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**SITUATING BELOOF'S MODEL OF CRIMINAL PROCESS UNDER
THE INDIAN JUSTICE SYSTEM**

- Aadrika Parashar¹ & Devjeet Gautam²

“Why in history has everyone always focused on the guy with the big stick, the hero, the activist, to the neglect of the poor slob who is at the end of the stick, the victim, the passivist –or maybe, the poor slob (in bandages) isn't all that much of a passivist victim –maybe he asked for it.”

- Hans Von Hentig

I. Introduction

Upholding the rule of law, ensuring justice, and preserving public order are some of the major among several goals of the criminal justice system. The main focus of its objective is to prevent and punish criminal activity, which is vital for community safety and stability. The system also provides offenders with chances of reformation and reintegration into society as part of their rehabilitation. The criminal justice system works to safeguard citizens, ensure equitable legal proceedings, and promote a safer environment for everyone by striking a balance between these objectives.³

Despite major social, technological, and administrative changes, the criminal justice system, which includes the police, prosecution, courts, and state correctional agencies, has remained remarkably unchanged. This stability stems in part from the insularity of these institutions

¹(LLM- INDIAN LAW INSTITUTE)

²(LLM- GGSIPU)

³ S. Mayeux, “The Idea of Criminal Justice System” 45 *American Journal of Criminal law* (2018).

and their relative immunity to outside scrutiny and influence, and in part it also comes from the autonomy of the individual parts of the system, each of which follows a set of guidelines to work toward its own sub-optimal goal.⁴ A single manager who has authority over every component of a criminal justice system does not exist anywhere.

However, the models of the criminal justice system vary from state to state. According to Herbert Packer, there are two models of a criminal justice system that compete with each other.⁵ Although he suggests that none of these models are good or bad, they form a part of the two extremes in which a criminal justice system can exist. He called these models- the crime control model and the due process model.

According to Packer⁶, the idea that the suppression of criminal activity is by far the most crucial task for the criminal justice system forms the foundation of the value system that guides the Crime Control Model. It is believed that when law enforcement fails to strictly regulate criminal behaviour, public order will collapse, which will ultimately result in the loss of one of the most vital facets of human freedom. A general disregard for laws tends to emerge if they are not enforced, that is if a large percentage of people are not apprehended and convicted during the criminal process. The law-abiding citizen is then subjected to a variety of unwarranted interference with his rights. His freedom to act as a member of society is severely curtailed, as is his security of person and property. The criminal process should be the guarantor of social freedom. The Crime Control Model stipulates that to accomplish this monumental task, the effectiveness of the criminal justice system in screening suspects, determining guilt, and securing suitable dispositions for those found guilty of crimes must be given top priority.

The due process model prioritizes reliability over effectiveness, in contrast to the crime control model. It is always sceptical about the possibility of error and an innocent accused getting convicted. Thus, the presumption of innocence, protection of individual liberties, judicial oversight of executive actions, and additional scrutiny to eliminate the possibility of error are the values of the model. The due process model promotes a formal and adjudicatory fact-finding process in place of the crime control model's informal and non-adjudicative fact-

⁴ GE Lynch, "Our Administrative System of Criminal Justice" 83 *Fordham Law Review* (2009).

⁵ Herbert L. Packer, "Two models of Criminal Process" 113 *University of Pennsylvania Law Review* (1964).

⁶*Ibid.*

finding. The due process model's primary goals are to be as error-free as possible and to ensure that the accused is treated fairly. It acknowledges that efficiency is a desirable quality, but only when it complements reliability.

Therefore, the two models of Packer are compared to 'the assembly-line production' and 'the obstacle course'. In a due-process model, each of its successive stages is intended to present formidable obstacles to moving the accused further along in the process, unlike assembly-line production, which moves an endless stream of cases, never stopping, carrying them to workers who stand at fixed stations and perform on each case, as it comes by the same, small but essential operation that brings it one step closer to being a finished product, or, to exchange the metaphor for the reality, a closed file.

