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VICTIM PARTICIPATION IN **CRIMINAL JUSTICE SYSTEM: STATUS** **QUO AND THE WAY FORWARD**

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ABSTRACT

“For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet the protection of our citizens – to guard them from becoming victims – is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.”

- President Ronald W. Reagan

Reporting a crime is the first step in the victim’s path towards justice through the criminal justice system. However, very often, victims choose not to report the crime. Thus, they never come into contact with the criminal justice system and the criminal walks free. As a result, the purpose of justice is defeated. Victims play an important role in the criminal justice system. Hence, it is imperative that they actively participate in the criminal justice process. With the rise of restorative justice, victims now have a far larger role to play in the criminal process. However, because victim participation in sentencing decisions undermines traditions and established patterns within criminal courts, these rights can face opposition in their implementation. Victim participation, on the other hand, can become an acceptable practise and a tool to integrate restorative justice aspects into adversarial court systems when legal cultures change and the victim is increasingly seen as a genuine party in criminal proceedings. This research paper attempts to examine the role of the victim in the criminal justice system and how it assists in securing justice for the victims. The historical development of the role of crime victims in common-law criminal justice systems, with a particular focus on the Indian criminal justice system, has been explicated. The Code of Criminal Procedure, 1973 (CrPC)

confers certain important participatory rights on the victims, which have been explicated in the research paper. There appears to be a gap between certain rights of the victim and their implementation, which the researcher enquires into. The researcher emphasizes that the criminal justice system must act in a victim-sensitive way. Emerging innovative approaches and mechanisms for integrating victims into processes have been examined. The research paper concludes by discussing the ramifications of criminal justice policies for victims of crime.

Keywords: victim, criminal justice, victim participation, victim rights, criminal process, justice

Introduction

Since the dawn of mankind, crime has existed in every age and is an inevitability of human society. Every crime results in the creation of a “victim,” whether directly or indirectly. As a result of this interdependence, there cannot be a victimless crime. Crime primarily consists of two elements: criminal (crime perpetrator) and victim (sufferer). In human communities, the victim’s position, significance, and visibility have taken many different forms. The victim of crime once held a prominent place in the administration of the criminal justice system. But over time, victims have changed to become nothing more than witnesses in the criminal proceedings. Victims were an entirely ignored species in terms of research up until the idea of an evolutionary science that would later become known as “Victimology,” a branch of criminology, was developed. With the emergence of this new discipline known as victimology, the victim—who was once disregarded as an element of the crime—came back into the spotlight.

In ancient times, crime began to be viewed as an offence against the state, rather than victim only. As the community’s guardian, the State began to defend the aggrieved person in the criminal case against the offender. Then, some principles in favour of the accused person have been emerged in order to ensure that they are not reduced to the status of a lower human being as a result of criminal accusations. The principles of natural justice, fairness and equity have conferred upon the accused certain rights such as right to be presumed innocent, until his guilt is proven, reasonable right to be heard, right to representation, right to bail, among other important inherent rights.

In the sphere of the rights of crime victims, the evolving rights in favour of the accused induced a lag. There was unquestionably a requirement for a similar rights-based structure for the victims. Yet, there is disagreement on how far such rights should be provided, how they should be structured, and when they should start to be recognised. The criminal justice system is profoundly lopsided in favour of the accused and his rights, which creates an imbalance when it comes to ensure that victims of crime for whom justice is sought, are given due rights in the process. While ensuring the rights of the accused are essential for the sake of upholding the principles of fairness, equity and dignity, it must be done without denying the victims their due rights.

Who is a victim?

Section 2 (wa) of the Code of Criminal Procedure (CrPC), 1973, inserted by the Code of Criminal Procedure (Amendment) Act, 2009, defines the term “victim”. According to Section 2 (wa) of CrPC, *“a victim means 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 includes his or her guardian or legal heir.”* Only individuals who fall within the legal description of “victim” are entitled to legal rights of participation in a criminal proceeding.

The term “victim” would include the guardian or legal heir of the person affected by the crime. Nonetheless, it is typically used to refer to the individual whose suffering is a direct or imminent effect of the crime. In a 2022 judgement, the Karnataka High Court held that the term “victim” includes the victim’s legal heirs, who would have the locus and be entitled to carry on the criminal case before the police filed a chargesheet in the event of the victim’s death, in accordance with Section 2 (wa) of CrPC¹. Justice M Nagaprasanna stated:

“A genuine victim is to be permitted to come on record and the definition of ‘victim’ as found in Section 2(wa) of the CrPC cannot be rendered a restrictive meaning and has to be liberally construed...The cause (complaint filed by deceased person) continues and the legal heir who has stepped in into the shoes of the complainant is entitled to agitate the cause brought up by the complainant².”

