

# Importance of Ensuring Victim's Right of Participation in Criminal Justice Process: Bangladesh Perspective

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## Abstract:

The study of the article will try to find out that how the victims of crime are treated in the criminal justice system of Bangladesh. In our criminal justice system, victim's appearance is overlooked where in reality their presence should be considered a vital point for securing justice. As we know that there is no comprehensive law securing rights and participation of victims in criminal justice system. Moreover victims' lack of awareness about their rights, unfair treatment towards them and the absence of the rules of law, victims are not getting the proper justice from our judicial system. This research relies on qualitative methods to explore their status, participation and numerous challenges in the justice system and lastly recommends how to make the justice system victim oriented.

**Keywords:** Victim, Criminal Justice System, Participation, Legal Right.

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## Introduction

Last few years in Bangladesh, the issue of 'rights' for victim of crime has become significant and influential in shaping criminal law in criminal justice process. The criminal justice system in Bangladesh based on the adversarial model. In an adversarial process, criminal justice system serves as forum to resolve the disputes between the state and the defendant<sup>1</sup> where the victim of the crime is almost eliminated from the active role in the process. Various measures, like: plea of innocence, right against arbitrary arrest, right to fair trial are designed to ensure the right of the accused. Victims play an important role in the criminal justice process, but it is restricted to that of informant and witness for the prosecution even though he or she suffered physical, psychological, emotional injury. By considering victim's eyewitness information, it is not only easy for police to capture the suspects, but prosecutor and judges also rely on the testimony of victim's in court to reach a judgement. Despite the reliability on victims, Bangladeshi criminal judicial system has emphasized on the interest of the offenders and it is ambivalent about the status of the victim of the crime. Consequently, the concerns of the victims have become subordinate of the offenders where victims play only a secondary role.

Recently Criminal law scholarship has turned its concentration toward the victim and there is an increasing demand that victims of the crimes should be integrated in the criminal justice process and they should have access to and participate in criminal proceeding. Various organizations are also pursuing to equalize the inadequate treatment of victims in the criminal justice system. Now it is more or less accepted that justice cannot be administered effectively without the recognition of the victim's rights and interest. However, the most controversial issue relating to victims have been questioned of participation in the criminal justice process. Some scholars have argued that victim's involvement in the criminal justice system and using victim's psychological suffering as a weapon, this process ultimately encourage to take revenge and rationalize punitive measures against offenders.<sup>2</sup> On the other hand, some explained that victim is in the centre of the criminal justice system and participation of the victim is an essential part for the establishment of the justice.<sup>3</sup> Furthermore, the direct participation might be warranted as indirect involvement of victim is observed by many as problematic.<sup>4</sup> Moreover, the further debates remain about the *extent* of participation to which victim ought to be entitled.<sup>5</sup> The victim should be more than a witness but not have the total control of the prosecution of the case.<sup>6</sup>

This paper examines the purpose and effect of the involvement of the victims in the justice process in Bangladesh and suggests that as a positive matter, victim's inclusion in the criminal process is becoming and will continue to be a reality in our justice system. Although it is considered that public are the sufferers by the committed offences rather than individual and victims involvement in the case is inconsistent and it would

<sup>1</sup> Peter Duff, *The Trial on Trial* (Hart 2007) vol 3 page 214

<sup>2</sup> Christine M. Englebrecht, 'Where do I stand? An Exploration of the Rules that Regulates Victim Participation in the Criminal Justice System' (2012) < <http://dx.doi.org/10.1080/15564886.2012.657290>>

<sup>3</sup> Cassell P 'Barbarians at the gates? A reply to the critics of the victim's rights amendment' (1999) ULR 479-544

<sup>4</sup> Erin Ann. H 'Victim participation in the criminal justice process' (2005) 13 J.L & Pol'y 22

<sup>5</sup> Jonathan. D 'Victim's rights in Criminal trial:Prospects for participation' (2005) JOLS , vol 2 no 2 pp, 294-316

<sup>6</sup> Stickels, John W. "The Victim Satisfaction Model of the Criminal Justice System" [2008] Journal of Criminology and Criminal Justice Research and Education 2,1-19

potentially cause enormous problem within any adversarial system.<sup>1</sup> However in recent days, the concept of the public interest has been influenced by private attention in decision making of the criminal justice process. Some adversarial system including Bangladesh judicial system have introduced few mechanisms in specific cases where the victim or their legal representatives have right to intervene in the trial. For example, the control of Acid act, 2002, the Acid Offences Act 2002 and women and Child Act 2000 have been enacted in the criminal law sector of Bangladesh. However, these provisions are extremely narrow. As a consequence, legal scholars should think about some mechanism whereby the victims can involve in the judicial process with offender. The first part of this essay will discuss the problem and barriers regarding victim's involvement in criminal process. Within the II part, victim's participation and its heuristic value will be analysed. Finally, some recommendation will be placed in relation to the victim's participation in the adversarial system.