Packer in his work, "Two Models of Criminal Process" has stated that to find a normative model that underlies the values of almost all the criminal processes ".....It will take more than one model, but *it will not take more than two.*"⁷ However, Beloof contradicted this idea in his work.⁸ He argued that Packer did not anticipate the modern law which takes into account the formal victim participation and hence, the assertion made by Packer does not stand true today.

Beloof suggested a third model of the criminal process, not to replace but to complement the two models formulated by Packer. This model he called- THE VICTIM PARTICIPATION MODEL.

II. The Victim-Participation Model by Beloof

The victim participation model of Beloof⁹ advocates for three important concepts- the fairness, respect and dignity of the victim. The model gives primacy to the individual victim's rights. Such right flows from two-fold reasoning: first, due to primary harm suffered by the victim as a result of the crime being committed against him/her; second, due to the secondary victimization of the victim that takes place at the hands of the government processes and the government actors acting within those processes. As the image of the crime control model

⁷ Douglas E. Beloof, "The third model of the criminal process: the victim-participation model" *Utah Law Review* (1999).

⁸*Ibid.*

⁹*Supra* Note 5.

and that of the due-process model presents an ‘assembly-line production’ and ‘an obstacle-course’, the image of the victim participation model, according to Beloof, is that of the victim following their cases down the assembly line. What this model proposes is that- victims are allowed to speak and address the court during formal proceedings as long as they do so in a suitable manner. Before pretrial dispositions are decided, the court and the prosecutor hear testimony from the victims and at hearings for sentencing and release, victims are allowed to speak.

The model discusses in detail the participation of the victims at different stages- including reporting of the case, trial, sentencing and appeal- which shall later be dealt in respect of the Indian Criminal Justice System under broader heads.

Although Beloof advocated for this third model, he also pointed out the major reason that leads to the denial of inclusion in this process. Beloof pointed out that even though this model proposes victim participation at all stages, such participation shall completely depend upon the free will of the victim. No victim who does not want to engage in the process shall be forced to participate. This idea at its face may look appealing but this is the area where the criticism of this model lies. The discretion of the victim to decide as to whether he/she wants to engage in the criminal process or not, and if yes, then in what way, directly affects the position of the accused in the case. In two cases where the accused are alleged to have committed the same offence, one may face a victim who seeks mercy and the other may face a victim who seeks severe sanction. The third accused may face a victim who decides to not participate at all. And this differential treatment of similarly situated accused, perhaps, is the most compelling reason for denying victim participation.

This paper, thus, seeks to evaluate Beloof’s model and to assess its feasibility and implications in the context of the Indian Criminal Justice System. It also seeks to assess whether India’s current legal framework allows for meaningful victim- participation and to explore the potential for victim-centred reforms based on Beloof’s framework.

III. Stages of Victim-Participation in Beloof’s Model

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1. Reporting of the Case

Belooof in his victim participation model¹⁰ argues that although in cases of some crime, the State is indirectly affected, the victim in all cases suffers harm. Therefore, it should be the prerogative of the victim to decide whether he/she wants to report the crime or not. He further argues that it is unwise to use coercion to get the victim to report—for instance, by making it illegal to fail to report in a misprision case—because this exacerbates the victim's harm. The victim's veto power over-reporting is threatened by such laws. Laws that make nonreporting a crime also jeopardize victims' privacy. It is appropriate to use noncoercive methods to persuade or motivate the victim to report. For the victim who requires specific inducement to be provided, the option to report may become more feasible. Offering victim compensation or social services resources, letting the victim participate formally or informally in the process, or safeguarding the victim's identity or privacy are some examples of incentives to report. All of these inductions subtly recognize that the victim is the one who has been harmed and should be treated with dignity and justice.

