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Fair Trial and Fear-Free Testimony: Strengthening Victim Protection in Indian Law

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ABSTRACT

The legitimacy of any criminal justice system depends upon its ability to ensure fairness while delivering justice to those who suffer harm. Traditionally, criminal procedure across common law jurisdictions has emphasized the rights of the accused, based on the foundational principle that the state must prove guilt beyond reasonable doubt. However, the contemporary evolution of criminal jurisprudence increasingly recognizes that a justice system focused solely on the accused may inadvertently marginalize victims, particularly those belonging to vulnerable social groups. In India, this challenge is especially visible in cases involving sexual offences, domestic violence, trafficking, and crimes against children, where victims frequently encounter intimidation, trauma, social stigma, and procedural obstacles that discourage them from testifying. The act of giving evidence in a criminal trial is meant to be a neutral procedural step in the search for truth. Yet in practice, victims often experience it as a second ordeal, marked by hostile questioning, public exposure, and fear of retaliation from the accused. Such conditions undermine the integrity of testimony and weaken the administration of justice. Recognizing this reality, Indian constitutional jurisprudence, statutory law, and judicial interpretation have progressively moved toward creating a framework that protects victims and witnesses while maintaining the accused's right to a fair trial. This article examines the evolving relationship between the right to a fair trial and the need for fear-free testimony within the Indian criminal justice system. It explores the constitutional foundations of victim protection, analyzes statutory safeguards within criminal

procedure and evidence law, and evaluates judicial developments that have expanded the scope of victim rights. It further considers legislative reforms such as witness protection mechanisms, in-camera proceedings, and victim compensation schemes. The article argues that fear-free testimony is not merely a procedural accommodation, but a constitutional imperative rooted in the principles of dignity, equality, and access to justice. A criminal justice system that fails to protect victims from intimidation or humiliation cannot be said to conduct a truly fair trial. The future of criminal justice reform in India therefore lies in harmonizing the rights of the accused with meaningful protection and participation for victims.

KEY WORDS

Criminal Justice System, Fair Trial, Victim Compensation Schemes, Victims, Accused's Right.

INTRODUCTION

At the heart of criminal jurisprudence lies a fundamental tension between two competing but equally essential objectives: protecting the rights of the accused and ensuring justice for victims. The principle that every accused person is presumed innocent until proven guilty is central to the rule of law. It prevents arbitrary punishment and ensures that the state bears the burden of proof in criminal prosecutions.

However, the practical operation of this principle has historically resulted in a justice system that prioritizes the procedural safeguards of the accused while paying comparatively less attention to the experience and protection of victims. For many victims, particularly in cases involving sexual assault, domestic violence, or organized crime, the criminal trial process itself becomes an extension of the original harm they suffered.

The courtroom environment can be intimidating. Victims may face direct confrontation with the accused, aggressive cross-examination, and social scrutiny. In conservative social contexts, victims of sexual crimes may also encounter stigma from their communities, which discourages them from pursuing justice. Consequently, many victims either withdraw from the legal process or provide incomplete testimony due to fear.

These challenges raise a critical question: Can a criminal trial truly be considered fair if victims are unable to testify freely and without fear?

The answer increasingly recognized by courts and legal scholars is that fairness must be understood in a broader sense. A fair trial must not only protect the accused from wrongful conviction but must also create conditions that allow victims to participate safely and meaningfully in the process of justice.

Thus, modern criminal jurisprudence seeks to transform the traditional adversarial framework into one that recognizes victims as essential participants rather than passive observers.

Constitutional Foundations of Victim Protection

The constitutional framework of India provides the normative foundation for protecting both the rights of the accused and the dignity of victims. Two constitutional provisions have played a particularly significant role in shaping this evolving understanding: the guarantee of equality before law and the protection of life and personal liberty. The right to life and personal liberty has been interpreted broadly by the judiciary to include not merely physical survival but also the right to live with dignity and security. This interpretation has allowed courts to recognize that victims of crime have a constitutional interest in the fairness and effectiveness of criminal proceedings. When victims are subjected to humiliation, intimidation, or threats during trial proceedings, their dignity and psychological well-being are compromised. Courts have therefore emphasized that the criminal justice system must adopt procedures that minimize such harm. The principle of equality before law also demands that victims receive meaningful access to justice. If procedural barriers prevent victims from presenting their testimony freely, the equality guarantee becomes illusory. Courts have therefore recognized that procedural

fairness must extend beyond formal equality to ensure substantive justice. Historically, the concept of a fair trial was interpreted primarily as a safeguard for the accused. While this protection remains essential, constitutional jurisprudence now recognizes that fairness requires balancing the interests of both parties.

This shift represents a broader transformation in criminal justice philosophy, acknowledging that victims are not merely sources of evidence but individuals whose rights and dignity deserve protection.

