
Role of the Victim in the Criminal Justice Process

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Special Article

ROLE OF THE VICTIM IN THE CRIMINAL JUSTICE PROCESS

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In an adversarial system like ours, criminal cases become a contest between the accused and the State, represented by the Public Prosecutor. There is very little role envisaged for the victim, who is the most affected by the crime. Her plight is forgotten in the battle for supremacy between the State and the accused. Instead of being the focus of the debate, she becomes the mere cause for it. This article looks at the role of the victim in the Indian Criminal Justice System and argues for making her an important player in the system, instead to relegating her to the sidelines. Not only will this provide much needed relief and succour to the victims, but will also help in the proper implementation of criminal justice in India. Further, the article makes a case for providing effective justice to the victim by supplementing her participation in criminal proceedings, with compensation for damages suffered due to the crime, and support services to ensure her proper recovery and rehabilitation. In conclusion, the article seeks to suggest ways and means of making the criminal justice delivery mechanism victim friendly and sensitive, so that it can meet the challenges faced by the victim and provide effective justice to those affected by crime.

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I. INTRODUCTION

To administer the criminal law efficiently, effectively and even-handedly is a fundamental obligation of any State governed by rule of law. This function is an attribute of the sovereign power of the State. The quality of governance in a democratic country is judged *inter alia*, by the manner in which the criminal justice system is administered, and its effectiveness. The desideratum of any system dealing with crimes and punishment is to impart a sense of security and safety to the people – whether it be inhabitants of the country or alien citizens visiting the country. As the society has a legitimate expectation of the State ensuring effective operation of the criminal justice system to promote common good and a hassle-free atmosphere, the failures or inadequacies in the criminal justice system or its apparatus are bound to have an adverse effect on the life and conduct of the people.

Indubitably, the criminal justice system in our country cries for reforms and refinements on many fronts. The inadequacies and aberrations that have been haunting the criminal justice system are too well known to be emphasized. The crude methods of investigation in which the use of third degree methods reigns supreme, ill-trained and ill-equipped police personnel lacking in people-friendly orientation, inefficient prosecuting machinery, lack of coordination between investigating and prosecuting agencies, witnesses being subjected to intimidation, tardy and long-drawn trials, and lack of accountability for the failure of prosecution, are some of the disturbing features of the criminal justice system of the present day in our country. Though in the post-independence era, there has been an increased awareness regarding the improvement of the quality of recruitment and training of police personnel, and use of scientific methods of investigation, the percentage of crime detection and the rate of conviction for serious crimes remains to be quite low.¹ Inadequate number of courts and ill-trained judicial officers have compounded the problems afflicting the system. The remedy or antidote to the ailments lies not merely in undertaking legislative

¹ The conviction rate in more serious crimes under the Indian Penal Code, 1860, is said to be in the range of 20% to 34%. It will be much less if the acquittals by appellate courts are taken into account. See NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA (2003).

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measures, but in refining or perhaps revamping the present system at work, so as to invigorate the criminal justice delivery system, and to put in place a welfare-oriented machinery. Towards this end, one area in which both legislative reform as well as rigorous executive action is required is in respect of meting out justice to the victims² of crime.

At present, the role of a victim of crime is only at the periphery of the criminal justice delivery system. Once the first information is furnished, the only stage at which the victim comes into the picture is when she³ is called upon to give evidence in the court by the prosecution. The victim virtually takes a backseat in the criminal justice network. She is neither a participant in the criminal proceedings launched against the offender, nor even reckoned as a guiding element in the process of prosecution or the ultimate decision-making. There is a plethora of instances in which the victim has been subjected to secondary victimization by the acts of the accused or their associates. The law does not afford any relief to the victim by way of monetary compensation or reparation for the harm suffered, except to a very limited extent.⁴ There has been crass neglect of the victim's needs and interests, even though she ought to be regarded as an important player in the system. The system has no mechanism and no direction to redress the suffering and trauma undergone by her. Except for the cases in which an *ad hoc ex gratia* amount has been sanctioned by the Government in its discretion, the victim has to fend for herself. She has to bear the horrifying experience with all its attendant consequences silently and helplessly. There is none to counsel her, to extend medical assistance, or to recompense her for deprivation of livelihood. The State or its instrumentalities do nothing to heal the scar left behind by the perpetrators of the offence. It is in this scenario that the topic of victimology which, in essence, means the vindication of the victim's cause and the methodology of rendering justice to the victim, has assumed great relevance in recent times. The case for protecting the interests of victims of crime, and for providing them succour and relief cannot be gain-said. It is high time that the legislative and executive wings appropriately attune the criminal justice system so as to unfold its potential to reach the victims who are in dire need of help.

There are four areas in which the criminal justice policy should take care of the interests of victims of crimes. They are:

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- ² In this paper the term "victim" includes the kith and kin (if the victim is dead), and the first informant.
 - ³ In this paper, the words "her/his" and "she/he", apply to both males and females.
 - ⁴ See §§ 357, 358, Code of Criminal Procedure, 1973 [hereinafter Cr.P.C.] & § 5, Probation of Offenders Act, 1958.

- (i) Furnishing information at the investigation and trial stages;
- (ii) Facilitating the victim to take active part in the criminal justice process;
- (iii) Providing monetary relief or compensation; and
- (iv) Extending support services such as providing legal aid, counseling, medical aid and rehabilitation.

Broadly, these areas fall under the categories of procedural and service rights, which the criminal justice system should thrive to promote. This paper will examine each of these areas to determine the scope and extent of legal and executive reform needed, to make the criminal justice system victim-friendly. The first part of the paper deals with the first two areas highlighted above. The second part examines the need for ensuring effective justice for victims, by providing them not only with monetary relief, but also with victim support services. In conclusion, the article draws from the entire discussion, and puts forth suggestions for change, so as to provide effective justice to victims of crime.