2. Investigating the case

Belooof pointed out¹¹ that a victim should have access to an official investigation if they have reported a crime. The victim should be informed of the process as well as the findings of the investigation. There ought to be an alternative if the State carries out an illegal investigation. The victim ought to be permitted to carry out an independent investigation. However, since the majority of victims lack the resources and expertise to carry out a sufficient private investigation, there should be a meaningful process in place to guarantee a sufficient official investigation if the authorities are unable or unwilling to carry out one. Additionally, the State and defence investigations should only encroach on the victim's privacy to the extent required to prevent further harm. For instance, it is not appropriate to interview victims more than once while conducting an investigation. During this stage, victims should have the choice to decline an interview with the defence, even though they may choose to do so. Only with the victim's permission should certain investigations be carried out. Without the victim's consent, physical and psychological assessments of the victim should not be permitted. It would constitute re-victimization to permit such assessments and searches.

¹⁰*Ibid.*

¹¹*Supra* Note 5.

Additionally, victims might not cooperate with the criminal justice system as a result of such assessments and searches.

3. The Charging Process

The victim participation model provides¹² that it should be possible for victims to veto the filing of a charge. It makes little sense to deny the victim the option to charge the suspect because the victim could have initially vetoed the criminal charge by not reporting. By doing this, the victim is being injured for reporting the crime. The victim is in the best position to assess whether going through the criminal justice system will cause harm to them. Additionally, if the victim wants to press charges, they ought to be able to decide what charges are suitable. This is due to the possibility of bias against the “unworthy” victim in the State’s charging decision. Moreover, victims should have the option to choose between a restorative justice model and a punitive procedural model during the charging stage. Because restorative justice may benefit the victim more than the retributive model of the formal criminal process, the victim may want to choose victim-offender mediation. Therefore, it should be up to the victim to decide between the two procedures.

4. Trial

Active victim participation at the stage of trial has been advocated by this model¹³ since the victim has already experienced the primary harm—the harm caused by the crime—and that exile from the case causes secondary harm. Strangely, the injured party is not allowed to attend the trial. The victim shouldn’t be barred from the courtroom by anyone. Two strategies to guarantee accurate truth-finding are victim cross-examination and sufficient jury instructions. The victim of the crime has a greater stake in the trial than any other individual or organization. It is disrespectful to the victim and to fairness principles to exclude the victim from the trial to minimize the importance of their stake. Additionally, the victim’s involvement supports the trial’s truth-finding purpose. The victim should have the right to legal representation during the trial (and other phases of the criminal process) in cases of serious (if not all) crimes, when the victim is especially vulnerable, or when a dispute arises between the victim and the prosecutor. The public prosecutor shouldn’t have authority over the victim’s attorney. The victim should be granted standing at trial and during the trial, the victim and the victim’s attorney would occupy a third table and have the chance to make an

¹²*Ibid.*

¹³*Ibid.*

opening statement, call witnesses, question the evidence, and make closing arguments. The same court and evidentiary rules would apply to both the victim and the victim's lawyer.

5. Sentencing

The victim participation model, as proposed by Beloof¹⁴, argues that not allowing the victim to participate in the process of sentencing would amount to victimisation. Therefore, at the stage of the hearing, the victim should be allowed to articulate the extent and the consequences of the primary harm and to present reasons in support of their opinion. These justifications include details about the victim and the effects of the crime on the victim, their family, and community members. To reduce the risks of revenge, procedural limitations are adequate. If the judge chooses to follow the recommendation of the victim, rather than the parties, it is because the victim's recommendation was more closely aligned with the public interest than was the recommendation of the prosecution or defence.¹⁵To accurately determine what is in the public interest, the victim's standpoint (and justification) is helpful.

6. Appeal

Any decisions that disregard, restrict, or deny the victim's right to participate should be subject to challenge by the victim according to this model.¹⁶ Victims' rights are without a remedy and are therefore non-existent- in the absence of the ability to use writs and appeals. It should be an option for victims to file a lawsuit against government entities that infringe upon their civil rights. Any instances in which a lower court fails to uphold the victim's rights ought to be addressed. This would discourage further infractions. Furthermore, only through appellate review will victim laws be elaborated and clarified.

