

VICTIM SUPPORT IN CRIMINAL LAW: NECESSITATING CHANGES IN CRIMINAL PROCEDURE

Ms.Megha Nagpal¹

Abstract

The Criminal Justice System offers protection to and safeguarding of rights of accused persons elaborately. Although this is necessary to ensure that the accused receives a fair trial; what is also desirable of the system is attention to the victims and their rights. A victim can play an important role, sometimes as a sole link, in proper investigation of the crime. Being at the receiving end of violent actions of accused, a victim may also be in need of monetary assistance and legal advice. Therefore, support to the victim must be systemic. A closer look at the criminal procedure in India reveals that the victim of crime is marginalized even though emphasis in the system is on fair trial. The present paper analyses provisions of the Code of Criminal Procedure, 1973 to ascertain if the same afford support to victims of crime. Simultaneously, the author also analyses judicial decisions that offered creative interpretation and directions to provide support to the victim within the bounds of current law. The paper concludes that criminal procedure in India requires legislative amendments to provide systemic support to victims of crime to accomplish the constitutional governance goal of equal justice.

Keywords: fair trial, Indian Criminal Justice System, victim's rights in criminal procedure,victim support.

¹ Assistant Professor,Symbiosis Law School, NOIDA (Constituent of Symbiosis International University),NOIDA,Uttar Pradesh,India

INTRODUCTION

Victim support in criminal law is currently in the process of being recognized as an important aspect of the Criminal Justice System in India. In a bid to equalize the platforms available with the society and its adversary, i.e., the accused, legislations have long made provisions in accused's favour. Crime means something more than a mere disobedience to a law, "it means an act which is both forbidden by law and revolting to the moral sentiments of the society".² Thus, since crime is seen as a wrong against society, not merely against an individual, the victim's voice in the Criminal Justice System is often subdued under the pressures of society's collective moral sentiments.

The present paper is an attempt to analyse the provisions of the Code of Criminal Procedure, 1973 from a victim's perspective. It emphasises that the Code should provide a systemic support to the victim in accordance with the ideals of fair trial and the constitutional principle of promoting equal justice. The paper first examines the demands of fair trial and the rights an accused person has under the Indian Criminal Justice System. It then proceeds to analyse the role a victim plays in the criminal justice system. Thereafter, the contours of proposed systemic support to the victim are explored along with an analysis of the scope for legislative amendment in Indian criminal procedural law from the victim's perspective. The paper concludes that providing systemic support to victims is indispensable and the same requires legislative changes in criminal procedure.

DEMANDS OF FAIR TRIAL: PROTECTION AND SAFEGUARD OF RIGHTS OF ACCUSED PERSONS IN THE INDIAN CRIMINAL JUSTICE SYSTEM

The Indian Criminal Justice System rests on the ideal of fair trial. The nuances of this objective are visible in fundamental rights safeguarding the interests of accused persons; say protection from testimonial compulsion,³ double jeopardy,⁴ illegal detention,⁵ requirement of

¹ R.C. NIGAM, LAW OF CRIMES IN INDIA: PRINCIPLES OF CRIMINAL LAW, 25 (Asia Publishing House 1965).

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

⁴ INDIA CONST. art.20, cl. 2.

⁵ INDIA CONST. art.22, cl. 1.

production before Magistrate within twenty-four hours of arrest,⁶ and more. The Supreme Court in *Zahira Habibullah Shiekh (5) v. State of Gujarat & Ors.*⁷ remarked that “fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.”

The Code of Criminal Procedure, 1973⁸ incorporates aspects of fairness in various provisions. An accused is presumed to be innocent until proven otherwise, and thus, the burden to prove his guilt lies on the prosecution.⁹ A corollary to this rule is that no adverse inference can be drawn against the accused if defence evidence is not led. Leading or not so the defence evidence is an option with the accused and is not a mandatory requirement. However, recording of accused's statement after the prosecution has closed its evidence and before he is called upon to give his defence, under § 313(1)(b) is mandated by the Code.¹⁰ India follows adversarial trial system wherein the judge acts as a neutral referee or an umpire between the parties. This adversarial system enables the court to discover truth in a fair manner.¹¹ Though the charge is framed by the court,¹² the Code requires the court to immediately read and explain the particulars of charge so framed to the accused.¹³

Public hearing is another aspect of fair trial under the Code. Per § 327 public can have access to any criminal court where any inquiry or trial is ongoing.¹⁴ Since fair trial principles are

⁶INDIA CONST. art.22, cl. 2.