¹ Plumber, Mustafa, 'Victim' U/S 2(wa) CrPC Includes Legal Heirs Who May Continue Criminal Case If Victim Dies: Karnataka High Court, Live Law, (Nov. 14, 2022), <https://www.livelaw.in/news-updates/victim-us-2wa-crpc-includes-legal-heirs-who-may-take-over-criminal-complaint-where-victim-dies-karnatakahigh-court-214037>.

² Scania Commercial Vehicles India Pvt. Ltd v. State of Karnataka, 2022 LiveLaw (Kar) 457.

Courts frequently hesitate to allow the term “victim” to be used during a trial, regardless of guilt or innocence. This reluctance is caused by a worry that the phrase “victim” indisputably declares that a crime has been committed; as a result, its usage is unfavourable and infringes on the accused’s constitutional right to a fair trial. It is appropriate to use the word “victim” during court proceedings since it aptly defines a victim’s legal involvement in the case. Courts must allow the term “victim” to be used in order to recognise a victim’s distinguished and significant place in the criminal justice system and to carry out the intent of victims’ rights laws.

If a victim is incapable of speaking for themselves, the following people may exercise their legal rights on their behalf:

- 1) A victim’s spouse
- 2) Any person having custody of the victim
- 3) A victim’s common law partner and had lived with them for at least a year prior to the victim’s death
- 4) Any relative of the victim³

The above category of persons has been recognized to be within the ambit of the term “victim” under Indian criminal justice system by virtue of Section 2 (wa) of the CrPC.

Emergence Of The Role Of Crime Victims In Common-Law Criminal Justice Systems

Under common law, the criminal justice system gave precedence to crime victims. Private prosecution, conducted by crime victims, has been practised since the Middle Ages. Instead of victim compensation from the state, the main emphasis of ancient law was on restitution from the perpetrator to the victim. Victims were not merely given a right to participate actively in the criminal justice system; rather, it was their obligation. During the eighteenth century, the victim was often responsible for prosecution. This involved the victim in all phases of the criminal justice system, including bringing the case, selecting the charge, obtaining witnesses, and participating in the court procedures. Victims also had the absolute right to intervene in court regarding the sentence if they thought it was unfair or likely to result in a royal pardon. In ancient Hindu law, compensation for the victim or the “spiritual” and material satisfaction of the sufferer was prioritised over the punishment of the criminal. It has been discovered that

³ Ibid.

India has acknowledged compensation or reparation as a form of punishment from ancient times. The awarding of compensation was seen as a royal right in pre-Sutra Hindu law. According to Manu law, the perpetrator must compensate the victim for their injuries, as well as cover any associated medical costs, and satisfy the owner of any property that was harmed. The aggrieved party would get compensation in addition to the punishment, not in lieu of it. In ancient India, it was believed that the King had a responsibility to compensate the victim of a crime. Consequently, it may be claimed that in ancient Hindu law, the victim was given centre stage, and both the perpetrator and the King were responsible for compensating and satisfying the victim.

Through the 19th century, private prosecution was typical in the United States⁴. So, it is clear that the position of victims in the criminal justice system was quite low by the turn of the twentieth century. Obviously, victims had a part in informing the police about crimes, and there were some modest legal provisions for recompense. But they were neither entitled to compensation nor were they involved in the criminal investigation. In 1973, in *Linda R. S. v. Richard D.*⁵, the United States Supreme Court observed that:

“In American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.”

The nineteenth-century movement for penal change contemplated reviving compensation and reparation. Jeremy Bentham supported the return of compensation, contending that “satisfaction” should be paid out of the offender’s property; however, if the criminal lacks property, it should be paid out of the public coffers because it is a public good. Until the end of World War II, criminal law and criminologists seldom ever took into account the victim’s involvement in the wrongdoing, victim’s impression of the criminal justice system, or victim’s entitlement to compensation. Frederick Wertham, an American psychiatrist, in 1949, proposed for ‘a science of victimology’ that would focus on the sociology of the victim. His contemporaries Hans Von Hentig and Benjamin Mendelsohn’s work on victims from the late 1940s is now largely considered as the foundational text for victim studies and the beginnings of victimology, which examines the crime from the victim’s stance. In the late 1970s, a powerful victims’ rights movement took hold, leading to changes in both state and federal statutes and regulations as well as state and federal constitutions. Reintegrating crime victims

⁴ U.S. Department of Justice, *Fundamentals of Victims' Rights: A Brief History of Crime Victims' Rights in the United States*, (Nov. 11, 2011), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/fundamentals-victims-rights-brief-history-crime-victims-rights>.

⁵ *Linda R. S. v. Richard D.*, 410 U.S. 614.

into the juvenile and criminal justice systems so they can actively participate in making offenders accountable for the harms and expenses victims have suffered as a result of the crime and make them accountable for their actions was given priority by these legislations.