Challenges Faced by Victims in the Trial Process

Despite legal protections, victims in India continue to face numerous obstacles when participating in criminal proceedings. These challenges undermine both the reliability of testimony and the overall credibility of the justice system. In many cases, particularly those involving organized crime or powerful offenders, victims and witnesses face direct threats aimed at discouraging them from testifying. Fear of retaliation often leads witnesses to turn hostile or withdraw their statements. Victims of sexual offences frequently encounter societal stigma that discourages them from publicly recounting their experiences. This stigma can be particularly severe in conservative communities where issues of honor and reputation are deeply embedded. The act of recalling traumatic events in a courtroom setting can cause severe emotional distress. Victims may experience anxiety, depression, or post-traumatic stress symptoms when required to repeatedly narrate the details of the crime. Aggressive questioning during cross-examination can sometimes cross the line between legitimate legal scrutiny and psychological harassment. Victims may feel humiliated or degraded, particularly when questions relate to their personal character or past behavior.

These challenges demonstrate that legal reforms must address not only procedural fairness but also the psychological and social realities faced by victims.

Procedural Safeguards in Criminal Trials

Indian law has gradually introduced several procedural safeguards aimed at protecting victims and witnesses during criminal proceedings. In cases involving sexual offences, courts may conduct proceedings in private to protect the identity and dignity of the victim. This measure reduces public exposure and encourages victims to testify without fear of social humiliation. Technological advancements have enabled courts to allow witnesses to testify through video conferencing. This reduces the need for direct confrontation with the accused and helps victims provide evidence in a more secure environment. Modern evidentiary rules increasingly limit intrusive questioning regarding the victim's past sexual history or personal character. Such restrictions aim to prevent the trial from becoming a forum for moral judgment rather than factual inquiry. Child victims require particularly sensitive treatment during legal proceedings. Courts often allow supportive environments, simplified questioning, and the presence of guardians to reduce psychological distress.

Witness Protection Mechanisms

Witness protection lies at the heart of a fair criminal justice system, as the entire trial process depends on witnesses being able to depose truthfully without fear. In reality, however, witnesses often face threats, intimidation, coercion, and social pressure, which may force them to turn hostile or avoid court proceedings altogether, thereby weakening prosecution cases and undermining public confidence in justice delivery. A fair trial, therefore, requires not only protecting the rights of the accused but also ensuring that witnesses can testify freely and without external influence. To address this concern, India has developed structured protection measures aimed at ensuring both physical safety and psychological assurance. These include confidentiality of identity, relocation in high-risk cases, police protection, and in-camera proceedings in sensitive matters. The Witness Protection Scheme, 2018 marked a significant step by introducing a formal threat assessment system that categorizes witnesses based on risk levels and provides proportionate safeguards such as relocation, security cover, and financial assistance.

Despite this framework, implementation remains inconsistent due to practical challenges like limited resources, delays, and lack of coordination. In many cases, support from NGOs and community groups

supplements these gaps by offering counseling, safe spaces, and logistical help. Ultimately, effective witness protection is essential to preserve the integrity of the justice system, as fear-free testimony is indispensable for ensuring a fair and meaningful trial.

From Punitive Justice to Restorative Justice

The traditional framework of criminal law has largely been offender-centric, focusing primarily on determining guilt and imposing punishment, often at the cost of overlooking the profound and long-lasting impact of crime on victims. Victims frequently suffer not only immediate physical harm but also enduring psychological trauma, social stigma, and severe economic hardship, which may disrupt their ability to lead a normal life. In recognition of these realities, modern legal systems have gradually shifted toward incorporating victim compensation and rehabilitation as essential components of justice delivery, thereby moving from a purely punitive model to a more restorative approach. Under Section 357A of the Code of Criminal Procedure, the State is obligated to provide financial compensation to victims or their dependents, acknowledging that the burden of crime cannot be left solely on those who suffer it. This reflects an important jurisprudential shift wherein the State assumes responsibility for mitigating the consequences of crime, especially in situations where punishment alone cannot adequately repair the harm caused. Compensation enables victims to access medical treatment, psychological counseling, and basic necessities, but it is only one aspect of meaningful justice. True restoration requires a holistic approach that includes mental health support, legal assistance, vocational rehabilitation, and social reintegration. Particularly in cases involving serious offences, victims often face marginalization and stigma, making structured rehabilitation indispensable for restoring their dignity and autonomy. Therefore, victim compensation and rehabilitation must be understood not as acts of charity, but as integral to a justice system that seeks to heal, restore, and reintegrate victims into society.

Judicial Activism and Constitutional Morality

The Indian judiciary has played a pivotal role in expanding the scope of victim protection through a dynamic and purposive interpretation of constitutional principles, particularly those relating to dignity, equality, and fair procedure. In the absence of comprehensive legislative safeguards, courts have stepped in to ensure that victims are not rendered invisible within the criminal justice process. By interpreting Article 21 of the Constitution to include the right to live with dignity, the judiciary has extended its protective umbrella to victims, ensuring that their participation in the trial process does not become a source of further suffering. Courts have recognized that the criminal trial itself can lead to secondary victimization if conducted without sensitivity, as victims may be subjected to aggressive cross-examination, public exposure, and prolonged procedural delays. In response, judicial interventions have introduced important safeguards such as in-camera proceedings in sensitive cases, restrictions on irrelevant or humiliating questioning, protection of the identity and privacy of victims, and the use of video conferencing or other technological means to facilitate safe testimony. These measures are grounded in the understanding that justice cannot be achieved if the process itself becomes oppressive or dehumanizing. Furthermore, courts have increasingly acknowledged that victims have a legitimate stake in the outcome of criminal proceedings, thereby recognizing their right to be heard and to participate meaningfully in the justice process. This evolving jurisprudence reflects a broader commitment to constitutional morality, ensuring that criminal law operates not merely as an instrument of punishment but as a system that upholds human dignity and fairness for all participants.

