



Dr. Mukul Raizada

Associate Professor, National Law University, Delhi.

Abstract

Besides the distributive aspect of justice, justice perception also includes procedural justice, interactional justice, and informational justice. There may be sufficient and prudent reasoning for not allowing the victims to have any say in distributive justice, but the same reasoning cannot be utilised when the question arises whether the victim should have stakes in other aspects of justice where those justice aspects are not detrimental to the well-placed rights of an accused. Procedural fairness plays an important role in forming the perceptions of justice. Listening to victims' versions of events cannot cause prejudice to the accused in an adversarial criminal justice system (hereinafter CJS) where judges play an active role in the administration of justice and are not mute spectators only. Any criminal justice system draws its legitimacy from dealing fairly with the victims and is considered an ethical and effective justice system. The victim's lost trust in the criminal justice system can be regained by providing the victim with specific rights and by adopting some measures in the procedural laws to assure the victim that his interests are not being sidelined and that he is no longer a lost entity in the entire pursuit of justice.

Introduction

Procedural fairness plays an important role in forming the perceptions of justice.¹ Any criminal justice system draws its legitimacy from dealing fairly with the victims and will be considered an ethical and effective justice system.² Victims of crime expect sympathetic treatment from the agencies of the Criminal Justice System (hereinafter) CJS. The adversarial CJS has evolved in a way that it treats the victim as witness of a crime and generally grants no more role to her than to depose before the court when asked to do so and her deposition is limited to the questions asked by the prosecution and defence counsel. Victims are left out from the criminal justice process (hereinafter CJP) on the grounds that punishing offenders is the sole task of the state having the responsibility of maintaining law and order and taking care of its citizens. Other factors for denying any role or say to a victim in the justice process are to discourage personal

vengeance and reformation of the offender, but there seems to be no genuine reason to deny procedural justice to a victim of a crime. The fairness of a procedure is a two-facet phenomenon, it not only ensures fairness for the victim but also for the offender. The fairness of the procedure necessitates consideration of such factors that make the criminal justice procedure fairer for victim without taking away due process rights of an accused. Against this backdrop, it becomes pertinent to evaluate how far the Indian CJS has gone to ensure procedural justice for crime victims. This study is doctrinal in nature and employs exploratory and analytical methods to examine various provisions incorporated under the Criminal Procedure Code, 1973 (hereinafter CrPC) on procedural justice parameters and does not deal with distributive justice.

This article in its first part, reflects upon the need for procedural justice for enhanced victim

¹ R. Barry Ruback et. al., *Crime Victims' Perceptions Of Restitution: The Importance Of Payment And Understanding*, 7, <http://pacrimstats.info/PCCDRReports/EvaluationResearch/Completed%20Research/Victims%20Services/Restitution/Crime%20Victim%27s%20Perceptions%20of%20Restitution.pdf>

² M. Hough et. al., *Trust In Justice And The Procedural Justice Perspective: Editors' Introduction*, 8 (4) EUROPEAN JOURNAL OF CRIMINOLOGY, 249- 253 (2011).

satisfaction. In its second part, it delves into the models of the CJS to find out the determinative parameters required for evaluating procedural justice for victims of crime. To understand the extent to which the criminal procedure law meets the requirement of procedural justice, the researcher in the third part of this article has critically analysed relevant provisions of the CrPC on these parameters of procedural justice followed by the conclusion.

Need for Procedural Justice

The phenomenon of the victim of a crime undergoing psychological distress and mental agony due to the apathetic attitude of state functionaries in the aftermath of a crime is generally termed "Secondary victimization." Secondary victimization may result from various factors such as victim-blaming, insensitive treatment, rejection of his version of events, poor or no interaction with the victim when he is in dire need of it, providing no update as to the progress of the case³ and giving no participatory role in the criminal proceedings.

Various research shows that an insensitive, detached, and unsympathetic attitude of agencies of the CJS leaves a scar on the victims' well-being. They feel anxious, frustrated, and unable to cope with this secondary victimization.⁴ Secondary victimization is much more harmful

than the effects of primary victimization. When a victim suffers primary victimization, he has a hope that the state is there to take care of his interest and well-being but in case of secondary victimization at the hands of state agencies, he finds himself in a more vulnerable position with no protective umbrella to take shelter of.⁵ Psychological harms due to procedural injustices adversely affect the "victim's self-esteem, belief in a just world, trust in the legal system, ability to cope and faith in the future."⁶

Victimological research indicates that Procedural fairness and the participatory role of victims in the CJP give them a sense of inclusion.⁷ It becomes easy for the victim of crime to deal with the adverse effects of primary victimization if he feels procedurally satisfied with the criminal justice mechanism.⁸ An increase in procedural justice satisfaction leads towards a feeling of control over one's own life.⁹ Research shows that a fair representation of victims' concerns along with consistency among victims' treatment results in an easy acceptance of the outcomes irrespective of whether they are favourable or not.¹⁰ Procedural fairness, by giving victims a 'voice' and 'respect,' may also mitigate the effects of legal outcomes in the criminal justice process.¹¹

³ U. Orth, *Secondary Victimization Of Crime Victims By Criminal Proceedings*, 15 (4) SOCIAL JUSTICE RESEARCH 313-325 (2002); M. Symonds, *The "Secondary Injury" To Victims*, special issue EVALUATION AND CHANGE 36-38 (1980).

⁴ J. SHAPLAND ET AL., VICTIMS IN THE CRIMINAL JUSTICE SYSTEM (Aldershot GB, Gower Publishing Company Limited, 1985); W. AUSTIN & J. M. TOBIAS, *Legal Justice And The Psychology Of Conflict Resolution In THE SENSE OF INJUSTICE: SOCIAL PSYCHOLOGICAL PERSPECTIVES* 227-74, (R. Folger ed., New York: Plenum, 1984).

⁵ M. Symonds, *The "Secondary Injury" To Victims*, special issue EVALUATION AND CHANGE 36-38 (1980).

⁶ U. Orth, *Secondary Victimization Of Crime Victims By Criminal Proceedings*, 15 (4) SOCIAL JUSTICE RESEARCH 313-325, (2002).

