference between cognizable and non-cognizable and compulsory registration of all crime;
- Audio/video recording of statements of witnesses,
- dying declarations and confession to be mandated by law;

VI. III. Strengthening the Prosecution System

Outside the investigation system it is the prosecution which is weakest in the entire criminal justice delivery system. There is no proper codification of the provision for the appointment of public prosecutor. In most of the situation it is found that the public prosecutor has affiliation from political parties, which need to be change and there is a need to provide a central legislation for the appointment of public prosecutor in whole country.

VI.IV. Sentences and Sentencing

The provision for sentencing and sentences for the offence is given under the Indian Penal Code, 1860. The Act was passed in the year 1860 and the punishments at that time were awarded according to society of nineteenth century. Today we live in twenty-first century, but still we are guided by the same colonial law, where the punishment awarded is also not according to today's society. Therefore, there is the tremendous need to bring the changes in awarding the punishments.

VII. Conclusion

Thus, at last it is submitted that the continuous changing nature of Indian society, the lengthy procedure in dispensing justice to common citizens, the continuance of draconian law and the continued negligence towards victims and their rights, reflects that, now the time has come where India needs to get rid of its colonial baggage and start working towards the evolution of victimology. Though few rights have been granted to the victims but still a lot needs to be done to recognize the victims' rights and to ensure their participation in the criminal justice delivery system.