

PARTICIPATORY RIGHTS OF VICTIMS OF CRIME: WITH SPECIAL REFERENCE TO INDIAN POSITION

Dr. Anusree A, Dr. Priya R

Associate Professor, Govt. Law College, Ernakulam
Assistant, Professor, Govt. Law College, Ernakulam

Abstract

The criminal Justice system has its objective to protect triangulation of interests- ie rights of accused, victim and Public at large. However in India, till recently one dimensional approach was adopted concentrating more on rights of the accused vis –a –vis State and victim was a forgotten party in criminal justice system. Pro Victim movements in International arena and adoption of landmark convention The UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985 and resultant conventions in later years had its impact in India. Victims right to reparation, protection, assistance and participation were recognized as Fundamental human rights. India being a party to UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985 is bound to enforce the same by virtue of Vishaka decision, Constitutional provisions and Vienna Convention on treaty obligations. The genesis of victims rights in India could be found in the recommendation of 154th Law Commission Report. The subsequent Report of Committee on the Reforms of Criminal Justice System , 2003 and Madhav Menon Committee Report 2007 and the consequent amendments in CRPC in 2008 had laid foundation for recognition of victim rights in India. Though most of the recommendations were in favour of victims right to compensation, The Committee on the Reforms of Criminal Justice System had recommended that crime victims must be armed with participatory rights at all stages of criminal justice process. Consequently, Crpc was amended in 2008 to include definition of victim and statutorily recognizing victims rights in various stages of criminal proceedings. Thus participatory rights were recognized to a limited extent of victim as intervener. It is heartening to note that, judiciary through plethora of its decisions like Delhi Domestic working women case, Rekha Murarka vs The State Of West Bengal on 20 November, 2019 Jagjeet Singh & Ors v. Ashish Mishra @ Monu & Anr (2022) have also recognized victims participatory rights such as right to legal aid, victims right to be heard in bail proceedings, during

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withdrawal of prosecution, right to move to higher court for cancellation of bail, rights to appeal against acquittal, victims right to appoint a counsel of his choice and role of victims counsel in assisting prosecution, which may extent to suggest questions to court or prosecution. In most of the decisions, by interpreting various provisions in crpc like proviso to Section 24(8), 225, 301,, judiciary has recognized various victim participatory rights by endeavoring to make a balance between victim rights and rights of the accused.

The objective of this study is to analyze how far victim participatory rights are recognized in the present Criminal justice system in India. This paper analyses the right of the victim to participate in criminal proceedings without restricting rights of the accused. A comparative analyzes is also done with regard to the legislative framework of victims rights in other common law countries like USA. The need for victim impact statement is also included.

Introduction

The criminal Justice system has its objective to protect triangulation of interests- i.e. rights of accused, victim and Public at large. However in India, which follows accusatorial system of criminal justice till recently, adopted one-dimensional approach, concentrating more on rights of the accused Vis –a –Vis State than the victim. The Victim had become a forgotten party as a historical evolution of the criminal justice system from the concept of private vengeance to state administered justice system. Thus, Victims role has become secondary in Criminal justice system.

The concept of victimology and victim rights is a recent development as far as criminal justice administration is concerned. Victim rights owes its origin to the writings of Benjamin Mendelsohn and Hans Von Hentig who had fled from Germany to America in 1940's.¹ Victim rights gained momentum in USA in late 1970's and first international conference on victimology was held in Jerusalem in 1973 which was followed by many conferences in international and national levels , culminating in The UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985. Victims right to reparation, protection, assistance and

¹Centre for international Crime Prevention, UN Handbook on Justice for victims, *available at* https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf, (visited on 2nd March, 2023).

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participation were recognized as Fundamental human rights. In response to victim rights movement, many countries in the western world have enacted legislation governing victim rights and have also conferred wide range of service and procedural rights to them. Victims now have right to information about the status of their case, could apply for financial and psychological assistance and other support services. All these had its impact in India. Much contribution in the field of victim's rights in India, was made under the aegis of Indian society of victimology dissipating knowledge and spreading awareness regarding victims' rights. They also came forward with victim's Assistance Bill and conduct various programs on victim issues. Apart from that various law commissions and committees have also recommended to include victim rights in criminal Justice system in India. Consequently, The Code of Criminal Procedure 1973 was amended in 2008 to include definition of victim and their rights in various stages of criminal proceedings. In India apart from The Code of Criminal Procedure 1973, certain enactments like Fatal Accidents Act, 1855, Probation of Offenders Act, 1958, Motor vehicles Act, 2019 have provisions for compensation to victims.