⁷ D. G. KILPATRICK ET. AL., THE RIGHTS OF CRIME VICTIMS: DOES LEGAL PROTECTION MAKE A DIFFERENCE? (Washington, DC: National

Institute of Justice Research in Brief, 1998); J. M. Wemmers et. al., *What Is Procedural Justice: Criteria Used By Dutch Victims To Assess The Fairness Of Criminal Justice Procedures*, 8 (4) SOCIAL JUSTICE RESEARCH 329- 350 (1995).

⁸ B. J. Winick, *The Jurisprudence Of Therapeutic Jurisprudence*, (3) 1 PSYCHOLOGY, PUBLIC, POLICY AND LAW, 184- 206 (1997).

⁹ M. BARD & D. SANGREY, *CRIME VICTIM'S BOOK* (New York: Brunner/ Mazel, 1986).

¹⁰ Edna Erez & Pamela Tontodonato, *The Effect Of Victim Participation In Sentencing On Sentencing Outcome*, 29 CRIMINOLOGY 451-474 (1990); E. ALLEN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (New York: Plenum, 1988).

¹¹ U. Orth, *Secondary Victimization Of Crime Victims By Criminal Proceedings*, 15 (4) SOCIAL JUSTICE RESEARCH 313-325, (2002); MALINI LAXMINARAYAN, *THE HETEROGENEITY OF CRIME VICTIMS: VARIATIONS IN PROCEDURAL AND OUTCOMES PREFERENCES* 57 (Wolf Legal Publishers, 2012) at 21.

Furthermore, procedural fairness creates legitimacy of the justice delivery system leading towards its acceptability and law obedience.¹² One factor that results in perceptions of legitimacy is the fair chance to present victims' versions of events.¹³ Taylor conceptualised the term legitimacy as:

"Legitimacy from this social value perspective is the property that a rule or an authority has, when others feel obligated to voluntarily defer to that rule or authority. Legitimacy, therefore, is a quality possessed by an authority, a law, or an institution that leads others to feel obligated to obey its decisions and directives."¹⁴

According to Taylor's 'Process-based model of regulation', Procedural justice augments the social value of legitimacy,¹⁵ thus infusing law-abiding and self-regulated behaviour.¹⁶ Victim satisfaction is essential to get their cooperation in justice administration and to make the CJS more efficient.¹⁷

Determinative Parameters of Procedural Justice

The study of various theoretical notions of justice indicates the preferences of victims relating to the idea of procedure that form their justice judgment resulting in enhanced victim

satisfaction.¹⁸ Various models of procedural justice reflect upon the parameters that form victims' justice judgments and influence their future course of conduct, thus: "The essence of procedural justice models is that the fairness of procedures and processes influence the attitudes and the behaviour of those subject to the procedure."¹⁹

Procedural justice as means to an end (fair outcome)

John Rawls in his model of 'pure procedural justice, 1958' suggested that any fair outcome is dependent upon the fact of how fairly the procedure was implemented "A fair procedure translates its fairness to the outcome only when it is actually carried out"²⁰ John Rawls perceives the notion of justice as *fairness* wherein everyone deserves *equal rights* in case of basic liberties and in case of inequalities, an advantage to be given to the least fortunate member of the society.²¹ Generally, justice judgments are made based on *justness* and *fairness* in both the procedures adopted as well as the outcomes delivered.²²

Thibaut and Walker in their procedural justice model, 1975, emphasized the necessity of the

¹² T. R. TYLER, WHY PEOPLE OBEY THE LAW (Princeton: Princeton University Press, 2006).; Paternoster et. al., *Do Fair Procedures Matter? The Effect Of Procedural Justice On Spouse Assault*, 31 LAW & SOCIETY REVIEW 163-204 (1997).

¹³ T. R. TYLER, WHY PEOPLE OBEY THE LAW (Princeton: Princeton University Press, 2006).

¹⁴ Tom R. Tyler, *Restorative Justice And Procedural Justice: Dealing With Rule Breaking*, 62 (2) JOURNAL OF SOCIAL ISSUES 311(2006).

¹⁵ T. R. Tyler, *Procedural Justice*, in THE BLACKWELL COMPANION TO LAW AND SOCIETY 435-452 (A. Sarat ed., Blackwell 2004).

¹⁶ T. R. Tyler, *Procedural Justice, Legitimacy, And The Effective Rule Of Law*, in CRIME AND JUSTICE: A REVIEW OF RESEARCH 283-358 (M. Tonry ed. University of Chicago Press, 2003.); T. R. Tyler, *Legitimacy And Legitimation*, 57 ANNUAL REVIEW OF PSYCHOLOGY 375-400 (2006).

¹⁷ A. S. Goldstein, *Defining The Role Of The Victim In Criminal Prosecution*, 52 MISSISSIPPI LAW JOURNAL 515- 561 (1982); M. Mcleod, *Victim Participation At Sentencing*, 22 CRIMINAL LAW BULLETIN 501- 507 (1986).

¹⁸ R. J. Bies & J. S. Moag, *Interactional Justice: Communication Criteria Of Fairness*, in RESEARCH

ON NEGOTIATION IN ORGANIZATIONS, 43-55 (B. Sheppard ed. 1986); Jo-Anne Wemmers, *The Meaning Of Justice For Victims*, in INTERNATIONAL HANDBOOK OF VICTIMOLOGY, 27-42 (Shlomo Giora Shoham et. al., eds. CRC Press, 2010).

¹⁹ JO- ANNE M. WEMMERS, WODC-MINISTRY OF JUSTICE, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM: A STUDY INTO THE TREATMENT OF VICTIMS AND ITS EFFECTS ON THEIR ATTITUDES AND BEHAVIOUR, 54, STUDIES ON CRIME AND JUSTICE A SERIES FROM THE DUTCH RESEARCH AND DOCUMENTATION CENTRE, (Kugler Publications, 1964).

²⁰ JOHN RAWLS, A THEORY OF JUSTICE, 86 (original edition, 1971 Belknap Press, Harvard University Press, Cambridge, Massachusetts, London: 2005).

²¹ *Id* at 244.

