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# Unveiling the Gaps: A Critical Analysis of Victim Protection under the Code of Criminal Procedure

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NAYANA KB<sup>1</sup> AND TANISHTA MANGARAJ<sup>2</sup>

## ABSTRACT

*The criminal justice system is an instrument of social control used to deter, prevent, control crime and to punish the criminals. The governance in a democratic country is judged inter alia, by the manner in which the criminal justice system is administered. The Indian criminal system is built on the principles of 'innocent until proven guilty' and 'let hundred guilty be acquitted but one innocent should not be convicted'. This shows how criminal centric the system is and there is very little attention given to the victims of the crime, their rights and protection. The current system barely involves victims, even if it is then they are only at the periphery of the criminal justice system, they usually take a backseat. It is high time we reverse this trend and put the victims on priority, as they are subjected to secondary victimization by the acts of the accused. This paper discusses the existing rights and protection of victims and the recent developments to the same. It has also been contemplated 'is it enough to imprison criminals?' Does this relieve the victim? Victims are not given proper and adequate assistance required and have a very minuscule number of rights and safeguards provided under the law and only an ad hoc ex gratia amount in compensation by the government that too at its discretion. Majority of them are either provided under law commission reports or the committee's reports, whose implementation is rarely seen. It is tried to examine the flaws that are prevalent in the existing system and further complemented with the suggestions for the same. It becomes crucial to peek into the international scenario, and see what else our criminal system can equip itself with. To make the system a victim centric one, it is indisputably a requirement to bring the victim to the forefront of the trial, by encouraging them to actively participate in the process and not just be equivalent to that of witnesses. It is further concluded with the necessary changes and amends to the current system to vindicate the victim's cause and the methodology for the same. The legislature and the executive wings need to attune the criminal justice system in order to tap into the potential to reach the victim in dire need of help.*

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<sup>1</sup> Author is a student at National Law University, Odisha, India.

<sup>2</sup> Author is a student at National Law University, Odisha, India.

## I. RIGHTS OF VICTIMS

The criminal law has two main purposes to fulfill, one is to end the impunity in order to prosecute the perpetrators and the other is to bring justice to the victims. The criminal procedure law seems to be concerned very little about the victim and their rights and protection. India has ratified the UN declaration of 'The Basic Principles of Justice for the Victims of crime and abuse of power'. This mainly highlights and emphasizes the importance of the victim's rights globally. It should be the primary function of the criminal system to provide basic rights to the victims, in order to restore justice<sup>3</sup>.

The basic rights includes:

- a. Furnishing information at investigation and trial stage
- b. Providing monetary relief
- c. Facilitate the process of victim participation in the criminal justice system
- d. Extending the support services as legal aid, counseling, rehabilitation and medical aid.

## II. ACCESS TO FAIR AND JUST COMPENSATION

In the existing legal system it can be said that the victims have to suffer a lot and moreover it can be said through this process it is their fundamental rights which get violated. Often the criminal justice system focuses on the plight of the accused and therefore the victim reparation process does not work as it should have been. As stated by Justice V.R Krishna Iyer in the case of **Rattan Singh v. State of Punjab** "It is a weakness of our jurisprudence that victims of crime and the distress of the dependents of the victim do not attract the attention of law. In fact, the victim reparation is still the vanishing point of our criminal law. This is the deficiency in the system, which must be rectified by the legislature".<sup>4</sup>

**Sakshi v. Union of India**, the "in-camera" trials were made compulsory by the apex Court in order to maintain the dignity of the victims in heinous offences like rape and sexual harassment under POCSO.

Some of the rights in the criminal justice system which provide for the rights of the victims are section 43 and section 154 of the Code of Criminal procedure. while section 439 says that before granting bail to the accused the victim has to be informed and that by virtue of section 439(1A) the victim can also object to the bail which is given to the accused. Moreover, it can be also said

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<sup>3</sup> Dr.Pawan Kumar Mishra, Criminal Justice delivery system and rights of victims:need for introspection, Faculty of Law.

