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VICTIM PARTICIPATION IN THE CRIMINAL JUSTICE PROCESS: A THERAPEUTIC APPROACH

Ms. Neha Singh*

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ABSTRACT

A crime is a menace to society at large and victims of crime represent the most suffering lot. Our Criminal Justice System conflates the presence of the State with the presence of victims wherein the trial becomes a significant contest between the state and the accused and victims are merely envisaged as mute spectators with passive role to play in their quest for justice. The victim's predicament is often forgotten in the battle for supremacy between the state and the accused. The recent Apex Court verdict in Jagjeet Singh versus Asish Mishra is historic in the arena of victim rights since it has for the first time recognized the unbridled participatory rights of the victim at all stages of trial. However, it is encountering many hurdles in its implementation, which reflects the urgent need for suitable amendments in the Criminal Procedure Code and the creation of a victim-friendly statutory framework so as to facilitate the recognition of victim rights. This Research paper seeks to examine the jurisprudential development of the concept of victim and analyse their evolving role in the criminal justice process in the wake of the recent Supreme Court Judgement and its implications in the field of victimology. The paper further stresses on the need for a therapeutic criminal justice delivery mechanism that provides for accountability and contributes to victim healing. The paper is finally concluded by suggesting ways and means of making criminal justice dispensation more victim-friendly which will not only provide relief to the victims but will also give teeth to criminal justice in India.

Keywords: *Victim, Criminal Justice System, Statutory framework, Therapeutic, Accountability.*

* Ph.D. Scholar, University Department of Law, Patna University.

I. INTRODUCTION

Background of the Study

Indian criminal justice system is centered around the accused and victims of crime who represent the most affected lot and are merely envisaged as mute spectators with either no or very limited role to play in the criminal justice process. The accused enjoys manifold rights and is accorded protection at every stage of the criminal proceeding whereas the victim's predicament is often forgotten in the battle for justice whose participation is merely restricted to being a prosecution witness in a criminal trial. Though the Indian judiciary has time and again, recognized the evolving role of victims by assuring them several rights through various judicial pronouncements, howsoever its enforcement in strict terms requires suitable amendments in the criminal procedure code and enactment of a victim friendly statutory framework for ensuring meaningful realization of the same. Relief to victims by way of judicial decisions is merely restricted to financial aid and the other aspects of victim assistance such as reparation and rehabilitation have often been ignored, thereby leaving the victim to cope with the aftermath of suffering.

Objectives of the Study

The present study is intended to achieve the following objectives:

a) To analyze the various definitions of the victim and to examine the possibility of expanding the scope of the definition.

b) To identify various types of victims under the Indian Criminal Justice system.

c) To discuss the role of the victim in the process of criminal justice administration in India.

d) To examine the participatory right of the victim and its extent of development.

e) To discuss the existing mechanism for protecting victims' rights and to point out the flaws in the present legal framework.

f) To suggest some efficacious measures ensuring the effective participation of victims at every stage of criminal justice administration.

Significance of the Study

The right to fair and speedy criminal justice is an essential attribute of fundamental Right to life and personal liberty and so the victim assumes importance in this regard, being an

integral component of the criminal justice system. To ensure meaningful realization of the aforesaid right, effective participation of victim at every stage of the criminal justice process is necessary. The previous researches in this regard appear to be limited in their scope which prompted the present study to cover the unexplored areas.

Scheme of the Study

In this background, the present study has been divided into six parts, which may be briefly summarized as the Introduction being the first part, Meaning & Concept of victim: Scope & Jurisprudential development being the second part, third part dealing with the Role of the victim in the criminal justice process, fourth part comprising Participatory Rights of victim: Evolution & Development, Fifth part dealing with Safeguarding victim rights: Therapeutic Approach and finally summing up with the sixth part pointing out conclusive findings and some workable solutions.

II. MEANING AND CONCEPT OF VICTIM: SCOPE AND JURISPRUDENTIAL DEVELOPMENT

Victims are individuals who suffer loss or injury in body, mind, reputation or property which may be direct or indirect due to any reason. They play a critical role in any criminal justice system. The concept of victim existed since time immemorial which gradually declined but further gained momentum with the sincere efforts of many classic writers of criminology as well as international organizations and further led to the advent of a new branch of criminology dealing with victim-offender relationships known as victimology.[1]

Meaning & Concept

The definition of victim lacks accurate precision. 'Victim' in common parlance refers to all those who suffer injury, loss, trauma, or hardship due to any reason and crime may be one of such reasons. Such loss or traumatic experience may be physical, psychological, emotional, or financial.[2]

The Code of Criminal Procedure provides a very narrow definition of victim which is not sufficient to cover all kinds of injury.

