

Need to Revisit the Rights of a Victim under the Criminal Justice System in India

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Abstract

The importance of victim assistance in criminal law is now being recognized as among the key components of the Criminal Justice System. In a bid to equalize the platforms available with the society and its adversary, i.e., the accused, legal provisions have been incorporated to protect the victims. Since crime is seen as a wrong against society, not merely against an individual, the victim's voice in the Criminal Justice System is often subdued under the pressure of society's collective moral sentiments.

This study is an effort to examine the Criminal Procedure Code of 1973 from the viewpoint of a victim. It emphasizes that the Code should provide systematic support to the victim in accordance with the ideals of fair trial and the constitutional principle of promoting equal justice. The paper first examines the demands of fair trial and the rights an accused person has under the Criminal Justice System. It then proceeds to analyze the role a victim plays in the criminal justice system. Thereafter, the contours of proposed systemic support to the victim are explored. And lastly, the paper concludes by proposing and analyzing the scope for some constructive suggestions in the form of legislative amendments in Indian law.

Key words: Victim, Criminal Justice System, Rights, Code of Criminal Procedure, 1973

I. Introduction

Victim support is a vital element of the criminal justice system in criminal law. In trying to balance the platforms available to society and its opponents, the defendants, legal provisions have long been in his favor. Crime is viewed as a heinous act not just against one person but against society, and the victim's voice

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in the criminal justice system is often under the pressure of the collective morality of society².

In this paper, we'll look at the Criminal Procedure Act of 1973 from the victim's point of view. In line with the notions of a jury process as well as the constitutional norms that encourage fairness, the Code must provide systemic assistance to the victim. The study begins by analyzing the standards for and rights of accused individuals in the Indian criminal justice system. The victim's place in the criminal justice system is still being examined. Thereafter, the paper will examine specific forms of systemic support. Finally, the paper concludes by suggesting and analyzing the scope of some constructive references in the form of legislative amendments to Indian law.

II. Necessity of Fair Trial: Protection and Safeguard of Rights of Accused Persons in The Indian Criminal Justice System

The Criminal Justice System of India rests on the ideals of a fair trial. The nuances of this objective are visible in fundamental rights safeguarding the interest of the accused persons, say protection from testimonial compulsion³, double jeopardy⁴, illegal detention⁵, the requirement of production before a Magistrate within 24 hours of arrest⁶ and more. The Supreme Court in *Zahira Habibullah Sheikh v. State of Gujarat & Others*⁷ remarked that "fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated."

Aspects of fairness are included in many clauses of the 1973 Code of Criminal Procedure. The prosecution's job is to show the defendant's guilt since an alleged perpetrator is presumed innocent unless proven guilty. This rule's corollary states that if the accused's defense evidence is not presented, no negative conclusions

² Crime means something more than mere disobedience to law, it means an act which is both forbidden by law and revolting to the moral sentiments of the society, Nigam, R.C. Law of Crimes in India Voll: Principles of Criminal Law, Asia Publishing House, 1965, p25

³ A person accused of any offence has a fundamental right under 20(3) of the Constitution of India to not to be compelled to be a witness against himself.

⁴ Article 20(2), the Constitution of India

⁵ Article 22(1), the Constitution of India

⁶ Article 22(2), the Constitution of India

⁷ (2006) 3SCC 374

may be made about them. The accused may choose to provide the defense evidence or not; it is not required⁸. The Cr.P.C. requires the recording of the accused's statement under section 313(1)(b) after the prosecution has finished its case and before he is asked to provide his defense. In the adversarial trial system used in India, the judge serves as a fair umpire or referee between the parties. This adversarial method helps the Court to fairly determine the truth. The Cr.P.C., 1973 mandates the Court to read and explain the specifics of the accusation to the accused even if the charge is formulated by the Court.

Public hearing is another aspect of a fair trial under the Cr. P.C., 1973. Since the fair trial principles are derived from the principles of natural justice, Cr. P.C. provides for compulsory issue of process to the accused for securing his presence during the trial. The provision can be understood to be an extension of the natural justice principle *audi alteram partem*⁹. Thus, Cr. P.C also provides for the reading over the charge against him to the accused. Mere reading over is, in fact, not enough. The charge also is required to be explained to the accused before his plea thereupon is recorded¹⁰. Another additional obligation in this regard is that the evidence is, as a rule, required to be taken in the presence of accused person¹¹ and also to be interpreted by the accused in open Court in his language¹². Interpretation can pose a challenge since the accused may not understand the language, especially if he or she is hearing impaired or suffers from blindness.