<sup>4</sup> Rattan Singh v. State of Punjab, (1979) 4 SCC 719.

that by virtue of section 154 the victim has the access to justice through the filing of FIR in the police station.

It can be said that at many times the victims face trouble for getting the work done through FIR. Because most of the time the station house officers refuse to register the FIRs. And that is when the plight of the victim increases. This was seen in the case of **Lalita Kumari V. Govt. Of U.P.**<sup>5</sup>. It is here the father of Lalita Kumari went to register the FIR for the missing daughter and thereafter the police refused to register it. This case thus settled the position that police officers have to mandatorily register the FIR.

It can be said that there are not laws but also the recommendations given by various committees to address the plight of the victims. For example- The malimath committee report which said that Victims of the country are ignored and cry and seek for attention and justice and therefore people have lost confidence in the criminal justice system. The committee made recommendations for the system to focus on the rights of the victims.<sup>6</sup>

It can be also said that after the malimath committee report the legislature inserted a provision of Section 372 under the Code of criminal procedure. Here it said that the victim had the right to file an appeal against the order passed by the court. IT was inserted by an amendment brought in the year 2009.

### III. CAN RESTITUTION BE A REMEDY?

Restitution means repairing the loss suffered by the victim due to the actions of the defendant. Courts have the authority in order restitution for victims in case of the problems suffered by the victims. The court at times may also consider the financial properties of the defendant in order to get the restitution.

The right of the victims to get redressal of the losses suffered by him/her has somewhat gathered the attention of the courts. But the victims right to be restituted hasn't got any statutory recognition. Often this right to be restituted has only been recognized when there is "culpable inaction" on the part of the state- Only where the state machinery fails to control the riots or other violent events then only the victims have the right to be restituted.

The 1984 case- After the assassination of Indira Gandhi there were riots in which many sikh properties were destroyed. Therefore, in the case of **R. Gandhi v. UOI**<sup>7</sup> the high court of

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<sup>5</sup> Lalita Kumari v. Govt. of UP, (2011) 11 SCC 331.

<sup>6</sup> REFORMS IN CRIMINAL JUSTICE SYSTEM UPSC - MALIMATH COMMITTEE, MADHAV MENON COMMITTEE REPORTS, SC DIRECTIVES IN PRAKASH SINGH CASE, AND RECENT DEVELOPMENTS, BYJUS, <https://byjus.com/current-affairs/criminal-justice-system-reforms-of-india/>.

<sup>7</sup> R. Gandhi v. UOI, (1989) Mad 205.

Madras on the report by the commissioner provided compensation to the victims for their losses of property in the Sikh community of Coimbatore.

However, it is not every time that such rights are recognized. In the case of **Sri lakshmi agencies v. Govt. of Andhra pradesh**<sup>8</sup> the Andhra Pradesh HC declined to grant any such kind of restitution to the victims. In this particular case the victims suffered due to the violence that occurred after the murder of a member of the legislative assembly. The court here held that as there was no culpable inaction on the part of the state the victim cannot be given any rights. Hence it can be said that the victims right to be restituted is not given in every case.

#### IV. COMPENSATION UNDER THE CODE

Victim compensation is an integral part of the criminal justice system. It is the financial assistance that is provided to the victims of the crime for the harm and loss they have suffered. The criminal procedure code (CrPC) provides the same under section 357A, which was inserted by the criminal amendment Act, 2008. The section provides for the establishment of a victim compensation fund at the district levels under section 357C. It empowers the state government to prepare schemes and the district legal services authority to implement the schemes and this would be overseen by a claim officer<sup>9</sup>.