II. VICTIM PARTICIPATION IN CRIMINAL PROCEEDINGS

Whether and to what extent the victim should be given a role in criminal prosecution, are core questions that need to be addressed. In India, the system in vogue for the dispensation of criminal justice is the adversarial system. The prosecution and the accused figure as the only parties. They put forward their respective versions, supported by evidence, and the Sessions Judge/Magistrate takes the role of an umpire to determine whether the prosecution has been able to prove its case beyond reasonable doubt. The accused is given an opportunity to take a particular stand in defence of his case, if he is so inclined. However, there is no statutory provision which confers a right on the victim to interpose as a party and play an active role and coordinate with the prosecuting agency to establish the guilt of the accused. Right from the stage of investigation of the crime up to the stage of conclusion of the trial, the role to be played by the victim is by and large determined by the police and the prosecution.

The system in vogue in our country, which is based on the British model of prosecution of criminal cases, is in contrast with the position obtaining in some other jurisdictions, especially in Europe. For example, in France, all those who suffer damage as a result of a crime, are entitled to become parties to the proceedings from the stage of investigation. The victim can move the court for appropriate directions if the investigation gets delayed or distorted. She has a right to intervene in the court proceedings. The victim or her lawyer can play an

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active role at par with the prosecutor in the conduct of the proceedings. She can also adduce evidence with regard to the loss and suffering undergone by her so as to claim compensation.⁵ Even in countries where the adversarial system akin to the one prevailing in our country exists, the victim's views on sentencing are duly considered before awarding appropriate punishment. In some states in U.S.A. & Commonwealth countries, a Victim Impact Statement is taken into account before taking a decision on such issues as plea bargaining and grant of parole.⁶ In light of these developments in other jurisdictions, this part will examine the role of the victim at the stage of investigation and in trial, and make suggestions for change in the Indian law with respect to the same.

A. Role of the Victim in Investigation

At the stage of investigation, the statement of the victim is recorded and she is sent for medical examination, if necessary. Then the victim is called upon to tender evidence in the court on the scheduled date, which often gets adjourned. Of course, the court has the *suo moto* power to summon the victim as a witness, if the prosecution fails to discharge its duty.⁷ The prosecution agency has the overall charge of conducting a criminal proceeding. The victim or the informant who sets the criminal law into motion, is not a party to the proceeding, except in a case where the proceedings are initiated on the basis of a private complaint preferred to a Magistrate.⁸ The police investigate the case pursuant to information received by them or on directions of the Magistrate, and file the final report or charge sheet in court.⁹ The Magistrate/Judge, after looking into the record of investigation and the report of the police officer, takes cognizance and frames charges, paving the way for the trial. However, if on a consideration of the police report or charge sheet, the Magistrate is not inclined to take cognizance and proposes to drop the proceedings, an opportunity is to be given to the victim/informant to have her say. This procedure is being followed in view of the decision of the Apex Court in

⁵ V.S. MALIMATH ET AL., REPORT OF THE COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM 76 (2003) [hereinafter MALIMATH COMMITTEE REPORT].

⁶ See §§ 265A-265C, Cr.P.C., introduced by the Criminal Law (Amendment) Act, 2006. This amendment has, for the first time, introduced the concept of plea bargaining in India. Notice to the victim is required to be given in such proceedings.

⁷ See § 311, Cr.P.C.

⁸ §§ 190, 200 & 202, Cr.P.C.

⁹ § 173(2)(i), Cr.P.C.

*Bhagwant Singh v. Commissioner of Police.*¹⁰ This is the limited role that a victim is allowed to play at the stage of investigation.

Indian law should change to accommodate the recognized needs of victims of crime. Necessary steps have to be taken by the State to make the victim play her due role in ensuring prompt investigation and effective prosecution of the case. The victim should have a sense of satisfaction that she is not being neglected by the State. One way of removing the wounded feelings of the victim, and to sustain the victim's confidence in the criminal justice process, is to make her presence felt both at the stage of investigation and in the course of trial. This can be achieved, firstly, by providing the right to information relating to investigation and the conduct of trial, to the victim. The victim should have the satisfaction of knowing what is happening. The right to know about the details of the case should include the reasons for the delay in tracking down the culprits, the stage of inquiry or trial before the court, as well as the reasons for the delay in the progress of trial, and an account of the evidence proposed to be adduced by the prosecution. A duty should be cast on the police to apprise the victim of the developments in investigation, unless the information, by any objective standard, is likely to hamper investigation. The victim should have access to a copy of the police report or the charge sheet filed in court. No doubt, under the current Indian law, there are certain provisions which are meant to provide the victim with such information. If the police refuses to investigate a case, then the police officer is required to notify the informant of that fact together with the reason therefor.¹¹ The Cr.P.C. further requires that the contents of the report sent to the Magistrate after the investigation is completed, shall be furnished to the first informant.¹² However, the police very often breach this obligation. Apart from ensuring strict observance of the said requirement, a further provision ought to be made to cast a duty on the concerned police officer to furnish on request, a copy of such report to the victim, even if she is not the first informant. This should be coupled with the conferral of a right to the victim to contest the findings of the report before a superior police officer.

¹⁰ (1985) 2 S.C.C. 537. See also *U.P.S.C. v. Papaiah*, (1997) 7 S.C.C. 614, wherein it was held that the judge of the lower Court had erred in accepting a closure report from the Central Bureau of Investigation, when such a report was submitted without giving notice to the original complainant and behind its back.

¹¹ § 157(2), Cr.P.C. Such reason is required to be given in the proforma prescribed by the appropriate Government.

¹² § 173(2)(ii), Cr.P.C.