1 N.V. Paranjape, Criminology & Penology including Victimology 765 (Central Law Publication, Prayagraj, 18th ed. 2021).

2 S.S. Srivastava, Criminology & Penology including Victimology 566 (Central Law Agency, Prayagraj, 6th ed. 2021).

'Victim' as defined by the Cr.P.C. means a person who has suffered any loss or injury caused because 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."[3]

'Victims' as defined by the United Nations includes 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 violate criminal laws operative within member states including those prescribing criminal abuse of power.

According to the Declaration of Basic Principles of Justice for Victims (1985), a person may be considered as a victim irrespective of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and victim. The term 'victim' also comprises the immediate family or dependents of the victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.[4]

Historical Background

Victims played a crucial role in the criminal legal system during ancient times. Their position remained the same even during the Mughal empire where they enjoyed substantial rights and were imparted justice. Howsoever, their power and position declined later with the advent of the Industrial Revolution in Europe. Their plight further worsened with the onset of the Adversarial system where they were merely envisaged as mute spectators with passive role to play in the criminal justice system. Thus, the victim-centric criminal justice system became more accused-oriented where the punitive role of the state outweighed the reparation aspect and became a dominating factor in the administration of criminal justice. They became the most neglected lot and were left to their own fate with nothing to gain except suffering and harassment. Their significant role was realized in the later part of the 18th and 19th centuries especially in the U.K. and U.S.A. where concern regarding victims caught the attention of many classic writers of criminology and hence, mass movements took place for reforming the Criminal Justice System. Victim rights further gained momentum with the efforts of the United Nations which has contributed in this regard by calling many conventions and declarations.[5]

3 The Code of Criminal Procedure, 1973, § 2, cl. wa, No. 2, Act of Parliament, 1974 (India).

4 The United Nations Convention on Justice & Support for Victims of Crime and Abuse of Power, 2006, art. 1.

5 Gurratan Wander & Harsimrat Kaur, "Victimology and Emerging trends of Compensation," Academike, (July 20, 2022, 9:25 PM), <https://www.lawctopus.com/academike/victimology-emerging-trends-compensation>.

Victim Typology

Different ideologists have proposed different kinds of victims time and again according to the nature of the offence or harm. However, the U.N. Declaration of 1985[6] categorizes victims under two broad heads.

Victims of Crime

It includes those who individually or collectively have suffered any harm whether physical or mental, emotional suffering or economic loss through acts or omissions that are in violation of criminal laws operative within member states. They may be either victim of crime relating to injury caused to a person or property such as Murder, Dowry death, Rape, Grievous Hurt, Dacoity, Robbery Assault or victims of environmental offences such as Gas leakage, River pollution etc.

Victims of abuse of power

It comprises all persons who individually or collectively, have suffered harm including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights due to abuse of power by authorities such as third-degree methods, custodial torture or death, custodial rape, groundless arrest etc.

Victims may also be broadly divided into three levels based on the hierarchy of the level of suffering experienced as a result of a crime.

a) Primary Victims are the immediate victims of crime and suffer physical, mental, and economic damage due to victimization.

b) Secondary Victims are mostly victims of social surroundings and suffer from social stigma, social ostracism, and social isolation. They suffer as a result of harm or injury to the primary victim.

c) Tertiary Victims are those who are other persons besides immediate victims who experience harm or injury due to the criminal act of the offender.[7]

Scope & Jurisprudential Development

Though India does not have any separate legislation for victims of crime, victim justice has been rendered through the affirmative action and orders of the Apex Court and victim rights acquired significance due to the efforts of various national-level commissions and

6 Declaration of Basic Principles of Justice of Victims of Crime & Abuse of Power, 1985.

7 S.S. Srivastava, Criminology, Penology & Victimology 569 (Central Law Agency, Prayagraj, 6th ed. 2021).

committees.[8] During the late 1970s, studies on crime victims by researchers in India was seen for the first time which was mostly conducted on victims of dacoit gangs in the Chambal valley, victims of homicide and victims of motor vehicle accident.[9]

The deplorable state of crime victims in India in contrast to global developments caught the attention of the Law Commission of India which made suggestions and recommended for introduction of provisions ensuring compensatory relief to crime victims under the Indian criminal law and procedure.[10] The 154th Report of the Law Commission of India[11] on the code of Criminal Procedure provided for a separate chapter on victimology which extensively dealt with victim's rights in criminal cases and its growing significance. It further mandated the incorporation of Section 357-A providing for victim compensation which was initially recommended by the 152nd Law Commission Report[12]. The Justice Malimath Committee[13] in its report provided for the extended right of the victim in matters of appeal which is not merely confined to appeal against orders passed by the trial court but also includes the right to appeal against acquittal to the High Court. The recommendations made by the Malimath Committee paved the way for suitable amendments in Cr. P.C. The definition of victim for the first time was incorporated in the code. The amended Section 372 of Cr. P.C.[14] dispensed with the requirement for the victim to approach the prosecution for its consent to file an appeal against the acquittal of the accused. The amended Section 357-A[15] was inserted in the Cr. P.C. which safeguarded victim rights by way of providing compensation to victims of crime. The Apex Court has referred to many International Conventions, Covenants and Declarations while interpreting the provision of fundamental rights.