²² T. R. TYLER, WHY PEOPLE OBEY THE LAW (Princeton: Princeton University Press, 2006); G. S. Leventhal, *Fairness In Social Relations*, in CONTEMPORARY TOPICS IN SOCIAL PSYCHOLOGY 211-239 (J. W. Thibaut et. al., eds., 1976).

justness of the manner or the procedure used in administering distributive justice. Only just ends are not sufficient for justice but the means used for arriving at the conclusion should also be just.²³ Their model has two factors of procedural justice namely 'Process control' later termed as 'voice'²⁴ refers to victims' say during the CJP and 'Decision control' refers to the consideration of the victim's voice at the time of decision-making.²⁵

Leventhal in his model of Procedural Justice, 1976 asserted six parameters to judge the fairness of a procedure that is 'Representation' referring to consideration of victims' views and concerns; 'Impartiality' that is free from biases; 'Accuracy' meaning thereby informed decisions; and 'Correctability' referring to scope for correction or modification in the decisions taken earlier. 'Consistency' or similarity of treatment 'across persons' or 'across times' and 'Ethicality' which refers to providing respectful and dignified treatment were also taken into consideration as a parameter.²⁶

Procedural justice having a normative value

Rejecting the concept of "procedural justice," only as a means to achieve the end, Tyler and

Lind, in 1992 proposed a "relational model (an expanded version of their group value model, 1988)" of procedural justice in which emphasis was laid upon the inherent value or the 'normative value' instead of 'instrumental value' of procedural justice. Fair procedures are significant in themselves irrespective of the consideration that they result in a fair outcome. This model emphasizes *interactional justice* as compared to control over the process or the decision. They emphasized that procedural justice has an inherent value reflected by the interaction between the victim and the agencies of CJS.²⁷ This model of procedural justice vehemently supports three determinants as the criteria to judge procedural justice that is *trust*, *standing* and *neutrality*. *Trust* refers to the concerns for the victims' needs and considering her views, *Standing* refers to respectful treatment and consists of 'participation' and 'respect for the rights of an individual.' 'Participation' in this model resembles the 'voice' factor or 'process control' in Thibaut and walker's model of procedural justice.²⁸ *Neutrality* refers to making decisions in an unbiased and impartial manner.²⁹ Though this model mainly talks about the

²³ JOHN THIBAUT AND LAURENS WALKER, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS, 1- 150 (Hillsdale, NJ: Erlbaum, 1975).

²⁴ R. Folger, *Distributive And Procedural Justice: Combined Impact Of "Voice" And Improvement Of Experienced Inequity*, 35 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY, 108-19 (1977).

²⁵ Jo-Anne Wemmers, *The Meaning Of Justice For Victims*, in INTERNATIONAL HANDBOOK OF VICTIMOLOGY, 27, 31 (Shlomo Giora Shoham et. al., eds. CRC Press, 2010); Jo-Anne M. Wemmers & Katie Cyr., *What Fairness Means To Crime Victims: A Social Psychological Perspective On Victim-Offender Mediation*, 2 (2) APPLIED PSYCHOLOGY IN CRIMINAL JUSTICE 102, 106 (2006).

²⁶ JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM: A STUDY INTO THE TREATMENT OF VICTIMS AND ITS EFFECTS ON THEIR ATTITUDES AND BEHAVIOUR, 57, STUDIES ON CRIME AND JUSTICE A SERIES FROM THE DUTCH RESEARCH AND DOCUMENTATION CENTRE, (Kugler Publications, 1964); G. S. Leventhal, *Fairness In Social Relations*, in CONTEMPORARY TOPICS IN SOCIAL

PSYCHOLOGY 211-239 (J.W.Thibaut et. al. eds., Morristown, N.J.: General Learning Press, 1976).

²⁷ T. Tyler & E. A. Lind, *A Relational Model Of Authority In Groups*, in 25 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 115-91 (M. P. Zanna ed., San Diego: Academic Press, 1992); JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM: A STUDY INTO THE TREATMENT OF VICTIMS AND ITS EFFECTS ON THEIR ATTITUDES AND BEHAVIOUR, 54, 57, 58, 59 STUDIES ON CRIME AND JUSTICE A SERIES FROM THE DUTCH RESEARCH AND DOCUMENTATION CENTRE, (Kugler Publications, 1964).

²⁸ T. Tyler, *Social Justice: Outcome And Procedure*, 35 (2) INTERNATIONAL JOURNAL OF PSYCHOLOGY 117-25 (2000).

²⁹ T. Tyler & E. A. Lind, *A Relational Model Of Authority In Groups*, in 25 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 115-91 (M. P. Zanna ed., San Diego: Academic Press, 1992); Jo-Anne M. Wemmers & Katie Cyr., *What Fairness Means To Crime Victims: A Social Psychological Perspective On Victim-Offender Mediation*, 2 (2) APPLIED PSYCHOLOGY IN CRIMINAL JUSTICE 102, 106 (2006).

interactional aspect of justice such as dignified and respectful treatment, it still takes into consideration 'victims' voice' or 'standing' and 'neutrality or impartiality' as a decisive factor in judging procedural fairness.

Wemmer proposed a two-factor model of procedural justice, 1995 wherein two determinants *neutrality* and *respect* were taken into consideration for ensuring procedural justice. Neutrality focuses on honesty, impartiality, and informed decision-making whereas 'respect' focuses on quality interpersonal treatment along with a concern for the victim's voice and his interests.³⁰

Procedural justice as a determinant of victim's satisfaction

Greenberg in his model of procedural justice, 1993, classified procedural justice into "*Systemic Justice*" founded on structural determinants and "*Informational Justice*" constructed on social determinants. "*Systemic justice*" is comprised of the procedures and rules that give rights to the victim while "*informational justice*" deals with information sharing.³¹ Belooof's victim participation model (1999) supports the active role of victims in the CJP by giving them an active participatory role without any decision-making power. This role is limited to following the case, informal consultation with the CJS agencies, and formally addressing the court.³² John Stickels' victim satisfaction model, 2003 highlights victim satisfaction as the primary objective of the criminal justice system rather

than establishing the guilt of the offender. This model stresses the recognition of the victim as '*de facto party*' and the role of the prosecutor as representative of the victim and his interests along with victim satisfaction.³³ '*Bottom-up Justice*' looks at justice from an individual's point of view.³⁴ In this approach, justice is assessed based on 'fairness perceptions' of the people. These perceptions are dependent on *accessible justice mechanisms, fair processes, and fair outcomes*.³⁵ From the victim's perspective, a system can be judged based on the "procedural preferences" or the expectations of the victim from the system.³⁶

An analysis of these models reflects that procedural justice is a significant factor in creating overall justice perceptions. Irrespective of the consideration that procedural fairness impacts perceptions of outcome fairness also, people appreciate fair procedures.³⁷ Based on the above procedural justice parameters, the following indicators can be used as the criteria to evaluate the criminal procedure laws to determine their procedural fairness towards victims of crime.