⁷(2006) 3 SCC 374 (India).

⁸Hereinafter referred to as 'the Code'. All Sections referred in the paper are of the Code unless otherwise specifically mentioned.

⁹EVID. 101.

¹⁰For a discussion on importance of accused's statement under § 313, see *Basavaraj R. Patil v State of Karnataka*, (2000) 8 SCC 740 (India).

¹¹K.N. CHANDRASEKHARAN PILLAI, R.V. KELKAR'S LECTURES ON CRIMINAL PROCEDURE 128 (Eastern Book Company 2011). The ultimate object of any trial is to find the truth. Cross examination is a tool that helps achieve this purpose. The accused under the Indian Evidence Act, 1872 has a right to cross examine the prosecution witnesses. For the importance of cross-examination in a criminal trial, see *Badri v. State of Rajasthan*, AIR 1976 SC 560 (India). The right of cross-examination can also be said to be reflected in § 204(2) that casts an obligation on the prosecution to file the list of prosecution witnesses before process can be issued to the accused.

¹²This is seen as a deviation from the adversarial system under the Code; see *Neeraj Tiwari, Fair Trial vis-à-vis Criminal Justice Administration: A Critical Study of Indian Criminal Justice System*, J. LAW CONFLICT. RESOLUT., Apr. 2010, at 67.

¹³CODE CRIM. PROC. 228(2).

¹⁴An exception to this general rule of court being open is trial in rape cases; see *CODE CRIM. PROC. 327(2)*. See also, *Naresh Shridhar Mirajkar v State of Maharashtra*, (1966) 3 SCR 744-811 (India), at 754: “Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice.”

derived from the principles of natural justice, the Code provides for compulsory issue of process to the accused for securing his presence during the trial. This is reflected from the use of the word 'shall'. If in the judicial mind of the Magistrate there exists sufficient ground for proceeding against the accused person, process (either summons or warrant) has to be issued.¹⁵ This provision can be understood to be an extension of the natural justice principle *audi alteram partem*.¹⁶ Thus, the Code also provides for the reading over of the charges against him to the accused. Mere reading over is, in fact, not enough. The charge also is required to be explained to the accused before his plea thereupon is recorded.¹⁷ Another additional obligation in this regard, is that evidence is, as a rule, required to be taken in the presence of accused person,¹⁸ and also to be interpreted to the accused in open court in his language.¹⁹ Interpretation can pose a challenge since accused may not understand the language especially if he or she is hearing impaired.

The Constitution of India calls for separation of the judiciary from the executive and the legislature.²⁰ This is to ensure an independent and impartial judiciary. In fact, this principle is also incorporated in the ICCPR.²¹ The Code ensures that personal bias is removed from the system through § 479. No presiding officer can be a judge in a criminal case wherein he himself is a party or in which case his personal interest lies. A corollary to the requirement of independent judiciary is to have an objective and reasonable manner of allocating cases to different Magistrates and Judges. The Code answers this by providing for territorial jurisdiction as well imposing limits on sentencing powers of Magistrates, Sessions Judges etc. The venue of the trial is decided on the basis of the place where crime is committed per § 177-189.²²

During the trial, an accused person receives a right to be represented by a counsel. A fundamental right under article 22(1), Constitution of India, this right is also a legal one under the specific provision of § 303. An extension of the same right is legal aid, under § 304. An

¹⁵To understand more on the requirement of giving reasons for issue of process, see *U.P. Pollution Control Board v Mohan Meakins Ltd. & Ors.*, (2000) 3 SCC 745 (India).

¹⁶This Latin maxim literally means, "no one can be condemned unheard."

¹⁷See CODE CRIM. PROC. 228(2), 240(2).

¹⁸CODE CRIM. PROC. 273.

¹⁹CODE CRIM. PROC. 279.

²⁰INDIA CONST. art. 50.

²¹See International Covenant on Civil & Political Rights art. 14, Dec. 19, 1966, 999 U.N.T.S. 176-177.