The National Commission to Review the Working of the Constitution recommended for a victim-oriented criminal justice administration and urged the union and state governments to legislate on this subject with an effective scheme of compensation for victims of crime

8 Ashpreet Kaur, "Judiciary's Contribution towards Evolving Victimology," iPleaders, (July 22, 2022, 10:03 PM), <https://blog.ipleaders.in/victimology>.

9 Akash Shah, "Victims, Victimization & Victimology," Legal Service India, (July 23, 2022, 10:45 AM), <http://www.legalservicesindia.com/article/1349/Victims,-victimization-and-victimology.html>.

10 Mihir Inamdar, "Criminal Victimization: Jurisprudential Perspective with Reference to India," Jus Dicere, (July 22, 2022, 2:10 PM), <https://www.jusdicere.in/criminal-victimization-jurisprudential-perspective-with-reference-to-india>.

11 Law Commission of India, "154th Report on the Code of Criminal Procedure, 1973" (1996).

12 Law Commission of India, "152nd Report on the Code of Criminal Procedure, 1973" (1994).

13 Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).

14 Inserted by Act 5 of 2009, (w.e.f. 31-12-2009).

15 Id.

without any further delay.[16] The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power[17], The Rights to Reparation for Victims of Human Rights Violation, April 1997, UN Convention on Justice & Support for Victims of Crime & Abuse of Power, 14th Nov 2006 are the major international instruments advocating victim rights and therefore must be respected by the state since customary rules of international law which are not inconsistent with municipal law shall be deemed to be incorporated in the domestic law.[18]

But unfortunately, these have not yet been interpreted by our Apex Court into fundamental rights which is very much implicit under the following Articles of the Constitution such as Article 14, 21, 39-A, 41, 46 and 51(c)[19].

Thus, it can be concluded that though India has recognized the importance of victim rights and has made progress in this regard, yet it is still far behind and has a long way to go.

III. ROLE OF VICTIM IN CRIMINAL JUSTICE PROCESS

The victim has a pivotal role to play at every stage of the criminal justice process. Several provisions of our procedural criminal law emphatically deal with the role of the victim during the trial in different capacities (witness/complainant) beginning from reporting stage to the sentencing stage.

Pre-trial Stage:

At the time of Reporting: The victim as an informant sets criminal law in motion by providing every information regarding the commission of a cognizable offence to an officer in charge of the police station.[20] On refusal to record an FIR by the officer in charge, the victim may send the substance of such information in writing to the Superintendent of Police who may either investigate the case himself or depute any subordinate for the same provided such information discloses the commission of a cognizable offence.[21] The victim as a complainant may file a complaint before a competent magistrate empowered to take cognizance.[22]

16 Government of India, "Report of the National Commission to Review the working of the Constitution", (2002).

17 Adopted by the United Nations General Assembly on Nov. 11 (1985).

18 People's Union for Civil liberties v. Union of India, AIR 1997 SC 568.

19 The Constitution of India, 1950.

20 The Code of Criminal Procedure, 1973, § 154, NO. 2, Acts of Parliament, 1974 (India).

21 Id. § 154(3).

22 Id. §190(1)(a).

At the time of Investigation: Where a complaint has been filed by a crime victim disclosing the commission of a cognizable offence, the magistrate in such a case directs police to register and conduct a proper investigation and also keeps track of the same.[23] The victim as a witness who seems to be apprised of the facts and circumstances of the case may be required to appear before the investigating officer for the recording of their statements and may also be examined orally by the police.[24] The victim as witness may also be produced before a magistrate by a police officer for the recording of statements.[25] The victim against whom rape is alleged or attempted to have been committed is required to undergo a medical examination conducted by a registered medical practitioner.[26] The victim enjoys the role of being informed and heard before the acceptance of the closure report of police by the magistrate leading to the discharge of the accused.

At the time of granting Bail: The victim has a role to participate in hearings related to bail and may also apply for cancellation of bail of the accused person who has been granted bail by the subordinate court.[27]

Plea–Bargaining: The victim also has a role to play in case of sentence or charge bargain by way of participation in the meeting along with the public prosecutor, investigating officer and the accused for obtaining a satisfactory disposition of the case.[28]

Inquiry and Trial Stage

The victim as a complainant or witness is examined upon oath by a magistrate.[29] The victim may file protest petition in case of unsatisfactory police report filed before the magistrate which is treated as a complaint. [30]The victim in a criminal trial is represented by a public prosecutor. The victim is entitled to engage an advocate of his choice to assist the prosecution.[31] If the victim of a crime instructs any pleader to prosecute in court, the prosecution shall be conducted by the public prosecutor and the pleader shall assist him by following his directions and may submit written arguments after the closure of evidence with the permission of the court.[32] The victim is also entitled to conduct prosecution

