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VICTIM PARTICIPATION AND RESTORATIVE JUSTICE OPPORTUNITIES UNDER REFORMED CRIMINAL PROCEDURE

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ABSTRACT

Justice cannot be truly achieved if the voices of victims remain unheard within the criminal process. Historically, criminal justice systems, including that of India, were primarily offender-centric, where the State assumed control over prosecution and victims were reduced to the role of mere witnesses. Although early legal frameworks such as the Code of Criminal Procedure, 1973 provided limited recognition through provisions like compensation, the evolution of victimology and global human rights movements has significantly influenced the shift toward a more victim-inclusive approach. In the present context, reforms such as the introduction of victim compensation schemes, the right to appeal, and participatory rights in trial proceedings reflect a growing acknowledgment of victims' interests. However, despite these developments, challenges such as lack of awareness, procedural limitations, and inadequate institutional support continue to restrict effective victim participation. This paper examines the changing role of victims within criminal procedure and explores the potential of restorative justice as a complementary framework that emphasizes healing, accountability, and dialogue. It hypothesizes that strengthening victim participation alongside institutionalizing restorative practices can lead to a more balanced and humane justice system. The study aims to analyze the evolution of victim rights, identify implementation challenges, and suggest reforms to enhance meaningful victim engagement in the criminal justice process

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1. Introduction

Since the dawn of mankind, crime has existed in every age and is an inevitability of human society. Every crime results in the creation of a "victim," whether directly or indirectly. As a result of this interdependence, there cannot be a victimless crime. Crime primarily consists of two elements: criminal (crime perpetrator) and victim (sufferer). In human communities, the victim's position, significance, and visibility have taken many different forms. The victim of crime once held a prominent place in the administration of the criminal justice system. But over time, victims have changed to become nothing more than witnesses in the criminal proceedings. Victims were an entirely ignored species in terms of research up until the idea of an evolutionary science that would later become known as "Victimology," a branch of criminology, was developed. With the emergence of this new discipline known as victimology, the victim who was once disregarded as an element of the crime came back into the spotlight.

In ancient times. crime began to be viewed as an offence against the state, rather than victim only, As the community's guardian, the State began to defend the aggrieved person in the criminal case against the offender. Then, some principles in favour of the accused person have been emerged in order to ensure that they are not reduced to the status of a lower human being as a result of criminal accusations. The principles of natural justice, fairness and equity have conferred upon the accused certain rights such as right to be presumed innocent, until his guilt is proven, reasonable right to be heard, right to representation, right to bail, among other important inherent rights.The expanding rights in favour of the accused caused a lag in the area of crime victims' rights. Without a doubt, the victims needed a comparable rights-based framework. However, there is controversy over the extent to which these rights should be granted, their form, and the timing of their recognition. The judicial system is severely biased in favour of the person being charged and his rights, which leads to an imbalance when it comes to guaranteeing that victims of crime who are seeking justice are granted the proper rights during the process.

While protecting the accused's rights is crucial for maintaining the values of justice, equity, and dignity, it must be done without depriving the victims of their legal rights.

2.Restorative justice

Restorative justice is not a particular blueprint or map, but a compass guided by key principles and values offering a direction. The principles of restoration of justice are as follows:

2.1 Restoration

Restoration focuses on repairing the harm caused by wrongdoing by addressing victims' needs, holding offenders accountable, and restoring relationships where possible, thereby promoting healing, reconciliation, and reintegration within the community.

2.2 Voluntarism

Voluntarism ensures that all parties participate freely in restorative processes without coercion, based on informed consent, allowing victims and offenders to engage genuinely, which enhances trust, openness, and meaningful outcomes.

2.3 Neutrality

Neutrality requires facilitators to remain impartial, ensuring balanced participation and fairness, without favouring any party, thereby creating an environment where all voices are equally valued and respected throughout the process.

2.4 Safety

Safety emphasizes creating a secure environment physically and emotionally where participants can express their experiences and feelings without fear, ensuring protection from intimidation, harm, or re-traumatization during the restorative process.