The Warren Court Revolution in American law, which established novel rights favouring the accused and added to the inequality with crime victims' rights, is where the history of the campaigns for crime victims' rights is traced. The campaign culminated in the creation of the President's Task Force on Victims of Crime⁶, whose report stated that the criminal justice system has lost a fundamental balance. The victims of crime have been converted into a group oppressively burdened by a system created to protect them. This oppression needs to stop. As a result, the US Congress branch approved the Crime Victims' Rights Act, 2004⁷, with the broad objective of protecting the "*right of victims to participate in the system*" and the "*right to be treated with dignity and respect*".

In *Does v. United States*⁸, the question of whether crime victims have participation rights under the Crime Victims' Rights Act prior to the filing of formal charges came up. The US Supreme Court gave an affirmative response and remarked "*the victims to be kept updated about the developments taking place in the criminal process, and that same does not begin with filing of formal charges but even during criminal investigation*"⁹ -

The Crime Victims' Rights Act of 2004 goes a step further by giving victims a real say in the criminal justice system as it listed certain rights to victims in federal criminal prosecutions such as the right to reasonable protection against the accused, right to notification, right to be present at any such public court proceedings, right to a fair hearing, reasonable right to consult with the government's attorney, right to restitution, right to legal actions without unjustified delays and the right to be treated fairly and to have one's privacy and dignity respected.

In recent years, there has been a new, dual movement wherein efforts to personalise criminals and support rehabilitative methods over punitive ones are matched by efforts to personalise victims and their growing influence on criminal justice procedures. Under this new regime, and neither party's rights are dependent on the other's being restricted. Both criminals and their victims often travel the same road. The notion of restorative justice, which has gained

⁶ Office for Victims of Crime, *Final Report of the President's Task Force on Victims of Crime*, <https://ovc.ojp.gov/library/publications/final-report-presidents-task-force-victims-crime>.

⁷ The Crime Victims' Rights Act, (CVRA) 18 U.S.C. § 3771.

⁸ *Does v. United States*, 817 F. Supp. 2d 1337.

⁹ *Ibid.*

popularity since the late 1970s, emphasised victim-offender mediation while downplaying the role of the state in the legal process.

Evolution Of Victims' Rights And Scope of Victim Participation

“Why in history has everyone always focused on the guy with the big stick, the hero, the activist, to the neglect of the poor slob who is at the end of the stick, the victim, the passivist –or maybe, the poor slob (in bandages) isn't all that much of a passivist victim –maybe he asked for it?”

- Hans von Hentig

The above statement depicts how the criminal event and the person who violated the law were given lopsided attention in the past. The fundamentals of criminal law, the requirements for criminalization, and the rights of the accused have concerned legal theorists and practitioners of the law for millennia. The criminal was always their point of departure rather than the victim of the crime. Only relatively recently, in the 1940s, did academics begin to show an interest in crime victims and their place in the legal system. Benjamin Mendelsohn coined the term “victimology” in 1947 which refers to the scientific study of crime victims. Victimology is defined as:

“The scientific study of the extent, nature, and causes of criminal victimization, its consequences for the persons involved and the reactions hereto by society, in particular the police and the criminal justice system as well as voluntary workers and professional helpers.”

Victims are now granted a variety of rights that were once largely overlooked by the criminal justice system. The main goal of victim's rights is to improve victim privacy, protection, and protection. The right to compensation, notification of court appearances, notification of rights, and the right to submit victim impact statements, right to attend court and sentencing hearings, to restitution, to dignity and respect, to protection, to speedy trial, are some typical fundamental rights available to crime victims. Other rights may include the right to be reasonably heard at criminal proceedings involving release, plea or sentencing, to confer with the public prosecutor in the case, to be free from unreasonable delay, etc. These rights together form victims' right to participate in the criminal justice system with the object to secure justice for themselves. Some of the rights of victims that are instrumental in their participation in the criminal justice system are discussed below:

Right to Notification: A victim must have the right to reasonable notice of all public hearings

at which the accused and the prosecutor are entitled to appear, as well as the right to attend any hearings on parole or other post-conviction release. A victim must be given the right to request a hearing in any event when a victim's rights are in question.

Right to Protection: Victims have the right to request that the court keep their identity private and that their security and privacy are taken into account. They also have the right to protection from intimidation and retaliation.

Right to a Speedy Trial: Victims of crime must have the right to a speedy disposition or trial. The Court must consider the interests of the victim in ruling on motions for continuance. There must be provision for speedy disposal of trials in cases involving elderly, minor or disabled victims.

Rights related to Evidence: Any items taken from victims as evidence may be given back to them at their request.

Right to Compensation and Restitution: Victims have the right to seek compensation from the criminal or from government compensation programmes for medical expenses related to physical or emotional damage brought on by the crime, repair and replacement costs related to property offences, and opportunity costs of time lost, assessed in lost income.