²²However, a case can also be transferred from one jurisdiction to another if it so expedient for the ends of justice or required for a fair and impartial inquiry or trial; see Chapter XXXI of the Code.

accused who cannot afford a private counsel, receives legal aid at State's expense under the Legal Services Authorities Act, 1987.²³To represent the State, which is a necessary party in every criminal case against the accused, representing people in their collective capacity,²⁴ Public Prosecutor and Additional Public Prosecutors as appointed under § 24, in the High Courts and Courts of Session, and Assistant Public Prosecutors in the Magistrates' Courts.²⁵

Expeditious trial is another aspect of fairness in the justice system. In *Hussainara Khatun v. Home Secretary, State of Bihar*,²⁶ the Supreme Court has held speedy trial to be an essential ingredient of 'reasonable, just and fair procedure' as guaranteed under article 21 of the Constitution of India. This position was also reiterated in *Motilal Saraf v. State of J&K*.²⁷The same is included under § 309(1). Thus, the court is required to, unless it is necessary to adjourn, examine witnesses in every criminal case on a day-to-day basis. Having once been tried and convicted or acquitted for an offence by a court of competent jurisdiction, no person can be tried for the same offence again. This protection from double jeopardy is guaranteed under article 20(2) of the Constitution of India and further protected as a legal right under § 300.

POSITION OF VICTIM IN THE CRIMINAL JUSTICE SYSTEM

Crime, even though it impacts an individual; is seen as a wrong against the society.²⁸ It harms people as a collective with its potential to create terror and being a hindrance to freedom and liberty; also a hurdle for safety and security, it is viewed as antagonistic to society. Thus, the prosecution is entrusted with the task of presenting society's concern before the court of law. Procedurally, it bottles down to collection of evidence by the police and conduct of trial by the Public Prosecutor in presence of accused. In such a scenario, the victim is seen as a third party. Giving a third party right to present its side of the story is laden with the fear of overstepping the bounds of criminal law or worse, negating or infringing the fundamental protections guaranteed

²³§12, Legal Services Authorities Act, 1987, No. 39, Acts of Parliament, 1987 (India), provides the list of persons who are entitled to legal services under the Act. It includes persons who receive income less than Rupees twelve thousand or Rupees nine thousand if the case is before the Supreme Court or any other court, respectively, apart from women, members of Scheduled Caste or Scheduled Tribe, and also persons with disabilities.

²⁴See K.N. CHANDRASEKHARAN PILLAI, R.V. KELKAR'S CRIMINAL PROCEDURE 22 (Eastern Book Company 2014).

²⁵See CODE CRIM. PROC. 24, 25.

²⁶AIR 1979 SC 1819 (India).

²⁷(2007) 1 SCC (Cri.) 180 (India).

²⁸PILLAI, *supra* note 23.

to the accused. According to some authors, the 'bifurcated structure of the adversarial criminal justice system' poses a major obstacle to victim involvement in the criminal justice process.²⁹

Article 39A to the Constitution of India provides 'equal justice' as a governance goal.³⁰ Equal justice should ideally be justice for both competing sides of a dispute. However, when crime is seen as a wrong against society, it becomes difficult to incorporate the views of the victim who is viewed as a third party within the adversarial system for criminal trials with State at one side and the accused at the other. Nevertheless, the fact that crime also majorly affects a victim on an individual level other than as a member of society, cannot be avoided let alone denied.³¹ Further, the retributive theory of punishment may justify the inclusion of a victim's say, at least in terms of the punishment that a convict must receive.

A specific difference between a tort and a crime is that the criminality of an act is distinct from its moral character, although, as a rule, the 'moral atrocity and infamy of any given action is the main reason why it is treated as a crime'.³² Crime cannot be seen in isolation since it impacts the victim. The degree of harm is dependent upon the kind of crime committed. Whereas the crime of criminal misappropriation of money may bring financial loss, the crime of murder may bring majorly personal or emotional loss. A rape victim may need medical assistance, counselling, or in grave situations psychiatric treatment. A disabled victim of crime may be in dire need of translator or interpreter. Further, the voice of each individual victim in the course of trial owing to individual loss becomes important. The victim's voice should therefore, be heard in the light of his specific needs that arise as a consequence of the crime suffered. The first step to lend support to victim to voice his concern is when the information relating to crime is recorded by the police.

²⁹ JonathanDoak, *Victims' Rights in Criminal Trial: Prospects for Participation*, J. LAW & SOC., June 2005, at 294-316.