International community² and some common law jurisdictions³ have in recent years also provided for victim participatory rights beginning with investigation stage. It is heartening to note that, in India, judiciary through plethora of its decisions have also recognized victims participatory rights such as right to legal aid, victims right to be heard in bail proceedings, withdrawal of prosecution etc.. In most of the decisions, by interpreting various provisions in The Code of Criminal Procedure 1973, like proviso to Section 24(8), 225, 301, Judiciary has recognized victim participatory rights by endeavoring to make a balance between victim rights and rights of the accused. Still right of victims to actively participate in criminal justice process is still a controversial and debatable issue both at international level as well as in India. In this study an analysis of present legal position as to participatory rights of victim is made. The study also attempts to analyze how far victim participatory rights could be incorporated in the present Criminal justice system in India without sacrificing rights of the accused.

²*Id.* In the declaration adopted in 1985, by the United Nations Seventh Congress on the Prevention of Crime and Treatment of the Offender, it was required that victims be allowed to present their views and concerns at appropriate stages of criminal justice process. Victims also enjoy significant rights as per Rome Statute.

³ For instance, some State jurisdictions in USA provide for participatory rights.

1. Definition of Victim

When analyzing international documents, UN Declaration of Basic principles of Justice for victims of crime and Abuse of Power, has defined victim in widest terms. Accordingly “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”

The person will be continued to be treated as victim irrespective of the stage of criminal justice process from the stage of apprehension. Secondly even family members of victim who are affected in the process are also treated as victim.

When analyzing Indian position, The Code of Criminal Procedure 1973⁴ defines victim as a person who has suffered any loss or injury caused by reason of the act or omission for which accused person has been charged. Victim also includes his or her guardian or legal heir.⁵ This definition has certain demerits. Only if accused is traced, there can be victim. Secondly, the term loss or injury is not defined and is left to judicial interpretation.⁶The definition also fails to guarantee rights to those who suffer harm while giving assistance or preventing crime.⁷This definition seems to very narrow especially when compared with the definition given by EU

⁴ Sec. 2(wa), The Code of Criminal Procedure 1973.

⁵ *Ravi v. State of Maharashtra* [9 SCC. 62(2019)].

⁶ Centre for Criminology and Victimology, National Law University Delhi, Duties of Front Line professionals for securing ends of justice for victims, available at <https://nludelhi.ac.in/download/publication/2017/Duty%20of%20Frontline%20Professionals%20Towards%20securing%20justice%20for%20victims.pdf>. (Visited on 13th March, 2023).

⁷ *Id.*

Directive which has no reference to charging a person as accused.⁸ Thus this definition is “at odds with international standards.”⁹

2. Rights of victims

As per UN Declaration, important Victim rights are classified under four specific heads

- i. access to justice¹⁰ and fair treatment ,
- ii. right to restitution,¹¹
- iii. right to compensation¹² and

⁸The Directive of the European Union, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF> (Visited on 23 March 2023). It defines “Victim as a natural person who has suffered harm including physical, mental or emotional harm or economic loss which was directly caused by the criminal offence. It also means the family members of the person whose death was directly caused by the criminal offence and who have suffered harm as a result of that death. Family member is defined so as to include – spouse, person with whom the victim was in a committed intimate relationship, family members in direct line, the siblings and dependents”. The definition of victim under the UK Code of Practise for Victims of Crime is in pari materia with the EU Directive.

⁹Victim assistance in the Indian criminal justice system, available at <https://blog.ipleaders.in/victim-sistance-indian-criminal-justice-system/> (Visited on 28th March, 2023).