Right to Participation and Consultation: The Victim Impact Statement (VIS), which is submitted at the time of sentencing, is the most common method by which victims participate. The victim is given the chance to address the court during VIS and elaborate on the socioeconomic, psychological, and physical impacts of the offence on the victim. It may be submitted by direct victims of the crime or by individuals who were harmed vicariously. A VIS permits the victims' suffering and experience to be recognised in the criminal justice system and grants them the ability to be heard in court.

Private prosecution is a good tool for protecting victims and preventing subsequent abuse by the criminal justice system because it is difficult for the prosecution to always secure the correct verdict. There should be a legal mechanism to require the investigative authorities to provide the injured party with the essential details relevant to the case when a private prosecution is used.

Benefits Of Victim Participation

Providing victims with a right to participate can assist prevent “secondary victimisation” and may even aid in the victim’s rehabilitation. Participation can aid in a victim’s rehabilitation in a number of ways. For instance, the act of testifying itself might be therapeutic. In having a witness attest that their abuse did occur, that it was horrific, and that it was not their fault, victims may find meaning in being heard. The victims’ experiences are validated through this truth-telling process, allowing them to recover. For instance, taking part in the prosecution may help victims regain control of their life and make sure that their opinions are heard, respected, and understood. By giving the victim a sense of agency and capacity to act that the original abuse drained, participation might also restore his dignity.

A fundamental corollary of victims’ rights to seek restitution is their right to participate. The victim’s participation is necessary to ensure that information pertinent to the award of compensation is revealed because the prosecutor’s interest is solely in obtaining a conviction. Participation is crucial because it aids in the potential legal need to give victims with a remedy and has the added advantage of advancing the process of reconciliation in areas where human rights violation has occurred. Victim participation may result in a more successful prosecution. The most knowledge about their own victimisation is likely to be held by victims, therefore they possess the ability to give the Court pertinent and crucial facts about the crimes. The ability should not be muzzled by the challenge of adding their opinions into the process.

Victim Participatory Rights In India: The Status Quo

Professor of Criminology and author, Ian Edwards has defined ‘participation’ with respect of victim rights as – *“it may be perceived as stemming from the broader concept of citizenship, and may include being in control, having a say, being listened to, or being treated with dignity and respect.”* The victims’ procedural rights within the criminal prosecution are an element of their participatory rights. A nation’s criminal justice system must operate efficiently for the State to uphold the Rule of Law. Any nation’s capacity for a robust criminal justice system serves as a yardstick for its level of governance. Even with the current shortcomings of India’s criminal justice system, providing justice to crime victims is one area that needs legislative reform as well as stringent administrative action.

Justice V.S. Malimath's Committee on "Reforms of the Criminal Justice System" has enunciated on the subject of "Justice to Victims" and made valuable recommendations about victim participatory rights. Fairness, due process, and recognition are the three elements of victim participation rights.

Fairness: The criminal justice system is unfair to victims because it prioritises the public interest over their needs. Hence, victim participation rights are fundamental to striking a balance between the rights of victims and accused. Their greater involvement is therefore required by the fairness principle throughout the entire trial, not just at the sentence phase.

Due Process: The "due process" justification places a strong emphasis on the victims' inherent rights to "life, liberty, and property" and calls for some protection for victims during the due process phase. The right to life or liberty of a victim of a violent crime has been violated due to the commission of the crime. The government utilises victims as witnesses, thus even while the due process provision is a check on governmental power, victims can nevertheless assert a private interest in how a criminal case turns out. According to this viewpoint, victims should receive procedural due process from the government and the courts.

Recognition: If the victims believe the criminal justice system has treated them unfairly, their situation must be acknowledged. It would significantly improve social welfare by enticing crime victims to file complaints and report offences. Yet not just at the time of sentence, but throughout the entire process, it is necessary to respect the victims' dignity.

In India, the accused and the prosecution play the major roles in the criminal justice system, with the judge acting as a referee. Only when providing evidence is the victim required to take part in the criminal process. However, the Code of Criminal Procedure, 1973 (CrPC) provides certain significant victim participation rights, such as:

1. Section 154(2): The right of the victim to send the first information report by post to the address of the Superintendent of Police if the officer in charge of the police station refuses to record it.
2. Section 190: The right to go directly to the Magistrate who has the authority to take cognizance.
3. Section 156(3): Under this Section, Magistrate is conferred the authority to order an investigation in response to such a request made under Section 190. The victim has the

choice to bring a complaint to the attention of the Judicial Magistrate, who is competent to do so.

In *Bhagwant Singh v. Commissioner of Police*¹⁰, the apex court ruled that the police report is forwarded to the magistrate having jurisdiction in the matter when the police investigation is complete, and that the victim must be consulted if the magistrate declines to file charges.