³⁰INDIA CONST. art.39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

³¹ For a disussion on how crimes affects its victim, see Mike Maguire, *The Needs and Rights of Victims of Crime*, 14 CRIME AND JUST. 363 (1991).

³²SIR JAMES FITZJAMES STEPHEN, A GENERAL VIEW OF THE CRIMINAL LAW OF ENGLAND 2 (Macmillan and Co.1890).

For every cognizable offence, a police-officer is mandated by law to register a first information report. After the categorical judgement of the Supreme Court in *LalitaKumari's* case,³³ the police cannot refuse registration of FIR upon receipt of any information that discloses commission of a cognizable offence. Further, any person who is aggrieved by refusal on police's part to register FIR, can resort to sending such information to the concerned Superintendent of Police, per § 154(3). The victim under § 200 also has a right to approach the court vide a complaint regarding commission of crime. A Magistrate, if he deems it so fit, take cognizance over the disclosed information and summon the accused persons. Further, once investigation begins, and the officer-in-charge of a police station reaches a conclusion that the investigation need not be carried further, he is duty-bound to intimate the informant of the said decision. In all situations, the victim shall nevertheless have a right to proceed against the same, including exercising his alternate remedy to present an application before the appropriate Magistrate under § 156(3).

Next relevant step is when a victim's testimony is recorded during trial. To hear the victim's side mere testimony as to the manner of commission of crime may not be enough. Although the Code allows for a victim to instruct a pleader, however, this pleader has to necessarily act under the instructions of the Public Prosecutor or Assistant Public Prosecutor, as the case may be.³⁴ If a victim's concerns are completely being marginalised under some panic reaction or even for overzealousness by presentment of an application for withdrawal by the Public Prosecutor, the Court can exercise its discretion as to the question of granting consent for such withdrawal.³⁵ The victim's role is, however, in general terms, limited to giving statement to police during investigation³⁶ and showing up for examination-in-chief and cross-examination which is mostly restrained to how the crime was committed, and in some cases, to ascertain the motive behind the crime.

³³*LalitaKumari v Government of Uttar Pradesh & Ors.*, (2014) 2 SCC 1 (India) – if the information given to police discloses commission of cognizable offence registration of FIR is mandatory under § 154. The judgement also makes provision for preliminary inquiry, for upto a maximum of seven days, by the police in cases involving matrimonial or family disputes, commercial cases, corruption cases, and medical negligence cases.

³⁴CODE CRIM. PROC. 301(2).

³⁵*See S.A. Karim v State of Karnataka*, (2000) 8 SCC 710 (India), decided on Nov. 7, 2000.

³⁶Per proviso to § 160(1), no woman or a mentally or physically disabled person or a male person below the age of fifteen years and above the age of sixty-years can be required to attend the police station for the purposes of giving a statement during investigation. Such people can give statement at their place of residence.

LOCATING VICTIMS' RIGHTS IN THE CODE OF CRIMINAL PROCEDURE: NEED AND SCOPE FOR SYSTEMIC SUPPORT

The United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985.³⁷ The Declaration recognises that the victims of crime and their families suffer loss, damage, injury and hardship when assisting in the prosecution of offenders.³⁸ It further calls upon Member States to provide 'victims of crime'³⁹ access to justice, fair treatment, restitution, compensation, assistance like medical, psychological etc.⁴⁰

The Code of Criminal Procedure, 1973 is the comprehensive set of rules to be followed for criminal trials. As demonstrated in Part II of this paper, the Code focuses on a balanced approach, ensuring that the accused receives a fair trial, and that the defense side is not crushed under the pressures of prosecution and the demands of society for an increased conviction rate, or even a punishment more severe than the crime merits. However, this balance is sought to be achieved between the prosecution (of which the victim only plays a small part) and the accused. The Code makes no provisions for detailed rights of victims or machinery to address the concerns of crime victims.

A crime victim may be in need of financial support for restitution. Often a victim is unable to get back on track for economic stability owing to shock, severe hardship suffered because of crime etc. To restore the victim back to his original position, that is, one before the crime, a portion of fine may be advanced to him. § 357 provides for the payment of compensation to the victim upon suffering any loss or injury as a result of the crime. This compensation is necessarily to be a part of fine.