Subsequently, the offender may agree to undertake specific actions aimed at repairing the harm, such as compensating for damages, issuing a formal apology, or performing community service. This

process not only addresses the victim's needs but also encourages offender accountability and reintegration into society. Thus, restoration operates as a constructive approach that prioritizes healing, reparation, and the rebuilding of relationships over purely punitive measures.

2.5 Accessibility

Accessibility ensures restorative processes are inclusive, non-discriminatory, and available to all individuals regardless of background, enabling equal opportunity to participate, understand proceedings, and benefit from justice mechanisms.

2.6 Respect

Respect requires recognizing and upholding the dignity, rights, and perspectives of all participants, fostering courteous dialogue, empathy, and understanding, even in conflict situations, which is essential for constructive and restorative outcomes.

The principle of restoration in restorative justice focuses on repairing the harm caused to victims and the community rather than merely punishing the offender. For instance, in cases of minor property damage, such as vandalism, restorative processes may be employed. In such a situation, the offender is given an opportunity to directly engage with the victim in a structured and facilitated setting. During this interaction, the offender acknowledges responsibility and understands the impact of the harm caused, while the victim is provided a platform to express the emotional and material consequences of the act.

3.Contrast with retributive and adversarial systems

To better understand the significance of restorative justice, it is essential to contrast it with traditional retributive and adversarial models of criminal justice. Conventional systems primarily emphasize punishment, deterrence, and the determination of guilt through formal legal procedures. In contrast, restorative justice adopts a more holistic approach by focusing on repairing harm, involving victims, and encouraging offender accountability through dialogue and reconciliation. This distinction highlights a fundamental shift in the philosophy and objectives of justice systems.

a. Focus on Punishment vs. Repair

Retributive and adversarial systems primarily focus on determining guilt and imposing punishment on the offender, whereas restorative justice emphasizes repairing harm, addressing victims' needs, and promoting reconciliation between the parties involved.

b. Role of the Victim

In adversarial systems, victims often play a limited role as witnesses for the prosecution, with minimal participation in decision-making. In contrast, restorative justice actively involves victims, giving them a voice in the process and outcomes.

c. Nature of Proceedings

Adversarial systems are formal, court-driven, and characterized by opposing parties seeking to prove or disprove guilt. Restorative justice, however, is collaborative and dialogue-based, encouraging mutual understanding, accountability, and consensual resolution outside traditional courtroom settings.

4.Evolution of Victim Participation in Criminal Procedure

The Indian legal framework has seen a gradual but important evolution in terms of recognizing and protecting the rights of victims. Initially, there were limited legal provisions addressing the needs of victims. However, increasing public awareness, judicial intervention, and global influence prompted lawmakers to introduce reforms to make the criminal justice system more victim friendly. These legislative efforts, although scattered over time, reflect a growing commitment to address the harm suffered by victims, not just punish the offenders.

One of the earliest and most significant legal reforms was the introduction of Section 357 of the Code of Criminal Procedure (CrPC), 1973, which allowed courts to award compensation to victims out of fines imposed on the accused. While this provision was a positive step, it had limitations it was dependent on the conviction of the accused and the availability of funds from fines. Moreover, it was

rarely used in practice, as victims were not always aware of their rights and courts seldom emphasized this aspect during sentencing.

Building upon these limitations, the need for a more structured and victim-centric approach led to further legislative and judicial developments in the Indian criminal justice system. A significant advancement was made through the introduction of Section 357A to the Code of Criminal Procedure by way of the 2008 amendment, which mandated the establishment of Victim Compensation Schemes by State Governments. Unlike the earlier provision, this mechanism enabled compensation even in cases where the offender could not be identified or convicted, thereby shifting the focus toward the victim's rehabilitation rather than solely linking relief to the outcome of the trial. Additionally, judicial pronouncements have played a crucial role in reinforcing victims' rights by emphasizing their right to participate in proceedings, be heard at various stages, and seek justice beyond mere conviction. These developments collectively indicate a transition from a passive recognition of victims to a more proactive framework aimed at ensuring their dignity, participation, and access to justice within criminal procedure.