4. Section 157(2): This section mandates the police officer to inform the informant or victim if he decides to halt further investigation.
5. Section 173(2)(ii): This section imposes a mandate that the informant or victim receive the contents of the police report that was first sent to the Magistrate at the conclusion of the inquiry.
6. Sections 225, 302, 303: Each crime is prosecuted by a Public Prosecutor; the victim may retain an attorney of his choosing and that attorney may submit written arguments once the case's evidence has been concluded.
7. Section 372: If the victim is of the view that the punishment awarded is insufficient, the accused is found not guilty, or the victim believes the compensation to be insufficient, the victim has the legal right to appeal the court's decision.
8. Sections 357, 357A, and 359: Provisions for victim compensation.

Scope Of Victim Participation In The Indian Criminal Justice System

In India, the criminal justice system primarily focuses on criminals, whether that is through their conviction, care, reformation, or rehabilitation. Currently, it appears that the sole goal of the criminal justice system is to determine an accused person's guilt or innocence. Even though the victim of a crime has experienced harm in different forms, their function in the current criminal justice system is limited to that of a witness for the prosecution. Giving the victim of crime a clearly defined status under the law and to render the system victim-oriented is urgently needed. The victim's intent to see the criminal punished cannot be disregarded or entirely overridden in favour of the State's social control. Neither at the time a charge is being framed nor while an order of discharge is being passed, the victim's opinions are not even asked for, much less taken into account. Even if the case results in a conviction, the State will defend the trial court's decision in any appeals that are filed challenging the conviction and punishment.

¹⁰ *Bhagwant Singh v. Commissioner of Police*, 985 AIR 1285, 1985 SCR (3) 942.

In order to prevent the victim of a crime from becoming resentful and possibly developing a desire to use the law to his own advantage in order to exact retribution, it is imperative that the victims of crime be given a key role in the criminal justice system. While the Supreme Court voiced its concern for the situation of the victims of crime in *P. Ramchandra Rao v. State of Karnataka*¹¹ by stating that:

“If left without a remedy might resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals”

Currently, there are primarily two systems for administering criminal justice: adversarial and inquisitorial. Adversarial common law is the system used in India to administer the criminal justice system. Here, the accused is assumed to be innocent, and it is the responsibility of the prosecution to establish the accused's guilt beyond a reasonable doubt. Also, the accused has the “right of silence,” thus he is not required to respond to the questions. Truth is meant to surface from the conflicting accounts of the facts that the prosecution and defence submit before an impartial judge in an adversarial system. The judge serves as a referee and makes the determination of whether the prosecution has established an accused's guilt beyond a reasonable doubt. From the perspective of the victim, the system appears to be fair and justified, but it is severely biased in the accused's' favour with disregard to the plight and rights of the victims or their plight.

It is critical to guarantee that victims play an active part during investigation and trial in order to respond to their interests more effectively. The issue with the current legal system is that once an investigation begins, the victim plays a very small part. When conducting investigations, police officers frequently move too slowly, missing opportunities to obtain important evidence and increasing the risk of corruption. On the other hand, investigations involving prominent and well-connected people as victims are typically handled quickly. Since the State is solely responsible for conducting the prosecution, the victim's involvement is limited to serving as a “prosecution witness” during the duration of the trial.

¹¹ P. Ramachandra Rao v. State of Karnataka, JT 2002 (4) SC 92.

Global Perspective on Victim Participation in Criminal Proceedings

The adoption of the **UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** by the General Assembly of the United Nations at its 96th Plenary on November 29, 1985, marked a significant international acknowledgment of the necessity of establishing norms and minimum requirements in national and international legal systems for the rights of crime victims. In accordance with the United Nations Declaration's Articles 4 and 6 (b), it is essential that victims receive compassionate care, are respected for who they are, and receive support in their efforts to take part in the criminal justice system.

According to the UN Declaration, victims of crime have a right to four main safeguards:

- i. Access to justice and fair treatment:** This right involves the ability to quickly seek redress, access to the legal system, right to be apprised of the victim's rights, appropriate support during the legal process, and protection of the victim's safety and privacy.
- ii. Restitution:** Restitution for crimes committed by public servants or other agents, should be provided to the victims by the State. This right would include restoration of property or compensation for harm or loss.
- iii. Compensation:** When the compensation from the offender is insufficient, the state should offer financial compensation, at the very least in cases of serious crimes that result in bodily injury and for which national funds should be established.
- iv. Rehabilitation:** Through governmental, non-profit, and community-based channels, victims should receive the essential aid in terms of material goods, medical care, psychological care, and social services. Those working in law enforcement, justice, health care, and social services should be trained in this area.

In Albania, victims of petty offences are instrumental in the prosecution process. The victim alone decides whether to file a criminal complaint. The aggrieved person has the right to bring a case before the court and prosecute the accused themselves. According to the Albanian Code of Criminal Procedure, only victims of petty offences may use this procedure, which falls under the umbrella of private prosecution. Serious crimes continue to be under the purview of the State, who is responsible for carrying out the prosecution. The victim may file an appeal with the court if they are dissatisfied with the State's decision not to press charges.