Introduced in 2008,⁴¹ § 357A calls upon every State Government (in co-ordination with Central Government) to formulate a 'Victim Compensation Scheme'. Funds available in the

³⁷G.A. Res. 40/34, U.N. Doc.A/RES/40/34(Nov. 29, 1985).

³⁸G.A. Res. 1985, *supra* note 36, pmb1.

³⁹'Victims of crime' under the UN Declaration, 1985 are defined as, "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," G.A. Res. 40/34, ¶ 1, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

⁴⁰See G.A. Res. 1985, *supra* note 36, annex.

⁴¹ Code of Criminal Procedure (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009 (India).

Scheme have to be utilised for victim rehabilitation. However, the amount of funds and their utilisation has to be recommended by the trial court in each case individually. Thereafter, the District or State Legal Services Authority, as the case may be, is required to fix the quantum of compensation for the victim keeping in view the court's recommendation. Such process is not only tedious but may also lead to differences in compensation for a similar harm or injury since each court may employ different standards of calculating it. Further, this compensation amount cannot exceed the maximum fixed under the Scheme.

Many States in India have notified Victim Compensation Scheme under § 357A, whereby the maximum limit over compensation in different offences is provided for. However, there is no uniformity in the quantum of such compensation. The same was also observed by the Supreme Court in *Tekram v. State of Madhya Pradesh*.⁴²In this case, looking at the peculiar circumstances of the rape victim who is disabled and was also did not have any emotional or financial support from the family, the Supreme Court directed a special rehabilitation scheme.⁴³The Court further directed all States and Union Territories to endeavour to formulate a uniform scheme for providing victim compensation to in physically disabled women who are victims of rape/sexual exploitation taking into consideration the Victim Compensation Scheme framed by the State of Goa that provides Rupees ten lacs as compensation in cases causing severe mental agony to women, for example, rape cases. Recently, in *Suresh v. State of Haryana*,⁴⁴ the Supreme Court has observed that the upper limit on compensation fixed in some States was very low. The court, thus, directed the judgement to be forwarded to National Judicial Academy for consideration on revision of the maximum limit on compensation under the Scheme.

Indian Criminal Justice System lacks a comprehensive mechanism to deal with the issue of witness intimidation. Inducement and threat haunt witnesses and consequently the justice system in every criminal trial. The *Best Bakery case* is a glaring example. Though the 2005 Amendment has introduced § 195A to the Indian Penal Code, 1860, which provision makes 'threatening anyone with injury to his person, reputation or property to cause him to give false

⁴²Crl. Appeal No. 884 of 2015 (India), decided on Feb. 11, 2016.

⁴³The State Government (respondent) was directed to pay Rupees eight thousand per month till victim's life time instead of a lump sum compensation considering the illiterate blind woman with no familial support incapable of managing a huge sum of money received in one go, treating the same to be an interest fetched on a fixed deposit of Rupees ten lacs.

⁴⁴(2014) SCC OnLine SC 952 (India).

evidence' a punishable offence, yet witnesses continue to turn hostile. Discussing what troubles the 'legally requisite criminal trial' in India, the Supreme Court in *Vinod Kumar v. State of Punjab*⁴⁵, where a prosecution witness resiled from his stand during cross-examination, remarked that a fair trial has to be fair to the defence and the prosecution as well as to the victim. The Court further observed, "It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safe-guarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues." The Court found that the repeated adjournments granted with a lax attitude by the trial court leading to delay in cross-examination of key witness resulted in his deviation from truth. Law Commission of India has recommended mandatory recording of statements of witnesses before Magistrate under § 164 during investigation in order to check witnesses turning hostile.⁴⁶

A victim's statement is an important link between the crime and its perpetrator. It is therefore, required to be recorded with utmost care. The police officer recording the statement of a victim during investigation should ensure that the victim is voluntarily making the statement without any influence or threat. With the 2013 Amendment to the Code, the statement of a woman victim of a sexual offences or acid attack is specifically required to be recorded by a woman police officer. In case such woman is physically or mentally disabled, the statement has to be recorded at the woman's residence with the help of an interpreter or special educator and is to be compulsorily videographed.⁴⁷ Such victim's statement is also to be recorded by the Judicial Magistrate under § 164(5A), and in case the victim is disabled, her statement before Judicial Magistrate is in lieu of examination-in-chief during trial.