¹⁰ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse#:~:text=Victims%20should%20be%20treated%20with,harm%20that%20they%20have%20suffered,> (Visited on 25th March, 2023). Right to access to justice and fair treatment includes Right to be treated with compassion and respect for their dignity; Right to be informed of their rights; Right to be heard wherever appropriate including release, parole, plea or sentencing; Right to submit a Victim Impact Statement ; Right to engage private advocate; Right to privacy; Right to security and protection from the accused; Right to speedy justice and Right to prompt redress.

¹¹*Id*, Right to restitution means right to full and timely restitution from the accused which includes return of property, payment for harm or loss, reimbursement of expenses etc .

¹²*Id*, This principle confers upon the victims who have suffered significant bodily injury or impairment of physical or mental health etc ,the right to compensation from the state in the cases in which the compensation is not fully recoverable from the accused. In India law relating to compensation to victims finds expression in *Sec.357, 37A, 357 B, 357C*. Under *Sec.357*, compensation can be categorized into two: a), where fine is a part of the sentence and b), where the fine is not a part of the sentence. Where the fine is a part of the sentence, compensation may be awarded for litigation expenses and also for any loss or injury caused by the offence. However, such payment need not be made until the appeal period has been lapsed, or if appeal is pending till the decision of the appeal. Where the fine is not a part of the sentence, the court may order the accused to pay compensation for any loss or injury by reason of the offence. However, both the abovementioned forms of compensation are subject to conviction. section 357A requires for the state governments to prepare victim compensation schemes in coordination with the central government. Where the court makes a recommendation for compensation, it has been left to the wisdom of the District or State Legal Services Authority to determine its quantum. In the event that the offender cannot be traced or identified, the victim may make an application to the DLSA/SLSA for compensation and adequate compensation must be granted within two months. *Sec.357 C* makes it mandatory for the all hospitals, public or private, to immediately provide first aid or medical treatment, free of cost, to the victims of offences covered under the provisions for acid attack or rape. *Sec.357 B* stipulates that compensation should be in addition to fine.

iv. right to assistance¹³.

In fact objective of all these rights is to improve the quality of life of the victim which has been harmed by crime. In *Rattan Singh v. State of Punjab*¹⁴ it was observed by Supreme Court that victim has two type of rights right to participate in criminal proceedings and right to seek and receive compensation from courts for the injuries suffered by him. Thus Criminal justice system in most of the countries recognizes two type of rights viz; procedural rights and service rights.¹⁵ Procedural rights are those rights which provide victims with central participatory role in decision making process as in the case of bail decisions, parole, sentencing etc.¹⁶ Service rights are those rights which provide victims with better treatment and experience in criminal justice process like notification about court dates, assistance to vulnerable victims , compensation etc. Thus, victim's participatory rights are an aspect of his procedural rights. Indian judiciary has played an active role in awarding compensation to crime victims as part of its restorative justice policy. However regarding participatory rights, it is still in its infancy though in recent years some progress has been made.

3. Position in Common Law countries

In recent years, some common law countries¹⁷ like USA, UK etc have come up with legislation governing victim rights. These countries follow accusatorial system akin to that of India. It would be fruitful if we analyze position in these countries

3.1.England

¹³*Id*, Right to assistance means the victims are entitled to the necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous methods. Section 357C of the Criminal Procedure Code, 1973, and the protocols on medico-legal care for survivors/victims of sexual violence , Ministry of Health and Family Welfare are the only two major legislative actions in this area.

¹⁴ M Arie M Anikis, A Comparative Overview of Victims Rights, Enforcement Mechanisms and Redress in England, Wales and the American Federal Jurisdiction, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2869304 (Visited on 20th March, 2023).

¹⁵ P. V. Reddi , “Role of the Victim in the Criminal Justice Process”, 18(1) Student Bar Review 1, 4 (2006).

¹⁶ *Id*.

¹⁷ M Arie M Anikis, A Comparative Overview of Victims Rights, Enforcement Mechanisms and Redress in England, Wales and the American Federal Jurisdiction, *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2869304 (Visited on 20th March, 2023).