5. Global shift toward victim rights movements

UNODC highlighted the continued relevance of the Victims Declaration in today's evolving landscape, where victims face emerging risks linked to cybercrime, online harassment, and transnational organized crime and emphasized that addressing these crimes requires effective international cooperation and mechanisms capable of operating across borders. By showcasing global efforts aimed at strengthening victim-centred approaches within criminal justice systems, UNODC reaffirmed its commitment to supporting Member States in translating the Declaration's principles into concrete practice.

Addressing students and participants, Bryan Ramos, UNODC Access to Justice Consultant, stressed: "The future of victim-centred justice depends on the participation of young people—not as observers, but as active shapers of the systems that will protect generations to come." He also encouraged a renewed commitment to the Declaration's vision, reminding the audience that: "Forty years after the Declaration, our task is clear: to turn its principles into daily practice, so that no victim is left unheard, unprotected, or invisible."

The upcoming 2026 UN Crime Congress will serve as an essential platform for policymakers, practitioners, and civil society to engage on emerging challenges and opportunities in crime prevention and criminal justice. Building on recommendations from the Regional Preparatory Meetings, where discussions on victims' rights highlighted key priorities, such as strengthening victim participation in criminal proceedings, addressing the needs of vulnerable and marginalized groups, and leveraging new technologies and data-driven approaches to enhance support for victims, the Congress presents a timely opportunity to advance these priorities and translate commitments into meaningful progress.

In addition, the recently adopted United Nations Convention against Cybercrime marks a significant milestone in international efforts to address the evolving landscape of digital crime. The Convention provides a framework for cooperation among States, promoting the harmonization of laws, strengthening investigative and prosecutorial capacities, and enhancing cross-border collaboration. By addressing emerging cyber threats, protecting victims of online crime, and supporting the responsible use of technology in justice systems, the Convention aims to ensure that responses to cybercrime are effective, coordinated, and grounded in respect for human rights.

At the same time, ongoing regional initiatives, including the recently updated EU Directive on Victims' Rights, will continue to shape the future of victims' protections across Europe and beyond. By strengthening access to justice, improving the quality and reach of support services, and promoting the consistent implementation of rights for all victims, these efforts aim to ensure that victims are not only recognized but actively supported throughout criminal justice processes.

As the landscape of crime continues to evolve, these efforts together will be essential in transforming longstanding commitments into tangible improvements for victims, strengthening both protection and access to justice.

6.Challenges in Victim Participation in India

Despite the increasing recognition of victims' rights within the Indian criminal justice system, the effective implementation of victim protection laws continues to face significant challenges. Legislative measures such as Section 357A of the Code of Criminal Procedure, 1973, and the Witness Protection Scheme, 2018, represent progressive steps toward victim empowerment. However, structural inefficiencies, administrative shortcomings, and socio-economic barriers often hinder their practical application. As a result, victims frequently remain deprived of timely justice, adequate compensation, and meaningful participation in the criminal process.

Victims' ignorance of their legal rights and entitlements is one of the main problems. Many victims are unaware that they can pursue support services or compensation, particularly those from marginalized communities or rural locations. This is made worse by the lack of successful public education and outreach initiatives from the government and legal authorities. In the absence of adequate information, victims seldom apply for remedy or refuse to engage in the criminal justice system at all.