1. Victims' voice or representation-meaningful participation in the process,
2. Fairness of the Process- at each stage: easy access to justice mechanism; protection; fair- investigation, prosecution, and trial; and correctability.

'Victims' representation or voice' denotes a 'meaningful participation' in the CJP.³⁸

³⁰ J. M. WEMMERS, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM (Kugler Publications, 1996).

³¹ Jo-Anne Wemmers, *The Meaning Of Justice For Victims*, in INTERNATIONAL HANDBOOK OF VICTIMOLOGY, 33 (Shlomo Giora Shoham et. al., eds. CRC Press, 2010).

³² Douglas Evan Belooof, *The Third Model Of Criminal Process: The Victim Participation Model*, UTAH L. REV. 289-328 (1999).

³³ John William Stickels, *Victim Satisfaction- A Model of the Criminal Justice System*, 41-42 (December 2003) (Ph.D. dissertation, The University of Texas at Austin), available

at <https://repositories.lib.utexas.edu/handle/2152/979>

³⁴ MARTIN GRAMATIKOV & RONALD JANSE, HILL, CONCEPT PAPER, MONITORING AND EVALUATION OF THE RULE OF LAW AND JUSTICE IN THE EU: STATUS QUO AND THE WAY AHEAD., 8 (2012).

³⁵ H. G. GENN & S. BEINART, PATHS TO JUSTICE: WHAT PEOPLE DO AND THINK ABOUT GOING TO LAW, (oxford, Hart Pub., 1999); M. Gramatikov et. al., *Measuring The Costs And Quality Of Paths To Justice: Contours Of A Methodology*, 3 HAGUE JOURNAL ON THE RULE OF LAW 349-379 (2011).

³⁶ MALINI LAXMINARAYAN, THE HETEROGENEITY OF CRIME VICTIMS: VARIATIONS IN PROCEDURAL AND OUTCOMES PREFERENCES 12 (Wolf Legal Publishers, 2012).

³⁷ *Supra note 34* at 10.

³⁸ Paternoster et. al., *Do Fair Procedures Matter? The Effect Of Procedural Justice On Spouse Assault*, 31 LAW & SOCIETY REVIEW 163-204 (1997); Tom R. Tyler, *Legitimacy In Corrections: Policy Implications*, 9 CRIMINOLOGY & PUBLIC POLICY 127-134 (2010).

'Fairness of the process' means 'accuracy' and 'impartiality' in the justice-delivery process. 'Accuracy' refers to informed decisions. 'Impartiality or neutrality' refers to the process of being free from personal biases or preconceived notions,³⁹ meaning thereby fairness of the process at every stage of the CJP thus requiring easy access to justice mechanisms, fair investigation, fair prosecution, fair trial and correctability of already taken decisions. 'Correctability' provides a mechanism to remedy authorities' erroneous decisions.⁴⁰

Critical Analysis of the CrPC on Procedural Justice Parameters

"At present, the victims are the worst sufferers in a crime and they do not have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system."⁴¹

Time and again, law commissions and committees formed to improve the CJS have emphasized the requirement for the victim orientation of the system. Law Commission has observed that the needs of victims and their rights should be given priority attention in total response to crime.⁴² Favouring victim-orientation of the CJS, the Malimath Committee stated: "unless justice to the victim is put as one of the focal points of criminal proceedings, the system is unlikely to restore the balance as a fair procedure in the pursuit of truth."⁴³

In tune with the changes in justice perceptions, the CJS in India has tried to ensure that the victims' demands for justice are met largely on

procedural justice parameters. This part of the article locates the fairness in the procedure based on the above parameters in the CrPC.

Victims' definition under the CrPC

A significant step in the direction of recognising the status of victim in the criminal justice process was to define the victim under section 2 (wa) of the CrPC.⁴⁴ The defining *victim* is a welcome step but it has two drawbacks. The definition uses the phrase *for which the accused person has been charged*⁴⁵, thus requiring the *charging* of the offender as an important prerequisite for granting the victim a status. Under the UN Declaration, according 'victim's status' to any person is not dependent upon the criteria of the accused being charged. United Nations Declaration, 1985 defines victims irrespective of the consideration of offenders' status as identified, apprehended, prosecuted, or convicted. Contrary to this definition, the definition under the CrPC is limited in the sense that recognition of victims' status is dependent upon whether the accused has been charged or not. This limitation of the accused being charged needs to be removed to make the CJS more accessible for victim of crime.

The definition of 'victim' under the CrPC, 1973 has another problem as the definition uses the expression "victim includes his or her guardian or legal heir".⁴⁶ A legal problem may arise in cases where the husband murders his wife or the son murders his father. Such a situation has not been accounted for while incorporating this valuable

³⁹ JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM: A STUDY INTO THE TREATMENT OF VICTIMS AND ITS EFFECTS ON THEIR ATTITUDES AND BEHAVIOUR, 57, STUDIES ON CRIME AND JUSTICE A SERIES FROM THE DUTCH RESEARCH AND DOCUMENTATION CENTRE, (Kugler Publications, 1964); Tom R. Tyler, *Legitimacy In Corrections: Policy Implications*, 9 CRIMINOLOGY & PUBLIC POLICY 127-134 (2010).

⁴⁰ Sarah Jessica Greenman, *Using Procedural Justice to Explore the Relationship between Victim Satisfaction with Police and Victim Participation in Prosecution*, 12 (2010) (Thesis submitted to University of Maryland), available at https://drum.lib.umd.edu/bitstream/handle/1903/10767/Greenman_umd_0117N_11392.pdf;sequence=1

⁴¹ CODE CRIM. PROC.(Amendment) Bill, 2006, as cited in Ram Phal v. State, (2015) SCC OnLine Del 9802 at ¶ 5.