Beloof, thus pointed out that a three-model concept, including the victim participation model and the two models by Packer, would be more functional than the two models as it takes into account the genuine participation of the victim- the direct sufferer of harm caused by any crime.

IV. Applicability of Victim-Participation Model in India

1. Structure and stages of the Indian criminal process

¹⁴*Ibid.*

¹⁵ Debalina Roy, "Victim Participation in Criminal Justice System: Status Quo and Way Forward" 2 *International Journal for Legal Research and Analysis* (2023).

¹⁶*Supra* Note 5.

a. The First Information Report

In India, the criminal trial process starts when the victim or a third party files a complaint. The police record this complaint as a First Information Report (FIR), which, according to Section 173 BNSS¹⁷, can be made orally or in writing. Important details like the date, time, place, and type of offence are included in the FIR, along with the names of the complainant and the accused. Since it marks the beginning of the legal process, this first step is important. In addition to initiating the legal process, it also provides a clear record of the preliminary facts and circumstances surrounding the alleged crime. Throughout the trial, it serves as a guide and is often cited by both the defence and the prosecution. According to the informant, the main purpose of the FIR is to initiate criminal proceedings, and from the perspective of the investigating authorities, it is to gather information about suspected criminal activity so that appropriate action can be taken to identify and apprehend the guilty.

¹⁷ The Bhartiya Nyaya Sanhita, 2023, s. 173.

b. Investigation

The police start the investigation after a formal complaint is filed. This stage entails gathering necessary information, conducting witness interviews, and cautiously gathering evidence. If there is enough evidence or if the offence is not subject to bail, the police may, if necessary, make an arrest. It is overseen by a senior police officer. The investigation must be finished in a reasonable amount of time. Section 176 of the BNSS¹⁸ specifies the procedure for conducting an investigation when a cognizable offence is suspected to have been committed. It also permits the officer-in-charge of a police station to refrain from conducting an investigation if he believes there is insufficient justification for one.¹⁹ The investigation phase is essential to the development of the prosecution's case. The police gather the evidences at this stage with diligence, to ensure the chain of custody and authenticity of the evidence. A comprehensive investigation is the foundation of fair trial and is also necessary for the defence and the prosecution to develop their cases.

c. Framing of Charges

A crucial point in the trial is the framing of charges (Section 251BNSS), which formally describes the accusations against the accused. The court considers the evidence and presents the charges after the chargesheet is filed. Subsequently, the accused must enter a guilty or not guilty plea. If the accused pleads guilty, the trial may quickly conclude with a conviction and sentencing. To ensure the accused understands the case, the court must guarantee that the charges are precise and unambiguous. This stage establishes the overall tone of the trial. The primary objective of framing the charge is to inform the defense of the points on which they need to prepare their arguments.

d. Sentencing

The court moves on to the sentencing phase if the accused is found guilty. The seriousness of the offense, the accused's prior criminal history, and any mitigating or aggravating circumstances are all taken into account during the sentencing hearing. After that, the court administers the proper penalty, which could be community service, probation, fines, or prison sentences. The sentencing phase is a fair and compassionate exercise of justice. The court

¹⁸ The Bhartiya Nyaya Sanhita, 2023, s. 176.

¹⁹ *Ibid.* at proviso to s.176(1).

must consider the seriousness of the offence, the accused's guilt, and the deterrence and reformation principles. The objective of this stage is to administer a fair and appropriate punishment.

e. Appeal

One essential component of the legal system that guarantees the strength of justice is the ability to appeal. It permits a higher court to review the case from a new angle, which could reveal flaws in the trial procedure or offer an alternative viewpoint. In India, both the defence and the prosecution are entitled to appeal the trial court's decision.²⁰ Higher courts may hear appeals, and the appellate process entails re-examining the arguments and supporting documentation put forth in the trial court. This is an essential safeguard to guarantee that justice is carried out and that mistakes or injustices are rectified.