Inadequate infrastructure and funding is another major hurdle. The Victim Compensation Schemes formulated under Section 357A of the CrPC are state-specific, and many states do not allocate sufficient funds or manage the schemes efficiently. In several instances, compensation is either delayed for years or denied due to bureaucratic red tape. The lack of trained personnel in State Legal Services Authorities (SLSAs) also leads to inefficient handling of victim claimsDelays in legal proceedings further aggravate the victim's suffering. Even when victims are willing to pursue justice, the long duration of trials, adjournments, and procedural complexities wear them down emotionally and financially. For instance, in sexual assault cases, victims often have to appear for repeated cross-examinations, which can be traumatizing. The absence of fast-track courts or victim-sensitive procedures in all jurisdictions contributes to revictimization during trialAnother critical challenge is insufficient witness and victim protection. Although the Witness Protection Scheme, 2018 has been declared enforceable by the Supreme Court, its practical implementation remains poor. In many cases, especially those involving powerful accused persons or organized crime, victims and witnesses face threats, coercion, or even violence. The fear of retaliation discourages victims from testifying, leading to high acquittal rates. There is also a lack of inter-agency coordination between the police, prosecution, and protection units.Lack of victim-centric training among law enforcement and judicial personnel is another major concern. Police officers, prosecutors, and judges are not uniformly trained in dealing with victims sensitively. Victims often report being treated with indifference, hostility, or even suspicion by the police when lodging complaints. Moreover, improper recording of victim statements and mishandling of forensic evidence further weaken the case. The criminal justice system still largely views the victim as a passive witness rather than an active rights-holder.

Additionally, victim support programs lack a structured framework. Although there are One Stop Centres and helplines, they are not consistently accessible or efficiently run throughout the nation. Counselling, legal assistance, medical care, and vocational training are examples of rehabilitation programs that are frequently dispersed and underfunded. The ability of victims to heal and reintegrate into society may be compromised if they are moved between several organizations without receiving comprehensive or ongoing treatment.

Finally, data collection and monitoring mechanisms regarding victim protection are severely lacking. Without accurate data on how many victims apply for and receive compensation or protection, it becomes difficult to assess the success or failure of existing laws. The absence of a national-level victim database limits policymaking and prevents the identification of patterns in victimization or systemic failure.

7. Scope for Reform in Criminal Procedure

The evolving recognition of victim participation and restorative justice within criminal procedure highlights the urgent need for comprehensive reforms to ensure their effective implementation. While existing provisions mark significant progress, they remain fragmented and insufficient to achieve meaningful victim engagement.

Firstly, there is a need for clearer statutory recognition of victims' participatory rights. Although certain provisions under the Code of Criminal Procedure, 1973, acknowledge the role of victims, the scope and extent of their participation remain ambiguous. A more coherent legislative framework is required to explicitly define victims' rights at various stages of the criminal process, including investigation, trial, and appeal, thereby reducing inconsistencies in judicial interpretation.

Secondly, it is essential to institutionalize restorative justice mechanisms within the formal criminal justice system. At present, restorative practices such as victim-offender mediation and community conferencing operate in a limited and largely informal capacity. Incorporating these mechanisms into statutory law, supported by clear guidelines and procedural safeguards, would enable their wider and more consistent application.

Further, capacity-building through specialized training of judges, prosecutors, and mediators is crucial. Effective implementation of victim-centric and restorative approaches requires a shift in mindset as well as skill development. Training programs should focus on victim sensitivity, communication techniques, and the principles of restorative justice to ensure that justice delivery is both fair and empathetic.

Finally, adequate safeguards must be established to ensure voluntary and informed participation in restorative processes. Participation should be free from coercion, with victims fully aware of their rights and options. Mechanisms must also be put in place to protect victims from intimidation, re-traumatization, or undue pressure, thereby maintaining the integrity and fairness of the process.

8.Conclusion

The transformation of criminal justice from an offender-centric model to a more balanced and victim-inclusive system reflects a significant shift in legal philosophy. The growing emphasis on victim participation and restorative justice demonstrates an effort to address not only the legal dimensions of crime but also its human and social impact. While legislative and judicial developments have expanded the recognition of victims' rights, practical challenges continue to hinder their effective realization.

Restorative justice offers a promising framework that complements traditional criminal procedures by focusing on healing, accountability, and reconciliation. However, its success depends on proper institutional support, clear legal recognition, and robust safeguards. Achieving a balance between the rights of the accused and the needs of victims remains essential to uphold the principles of fairness and justice.

In conclusion, meaningful reform in criminal procedure must aim to integrate victim participation and restorative practices in a structured and sustainable manner. Such an approach would not only enhance the effectiveness of the justice system but also ensure that it remains humane, inclusive, and responsive to the needs of all stakeholders.

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