⁴² LAW COMMISSION 154TH REPORT, CHAPTER XV, <http://lawcommissionofindia.nic.in/101-169/Report154Vol1.pdf>

⁴³ COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, volume 1, March 2003, 75 at ¶ 6.2.

⁴⁴ CODE CRIM. PROC. 1973, § 2 (wa), inserted by CODE CRIM. PROC. (Amendment) Act, 2008, w.e.f., 31-12-2009.

⁴⁵ *Id.*

⁴⁶ *Id.*

section in the Code. The guardian or legal heir, if they are the defendant in the same case, has not been mentioned as a disqualification as has been considered under the Crime Victims' Rights Act, 2004 of U.S. wherein it has specifically been provided that *in "no event shall the defendant be named as such guardian or representative"*. A proviso to the same effect needs to be incorporated in the definition of the victim. Also, the *suffering* may be included as a criterion for granting the victim status to the guardian and heirs. A guardian or heir of the deceased can be considered a victim based on emotional suffering as has been the observations of various high courts. Guwahati High Court for recognizing the locus standi of the father of the deceased to file an appeal as a 'victim', treated his emotional sufferings as 'injury', thus giving a wider meaning to the term 'victim'.⁴⁷ Patna High Court agreed with the views of the Guwahati High Court that the victims' definition should be widened, and held that, "in case the allegations of crime being committed was on the husband of the deceased (e.g.- u/s 304 B IPC), father of the lady (or her any close relation) may also come within the definition of 'victim', on account of loss or emotional injury suffered by him."⁴⁸

Victim's voice or representation- meaningful participation in the process

Participation during the investigation

Taking into consideration the difficulties faced by old aged and physically or mentally challenged persons and to lessen the fear and trauma of young witnesses, female witnesses, rape victims and victims of specific offences various provisos have been added to the CrPC to make the investigation process more victim-witness friendly and to make the process less cumbersome for the victim-witness of crime. The CrPC provides that recording of rape victims' statements shall be done at the place of

their choice in the presence of their parents or guardians or close relatives or social worker and to be recorded by female officer if feasible.⁴⁹ Proviso second to section 161 (3) provides for the recording of statements by a female police officer or by any woman officer in case of specific offences against women as mentioned under this proviso.⁵⁰

In case of specific offences against women as enumerated under this section, it provides for the recording of statements of victim as soon as possible by the judicial magistrate.⁵¹ This provision enhances the credibility of the recording of the statement. Provisos attached with this section make it clear that in case a victim is 'physically or mentally' disabled person, such recording to be done in the presence of an interpreter and be also video graphed.⁵² Further, section 164 (5-A) (b) makes it clear that statements recorded in such cases shall be treated as statement made in examination in chief, thus saving the witnesses from the hardship of going through the process again at the time of trial and make it easy for them. These provisions, while helping women victims during the stage of the investigation, may also result in more victim participation in the justice process.

Based upon the provisions under sections 157(2), 169, 170 and 173 of the CrPC, the Supreme Court (hereinafter SC) observed that an informant or the complainant is entitled to present his views at the time of consideration of 'final report' and thus they should be given a notice and be heard before accepting the 'final report'.⁵³ The SC has recognised that in case a decision to drop the proceedings against all the accused or a decision to proceed only against some of the accused is taken, it affects the informant adversely. Thus, notice is required to enable the informant to file

⁴⁷ Gouranga Debnath v. State of Tripura, 2011 (4) GLT 379 as cited in Ram Phal v. State, (2015) SCC OnLine Del 9802 at ¶ 11.

⁴⁸ Parmeshwar Mandal v. State of Bihar, 2014 (1) PLJR 377, in CrI. A. No. 1708 of 2012 as cited in Ram Phal v. State, (2015) SCC OnLine Del 9802 at ¶ 12.

⁴⁹ CODE CRIM. PROC. 1973, § 157 (1), Proviso, inserted by CODE CRIM. PROC. (Amendment) Act 5 of 2009, § 11, (w.e.f. 31-12-2009).

⁵⁰ Against whom an offence under Sections 354, 354 A, 354 B, 354 C, 354 D, 376, 376 A, 376 AB, 376 B, 376 C, 376 D, 376 DA, 376 DB, 376 E or Section 509 have been committed or attempted.

⁵¹ CODE CRIM. PROC. 1973, § 164 (5 A) (a) .

⁵² *Id.* at Proviso.

⁵³ Bhagwant Singh v. Commr. Of Police, (1985) 2 SCC 537; Gangadhar Janardan Mhatre v. State of Maharashtra and Others, (2004) 7 SCC 768.

a protest petition timely⁵⁴. These observations reflect that the CrPC consider the interest of the informant in a case but the benefit of such measures is needed to be given to victim equally since she is the actual sufferer of a crime. Victim participation at the stage of investigation helps ensure victim justice. Victim participation should be encouraged by incorporating suitable measures in the legislation.⁵⁵

Participation during Plea bargaining

In plea bargaining, parties are given time to arrive at a mutual disposition including the for compensation to victim thus effectively considers the victim as a party⁵⁶ in the proceedings. A victim has been given a right to be notified and to present his concerns during such proceedings.⁵⁷ The trial cannot be concluded without giving such an opportunity to victim who is entitled to the notice to present his grievances to be taken into consideration and the courts are obliged to follow this procedure.⁵⁸ Regarding the scope of plea bargaining under chapter- XXI-A of the CrPC, the SC observed: "This is a great leap forward in the recognition of the right of a victim to participate in the proceedings of a non-compoundable case."⁵⁹

Participation during prosecution and trial

Procedural justice for victims cannot be ensured without giving the victim an equitable right to participate in the criminal prosecution. Proviso to section 24 (8) gives the victim a right to have an advocate of one's own choice and is a welcome step towards recognizing victims' say in the criminal justice process. Although a victim has also been given a right to appeal but what is lacking is the mechanism for proper victim representation throughout the trial process to ensure that the trial is not unfair and inequitable to the victim. As has been provided under the Code, the victim's advocate can only assist the

prosecution and submit written arguments with court's permission and that too only after the evidence is closed in the case.⁶⁰ The lack of effective participation rights during the prosecution or trial of a case makes the right to appeal not sufficiently meaningful. Regarding victims' participation at the stage of prosecution, the Bombay HC reflected upon the victims' position as:

"It need hardly be stated that even the rights granted by the legislature fall far short of the standards of fairness and equity expected of a vibrant democracy such as India. The legislature may do well to apply its mind in that behalf and make law taking directions from the Anglo-American jurisprudence that the citizens of this country equally deserve".⁶¹

Of late, the courts have recognised victims' right to participation during the prosecution stage.⁶²

Until and unless the victims' advocate is given a right to represent his concerns at the time of witness examination and before the evidence is closed in the case, nothing valuable can be achieved.