2. Current Victim Participation Rights under Indian Law

The Code of Criminal Procedure, 1973 initially did not define who a victim is. It was only after the amendment of 2008 that the definition of the term "victim" was added under Section 2(wa) of the code.²¹ It defined 'victim' as "*victim*" means a person who has suffered any loss or injury caused because of the act or omission for which the accused person has been charged and the expression "*victim*" includes his or her guardian or legal heir. The definition of victim was more accused-centric as it provided -for losses caused by the act or omission with which the accused was 'charged'. Hence, it was only after the charges were framed that it could be decided as to who was a victim.

Section 2(y) of the Bhartiya Nyaya Sanhita, 2023²² (which repealed the CrPC) defines the term victim- as "a person who has suffered any loss or injury caused because of the act or omission of the accused person and includes the guardian or legal heir of such victim". It is now more apt as it has solved the problem that existed with the earlier definition. Although the criminal process in India is largely dominated by the State, it does not make sense as to why the party (State) who is to be partially blamed for a crime should have the sole prerogative to prosecute. The current legal framework in India scarcely mentions the

²⁰*Ibid.*

²¹ The Code of Criminal Procedure, 1973, s.2(wa).

²² The Bhartiya Nyaya Sanhita, 2023, s. 2(y).

provisions relating to the participation of victims. The provisions under the criminal law framework where victim participation has been are as follows:

a. Information in Cognizable Cases

Section 173(2)²³ provides that a copy of the information as to the commission of a cognizable offence as recorded by the officer in charge of the police station under section 173 (1) shall be provided to the informant or the victim, free of cost. Section 173(4) further provides that the victim has a right to send the first information report by post to the address of the Superintendent of Police if the officer in charge of the police station refuses to record it.²⁴ Furthermore, the BNSS also provides that a victim or any other person may also file a complaint directly with the magistrate who has the jurisdiction in the case. Therefore, the criminal justice system in India provides some role of the victim at the stage of reporting of the case.

Conflict with Belooof's model

However, it is to be noted that it is not only the prerogative of the victim under the Sanhita to report a case i.e. Section 173 or 223²⁵, the Sanhita does not mention that only the victim may give such information relating to the commission of a cognizable offence against him/her or may file a complaint with the magistrate as warranted by Belooof in his model.

b. Report of a police officer on completion of the investigation

Section 193 of the BNSS provides²⁶- "Every investigation under this chapter shall be completed without unnecessary delay". The same provision under sub-clause (3(ii)) now provides that the police officer shall, within a period of ninety days, inform the progress of the investigation by any means including through electronic communication to the informant or the victim. The provision was born with the BNSS and was absent in the (now repealed) CrPC. Sub-clause (3(iii)) further provides that – "the officer shall also communicate, in such manner as the State Government may, by rules, provide, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given." However, this provision does not specifically mention the term victim and holds the

²³*Ibid* at s.173 (2).

²⁴*Ibid* at 173(4).

²⁵*Ibid* at s.173,223.

²⁶*Ibid* at s. 193.

police officers accountable to the informant, whether or not that informant is the victim or not.

Moreover, Section 230 of the BNSS²⁷ also provides that in any case where the proceeding has been instituted on a police report, the Magistrate shall without delay, and in no case beyond fourteen days from the date of production or appearance of the accused, furnish to the accused and *the victim* (if represented by an advocate) free of cost, a copy of the police report and other documents.

Conflict with Beloo's model

The provision, although mentions the involvement of the victim at the stage of an investigation, is in contradiction with what the Victim-Participation Model proposes. According to Beloo, the victim should be allowed to keep track of the investigation process, not by being reported about the progress in the investigation, but by being a part of it throughout the process. Beloo argued that while maintaining a timeline is important in a criminal process, such a timeline should not undermine the efficiency of the process and the justice system should give primacy to the victim's needs and perspectives.

c. Appeal

Section 413 of the BNSS²⁸ provides that- "...the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court."