Private accessory prosecution, an exclusive German criminal procedure, is an effective procedure in ensuring the active participation of the victim in criminal proceedings. The victim gets numerous opportunities to influence decisions made throughout the criminal investigation thanks to this system. As a co-prosecutor, the victim's opinions and concerns about this method are well taken into account from the beginning of the prosecution process. The prosecutor also provides legal counsel to the victim, and upon request, a lawyer may be brought in to help.

The preamble to the Rome Statute of the International Criminal Court (ICC) emphasizes on victims and their suffering, which depicts that it prioritizes the interests of the victims of crime. The Rome Statute grants victims considerable participation rights in cases before the ICC. The right to express one's opinions on matters affecting their own interests, the admissibility of a case, and the choice to permit an inquiry has been granted to victims. Many nations with a civil law system allow victims to participate in legal processes as a third party or "subsidiary prosecutor." In these nations, the victim or the victim's legal representative has the right to request investigative measures, analyse the prosecution's case against the defendant, make declarations, present evidence, question witnesses cross-examination, and deliver closing remarks. International criminal processes, which have primarily been based on the adversarial system, have not provided victims with the same rights, despite this widespread practise in nations with civil law. One of the most significant features of the Rome Statute is the victims' right to take part in trials before the International Criminal Court.

Mechanisms For Victim Empowerment

The Criminal Procedure Code (Amendment) Act, 2008, amended the long-debated subject of victim compensation schemes. In addition to the victim compensation scheme, it has enabled victims to choose an advocate of their choice, with the court's leave, to evaluate the prosecution in accordance with Section 24. If the court permits, this lawyer will also be entitled to make distinct arguments, interview witnesses, and produce evidence. Aside from that, the victim may seek an appeal against the accused's acquittal, conviction for a lesser offence, or the imposition of an insufficient sentence as per Section 372. These provisions have given victims a legitimate place in the criminal justice system.

To make sure that victims are fairly rewarded, almost every state in the nation has established victim compensation schemes. The word "substantial" in the Law Commission of India's 41st

Report, which excluded the cases of recovery of nominal costs, was the first to identify the relevance of compensability. It is interesting to note that the Victim Compensation schemes vary from state to state in India, based on the category of the crime.

The Indian government has recently passed a number of steps to advance victim justice, but their implementation at the local level has always been questioned because of procedural irregularities. Among the noteworthy programmes are the Central Schemes for Assistance to Victims of Terrorist and Intergroup Violence, the Scheme for Relief and Rehabilitation of Rape Victims, and others¹².

The Supreme Court in the landmark case of *Domestic Working Women's Forum v. Union of India*¹³ urged the National Commission for Women to develop a “system so as to wipe out the tears of unfortunate victims of rape.” The Supreme Court observed that “in light of the Directive Principles contained in Article 38(1) of the Constitution, it was necessary to establish a Criminal Injuries Compensation Board, because rape victims frequently incur substantial financial loss and, in some cases, are too traumatised to continue working.” The apex court further ordered that compensation for victims be granted by the court upon conviction of the perpetrator, as well as by the Criminal Injuries Compensation Board whether or not a conviction has occurred. This historic case has provided certain guidelines and called for assistance and rehabilitation to rape victims in the various forms.

Evolving the philosophy of restorative justice, the Supreme Court in *State of Gujarat v. Honourable High Court of Gujarat*¹⁴ directed that “prisoners be paid equitable wages for the work done by them, that every prisoner be paid wages for the work done by him, and that the state make law requiring a portion of the wages earned by prisoners to be paid as compensation to deserving victims of the offence.” This is a huge step forward in offering restorative justice to crime victims. The Protection of Human Rights Act of 1993 (as amended in 2006) introduced a new mechanism for addressing violations of human rights at the national/state level. Victims and their families may be awarded instant compensation by human rights commissions.

¹² Satyabhama School of Law Department of Legal Studies, *Penology & Victimology*, https://sist.sathyabama.ac.in/sist_coursematerial/uploads/SAL1053.pdf.

¹³ *Domestic Working Women's Forum v. Union of India*, 1995 SCC (1) 14, JT 1994 (7) 183.

¹⁴ *State of Gujarat v. Honourable High Court of Gujarat*, 1998 7 SCC 39.

Impediments to Victim Participation in Criminal Proceedings

Given the negative consequences of crime victimization, one would assume that victims will encounter compassion and respect wherever they go. Unexpectedly, the exact reverse is true. Several victims are held accountable for what occurred, their characters and features are disparaged, and it is frequently thought that they “got what they deserved.” The widespread conviction that a just world exists may be the underlying mechanism producing this unfavourable reaction to crime victimization. People typically believe that good things happen to good people and bad things happen to evil people. But, the victimisation of innocent individuals puts this “justice motive” in jeopardy and produces misery. Attributing guilt to a victim of a crime, demeaning this person’s character, or psychologically separating oneself from this person are all methods for restoring faith in a just world. A victim’s suffering is justified by claiming that they are to blame. The issue is that criminal justice authorities may (subconsciously) be led by this idea in addition to the common people who share this deluded belief in a just world. Further, there seems to be a concern that granting victim rights have the potential of imposing a burden on the already overburdened criminal justice system.