### **Challenges and Opposition of Victims' Participation**

The main obstacle regarding victim's participation in criminal process is the bifurcate structure of the adversarial criminal justice system where the prosecutor and the offender are the main party of the trial and both parties produce evidence and strike opponent party's argument for the establishment of their own case.<sup>2</sup> According to William Pizzi, the adversarial system '*turns the witness into weapons*' and uses this weapon against other side in favour of their case.<sup>3</sup> Within this structure, involvement of the victims means the inclusion of third party which is nearly impossible without a radical reform of the procedure. Even the status and involvement of the victim in criminal justice system have developed over the years, the legislation regarding victim's issue have not quite changed. Very handful legal rights have been ensured by code of criminal procedure, penal Code and evidence act including filing suit, duties during investigation, scope as prosecution-witness, right to appeal and other protective framework for the victims. Approach of new legislation and the legislative fiscal projection for victim inclusion often amplify the proposed cost of the program.<sup>4</sup> As a developing country, it is very difficult for Bangladeshi Government to reform the total criminal justice system. In addition, it can be said that the involvement of the third party in a case could be seen to breach the principle of equality as the adversarial system relies on the balance of power.

In Bangladesh it can be seen that, victims are highly discouraged to file a case in the court, even a simple reporting about the incidence of victimization to the police. Only for this reasons, most of the incidents/ crimes remain unrevealed to the law machineries of the country. Specially, woman and girl victims are pressurized by family members not to disclose the occurrence happened with them. Another major argument against the victim's involvement in the criminal justice process is that it will place an unnecessary burden on the criminal justice agencies which are already overloaded with high volumes of cases.

Furthermore, there is no policy/rule of keeping the victims updated about investigation or case progress. If the victims on their own accord do not take initiatives to know the progress in investigation, they remain unaware about the proper investigation report. Moreover corruption and malpractice is the common problem in investigation stage in criminal justice process in Bangladesh. There are numerous instances where victims have not only been neglected in terms of their needs and demands, but also, they have been treated with disregard and insensitivity. For instance, victims are often questioned by the police overlooking their traumatized mental states. In the case of rape, victim survivor suffers from social stigma/face the darkness of the society every single moment in their life. In regard to a rape case of Anuska in Dhaka, the victim's mother claimed that in case of rape of her daughter, people on social media were prone to say that it was the girl's fault, who visited the perpetrators house and got raped there.

Judges and prosecutors are also reluctant to accept the involvement of victim in decision making process and they put very little emphasis on victim participation.<sup>5</sup> In term of this victim's impact statement can be a good opportunity. A Victim Impact Statement is pronounced to the judge or magistrate in a criminal trial by the victim before they sentence an offender. It aims for a better understanding of individual impact of crime that has had on the victim/s during trial including the suitable punishment which should be given to the offender. However, victim impact evidence is not yet acceptable during sentencing hearing in Bangladesh. Hazera, victim of domestic violence claimed that throughout the criminal trial, I was never being asked how the violence impacted my life and day to day activities. They believe that victim's participation will increases their workload which will ultimately disrupt the criminal process and effect in term of establishing justice.<sup>6</sup> Prosecutor and the defence attorney suppose that by allowing victim in criminal process they may loss control over the case and it will

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<sup>1</sup> Ibid

<sup>2</sup> Ibid (n 5)

<sup>3</sup> William P, 'Trial without Truth'( 1999) 197

<sup>4</sup> Paul S. Hudson, ' The crime victim and the criminal justice system: Time for a Change' (1984) Pepp.L .Review, vol 11

<sup>5</sup> William F. McDonald, 'Plea Bargaining :Critical issues and common practice' (Washington,D.C. US Dept of Justice , National Institution of Justice 1985) 62-70

