

Putting Victims First: Confronting Challenges in India's Criminal Justice System

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Abstract

The paper explores the intricacies of India's criminal justice system, with a specific emphasis on the often-overlooked rights and requirements of victims. The paper assesses the current landscape in India, critically evaluating the involvement of victim at various stages of India's criminal justice system, such as pre-trial processes, victim involvement during trials, the compounding and withdrawal of cases, and delves into the post-trial support for victims. Highlighting the limited and passive role victims currently play in these processes and contrasting this with more victim-centered approaches in France and the United States, the authors aim to offer constructive recommendations for enhancing victim justice in India.

Keywords: Indian Criminal Justice System, Victim Rights, Victim-Centred Approach, Post-Trial Support.

Introduction

The Criminal justice system has evolved over the time, transitioning from an individualistic approach with victims³ as central figures that prosecuted their offenders to a collective partnership where the state takes on the victim's role and prosecutes crimes on behalf of society, thereby diminishing victims to the inconspicuous role of mere witnesses in criminal proceedings. The global approach to criminal justice is rooted in the protection of the rights of the accused and the criminal justice system in India aligns with this basic tenet. In India's adversarial legal system, the prosecution bears the responsibility of proving the guilt of the accused beyond reasonable doubt and there is an unwavering commitment to prioritize the rehabilitation of guilty offenders. While rehabilitation of offenders is crucial, fair justice demands a balance in caring for both criminals and victims. Justice Benjamin N. Cardozo of the Supreme Court of the United States of America has aptly stated "*justice, though due to accused, is due to accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.*"⁴ With the accommodation of victims in the legal process and the amplification of their voices, the criminal justice system becomes more victim-centred which contributes to a fairer and more equitable legal system. Regrettably, as the legal system currently limits the role of victims they, despite setting the criminal law into motion, they often become forgotten heroes being relegated to the status of mute spectators in their own cases. With the rights of victims taking a backseat, victims may undergo an extremely stressful, demeaning and unjust ordeal that may significantly distort their experiences within the criminal justice system, often causing what's known as 'secondary victimization'. This secondary victimization may lead to feelings of disillusionment, detachment, and reluctance to cooperate with authorities down the line, not only on the part of the victim but also among their family and associates.

The following paper attempts to employ a comparative lens in analyzing the rights afforded to both the accused persons and victims in India and aims to propose recommendations for enhancing the concept of victim justice across various stages of a criminal trial. Additionally, it will draw parallels with the practices in two countries, viz., the United States of America which pioneered the implementation of victim compensation program and France which employs a similar state-sponsored prosecution system as in India, at specific junctures respectively, serving as valuable reference points to offer insights for improving victim justice in India.

I. Dissatisfactions and Disconnections: Challenges in Victim Interaction with Criminal Justice Agencies in India

The victim's adverse experiences in the criminal justice system from engagement with different entities in the criminal justice system, including the police, prosecution, and the court are further elaborated below as we explore different phases, highlighting their marginalization and disempowerment.

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Victim's engagement in the Pre-Trial Process

The victim's initial contact with the criminal justice system is with the police from whom they seek assistance and support, while the latter's priority is on case progression rather than addressing the victim's needs. Upon receiving the information, the officer-in-charge of the police station is obligated to document the information as a First Information Report (FIR) and furnish a free copy of the same to the person who reported the incident.⁵ However it is crucial to note that if the victim is not the informant, the copy of the FIR is not accessible to them. When there is refusal to lodge such FIR by the designated officer, the informant has the right to approach the Superintendent of Police, who is in turn expected to order investigation⁶, failing which the informant is entitled to make a complaint to the Magistrate⁷, who may take cognizance himself⁸ or may direct investigation by the police without taking cognizance⁹. In case the information received relates to a non-cognizable offence, the Police is required to direct the informant to the Magistrate. In this context, it is to be noted that the Apex Court, in the case of *Lalita Kumari v. Government of Uttar Pradesh*¹⁰ has laid down detailed guidelines making lodging of FIR mandatory in all cognizable cases, and has fortified this by providing for departmental action against officers who refuse to register FIRs. The practical experiences of victims, including informants, however, reveal that they frequently encounter police indifference and a lack of cooperation from the police when seeking assistance. The Malimath Committee on Criminal Justice Reforms¹¹ discovered that case facts are often manipulated, resulting in the conversion of cognizable cases into non-cognizable ones (and vice versa), which detrimentally affected on both victims and the accused and therefore recommended the abolition of distinction between cognizable and non-cognizable case with regard to investigation by police to improve the fairness and responsiveness of the justice system.