Section 301 of CrPC acts as an obstruction of the right of the victim with respect to a lawyer of his or her choice conducting prosecution. The overall purpose of enacting Section 301 appears to be to ensure that when the State takes on a case, the complainant's or victim’s rights are placed second to the State’s, and that the victim's attorney has no right to audience unless specifically granted by the Public Prosecutor representing the State. Regardless of the Public Prosecutor's arguments or his approval in this regard, he may submit written arguments to the Court with the permission of the Court. The Supreme Court ruled in *Thakur Ram & Ors. v. State of Bihar*¹⁵ that a private party has no locus standi in a case that has moved forward based on a police report. It further stated that, with a few notable exceptions, in criminal cases, the aggrieved party is usually the State, which is in charge of protecting the social interests of the entire community. As a result, it is imperative for the State to take all necessary actions to hold whoever violated the community’s social interests accountable. In *Shiv Kumar v. Hukam Chand*¹⁶, the Supreme Court observed that it is obvious from the Code’s overall structure that only the Public Prosecutor is authorised to prosecute cases in Sessions Courts. The legislature

¹⁵ Thakur Ram & Ors. v. State of Bihar, AIR 1966 SC 911

¹⁶ Shiv Kumar v. Hukam Chand, (1999) 7 SCC 467.

reminds the State that its policies must rigorously follow fairness and equity in an accused person's Sessions Court trial. The rationale behind Section 301 of CrPC appears to be that if given complete discretion, a private attorney would concentrate on securing a conviction even if the case did not warrant one. To avoid that, he is compelled to rigorously follow the Public Prosecutor's directives in his duty. To uphold the principles enshrined in Article 21 and so as to ensure a fair trial, the provisions of Section 301 has been framed. It is believed that in the greater good of society that the prosecution be handled by a neutral party like the Public Prosecutor. However, in the process, the victim's right to fairness and equity are being hindered. Thus, there is dire need of a provision that aims to uphold the victim's rights and participation in the criminal proceedings.

Section 302 of CrPC has a somewhat liberal approach in respect of upholding the victim's attorney's role in the proceedings. In *J. K. International v. State (NCT of Delhi)*¹⁷, the Supreme Court observed, citing Section 302 of the Code of Criminal Procedure, 1973, that the scope of any other private person wanting to take part in the prosecution is still greater when the trial is held before a Magistrate's Court. The Supreme Court also stated in its explanation of Section 302 of the Code of Criminal Procedure of 1973: "*The private individual who is entitled to conduct prosecution in the Magistrate's Court might employ an Attorney to perform the necessary in Court on his behalf.*" It further clarifies the idea that anyone who feels wronged by an offence committed against them or someone they care about can go before the magistrate and ask for authorization to bring charges. However, the right conferred in Section 302 is not applicable to trial in a Sessions Court. Thus, the power given is limited in scope. In *Amir Hamza Shaikh v. State of Maharashtra*¹⁸, the Supreme Court clarified that even though the Magistrate is not required to grant permission at the mere asking, the victim has a right to support the Court in a trial before the Magistrate.

Opinions, Suggestions And Reforms Envisaged

The evaluation of the extent of victim engagement in the Indian criminal justice system makes it abundantly evident that there is a major absence of any legislation or statute conferring victim rights or ensuring their participation in the criminal proceedings. Even if certain rights exist, there is a gap in their implementation. Both before, during and after the trial, the rights of the crime victims should be upheld.

¹⁷ J. K. International Vs. State (NCT of Delhi), (2001) 3 SCC 462.

¹⁸ Amir Hamza Shaikh v. State of Maharashtra, (2019) 8 SCC 387.

The following rights must be given legitimacy through statutory authority and must be implemented effectively so as to ensure that victims' rights are upheld and their participation is observed:

Choice of prosecution: When the case is being framed, the police officer must be obligated to make sure the victim is heard. Victims should be given the reasonable opportunity to voice their opinions and grievances throughout the investigation stage by filing a complaint.

Right to consultation: At the time the offender is sentenced and while parole decisions are being made, the victim must be consulted. The victim must be consulted at the sentencing stage in order to determine the amount of compensation and to give a Victim Impact Statement (VIS) that might affect the severity of the punishment. Crime causes the most suffering for its victims. It is crucial to provide them the opportunity to express their suffering and worries through a Victim Impact Statement (VIS) and Victim Impact Evidence (VIE).

Right to contest the police report's findings: The victim's right to get the police report under Section 173(2)(ii) of the CrPC should be coupled with the victim's right to contest the report's findings in front of a higher-ranking police official.