23 Id. §156(3).
24 Id. § 160, 161.
25 Id. § 164.
26 Id. § 164.
27 Id. § 439(2).
28 Id. § 265-C
29 Id. § 200.
30 Id. § 190.
31 Id. Proviso to § 24(8). Inserted by Act 5 of 2009.
32 Id. § 301(1) & (2).

himself.[33] The evidence of the victim shall be taken in the presence of the accused except when expressly barred.[34] The victim as a witness may also be examined by way of issuing commissions.[35] The victim summoned as a witness or in any other capacity shall be examined or re-examined at any stage of trial for a just decision of the case.[36] The victim as complainant or informant may be directed by the magistrate to pay compensation to the accused for accusing them without reasonable cause. [37]The victim as the complainant may withdraw his complaint against the accused before the passing of the final order with the consent of the magistrate on proving sufficient grounds for withdrawal. [38]The victim can also apply for a transfer of the case from one criminal court to another in sessions division or to the High Court or Supreme Court for achieving the ends of justice.[39]

Post-trial Stage:

At the time of Filing the Appeal: The victim is entitled to prefer an appeal to the superior court against any order passed by the subordinate Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.[40] The victim as the complainant is also entitled to file special leave to appeal before High Court from the order of acquittal if such order has been passed in any case instituted upon complaint of the victim and the High Court has granted permission to the victim on an application made by him/her in this regard.[41]

At the time of Revision: The victim as an aggrieved party may also file revision before the Session Court or High Court where there is no provision for appeal to rectify any improper exercise of judicial power by the subordinate court.[42]

At the time of Sentencing: At the time of pronouncing of judgement, the victim's role can be seen in the case of grant of compensation for any loss or injury suffered by the victim even in cases where a fine was not imposed on the accused.[43]

33 Id. § 301(2).
34 Id. § 273.
35 Id. § 287.
36 Id. § 311.
37 Id. § 250.
38 Id. § 257.
39 Id. § 406, 407, 408.
40 Id. § 372 proviso. Inserted by Act 5 of 2009.
41 Id. § 378(4).
42 Id. § 399, 401.
43 Id. § 357, 357-A.

IV. PARTICIPATORY RIGHTS OF VICTIM: EVOLUTION & DEVELOPMENT

The criminal justice system in India is accused-centric where the victim's position stands marginalized. Initially, the criminal justice system in India laid much emphasis on punishment as a part of crime rather than paying heed to the sufferings of victims of crime. Therefore, the victim's role in a criminal trial was merely limited to that of being a witness for the prosecution. Howsoever, in situations where victims of crime and witnesses of the case were the same, the victim played dual role of being a victim of crime as well as the witness of the crime.[44]

The concern towards victim rights grew later with the efforts of social activists who played an active role in drawing the attention of the court towards the loopholes in the existing criminal justice system by way of public interest litigation as well as by contributions of Law Commission and Committees such as 154th Law Commission's report[45], Justice Malimath Committee Report[46], Madhav Menon Committee Report [47]etc.

The Declaration of Basic Principles of Justice of Victims of Crime and Abuse of Power (1985) recognized four basic rights of victims of crime which are Access to justice and fair treatment, Restitution, Compensation, and Personal Assistance & Support Services. Amongst these rights, Indian law has always shown utmost priority towards awarding of compensation to victims and their rehabilitation by providing some financial assistance to them. The status of crime victims regarding access to justice and fair treatment may be attributed to four different stages of criminal justice system which are Right to bring criminal law into motion by lodging an FIR or Complaint, the right of the victim during the investigation, right of victim during trial and right after judgement in criminal case.[48] Victim assistance by way of counselling and support services which was also one of the key components of the declaration has hardly received any attention.[49]

44 Surja Kant Baladhikari, "Victim: A Forgotten Story in the Indian Criminal Justice System," 9 Vivekanand Journal of Research 38 (2020).

45 Law Commission of India, "154th Report on the Code of Criminal Procedure, 1973" (1996).

46 Government of India, "Report of the Committee on Reforms of Criminal Justice System" (Ministry of Home Affairs, 2003).

47 Government of India, "Report of the Committee on Draft National Policy on Criminal Justice" (Ministry of Home Affairs, 2007).

48 R.N. Mangoli & Nandini G. Devarmani, "Role of victims in Criminal Justice System: A Critical Analysis from Indian Perspective" *SSRN*, (27th July, 2022, 8:12 PM) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2814578 .

