

AN APPRAISAL OF VICTIM PROTECTION IN BANGLADESH*

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Abstract

Notwithstanding piecemeal and passive statutory recognition of the victims of crime, victims' right to meaningful access to criminal proceedings falls short of adequate protection. Our constitutional commitment to fair trial revolves around a cluster of procedural safeguards to the offender. The victims of crime enjoy no better protection under Code of Criminal Procedure 1898. Over the years a host of special legislations have been enacted to combat violence against women which also offer rather hazy victim protection scheme. The agencies of criminal justice system appears to be oblivious to the plight of the victims of crime. This article transpires that in absence of holistic legal as well as institutional framework protecting the witnesses and victims of crimes, victim justice still remains highly elusive in Bangladesh. It is thus emphatically argued that victims' rights should be high in the agenda of our criminal justice reforms. Consequently, an exhaustive legislation for victim and witness protection is urgently required.

Introduction

Despite the episodic and passive recognition of the victims of crime in our national legislations, victims' right to 'meaningful access to criminal proceedings'¹ falls short of exhaustive protection. Our common law system provides more procedural rights to the offenders which make them more active and dominant in the judicial process.² Our commitment to fair trial in the constitution and international human rights instruments including International Covenant on Civil and Political Rights

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1 Meaningful access to justice requires more than sporadic theoretical rights. It can be thwarted at every step by lack of information, resources, and support; by justice sector personnel not emphatic, or who seeks excessive fees; and by court room procedures that are intimidating and revictimise the victim and witnesses. See Nancy Hendry, "Remarks on Access to Justice for the Victim of Domestic and Sexual Violence", *Souvenir 2015*, Bangladesh Women Judges Association, pp. 48-50.

2 M. Shah Alam, *Bangladeshe Ainer Sangsker o Ain Commission (Legal Reforms in Bangladesh and Law Commission)*, (New Warsi Book Dhaka 2016), p. 122.

(ICCPR)³ basically deals with a cluster of procedural safeguards to the accused. The victims of crime are typically excluded from taking a participatory role in the justice process other than to serve as lone witnesses. The Code of Criminal Procedure 1898⁴ provides no better protection for the victims of crime. Over the years a host of special legislations have been enacted to combat violence against women which also offer hazy victim protection scheme. Though the victims need protection, safe accommodation, support, counselling and legal assistance, the agencies of criminal justice system are also often oblivious to the plight of the victims of crime and witnesses. In absence of holistic legal as well as institutional framework, victim protection still remains highly elusive in our criminal proceedings.

This article is based on both primary sources including statutes, rules, regulations, and secondary sources including books, journal articles, periodicals, reports and other sources from internet. It contains several sections. Following this brief introductory note, Part II sheds light on international concern for victim protection in justice system. Part III specifically deals with importance of victim protection in criminal litigation. Part IV reflects the rights of the victims of crime available in Code of Criminal Procedure and other special laws. It also makes a brief reference to the institutional scheme on victim protection. Part V discusses the multitude of challenges faced by victims of crime and witnesses in criminal justice system. Part VI offers recommendations for the better protection of victims and witnesses in criminal proceedings. Finally, a brief conclusion wraps up the discussion.

International concern for victim protection

International human rights law has been explicit in specifying procedural rights of the accused that are necessary ingredients for fair trial discourse. In particular, access to justice is included in the catalog of human rights as enshrined in International Covenant on Civil and Political Rights (ICCPR) 1966.⁵ The ICCPR, however, touches the basic procedural rights that are accorded to the offender alone. It does not specifically focus on the importance of the substantive and formal rights of victims in the context of criminal proceedings. Nevertheless, over the years there has been growing recognition at the international, regional and national levels of the relevance of highlighting the role of victims in criminal litigation. In

3 International Covenant on Civil and Political Right (ICCPR) 1966; available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; last accessed 01.01.2016.

4 Act V of 1898.

5 International Covenant on Civil and Political Rights 1966, art. 14.

particular, in 1985 United Nations General Assembly adopted Basic Principles of Justice for Victims of Crime and Abuse of Power, which note that:⁶

- Victim should be treated with compensation and respect for their dignity.
- Victims are entitled to the mechanisms of justice and promote redress, as provided for by national legislation, for the harm they have suffered.