The judiciary must be kept apart from the executive branch and the legislative, according to the Indian Constitution¹³. This is to ensure the independence of the judiciary. In fact, this principle is also incorporated in the ICCPR¹⁴. The Cr.P.C. ensures that the personal bias is removed from the system through section 479. No judge can be a judge in a criminal case wherein he himself is a party, or in any case, his personal interest lies. A corollary to the requirement of an independent judiciary is to have an objective and reasonable manner of allocating cases to the Different Magistrates and Judges. Cr.P.C. answers this by providing

⁸ Sections 228,240,246,251 of the Code of Criminal Procedure, 1973

⁹ The Latin maxim means “no one can be condemned unheard”.

¹⁰ Sections 228,240,246,251 of the Code of Criminal Procedure, 1973

¹¹ Section 273, CrPC,1973

¹² Section 279, CrPC,1973

¹³ Article 50, Constitution of India

¹⁴ See Article 14 ICCPR

for territorial jurisdiction as well as imposing limits on the sentencing powers of Magistrates, Sessions Judges etc. The venue of the trial is decided on the basis of the place where the crime is committed, as per sections 177-189¹⁵. An accused individual has the right to have counsel represent them during the trial. A Fundamental Right under Article 22(1) of the constitution of India is also a legal right under a specific provision of the Cr. PC. An extension of the same right is legal aid under section 304. An accused who cannot afford private counsel receives legal aid at State's expense under the Legal Service Authorities Act 1987¹⁶.

In every criminal case, the State participates as a party against the accused. In doing so, it represents people in a collective capacity¹⁷. The State is represented by the Public Prosecutor and Additional Public Prosecutor assigned under section 24 in the High Courts and Courts of Session and by the Assistant Public Prosecutors in the Magistrate's Court¹⁸.

In *Hussainara Khatoon v. Home Secretary, State of Bihar*¹⁹, The Supreme Court of India has ruled that an immediate trial is an essential element of "reasonable, just, and fair procedure" as needed by Article 21 of the Indian Constitution. The position was also reiterated in *Motilal Saraf v. State of J&K*²⁰. The same finds elaboration under section 309(1) Cr.P.C., 1973. As a result, the Court must, on a daily basis, interview witnesses in every criminal case unless an adjournment is necessary. If a person has once been tried for and found guilty of the same crime or acquitted of the same crime by a court with the necessary jurisdiction, they cannot be prosecuted again for the same crime. This protection from double

¹⁵However, a case can also be transferred from one jurisdiction to another if it is so expedient for the ends of justice or required for a fair and impartial inquiry or trial; see Chapter XXXI, CrPC 1973

¹⁶ Section 12 of the Legal Service Authorities Act, 1987 provides the list of persons who are entitled to legal services under the Act. It includes persons who receive income less than Rupees twelve thousand or Rupees nine thousand if the case is before the Supreme Court or any other court, respectively, apart from women, members of Scheduled Caste or Scheduled Tribe, and also persons with disabilities.

¹⁷ PILLAI K.N. CHANDRASHEKHARAN. R.V. KELKAR'S CRIMINAL PROCEDURE. 22 (Eastern Book Company), 2014.

¹⁸ sections 24 & 25, Cr.PC 1973

¹⁹ AIR 1979SC1819

²⁰ (2007)1SCC (Cri)180

jeopardy is guaranteed under Article 20(2) and further protected as a legal right under section 300, Cr. P.C.

III. Position of Victim in the Criminal Justice System

Crime, even though its impacts an individual, is seen as wrong by society²¹. It harms people as a collective with its potential to create terror and be a hindrance to freedom and liberty and a hurdle to safety and security, and it is viewed as antagonistic to society. Thus, the prosecution is entrusted with the task of presenting society's concerns before the Court of law. In terms of procedure, it basically comes down to the police gathering evidence and the public prosecutor conducting the trial while the accused is nearby. In such a scenario, the victim is seen as a third party. Giving a third party the right to present its side of the story is laden with the fear of overstepping the bounds of criminal law or, worse, negating or infringing the fundamental protections guaranteed to the accused. According to some authors, the bifurcated structures of the adversarial criminal justice system pose a major obstacle to victim involvement in the criminal justice process²².