In England and Wales victim rights predominantly consists of service rights. Though participatory rights exists, they are generally enforced outside criminal proceedings. The sources of victim rights include statutes, pledges, schemes and codes, though mainly it is governed by Code of Practice for victims of Crime, 2005 enacted under Domestic Violence, Crime and Victims Act, 2004. The code of practice provides for minimum level of service rights which victims could expect from criminal justice agencies. The code has also demarked the obligations among different agencies so as to ensure effective implementation. For instance, Code has stipulated that prosecutor has key role in giving information about key prosecutorial decisions and giving explanations especially in serious crimes. Witness care units also has similar obligations . Apart from providing service rights, participatory rights are also guaranteed by the Code. In recent years Victim interests are also taken into consideration by the prosecutors as part of wider public interest. Victim is given a say as to the decisions like whether prosecution is required in wider public interest, whether to accept guilty plea and request for compensation and ancillary orders. Victim also have the right to submit victim personal statement to the police which form part of their file. The prosecutors are bound to draw the attention of sentencing court to this statement so as to arrive at appropriate punishment. Thus victim participatory rights are implemented through direct contact with agencies of criminal justice administration. They have a central role in putting forth victim interests and views to criminal process.

Apart from this informal mechanism, judicial review is also available to the victims for breaches that occur under Code for Crown Prosecutors especially in cases of decision not to prosecute. However with respect to victim personal statement scheme not legal or quasi legal remedy is provided.

Thus in UK, victim service rights predominates participatory rights . However system also recognizes participatory rights which is enforceable mainly through informal mechanism and also through judicial review which is used as a last resort.

3.2.US Position

Victim rights in US is mainly provided in state constitution and statutes. Contrary to English model, Victim rights under US model is developed around the concept of victim participation as provided under Crime Victim Rights Act, 2004 . One of the significant feature of

Crime Victims Rights Act is that victim can assert their rights in criminal proceedings and appoint a lawyer of his choice to represent him. Victim Rights under the Act include right to protection, right to notice of any court proceedings and parole proceedings, Right to heard, right to speedy justice, right to be treated with fairness, right to dignity and privacy. The Act provides that both judges and prosecutors have to implement the rights. However role of each agency is not clearly demarked. Victim is conferred with wide participatory rights under the Act with respect to decision to prosecute, plea negotiation, parole proceedings and victim impact statement as to sentencing.

Under Crime Victims Rights Act, in the first instance, victim may approach District court and then to file a mandamus action to appellate court. Courts have been generally more inclined to provide remedies for participatory rights in case of violation by courts but less inclined for breaches by prosecutor and those breaches which do not affect the outcome of process. Thus in USA participatory rights are given more space, though more is to be done regarding redressal of its breaches

The analysis of these common law position reveal that India also can take inspiration from these models and initiate steps to provide more participatory rights to the victims without detrimentally affecting rights of the accused.

4. Indian Position

In India we follow adversarial system wherein only prosecution and accused act as parties putting their versions supported with evidence before an impartial umpire, the judge. The judge determines whether is the accused is guilty or not. There is presumption of innocence in favour of accused and burden of proof lies on the prosecution to prove that accused is guilty beyond reasonable doubt. Though accused can take a stand in defence to put forth his claim, if he wishes. However, the same right is denied to the victim. The statutes do not confer any right on the victim to take an active role in the criminal proceedings. His role in criminal justice process from investigative stage till conclusion of trial is mainly determined by police and prosecution. Regarding the position of victim in Indian Criminal Justice system Justice Krishna Iyer in Rattan

Singh v. State of Punjab¹⁸ had observed that it is a weakness of our system that victims of crime do not attract the attention of our law. As time passed on the apex court in vigorous terms had stood for victims.

Various Commissions and Committees have also dwelled on victims rights. Law Commission in its 42nd Report had emphasized on the relevance of reparation to the victims. Law Commission in its 154th Report had emphasized on victims right to compensation and rehabilitation, Both the commissions did not mentioned about participatory rights. Malimath Committee emphasized on victims right to participate in criminal justice process, The Report of the Committee on the Draft National Policy on Criminal Justice 2007, suggested for impleading victim as a party in criminal proceedings and LCR Law Commission in its 221st Report on Need for speedy justice, suggested for providing appellate rights to victims which was affirmed by apex court in Naval Kishore Mishra v. State of UP¹⁹. Apart from the above Verma Commission in its Report in 2013 had also made elaborate suggestions upon victim rights. The code of Criminal procedure was amended in 2008 and 2013 to incorporate some of these suggestions so as to make the system victim oriented.²⁰