It was in the 154<sup>th</sup> law commission report, titled “*Victim Compensation Scheme*”,<sup>10</sup> released in 1996 devoted an entire chapter to ‘victimology’. It recommended the establishment of the victim compensation and the same would be administered by the central government. It highlighted the existing flaws, lack of uniformity in compensation amounts across different states, inadequate and not fully compensating the victims for their losses. These defects in the system were corrected by the 2008 criminal amendment Act, which inserted S.357A<sup>11</sup>. However, the implementation of these schemes has been very inconsistent. Procedural delays and inability of the offender to pay have often been the reasons for not receiving the adequate compensation.

**In the case of Bodhisattwa Gautam v. Subhra Chakraborty**, the apex Court clearly held that when a court has the authority to award compensation in a rape case, then it also also has the implied authority to award interim compensation to the victim. In this case The court, after being satisfied about the culpability of the accused, ordered him to pay a sum of Rs.1000 every month to the victim as interim compensation along with arrears of compensation from the date

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<sup>8</sup> Sri lakshmi agencies v. Govt. of Andhra pradesh, (1994) SCC OnLine AP 3.

<sup>9</sup> Mike Maguire, *The needs and rights of victims of crime*, (1991) crime and justice 363-433.

<sup>10</sup> Law Commission of India, 154<sup>th</sup> Report on the Code of Criminal Procedure, 1973, Vol. I, Chapter XV ( J 996).

<sup>11</sup> The Code of Criminal Procedure, 1973, Sec 357A.

of the complaint.

Compensation acknowledges the harm suffered by the victim and can contribute to their sense of justice. The establishment of a national fund for victim compensation as recommended by the 154<sup>th</sup> law commission report could help if it is properly implemented and made uniform across all states.

The Malimath committee on the reforms of the criminal justice system in India in 2003, had suggested that the victim compensation is a state obligation in all serious crimes, irrespective of the status of the offender, if he is apprehended or not, convicted or acquitted. This led to the addition of S.357A, making the state or the district legal services to award compensation.

## **V. VICTIM ASSISTANCE UNDER THE CODE**

It refers to the support and services provided to the victims of crime to help them recover from the harm they have suffered. The legal developments have led to the mandate of the police under section 154 of CrPC to record the information provided by the victim (FIR) without any delay or lack of jurisdiction. This ensures that the complaint of the victim is given due consideration by the police. It further provides for them to engage with a lawyer of their choice to represent them during trial under section 24 of CrPC. This is crucial to ensure that the victims have access to legal representation and can participate actively in the trial process.

The guidelines by the highest court on victim compensation, which asks for establishing a victim compensation scheme in each state and to assist in getting an interim compensation during the trial. To be treated with dignity and respect throughout and to safeguard their rights. Their statements should be recorded in a sensitive and non-threatening manner, and speaks a lot about the importance of victims to the criminal system.

## **VI. COMPARATIVE ANALYSIS OF VICTIM'S RIGHTS IN INDIA TO THE OTHER COUNTRIES**

The rights and protections given to the victims are very different in its framework across the world. In India it went through a series of changes to arrive at the present juncture of the laws. However, the implementation of these newly introduced provisions remains a big challenge that needs to be tackled to see some tangible results. Here is a comparative analysis, with other countries and to look into the areas where we can make proper arrangements as they are in developed countries<sup>12</sup>.

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<sup>12</sup> Michael Barchrach, *The Protection and Rights of Victims under International Criminal Law*, 34 *American Bar Association* 7, 7-20 (2000).

One of the developed countries, the United States of America has got its very well-established legal framework for victim rights and protections enshrined in federal as well as state laws. The passage of the Crime Victim's Rights Act (CVR) in 2004 further provides a wide range of rights including the right to receive restitution. Their implementation has been very commendable due to the proper delegation among the states. The same is true in the case of Canada and Australia. India despite having proper legal framework and the recent developments like the victim compensation scheme 2018 to provide payment to the victims of crime. The challenge is the lack of awareness among the people, inadequate resources and a slow justice delivery system. It is the need of the hour to implement the same in an efficient manner. The developed systems have institutions in place and programs to ensure the effective implementation of the laws. This is definitely a take away for our criminal justice system. Major things that India lacks in comparison to others are:

- a) Victim's personal statements: The legal framework of the United Kingdom allows victims of crime to make personal statements, providing them an opportunity to express the impact of the crime on their lives and these are then considered by the court in the judgment outcome.
- b) Victim support services: This includes a range of services including the victim support and the National association for victim support to provide emotional and practical support to them. These services are free of charge available to all the victims, an initiative by the government.