<sup>6</sup> Sarah N. Welling 'Victim Participation in Plea Bargaining' (1987) vol 65 Wash. U. L. R

impose irrelevant information that may hinder the defence.<sup>1</sup> Furthermore, victim inclusion at trial is considered unfair to defendants that can undermine the prosecutorial efforts. By presenting the victim witness and giving impact statement, victim can lead to false conviction and enhance sentences.<sup>2</sup> Critics explained that if the victims participate in criminal process, there is a chance to prevent conviction by collusion with defendants.<sup>3</sup> The most persistent criticism regarding victim participation is that it can transform the criminal justice system as a forum for the personal combat and revenge.<sup>4</sup> The distinction between criminal law and civil law would be demolished. Because individual rights and interest for victims are suitable only in the civil law and criminal law should be limited within the state's interest.<sup>5</sup>

In term of sentencing, victim participation precedes the various goals of sentencing and enhances deterrence by increasing prosecutorial efficiency.<sup>6</sup> Moreover this procedure might promote rehabilitation because offender confronts the victim and the reality of the harm that what he or she has done with victim.<sup>7</sup> However, victim participation in sentencing process is a legal process and if victim is allowed to participate in sentencing, unacceptable public pressures may undermine the total court system.<sup>8</sup> Further, there is a chance that victim can produces feeling of helplessness which may aggravate the criminal justice experience. Victim input in the process means rights achieved by the victim and rights lost to the defendants. Consequently, victim participation would give a party status to victim but it may break the traditional definition of justice and fairness.<sup>9</sup> Further, it is important to remember that the nature of the criminal law as public more than as private.<sup>10</sup> If the victim's interest excels the reasonable ambit, there is a chance to prevail undue influence and direct control upon the public prosecution. These undue influences decrease the public respect for the prosecutor and the judge who are the arbiters of the criminal judicial system.<sup>11</sup> While the private interest receives consideration, the public interest must be dominated. Moreover, abuses of power by victim would not enforce the justice than some manipulation is commonly practicing by the defendants in the present adversarial system.

### Significance of Victim Participation

The rationale behind the involvement of the victim and enhancement of victim right in the criminal justice process is that victim satisfaction with the judicial process is important to its operation. Research suggests that, victims experience and interaction with the judicial system has a significant impact on victim's satisfaction.<sup>12</sup> If the victim is satisfied, he/she will encourage cooperating with the judicial system and it will be easier to establish an effective system by apprehending and convicting criminals and ultimate result is the overall lower crime rate.<sup>13</sup> Moreover, as crime has become an every part of life for Bangladesh, without victim's cooperation it is difficult to establish an effective judicial system. A research by New York Victim agency identified that, the reason behind victim's lack of cooperation in criminal procedure is the failure of recognition his interest in the case.<sup>14</sup> As courts are enormously overloaded with too many cases, victim involvement can assist in term of fact finding process. There is no reason per se that granting participatory rights to victims will necessarily conflict with the accused's right to a fair and expeditious trial. The right to a fair trial necessarily entails the right to an expeditious one. Allowing victims to participate meaningfully in any criminal proceeding will inevitably extend it; however, any delay should not automatically be considered undue. Problems of long delay in national courts are well documented, but they are not unique to courts that offer substantive victim participation.

From victim's perspective, consideration of their needs and their valuable statement and opinion will help them to recover themselves from their harm and loss or minimize their psychological trauma.<sup>15</sup> Victim feels that in adversarial system, their interest is completely ignored and they treated often very unfairly.<sup>16</sup> The crime victim's role should be like an active participant and informant who is well informed about the updates of case by judicial authority.<sup>17</sup> Victim should have a voice in the decision making process. Victim participation improves

<sup>1</sup> Edna E, 'Victim Participation in Sentencing: Rhetoric and Reality' (1990) *Journal of criminal Justice*, Vol 18, pp 19-31

<sup>2</sup> Ibid (n 4)

<sup>3</sup> Ibid

<sup>4</sup> Deborah P. Kelly, 'victims' (1987)34c *Wayne L.Rev.* 69

<sup>5</sup> Ibid

<sup>6</sup> Ibid(n 13)

<sup>7</sup> Ibid

<sup>8</sup> Rubel H.C, 'victim participation in sentencing'(1986)*CLQ* 226-50

<sup>9</sup> Douglas Evan Beloof, 'The Third Model of Criminal Process: the victim Participation Model' (1999) *Utah Law Review*, 289

<sup>10</sup> Ibid (n 1)