49 Ahmad Siddique, Criminology, Penology & Victimology (EBC, Lucknow, 7th ed. 2021).

Participatory rights

At present, the victim enjoys the following participatory rights during a criminal trial:[50]

a. Right to obtain a copy of FIR free of cost from the officer in charge.[51]

b. Right to attend proceedings during the bail application, investigation, inquiry, trial and thereafter at the stage of sentencing and parole.[52]

c. Right to be notified that the case shall not be investigated by the police in the absence of any sufficient ground.[53]

d. Right to Legal aid and fair trial.[54]

e. Right to file the complaint and be examined and heard before the magistrate.[55]

f. Right to apply for cancellation of bail.[56]

g. Right to be consulted in case of withdrawal from prosecution.[57]

h. Right to protection from intimidation and harassment.[58]

i. Right to engage an advocate of his choice to assist the public prosecutor.[59]

j. Right to appoint any private pleader as a prosecutor which includes the victim himself.[60]

k. Right to prefer an appeal against any order of acquittal passed by the court or against conviction for a lesser offence or inadequate sentence.[61]

l. Right to be heard before acceptance of the final report of police by the magistrate discharging the accused.[62]

m. Right to apply for shifting the venue of trial in the interest of justice.[63]

50 S.S. Srivastava, Criminology, Penology & Victimology, 594-597 (Central Law Agency, Prayagraj, 6th ed. 2021).

51 The Code of Criminal Procedure, 1973, § 154(2), NO. 2, Acts of Parliament, 1974 (India).

52 *Mallikarjun Kodagali v. State of Karnataka & Ors.* (2019) 2 SCC 752.

53 *Bhagwant Singh v. Commissioner of Police and Anr.* AIR 1985 SC 1285.

54 Legal Services Authorities Act, 1987, s. 12(1).

55 The Code of Criminal Procedure, 1974, s. 200.

56 Id. § 439(2).

57 Id. §§ 257, 321,

58 The Indian Penal Code, 1860 (Act 45 1860), s. 228A.

59 Id. § 301(2).

60 Id.

61 Id.§§ 377, 378.

62 *K.P. Ramasamy & Ors. v. R. Dharmalingam & Ors.* 2020 SC 168.

63 Id. § 406.

n. Right of the rape victims to participate in camera trial proceedings.[64]

o. Right to compensation and restitution.[65]

p. Right of an accused victim to object arrest or detention by the police in the absence of proper compliance of safeguards necessary for arresting a person.[66]

The realm of victim rights is an evolving jurisprudence and the judiciary has time and again, recognized the emerging role of victims and accorded crucial protection to them. Though there is a lack of any comprehensive legislation imparting justice to victims in India, the Apex Court has played an insightful role and adopted affirmative action to secure the rights of victims.[67]

In *Rudal Shah v. State of Bihar*[68], the Apex Court for the first time laid down the foundation of the principle of compensatory justice by categorically stating that it has the power to award compensation to undertrial prisoners who have become victims of inordinate delay in the trial process for infringement of their fundamental right to speedy justice by way of writ jurisdiction. In *D.K. Basu v. State of West Bengal*[69], the Apex Court laid down guidelines to protect victims of custodial violence including custodial rape. In *Hussainara Khatoon & Ors v. Home Secretary*[70], the Apex Court recognized victimization due to abuse of state power. In *Bodhisatttwa Gautam v. Subhra Chakraborty*[71], the Apex Court recognized the right of awarding interim compensation to victims of rape and also laid down guidelines to support impoverished rape victims who are deprived of legal, medical and psychological services due to financial constraints. In *S.A. Karim v. State of Karnataka*[72], the Supreme Court recognized the right of the victim to be consulted in case of withdrawal from prosecution by relying on the plea of the deceased victim's father and dismissed the order of the trial judge that had allowed the prayer of the state for withdrawal. In *G.X. Francis v. Banke Bihari Singh*[73], the Apex Court in view of ensuring a fair trial shifted the venue of a criminal defamation case filed in the High Court of Madhya Pradesh where the situation

64 Id. § 327(2).

65 Id. §§§ 357, 357-A, 357-B.

66 *Joginder Kumar v. State of U.P.* 1994 SCC (4).

67 Kishita Gupta, Victim assistance in the Indian criminal justice system, *ipleaders,,* (25th July, 2022, 7:14 PM) https://blog.ipleaders.in/victim-assistance-indian-criminal-justice-system .

68 AIR 1983 SC 1086.

69 (1997) 1 SCC 416

70 (1980) 1 SCC 98.

71 AIR 1996 SC 922.

72 (2000) 8 SCC 710.