## **VII. FLAWS IN THE CODE**

After a lot of cases it has only been recognized that the victim has a right to file for appeal under the code of criminal procedure. One such provision which has been made out of the proviso mentioned under Section 372 of the CRPC, 1973<sup>13</sup>- after the amendment in the year 2009, for the victims is that-

“Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicted for a lesser offense or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court; and does not right to appeal in ordinary sense as available to the victims under Sections 374 and 380 of the Code.”

Another flaw in the criminal justice system is that it tilts around the accused in most of the

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<sup>13</sup> The Code of Criminal Procedure, 1973, Sec 372.

cases- In the case of one **Nirmal Singh Kahilon v. State of Punjab**, the Supreme court clearly stated that victims in a crime are also entitled with the right to fair investigation, as like the accused, which is given under Art. 21 of the Constitution of India.

Victimology at the hands of the society- It can be said that a victim is a person who has suffered harm as well as a lot of physical and mental injury. The impairment of the fundamental rights of the victim also happens at the hands of the society. This is known as secondary victimization. For instance, take the case of a rape victim- People judge her character, sometimes see the victim as an inferior human being. The result is that in the criminal justice system there is a means of social control of the victim.

It can be said in a more nuanced way that the whole process of criminal investigation and trial may result in secondary victimization. from investigation, through decisions about whether to prosecute, the trial itself, and the offender's sentencing, to his or her eventual release.

Secondary victimization through the criminal justice system can also occur because of the problems in balancing the victim's rights with that of the offender's rights.

At times it is the criminal justice system which causes a lot of pain to victim. For example, in the case of **Rudal Shah v. State of Bihar**.<sup>14</sup> Rudal Shah had applied for habeas corpus petition for his release. And there was no grounds on which he was detained in jail for about 14 years the harm that is done to a person in jail. Without any particular evidence in disregards a kind of victimization that happens to the Person and In this case, when he filed the petition for hideous corpus. The court noted that an equal amount of. Compensation should also be given to the victim when he is incarcerated in jail for no reason.

Rights of the victim at times are not recognised. It is clear from section 357 of the Indian Penal code that the court can award compensation to the victim. But this right is hardly recognised by the court. In the case of **Hari Kishan V State of Haryana v. SukhbirSingh** the court observed that the right of persons to get compensation has been seldom recognised by the courts. This was also recognised in the case of **D . K Basu v. State of West Bengal**- the award of compensation and the right to relieve the heirs of the victim who was tortured by the functionaries of the state is one of the most important rights available to the victim and his heirs.<sup>15</sup>

Victim victimization happens when the police are not cooperating with the victim. Recently the

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<sup>14</sup> Rudal Shah v. State of Bihar (1983) 4 SCC 141.

<sup>15</sup> Pawankumar MIshra, *CRIMINAL JUSTICE DELIVERY SYSTEM AND RIGHTS OF VICTIM: NEED FOR INTROSPECTION*, National Seminar on Indian Criminal Justice System: Emerging Dimension, Faculty of Law, University of Lucknow (Nov. 12, 2016) [https://ir.nbu.ac.in/bitstream/123456789/3051/1/September2016\\_03.pdf](https://ir.nbu.ac.in/bitstream/123456789/3051/1/September2016_03.pdf).



Orissa HC gave a 1-year service suspension order against a police officer who refused to register the Fir of a murder case. In this particular case the mother was alleging that her son was killed and prayed for the investigation of the death of the son. Here The Court noted that-“surprisingly, after the petitioner approached the High Court, the police acknowledged the written complaint and registered the FIR on 24.11.2022”<sup>16</sup>. It was alleged that such inaction on the part of the police was intended to protect the accused, who is said to be a police officer.