Participation during Withdrawal from prosecution

In *Abdul Karim v. State of Karnataka*⁶³, setting aside the order granting withdrawal from the prosecution on an appeal filed by the father of the deceased, it was observed by the SC that a grave miscarriage of justice could be averted due to the appeal filed by the victim, thus: "The locus standi of the present appellant has not been contested before this Court. Had it not been for his appeal, a miscarriage of justice would have become a fait accompli."⁶⁴

The SC, in another case, while dealing with another issue, acknowledged the fact that such withdrawal affects the victim the most since it

⁵⁴ *Minu Kumari and another v. State of Bihar and Others*, (2006) 4 SCC 359.

⁵⁵ *Sonalal soni v. State of Chhattisgarh*, 2005 SCC OnLine Chh 132 at ¶ 21.

⁵⁶ CODE CRIM. PROC. 1973, § 265 C (a), 265 (b) and 265 J.

⁵⁷ *Id.* § 265 B (4).

⁵⁸ *Girraj Prasad Meena v. State of Rajasthan*, 2013 SCC OnLine SC 899 at ¶ 20.

⁵⁹ *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752 at ¶ 5.

⁶⁰ CODE CRIM. PROC. 1973, § 24 (8) and § 301.

⁶¹ *Balasaheb Ranganath Khade v. The State of Maharashtra and Ors.* 2012 SCC OnLine Bom 635 at ¶ 41.

⁶² *Balasaheb Ranganath Khade v. The State of Maharashtra and Ors.* 2012 SCC OnLine Bom 635; *Vijay valia v. State of Maharashtra*, 1987 Mh.L.J.49.

⁶³ *Abdul Karim and Others v. State of Karnataka and Others*, (2000) 8 SCC 710.

⁶⁴ *Id.*

results in his grievances remaining unanswered⁶⁵ Withdrawal from prosecution by the State may adversely affect the victims, thus necessitates, considering their concerns. In view of this, it becomes more pertinent that a provision is made to enable the victim to share his concern with respect to the withdrawal before the court allows it.

Participation at the time of granting bail

Public prosecutors are entitled to a right to hearing in bail matters in case of alleged offences punishable with death or more than seven years imprisonment, but the victim of a crime is devoid of any such right.⁶⁶ However, he is the one who will have to face the consequences if the offender is allowed to roam freely. The victim should also be given a chance to present his concerns at this stage. This makes it easier to assess the possibilities of threats or retaliation and the need for protective measures on a case-to-case basis. Recognising victims' right to be heard before granting bail the Apex Court observed that "If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice."⁶⁷ The Apex Court went on to note that victims are further entitled to be provided services of counsel at the State's expense if they are unable to engage a private counsel on their own to represent them during bail proceedings and it shall be obligatory upon the High Court to ensure that they are provided a legal aid counsel.⁶⁸

Fairness of the process

Access to justice mechanism

The CJP commences with the registration of the first information report (hereinafter FIR). Registering FIR is obligatory in all cognizable offences and facilitates the victim to access the justice.⁶⁹ The provision also provides an alternative remedy if the police avoid the registration of FIR. Section 154 on one hand

ensures informational justice by making available a copy of FIR to the informant and on the other hand provides a remedial measure in case a police officer refuses to register FIR in a cognizable offence, to approach higher authorities (Superintendent of Police) concerned.⁷⁰ The victim has been given the additional alternative to approach the Magistrate if the police do not register an FIR or investigate.⁷¹ The FIR is to be mandatorily registered not only in the cases referred to specifically in section 166 A (c) but in all cognizable offences.⁷² By incorporating section 166 A (c), the legislature has tried to ensure that no such crime goes unreported by imposing penal sanctions in case a police officer refuses to register FIR in such specific offences as mentioned under this section.⁷³ To ensure that ghastly crimes against women victims do not go unreported, it is prescribed that for woman victims of specific offences, FIR shall be registered by female police officers or any woman officer.⁷⁴ In case of such women victims (of these specific offences) being physically or mentally disabled, the recording and the videography shall be done in presence of an interpreter, at their residence or a place of their choice.⁷⁵

Protection during the criminal justice process

Victim protection laws protecting crime victims from threats and intimidation are necessary to ensure the proper administration of justice. A lack of protective measures can prevent victims from reporting crimes and turn victim-witnesses hostile, which may adversely affect the whole process of administering justice. A fair trial can only be ensured if the deposition is truthful. The SC and various High Courts also emphasised the issue of victim protection and the need for legislative measures to provide victim-witness

⁶⁵ V.L.S.Finance Limited v. S.P.Gupta and another, (2016) 3 SCC 736 at ¶ 54.

⁶⁶ CODE CRIM. PROC. 1973, § 437 (1), Proviso fourth, inserted by CODE CRIM. PROC. (Amendment) Act 25 of 2005, § 37.

⁶⁷ Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321 at Para 24.2 & 26.

⁶⁸ *Id.* at ¶ 44.

⁶⁹ CODE CRIM. PROC. 1973, § 154 (1).

⁷⁰ *Id.* § 154 (2) and § 154 (3).

⁷¹ *Id.* § 156 (3).

⁷² Lalita kumari v. Government of U.P. & Ors., 2013 SCC OnLine SC 999.

⁷³ Indian Penal Code, § 166 A (c), inserted by the Criminal Law (Amendment) Act, 2013.

⁷⁴ CODE CRIM. PROC. 1973, § 154 (1), Proviso, inserted by Act 13 of 2013, § 13.

