

Towards Constitutionalising the Rights of Victims

*Rohini Kumari Shaw*¹

*Dr. Dipa Dube*²

Abstract

“It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victims do not attract the attention of the law. In fact, victim reparation is still the vanishing point of our criminal law.”(Krishna Iyer J. in Rattan Singh v. State of Punjab AIR 1980 SC 84)

The words of Justice Iyer still hold good. The Indian criminal justice system based on the adversarial model of justice dispensation, focuses heavily on the rights of the accused, while sidelining the victim’s interests. Representing the latter, the state undertakes the responsibility to prosecute and punish the offenders, as crimes are deemed to be against the state. Victims are not allowed to take active role in the trial process. Following the 1985 UN Declaration of Basic Principles of Justice to Victims and Abuse of Power, a milestone was achieved in the recognition of victims’ rights and justice. Closely following suit, the Indian laws underwent radical changes to include victim’s right to appeal, compensation, appoint advocate, oppose bail etc. In spite of the amendments, the plight of victims remain pitiable with sparring changes made at the ground level. The police, prosecution and other service providers fail to provide necessary assistance to victims. It is time that the victims should effectively find mention in the Constitutional document so as to create an overarching obligation on the State to respect their rights.

Key words: *Victim assistance, adversarial system, criminal justice system, victim rights, sexual violence.*

¹Research Scholar, Rajiv Gandhi School of Intellectual Property, Indian Institute of Technology, Kharagpur.

²Professor, Rajiv Gandhi School of Intellectual Property, Indian Institute of Technology, Kharagpur.

I. Introduction

Criminal justice system has been established in every civilized society, to maintain the societal order and protect the individuals from unwarranted invasion by others. It ensures protection of individuals' rights, while punishing the accused for violation of the same. Criminal liability is the strongest formal condemnation that society can inflict.³ It seeks to regulate perilous, anti-social human conduct through the infliction of punishment to the accused. The latter is considered the desired end of the justice process since the society is secured from probable threats, and the accused receives the 'just deserts'.

There are primarily two models of Criminal Justice System, i.e., adversarial and inquisitorial⁴. The Indian Criminal Justice System, based on the age old adversarial British model, emphasizes on the punishment of the accused. It is presumed that crime is committed against the State, and the State takes charge of the case on behalf of the victim, while the latter has no role, except as a witness, in the trial. The system focuses heavily on the rights of the accused, while sidelining the victim's basic needs and interests. In Hobbesian terminology, the Leviathan fails the victims twice: first in failing to secure their life, liberty, and property from the transgressions of another and, in the second instance, failing to fully and ultimately restore the victims to their rightful position.⁵

Bajpai and Gauba⁶ writes,

“Victim is at the core of any crime made punishable by the organized society within whose jurisdiction it occurs. It is the pain of deprivation suffered by him which provides the cause for criminal action. The recorded history of early human civilizations would show that whenever

³ ANDREW ASHWORTH, *PRINCIPLES OF CRIMINAL LAW*1(London: Oxford University Press, 6th ed., 2009).

⁴ W. BUCKLEY, *SOCIOLOGY AND MODERN SYSTEM THEORY*(Englewood Cliffs, New Jersey: Prentice Hall, 1967).

⁵ Centre for Criminology and Victimology NLUD, *DUTIES OF FRONTLINE PROFESSIONALS TOWARDS SECURING JUSTICE FOR VICTIMS: A Manual*(2018).

⁶ BAJPAI, G. S. AND GAUBA, SHIRIYA, *VICTIM JUSTICE- A PARADIGM SHIFT IN CRIMINAL JUSTICE SYSTEM IN INDIA*(Delhi: Thomson Reuters, 1st Ed., 2016).

a crime situation occurred, the affected citizen (the victim) was expected to approach the ruler in his Court to lodge a formal complaint and seek the offender being brought to justice. ...What began even in England as a victim-centric system of criminal justice came to be usurped over the period of time ...The right of the victim to seek justice (punitive, restitutive, rehabilitative, etc.) in the face of crime inflicted against him/her turned, over the years, into a prerogative of the Crown. The procedure for bringing the offender to book and secure punishment for him, originally controlled by the victim citizen, was slowly taken over by the 'lawyer', whether representing the prosecution or the defence. The victim was rendered merely a witness for the prosecution, no more and no less with no rights of his own, whether substantive or procedural."