73 AIR 1958 SC 309.

was hostile, to the one in the neighboring state. *In P.S.R Sadhanantham v. Arunachalam*[74], the Apex Court recognized the right of victims near relatives to file SLP under Article 136 of the Constitution challenging an order of acquittal by the High Court. In *Karan v. State N.C.T. of Delhi*[75], the Delhi High Court recognized the right to restitution of victims of crime based on victim impact reports to determine the quantum of compensation by assessing the impact of crime on the victim. In *Nirmal Singh Kahilon v. State of Punjab*[76], The Hon'ble Apex Court recognized the victim's right to fair trial and investigation and such right flows from Article 21 of the Constitution of India. In *K.P. Ramasamy v. R. Dharmalingam*[77], the Supreme Court laid down that victim has the right to file a protest petition if deprived of the right to notice before acceptance of the final report of the police. In *Mallikarjun Kodagali v. State of Karnataka & Ors*.[78], the Apex Court emphasized the need for the establishment of Victim Impact Statements assuring adequate participation of victims in criminal proceedings and also confirmed the victim's right to file an appeal against an order of acquittal.

In the recent case of *Jagjeet Singh v Ashish Mishra*[79], the Apex Court has acknowledged the unrestrained participatory rights of the victim at every stage of the criminal proceeding i.e., from the time of the commission of offence till the conclusion of trial.

The recent judgement of the Apex Court in the Lakhimpur Kheri case[80] is historic in the realm of victim rights since it affords greater participation for victims in the criminal justice process.

Observations of the Court

The Court made the following remarks regarding the victim's role in the criminal justice process:

a) Victim enjoys uncontrolled participatory rights at every stage right from the inception till the conclusion of trial which also extends to appeal and revision proceedings. Hence, they can assert their right to participate at every stage post-occurrence of an offence.

74 (1980) 3 SCC 141.
75 (2020) DLT 352.
76 (2009) 1 SCC 441.
77 Appeal (Crl.) No (s). 354/2020.
78 (2019) 2 SCC 752.
79 2022 Live Law (SC) 376.
80 Jagjeet Singh v. Ashish Mishra, (Crl.) Appeal No. 632 of 2022.

b) Where victims willingly come forward and participate, they must be granted an opportunity for fair and effective hearing and cannot be expected to observe the proceedings as a mute spectator especially where they may have genuine grievances.

c) The victim's right to file an appeal against acquittal if not supplemented with the right to be heard at the time of deciding bail application would result in a travesty of justice.

d) The right of the victim to be heard is an indispensable right which is independent of that of the state under Cr.P.C.

e) A 'victim' need not always be construed as complainant/informant since even a person unknown to the act of crime may be an informant.[81]

Way Forward

Though the progressive observations made by the court, in this case, are likely to have a profound impact on the way we visualize our criminal justice processes, its implementation in letter and spirit may be challenging on various fronts in the wake of several provisions and judicial precedents[82] which may act as stumbling block to the comprehensive guarantee of such rights to the victims. The most effective way to address these challenges is to provide legislative affirmation to the principles of participation by incorporating suitable amendments in the existing criminal procedural law and enacting a victim-friendly statutory framework to facilitate the recognition of victim rights.[83]

V. SAFEGUARDING VICTIM RIGHTS: THERAPEUTIC APPROACH

Ever since the acceptance of the Declaration of Basic Principles of Justice, for Victims of Power Abuse and Crime (1985), India has made considerable progress in providing safety and assistance to victims of crime through various legal reforms.

81 Sohini Chowdhury, Victim has right to be heard from every stage from investigation to culmination of trial in Appeal/Revision, Live Law, (29th July, 2022, 10:20 PM.) https://www.livelaw.in/top-stories/victim-has-right-to-be-heard-at-every-stage-from-investigation-to-culmination-of-trial-in-appealrevision-supreme-court-196856.

82 *Rekha Murare v. State of West Bengal*, (Crl.) No. 7848 of 2019.

83 G.S. Bajpai & Ankit Kaushik, "A victory for crime victims", The Hindu, May 11, 2022.

Protection Measures & Safeguards: Existing Framework & Mechanism

Under the Constitution of India: There are several provisions in our Constitution which provide for the protection of victims' rights. The preamble itself deals with the noble principle of brotherhood which impliedly incorporates the idea of protecting victim rights. Article 14[84] of the Constitution dealing with the equality principle envisages the idea of equal care and protection to both victims and offenders. Article 21[85] of the Constitution conceives the idea of fair trial and investigation and hence guarantees safety and security to victims. Further, the Constitution acknowledges the responsibility of the state to secure public assistance to vulnerable groups in case of undeserved want[86] and the fundamental duty of every citizen to have compassion for living creatures which includes victims[87]. Hence, the constitutional scheme for compensatory victims is reflected in various rulings of the Supreme Court while interpreting Fundamental Rights or Directive Principles of State Policy or by way of exercising writ jurisdiction[88], SLP[89] and invoking extraordinary powers to do complete justice[90].