Persons with disabilities, however, can be victims of offences apart from sexual offences. The law must therefore, recognise that the need of interpreters and special educators is pressing and need not be limited to sexual offences alone.⁴⁸ In *State of Maharashtra v. Dr. Praful B.*

⁴⁵Crl. Appeal No. 554 of 2012 (India), decided on Jan. 21, 2015.

⁴⁶See observations of the Law Commission of India, L.C.I. REP. No. 178, pt. 16, at 116-119 (Dec. 2001), <http://lawcommissionofindia.nic.in/reports/178rpt1.pdf>. The report, however, makes no recommendations as to providing adequate arrangements for police protection of witnesses from accused and/or other influential factors.

⁴⁷CODE CRIM. PROC. 154(1) Proviso 1 and 2.

⁴⁸For further discussion, see *infra* note 49, at 58-62.

Desai,⁴⁹ the Supreme Court allowed a defence witness to depose through video conferencing. The same standard can be applied for victims as well, especially the ones who cannot appear for deposition owing to trauma or ill-health.

Furthermore, an assailant or a convict can also be a victim in certain circumstances. Custodial violence makes the accused, who is otherwise the party charged with having inflicted injury through crime, a victim.⁵⁰ The Supreme Court in *D.K. Basu & Anr. v. State of West Bengal*⁵¹ laid down guidelines every police officer was required to observe upon making an arrest.⁵² § 41B to 41D, introduced in the Code in 2008,⁵³ incorporate some of the *Basu* guidelines, thereby ensuring fairness of procedure even during investigation.⁵⁴ The law has thus far recognised and formally codified rights of an arrestee in order to prevent any abuse of power by police. However, similar affirmative provisions for a victim are missing in the Code.

The UN Declaration, 1985 lays down *inter alia* basic principles relating to assistance to be provided to victims of crime like medical, material, psychological and social assistance. This can be made available through any means that of governmental, voluntary, community-based and indigenous.⁵⁵ Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.⁵⁶ Functionaries concerned in the Criminal Justice System such as police, health and social service providers and also judges must receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.⁵⁷

Turning these UN Declaration goals into reality should be the vision of Indian Criminal Justice System. For instance, victims of sexual abuse may require immediate medical attention not only to help them cope up with trauma caused due to crime but also for timely collection of

⁴⁹(2003) 4 SCC 601 (India).

⁵⁰ For a discussion on how incarceration makes convicts vulnerable, see Megha Nagpal, *Minimizing Vulnerability of Persons with Disabilities through Legislative Responses in Criminal Procedure in India*, NULJ, Jan. 2017, at 62-67.

⁵¹(1997) 1 SCC 416 (India).

⁵² The guidelines included visible display of name on the badge of the arresting officer.

⁵³ § 6, Code of Criminal Procedure (Amendment) Act, 2008, No. 5, Acts of Parliament, 2009 (India).

⁵⁴ These provisions lay down duties of police officer upon arrest, for example, preparing a memorandum of arrest; informing the arrestee of his right to inform the fact of arrest and place of detention to a friend or relative, etc.

⁵⁵G.A. Res. 1985, *supra* note 36, at ¶ 14.

⁵⁶G.A. Res. 1985, *supra* note 36, at ¶ 15.

⁵⁷G.A. Res. 1985, *supra* note 36, at ¶ 16.

evidence. The Supreme Court in *State of Karnataka v. Manjanna*⁵⁸ expressed its disapproval of the practice of doctors of government hospitals to refuse medical examination of rape victims without requisition by the police. Such inordinate delay may lead to loss of essential evidence. Refusal to administer post-rape medical examination greatly damages likelihood of fair trial for the victim.⁵⁹ A rape victim's need for medical examination is a 'medicolegal emergency'.⁶⁰ In this regard, the 2005 Amendment⁶¹ introduced § 164A and § 53A to the Code. Medical examination of the victim can now be conducted by any registered medical practitioner in absence of a government doctor with the consent of a woman.⁶² The provision, however, does not mandate such medical examination by a woman doctor. Though § 53A(2) specifies the requirements of medical examination of a person accused of rape, yet in sub-section (1) such medical examination can be conducted only by a registered medical practitioner employed in a hospital run by the Government or by a local authority. It is only if such practitioner is unavailable can any other registered medical practitioner conduct such examination that too within sixteen kilometers radius from the place where crime is committed at the request of police officer not below the rank of Sub-Inspector.⁶³