Kirchhoff⁷ maintains that the victims played a role in the system. However, over time, it completely co-opted the victim on the simple assumption that victim's interests and system's interests were identical. That victims as witnesses might not want to serve the punishing state did not appear as a problem.

Crime victims continue to live on the edge as justice predominantly means justice for the accused. The victims ordinarily have little or no rights at the stages of the investigation, trial, or sentencing. The State overshadows the victim's interests and undertakes the responsibility to prosecute and punish the offenders.

The idea of victim's rights is a relatively new concept. It has come to bear considerable influence on the formation of criminal justice policy on both the domestic and international platforms.⁸ Whereas, a milestone was achieved in recognition of victims' rights and justice through UN Declaration of Basic

⁷KIRCHHOFF, G. F. ,VICTIMOLOGY: A THEORY OF CONSEQUENCES. IN GLOBAL VICTIMOLOGY: THEORY, FACTS, LEGISLATION⁸³ (Delhi: Lexis nexis1st ed. 2017).

⁸JONATHAN DOAK, VICTIMS' RIGHTS IN CRIMINAL JUSTICE SYSTEM, IN G BRUINSMA AND D WESIBURD (eds), *Encyclopedia of Criminology and Criminal Justice* (New York: Springer, 2014)

Principles of Justice to Victims and Abuse of Power, 1985⁹, India is yet to realize the importance of victim's rights in criminal justice system.

Benjamin Cardozo said 'justice, though due to the accused is due to the accuser'. 'Forgotten entity', 'marginalized person' and 'subject of secondary victimization' are some of the common expressions that a crime victim is associated with in the criminal justice system in India. While the scene has changed internationally for crime victims, the world for the crime victim in India remains unchanged.¹⁰

In this paper, an attempt has been made to see the changing paradigm with regard to victims' rights in the criminal justice system through the various amendments in the law over the years. The authors have opted to highlight the plight of victims, specifically in the context of sexual violence, and argue that in spite of the changes, victims continue to face plethora of problems, and their sufferance know no bounds, which furnishes the ground for inclusion of victims' rights in the Constitutional framework of the country.

II. Legal Position of Victims Prior to 2008

Prior to the Code of Criminal Procedure (CrPC) Amendment Act 2008, victims hardly had any rights in criminal justice process. The victim merely initiated the law into motion as an informant or complainant, who gives the information of the commission of a cognizable offence to the police¹¹ or by approaching the magistrate with the complaint.¹² The victim was neither a part of the investigation process nor had any right to seek information as to the progress of the investigation. The victim merely was required to record his/her statement to the police under section 162 Cr.P.C., 1973 and undergo medical/ forensic

⁹*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985*, Available at <https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.29>.

¹⁰RANBIR SINGH, *VICTIM JUSTICE: A PARADIGM SHIFT IN CRIMINAL JUSTICE SYSTEM IN INDIA*, 4 *J. Nat'l L. U. Delhi* 115 (2017).

¹¹ Code of Criminal Procedure, 1973, S. 190, No. 2, Acts of Parliament, 1974 (India).

¹² Code of Criminal Procedure, 1973, S. 190, No. 2, Acts of Parliament, 1974 (India).

examination, where necessary. The victim or his/her advocate had no right to associate with the prosecution process in court. The right of appeal against the order/ judgment of acquittal was given to state,¹³ subject to leave of the High Court.¹⁴ The fine imposed under section 357 Cr.P.C, 1973 on the accused formed part of the compensation to the victim. However, the fine amount in most cases was too inadequate to bring any substantial changes in the life of the victim. Further, rehabilitation of the victim did not figure in the entire scheme of justice.¹⁵

III. Judicial Activism in Victims' Rights

A new era in the Indian victimological thinking began with the initiative taken by the Indian judiciary in the nature of evolving a new kind of compensatory constitutional remedy through Articles 32 or 226/227. Starting from *Rudal Shah v. State of Bihar*¹⁶, the Supreme Court made it categorically clear that the higher judiciary has the power to award compensation for violation of fundamental rights through the exercise of writ jurisdiction and evolved the principle of compensatory justice in the annals of human rights jurisprudence. Then again, in *Nilabati Beharav. State of Orissa*¹⁷ the court ordered compensation for custodial killing. In both the cases, the court held that victims' fundamental rights under Article 21 of the Constitution of India, were violated.