<sup>11</sup> Helen F, 'Procedural rights of Victims of Crime: Public and private Ordering of the criminal justice process?'(1997) *MLR* vol 60

<sup>12</sup> Ibid (n 2)

<sup>13</sup> Deborah P. Kelly, 'Victims' perception of Criminal Justice' (1984) *Pepp.L. Review*, vol 11

<sup>14</sup> Ibid

<sup>15</sup> Ibid (n 13)

<sup>16</sup> Ibid (n 10)

<sup>17</sup> Morgan B and K. Smith, 'Victims, punishment and parole: The effect of the Victim participation in parole hearing, (2005) *Criminology and public policy*, 336-60

the process and establishes the real justice because a judge cannot pass a judgement without hearing the person who is victimized. Victim's participation and presence in criminal procedure reminds judges and prosecutors that beyond the role of the 'state' which is impersonal, victim is the real person whose interest is related to the case and need to be resolved.<sup>1</sup> According to the Professor Goldstein, it is true that the purpose of victim participation is to make him satisfied, but main motive is to ascertain the proper consideration of fact and legal issues.<sup>2</sup> Because, sometimes there is a risk that pressure of bureaucracy and politics will undermine important case related issue. If the victim's right to participate is ensured by the legislative procedure, it will help to reduce their assessment that criminal judicial system is lenient on criminals.<sup>3</sup>

Furthermore, some judges try to equalize the sensibility of victim with the lack of fairness and justice. But most of the victims are not aggressive or bloodthirsty and they only want defendant's imprisonment through proper proceeding and justice. Even victim's participation not only helps the defendant, but also reduces the defendant's sentence.<sup>4</sup> In *R v Hardy*, a Canadian case,<sup>5</sup> deceased victim's family claimed that court gives the more lenient punishment to the offender even in the manslaughter case. A healthy victim's presence at the decision making process apparently decrease sentence. A study of the victim input in criminal justice proceeding indicated that when victim attends in the pre-trial settlement, there is more possibility of quicker disposition of the case.<sup>6</sup> A non-involved party like 'the public' will not be able to perform this kind of activities. Victim's involvement also helps to perform the procedure in a more democratic way where the punishment imposed on accused reflects community's response to crime.<sup>7</sup> Victim is that person who represents the state's community to convey the social disorder.

In spite of being a vital part of the criminal legal system, the issue of the participation of victim in criminal possess opposition. In the matter of parole hearing, judicial administrative officers contended that by allowing the victim in this procedure, their caseloads will be elevated and parole mechanism hampered.<sup>8</sup> Proponents of victim inclusion states that the placement of victim in criminal proceeding gives victims act a symbolic legitimacy and the victims want only their rights will be placed equally with the offenders.<sup>9</sup> In addition, inclusion of victim in criminal procedure allows them to enter into the court room where they can view their testimonies regarding the cases and the related issue. In many cases victims are never informed about the status of the case or the ultimate outcome by the prosecutors and the court. It is also argued that relying on victim to punish offender, on the other side, ignoring victim's interest, needs and wants means sacrificing the individuals for the establishment of the society's goals which is unacceptable and seems unfair to many.<sup>10</sup>

Participation of victim in criminal justice process may be essential for psychological recovery. By ensuring this right, victim's perception of imparity rather that offenders could be reduced which also prevent further psychological harm. On the other hand, if the criminal justice system fails to ascertain this right to victim, crime related psychological damage would increase.<sup>11</sup> Lastly, victim participation may promote rehabilitation as the offender confronts the victim during the procedure or in term of the implementation of the sentence.

## Recommendation

It is undeniable that victims are kept out from the mainstream of the legal criminal proceedings. Changes need to be implemented to address the victim dissatisfaction regarding the criminal justice process. Victim's rights should be constitutionalized and his/her voice should be accepted in different stages of the trial process.<sup>12</sup> The victim is the subject to the discretion of the prosecutor and the judge and they may give importance of victim opinion or deny it. Having rights does not mean that it will bring benefit for victim, because these are not statutory. On the other hand, defendants' rights carry more weight because they are constitutionalized. A constitutional right could be used to balance the rights of victim and defendants.<sup>13</sup> However, it is important to ascertain that victims' participation does not undermine the fairness in the proceedings.<sup>14</sup> Although one can

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<sup>1</sup> Stickels, John W. "The Victim Satisfaction Model of the Criminal Justice System" (2008) *Journal of Criminology and Criminal Justice Research and Education* 2, 1-19.