Article 39A to the Constitution provides 'equal justice' as a governance goal. Equal justice should ideally be justice for both competing sides of disputes. However, when a crime is, it becomes difficult to incorporate the views of the victim, who is seen as a third party within the adversarial system for criminal trials with the State at one side and the accused at the other. Nevertheless, the truth that crime also majorly affects a victim on an individual level other than a member of society cannot be denied. Further, the retributive theory of punishment may justify the inclusion of a victim's say, at least in terms of the punishment that a convict must receive.

Although generally, the moral horror and infamy of any particular conduct is the primary reason why it is considered a crime, there is a specific distinction between a tort and a crime in that the illegality of an act is different from its moral

²¹ PILLAI K.N. CHANDRASHEKHARAN. R.V. KELKAR'S CRIMINAL PROCEDURE. 22, Eastern Book Company, 2014.

²² Doak, Jonathan. "Victims' Right in Criminal Trial: Prospects for Participation" Journal of Law and Society, vol.32, no. 2, June 2005, pp294-316

character²³. Because crime affects the victim, it cannot be seen in isolation. The kind of crime committed will determine the extent of the damage. Loss, the crime of murder, brings personal loss. Thus, it becomes critical to hear each victim's voice throughout the trial. The victim's voice should be heard in light of his unique demands that result from the incident he was a victim of. A rape survivor may need medical care, counseling, or in serious cases, mental care. An interpreter or translator may be absolutely necessary for a handicapped crime victim.

A police officer is required by law to file a 1st information report for each cognizable offense. After the categorical judgment of the Supreme Court in *Lalita Kumari's* ²⁴case, the police cannot refuse registration of an FIR upon receipt of any information that discloses the commission of a cognizable offense²⁵. In other instances, the victim is entitled to use section 200 of the law to lodge a complaint with the Court. A Magistrate, if he deems so fit, takes cognizance of the disclosed information and summons the accused persons. In addition, once an investigation is underway and the officer-in-charge of a police station determines that the inquiry does not need further action, he has an obligation to tell the informant of the decision. In all situations, the victim will, nevertheless, have a right to proceed against the same, including exercising his alternative remedy to present an application before the appropriate magistrate under section 156(3).

To hear the victim's side, mere testimony may not be enough. Although Cr.P.C., 1973, allows for a victim to instruct a pleader, however, this pleader has to necessarily act under the instruction of the Public Prosecutor or Assistant Public Prosecutor, as the case may be²⁶. The victim's role is, in general terms, limited to giving statements to police during the investigation²⁷ and showing up for

²³ Stephen, Sir James Fitzjames. A General View of the Criminal Law of England. Macmillan and Co, 1980, p2

²⁴ (2014) 2SCC 1

²⁵ Any person who is aggrieved by refusal on police's part to register FIR, can resort to sending such information to the concerned Superintendent of Police, as per Section 154(3), Cr.PC, 1973

²⁶ Section 301(2), CrPC, 1973

²⁷ As per proviso to Section 160(10) no woman or a mentally or physically disabled person or a male person below the age of fifteen years and above and above the age of sixty

examination in the chief and cross-examination. However, if a victim's concerns are completely marginalized under some panic reactions or even by overzealousness at present, net of application for withdrawal by the Public Prosecutor, The Court may use its discretion in deciding whether to provide permission for such a withdrawal²⁸.

IV. Evaluating Victim's Right in the Code of Criminal Procedure: Need and Scope for Systemic Support

The Declaration of Basic Principles of Justice for Victims of Crime and Power Abuse was endorsed by the UN in 1985²⁹. The Declaration recognizes that the victims of crime, along with their families, suffer loss, injury, damage, and hardship when supporting the prosecution of offenders³⁰. It further calls upon Member States to provide victims of crime access to fair treatment, justice, compensation, restitution, and assistance like medical, psychological etc.