In *Delhi Domestic Working Women's Forum v. Union of India*¹⁸, the Supreme Court delivered a historic judgement with regard to the rights of rape victims and mandated the National Women's Commission to prepare a scheme for the rehabilitation of victims. Similarly, in *BodhisattwaGautam v. Subhra*

¹³Code of Criminal Procedure, 1973, Ss. 378(1) and 378(2), No. 2, Acts of Parliament, 1974 (India).

¹⁴Code of Criminal Procedure, 1973, S. 378(3), No. 2, Acts of Parliament, 1974 (India).

¹⁵Amit Bhaskar, *Analysing Indian Criminal Justice Administration From Victims' Perspective*, BLR, pp.175-176 Oct.–Dec.(2013).

¹⁶(1983) 3 SCC 508.

¹⁷(1993) 2 SCC 746.

¹⁸(1995) 1 SCC 14.

*Chakraborty*¹⁹ the court evolved creative principles of victimology and victim justice. First, it held that the award of compensation, as an interim relief is necessary so that undue delay in the delivery of justice to a victim of crime is not caused. Secondly, it held that the court had jurisdiction to award such compensation to the victim even when the accused is not convicted, due to the slow progress of the criminal proceedings. These principles evolved by the court were futuristic, perhaps a form of judicial activism but paved the way for a victim – centric approach to criminal justice, hitherto absent.²⁰

Around the same time, the plight of victims caught the attention of the Law Commission of India. Consequently suggestions were made to include compensatory relief to crime victims through the 152nd Report (1994)²¹ and 154th Report (1996)²². In 1996, the Law Commission in its 154th Report explicitly dedicated an entire chapter to ‘Victimology’, with an extensive emphasis on victim’s rights²³. Again, in 2003, the Malimath Committee on Reforms of the Criminal Justice System, 2003²⁴ raised concerns with regard to the alarming situation in respect of victims and the need to give a better deal in tune with the international development.

IV. Scenario Post 2008

In 2008, a major overhaul of the Code of Criminal Procedure was undertaken and several provisions incorporated towards a better victim justice mechanism.

¹⁹(1996) 1 SCC 490.

²⁰See also, *Chairman, Railway Board and Others v. Mrs. Chandrima Das* (2000) 2 SCC 465; *Sakshi v. Union of India* AIR 2004 SC 3566.

²¹LAW COMMISSION OF INDIA, 152ND REPORT ON CUSTODIAL CRIME (MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF INDIA, 1994).

²²LAW COMMISSION OF INDIA, 154TH REPORT ON THE CODE OF CRIMINAL PROCEDURE, 1973 (ACT NO. 2 OF 1974) (MINISTRY OF LAW AND JUSTICE, GOVERNMENT OF INDIA, 1996).

²³See also, *Law Commission of India, 172nd Report on the Review of Rape Laws* (Ministry of Law and Justice, Government of India, 2000).

²⁴GOVERNMENT OF INDIA, REPORT OF THE COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, (MINISTRY OF HOME AFFAIRS, 2003).

In 2013, following the brutal rape and murder of Nirbhaya, a slew of reforms were further made in the law²⁵.

Consequent thereto, for the first time, the definition of victim has been provided in lines of the UN Declaration²⁶ to include any person who has suffered any loss or injury as a result of the act of the accused, and includes his/her guardians and heirs. The victim has been granted a say in the grant of bail to an accused. Section 439 (2) Cr.P.C., 1973 as interpreted by the courts, recognizes the right of the complainant or any “aggrieved party” to move the High Court or the Court of Sessions for cancellation of a bail granted to the accused. A closure of report by the prosecution cannot be accepted by the court without hearing the informant²⁷. Also, compounding of an offence cannot possibly happen without the participation of the complainant²⁸. The victim of a crime may move the government to appoint a special prosecutor for a given case though section 301(2)CrPC, 1973 mandates that such lawyer of the private party “shall act under the directions of the Public prosecutor...and may, with the permission of the court, submit written arguments after the evidence is closed in the case.” Further, though there is no legal provision in the code for providing legal aid to victims of crime, section 12(1) of the Legal Services Authorities Act, 1987 entitles every person “who has to file or defend a case” to legal services subject to the fulfilment of the “means” test and the “prima facie” criteria²⁹. The victim’s right of participation in the post-trial stage of the proceedings is recognized. An appeal against an order of acquittal can be preferred, with the prior leave of the High Court by both the Government and the complainant³⁰.