The Constitution of India guarantees various rights to the victims of crime. In fact right to fair trial and investigation applies to both accused and the victim and is an aspect of Article 21 of the Constitution of India²¹ All constitutional rights under Part III is available to victim also which may be read to include participatory rights also. Moreover, Victim assistance and welfare is part of constitutional goals under Art 38 . State has the mandate to secure the objectives enshrined in the Directives which mandates justice to crime victims also. Thus state is under an obligation to compensate the victims , provide victim assistance, support services and participatory rights.

¹⁸ *Rattan Singh v. State of Punjab*, [AIR 84 SC 1980].

¹⁹ *Naval Kishore Mishra v. State of U.P.*, [(2019) 13 S.C.C. 182].

²⁰ The Code of Criminal Procedure (Amendment) Act, 2008 brought in Sec 2(wa), Proviso to Sec 24(8), Proviso to Sec 26(a), Proviso to Sec 157(1), Ss.173(1A), 309 (1), 327 (2), (3), 357 and 372. The Code of Criminal Procedure (Amendment) Act, 2013 provides that the compensation to be paid under section 357A is to be paid in addition to the fine to be paid to the victim under section 326A or 376 D of the IPC., section 357C . It provides for an obligation on all state or private hospitals to compulsorily provide immediate medical aid to the victims of offences.

²¹ *Nirmal Singh Kahlon v. State of Punjab*, [AIR 984 SC 2009].

Victim rights find expression in The code of Criminal Procedure also. Apart from guaranteeing right to compensation to the victim, the Code also contains provisions dealing with Victims rights to participation. For instance Victim may move the criminal justice to motion by furnishing FIR. If police officer refuses to record FIR, victim can sent a copy of the same to the superintendent of police. If superintendent also denies, then the victim can directly proceed to magistrate having jurisdiction to take cognizance under Section 190 (9).The magistrate is empowered to direct investigation upon such request.²² It is also important to note that if the information discloses the alleged commission of a cognizable offence, police is bound to register FIR and start investigation.²³

The code of Criminal Procedure also requires that if police decides not to investigate the case,²⁴ or is stopping further investigation²⁵, it has to be notified to the victim.²⁶ If upon conclusion of investigation, the police report is sent to the magistrate competent to take cognizance and if he refuses to frame charge , the victim must have a say in such matter.²⁷ Similarly while giving closure report also the victim must be given the notice.²⁸ The contents of the police report forwarded to the magistrate have to be forwarded to the victim also.²⁹

Though prosecution of the offence is conducted by public prosecutor, , victim can engage a private lawyer of his choice.³⁰ Such an advocate can submit his written arguments once evidence is closed in the case.³¹ However he does not have an independent authority to act in a case³² Victim has right to appeal under Section 372, in case of inadequacy of sentence or acquittal of the accused. This right is a substantive right and leave to appeal is not required.³³ Now that right to information has become statutory and constitutional right since he enactments of Right to Information Act,

²² The code of Criminal Procedure , Sec. 156(3) (10).

²³ *Lalitha Kumari v. Govt of UP*, [AIR 554 SC 2013].

²⁴ Sec.157 (2).

²⁵ Sec. 173(2)(ii).

²⁶Sec.157 (2).

²⁷ *Bhagwant Singh v. Commissioner of Police*, [AIR 1285 SC 1985].

²⁸ *U.P.S.C. v. Papiah* , [(1997) 7 SCC 614].

²⁹ The code of Criminal Procedure 1973,Sec.173(2)(ii).

³⁰ The code of Criminal Procedure1973,Sec.24 (8).

³¹ The code of Criminal Procedure 1973,Sec.301.

³² *Shivkumar v.Hukum Chand* [(1999)7 SCC 467].

³³ *Mallijarjun Kodagali v. State of Karnataka*,[(2019) 2 SCC 752].

2005, Victims right to information , entitles him to know about the progress of the case , reasons for delay in arresting the culprits, stages of inquiry or trial, details of evidence etc.