The Cr.P.C. 1973 is a comprehensive set of rules to be followed for criminal trials. As demonstrated in Part II of this paper, the Code focuses on a balanced approach, ensuring that the accused gets a fair trial and that the defense side is not crushed under the pressures of prosecution and the demands of society for an increased conviction rate, or even a punishment more severe than the crime merits. However, the balance is sought to be achieved between the prosecution (of which the victim plays only a small part) and the accused.

The various stages of a criminal case wherein the victim can be provided systemic support:

A. *Compensation and Rehabilitation of the Victim*

The victim can also want financial assistance for reparation. A victim is often unable to resume his or her path toward economic stability due to shock, extreme suffering brought on by the crime, etc. A part of the payment may be forwarded to the victim in order to put him back in his pre-crime position. The payment of compensation to the victim upon incurring any loss or harm as a consequence of the crime is provided for under Section 357 of the Criminal Procedure Code. The

years can be required to attend the police station for the purposes of giving a statement during investigation. Such people can give statement at their place of residence.

²⁸ See S.A. Karim v. State of Karnataka, Supreme Court of India, on 7th November, 2000

²⁹ UN General Assembly Resolution No. A/RES/40/34, adopted on November 29, 1985

³⁰ Preamble to the UN Declaration, 1985

maximum amount of compensation for certain offenses is allowed under the Victim Compensation Scheme, which has been announced by several states. The amount of such compensation, nevertheless, is not constant. The same was also noted by the Supreme Court in *Tukaram Vs. State of Madhya Pradesh*³¹. The Supreme Court ordered a specific rehabilitation program in this instance after taking into account the particular circumstances of a rape victim who is handicapped and who also lacks the financial or emotional support of their family.

Each state government is required to develop a Victim Compensation Scheme (in conjunction with the Central Government, under Section 357A³². The scheme's available funds must be used for victim rehabilitation. The trial court must, however, specifically suggest the amount of money and how it will be used in each instance. After that, the District or State Legal Services Authorities, depending on the situation, must determine the victim's compensation amount while taking the Court's advice into consideration. Such a procedure is not only time-consuming, but it might also result in various amounts of compensation for the same loss or injury, as every Court might use a distinct set of rules to determine it. Additionally, this compensation sum cannot be greater than the limit established under the scheme. Lately, in *Suresh v. State of Haryana*,³³ The Supreme Court noted that certain states' set top compensation limits were very low³⁴.

A victim might either be a suspect or a convicted person. It is ironic that the person accused of committing a crime is the one made vulnerable by custodial abuse. The Apex Court in *D.K. Basu & Another Vs. State of West Bengal*³⁵ laid down instructions that each police officer should make an arrest. Section 41A-41D³⁶ incorporates these guidelines³⁷.

³¹31 Crl. Appeal No. 884 of 2015, decided on February 11, 2016

³² This provision was inserted by the Code of Criminal Procedure (Amendment) Act, 2008

³³ (2014) SCC Online Sc952

³⁴ The Court directed that the judgement be forwarded to National Judicial Academy for consideration on revision of the maximum limit on compensation under the scheme.

³⁵ (1997) 1SCC 416

³⁶ Inserted vide the Code of Criminal Procedure (Amendment) Act, 2008

³⁷ These guidelines included visible display of names on the badge of the arresting officer.

B. Witness Protection

Inducement and threat haunt witnesses and, consequently, the justice system in every criminal trial. The Best Bakery Case is a glaring example. The Indian court system lacks an all-encompassing solution to the problem of witness intimidation. Though the 2005 Amendment has introduced section 195A to the Indian Penal Code, 1860, the witness remains to turn aggressive. Discussing what troubles the 'legally requisite criminal trial in India', the Supreme Court in *Vinod Kumar v. State of Punjab*³⁸, where a prosecution witness bounced from his stand all through the cross-examination, mentioned that a fair trial should be fair both to the defense as well as the prosecution as well as to the victim. It additionally stated that a lengthy delay in the cross-examination was inadmissible under legal theory. It contradicts the idea of being guarded. It is upsetting to see that the practice of granting adjournments—which is really a disease persists after several judgments from this Court. The trial court's numerous adjournments and permissive attitude, which delayed cross-examining a crucial witness, were judged to have caused him to deviate from the truth, according to the Court. Law Commission of India, too, has, in a number of reports, recommended making adequate arrangements for the protection of witnesses from the accused and other influences³⁹.