⁷⁵ *Id.* § 154 (1).

protection⁷⁶ Such protective measures are also required to restore human dignity to victims of crime. The SC observed thus:

“It is, therefore, imperative that for justice to be done, the protection of witnesses and victims becomes essential, as it is the reliance on their testimony and complaints that the actual perpetrators of heinous crimes during the communal violence can be brought to book.”⁷⁷---“In most of the cases, witnesses are the victims of the crime. Most vulnerable amongst them are women and children. Under the existing system they are mere pawns in a crime trial and there is very little concern for protecting their real interests. The protection is necessary so that there is no miscarriage of justice; but protection is also necessary to restore in them, a sense of human dignity.”⁷⁸

Malimath Committee and various law commissions have emphasized the necessity of witness protection schemes in their reports.⁷⁹ The SC also approved a draft in this regard.⁸⁰ Later, the Apex Court in *Jagjeet Singh v. Ashish Mishra*⁸¹, recognised that not only the witnesses but also the victims in the case deserve protection.

Though there is a lack of any specific victim protection scheme under the CrPC, the provisions empowering police to make arrests without a warrant can be taken recourse of under certain circumstances as provided under section 41 (1) (b). As per the mandate of this section, if there are chances of tampering with evidence, or dissuading any person from disclosing facts by way of inducement or threat, an accused may be arrested by the Police.⁸²

Another legislative measure can be seen in the form of section 437 (3) which deals with

mandatory imposition of certain conditions on granting bail in non-bailable offences. Its clause (c) is significant since it has a mandatory condition for grant of bail that: “the accused shall not make any inducement, threat or promise directly or indirectly to any person acquainted with the facts of the case”.⁸³ By incorporating this provision, victims’ threat perceptions have been taken into consideration. This can be termed as an effort to recognise victims’ need for protective measures. Section 195 A also provides recourse to witnesses in case of threat by an accused. Proviso to section 273 of the CrPC also has some implications for victims and empowers the court to take necessary measures to ensure that women victims of rape or sexual offences, below eighteen years of age are not confronted with the accused during their deposition before the court. This protective shield is available only for women victims, only of rape or sexual offences and only in case their age is below eighteen years. To protect women victims of sexual offences, a mandatory provision of in-camera proceedings has been provided under the CrPC.⁸⁴

Fair and speedy investigation

The SC and various High Courts have observed in a wide range of cases⁸⁵ that the crime victim too is entitled to a fair investigation, and the extended dimension of Article 21 empowers victims to demand a fair trial. Through these cases, the courts have held that not only the State must ensure a fair investigation so that the trial culminates as a fair trial, but the courts should also be cautious to ensure that the investigation done in the case was not motivated, biased,

⁷⁶ *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158; *Suo Moto v. State of Rajasthan*, 2005 SCC OnLine Raj 658; *Mosaref Hossain Mondal v. State of West Bengal & Ors.*, 2012 SCC OnLine Cal 4076; *Sanjeev Nanda v. The State* 2009 SCC OnLine Del 2015.

⁷⁷ *National Human Rights Commission v. State of Gujarat and Others*, (2009) 6 SCC 767 at ¶ 7.

⁷⁸ *Ibid.*

⁷⁹ COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, volume 1, March 2003; 14th, 154th, 172nd, 178th and 198th law commissions reports.

⁸⁰ *Mahendra Chawla v Union of India*, (2019) 4 SCC 615.

⁸¹ *Jagjeet Singh v. Ashish Mishra*, (2022) 9 SCC 321 at ¶ 45.

⁸² CODE CRIM. PROC. 1973, § 41 (1) (b).

⁸³ *Id.* § 437 (3) (c).

⁸⁴ *Id.* § 327 (2).

⁸⁵ *Babubhai v. State of Gujarat and others* (2010) 12 SCC 254; *Gurbax Singh Bains v. State of Punjab* 2013 SCC OnLine P&H 4245; *Ram Padarath Singh v. The State of Bihar* 2014 SCC OnLine Pat 6564; *P. Sathish Kumar v. State of Tamil Nadu* 2014 SCC OnLine Mad 347.

reckless or injudicious. Police as an agency of the criminal justice system have a constitutional obligation to ensure fairness in the investigation process. As stated by the Madras HC: "To be fair to the victim, fair to the Accused and fair to the society at large are the Constitutional obligations of the Police. If there is any deviance, it is likely to result in failure of justice."⁸⁶

The CrPC has detailed provisions under its chapter XII to ensure fair investigation towards all its stakeholders. Section 157 (1) of the CrPC provides for investigation procedure in cognizable cases. The informant is required to be kept informed about the action taken on his report.⁸⁷ In case, the police officer is of the opinion that an investigation is not required, the police officer shall inform the informant⁸⁸ thereby providing an opportunity for the informant/victim to avail alternative recourse in such a situation. For investigating the facts of the case, the police officer may require the presence of any person before himself but the proviso makes a reasonable restriction on this power by mandating that age, gender and physical or mental disability is required to be taken into consideration while using power under this section.⁸⁹ Section 161 deals with witness examination and directs that police officers shall make a true account of all the statements given by the witnesses. Proviso to this section⁹⁰ provides for recording of such statements through audio-video electronic means that is an attempt to bring transparency in the investigation by use of technology and may be helpful in decreasing the chances of manipulation in the statements due to intimidation or undue influence. Section 164 of the CrPC provides for the statement recording by magistrates and its proviso provides that such statements may be recorded through audio-video electronic means also.

The police officer is under a duty to maintain the records regularly on daily basis mentioning timings of receiving information and places visited to collect or ascertain circumstances etc.⁹¹

section 173 (1) provides for a speedy disposal of the case. Police should perform their task of investigating the case and collecting evidence in a fair and unbiased manner and should not violate any direction of law in this regard. To ensure that the investigating agency works within these legal bounds necessary to maintain fairness in the process, the legislature through the Amendment Act 13 of 2013, has incorporated Section 166 A under the Indian Penal Code. which prescribes penal consequences in case an investigating officer fails in his duties to register an FIR and investigate the case fairly.