Inspite of these provisions, it is to be noted that criminal prosecution in India is manly conducted by public prosecutor, an office supposed to be independent and impartial. He is considered as an officer of court and his function is not to procure conviction at any cost. As per Section 301 Public Prosecutor may appear and plead without any written authority in all courts. Under Section 301(2), if a private lawyer is engaged, by the victim or the first informant, he can act assist the Public Prosecutor with the permission of the court and also submit written arguments once evidence s closed. The role of this private counsel is that of a junior advocate who assists his senior and cannot act independently.³⁴Under Section 302 , Public Prosecutor can conduct prosecution in Magistrate court. Supreme Court has made distinction between Sections 301(2) and Sec 302 regarding the role of private lawyer in *Shivkumar and in M/s JK International v.State*³⁵, by holding that counsel engaged by victim may be allowed to intervene before a magistrate court under Sec 302 where as he has only a subordinate role in sessions court under Section 301. Thus Sections 301 and 302 give some scope to victim intervention in trial proceedings. Victim can also approach the court for cancellation of bail.³⁶Moreover in plea bargaining matters and in compounding of offences, victim has an important role. In cases of withdrawal of prosecution with the permission of court, which may either result in acquittal or discharge of accused, courts have impliedly recognized rights' of victims to oppose such withdrawal. . These are some of the participatory rights envisaged under Indian law.

Several rights have been provided by judiciary. For instance in *Sakshi v. Union of India*³⁷, emphasized on in camera trials in case of sexual offences. In *Delhi Domestic Working Womesn Forum v. Union of India*³⁸ court emphasized on legal aid to victims of crime right from the stage of investigation. If victims is unable to engage a lawyer, it is obligatory on the part of court to

³⁴ *Shivkumar v. Hukum Chand*, [(1999)7 SCC 467].

³⁵*Shivkumar v.Hukum Chand*, [(1999) 7 SCC 467].

³⁶ The Code of Criminal Procedure Code, 1973, Sec. 439 (2) , The High Court or Court of Sessions can be approached for this purpose.

³⁷ *Sakshi v. Union of India* , [(1999)6 SCC 591].

³⁸ *Delhi Domestic Working Womesn Forum v. Union of India*, [(1995) 1 SCC 14].

appoint a lawyer at states expense.³⁹ victim rights was extended to include victim compensation, protection, medical treatment and security to the victim and his family etc in Alarming Rise in the Number of Reported Child Rape incidents , in re⁴⁰. In this case, court was dealing with suo moto writ petition in child rape cases under Art 21 and Art 32 of the constitution. Victim is also entitled to compensation, He can file revision petition in order to point out the error of an inferior court.⁴¹ In rape cases he has reverse burden of proof and other rights include abolition of section 155(4) Indian Evidence Act⁴², prohibition of publication of name of victims in rape cases⁴³ are also recognized as his legal rights.

Regarding victims participatory rights, in the land mark decision in *Rekha Murarka v. State of WB*,⁴⁴ while interpreting Ss. 301, 225 , proviso to Section 24(8) and Section 311 Code of Criminal Procedure, apex court held that victims counsel 's right to assist prosecutor is not restricted to assisting special public prosecutor but extends prosecutors in general. The extent of such assistance and the manner of giving such assistance would depend upon facts and circumstances of each case

However court had denied the right of private counsel of the victim to cross examine the victim or make oral arguments. By interpreting the term “ assist” in Section 24(8) , court clarifies that , assist does not mean conduct of prosecution by the counsel for the victim and it being sole responsibility of public prosecutor. The court opined that if private counsel is given this right , it may adversely affect prosecution case and the trial may devolve into a vindictive battle between counsel of the victim and the accused which is not in consonance with accusatorial principles. Court also opined that private counsel may not be as experienced as that of public prosecutor. However it is heartening to note that judiciary has also made a progressive step by permitting the victims counsel to make requisition to the court to invoke Section 311 Crpc⁴⁵ and summon or

³⁹ *Jagjeet Singh & Ors v. Ashish Mishra @ Monu & Anr*, [(2002)SCC OnLine 453].