Notification to the victims at the investigation stage as well as trial stage: The victims must be given the right to information about the case status, including the reasons why the culprits have not been found yet, the stage of the investigation or trial, the reasons the trial has been postponed, the specifics of the evidence the prosecution will use, and the victims' right to appropriate access to the police report. As a result, a responsibility is created. on the investigating agency to keep the victim in loop.

Bail decisions: While deciding whether to release the accused on bail, the victims must be given fair regard. When the bail request is brought before a court, that is the period when victims can voice their opinions.

Right to Information: The Right to Information Act, 2005 allows the victim to request information regarding the investigation or trial.

Right to participate in the criminal justice system: Victims must be conferred the right to appear in court and call attention to the police's failure to question witnesses or their ignorance of important pieces of evidence. The victim's advocate must be permitted to cross-examine the defence witness and ask questions of the prosecution witnesses.

In addition to the above rights, statutory backing must be given to the procedure of victim participation in criminal proceedings in the following basic aspects:

Through the course of the process of criminal justice, victims' opinions and concerns should be heard and properly addressed by the appropriate authorities. Victims should be encouraged in their endeavours to participate in the criminal justice system and treated with compassion and respect for their dignity. When the State decides not to prosecute, one of the choices can be private prosecution. Precautions must be taken to prevent the misuse of private prosecution. However, the provision for private prosecution must be made. The prosecution should take into account, among other things, the opinions of the victims while deciding whether to appeal. It is crucial that victims obtain prompt compensation for sustained as a result of the crime through the criminal court system when it comes to compensation and restitution for victims.

The following initiatives will pave the way for enhanced victim participation and victim empowerment:

Victim-Offender Mediation Programs: There may be certain victims who would want to have face to face meetings with their offenders. To facilitate such a dialogue in a structured environment, Victim-Offender Mediation Programs should be introduced. Mediation in criminal law is a diversion from prosecution.

Compliance Programs: Through training, workshops, etc., victim rights compliance programmes aim to inform the general public and criminal justice organisations about victims' rights. They have a formal complaint process and receive complaints from victims when their rights are violated.

Victim Rights Clinics: In order to aid in the enforcement of victims' rights by giving victims free legal representation in court, Victim Rights Clinics must be established. The clinics may be run by advocates, lawyers, law students, social activists and so on.

It is essential to understand that simply granting victims' rights is not sufficient. Victim' rights must be supported by a modus operandi to ensure that the organisations and people in charge of notifying victims of their rights. Government discretion to deny rights, lack of a procedure to enforce the rights, and appellate court discretion to deny review are some of the hindrances for victims to fully exercise their rights. It is vital that victims receive a locus to defend their rights in the event of violation of victim rights.

Conclusion

In contemporary societies, the state now has the exclusive right to imprison criminals in the interest of the community as well as the duty to safeguard its citizens from crime. The state, however, disclaims all liability for victim injuries. Retribution has a minor role in how the criminal justice system is now run, yet its significance cannot be denied. Even now, the primary motivation behind criminal law is the feeling of righteous outrage. Except for infrequent initiatives, there is still a trend to transfer the issue of restitution or compensation farther and more outside of the criminal justice system, likely out of a wish to keep the victim out of it. The argument demonstrates unequivocally that the victim is not regarded as an essential participant in the criminal justice system. Almost no legal system completely considers the victim's participation in the criminal proceedings. Where there is state compensation, which is a rare occurrence, the system either is not completely successful or does not work at all. While the state is thought to be responsible for criminal punishment, the wrong or damage done to the victim as a result of the crime is almost considered to be a private problem. As the State bans him from enforcing the law on his own, the victim of today is unable to seek redress on his own.

Changes in socio-economic situations may play a key role in the solution to the problem. Despite the fact that the nineteenth century saw significant advancements and changes in criminal law, laissez-faire doctrines predominated and prevented governments from implementing social welfare programmes, particularly those that benefited crime victims. Restitution and compensation schemes as a social welfare measure now dominate the legislative platforms of governments in the majority of affluent nations where partial or full responsibility for social fatalities is now recognised.

Nonetheless, it is noteworthy that the victim of crime has now come to light and is recognised

as a person deserving of attention in countries all over the world after residing in a position of virtually complete obscurity for generations.

In the Indian criminal justice system, the rights of the accused are given paramount importance, upholding the principles of natural justice, fairness, etc. enshrined in the Constitutional. However, in doing so, the rights of the victims are grossly overlooked. It is an established fact that a crime affects the entire society and hence, the State takes the onus to ensure that justice is done. It must not be forgotten that as a result of a crime, it is the victim who suffers the most, in various spheres of his or her life. It is only fair and just that the victim has a say in the criminal proceeding of a crime that has been committed against him. Justice is primarily sought for the victim, isn't it? The Code of Criminal Procedure needs to be amended imminently in order to make it considerably more supportive of the victim's participation rights. In order to give victim participation rights a suitable place in the criminal process, an effort must be made to achieve the right balance.

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