A better practice, exemplified by the French Criminal justice system, can be cited here wherein the police is mandated to record the victim's statements even if they do not have jurisdiction to investigate the complained offence, and then forward such statements to the appropriate authority.¹² This approach ensures that the police become the sole reliable point of contact in instances of victimization, eliminating any confusion for victims regarding whether to depose their statements before the Police or the Magistrate.

During the investigative process, the accused is entitled to several rights, which encompass safeguards with respect to arrest, right to be produced before the nearest Magistrate, procedural safeguards regarding search and seizure, recording of confessions amongst others. At the stage of investigation, the victim's statements are recorded by the Police¹³ and the Magistrate¹⁴ and if required, the medical examination of the victim is conducted.¹⁵ Here, the victim's only next active role is as a prosecution witness in court, with no other involvement in the investigation process. When the accused is produced before the Magistrate,¹⁶ the criminal justice system sees no intervention by the victim. This provision grants default bail if the investigation isn't completed within a specified time period of 60 or 90 days as the case may be, with no right to the victim to claim for an explanation for non-completion of investigation within the prescribed time. Additionally, the victim's input is not taken into account when the police officer decides to release the accused on bond,¹⁷ especially in cases where there may not be sufficient ground for presentation before the Magistrate.

Quite evidently, the victim has little importance in the investigation process. However, by a reading together of the definition of 'investigation'¹⁸ along with provision relating to charge- sheet¹⁹, there seems to be no statutory bar for involving victim participation in the investigation procedure. What is required to further enhance the acknowledged needs of the victim is to ensure that he/she is satisfied about not being abandoned by the State. It is important that the victim is allowed to make his/her presence felt at the investigation as well as prosecution stage. The victims have the unqualified right to know about the details of the progress of the case, including the reasons for delay in conducting investigations, in tracking culprits, and information about the evidence to be adduced by the Prosecution. The police is required to have the duty to make the victim aware of the advancement in proceedings of investigation unless the disclosure of such information is hazardous to the investigation itself. A copy of FIR as well as a copy of the charge- sheet should be made available to the victim even if he/she is not the first informant. Further, the victim is required to be entitled to argue against the findings of the report before a superior police officer. Assistance to the victim can be sought for the evidence collection and should also be allowed to posit recommendations concerning the investigation. The Malimath Committee²⁰ had suggested that the right to move the court for necessary orders must be ensured to the victim in order to expedite the process of investigation. In France, this right is implemented, and the victim has the same right of participation as the accused in case of pre-trial inquiry. The victim may plead that the investigation be conducted in a particular manner by the *juged' instruction* and *in entitled* to access the case documents.

At this juncture, the *Victim's Charter of the United Kingdom*, 1996 may be referred to. The right to information to victims has been elaborately dealt with by stating that "you can expect a crime you have reported to be investigated and to receive information about [significant developments in your case]... the police will tell you if someone has been caught, cautioned or charged...[and on request] you will be told about any decision to drop or alter the charges substantially. You will also be told the date of the trial and the final result."

So far as India is concerned, the *Right to Information Act, 2005* has allowed the victims to have access to the entries of the case diary maintained by the Police as well as other police records with respect to the progress of the case, and also has provided remedies in the event of non-disclosure. However, the police officer is not under a strict obligation to

furnish 'explanatory information' for example the reason for delay and the procedure adopted for expediting the investigation. Clear guidelines for such clarification are required in order for the victim to experience a transparent process. Further, the exemption clause under the Act²¹ is likely to be used mechanically by the Police officers as a shield. Hence, there is requirement that the victim is given an opportunity to approach the Magistrate or any other judicial officer of the district at the time of investigation in order to get the withholding of information examined and give appropriate orders therefor. Despite the fact the victim may approach the High Court under its writ jurisdiction,²² the remedy is discretionary and often lengthy.