Conflict with Beloo's model

Although the provision seems to have given a space to accommodate the victim's rights at the stage of appeal, it is not free from all flaws. Beloo argued that the victim's right should be at least equal to that of the accused. However, even the current code mentions the right of appeal for the victim only in limited cases. Such right is limited to cases where the accused

²⁷*Ibid* at s.230.

²⁸*Ibid* at 413.

has been convicted for a lesser offence or where the compensation is inadequate. However, it does not take into account a situation in which the accused has been sentenced to a lesser term and also sidelines other aspects of victim-centric justice. Moreover, the provision accords no rights to the victim to prefer an appeal against delays, procedural irregularities, lenient bail conditions, etc.

d. Other Provisions

(i). Section 18(8) provides that²⁹- “The Central Government or the State Government may appoint, for any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor: Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.”

Conflict with Beloof's model

The Victim-participation model provides for full participatory rights of the victim including the right to directly advocate their interests in the court. However, this provision limits the participatory rights of the victim not only in the sense that it acts as a barrier to the independent standing of the victim in a case but also in the sense that even for assisting the Public Prosecutor, it poses a requirement of court's permission, making it conditional and discretionary upon the courts.

(ii). The proviso to Section 360 of the BNSS³⁰ provides that – “...no Court shall allow such withdrawal without giving an opportunity of being heard to the victim in the case.”

Conflict with Beloof's model

Although the provision provides the victim a right to be heard before the prosecution withdraws the case, it does not provide the victim a right to challenge the decision of the court, if any made, against his interest. The victim lacks recourse in cases where his voice is heard but not taken into consideration while the prosecution withdraws the case.

V. Indian Judiciary on Victim-Participation Rights

The Indian judiciary's approach to victim participation rights has been consistent, holding the victim as an important stakeholder in the crime and the criminal process. The courts have

²⁹*Ibid* at s.18(8).

³⁰*Ibid* at 360.

dealt with crime and again emphasized the need to provide active participation rights to the victim, shifting their position from mere witnesses to critical stakeholders in any case.

The Supreme Court as early as 1979, in the case of *Rattan Singh v. State of Punjab*³¹, pointed out the need for recognition of the victim rights in the following words:

It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law! This is a deficiency in the system which must be rectified by the legislature. We can only draw attention to this matter. Hopefully, the welfare State will bestow better thought and action to traffic justice in the light of the observations we have made. We dismiss the special leave petition.

The court therefore, in this case, clearly pointed out the significance of attention that the victims of a crime must get in a criminal justice system.

In a further case of *Ankush Shivaji Gaikwad v. State of Maharashtra*³², the Supreme Court laid down the importance of compensation to be awarded to the victim. The court ruled that it is the mandatory duty of a criminal court to apply its mind independently to the question of compensation and such power should be exercised not ancillary to but in addition to other sentences. The court also held that the courts exercising such power should also record the reasons for awarding the compensation and also for not awarding it. This was a landmark case that marked the significance of victim jurisprudence in India.

Again, in the case of *Mallikarjun Kodagil v. State of Karnataka*³³, the court significantly advanced the victim's rights under the Indian Criminal Justice System. The court emphasized the fact that the victims have an independent and statutory right to appeal under proviso to Section 372 and such right is autonomous to the victim and does not depend on the right of the State to file an appeal. The court also held that in cases where there are more than one

³¹ 1980 SCR (1) 846.

³² 2013 (6) SCC 770.

³³ AIR 2018 SC 5206.

victim, each victim shall have such independent rights as the extent to which each victim is impacted by the same crime may vary.

In the recent case of *Jagjeet Singh v. Ashish Mishra @ Monu & Anr.*³⁴, the Supreme Court of India reinforced the participation rights of the victim in a criminal case and held that the status of the victim cannot be relegated to being a mere witness. A victim is an important stakeholder in any criminal case and hence he/she must have active rights to participation. The court in this case also went on to state that the victims should have the right to participate at each stage of the proceeding and in cases where the victim is ready and willing to participate in such proceedings, there is no reason as to why he should be deprived of this right.