⁴⁰ *In Re: etc in Alarming Rise in the Number of Reported Child Rape incidents* , [(2019) 8 SCC 300].

⁴¹ *Pratap v. State of U.P.*, [(1973)3 SCC 690]; *K. Sudhakaran v. State of Kerala*, [(2009) 4 SCC 168]. Recognised victims right to bring revision petition. Only thing is that it should not be used to serve private purpose or for vengeance.

⁴² The Indian Evidence (Amendment) Act 2002.

⁴³ The Indian Penal Code, 1860, Sec. 228A.

⁴⁴ *Rekha Murarka v. State of WB*, [(2020) 2 S.C.C. 474].

⁴⁵ The Code of Criminal Procedure, 1973, under Sec. 311, the court has the power to summon at any stage, any person as a witness, or examine any person who is in attendance, though she has not been summoned, or recall or re-examine any person already examined. The court is enjoined with a duty to do so if the evidence of such person appears to be

examine material witnesses at any of the stages of trial. This manifest permission granted by court to use Section 311 Crpc to secure victims justice “is certainly a breath off fresh air”⁴⁶ It is submitted that similar interpretation must be made with respect to Section 165 of Indian Evidence. If victim is given limited role in prosecution it may be ensured that courts have effective control over the prosecution.

At this juncture apex court’s decision in Jagjeet Singh v. Ashish Mishra⁴⁷ assumes significance. The court held that victim has right to be heard at all stages of criminal proceedings and thus legitimized victims participatory rights. In this case Supreme Court cancelled the bail granted by Allahabad High Court on the ground of denial of victims right to participate in the criminal proceedings. The High Court had granted bail to the accused without giving an opportunity of hearing to the victims as they were disconnected during hearing of bail application and their prayer for rehearing of bail petition also went to deaf ears. As per Section 2(wa) Crpc a person becomes victim only when accused has been charged with the offence. This bar has been removed by the court when it held that a person becomes victim immediately after the occurrence of the offence. A victim who was not a complainant had been deprived of several pre trial rights like right to approach superior officer in case of refusal to register FIR, right to be informed about the progress of investigation , including decision not to investigate, right to be informed on filing final report or closure report. Though court in this case opined that complainant and victim are two different entities simultaneously states that the victim has “unbridled participatory rights” right from the stage of the investigation, which means the victim must have all rights that a complainant has, and much more. Court also observed that victims participatory rights extends to the stage of appeal or

essential to the just decision of a case. In *Rambhau v. State of Maharastra*, [(2001)4 S.C.C. 759]. Court had held that this power cannot be availed of in order to fill the gaps or lacunae in the prosecution evidence. But court has clarified in *Zahira Sheikh v. State of Gujarat*, [(2004) 4 S.C.C.158], that the lacuna in the prosecution, "is not to be equated with the fallout of an oversight committed by a Public Prosecutor either in producing relevant material or in eliciting relevant answers from witnesses."

- ⁴⁶Ankit Kaushik ,On The Victim’S Right To Participation, available at [⁴⁷ *Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr*, \[\(2022\)SCC OnLine 453\].](https://www.scconline.com/blog/post/2022/06/16/on-the-victims-right-to-participation/#:~:text=The%20Court%20holds%20that%20the,victim's%20advocate%20may%20not%20be,(Visited on 23rd March, 2023) There are a plethora of decisions of the Supreme Court casting a duty upon the courts for invoking Section 311 CrPC to secure justice; like <i>Rajaram Prasad Yadav v. State of Bihar</i>, [(2013)14 SCC 461]; <i>UT of Dadra and Nagar Haveli v. Fatesinh Mohansinh Chauhan</i>, [(2006) 7 SCC 529].