Victim's engagement during the Trial

In criminal cases, the State is responsible for prosecution through Public Prosecutors (PP) to ensure justice. PP's role is to be impartial, assisting the court and not favoring any party. Their authority is derived from Cr.P.C²³, allowing them to 'appear and plead' in court without written authority. Section 301(2) allows private persons to have a pleader assist the Public Prosecutor, but this pleader works under the Public Prosecutor's direction. They can submit written arguments only after the evidence in the case is closed. In the case of *Shiv Kumar v. Hukam Chand*²⁴, the Supreme Court has ruled that private counsel's role is akin to a junior counsel supporting a senior. A slight diversion can however be observed with respect to the trials and inquiries before the Magistrate where a private counsel engaged by the victim may conduct the prosecution by itself.²⁵ In contrast to this, the right to be defended by 'a pleader of his choice' is bestowed upon the accused.²⁶ Further all evidences in the Court are to be admitted in the Court in the presence of the accused, and in case the attendance of the accused is dispensed with, his pleader is required to be present in the proceedings.²⁷ In the hearings pertaining to bail applications, the accused has been provided the fair opportunity to be heard before rejecting or granting bail.

The justification for restricting victim participation in trial proceedings revolves around the idea that the State, when under attack, bears the duty and the right to protect the life, liberty, and property of its citizens, while also wielding its police powers to prevent and prosecute crimes in the pursuit of justice. As the guardian of sovereignty, the State is obliged to discourage individuals from seeking their own justice. Another argument posits that involving victims in the trial process may compromise its fairness and open the door to possible acts of vengeance. However, the reality on the ground doesn't unequivocally support these claims. The State often falls short in adequately representing the victim, and its prosecution is hindered by issues such as the recruitment and training of public prosecutors, as well as a lack of experience in criminal law. Furthermore, there's a clear lack of coordination between investigating officers and prosecutors once the charge sheet is filed in court. Common problems include investigating officers not appearing for scheduled examinations, inadequate witness protection, and inadequate prosecution management, which have become widespread in the country's criminal justice system. Police officers often consider their responsibility fulfilled once the investigation is concluded and the police report is filed, showing little concern for the case's final outcome. Given this scenario, involving the victim in the criminal trial is crucial to support the state's prosecution process and assist the court in making equitable decisions. This approach also ensures that the victim's voice is heard and valued by the court, and that the prosecution is progressing in the right direction.

The French Criminal Justice System, however, is favorable towards the participation of victims to a large extent. The victim is allowed to be represented as a *partie civile* and thus the victim constitutes as a separate pillar of the criminal trial proceeding. At the very beginning of the trial, the victim is to be informed about such a right. The victim is even allowed to initiate criminal proceedings in cases where no prosecution has appeared. Representing interests of the victim and seeking compensation can also be done by private organizations working towards certain interests, including organizations fighting against homophobia, sects, and those who represent work accident victims. The victim is to be kept informed about the proceedings throughout, at an interval of six months.

The criminal justice system in the USA also recognizes the right to participation of the victim in the trial process. The US Congress enacted the *Crime Victims' Rights Act* in 2004 to define several rights of victims. One right that is significantly provided to victims of crime, and their family members and relatives is the right to be protected from the offender and his harassment. The victims also have the right to be reasonably and timely informed about the proceedings, the right to be heard at appropriate stage, right not to be excluded in hearings, right to be free from unreasonable delay, and right to be represented by an attorney. The Victim Information and Notification Everyday (VINE) is a national program of the USA to help the victims of domestic violence and other crimes to be informed about the procedure via phone, internet, or email.

A prudent approach with respect to India would be a harmonious balancing of the various considerations and providing victim a limited right of participation. The private counsel appointed by the victim must not be restricted to play only the role of a subordinate council to the public prosecutor and should be given a role as that of the Public Prosecutor. At the stage of consideration of charge the victim is required to be given a right to be heard and bring up certain relevant evidence which might not have been taken into consideration by the police at the time of investigation. The victim's counsel should be allowed to pose additional questions to prosecution witnesses and cross-examine defense witnesses, in addition to the prosecutor's questions. Supplementary arguments by the victim's counsel can help express the victim's opinions and may influence the case's outcome, both in terms of charges and sentencing. Victims should

participate in criminal cases but not as 'parallel prosecutors. They can submit arguments to the court, but the court must exercise caution, as victims may unintentionally exaggerate, especially in group cases.

Compounding and Withdrawal- Special junctures for End of trial

There are certain points in a criminal proceeding that can put an end to the trial outrightly. Certain recognized offences can be compounded²⁸, technically allowing victims to withdraw the case brought about in the Court. Another provision for end of trial is the procedure of withdrawal from prosecution by the state itself.²⁹ The Malimath committee³⁰ had suggested an increase in the number of compoundable offences in order to lessen the excessive burden on the courts and to gradually shift the objective of punishment towards reformation rather than retribution. However, in the scenario of the Indian context, compounding of offences in maximum probability would entail a chance to exploit the victims and would not be able to effectively mete out justice.