It is therefore clear that the consistent approach of the judiciary has been towards upholding the victim's right of active participation. The judgements underscore the evolving jurisprudence of Victim's rights in India that increasingly acknowledges and reinforces the rights of the victims- to align with the global standards.

VI. Feasibility of Belooof's Model in India

Since the Victim-Participation model, which according to Belooof, complements the two models of Packer- the due process model and the crime control model, is all about the participatory rights of the victim- the main stakeholder in the criminal proceedings, it can be seen as an ideal model which all countries must adopt to do complete justice to their victims. However, before blindly applying this model to any country, it is important to test if the other prevailing factors in the place allow for the accommodation of this model. It is important to first test the feasibility of the model in a particular place before applying it to the criminal justice system of that place.

1. Conflict with adversarial system

³⁴ (2022) 4 SCR 536.

According to the victim's rights movement, it is unfair to keep victims out of criminal proceedings since they have a peculiar stake in how criminal cases turn out and should be given the chance to have those interests represented.³⁵ However, the movement hardly reinforces what legal realists and public interest litigators have already pointed out: the adversarial system disregards other parties whose interests litigation may impact.³⁶ The adversarial system promotes the supremacy of the law or the equal application of the law to all societal segments. Under this system, the accused is presumed innocent, and the prosecution bears the burden of proving their guilt beyond a reasonable doubt. In case of a doubt, the accused is given the benefit of the doubt. Additionally, the accused has the right to remain silent and cannot be forced to respond. The prosecution and the defendant are the only parties that the adversarial criminal justice system is intended to accommodate in the combative environment of its trial process.³⁷ Other than serving as a prosecution witness, the victim has no right to an audience. While some support the involvement due to the cathartic value it provides for victims, others are against it because of the potential disruption to the system and the danger to the defendant's rights. India being a country that follows the adversarial system, it is difficult to incorporate full victim participation in its criminal justice system due to the basic characteristics that the adversarial system has. The integration of victim rights into an adversarial framework creates the risk of creating procedural complications. Scholars warn that over-empowerment of the victims may lead to loss of neutrality of the judges and rights of the accused.³⁸

2. Procedural Delays

The Indian judiciary is already grappling with as many as 80,701 cases pending adjudication in the Supreme Court and a total of 51 million cases pending in the judicial system. The inclusion of the Victim-Participation model under the current system would demand additional hearings and consultation of the victims- adding to procedural delays. In a case as

³⁵ Erin Blondel, "Victim's Right in an Adversary System" 58 *Duke Law Journal* (2008).

³⁶ *Ibid.*

³⁷ Julian Roberts, "Listening to the Crime Victim: Evaluating victim input at sentencing and parole" 38 *Crime and Justice* (2009).

³⁸ *Ibid.*

brutal as the *Nirbhaya Gang Rape*³⁹, it took 7 years for the convicts to be executed under the current framework of the criminal justice system. The inclusion of victim-participation at each stage, as suggested by Beloof, would contribute to more complexities and procedural delays. Moreover, the current infrastructure and funding of the judicial and investigating agencies are insufficient even for the present number of cases. It would take a lot more funding and development of infrastructure including filling of vacancies on judicial posts to conduct all the investigation and participation that Beloof's model demands. And by no stretch of the imagination, it can be said that prolonged trials would do good to the victims. It would only cause more trauma and expose them to secondary victimization.

3. Ethical Challenges

In a system of criminal justice like that of India, it is a significant challenge to incorporate the victim-participation model while maintaining the neutrality of the process. The risk of prejudice against the accused in such a system increases. Beloof's model would entail emotional narratives from the victims and their active involvement at every stage of the trial which might influence judicial decisions. A judge might otherwise not decide what he decides when a victim is actively involved. The Victim-Participation may introduce a subjective element in the process of adjudication. Since India follows an adversarial system, the involvement of the victim at every stage risks tilting the balance of fairness. The victim-impact statements that represent the victims are although very crucial in presenting the victim's perspective, it may negatively impact the accused especially in grave offences like sexual offences and terrorism. Scholars argue that these statements can create biases that disproportionately affect sentencing decisions and might lead to the infliction of harsher penalties.⁴⁰ Additionally, when victims are granted participatory rights at every stage, it may lead to deliberate causing of delay of proceedings in cases where the apprehended outcome does not align with their sense of justice. Therefore, it is difficult to incorporate full victim-participation rights under the present code without making necessary amendments to avoid delay.