Fair prosecution and trial

Not only the accused in the case but the victim as well as the society at large have an interest in the fair disposal of the case. Highlighting the aspect of procedural fairness in a criminal trial, the SC made pertinent remarks as:

"Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. 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. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial."⁹²

Against this backdrop, it is a must for a public prosecutor to present all facts and evidence before the courts fairly and judiciously. A public prosecutor is required to perform his duties fairly. As observed by the SC: "Therefore, a Public Prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims."⁹³

Generally, a crime is supposed to be a wrong against society but the actual sufferer in any

⁸⁶ P. Sathish Kumar v. State of Tamil Nadu 2014 SCC OnLine Mad 347, at ¶ 1.

⁸⁷ CODE CRIM. PROC. 1973, § 173 (2) (ii).

⁸⁸ *Id.* § 157 (2).

⁸⁹ CODE CRIM. PROC. 1973, § 160 (1), Proviso.

⁹⁰ *Id.* § 161 (3) Proviso, inserted by Act 5 of 2009, § 12.

⁹¹ CODE CRIM. PROC. 1973, § 172 (1).

⁹² Zahira Habibulla H. Sheikh and another v. State of Gujarat and others (2004) 4 SCC 158 at ¶ 36.

⁹³ Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1, at ¶ 187.

incidence of crime is the unfortunate victim. It casts, therefore, a duty on the State and the prosecution to ensure fairness in the criminal justice proceedings.⁹⁴ But despite such judicial recognition, it is a fact that too many times, public prosecutors do not pay sufficient attention to victim-justice issues.⁹⁵ Such circumstances, where there is an intentional lack of fair representation from the Public Prosecutor, justify a significant role for victims' counsel. The proviso to section 24 (8), gives the victim a chance of being represented fairly.⁹⁶ However, the role of such a private pleader has its limitations as imposed under section 301 (2) of the CrPC. This section makes it clear that a private pleader shall "*act under the directions of the Public Prosecutor*" and may submit written arguments only after evidence is closed in the case and that too with the permission of the court.⁹⁷

The right to a fair trial includes the right to be heard or to be represented fairly⁹⁸ and a crime victim is equally entitled to an effective representation during the trial proceedings. The limited role provided to the private counsel cannot be seen as an effective measure to ensure victim justice and at least in cases, where the prosecution is suffering from any defects, victims' counsel must be allowed to play an active role in conducting fair and effective prosecution. The Madras HC (Madurai Bench) has emphasized that:

"It is the sole prerogative of the public prosecutor to pick, choose and examine a prosecution

witness. However, if the public prosecutor fails in the above-mentioned duty either accidentally or designedly in the opinion of the Court, then in such a circumstance it can permit a victim's lawyer even to examine a witness. Such a power can also be exercised by the court for the purpose of conducting a free and fair trial and in the interest of justice."⁹⁹

Another provision that can be taken recourse to by the victim is section 311 of the CrPC which can be used by the court to take any appropriate measure that befits the circumstances in the examination of witnesses for arriving at a just decision in the case.¹⁰⁰

Correctability

The right to correctability is meant to correct the erroneous decisions already taken. Section 372 of CrPC deals with general rules regarding the filing of appeals against judgment or criminal court order¹⁰¹ and proviso to this section makes the victim entitled to a substantive right to appeal.¹⁰² This proviso was considered by the Mumbai High Court a "complete code in itself since it enriched the criminal jurisprudence" by giving a substantive right to the victim of crime for the first time.¹⁰³ This proviso gives an independent right to the victim.¹⁰⁴ This proviso entitles the victim to file an appeal. The victim is not required to obtain leave of the court to file an appeal under this proviso as was held by the Bombay HC in Balasaheb Rangnath Khade v.

⁹⁴ *Mina Lalita Baruwa v. State of Orissa and Others*, (2013) 16 SCC 173 at ¶ 19.

⁹⁵ *State of Rajasthan v. Mohammad Muslim Tagala*, (2014) 10 SCC 658; *Sunil Kumar Pal v. Phota Sheikh and Others*, (1984) 4 SCC 533; *Mina Lalita Baruwa v. State of Orissa and Others*, (2013) 16 SCC 173.

⁹⁶ Inserted by CODE CRIM. PROC. (Amendment) Act 5 of 2009, § 3.

⁹⁷ CODE CRIM. PROC. 1973, § 301 (2).

⁹⁸ *K. V. Shiva Reddy v. State of Karnataka* 2005 SCC OnLine Kar 260.

⁹⁹ *Sathyavani Ponrani v. Samuel Raj*, 2010 SCC OnLine Mad 3758 at ¶ 36.

¹⁰⁰ *Mina Lalita Baruwa v. State of Orissa and Others*, (2013) 16 SCC 173; *Rekha Murarka v. State of West Bengal*, 2019 SCC OnLine SC 1495.

¹⁰¹ CODE CRIM. PROC. § 372,

"No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force".

¹⁰² CODE CRIM. PROC. 1973, § 372, Proviso, inserted by the (Amendment) Act 5 of 2009, s. 29, provides that: "Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence 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."

¹⁰³ *Balasaheb Rangnath Khade v. The State of Maharashtra and Ors.* 2012 SCC OnLine Bom 635 at ¶ 51.

¹⁰⁴ *Ram Phal v. State*, (2015) SCC OnLine Del 9802.

State of Maharashtra.¹⁰⁵ But terming this legal position as incorrect, the SC in Satya Pal Singh v. State of Madhya Pradesh¹⁰⁶ emphasized that it is mandatory to obtain leave of the court before exercising this right to appeal. Recently it was made clear by the Apex Court that a victim need not apply for leave to appeal.¹⁰⁷

Conclusion

After analysing various provisions of the CrPC, it can be safely deduced that by implication and inferentially also these provisions meet the procedural justice parameters identified in the second part of the article. Evolving jurisprudence from the superior courts also proactively recognises the fair procedural rights of the victims. But, for according to uniformity and certainty to the effective realisation of these fair procedural rights for the victim, there is certainly a need to provide for legislatively mandated specific rights to the victim of crime at every stage of the CJP. The procedural justice parameters, identified above, may act as a guiding light for the legislator in this respect and the efficacy of the realisation of the victims' rights may be tested against these parameters periodically.

¹⁰⁵ Balasaheb Rangnath Khade v. The State of Maharashtra and Ors. 2012 SCC OnLine Bom 635.

¹⁰⁶ Satya Pal Singh v. State of Madhya Pradesh, (2015) 15 SCC 613.

¹⁰⁷ Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752.