The withdrawal from Prosecution is done as per the sole discretion and analysis of circumstances by the Public Prosecutor. The victims do not generally have an option to opine when the Prosecutor withdraws. In *Abdul Karim v. State of Karnataka*³¹, the Supreme Court, though not addressing the issue directly, has tacitly recognized the right of the victim to file counter applications to withdrawal.

Post- trial stage

After examining evidence and hearing arguments, the trial judge either acquits or convicts the accused. Convicts gain rights such as the right to appeal, suspension of sentence pending appeal, and prisoner rights. The focus is on rehabilitation. Victims have the right to appeal³² but they have limited trial involvement and don't get free copies of judgments like the accused. So far as victims are concerned, the observation of the 154th Law Commission Report is worth mentioning: "*crimes often entail substantial harm to people and not merely symbolic harm to society. Consequently, the needs and rights of victims of crime should receive priority attention in the total response to crime.*"

One of the most important requirements for any victim of crime is rehabilitation. As much as it is necessary for the offender, the victim equally requires to be rehabilitated into society after the immense injury, hard, trauma, stress, loss of dignity, respect, and the ensuing societal pressure that the victim had to bear. Efficient preventive measures as well as provisions for cure should be meted out to the victims for their physical injuries, mental trauma and stress that the victim had to go through. In the decision in *Manohar Singh v. State of Rajasthan*³³, the Supreme Court held that "*Victim's plight cannot be ignored even when a crime goes unpunished for want of adequate evidence.*"

A significant post-trial right for the accused is release by way of parole which is a mode of correction in modern penology. The accused is seeking to be rehabilitated by release from penal institution in order to ascertain whether he is fit to live in society, with a promise to return to prison in case of violation of any condition. The victim does not enjoy any specific such right to be rehabilitated into society.

II. The Way Forward: Comprehensive Framework for Victim Rehabilitation and Support in India

To rehabilitate crime victims, a method is to provide monetary compensation. The 154th Law Commission Report focused on victims' rights during and after trials. This was based on the provisions of the Indian Constitution, ensuring the right to public assistance and citizens' duty to develop humanism and reform. The report also discouraged limiting compensation to fines, penalties, and forfeitures only. The Malimath Committee report³⁴ proposed adopting UK-inspired victimological strategies in India, stressing the state's responsibility to compensate victims of serious crimes, even without a conviction. This led to the inclusion of Section 357-A in the Cr. P. C., enabling compensation for victims or their dependents for harm caused by crimes. State governments are required to establish compensation schemes, with the District Legal Services Authority or State Legal Services Authority determining the compensation amount. Additionally, Section 357B in the Cr. P. C. mandates additional compensation for acid attack victims and specific rape categories, in addition to fines imposed under those sections.

Another very important pillar of victim justice is 'support services. It is often the case that the victims are not even aware of their rights and thus, enforcing of rights seems far-fetched. Legal aid, therefore, is to be extended not only to the offender, but also to the victim. In the case of *Delhi Domestic Working Women's Forum v. Union of India*³⁵, the Supreme Court held that legal assistance to victims of rape needs to be provided, 'right from the level of the police station'. The court further opined that the victim's advocate must be well-acquainted with the nitty-gritties of the criminal justice administration. This assistance is to be continued by the same advocate till after the end of the case. However, it has been apprehended that the idea is not implementable, and a more practicable approach would be to associate any recognized Non-Governmental Organization (NGO) with the Police Station to provide assistance to victim of a lawyer to be appointed by District/State Legal Services Authority.

Medical care and assistance are also necessary for the victim besides legal and monetary support. Section 357C of Cr. P. C. mandates "*all hospitals, public or private, whether run by the Central Government, the State Government, local*

bodies or any other person to immediately provide free first-aid or medical treatment to victims of certain offences and to inform the police of the incident". Poor victims who might have lost parental care, sexual victims, need special attention. The Government, through its social welfare ideal, is required to take all necessary steps to make provisions for expert medical treatment, counseling services, psychiatric support, and all other necessary services whether or not with the help of non-governmental organizations and other institutions.