³⁹ Mukesh v. State NCT of Delhi, AIR 2017 SC 2161.

⁴⁰ *Supra* note 25.

4. Legal Challenges

The bedrock of the criminal justice system in India is formed by the Constitutional provisions that guarantee several fundamental rights. Incorporation of Belooof's model under the Indian criminal justice system may come into conflict with Article 21.⁴¹ These rights might get diluted due to the incorporation of victim participation- as it might shift the focus from impartial adjudication to emotional appeals. While victim participation is invaluable, it cannot be allowed to supersede or interfere with the fundamental principle of presumption of innocence. In India, where high-profile cases are often influenced by public sentiments, providing a framework that gives an active role to the victim might lead to the dilution of legal standards and also to decisions driven by public opinion. The absence of procedural clarity under the present laws also poses a challenge. For example: the BNSS provides that the victim has a right to know about the progress of the investigation but whether such rights give rise to a qualification to challenge investigative decisions or not is not mentioned under the code. Similarly, it does not lay down as to whether the victim can veto the process of plea-bargaining or not. Therefore, it would not be wise to adopt the Western system without adapting it to the ground realities in the Indian context.

VII. Conclusion

Situating Belooof's model under the Indian criminal justice system represents both- a goal and a challenge. While the core idea of Belooof's model that proposes full participation of victims at all stages of a criminal process is very sound in as much as it aims to restore the dignity of the victims by allowing them to share their part of the story, its applicability in India remains questionable due to the type of adjudication process that India follows (adversarial system), the socio-cultural realities and the loopholes of the current legal framework.

This is a growing phenomenon around the world that the victims of crime are now being placed at a higher pedestal than that of a mere witness. Victim participation is now being recognised globally as a vital component of justice which ensures that the victims are the main stakeholders and they deserve equal procedural rights and dignity. The recent legislative

⁴¹ The Constitution of India, 1950, art.21.

development under the Indian criminal law, the BNSS has incorporated several rights of the victims under the code. The rights are both- some informatory and other participatory. The code has made significant strides in formally recognises the victim rights, including access to investigation updates, right to be heard before withdrawal of the case by the prosecution, the right to prefer an appeal, etc. However, while these provisions are progressive in themselves, they still do not grant substantive participatory roles to the victims at critical stages like trial and sentencing, as envisioned by Beloof in his model. This can also be seen to arise as a cautious approach to grant participatory rights to the victims without contravening the foundational principles and constitutional provisions.

While the Victim-participation model of Beloof aligns primarily with the restorative and reformative justice approach, direct adoption of the model in India would encounter several practical challenges. Structural challenges such as overburdened judiciary, delayed investigation and procedural inefficiencies make the addition of victim-participation without exacerbating delays doubtful. Moreover, there are ethical and legal challenges as well which include a risk of prejudice against the accused, procedural misuse, conflict with the adversarial framework and dilution of foundational principles like the presumption of innocence.

The feasibility of Beloof's model in India can be ensured not by direct adoption of the model into the Indian criminal justice system but by developing a hybrid approach that contextualizes its principles within the existing Indian framework. This might include expanding the victim rights through well-defined guidelines and amending the BNSS on one side and strengthening the judicial capacity and other infrastructure on the other. The use of technology will also be required to streamline the participatory rights of the victim without compromising the rights of the accused. The goal of the hybrid approach should not be to create a comparative narrative between the rights of the accused and the victims but to create a system that would take into account the interest of all the stakeholders while ensuring procedural impartiality.

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