"This Court fails to fathom as to why the petitioner should be made to rush to the High Court for seeking an order from this Court to get the FIR registered, this itself smacks the insensitivities of the concerned police station", the Court said while expressing its dismay.

### VIII. CURBING THE RIGHTS OF VICTIM

The concept of victim and victimology is one where the rights of the victim rather than being guaranteed are taken away. The word victim itself was nowhere defined in the criminal procedure code from the beginning. It was only inserted after the 2009 amendment. **Section 2 (wa)** of the Code of Criminal Procedure which was incorporated by the Amending Act, 5 of 2009 defines a victim as “: a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir”.

Though the 154<sup>th</sup> report of the law commission dealt with the topic of victimology it didn't widen its ambit to include the victim's role in the criminal investigation and trial.

In the case of **Nilabati behera v. Lalita behera** the rights of victims to get compensation were recognised. In that case the death of a 22-year-old in police custody gave the rights to victim compensation in case of death in police custody. The mother here was entitled to compensation. But the victimology that was suffered by her son cannot be repaired and it is important to note here that a life taken cannot be subsequently returned and therefore death in the police custody needs to stop.

It can be said that in some of the heinous rape cases the victim rights are not recognised. One such is the **Mathura rape case**<sup>17</sup>. Here the tribal girl who was raped two times by the police officer in the custody. The High court here had said that as there were no signs of struggle the police officer couldn't be prosecuted.

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<sup>16</sup> Jyoti Prakash Dutta, *Orissa High Court Halts Field Posting Of Police Officer Who Refused To Register FIR In Alleged Murder Case, Orders Sensitization Training*, Live Law (Dec. 22, 2013, 11:00AM) Orissa High Court Halts Field Posting Of Police Officer Who Refused To Register FIR In Alleged Murder Case, Orders Sensitization Training (livelaw.in).

<sup>17</sup> *Tukaram and Another v. State of Maharashtra*, (1979) 2 SCC 143.

Victim's victimization happens when the order of a court even makes the life of the victim hell. In a recent case CJI Sharad Arvind Bobde gave the accused rapist an option to marry the victim in order to save the accused from the vagaries of jail. These kinds of options given to the accused will make the life of the victim even more tormented than the one now. Marrying the rapist would mean a lifetime rape at the hands of the tormentor. In these kinds of cases if the guilt of the tormentor and accused is established it is necessary that a stringent punishment be given to the rapist. The readings of this particular judgment show how the court is going on to give options to the accused in order to save himself.<sup>18</sup>

Victims' death in the custody of the police officer are some of the heinous crimes that have happened in Tamil Nādu's toothed district.. In the **P Jayaraj and J Bentick case**<sup>19</sup>, the father and son duo who died in police custody show how gruesome a crime can be. The son died due to the internal bleeding which happened after the police torture. A day after the father died. Though a CBI inquiry was there in this particular case the victims' suffering show that the people who are victims of custodial violence have no recourse to get justice at all.

Victim victimology happens due to the lack of the enforcement of the rights of victims. For example even if the victim has the right to get free legal aid he doesn't get his rights or get a lawyer to defend himself. In the case of the **State of Andhrapradesh v. Challa Ramakrishna reddy**-the relief to redress the wrong for the established invasion of fundamental right by the citizens is an additional right to the traditional remedies which are given to the victim.

The victim's rights are often considered at par with the rights of the accused. In case of conviction the accused appeals and in case of acquittal the victim appeals. The power balancing is done only at the appellant stage. In the case of **Balasaheb Rangnath Khade v. State of Maharashtra** it can be said that the victim is put on par with the accused and not the state. In cases of heinous crimes this situation makes the life of the victim even more gruesome. As in a crime the state fights against the accused it should be made that the victim rights should be recognised at par with that of the state.”