Accordingly, the United Nations prescribed the Model Witness Protection Law 2000 and the Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organised Crimes 2008.⁷

Under the UN Convention against Transnational Organised Crime,⁸ State - parties are also legally required to take appropriate measures to provide effective protection from retaliation or intimidation for witnesses who give testimony in cases involving transnational organised crime. In addition, under Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,⁹ adopted by the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, member - States recognised the importance of giving special attention to the need to protect witnesses and victims of crime and terrorism and committed themselves to strengthening, where needed, the legal and financial framework for providing support to such victims, taking into account, inter alia, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.

It is pertinent to mention that such declarations mostly fall within the ambit of soft international law bearing no direct legal obligation to the State- parties.¹⁰ However, its persuasive importance cannot be readily brushed aside as the instrument was passed by overwhelming majority of member States. It is declared by the High Court Division (HCD) that the beneficial provisions and principles of international law can be resorted to and implemented in relevant cases unless they are contrary to the existing national laws.¹¹ In *Professor Nurul Islam v Bangladesh*¹² the HCD even

6 UN Resolution A/RES/40/34 of November 29, 1985; available at <http://www.un.org/documents/ga/res/40/a40r034.htm>; last accessed 01 January 2016.

7 Available at <https://www.unodc.org/documents>; last accessed 01 January 2016.

8 General Assembly Resolution 55/25, annex I, art 24; available at <https://www.unodc.org/documents>; last accessed 01 January 2016.

9 General Assembly Resolution 60/177; available at <https://www.unodc.org/documents>; last accessed 01 January 2016.

10 J. G. Starke QC, *Introduction to International Law*, (Aditya Books Butterworths 1994), pp. 52-55.

11 *Anika Ali v Rezwanul Ehsan* [2012] 17 MLR (AD) 49, *Hussein Mohammad Ershad v Bangladesh and Others* [2001] 21 BLD (AD) 69. See generally, Abul Hasanat, "Using

considered and applied non-binding instruments in the interpretation and application of domestic law.

In commensurate with the international standards, in many jurisdictions the victims of crime are fairly protected, assisted, restituted and compensated by appropriate laws and measures.¹³

Importance of victim justice in criminal proceedings

Now-a-days, it goes without saying that right to fair trial involves consideration of a popular triangulation entailing the interests of the victim, the accused and the society.¹⁴ In our criminal justice system, the victims of crime are generally left out from assuming participatory role other than to serve as mere witnesses.¹⁵

The victim of a crime plays a crucial role in the administration of criminal justice both as a complainant or informant and also as a witness for the prosecution.¹⁶ Victim - protection is thus indispensable for restoring the confidence of the common man in the criminal justice system by protecting the innocent and the victim and by punishing unsparingly the offender. Likewise, restorative justice, which seeks to include the victim in the process in an effort to make an offender appreciate the significance of his crime, apologies and gain forgiveness is one approach that has also gained popularity.¹⁷ Actually, restorative justice is far more concerned about the restoration of the victim and victimised community than costly punishment to the offender and it also elevates the importance of the victim in the criminal justice process through increased involvement, input and services.¹⁸

International Law in National Courts: Bangladesh Perspective”, *Bangladesh Journal of Law*, Volume 13, 2013, pp.49-72.

12 [2000] 52 DLR (HCD) 413.

13 For instance, Australian Witness Protection Act 1991, Canadian Witness Protection Program Act 1996, the United States Code, Chapter 73 provides for victim protection laws and schemes.

14 W. Morrison *et al*, *Common Law Reasoning and Institutions*, (University of London Press 2006), p.186.

15 Hussain M. F. Bari, “Plight of the victims of crime”, *The Daily Star (Law and Our Rights)*, 6 May 2014.

16 Law Commission, 108th Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences, available at <<http://www.lawcommissionbangladesh.org/reports.htm>>; Last accessed 01 January 2016.