Witness protection schemes, which would undoubtedly include the protection of the victim, is another significant juncture. Incidents of victims and witnesses turning hostile is due to the fact that the entire process of giving testimony in court, the regular journey, the traumatic cross examinations, all of this might be very arduous. Adding to this is the lack of facilities for the witnesses, even the basic ones, like toilets, chairs, waiting rooms, monetary support, etc. The long-drawn procedure of trials reduces the faith of victims in the system. Here, the conditions can be improved by providing for a suitable atmosphere for the victims who visit the courts as witnesses or spectators. Witness protection measures are very important for the conclusion of the trial as a fair one.

The USA has developed the National Organization for Victim Assistance (NOVA) in 1975 to expand victim services across the country by formulating new schemes and legislations. NOVA also helps in providing information to the victim and securing technical assistance. Victim Impact Assessment (VIA) is very important for the awarding of compensation that is effectively done in the US through the VIA tool which checks a lot of factors at the time of sentencing. The decision of the Supreme Court of India in *Mallikarjun Kodagali (Dead) v. State of Karnataka*³⁶ emphasized on the necessity of victim impact statements in case of compensation schemes.

III. Conclusion

The central aim of the criminal justice system is to ensure justice for all parties involved. The concept of distributive justice underscores the principle that all individuals should be treated with equality. However, the exercise of discretion has, on occasion, resulted in uneven treatment, particularly when it cannot be clearly and objectively defined. Consequently, it becomes imperative to establish a system that can effectively oversee and regulate this discretionary aspect within criminal procedures. A refined and civilized system of criminal justice administration ideally places the safety of victims, potential victims, and their families at the forefront. Historically, the accused has been granted primacy in the criminal justice system, with legal provisions favoring the protection of their rights. On the contrary, victims have often found themselves marginalized. Valuable insights can be gleaned from the best practices followed in countries like the United States and France. Incorporating such provisions at the appropriate stages in the criminal justice process can help empower these frequently overlooked victims, who often play the role of the forgotten spectators. Victims should be afforded the opportunity to participate actively in every phase of the criminal proceedings, while simultaneously receiving the necessary support for rehabilitation, encompassing financial, medical, and psychological assistance. Empowering victims through their active involvement in the criminal justice process and providing comprehensive support can be pivotal in helping them overcome the emotional and psychological distress resulting from the crimes they've experienced. By placing their well-being at the forefront, recognizing their rights, and allowing them to participate actively, victims are more likely to attain closure and experience relief from the emotional suffering inflicted by the criminal acts they've endured.

IV. References

1. Section 2 (wa) of The Code of Criminal Procedure, 1973 defines victim as "*a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.*"
2. Snyder V. Massachusetts, 291 US 97, 122, (1934).
3. The Code of Criminal Procedure, 1973, Sec.154.
4. *Ibid.*
5. The Code of Criminal Procedure, 1973, Sec.200.
6. The Code of Criminal Procedure, 1973, Sec.190(1)(a).
7. The Code of Criminal Procedure, 1973, Sec.156(3).
8. (2014) 2 SCC 1
9. JUSTICE V.S. MALIMATH COMMITTEE, Report of the Committee on Reforms of Criminal Justice System. Delhi: Ministry of Home Affairs, Government of India.
10. Code of Criminal Procedure, Art. 15-3 (France).
11. The Code of Criminal Procedure, 1973, Sec. 161.
12. The Code of Criminal Procedure, 1973, Sec. 164.
13. The Code of Criminal Procedure, 1973, Sec. 164A.
14. The Code of Criminal Procedure, 1973, Sec. 167.
15. The Code of Criminal Procedure, 1973, Sec. 169.
16. The Code of Criminal Procedure, 1973, Sec. 2(h).
17. The Code of Criminal Procedure, 1973, Sec. 173.
18. Supra note 8.

19. The Right to Information Act, 2005, Sec. 8(1) (h).
20. The Constitution of India, 1950, Art. 226.
21. The Code of Criminal Procedure, 1973, Sec. 301(1)
22. (1999) 7 SCC 467.
23. The Code of Criminal Procedure, 1973, Sec. 302.
24. The Code of Criminal Procedure, 1973, Sec. 303.
25. The Code of Criminal Procedure, 1973, Sec. 273.
26. The Code of Criminal Procedure, 1973, Sec. 320.
27. The Code of Criminal Procedure, 1973, Sec. 321.
28. Supra note 8
29. AIR 2001 SC 116.
30. The Code of Criminal Procedure, 1973, Sec 372.
31. (2015) 3 SCC 449
32. Supra note 8
33. (1995) 1 SCC 14
34. (2019) 2 SCC 752