## IX. NEED OF THE HOUR

Under what needs to be done there are the recommendations of the law commissions which need to be implemented as well as the compensation which should be provided to the victims.

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<sup>18</sup> S. R. Aadhi Sree, *Victims And Victimology In India– Need For Paradigm Shift*, 9, International Journal of Scientific and Research Publications (2019).

<sup>19</sup> Deepankar Malviya, *Jayaraj-Bennicks Custodial Deaths Case : Supreme Court Dismisses Plea Of Accused Cop To Transfer Trial From Tamil Nadu To Kerala*, Live Law (Oct. 18, 2022) Jayaraj-Bennicks Custodial Deaths Case : Supreme Court Dismisses Plea Of Accused Cop To Transfer Trial From Tamil Nadu To Kerala (livelaw.in).

It should be made clear- for example the 152<sup>nd</sup> report of the Law Commission<sup>20</sup> said that in case of the custodial violence Rs 25000 should be given to the victim and in case of bodily injury which causes death rupees 100000/- should be given. but this has been hardly implemented in the country.

The 42<sup>nd</sup> report said that the notions of state immunity are going under rapid change and it should be recognized that if the state fails to protect the victims and other citizens against the violence happening then the state can be legitimately called to fairly compensate them and to protect them by providing free Legal Aid and other services.

## **X. VICTIM'S PARTICIPATION IN THE CRIMINAL TRIAL**

The term 'Victim Participation' refers to the involvement of the victim in trial process. It is recognized under the CrPC. Victim Participation in the criminal trials in India has been a moot question for years and still continues to be, whether and to what extent the victim should be given the role to participate. It is crucial to recognize the importance of victim's say in the proceedings to obtain a very close look of the case. Lack of statutory provisions which would confer the right on the victim to interpose as a party into the case, but only coordinate with the prosecuting agency to establish guilty of the accused. Puts them in a seat of passive role, by and large the role is played by the police and the prosecutor. This is mainly because the crimes are considered to be wrong against the society and not against the private person(victim), but it is to be taken into consideration that in countries like France, where the victims of a crime are also given the chance to become parties to the case and can produce evidence with regard to the harm or the loss they have suffered. Their statements are considered before taking a decision on issues such as plea bargaining and grant of parole. The rights include making statements during trial, present the evidence oral or written submissions to the court. The right to be represented by a lawyer<sup>21</sup>.

In addition to these rights, the CrPC provides for the appointment of a Public Prosecutor to represent the victim's interests in the trial. Increased participation of the victim in the trial process can bring in more transparency and accountability of the criminal justice system.

The major challenges for the active participation of the victim in the trial process is the lack of awareness and education. Victims are either not aware of the rights and procedures to follow in order to participate in the trial or are not interested to be a part of the same<sup>22</sup>. This is compounded

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<sup>21</sup> P. V. Reddi, *Role of Victim in the criminal justice process* 18, Student Advocate Committee 1, 1-24 (2006).

<sup>22</sup> *ibid.*

by the fact that our criminal system is complex and difficult to navigate even for those who are well read and acquainted with the system. This demands the system to educate the victims about the rights the statute provides and simultaneously work on the simplification procedures to encourage the victim participation.

Lack of legal infrastructure and resources to support different schemes brought in for the victims by the state and center. The victim support services such as counseling and mental health aren't in place, let alone be the monetary compensation. The system is heavily criticized for slow and inefficient delivery, which can further frustrate the victims, who may feel marginalized and left out of the process. It is a high concern, given the increase in the lawsuits and victims. There is a serious change necessary to cope up with this challenge and to bring about the active participation of the victims. Additionally, there are challenges related to cultural norms and societal attitudes towards victims of crime. Victims, especially women and children, often face stigmatization and discrimination within their communities, which often is the reason for not participating in the trial. This can be due to lack of empathy, support system and understanding as a whole. Thus, a cultural shift in the attitude towards victims is the key.