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It may be noticed that in the United Kingdom, the right to information is ensured to the victim by means of executive instructions issued by the Home Ministry. The 1996 Victim's Charter states:

[Y]ou can expect a crime you have reported to be investigated and to receive information about [significant developments in your case]... the police will tell you if someone has been caught, cautioned or charged...[and on request] you will be told about any decision to drop or alter the charges substantially. You will also be told the date of the trial and the final result.¹³

In India, with the recent enactment of the Right to Information Act, 2005, the victim's right to secure information from the police at the investigation and subsequent stages, may assume a new dimension, especially in view of the overriding effect given to the provisions of the Act. The entries in the case diary or other police records concerning the stage/progress of the case can be accessed by the victim or the informant, and in case of non-disclosure of information, such person can have recourse to the remedy provided under the Act.¹⁴ However, it is doubtful whether a police officer is under an obligation to furnish explanatory information, such as the reasons for delay, and the steps being taken to expedite the investigation/trial. To clear such doubts, it is advisable that the Governments issue specific instructions to furnish such information, even though there is no specific provision to that effect under the existing law. Secondly, it is quite likely that police authorities will be prone to invoke the exclusionary clause in section 8(h) of the Act, in a mechanical manner.¹⁵ In such an event, the victim will have to take resort to the remedies under the Act, which would cause her further hassles, apart from the delay. It is, therefore, desirable that in a criminal case which is at the stage of investigation, the victim/informant is given a right to approach a Magistrate or a designated Judicial Officer in the district. Such Judicial Officer can

¹³ VICTIM'S CHARTER 2 (1996), available at <http://www.cjsonline.gov.uk/downloads/application/pdf/Victims%20Charter%20-%20English.pdf>. This entitlement is backed by two Home Office Circulars, which require the police to inform the victim about the progress of the case. The 1995 version of the Court's Charter provides that court staff will explain why delays are necessary and will be available to explain other points of procedure. See generally Helen Fenwick, *Procedural rights of the Victims of Crime: Public or Private Ordering of the Criminal Justice Process*, 60 MOD. L. REV. 317 (1997).

¹⁴ § 20, Right to Information Act, 2005.

¹⁵ § 8(h), Right to Information Act, 2005, provides that such information as would impede the process of investigation or apprehension or prosecution of offenders need not be disclosed.

examine whether the police is justified in withholding the required information, or is in fact evading a proper response to the victim's query, and then issue appropriate directions. No doubt, the victim has a remedy to invoke the jurisdiction of the High Court under Article 226 of the Constitution. However, this remedy is discretionary and at times, would be a long drawn process. That apart, the High Court normally refrains from probing into disputed questions of fact, which might often come up in such cases.

B. Role of the Victim in Prosecution

The next important question is whether and to what extent the victim should be allowed to play a role in the proceedings set in motion by the criminal prosecution.

In India, the prosecution is carried on by the Public Prosecutor ("P.P.") who is supposed to be fair and objective in his approach. He is considered to be an officer of the court, with a duty to assist the court in arriving at its decision. The P.P. is not supposed to identify himself with the police and seek to get conviction by any means, fair or foul. At times, the court may permit an advocate authorized by the informant or the victim to assist the P.P., but such advocate has no independent right to present the case. His role is that of assisting the P.P. who is in sole charge of the prosecution.

The relevant provisions of the Cr.P.C. deserve reference. Section 225, Cr.P.C., enjoins that in every trial before a Court of Session, the prosecution shall be conducted by a P.P. Section 301 bears the heading "*Appearance by Public Prosecutors.*" Section 301(1) lays down that the P.P. or the Assistant Public Prosecutor ("A.P.P.") in charge of a case may appear and plead without any written authority. Then follows section 301(2), which seems to qualify the general rule relating to the appearance of P.P.s. It enjoins that where a private person instructs a lawyer to prosecute any person, the P.P. or the A.P.P. in-charge of the case, shall conduct the prosecution, and the lawyer so instructed can only act under the directions of the P.P. or the A.P.P., as the case may be. However, he can, with the permission of the Court, submit written arguments after the evidence is closed. That means that the counsel engaged by a private person such as the victim or the first informant can assist the Prosecutor with the permission of the Court and submit written arguments after the evidence is closed. The role of a private counsel in such an event, as pointed out by the Supreme Court in the case of *Shivkumar v. Hukum Chand*,¹⁶ is more or less that of a junior counsel who assists a senior. He cannot act independent of the P.P.

¹⁶ (1999) 7 S.C.C. 467.

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Next is section 302¹⁷ bearing the caption “*Permission to conduct prosecution*”, which is with reference to the inquiries and trials in a Magistrate’s court. Section 301(2) applies to the prosecutions conducted in all courts whereas section 302 is confined to trial in a Magistrate’s court. The distinction between sections 301(2) and 302, as highlighted by the Supreme Court in the two decisions of *Shivkumar* and *J.K. International v. State*,¹⁸ seems to suggest that a counsel engaged by a victim or a third party may be allowed to intervene, nay, play a primary role in the conduct of prosecution before a Magistrate’s court, whereas in the sessions court, he is only permitted to have a limited or subordinate role.¹⁹

These provisions, namely, sections 301 and 302, give some scope for the intervention of the victim or the person aggrieved by the offence, in the trial proceedings.²⁰ Apart from this, the victim also has the opportunity to address the court in case the Magistrate is not inclined to take cognizance after the police report is submitted.²¹ Further, the informant or the victim can also have her say when bail is liable to be cancelled.²² Lastly, the recently introduced provisions in

¹⁷ § 302 reads:

(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector, but no person, other than the Advocate General, or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission;

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

¹⁸ (2001) 3 S.C.C. 462.

¹⁹ It needs to be clarified that even under § 302 a private party or his counsel cannot be permitted to conduct the prosecution to the exclusion of the public prosecutor, who is already in charge of the case. The more reasonable interpretation would be that § 302 is meant to take care of a situation where no P.P. is available, or the P.P. on record is, in the opinion of the court, unfit to conduct the prosecution. If the P.P. is available, § 301(2) comes into play in respect of trials in any court, and the private counsel cannot act independent of P.P.

²⁰ In the words of the Supreme Court in *J.K. International*, an aggrieved private person “is not altogether wiped out from the scenario of the trial” even in a case where cognizance of the offence is taken on the basis of the charge-sheet submitted by the police. The Supreme Court ruled that in a proceeding for quashing the charge, the informant ought to be heard, if he so desires. *Supra* note 18.

²¹ *Supra* note 10.

²² The High Court or Court of Sessions can be approached for this purpose under § 439(2), Cr.P.C. § 439(2) has wide amplitude and does not restrict the scope of moving the court to the prosecution only.