The Delhi High Court in *Delhi Commission for Women v. Delhi Police*⁶⁴ issued comprehensive guidelines to police, hospitals/doctors, lower judiciary, prosecutors, Child Welfare Committees, and other concerned authorities for cases involving commission of sexual offences and child sexual abuse. Specifically, the duty officer receiving complaint of such an offence, has to call upon lady police officer on duty to make the victim and her family comfortable. In addition to this, a SAFE kit or a sexual assault evidence collection kit or a sexual assault forensic kit consisting of a set of items used by medical personnel for gathering and preserving physical evidence following a sexual assault, was directed to be made available with all government hospitals where special rooms were also directed to be set up where victims are to be examined and questioned in privacy.

⁵⁸(2000) 6 SCC 188 (India).

⁵⁹See SUPREME COURT ON CHILDREN 322 (Vincent Walsh ed., Human Rights Law Network 2011).

⁶⁰N. Jagadeesh, *Legal Changes Towards Justice for Sexual Assault Victims*, INDIAN JMEDETHICS, Apr.-June 2010, at 109.

⁶¹ Criminal Procedure Code (Amendment) Act, 2005, No. 25, Acts of Parliament, 2005 (India).

⁶²CODE CRIM. PROC. 164A.

⁶³CODE CRIM. PROC. 53A(1).

⁶⁴Writ Petition (Crl.) 696 of 2008, order dated Oct. 23, 2009.

Crime affects the victim. In fact the very suffering of loss or injury due to crime makes a person a 'victim'.⁶⁵In some countries, a victim's voice is heard in the form of a 'Victim Impact Statement'. In this statement, the victim receives a chance to narrate his story and his suffering.⁶⁶ The same helps the court to appropriately decide the fitting punishment for the guilty. India too can allow a victim to inform the court of the impact the crime has had on him or her at the time of arguments on sentence. Cautionary, the same should not be a sole ground for deciding the punishment, however, it can be one of the factors to be taken into account while deciding appropriate punishment.

CONCLUSION

Criminal justice is wider than individual retribution and punishment. However, if equal justice is a governance goal per the Constitution, victim's voice must be heard in a criminal trial. The ideals and goals of Criminal Justice System in the form of fair trial can be truly achieved only when the victim is given a participatory role. The contours of this role however, remain to be determined. Caution must be taken to maintain the delicate balance between competing claims. Criminal procedure need not be restricted to the laying down of framework for carrying out investigation and trial and limits on the powers of various functionaries under the Code. The need of the hour dictates that the victim be given systemic support in the legislative arrangement so as to ensure justice to him and through him, on a larger level, to the society.

BIBLIOGRAPHY

1. Jonathan Doak, *Victims' Rights in Criminal Trial: Prospects for Participation*, J. LAW & SOC., June 2005.
2. K.N. CHANDRASEKHARAN PILLAI, R.V. KELKAR'S CRIMINAL PROCEDURE (Eastern Book Company 2014).
3. Law Commission of India, L.C.I. REP. No. 178, pt. 16, at 116-119 (Dec. 2001), <http://lawcommissionofindia.nic.in/reports/178rpt1.pdf>.
4. Megha Nagpal, *Minimizing Vulnerability of Persons with Disabilities through Legislative Responses in Criminal Procedure in India*, NULJ, Jan. 2017.

⁶⁵See CODE CRIM. PROC. 2(wa).

⁶⁶See Erin Ann O'Hara & Maria Mayo Robbins, *Using Criminal Punishment to Serve Both Victim and Social Needs*, LAW AND CONTEMP. PROBS., Spring 2009, at 119-217.

5. N. Jagadeesh, *Legal Changes Towards Justice for Sexual Assault Victims*, INDIAN J MED ETHICS, Apr.-June 2010.
6. NeerajTiwari, *Fair Trial vis-à-vis Criminal Justice Administration: A Critical Study of Indian Criminal Justice System*, J. LAW CONFLICT. RESOLUT.,Apr. 2010.
7. 1 R.C. NIGAM, *LAW OF CRIMES IN INDIA: PRINCIPLES OF CRIMINAL LAW* (Asia Publishing House 1965).
8. SIR JAMES FITZJAMES STEPHEN, *A GENERAL VIEW OF THE CRIMINAL LAW OF ENGLAND* (Macmillan and Co. 1890).