C. Statement of Victim

A victim's statement is an important link between the crime and its perpetrator. It is therefore required to be recorded with utmost care. The police officer taking the victim's statement throughout the investigation should make sure that the victim is speaking freely and is not being coerced or threatened. With the 2013 Amendment to the Cr.P.C., A female police officer must take the statement of a female victim of sexual assault or an acid attack. If the woman in this situation has a mental or physical disability, the statement must be taken in her home with the help of a special educator or interpreter, and it must be videotaped mandatory⁴⁰. In accordance with section 164(5A), the victim's testimony must also be captured by the Judicial Magistrate. If the victim is incapacitated, her statement to the Judicial Magistrate will take the place of the trial's first cross-examination.

³⁸ Crl Appeal No. 554 of 2012, decided on January 21, 2015

³⁹ See 14th 15th 172nd 178th Report of Law Commission of India

⁴⁰ Proviso 1 and 2 to Section 154(1), Cr.PC 1973

Persons with disabilities, however, can be victims of offenses apart from sexual offenses. The law must therefore recognize that the need for interpreters and special educators is pressing and need not be limited to sexual offenses alone.

In *State of Maharashtra v. Dr. Praful B. Desai*⁴¹, The Supreme Court, allowed a defense witness to depose through video conferencing. The same standard can be applied to victims as well, especially the ones who cannot appear for deposition owing to trauma or ill health.

D. Medical Support

The UN Declaration of 1985 establishes fundamental guidelines for helping crime victims with their medical, material, psychological, and social needs. This may be made accessible by various methods, including governmental, non-profit, populist, and indigenous⁴². Victims should be made aware of the availability of and given easy access to other appropriate aid⁴³. Judges, police, social workers, and others who work in the criminal justice system must all get training to help them understand victims' needs and how to give them fast, appropriate care⁴⁴.

Sexual abuse victims may need urgent medical care in order to assist them in dealing with the trauma that has been created by the crime as well as to quickly gather evidence. In *State of Karnataka v. Manjanna*⁴⁵, the Supreme Court underlined its dissatisfaction with the practice of government hospital physicians refusing to examine rape victims medically without a police request. Such excessive delay might result in the destruction of crucial evidence. The possibility that the victim would get a fair trial is severely harmed by the refusal to have a post-rape medical assessment. A medicolegal emergency is a requirement for a medical assessment of a rape victim⁴⁶. Sections 164A and 53A were added in this respect by the 2005 Amendment⁴⁷. In the absence of a government doctor, any medical professional may now examine the victim with

⁴¹ (2003) 4SCC 601

⁴² Paragraph 14 of the UN Declaration, 1985

⁴³ Paragraph 15 of the UN Declaration, 1985

⁴⁴ Paragraph 16 of the UN Declaration, 1985

⁴⁵ (2000) 6SCC 188

⁴⁶ Jagadeesh, N. "Legal changes towards Justice for Sexual Assault Victims." *Indian Journal of Medical Ethics*, Vol VII no. 2, April-June 2010 p109.

⁴⁷ The Criminal Procedure Code (Amendment) Act, 2005

a woman's permission⁴⁸. However, the clause does not demand that a woman doctor conduct the examination. Despite the fact that, as stated in paragraph (1), a medical checkup of a rape suspect may only be done by a licensed physician employed by a government or local authority-run institution, section 53A (2) defines the conditions for such an examination. Only in the event that this practitioner is not accessible

At the request of a police officer with the rank of Sub-Inspector or above, a registered medical practitioner conducts such a test within a sixteen-kilometer radius of the scene of the crime⁴⁹.

The Delhi High Court in *Delhi Commission for Women v. Delhi Police*⁵⁰ issued comprehensive instructions to hospitals or doctors, police, prosecutors, Child Welfare Committees, lower judiciary, and many other concerned authorities for a case involving the commission of sexual offenses and child sexual abuse. The male duty officer who receives a complaint of such an offense is obligated to call the female officer on duty to ensure the safety of the victim and her family members. All public hospitals are also required to maintain what is called a "SAFE kit," which contains a variety of items utilized by medical personnel to gather as well as store physical proof in the aftermath of a sexual assault. It was also mandated that private examination and questioning areas be set up in all government hospitals.