Cr.P.C. relating to “plea bargaining” deserve notice.²³ Notice is required to be given to the victim to participate in the meeting to work out a mutually satisfactory disposition of the case, including the payment of agreed compensation. Thus, in “plea bargaining” matters, an effective right is conceded to the victim. These are the limited areas in which the victim is allowed to participate in criminal proceedings.²⁴ The primary responsibility of conducting the prosecution however rests with the P.P.

The exclusion of the victim from the prosecution scene is sought to be justified by the concept that, by and large, crimes are directed against the society as a whole. Crimes foment unrest in the society and trigger off repercussions on societal life. The State which takes upon itself the duty to protect the life, liberty and property of the people, and to enforce the rule of law, exercises its police power to check crimes and bring offenders to justice. The State apparatus and functions reflect the collective will and expectations of the people at large to provide safety and protection to the members of the society. Furthermore, the State which is the repository of the sovereign power of maintaining law and order, tranquility and safety of citizens, is duty bound to restrain individuals from taking the law into their own hands. The State, therefore, undertakes the duty of tracking down, prosecuting and punishing criminals through due process of law while incidentally redeeming the grievance of the victim. Another reason advanced is that the intervention of the victims in the prosecution process may vitiate the fairness of the trial, and open the door-way to retributive or vengeful traits of the victim, that might imperil a fair trial. This militates against the desideratum of any civilized system of criminal jurisprudence. These are weighty reasons for placing the conduct of prosecution in the hands of the prosecutor appointed by the State, particularly since he owes a duty to the court to be fair and to render assistance in an objective manner.

The rationale behind assigning this key role to the P.P., and not allowing a third party like the victim to be a co-equal partner in the prosecution of a case is

²³ §§ 265A to 265C, Cr.P.C., introduced by the Criminal Law (Amendment) Act, 2006.

²⁴ There are instances in which the Supreme Court has granted leave to the victim's relation or informant in the cases in which the State had not preferred appeal against acquittal or sentence. *See, e.g., P.S.R. Sambarthan v. Arunachalam*, (1980) 3 S.C.C. 141 and *Saibharati v. Jayalalitha*, (2004) 2 S.C.C. 9, where the Supreme Court even allowed a person who did not figure as a complainant/informant to file an appeal against acquittal of a public servant charged under the Prevention of Corruption Act, 1988. However, this trend rests on a different principle, *viz.*, the amplitude of the jurisdiction of the court under Article 136, and cannot be applied *proprio vigori* to participation in trial cases.

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better understood by referring to the observations of the Supreme Court in *Shiv Kumar*:

From the scheme of the Code the legislative intention is manifestly clear that prosecution in a Sessions Court cannot be conducted by anyone other than the Public Prosecutor. The legislature reminds the State that the policy must strictly conform to fairness in the trial of an accused in a Sessions Court. A Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the Public Prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during trial the Public Prosecutor should not scuttle or conceal it.²⁵

The Supreme Court quoted with approval the following passage from a Division Bench judgment of A.P. High Court:

Unless, therefore, the control of the Public Prosecutor is there, the prosecution by a pleader for a private party may degenerate into a legalized means for wreaking private vengeance. The prosecution instead of being a fair and dispassionate presentation of the facts of the case for the determination of the court, would be transformed into a battle between two parties in which one was trying to get better of the other, by whatever means available. It is true that in every case there is the overall control of the court in regard to the conduct of the case by either party. But it cannot extend to the point of ensuring that in all the matters one party is fair to the other.²⁶

Whether the idealistic role of the P.P., as enunciated by the Supreme Court, is limited to theory or is perceived in actual practice as well, is a different matter. That apart, the important issue that arises is whether there is justification to marginalize or virtually ignore the victim. A progressive nation committed to the welfare of its people should not be content with investigating the offence and prosecuting the offender. It is equally the duty of the State to take care of the problems and interests of the victims and to bring them closer to the criminal justice process so as to assuage the feelings of injustice and insecurity haunting them. After all, it is they who bear the brunt of the crime.

²⁵ *Shiv Kumar v. Hukam Chand*, (1999) 7 S.C.C. 467.

²⁶ *Medichetty Ramakistaiah v. State of Andhra Pradesh*, A.I.R. 1959 A.P. 659.

While there is considerable merit in the contention that the State should be primarily responsible for the prosecution of offenders, we have to take note of the stark realities apparent in our country. That the State conducts the prosecution efficiently and effectively through the media of trained and experienced Prosecutors, with the police officers assisting them, does not convey the true picture. We know how efficient and independent prosecutors really are. The low standards of recruitment of A.P.P.s, inadequate training imparted to them, and advocates with little or no experience in criminal law practice being appointed as P.P.s, on considerations other than merit, are well known. The Directorate of Prosecution, which is supposed to oversee the working of the P.P.s and A.P.P.s, is handicapped by the lack of adequate powers, resources and infrastructure. Once the charge sheet is filed in court, we find very little coordination between the investigating officer and the P.P. There are innumerable instances in which the investigating officer does not turn up for examination on the scheduled dates. No prompt steps are taken to produce the witnesses on time. Witness protection remains a distant ideal. Police officers seem to think that their duty ends with arresting the suspects and filing the charge sheet, and that they are not concerned with the ultimate result. Inept handling of prosecution has become a rule, instead of being an exception. In this background, the victim's participation, at least to a limited extent, would help the prosecution in fulfilling the duty entrusted to it, and would provide much needed assistance to the court in its voyage of discovery of truth within the framework of criminal jurisprudence. Secondly, the victim will have the satisfaction of guiding the prosecution on the right lines, and of the court hearing her view point. The right approach would be to balance these diverse considerations and to provide a limited role to the victim. While the victim or her counsel should be allowed to appear and assist the prosecution, she should not be placed on an equal pedestal with the P.P. or be given a co-equal role as that of the P.P. At the stage of framing of charges, it is but proper that the victim is heard. The victim can always bring to the notice of the court that a relevant witness has not been examined by the police, or some material piece of evidence, has been left out. It is then for the court to give appropriate directions to the prosecution. The victim's counsel ought to be permitted to put supplemental questions to the prosecution witnesses and to cross-examine the witnesses, if any, produced by the accused, without of course, repeating the questions put by the prosecutor. At the conclusion of the trial, supplementary arguments should be allowed to be advanced by the victim's counsel, both on the merits of the charge, as well as on the sentence. These measures, apart from taking care of the interests of the victims, provide considerable assistance to the court in handing down its verdict, without in any way stifling the essential principles of criminal law, including the procedural safeguards available to the accused.