17 David Ormerod, *Criminal Law*, (Oxford University Press 2008), p. 5. Also see G. Johnstone and D. W. Vannes, *A Handbook of Restorative Justice* (London 2006); available at www.homeoffice.gov.uk/crime-victims/restorative-justice; last accessed 01 January 2016.

18 See, K. I. Vibhute, “Justice to Victim of Crime: Emerging Trends and Legislative Models in India”. K. I. Vibhute (ed.), *Criminal Justice*, (Eastern Book Company Lucknow 2004), pp. 370-395.

Adequate protection of victims and witnesses plays a key role in the successful functioning of the Court, aiming to ensure that witnesses participate in and testify freely and truthfully without fear of retribution and further harm.¹⁹ In principle, the Court is duty-bound to take appropriate measures for the safety, physical and psychological well-being, dignity and privacy of the victims and witnesses. It is also incumbent upon the State to ensure that victims who would be witnesses are adequately protected against threats and intimidation from the accused side.²⁰ It is true that not all petty offences require massive victim protection scheme. However, victim and witness protection is essentially required in trials of offenders involved in serious types of crimes.

For every crime committed, there are two victims: first sufferer is the society that sees violation of its laws that renders the peace of its citizens in jeopardy and the actual victim of crime endures an injury to person or property. According to C. K. Allen, a crime is a crime because it consists in wrongdoing which directly and in serious degree threatens the security or well-being of the society, and because it is not safe to leave it redressable only by compensation of the party injured.²¹ Therefore, criminal justice system allows the State to play the prominent role in the prosecution of a criminal case. In our current system the public prosecutor takes centre-stage and represents the interests of the state in delivering justice and the actual victim of the crime is relegated to the role of witness for the prosecution.

There is no gainsaying that assistance to the victims of crime is of paramount importance because they have been subjected to irreparable loss as a result of crime. Adequate protection of witnesses and victims of crime is thus *sine qua non* for efficient investigation and prosecution of the offenders. The victim is an important player in the whole process of criminal justice system. Therefore, much attention be given to the rights, privileges and protection of the victims.²² According to David Garland, it is imperative that individual victims must be kept informed, to be offered the support they need, to be consulted prior to decision making, and to be involved in the judicial process.²³ He also argued that the victims

19 Atwar Rahman *et al*, "Necessity of legislation for protection of witness in Bangladesh: A legal study", *Journal of Judicial Administration Training Institute*, Issue 14, 2015, p.26.

20 Eshanul Haque Shomaji, "Final Report on Proposed Amendments for Code of Criminal Procedure 1898", *unpublished work with support from UNDP*, p. 28.

21 C. K. Allen, "The Nature of a Crime", *Journal of Society of Comparative Legislation*, (1931, reprinted 2007), p. 233.

22 *Op. cit.*, note 16.

23 David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, (Oxford 2009), p. 179.

must be protected, their voices must be heard, their memory honoured, their anger expressed, their fears addressed.²⁴

However, some scholars question whether victim's active participation in criminal litigation blurs the distinction between civil and criminal proceedings. Some are also concerned about the possibility of increased sentencing disparity and bias based on victim attributes. Another conservative approach is that such victim protection scheme may incur additional costs to the justice system and it may ultimately procrastinate the proceeding.

In spite of such myopic concerns about the victim participation in criminal proceeding, while writing extra-judicially, Justice Hamidul Haque observed that ensuring the right to fair trial to both the accused and the victim is equally important for arriving at a fair decision.²⁵ He elaborated that an aggrieved person or a victim has also right to get justice as the right of a victim of rape or acid burn, for example, to get justice is no less important than the right of the accused to get fair trial, right of the victim to get protection is also not less important than the offender's right to defend.²⁶ The High Court Division has also emphatically laid down that:²⁷

In a democratic country governed by rule of law, the government is responsible for ensuring free and fair trial not only to the accused but also to the victim of crime. It is also emphasised that the court is not only to see the right of the accused persons, but also to see that the victim of crime can have a trial free from all fear and insecurity.