Under Indian Criminal Laws: The Code of Criminal Procedure, 1973 outlines several provisions dealing with different aspects of victim protection such as protection against torture and intimidation by the police[91], recording of statements of victims as witnesses by audio-video electronic means[92], conduct of in camera inquiry and trial proceedings of victims of rape at the place of residence or any other place of choice possibly by a women judge or Magistrate[93], medical examination of victim of rape[94], payment of reasonable expenses incurred by the victim as complainant or witness for the purpose of attending the court[95], provision for open court trial[96], recording of statement of a temporarily or permanently mentally or physically disabled person with the help of an interpreter or special educator[97],

84 The Constitution of India, 1950.
85 Ibid.
86 Id. art. 41.
87 Id. art. 51A cl. G.
88 Id. arts. 32, 226.
89 Id. art. 136.
90 Id. art. 142.
91 The Code of Criminal Procedure, 1973, s. 163, 171.
92 Id, § 160 proviso. Inserted by Act 5 of 2009.
93 Id, § 157 proviso. Inserted by Act 5 of 2009.
94 Id, § 164-A.
95 The Code of Criminal Procedure, 1973, s. 312.
96 Id, § 327.
97 Id, § 164(5) proviso. Inserted by Act 13 of 2013.

completion of investigation of rape offences within two months from the date of filing of FIR[98], completion of inquiry or trial in case of rape offences within two months from the date of filing of chargesheet[99], Free of cost medical treatment to victims of rape and acid attack by the government hospitals[100], protection to victims of custodial offences for e.g. issuance of prior notice to person against whom reasonable complaint has been made to appear before the police officer, Preparation of memorandum of arrest and informing the person arrested to notify about his arrest to his near ones, enabling the accused person to meet an advocate of his choice during interrogation[101], arrest of women only after sunrise and before sunset except under exceptional circumstances[102], payment of compensation to victim for any loss or injury caused by the offence[103] etc. There is a separate provision for a Victim compensation scheme [104]with the object of providing compensation to the victim or his dependents who have suffered loss or injury and require immediate aid and assistance even in those cases where the offender has not been traced or identified and trial has not been conducted[105]. The District or State Legal Service Authority is the body deciding the quantum of compensation to be awarded under the scheme on the recommendation of the court.[106] The trial court may even make recommendations for awarding compensation in cases where sufficient compensation for rehabilitation of the victim has not been awarded under section 357. The compensation paid under the scheme shall be additional i.e., apart from payment of fine to victims of rape or acid attack.[107] The Indian Penal Code, of 1860 also guarantees protection to victims by providing that whoever threatens to cause any injury to another person including damage to his reputation or property or injury to anyone in whom that person is interested with the intent to cause that person to give false evidence shall be penalized for a term which may extend to seven years or fine or both.[108] Disclosure of the identity of victims of rape or offences related to rape is a punishable offence under I.P.C. which will attract punishment with imprisonment which may extend to two years including a fine.[109]

98 Id, § 173(1A). Inserted by Act 5 of 2009.
99 Id, § 309 proviso. Inserted by Act 13 of 2013.
100 Id, § 357-C. Inserted by Act 5 of 2009.
101 Id, § 41-A, 41-B, 41-D. Inserted by Act 5 of 2009.
102 Id, § 46 proviso. Inserted by Act 5 of 2009.
103 Id, § 357.
104 Id, § 357-A. Inserted by Act 5 of 2009.
105 Id. § 357-A cl. 4.
106 Id. § 357-A cl. 2.
107 Id. § 357-B.
108 The Indian Penal Code, 1860 s. 195-A.
109 Id. § 228-A.

The Indian Evidence Act, of 1872 also offers protection to victims and witnesses by prohibiting indecent, scandalous or offensive questions being asked to them having the tendency of making them feel annoyed or humiliated[110]. The victim or witness is also afforded a defence of not being subject to arrest or prosecution if he is compelled to give any answer, except a prosecution for giving false evidence.[111] Victims are also guaranteed protection against irrelevant questions which have no connection to concerning the matter in issue.[112] Unnecessary questions to the victim of rape regarding her past character bearing no relevance to the issues of the case is prohibited.[113]

Under Special Laws: Anonymity protection to victims and witnesses has also been provided by some special legislations such as The Unlawful Activities (Prevention) Amendment Act, 2004[114], Juvenile (Care and Protection of Children) Act, 2000[115], The Protection of Children from Sexual Offences Act, 2012[116]. Compensatory relief to victims has also been guaranteed under various statutes such as the Probation of Offenders Act, 1958[117], Motor Vehicles Act, 1988[118] as well as SC and ST (Prevention of Atrocities Act), 1989[119]. Legal Services Authority Act, 1987 recognizes the victim's right to legal aid provided such a victim has a prima facie case to prosecute or defend.[120]

Major Pitfalls:

a. Despite the existence of several provisions in various legislations safeguarding victims' rights, there is no specific law in India for victims of crime.

b. The criminal justice system in India is accused-centric where victims are merely envisaged as mute spectators with limited roles to perform.

c. The problem of rampant corruption by public officials cripples the entire system which results in the victimization of people from every stratum of the population.[121]

110 The Indian Evidence Act, 1872, § 151, 152, NO .1, Acts Of Parliament, 1872 (India).

111 Id. § 132 proviso.

112 Id. § 148.

113 Id. § 155.

114 § 40.