A question may arise as to whether, in the face of the powers vested with the court to summon witnesses *suo motu*, and to put questions on its own, the

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victim's intervention is going to make any real difference. Under section 311, Cr.P.C., the court has the power to summon at any stage, any person as a witness, or examine any person who is in attendance, though she has not been summoned, or recall or re-examine any person already examined. The court is enjoined with a duty to do so if the evidence of such person appears to be essential to the just decision of a case.²⁷ It has been held that this power cannot be availed of in order to fill the gaps or lacunae in the prosecution evidence.²⁸ The lacuna in the prosecution according to the Supreme Court, "is not to be equated with the fallout of an oversight committed by a Public Prosecutor either in producing relevant material or in eliciting relevant answers from witnesses."²⁹

Another provision which is, "in a way complimentary"³⁰ to section 311, Cr.P.C., is section 165 of the Indian Evidence Act, 1872. It invests the court with the power to ask any question, to any witness, at any time, about any fact, and to order the production of any document or thing related to any relevant fact. This power can be exercised by the court "in order to discover or to obtain proof of relevant facts." Despite all these provisions, judges of the trial court seldom exercise these powers, either because of the pressure of work, or indifference of the judge who expects the respective parties to prove or defend the case, or because of the notion that he may be attributed with bias. In *Ramachandra v. State of Harayana*,³¹ the Supreme Court deplored the tendency of the trial judges in not exercising proper control over the criminal trial. The recent case of *Best Bakery*³² is also illustrative of the mindset and passive role of a judge trying criminal cases. In the wake of these disturbing features, viz., inefficient prosecution machinery and indifferent presiding judges, the role of the victim assumes importance. The victim can render valuable assistance to the court so as to ensure that material evidence does not escape from the scrutiny of the court, and the witnesses are examined on right lines. If the victim is allowed to have her say on certain crucial aspects, it would facilitate the court to effectively exercise its

²⁷ For an analysis of the section, see *Zahira Sheikh v. State of Gujarat*, (2004) 4 S.C.C. 158.

²⁸ *Jamatraj Kewalji v. State of Maharashtra*, A.I.R. 1968 S.C. 178; *Mohanlal Shamji v. Union of India*, (1991) 1 S.C.C. Supp. 271; *Rambhau v. State of Maharashtra*, (2001) 4 S.C.C. 759.

²⁹ *Rajendra Prasad v. Narcotic Cell*, (1999) 6 S.C.C. 110. The expression "lacuna in the prosecution" has been further explained as "inherent weakness or latent wedge in the matrix of the prosecution case."

³⁰ *Zahira*, *supra* note 27, at 189.

³¹ A.I.R. 1981 S.C. 1036.

³² *Zahira*, *supra* note 27, at 197, where the Supreme Court remarked on the passive role played by the trial judge in that case.

powers under the provisions noted earlier. The handicaps which the court otherwise faces could be overcome by the timely intervention of the victim. *However, a balanced approach is called for.* The victim should not be allowed to become a parallel prosecutor. Her right of participation should include the right to place her submissions before the court so that it can determine whether the exercise of powers under any of the enabling provisions is called for. However, in appreciating the submission of victims in cases involving groups and factions, the court should be extra-cautious because there is generally a tendency on the part of the victim to exaggerate.

At the pre-trial stage, the victim must be heard before framing charges. In the course of the trial, the victim's counsel should be given the opportunity to put supplemental questions to the witnesses. In the alternative, the court itself can put such questions after considering the submission of the victim. On behalf of the victim, arguments – written or oral – can be received. Of course, the victim should not be allowed to question interim orders that may be passed on the application of the victim or otherwise, as it has the inevitable effect of prolonging the trial. By allowing a limited role to victims in this manner, and by adopting a cautious approach as mentioned above, the criminal justice system will give victims the much needed satisfaction of knowing that it cares for them. At the same time the courts will be better assisted in their quest for truth and in arriving at a just decision, without pandering to the retributive spirit or vengeful attitude of the victims. It will not in any way diminish the presumption of innocence in favour of the accused, nor jeopardize the due rights of the accused.

C. Recommendations of Commissions

A dissertation on the victims' role and rights will not be complete without referring to the reports of various Commissions. The 42nd Report of the Law Commission of India adverted to the topic of providing reparation to the victim of an offence. It pointed out that "in recent times, the compensation aspect is regaining its importance, not, of course, as the principal aim of criminal proceedings, but as a recognized ancillary thereto."³³ After referring to the legal systems in France and Germany, which enable the victim to make a claim for compensation in the course of the criminal proceedings, the Law Commission observed as follows:

We do not think that any such elaborate procedure as is provided in France or Germany would be suitable for our criminal

³³ LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE, 1860 ¶ 3.12 (1971).

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Courts. It would be unwise to create a legal right in the person or persons injured by the offence to join in the criminal proceedings from the beginning as a regular third party. This would only lead to a mixing up of civil and criminal procedures which in our legal system are kept separate, a confusion of issues and a prolongation of a trial.³⁴

The 154th Law Commission Report dealt with the topic of Victimology, but confined itself to a discussion on victim compensation. It did not address the issue of participation of victims in investigation and prosecution.