²⁵*The Criminal Law (Amendment) Act, 2013, No.13 of 2013*, Available at <https://www.iitk.ac.in/wc/data/TheCriminalLaw.pdf>.

²⁶*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985*, Available at <https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.29>.

²⁷Code of Criminal Procedure, 1973, S. 173(2)(ii), No. 2, Acts of Parliament, 1974 (India).

²⁸Code of Criminal Procedure, 1973, S. 320, No. 2, Acts of Parliament, 1974 (India).

²⁹Legal Services Authorities Act, 1987, Ss. 12(1)(h) and 13(1), No. 39, Acts of Parliament, 1987 (India).

³⁰Code of Criminal Procedure, 1973, S. 378(4), No. 2, Acts of Parliament, 1974 (India).

Another significant legal reform is the victim compensation scheme under section 357A of the Cr.P.C., 1973 inserted by Criminal Law Amendment Act, 2009. Clause (1) of Section 357A provides that every state government in co-ordination with the central government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. Clause (2) provides that whenever a recommendation is made by the court for compensation, the District Legal Service Authority or State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme. This grant of compensation is distinct from the restitution granted to victims by the accused; it is the state which has to bear the expenses for the pain, injury and trauma suffered by the victim.

Some provisions specifically embedded for victims of gender-based offences such as rape, sexual assault, harassment etc. worth mentioning are: recording of statements by women police officers at the residence of the victim³¹; video graphing of statements³²; recording of statements before Magistrates³³; use of special educators or interpreters where necessary³⁴; medical examination of victims within twenty four hours by registered medical practitioner³⁵; speedy investigation³⁶; treatment of victims in hospitals free of cost³⁷; non-disclosure of the identity of the victim in any publication³⁸; in camera proceedings in trials³⁹; repeal of S. 155(4) Indian Evidence Act, 1872 which permitted the impeachment of the credibility of a prosecutrix by referring to her “immoral character”.

³¹Code of Criminal Procedure, 1973, S. 154(1)(a), No. 2, Acts of Parliament, 1974 (India).

³²Code of Criminal Procedure, 1973, S. 154(1)(b), No. 2, Acts of Parliament, 1974 (India).

³³Code of Criminal Procedure, 1973, S. 164(5A)(a), No. 2, Acts of Parliament, 1974 (India).

³⁴*Ibid.*

³⁵Code of Criminal Procedure, 1973, S. 164A(c), No. 2, Acts of Parliament, 1974 (India).

³⁶Code of Criminal Procedure, 1973, S. 173(1A), No. 2, Acts of Parliament, 1974 (India).

³⁷Code of Criminal Procedure, 1973, S. 357A(c), No. 2, Acts of Parliament, 1974 (India).

³⁸Indian Penal Code, 1860, S. 228A, No. 45, Acts of Parliament, 1860 (British India).

³⁹Code of Criminal Procedure, 1973, S. 327(2), No. 2, Acts of Parliament, 1974 (India).

V. Restrictive Interpretation of Victim's Rights

The Indian laws have undergone radical changes to include rights of victims' such as right to appeal, oppose bail, compensation, legal representation, confidentiality and identity protection etc., yet in recent years, it is noticed that these have been given restriction interpretations by the judiciary.

In *RekhaMurarka v. State of West Bengal*⁴⁰ alluding to section 225 of the CrPC, 1973, it was held that the mandate that a sessions trial shall be conducted by a Public Prosecutor is unequivocal and cannot be diluted by the proviso to section 24(8), which allows the victim to engage a counsel to assist the prosecution. Drawing a distinction between assisting the prosecution and conducting it, the High Court took note of instances where allowing a free hand to the victim's counsel may hamper the prosecution's case and impact the fairness of the trial. Also, in *Sandeep Kumar Bafna v. State of Maharashtra*,⁴¹ the court held that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution.

With regard to appeal, in *Bhikhabhai Motibhai Chavda v. State of Gujrat*,⁴² the complainant/victim preferred an appeal against the order of acquittal, in spite of the fact that the State had already preferred an appeal in which the leave was granted by the high court and the appeal was admitted. The Bench held that victims' right of appeal is neither absolute nor higher than that of the State, and only, if the State is not pursuing the matter with a proper spirit, the victim may validly raise a grievance and file an appeal. In *Bhavuben Dineshbhai Makwana v. State of Gujarat*⁴³ while discussing the scope of appeal by a victim under Section 372 Cr.P.C, 1973, the court held that the victim has no right to prefer an appeal against 'inadequacy of sentence', a right which is available only to the State⁴⁴.