E. Sentencing

Crime affects the victims. In fact, the very suffering of loss or injury due to crime makes a person a 'victim'⁵¹. In some countries, a victim's voice is heard in the form of a 'Victim Impact Statement'. In this statement, the victim receives a chance to narrate his suffering⁵². The same help the Court to appropriately decide the fitting punishment for the guilty. India similarly permits a victim to tell the Court at the sentencing hearing of the effects the crime has had on them.

⁴⁸ Section 164A Cr.PC, 1973

⁴⁹ Sub section (1), Section 53A, Cr.PC, 1973

⁵⁰ Writ Petition (Crl) 696 of 2008, order dated October 23, 2009

⁵¹ See Section 2(wa) Cr.PC 1973

⁵² See O'Hara, Erin Ann and Robbins, Maria Mayo. "Using Criminal Punishment to serve both Victim and Social Needs". Law and Contemporary Problems, Vol 72, no 2, Spring 2009, pp119-217.

However, it may be one of the considerations used when determining the sentence. The same should not be the only grounds for punishment.

V. Conclusion

Criminal justice encompasses more than simply personal punishment and vengeance. However, if the Constitution's purpose of equal justice is to guide government, then a criminal trial must provide victims' voices a chance to be heard. The criminal justice system's principles and objectives in the form of a fair trial can only be fully realized when the victim is allowed a participating role. But the specifics of this position are still unknown. To preserve the delicate balance between opposing claims, caution must be used. The criminal procedure should not be limited to the establishment of guidelines for conducting investigations and trials, as well as restrictions on the authority of different officials operating under the Cr.P.C. The victim must get systematic assistance within the legal framework in order to secure his justice and, indirectly, the justice of society as a whole.

Recommendations

Numerous obstacles must be overcome in India in order to protect victims and prevent victimization. However, these obstacles are being overcome thanks to certain effective actions. The following are a few of the obstacles and solutions:

A. No Separate Law for Crime Victims Yet

However, ongoing work is being done to pass nationwide legislation protecting victims. A sample draught of a bill is the ISV Victim Bill.

B. Corruption in the Indian Criminal Justice System

Public official corruption harms society as a whole and targets individual from all demographic groups. The Government must take decisive action to lower the amount of corruption and stop the buildup of illicit riches. A more contemporary example is the declaration of assets and money by ministers of the government and judges of the higher Court.

C. Empowerment of Women to Prevent Victimization of Women

NGOs and the government have taken up serious initiatives to alter the conventional oppressed and subservient status of women. For female students, several discounts, special privileges, and tax breaks are available to support their

pursuit of higher education and employment, as well as to support the economic independence of senior women citizens.

D. Empowerment of Children

Making basic education an important constitutional right will significantly empower children because education is the engine of progress. Other forms of victimization, such as child labor, will be impacted by how well this right is implemented.

E. Major Challenge is Implementation

The main obstacle is the lack of honesty and openness among the politicians who create guidelines and the dedication of the government employees tasked with carrying them out. While developed nations, such as the United Kingdom, have made significant progress toward delivering victim justice, the situation of victims has not been satisfactory in India. Despite this, victims still have high expectations and aspirations, even in those nations which fall short of other nations' achievements. The Criminal Injuries Compensation Act was passed in the UK in 1995. The UK's Home Office concluded that "many victims felt that the rights of the accused of a crime take precedence over theirs in criminal proceedings" in its study "Criminal Justice: The Way Ahead," published in 2001. Victims are not given information or a feeling of security during the protracted investigation and trial processes. Victims are often required to appear in Court for trials that are postponed without notifying them or exposed to needlessly uncomfortable courtroom experiences. The organizations set up to assist victims often fail to recognize and meet their requirements. The UK has suggested several adjustments to balance its judicial system in light of this finding. As a result, victim justice has not been fully realized, even in nations where many advancements have been made. To ensure that the fundamental rights outlined in the United Nations Declaration of Victims are realized in the vast majority of developing nations, we must pursue the issue with governments and civil society on a consistent basis.