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revision.⁴⁸ This decision has the effect of securing wide range of rights to the victim during trial like right to be informed, right to protection, right to be heard and right to be compensated and right to restitution.⁴⁹

5. Victim Impact Statement

Right to fair trial extends not only to the accused but also to the victim. The principle of proportionality requires that courts shall take into consideration the impact of crime upon the victim while awarding punishment to the accused.⁵⁰ At this juncture victim impact statement will be of much relevance, which will enable the courts to take into account the damage caused to the victim a direct result of the commission of the crime. This will lead to increased victim satisfaction with judicial process achieving fairness in the process as victims right to be heard is materialized. It will also promote psychological healing by helping them to recover from the emotional trauma associated with victimization. It will also help in alleviating the feeling of helplessness as they could directly put their voice before judicial authorities. Analysis of other common law jurisdiction reveal that Victim impact statement at the time of sentencing has become part of their jurisprudence and it will not determinedly affect the rights of accused. In *Satya Prakash v. State*⁵¹, Delhi High Court had held that in the cases of road accidents, the Station house officer of the concerned police station shall conduct an inquiry and lodge Victim Impact Report. In *Mallijarjun Kodagali v. State of Karnataka*⁵², the apex court examined victims right to safety and crime, police protection and bodily integrity within the scope of Articles 14 and 21 of the Constitution. Court also opined that victim impact statement and assessment must be given due recognition so that appropriate punishment may be awarded to the accused. In order to ensure Right to access to

⁴⁸ Ankit Kaushik, On The Victim's Right To Participation, available at [https://www.scconline.com/blog/post/2022/06/16/on-the-victims-right-to-participation/#:~:text=The%20Court%20holds%20that%20the,victim's%20advocate%20may%20not%20be,\(Visited on 23rd March, 2023\).](https://www.scconline.com/blog/post/2022/06/16/on-the-victims-right-to-participation/#:~:text=The%20Court%20holds%20that%20the,victim's%20advocate%20may%20not%20be,(Visited on 23rd March, 2023).)

⁴⁹*Id.*

⁵⁰ *State of M.P. v. Saleem*, [(2005) 5 SCC 554], the Supreme Court of India held that the quantum of punishment must be consistent with the rigours, atrocity and brutality that the crime infliction has brought down upon the victim.

⁵¹ *Satya Prakash v. State*, [(2013) 3 MWN (Cri.) 373].

⁵² *Mallijarjun Kodagali v. State of Karnataka*, [(2019) 2 SCC 752].

justice and fair treatment to the victim, it is important that the concept of Victim Impact statement must be made applicable in our Criminal Justice system.⁵³

6. Conclusion

Today there is victimization of victim in the criminal justice process. Though courts have tried to address the issue by providing compensation to the victim , it is not adequate. Today's system gives predominance to the rights of the accused and there is a need for balancing the rights of the accused and the victim. Victim participatory rights are quintessential to secure such a balance. The reason for denial of participatory rights to the victim seems to stem from the fact that state represents the collective will and by detection of crime and prosecution of offender redressal of victims grievance is made. State being the repository of sovereign power of maintenance of law and order, ensuring safety and security of its subjects and bringing offenders to justice is duty bound to restrain private parties to take law into their own hands. If victim is given active role in prosecution of offenders, it would open the door for vengeful traits affecting fair trial. But It cannot be overlooked that in some countries wherein accusatorial system similar to one prevailing in our country exists, still provides various participatory rights to the victim without affecting rights of the accused. Certain participatory rights like concept of victim impact statement before imposing sentence, plea bargaining , closure of the case etc may be incorporated without detrimentally affecting rights of the accused. Present trend of judiciary seems to be progressive. By balancing various interests, victim is given a limited participatory role to assist the court . Creating public awareness about these progressive decisions is the need of the hour. Human Rights Commissions, Legal Services Authorities and NGO's working on victim rights should work hand in hand to give awareness to the victims of their rights, right to support services. Victim handbook shall be translated into regional languages and must be made accessible. List of the lawyers who are willing to take up the cases of victims must be published in every police station. There should be coordination between agencies of criminal justice system to ensure victim of his rights. It is high time that the Code of Criminal Procedure has to be amended to accommodate

⁵³Centre for Criminology and Victimology, National Law University Delhi, Duties of Front Line professionals for securing ends of justice for victims, available at <https://nludelhi.ac.in/download/publication/2017/Duty%20of%20Frontline%20Professionals%20Towards%20securing%20justice%20for%20victims.pdf>. (Visited on 13th March, 2023).

those participatory rights, which are in consonance with our accusatorial system so that triangulation of interests is well protected in Indian Criminal Justice system.

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