The topic of “*Justice to Victims*” engaged the attention of the Committee on Reforms of Criminal Justice System, headed by Justice V.S. Malimath. The following are the recommendations made by the Commission in regard to victims’ participation in the criminal proceedings:

- i. The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with 7 years imprisonment or more.
- ii. In select cases notified by the appropriate government, with the permission of the court, an approved voluntary organization shall also have the right to be impleaded in court proceedings.
- iii. The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer.
- iv. The victim’s right to participate in criminal trial shall, *inter alia*, include:
 - a. To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence.
 - b. To ask questions to the witnesses or to suggest to the court questions which may be put to witnesses.
 - c. To know the status of investigation and to move the court to issue directions for further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation.
 - d. To be heard in respect of the grant or cancellation of bail.
 - e. To be heard whenever Prosecution seeks to withdraw and to offer to continue the prosecution.

³⁴ LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE, 1860 ¶ 3.16 (1971).

- f. To advance arguments after the Prosecutor has submitted arguments.
- g. To participate in negotiations leading to settlement of compoundable offences.
- v. The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court.³⁵

By and large, these recommendations deserve acceptance, subject to the qualifications discussed earlier as to the extent of participation by victims. However, the implementation of the Recommendation No. (ii) above, may be fraught with practical difficulties. Though there are some dedicated and service-minded N.G.O.s in our country, many such organizations have dubious track records. Their involvement may give rise to complications, such as allegations of blackmail. It is, therefore, advisable to refrain from such a move, for the present.

III. DELIVERING EFFECTIVE JUSTICE TO VICTIMS

A. Victim Compensation

Thus far, we have discussed the need for a distinct role and participation of victims in the criminal justice process. The more important aspect of rendering justice to the victims, however, lies in providing monetary relief for the loss and suffering undergone by the victim. This is a topic which needs exhaustive treatment and I do not propose to add to the length of this article by a detailed discussion thereof. At the same time, this subject should not be left altogether out of consideration because when we talk of the victim's role in the criminal justice system, the victim's needs and interests are allied aspects which call for a holistic approach. Hence, I will briefly discuss this point.

Under the existing provisions of the Cr.P.C., there is a limited scope to grant compensation to the victims. Section 357(1) provides that in a case where a sentence of fine is imposed (with or without imprisonment), the court may order the whole or any part of fine to be applied for the payment of compensation

³⁵ MALIMATH COMMITTEE REPORT, *supra* note 5, at 270-271.

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to any person, for the loss or injury caused to him by the offence. This is subject to the rider that in the opinion of the court, the compensation is recoverable by such person in the civil court. Section 357(3) enables the court to order the accused person to pay, by way of compensation, a specified amount to the person who has suffered loss or injury by reason of the offending act. Such order can be passed even if the fine does not form part of the sentence imposed.

The Supreme Court in *Harisingh v. Sukbir Singh*,³⁶ lamented that courts have seldom invoked the provisions contained in section 357 and recommended the liberal exercise of this power by courts trying criminal cases, so as to meet the ends of justice. The Court however cautioned that such compensation must be fair and reasonable. In some other cases, the Supreme Court has invoked the provisions of section 357(3), Cr.P.C., and directed payment of substantial compensation by the convict to the victim.³⁷

In a recent case, the Supreme Court, while acquitting the accused on a charge of rape on the ground of consensual sex, nevertheless adopted a novel course of exploring the possibility of payment of reasonable compensation under Article 142 of the Constitution, to the victim and her illegitimate child, on finding that the accused committed a breach of promise to marry. The amount which the accused paid as compensation was sent to the Chief Judicial Magistrate for disbursement to the victim and the child.³⁸ In the exercise of its jurisdiction under Articles 32 and 142, the Supreme Court has also been directing payment of compensation by the State to the victims of custodial violence including rape and *mala fide* or illegal detentions. The compensation awarded in such cases stems from the principle of "Public Law Torts" or the breach of public law duty.³⁹ The court has also been directing rehabilitation of children and other depressed sections subjected to bonded labour and other forms of exploitation.⁴⁰

While the Supreme Court has been active in promoting the interests of the victims of crimes, this is more by exercise of plenary or discretionary power vested with the highest Constitutional Courts, rather than through the vindication

³⁶ (1988) 4 S.C.C. 551.

³⁷ See *Harikrishna v. Sukhbir Singh*, (1988) 4 S.C.C. 551; *Madhukar v. State of Maharashtra*, A.I.R. 1978 S.C. 1525; *Venkatesh v. State of T.N.*, A.I.R. 1993 S.C. 1230.

³⁸ *Deelip Singh v. State of Bihar*, (2005) 1 S.C.C. 88.

³⁹ See generally *C. Whitman, Emphasizing the Constitutional in Constitutional Torts*, (1997) 72 CHI-KENT L. REV. REVIEW 661.

⁴⁰ See *Nilbati Behra v. State of Orissa*, (1993) 2 S.C.C. 746; *Rudul Sah v. State of Bihar*, (1983) 4 S.C.C. 141.

of vested rights of the victims. It is regrettable that our country lags behind others in recognizing and attending to victims' rights and needs. The need for change in Indian law in this respect has been recognized time and again, by the Law Commission.

The 42nd Report of the Law Commission, while devoting a paragraph on the State's Responsibility for Compensation to Victims of Crime, observed thus:

With the emergence of the social welfare State, these traditional notions of State immunity are undergoing rapid change. The idea that the victim of crime deserves as much attention from the State as the criminal and that, if the State fails to protect its citizens against violence, it can legitimately be called upon to compensate the victim is gaining ground in western countries.⁴¹

The Law Commission referred to the English legal system where a non-statutory scheme of *ex gratia* payments by the State has been introduced, and the Criminal Injuries Compensation Board has been constituted. It also referred to similar programmes in vogue in New Zealand, North Ireland and in some of the states in U.S.A. However, no specific recommendation was made on the point of the State compensating the victim.⁴² At the same time, the Law Commission recommended appropriate statutory amendments giving power to the court to direct, while sentencing the accused, that the whole or any part of the fine realized from her shall be paid by way of compensation to the victim, if the court is of the opinion that such compensation is recoverable by means of a civil suit.⁴³ This recommendation led to the introduction of section 357(3) in the Cr.P.C.