Comparative and International Perspectives

The development of victim protection in India has also been significantly influenced by international legal standards and comparative jurisprudence, which increasingly recognize victims as central stakeholders in the justice process rather than mere witnesses. Globally, there has been a growing emphasis on treating victims with dignity, compassion, and respect, while ensuring their meaningful participation in criminal proceedings. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of

Power, 1985, represents a landmark framework that outlines essential rights of victims, including access to justice, protection from intimidation and retaliation, provision of medical and psychological assistance, and the right to be informed about the progress and outcome of proceedings. Many jurisdictions have gone further by institutionalizing victim impact statements and participatory rights, thereby ensuring that the voices of victims are heard within the justice system. These international developments underscore a fundamental shift in legal philosophy, recognizing that justice is incomplete if it excludes the experiences and needs of victims. Indian law, through judicial pronouncements and legislative reforms, has gradually begun to align with these global standards, reflecting an emerging commitment to a more inclusive and victim-centered approach. This alignment not only strengthens domestic legal frameworks but also reinforces the legitimacy and credibility of the justice system in a global context.

Harmonizing Victim Protection with the Fundamental Rights of the Accused

While the expansion of victim protection is both necessary and desirable, it must be carefully balanced with the fundamental rights of the accused, which form the cornerstone of criminal jurisprudence. The principle that an accused is presumed innocent until proven guilty, along with the right to a fair trial, is essential to prevent wrongful convictions and ensure justice. Safeguards such as the burden of proof resting on the prosecution and the right to cross-examination are indispensable components of this framework. However, the exercise of these rights must not result in the harassment, humiliation, or intimidation of victims. Courts have increasingly recognized the need to regulate cross-examination in a manner that preserves the dignity of the victim while allowing the defense to effectively challenge the evidence. This delicate balance requires a nuanced approach, where neither the rights of the accused nor the protection of the victim is compromised. A fair trial must therefore be understood as a process that ensures justice to both parties, maintaining procedural integrity while safeguarding human dignity. Achieving this balance is crucial not only for the outcome of individual cases but also for sustaining public confidence in the justice system as a whole.

Structural Reforms and the Future of Victim-Centric Justice in India

Despite significant progress in recognizing and protecting victim rights, several structural challenges continue to impede their effective implementation. The absence of a robust and uniformly applied witness protection mechanism remains a major concern, as victims and witnesses often face threats, intimidation, and coercion, which discourage them from participating freely in the trial process. Additionally, delays in the justice system exacerbate the suffering of victims, prolonging their trauma and undermining their faith in legal institutions. There is also a lack of adequate awareness among victims regarding their rights and the support services available to them. Addressing these issues requires comprehensive reforms aimed at strengthening institutional capacity and improving procedural efficiency. This includes the establishment of effective witness protection programs, specialized training for judges, prosecutors, and lawyers in trauma-sensitive practices, and the expansion of technological solutions such as remote testimony to enhance accessibility and safety. Furthermore, victim support services must be institutionalized and made easily accessible, providing counseling, legal aid, and rehabilitation assistance. Ensuring speedy trials, particularly in cases involving vulnerable victims, is equally essential to prevent prolonged injustice. These reforms would contribute to the creation of a justice system that is not only efficient and fair but also compassionate and responsive to the needs of victims.

CONCLUSION

Ensuring Fear-Free Testimony as the Foundation of Meaningful Justice

The evolution of criminal justice in India reflects a gradual yet profound transformation from an accused-centric framework toward a more balanced system that recognizes the rights and dignity of victims. At the core of this transformation lies the principle of fear-free testimony, which is essential for the effective administration of justice. When victims are unable to testify freely due to fear, intimidation, or trauma, the search for truth is inevitably compromised, and the fairness of the trial is called into question. A justice system

that fails to create a safe and supportive environment for victims cannot fulfill its constitutional mandate. The principles of dignity, equality, and fairness require that victims be empowered to participate in the legal process without apprehension or distress. Procedural safeguards, witness protection mechanisms, and victim compensation schemes represent important steps in this direction, but they must be supported by a broader cultural shift within the legal system. Courts, lawmakers, law enforcement agencies, and legal practitioners must work collectively to ensure that justice is not only done but is seen to be done in a manner that respects the rights of all stakeholders. Ultimately, the credibility of the criminal justice system depends on its ability to strike a just balance between protecting the rights of the accused and safeguarding the dignity and security of victims, thereby fulfilling the constitutional promise of justice for all.

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