<sup>2</sup> Abraham S. Goldstein, 'defining the role of the victim in criminal prosecution' (1982) 52 *Miss. L.J.* 515, 556

<sup>3</sup> Susan E.G and Nicholas E.R, 'Victim's role in the criminal justice system; A Fallacy of victim Empowerment?' (1992) *Journal of civil rights and economic development*, vol 8, 225-250

<sup>4</sup> *Ibid* (n 20)

<sup>5</sup> *R v Hardy* ( SC. 1976)

<sup>6</sup> *Ibid* (n 16)

<sup>7</sup> Aldo.Raineri, 'Re- integrating the victim into the sentencing process' (1995) vol11 *QUT Law Review*

<sup>8</sup> *Ibid* (n 29)

<sup>9</sup> *Ibid*(n 2)

<sup>10</sup> *Ibid* (n 13)

<sup>11</sup> Kilpatrick D and Otto. R.K, 'Constitutionally guaranteed participation in the criminal proceedings for victim:Potential effect on Psychological function,' (1987)*Wayne L Rev*, 7-28

<sup>12</sup> Ryan R, 'Victims role in the Justice process' (2014) *Internet journal of criminalology*

<sup>13</sup> *Ibid* (n 31)

<sup>14</sup> *Ibid* (n 1)

oppose that constitutionalize of victims' rights would infringe the defendants constitutional rights, but it would not overstep defendants' rights moreover provide an equal treatment for the victims.<sup>1</sup>

Some law should be implemented regarding specific area such as victims' voice law, victims' intimidation law, and speedy trial law for victim. Regulation need be implemented in term of courts' communication with victim, enforcement of current policies, encourages victims' assistance organization to involve in the criminal procedure.<sup>2</sup> Restorative justice method needs to implement in regards to minor crime which is completely ignored in Bangladesh criminal judicial process. Further, victims' satisfaction model can be developed in the modern criminal justice philosophy. This model focuses on the victim not on the defendant. Because, victims who are primarily harm by the crime and criminal justice process should be responsive to the victims.<sup>3</sup>

Communication needs to be developed between the court and the victim. Enhancing communication between state bodies and individual victims is a way for victims to be heard by the justice system which victims want. In this regard, public agencies such as police, court or government crime control agencies can play a vital role. Another law need to be implemented in relation to harassment or tampering with witness in Bangladesh criminal judicial system. Recent study has shown that victims most of the times get victimized second time by the abuse of judicial power which is also a major reason for the non-cooperation of crime victims.<sup>4</sup> Victim should be given more influence in the sentencing process, parole hearing, because; victim participation is the strongest indicator of whether parole was granted or denied and when victim actively present in the proceeding have a strong effect on the outcome.

The office for victims of crime or the National Human Rights Commission, Bangladesh could help to improve victims' participation and the satisfaction by including them in the development and implementation of all programs provided to victims. This inclusion of the victim can help balance the public, state, and individual interests involved in the justice process. Another recommendation is these offices should provide adequate supports for victims.

To implement these proposals will take a substantial amount of time and it is not too easy to change the current criminal justice system. Recommendation may be effective to strengthening the victim participation; on the other hand it may be harmful for the criminal justice procedure. These suggestions seek to find a balance among the interest of the victim, the state, and the offender in the criminal justice process with an emphasis on giving more power to the victim.

## Conclusion

Victim is an integral part of the criminal justice process. Their rights must be respected by acknowledging their input, because; their involvement is necessary for the disposition of the case. The stereotyped criminal justice strategy and the absence of separate legislation and justice procedure affect the services for the victims in Bangladesh. Hence, there is the need of effective victim support system in criminal justice system in Bangladesh. It is obvious that in recent years, the Bangladesh legislature is taking into consideration the status of the victims of the crimes while making laws regarding any criminal proceedings. Moreover recently victims have been achieved attention and focus of the media and scholars. It is encouraging the Bangladesh government to amend the Code of Criminal procedure of 1898 in order to incorporate some legal provision regarding the victim of the offences. By giving victims' rights of participation to a constitutional status, it will not erode the defendants' rights; moreover it will be placed on an equal platform. Victims' statutory rights would ascertain a forum for them where they could involve simultaneously with defendants in the criminal justice process and their voice could be heard. The government and the concerned bodies need to keep in mind that everything must be developed basing on the greater welfare of the victims.

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<sup>3</sup> Ibid (n 29)

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