In the 152nd Report of the Law Commission, a limited reference was made to the issue of victim compensation. While discussing custodial crimes, the Law Commission recommended the introduction of a provision in the Cr.P.C., empowering the court to order payment of compensation by the Government as well as any public servant convicted of the offence of causing death or bodily injury to a person in custody. A minimum of Rs. 25,000/- in the case of bodily injury, and Rs. 100,000/- in the case of death, was fixed, and a provision for interim relief was also recommended.⁴⁴ However, these recommendations are yet to be translated into action.

⁴¹ LAW COMMISSION OF INDIA, 42ND REPORT ON THE INDIAN PENAL CODE, 1860 ¶ 3.20 (1971).

⁴² *Id.*

⁴³ *Id.* at ¶ 3.19.

⁴⁴ LAW COMMISSION OF INDIA, 152ND REPORT ON CUSTODIAL CRIMES ¶ 12.7 (1994).

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The Law Commission again dealt with the State's duty to compensate victims, in its 154th Report. It proposed the introduction of a new provision- section 357-A⁴⁵- in the Cr.P.C. to provide for the preparation of schemes by the Central and State Governments to establish funds to compensate victims; prescribe procedures for the determination and disbursement of the compensation, both in cases which have gone for trial, as well as cases in which the offender is not traced or identified; and provide free medical facilities to the victim.⁴⁶

This issue also received considerable attention from the Malimath Committee, which observed that victim compensation is a "State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted."⁴⁷ The Malimath Committee Report recommended the framing of a separate legislation which would *inter alia*, provide for the scale of compensation in different offences, and the conditions under which it may be awarded or

⁴⁵ This proposed section reads:

(1) Every State Government in co-ordination with the Central Government shall prepare a Scheme for providing funds for the purpose of compensating the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Under the Scheme the District Legal Services Authority at the district level and the State Legal Services Authority at the State level shall decide the quantum of compensation to be awarded whenever a recommendation is made by the trial court to that effect.

(3) If the trial court, at the conclusion of the trial, is satisfied that the compensation awarded under Section 357(3) is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may recommend to the District Legal Services Authority if the compensation in its view is less than Rs.30,000 or to the State Legal Service Authority if the compensation is more than Rs.30,000.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place it is open to the victim or his dependents to make an application under sub-section (2) to the District Legal Services Authority at the district level and the State Legal Services Authority at the State level for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4) as the case may be, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall after due enquiry award adequate compensation by completing the enquiry within two months.

⁴⁶ LAW COMMISSION OF INDIA, 154TH REPORT ON THE CODE OF CRIMINAL PROCEDURE, 1973 ¶ 15.17 (1996).

⁴⁷ MALIMATH COMMITTEE REPORT, *supra* note 5, at 271.

withdrawn. The Committee recommended for consideration, the Draft Bill submitted by the Indian Society of Victimology in the year 1995. It also called for the creation of a Victim Compensation Fund to be administered by the Legal Services Authorities. The Committee also recommended that “legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.”⁴⁸

The Apex Court has also been cognizant of the deficiencies in the current law relating to victim compensation. It has called for a State sponsored compensation scheme, and recommended the constitution of a Criminal Injuries Compensation Board such as the one existing in England, in the specific context of compensation to rape victims.⁴⁹

Concerns about justice to victims of crime have also been voiced in the international arena. The Resolution adopted by the General Assembly of the United Nations in 1985, incorporating the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (“Declaration”),⁵⁰ is a big milestone in the evolution of the concept of victim’s compensation. This Declaration lays down the foundation for the State’s obligation to compensate the victim, and is considered to be the *Magna Carta* on the rights of victims. The Declaration provides:

[W]hen compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

- (a) Victims who have sustained bodily injury or impairment of physical or mental health as a result of serious crimes;
- (b) The family in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.⁵¹

⁴⁸ *Id.* at 279.

⁴⁹ In *Delhi Domestic Working Women’s Forum v. Union of India*, (1995) 1 S.C.C. 14, the Court, for the first time, underscored this need. The National Commission for Women was required to submit a Draft Bill on the same, to the Government of India. A Draft Bill has since been submitted but has not been acted upon.

⁵⁰ G.A. Res. 40/34 (1985), available at http://www.unhchr.ch/html/menu3/b/h_comp49.htm.

⁵¹ DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER ¶ 12 (G.A. 1985).

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The Declaration recommended the establishment of National Funds for Compensation to Victims.⁵² It further provided that victims should receive necessary material, medical, psychological and social assistance through governmental, voluntary, community based and indigenous means.⁵³ This Declaration underscored the need to strengthen the judicial and administrative mechanisms to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible.⁵⁴

In Europe, the Convention on the Compensation of Victims of Violent Crimes, 1983,⁵⁵ is another significant move in the field of victimology. It is almost on the same lines as the United Nations Declaration. Drawing inspiration from this Convention, many States in Europe have taken legislative measures, such as the enactment of the Criminal Injuries Compensation Act, 1995 in the United Kingdom. In these countries, a victim-oriented approach is emerging with an accent on promoting victim satisfaction. Apart from providing monetary compensation, victims' support strategies are being addressed as an integral part of the policies modulating the criminal justice administration, especially in relation to sexual assault cases. There is raging debate in these countries as to whether a needs-based or a rights-based approach is called for in relation to the victim. Restorative justice to the victims is being explored in these countries.⁵⁶

It is high time that in India the Government initiates legislative and executive measures to render justice to victims and to promote victim satisfaction, without being bogged down in jurisprudential quagmires of whether the victim has a right, and the State is under a corresponding obligation, to grant monetary compensation and rehabilitate the victim. Compensation should be made available to the victims of serious crimes, whether or not the offender is traced or convicted. Even where the offender is apprehended, tried and convicted, the order passed by the criminal court directing payment of compensation by the offender may not serve much purpose in certain cases, either because of the indigent status of the convict, or the difficulties involved in the recovery of compensation. Therefore, rendering of monetary assistance to the victim or her dependants in crimes of a serious nature, should be the first and foremost step to be undertaken by the State. The State need

⁵² *Id.* at ¶ 13.

⁵³ *Id.* at ¶ 14.

⁵⁴ *Id.* at ¶ 5.