⁴⁰2019 SCC Online SC 1495.

⁴¹(2014) 16 SCC 623.

⁴²2010 Cri LJ 3325(Guj).

⁴³2012 SCC OnLineGuj. 5764

⁴⁴*PravinderKansal v. State of NCT of Delhi*(2019 SCC Online Del 11508).

In the case of *Mahesh Pahade v. State of M.P.*⁴⁵ the High Court raised the point that though it is the responsibility of the state to bring the accused to the law, in such process the actual sufferer of crime cannot be permitted to stay outside the law and watch the proceedings from hindsight. It will be travesty of justice if victims of such heinous crime are denied the right to address their grievances before the court of the law.

Inadequacy of compensation to victims still remain an issue of grave concern. In *Bijoy Bhaskar v. State of West Bengal*,⁴⁶ the accused was sentenced to suffer the maximum sentence of life imprisonment and pay a fine of Rs. 20,000/- for the commission of the offence of rape punishable under section 376(2)(g) of I.P.C. The victim was hospitalized for three and a half months in the case, attributable to the assault on her. Yet the court awarded a paltry amount as compensation to be paid out of the fine imposed on the accused. In *Ankush Shivaji Gaikwad v. State of Maharashtra*⁴⁷, the court has reiterated that the economic capability of an accused is to be borne in mind while imposing liability on him. In cases where the State is obligated to pay compensation, it has been seen that there are great disparities across States with regard to the procedures and amount of compensation making it gruelling for the victims⁴⁸.

VI. The Case of Sexual Violence Victims

“From the humblest beginnings of the social order based on a primitive system of retaliatory force- the *lex talionis*- an eye for an eye- woman was unequal before the law. By anatomical fiat- the inescapable construction of their genital organs- the human male was the natural predator and the human female served as his natural prey.”⁴⁹ Sexual violence against women is not a new phenomenon.

⁴⁵*Criminal Appeal No. 933 of 2014, Decided on 18.07.2018.* Available at <https://indiankanoon.org/doc/184956475/>.

⁴⁶ 2019 Cri LJ 5041.

⁴⁷ (2013) 6 SCC 770.

⁴⁸ DIPA DUBE, Victim Compensation Scheme in India, Vol.13(2), IJCS, pp.339-355, July-December 2018.

⁴⁹ SUSAN BROWN MILLER, *AGAINST OUR WILL- MEN, WOMEN AND RAPE* 16 (Penguin Books, 1975).

It has continued since time immemorial across jurisdictions in numerous forms and patterns, ranging from rape to sexual molestation. The term is taken to include aggressive and abusive behaviours of different intensity and consequences, from unwanted touching to forced intercourse and rape.

Over the past few decades, sexual violence has assumed gargantuan proportions with newer and more brutal forms coming to the fore. According to United Nations⁵⁰, the percentage of women experiencing sexual violence is much lower than those experiencing physical violence, though the consequences are usually severe and last a lifetime in case of sexual violence. According to estimates, the percentage of women experiencing sexual violence at least once in their lifetime ranges from around 4 % in Azerbaijan to a quarter or more women in Switzerland (25%), Denmark (28%) and Mexico (44%)⁵¹. According to World Health Organization⁵², overall, 35% of women worldwide have experienced either physical and/or sexual violence. Most of this violence is intimate partner violence. Worldwide, almost one third (30%) of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner. According to the National Crime Record Bureau, approximately 100 sexual assaults are reported daily to the police and the numbers have been steadily increasing over the past few years. In fact, between 2000 and 2016, there has been a 75% increase in the official number of rapes

⁵⁰*The World's Women: Trends and Statistics, UN Statistics Division, 2010, pp. 133-34.*

Available at

<http://www.un.org/esa/socdev/ageing/documents/egm/NeglectAbuseandViolenceofOlderWomen/Violence%20against%20women.pdf>.

