

A VICTORY FOR CRIME VICTIMS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Guru Sevak Singh, a farmer, poses with the photograph of his brother Guruvinder Singh, who was killed during the farmers' protest in Lakhimpur Kheri on October 3, 2021. | Photo Credit: REUTERS

In stating that [the victim of a crime ought to be heard at all stages of a trial](#), the Supreme Court judgment, in [Jagjeet Singh v. Ashish Mishra \(2022\)](#), essentially becomes a cause for celebration for victim rights advocates. This is historic in many ways as the courts in India have never made such a fervent plea for victim justice. While denying bail to Ashish Mishra in the Lakhimpur Kheri case, the court made sharp remarks legitimising the claims of victim to participate in the criminal justice process. The court observed that international instruments and trends as well as the recommendations of the law reform reports were in favour of granting greater participation for victims of crime.

The judgment has far-reaching victimological implications. On a principled note, the court observed that our criminal justice system conflates the presence of the state with the presence of the victim. Such conflation is attributable to the traditional understanding of the criminal process wherein the trial is a contest between the state and the accused only. In sociologist and criminologist Nils Christie's terminology, if we consider the conflict to be property, then the state claims ownership over the same. The conflict as property, however, must be restored to its rightful owner — the victim.

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The court then goes on to observe that the victim cannot be asked to wait till the commencement of the trial to assert their right to participate in the proceeding. The victim has a legally vested right to be heard at every step post the occurrence of the offence. This court's observations have the potential to impact several important facets of the criminal process. First, the victim as defined in Section 2(wa) of the Code of Criminal Procedure (CrPC) becomes a victim only after an accused has been charged with the offence. The judgment, however, overcomes this bar to provide the victim with the right to be recognised as a victim immediately after the occurrence of the offence.

Second, a victim, not being a complainant, has been deterred from several substantive pre-trial rights under the CrPC including the right to approach the superior police officer in case of a refusal to register an FIR, the right to be informed about the progress of the investigation or the decision not to investigate, and the right to be informed on the filing of the final/closure report. Though the judgment clarifies that the complainant and victim are two different entities in the law, it simultaneously states that the victim has 'unbridled participatory rights' right from the stage of the investigation. This translates to a pronouncement that the victim must have all rights that a complainant has, and much more.

Third, the court observed that the participatory rights of the victim extend all the way to the stage of appeal or revision. The Supreme Court has also observed that the rights of the victim must not be termed or construed restrictively.

If they are comprehensively applied, these observations have the effect of securing a gamut of rights for the victim at the trial stage including the right to be informed of the proceedings, the

right to protection, the right to speedy justice, the right to present arguments and written submissions, the right to examine witnesses, the right to be heard at sentencing and the right to be compensated and restituted.

These progressive observations are bound to have an indelible impact on the way we perceive our criminal justice processes. Nevertheless, an implementation of the judgment in its letter and spirit is bound to face challenges on two important fronts. The first challenge lies in the enunciation of the rights which the judgment seeks to secure. While the judgment grants participatory rights to victims at all stages of the criminal process, it remains to be seen how the judgment is interpreted in the future and which rights are consequently identified. In the absence of such clarity, it also remains to be seen how the judgment will be applied by the lower courts in practice. It is true that some practices granting the victim substantive rights, such as the right to file a protest petition at the time of filing the final report/closure report, have emerged purely from judicial precedents. However, these practices have evolved over time and have required much judicial discourse to become settled. In the light of the same, it seems that it will not be easy to implement the judgment immediately. This was a high-profile case and therefore made the headlines. One wonders how many victims have the capacity to approach the highest court of the country for justice.

A second challenge is that at the moment, there are several provisions and judicial precedents which stand in the way of a comprehensive guarantee of such rights to the victims. For instance, Section 301 limits the right of the victim's participation at the trial in a court of session to submission of written arguments after evidence is closed in the matter. This position has received judicial affirmation in the case of *Rekha Murarka v. State* (2019), wherein the Supreme Court proffered that granting victims a right to participation at trial may lead to the trial becoming a 'vindictive battle' between the victim and the accused.

Perhaps the best way to tackle both these challenges is to give legislative recognition to the principle of participation which has received the judicial stamp of approval. The CrPC of 1973 is largely based upon the CrPC of 1898. Both these enactments carry scant provisions in terms of access, participation, assistance, protection and compensation to victims of crime. The amendments defining the victim and granting them the right to legal representation and more are hardly adequate to substantively secure internationally recognised rights for victims of crime.

There is an urgent need to amend the CrPC in order to facilitate the recognition of victim rights and to create a statutory framework enabling the same. The recommendations of the Committee for Reforms in Criminal Laws take note of such a need and are expected to work on these lines. Such legislative incorporation can grant recognition to the rights of victims as well as secure their implementation by the lower judiciary as well as the functionaries of the criminal justice system.

G.S. Bajpai is Vice-Chancellor, Rajiv Gandhi National University of Law, Punjab, where Ankit Kaushik is an Assistant Professor

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