The positive developments include the Criminal Law (Amendment) Act, 2009<sup>23</sup>, which included provisions for victim compensation and support services. The courts have also through judgements have recognized the rights and ensured that the victims are given a voice in criminal trials, by allowing the victims to make statements during sentencing. Despite these developments, the issue demands significant attention from the government and society as a whole to address. This would also include increasing awareness and education, infrastructural developments, resources, addressing cultural norms and societal attitudes.

The Supreme court's holding in the **UPSC v. Papaiah**<sup>24</sup>, 'The judges of the lower court had erred in accepting a closure report from the CBI, when such report was submitted without giving due notice to the complainant and behind his back'. Such progressive decisions have helped alleviate the issue. The victim has to be given a say in matters when the Magistrate refuses to frame charges after receiving the police report as was held in *Bhagwat Sing v. Commissioner of Police*.

The victim's participatory rights can be summed up under three broad categories:

'fairness', 'due process' and 'recognition'. It is necessary to strike a balance between the rights of the accused and the victim of a crime. Thus, fairness would require the victim to participate

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<sup>23</sup> The Criminal Law (Amendment) Bil, 2009.

<sup>24</sup> Union Public Service Commission v. S. Papaiah, (1997) 7 SCC 614.

actively throughout the trial. Due process, the saying “When an individual becomes a victim of a violent crime, that person’s right to life and liberty has been invaded.”<sup>25</sup> Though the due process is to keep a check upon the government powers, victims are treated no more than the witness. Recognition, the predicament of the victims must be well recognized. Given the long and slow legal process, their recognition becomes vital to not make them frustrated. It would also include the victim’s dignity right from the beginning to the end of the trial.

The prosecutor is the one who carries on the prosecution. As provided under Section 225 of CrPC, he is entitled to conduct prosecution. They have the authority to appear even without any written authority as provided under Section 301(1). The victim can however, with the permission of the court, appoint a counsel to assist the prosecutor. Their role is very limited and more or less that of a junior counsel who assists a senior.<sup>26</sup> He has no independent functions, this was further highlighted by the Supreme Court in **Shiv Kumar v. Hukum Chand**.<sup>27</sup> They can be allowed to play a primary role in Magistrate’s court, whereas in sessions court, he has only a limited role, as provided under section 301(2) and 302 of CrPC. This was further clarified in the case of **J.K. International v. State**.<sup>28</sup> The justification for excluding the victim from the prosecution scene is because the crime is sought to be against the state and it is perceived that the intervention of the victims in the trial process may vitiate the fairness of the trial. It would further open the door to the retributive and vengeful traits of the victim on the trial affecting it<sup>29</sup>.

## XI. CONCLUSION

This article basically discusses the rights of victims in the Code of Criminal procedure. It also discusses the secondary victimization and flaws in the criminal justice system. From the research on victim protection it can infer that there is a lot which needs to be done for the protection of victims in the Criminal justice system. There definitely exists a gap between the rights and their implementation. There needs to be proper coordination between the judiciary and the executive, especially the police, in order to make the trial process smooth and proper. The right of the victim is not just limited to the post-trial stage but also the pre-trial stage. Bail: The victim’s viewpoint and say must be given due consideration at the time of granting bail to the accused. This would empower the victims and make their participation valued. It also talks

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<sup>25</sup> PV Reddi, *Role of the victim in the criminal justice process*, (2006) Student Bar Review.

<sup>26</sup> Jonathan Doak, *‘Victim’ Rights in criminal trial : prospects for participation*, (2005) Journal of Law and Society 295.

<sup>27</sup> Shiv Kumar v. Hukum Chand, (1999) 7 SCC 467.

<sup>28</sup> JK International v. State (Govt. of NCT of Delhi) (2001) 3 SCC 462.

<sup>29</sup> I. Edwards, *An Ambiguous Participant: The crime victim and criminal Justice Decision Making*, 44 (2004) British Journal of Criminology 967.

about the methods which need to be adopted for the criminal justice system in-order to address the rights of victims.

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