⁵¹*The World's Women: Trends and Statistics, UN Statistics Division, 2010, pp. 133-34.*

Available at

<http://www.un.org/esa/socdev/ageing/documents/egm/NeglectAbuseandViolenceofOlderWomen/Violence%20against%20women.pdf>.

⁵²*Violence against women, World Health Organisation, Available at*

<https://www.who.int/news-room/fact-sheets/detail/violence-against-women#:~:text=Global%20estimates%20published%20by%20WHO,viole%20is%20intimate%20partner%20violence.>

and sexual assaults⁵³. In 2018, nearly 33356 cases of rape were reported⁵⁴, though the 'dark figure' is considered much higher.

In *Pushpanjali Sahu v. State of Orissa*⁵⁵, the Supreme Court emphasized that sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience-offending her self-esteem and dignity. Sexual violence has profound impact on the physical and mental health of the victim⁵⁶. Most of the time it results in the death of the victims; cases of suicides have also been reported⁵⁷. Sexual assault is noted to result in emotional reactions such as grief, generalized fears, self-blame, emotional liability, and emotional numbing ; and cognitive reactions such as flashbacks, intrusive thoughts, blocking of significant details of the assault and difficulties with concentration. Social withdrawal and avoidance also occur post assault, exacerbated by the fact that many victims change jobs or move to alternative living quarters⁵⁸. The long term effects of sexual victimization can include years of problem avoidance, social withdrawal, and self-criticism.⁵⁹

⁵³See, *National Crime Record Bureau, Crime in India, 2016* (Ministry of Home Affairs, Government of India, 2016).

⁵⁴NATIONAL CRIME RECORD BUREAU, *CRIME IN INDIA 2018* (MINISTRY OF HOME AFFAIRS, GOVERNMENT OF INDIA, 2018).

⁵⁵ (2012) 9 SCC 705.

⁵⁶*World Report on Violence and Health, World Health Organisation, Geneva, 2002*, Available at https://www.who.int/violence_injury_prevention/violence/world_report/en/summary_en.pdf.

⁵⁷Ibid,

⁵⁸Cheryl Regehr and Ramona Alaggia, *Perspective of Justice for Victims of Sexual Violence*, Vol.1(1), *Victims And Offenders*, pp.33-3, 2006,.

⁵⁹STACY L MALLICOAT, *WOMEN AND CRIME: A TEXT/READER* (California: Sage Publications, 2nd Edition, 2014).

VII. Experience of Sexual Violence Victims in India

Sexual violence victims in India face significant, and sometimes insurmountable hurdles during the investigation and prosecution of crimes.⁶⁰ In the backdrop of a conservative society, one can well imagine the shame and ignominy attached to the lives of women. More often than not, women prefer to remain silent and hush up the matter⁶¹. For those who dare face society, hurdles await at every step. Lodging a first information report (FIR) becomes the first and most difficult aspect with the police either refusing to record the statement or passing remarks about the veracity of the complaint. The most common problem suffered by many of the victims while reporting an offence is the absence of receptive and sympathetic attitude from police towards the victims.⁶² Studies indicate that victim satisfaction with police responses is demonstrably low⁶³. The suggestion that victims who have no interaction with criminal justice suffer less trauma is especially concerning, and that poor police handling of the victim and the investigation, especially with regard to sensitivity and respect, can exacerbate trauma⁶⁴. It is reported that being treated with respect is more important to victims in terms of their satisfaction with the process than investigative and sentencing outcomes⁶⁵.

The next tedious process comes in the form of a medical examination. In most cases, delays are a common matter with crucial pieces of evidence being lost; in those where examinations are conducted, an unsympathetic and unconcerned medical officer comes heavy. Many times, the doctors are keener to probe whether the victim is habituated to sexual intercourse than examining whether

⁶⁰SUBHRADIPTA SARKAR, *THE QUEST FOR VICTIM'S JUSTICE IN INDIA*, Vol. 17(2), *Human Rights Brief*, pp.16-20, 2010.

⁶¹See, *B.B. Hirjibhai v. State of Gujrat* AIR 1983 SC 753.

⁶²BHARAT B.DAS, *VICTIMS IN THE CRIMINAL JUSTICE SYSTEM* (New Delhi: Aph Publishing, 1997).