115 § 21.

116 § 23.

117 § 5(1).

118 § 5.

119 V 4.

120 § 12, 13.

121 Mendelson B., "Role of victims in Indian Criminal justice system and Legislative measures taken", *Racolb Legal,* http://racolblegal.com/role-of-victims-in-indian-criminal-justice-system-and-legislative-measures-taken (Last visited on 28th July, 2022).

d. Heavy backlog of cases pending in courts leads to denial of victims' right to speedy justice.

e. Lack of awareness in people especially poor women and children, who remain uninformed about their rights exposes them to vulnerability which makes them easy victims of exploitation.[122]

f. Unsympathetic and insensitive attitude of law enforcement agencies towards victims and witnesses affects their willingness to participate freely in the criminal justice process and makes them reluctant in seeking redressal of their grievances.

g. Lack of transparency and accountability is another ill plaguing the system thereby impeding the implementation process which is one of the prime hurdles.

h. Assistance is provided to victims mostly by way of compensation or by repayment of medical treatment expenses or litigation costs whereas minimal attention is given towards providing adequate support services for victims of crime including counselling measures.

i. The Code of Criminal Procedure, 1973 prescribes a very narrow definition of the victim by merely prescribing suffering or loss to the victim as a result of an act or omission of the accused person and ignores the other reasons behind the same such as unnecessary harassment, inordinate delay, misuse or abuse of power or criminal process by the authorities under the code or any private person.

j. Victimization by abuse of criminal process which has been glaringly reflected in many earlier cases including the recent ones of Nupur Sharma[123] as well as Muhammad Zubair[124] do not find its mention anywhere.

k. The victim's right of representation by a private pleader is merely confined to the submission of written arguments after the closure of evidence and with the prior permission of the court.

Therapeutic Approach:

A crime has a lifelong impact on the victim and the victim is often left isolated with no idea to cope with the tragic aftermath especially societal trauma which makes them feel alienated. Hence, they get trapped in the vicious cycle of vindictive battle with no hope of

122 Pavithra V. & Rikhta Muralidhar, "Victim Rights in India: Is the Focus of the Criminal Justice System Shifting from the accused to the victim?", 4 *International Journal of Law Management & Humanities* 778 (2021).

123 *Nupur Sharma v. Union of India,* WP(Crl.) 239/2022.

124 *Mohammad Zubair v. State of U.P.*, Civil Appeal No. 8643 of 2009.

recovery.[125] The victim-oriented approach in the criminal justice system envisages the idea of restorative justice which focuses on therapeutic dealing thereby, healing the wounds of the society to restoring the confidence of the victims in the system. This approach endeavors to heal the society internally through a process of reconciliation by way of participation of victim, accused and community.[126]

VI. CONCLUSION & SUGGESTIONS

The Indian Criminal justice system is accused-centric and fails to provide an environment conducive for the efficacious participation of victims in the investigatory, prosecution and sentencing process. However, positive trends in the realm of victim rights have been observed in recent times both at the national and international level with the passing of the United Nations Declaration recognizing key components of victim rights and the efforts of the law commission and committees in making suitable recommendations with a view to incorporate the same in Indian criminal laws. The Indian judiciary has shown greater receptivity towards victims by recognizing their evolving role and hence, providing them a gamut of rights which has been reflected in various earlier pronouncements including the recent one of *Jagjeet Singh v. Ashish Mishra*. Restorative justice which calls for therapeutic dealing is the only amicable solution which will not merely alleviate the sufferings of the victim but also reinstate peace and harmony in society.

The following measures are suggested in this regard:

a. A separate robust legislation exclusively dealing with victims should be enacted.

b. Victims should be accorded a well-defined status under the criminal law so as to ensure an equitable balance between the rights of the accused and that of the victims.

c. There is an urgent need for the incorporation of suitable amendments in the Indian Criminal Procedure Code which not only provides for a comprehensive definition of victim but also addresses the needs of victims on various fronts.

d. Adequate training should be provided to the agencies of the criminal justice system so that they become more sensitive to the needs of the victims and handle their issues with utmost sincerity and empathy.

125 *Suresh & Ors. v. State of Haryana.*, Criminal Appeal No. 420 of 2012.
126 *Karan v. NCT.,* Criminal Appeal No. 352 of 2020.

e. Efforts should be made to provide assistance to victims by way of reparation and rehabilitation which requires the active participation of various stakeholders including civil society and can be ensured by sensitizing the victims about their rights and by offering them support services including counselling measures through training programs and awareness campaigns.

f. Need for the establishment of a centralized authority where victims can have direct access for seeking remedies.