⁵⁵ European Convention on the Compensation of Victims of Violent Crimes, (E.T.S. No. 116), available at <http://www.conventions.coe.int/Treaty/EN/Treaties/Html/116>.

⁵⁶ See, e.g., Andrea Schneider, *Introduction to the Restorative Justice Symposium*, 89 MARQ. L. REV. 247.

not search for jurisprudential justification for affording such monetary help and other assistance. Legal niceties, such as whether the State was in a position to prevent the crime, whether the occurrence of the crime was attributable to culpable negligence or inaction on the part of the police, and whether the State can claim legal immunity, are all mundane and irrelevant points which ought not to be debated at all.⁵⁷ We have sufficient indication in our Constitution that the State going to the rescue of the victims of crime, irrespective of its legal obligation, is a part of the ideal of social justice which the Constitution undoubtedly spells out as a goal. A provision such as Article 38 bears ample testimony to the fact that victim assistance and the promotion of welfare ideals are part of that cherished goal. The only limitation which the State has to bear in mind is the resource crunch. Here a balance has to be struck. While the State need not go the entire distance, and pay the full compensation that may be quantified in civil action, it has to bear this burden at least within reasonable limits, by prescribing a scale of minimum monetary relief to be provided to the victims of various offences. In cases of conviction, the provision for payment of compensation by the convict as well as the State can be worked out harmoniously. The scale of monetary relief to be borne by the State and the proportion of such relief to be granted initially, the offences in relation to which it would be appropriate to extend such assistance, and the conditions subject to which the monetary relief should be made available, are all matters of detail, and a debate on these and other allied aspects are better relegated to a separate essay, as already indicated.

B. Victim Support Services

The above discussion becomes irrelevant if there are no means available for the victim to enforce her rights. Quite often, the victim might not even be aware of her rights, much less act upon them. This calls for the provision of legal aid to victims of crime. It hardly needs emphasis that an indigent victim should be provided free legal aid and the services of a fairly experienced lawyer should be made available. In *Delhi Domestic Working Women's Forum v. Union of India*,⁵⁸ the Supreme Court stressed the need to provide legal assistance to the victims of rape, right from the level of the police station. The Court observed that the advocate provided to the victim of rape should be one who is well acquainted

⁵⁷ Here an analogy can be drawn with the "no fault" liability principle enshrined in statutes such as the Public Liability Insurance Act, 1991 and the Motor Vehicles Act, 1988. Along the same lines, the State can compensate victims for the crimes committed against them, even though there is no culpability on the part of the State in the commission of the crime.

⁵⁸ (1995) 1 S.C.C. 14.

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with the criminal justice system. It also observed that it is important to provide continuity of assistance by ensuring that the same advocate who looked after the interests of the victim at the police station represents her till the end of the case.

However, it is a matter of serious doubt whether it is practicable to implement this idea. The more acceptable and practicable course would be to provide immediate assistance of recognized N.G.O.s at the police station. Such organizations can help the victim in seeking the advice of a competent lawyer nominated by the District/State Legal Services Authority.

Along with making provisions for legal aid and monetary assistance, equal priority should be given to rendering proper and prompt medical aid to the victims of violent crimes, since monetary compensation may not be an adequate remedy in certain circumstances. In the cases of offences involving women and children, such as rape, kidnapping, and domestic violence, the need to organize counseling by experts, and providing a network of psychiatric services, is of utmost importance. Rehabilitation of poor victims who have lost the parental care, and the sexually victimized women and children, calls for urgent attention, treating it as part of the social welfare ideal of the State. It is in this area that the voluntary organizations can usefully supplement the role of Governmental agencies. Such voluntary organizations play a vital role in counseling and rehabilitating the victims in the U.K., U.S.A., and other advanced countries. Victim support services have made a big impact in these countries.

The Government, on its part, should take the initiative to augment facilities for free expert medical assistance, counseling and psychiatric treatment, in every district, and encourage the role of N.G.O.s, while coordinating their efforts in this direction. Instead of launching agitations for stiffer penalties, the N.G.O.s would do well to concentrate on extending their support base, and lend a helping hand and psychological support to those victims whose needs will not be met by mere monetary assistance. In short, a package of measures aimed at providing monetary compensation as well as reparation in other ways should be devised by way of legislation and executive intervention.

Another area on which the Government should bestow its attention, is the treatment meted out to victims at police stations and hospitals. Close observers of the criminal justice system at work, often get the feeling that the victim is virtually treated as chattel. Elaborate and effective guidelines, coupled with intensive training in this sensitive area, is the need of the hour, if we go by experience and ground realities.

Witness protection, including the protection of the victim, is another pressing concern. Many a victim, or for that matter, a prosecution witness,

considers the journey to the court and back, as an arduous and even a traumatic experience. No facilities, such as waiting halls, are provided for the victims and the prosecution witnesses, even though they have to wait in the court for a considerable time. Often they are seated with the accused and his associates. Even elementary facilities, such as chairs and toilets are not available to them. The long period of wait in the courts adds to the misery of victims and witnesses. The long duration of trials is a contributing cause to the malady of witnesses turning hostile, and the victim getting disillusioned with the system. These are the areas in which the judiciary as well as the executive should immediately take positive steps. Provision of a congenial atmosphere for the victims who come to the court for observing the proceedings, or for the purpose of tendering evidence, is an imperative need. More importantly, witness protection measures, which are virtually non-existent, should be organized effectively and in earnest.

IV. CONCLUSION

Any civilized system of criminal justice should aim at ensuring safety and instilling a sense of security in the victims and their families. This not only requires that the victim be allowed to participate in a meaningful way in the criminal proceedings, but also that she be provided aid and assistance, both monetary and psychological. Such an approach will incidentally contribute to the reduction in crime rate, as it will improve conviction rates and ensure that the criminal justice system acts as an effective deterrent to potential criminals. Expending money for strengthening the criminal justice system, especially in the area of meting out justice to the victims, therefore, ought not to be regarded as an unproductive expenditure. Drawing a road map to give a better deal to the victims is the need of the day which can brook no delay.