⁶³JANE MONCTON-SMITH, *INTRODUCING FORENSIC AND CRIMINAL INVESTIGATION*, (TONY ADAMS, ADAM G. HART, JULIA WEBB et al. London: Sage Pub., 1st Edn., 2013); KESTEREN, J.V., DIJK, J.V. AND MAYHEW, P., *THE INTERNATIONAL CRIME VICTIMS SURVEYS: A RETROSPECTIVE*, vol. 20(1), *International Review of Victimology*, pp.49-69, (2014).

⁶⁴WEMMERS, JO- ANNE, *VICTIMS' EXPERIENCES IN THE CRIMINAL JUSTICE SYSTEM AND THEIR RECOVERY FROM CRIME*, vol. 19(3), *International Review of Victimology*, pp. 221-233 (2013).

⁶⁵*Supra* n. 64, at p. 31.

she might have been subjected to such an act⁶⁶. The trial is the next impending danger awaiting the victims' turn. With little or no information coming as to the developments made during the investigation, the victim is made to stand in the box to face a forceful cross-examination and her tormentor. Silence on the part on the victim, as well as her refusal to answer indecent and suggestive questions, is interpreted to mean 'consent,' the litmus test of the offense of rape, and very soon the victim finds herself more dejected and humiliated than ever before⁶⁷. The final blow comes with the acquittal of the accused. A study conducted by the People's Union for Democratic Rights (PUDR)⁶⁸, a Delhi based civil liberties group, looked at ten cases of rapes by police personnel and revealed that in most cases, the accused was acquitted; and some had been reinstated in their old posts. In cases where the trial results in the conviction of the accused, sentencing follows subject to the stipulations laid down in the Indian Penal Code⁶⁹. That spells the end of the case, and justice is said to be done.

While analyzing the entire sequence of events, it becomes clear that the criminal justice system fails to ameliorate the condition of the victim as well as re-socialize and re-assimilate them in society. From lodging the FIR to the final disposition of the case by the court, nothing comes in the way of the victim. She

⁶⁶ The concept of being 'habituated' to sexual intercourse was initially thought to indicate 'consensual sex', though the Supreme Court in *Sanju Gope v. State* 1998 Cri.L.J. 1984 held, " A woman may be of immoral character and yet if sexual intercourse is committed with her against her will or without her consent, the person committing it must be held guilty of rape." *Milind Ambadas Mhaske v. State of Maharashtra* 1998 Cri.L.J. 1357. See, *Tukaram v. State of Maharashtra* AIR 1979 SC 185.

⁶⁷ Swayam, Gender Equality and the Judicial System in West Bengal in N.K. Chakrabarti and Shachi Chakrabarty (ed.), *Gender Justice* (Kolkata: R. Cambray & Co. 2006) pp.386-7. "The responses of the litigants who had taken cases of violence against them to court paint a gloomy picture of what they experience in the hands of the judicial system...They are mistreated, misinformed, and ignored or even sexually harassed by their own lawyers. The judges often do not consider them reliable or truthful witnesses (sic). The judges, lawyers, court officials, members of the public behave rudely with them or are at best dismissive of them."

⁶⁸ People's Union for Democratic Rights, *Custodial Rape: A Report on the Aftermath* 6 (1994).

⁶⁹ Section 376, Indian Penal Code 1860.

is left to fight the battle of justice with her own might, ignore taunts and sneers, brave the deadly court environs and come out empty-handed with no succour for herself. Compensation, counselling, medical care, none are available, leaving the rape victims in a wretched and pitiful condition.

VIII. Conclusion

Why do we need to constitutionalize the rights of victims? The Indian Constitution is *suprema lex*. It upholds the ideas and aspirations of the people, and enumerates their rights, which form the 'basic structure' of the sovereign, democratic nation. In the context of criminal justice, Art 20 and 22 envision certain fundamental rights which are guaranteed to the accused. These rights have laid the foundations of criminal jurisprudence in the country and, at no point of time, can be trampled by the legislature, judiciary or any agency of the state. It is in the same spirit that the rights of victims must be enshrined in the Constitutional document to give it the highest sanctity of law and ensure its sacred compliance at all times. As is the case with crime victims in India, inspite of coming a long way from a 'non- entity' to an active participant in the criminal justice process, their rights continue to be violated by the agencies of the state, leaving them in a pitiable state of vulnerability. The police, prosecution, and other service providers fail to provide necessary succor to victims. It is time that the victims' rights should effectively find mention in the Constitution so as to create an overarching obligation on the State to respect and uphold the same.