Nevertheless, the criminal justice system has gradually recognised that its failure to grant victims a prominent role in the dispensing of justice. Actually, the continued functioning of the criminal justice system depends on victim cooperation both in reporting offences and in assisting the prosecution of crimes.²⁸

Bangladesh Law Commission rightly points out that our criminal justice administration will assume a new direction towards better and quicker justice once the rights of the victims are recognised by law and restitution for loss of life, limb and property are provided for in the system.²⁹

24 *Op. cit.*, note 23, at p.11.

25 Md. Hamidul Haque, "Some loopholes and deficiencies in the existing laws relating to trial of criminal cases", [2005] 25 BLD (Journal Section) 28.

26 Md. Hamidul Haque, "Victim's Compensation Right", *Souvenir 2015*, Bangladesh Women Judges Association, p. 35.

27 *Tayazuddin and another v State* [2001] 21 BLD 503 (HCD).

28 *State v Zakaria Pintu* [2008] 60 DLR 420 (AD).

29 Law Commission, 74th Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences; available at <http://www.lawcommissionbangladesh.org/reports.htm>; last accessed 1 January 2016.

There is now universal consensus that victim's participatory role in criminal proceeding will surely enhance the quality of justice. Only with an increased understanding of victims' emotional needs, criminal justice professionals will be offering better services that essentially address victims' needs and promote victim satisfaction within the justice process. Increased compassion for the rights of victims will lead to a higher reporting of crime and victim participation at trials and an increase in the system's ability to secure more convictions and seek adequate sentences. Accordingly, the Judge has an important role in protecting the rights of all which necessarily include the accused and the victim. It is expected that the scale of justice is balanced, not tilted in favour of one party or the other.³⁰

Currently, two tribunals, established under the International Crimes Tribunal Act 1973, are in operation. The International Crime Tribunal-1 and the International Crime Tribunal-2 have separate rules of procedures of their own that offer adequate compatibility with the rights of the accused enshrined under Article 14 of the ICCPR. However, the paucity of provision for reparation of victims of crime has drawn the attention of the ICT. In particular, ICT-1 expressed grave concern for lack of victim protection in it.³¹ In particular it held that there is no provision of victim - compensation in ICTA of 1973 nor in the Penal Code 1860. As such the Tribunal restrained to make an order against the accused for reparations to the particular victim of sexual violence. However, the Tribunal opines that all the victims including P.W-01, of sexual violence committed during the War of Liberation, 1971 should be adequately compensated and rehabilitated by the State itself without further delay.³²

Legal and institutional framework for victim protection

Bangladesh follows the tradition of common law.³³ The British colonial rulers sanctioned the legal system in the Indian sub-continent on the basis of Mughal principles of Islamic laws, Hindu laws and common law perspective of justice, equity and fairness.³⁴ The Code of Criminal Procedure (V of 1898), the Penal Code (XLV of 1860) and the Evidence Act (I of 1872) along with few special laws laid the basic foundation of legal regime dealing with substantive offences and criminal

30 Nancy Hendry, "Remarks on Access to Justice for the Victim of Domestic and Sexual Violence", *Souvenir 2015*, Bangladesh Women Judges Association, pp. 48-50.

31 The Chief Prosecutor v A T M Azharul Islam ICT-BD 05/2013 (ICT-BD 1).

32 *Ibid*, p.154.

33 *Op. cit.*, note 2, p. 122

34 H. M. F. Bari, *An Appraisal of Victim Protection in Bangladesh*, (Asiatic Society of Bangladesh 2016), p. 2.

procedure that are followed in our criminal justice system.³⁵ Though a victim has the right to set the law in motion by lodging a complaint or first information report (*ejahar*), in essence the victim of crimes still retains no rights to be present, informed and heard, to have a voice in criminal litigation except to be a lone prosecution witness when being summoned by the Court.

i. Victim protection under Code of Criminal Procedure

In general, the Code of Criminal Procedure 1898 offers a host of rights to the victim of crime which may be summarised below:

- a) Lodging a lawsuit: A victim can lodge an information relating to the commission of a cognizable offence in black and white or orally to an officer in charge of a police station.³⁶ This is known as filing an *ejahar* in police case or general register (GR) case.³⁷ Similarly, a victim can file a complaint³⁸ to the Magistrate of facts which constitute an offence and the Magistrate can take cognizance of such offence accordingly after observing all legal formalities.³⁹ The Magistrate taking cognizance of an offence on a complaint shall at once upon oath the complainant and present witnesses including the victim.⁴⁰
- b) *Rights and duties during investigation*: A police officer investigating an offence may examine orally any persons (which necessarily include the crime-victim) who are supposed to be acquainted with facts and circumstances of the case.⁴¹ A Magistrate records the statement or confession of victims in the course of investigation after observing all legal formalities.⁴²
- c) *Victim as prosecution- witness in police case*: It is worth-mentioning that in a complaint case (CR case) the complainant directly and actively participates in

35 Hussain M. F. Bari, "An Appraisal of Sentencing in Bangladesh: Between Conviction and Punishment", *Bangladesh Journal of Law*, Volume 14, 2014, p. 90. Also see Shahdeen Malik, "Perceiving Crimes and Criminals: Law Making in the early 19th century Bengal", *Bangladesh Journal of Law*, Volume 6, 2002, p. 59.

36 Code of Criminal Procedure 1898, s 154.

37 GR cases are those cognisable cases which are entered in the General Register in Form No. (R)3 (as found in Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009, Volume II, p. 44) in accordance with Rule 381(4) of Criminal Rules and Orders (Practice and Procedure of Subordinate Courts) 2009, Volume I.

38 *Complaint is the allegation made orally or in writing to a Magistrate, with a view to his taking action that some person has committed an offence, but it does not include the police report*: The Code of Criminal Procedure 1898, s 4(h).

39 Code of Criminal Procedure 1898, s 190(1)(a).

40 *Ibid.*, s 200.

41 *Ibid.*, s 161.

42 *Ibid.*, s 164.

the proceeding. However, in police case (GR case) he stands on a different footing as a mere prosecution witness. In CR case it is the individual responsibility of the complainant to produce his witnesses including the victim. However, in GR case it is the duty of the concerned police officer (prosecution) to ensure appearance of the witnesses including the victim.⁴³

- d) *Oppose the offender's move*: In practice, the victim may oppose release of an accused on bail or release of any property seized during investigation, or oppose the prayer of accused in criminal revision, appeal and writs filed, but he has no status to be necessarily informed by Court, when such applications are filed by the accused.
- e) *Victim's lawyer to function under the direction of Public Prosecutor*: In sessions- trial, the Public Prosecutor has the authority to conduct the prosecution.⁴⁴ Though there is no clear statutory sanction in Code of Criminal Procedure, in practice the Assistant Public Prosecutors play the prosecutory roles in trials of cases at judicial Magistracy.⁴⁵ Public Prosecutors may plead in all Courts in police cases. However, if the victim engages a private lawyer to conduct the prosecution, such private lawyer is required to act under the directions of the Public Prosecutor.⁴⁶
- f) *No withdrawal of police case*: A victim/ complainant can withdraw the complaint case at any stage of the proceeding.⁴⁷ However, victim/ informant cannot withdraw a police case as such.
- g) *Fine may go to the victim*: When a monetary fine is imposed as the sole or an additional punishment, the Court may, at its discretion, direct all or part be paid to the victim.⁴⁸ In cases where the state is the perpetrator, the Apex Court, exercising the writ jurisdiction for the violation of fundamental rights of the Constitution, sometimes order compensation to be paid by the state for certain crimes, including illegal detention and custodial torture.
- h) *Right of appeal*: There are two important rights of victim, after pronouncement of judgment. He may file a criminal appeal against the judgment of acquittal and also against inadequate sentence. The victim also has the right to receive compensation in appropriate cases.

43 *Ibid.*, s 171(2).

44 *Ibid.*, s 265A.

45 Police used to conduct the prosecutory role during trial of case in Magistrate Courts till 2007.

46 Code of Criminal Procedure 1898, s 493.

47 *Ibid.*, s 248.

48 *Ibid.*, s 545.

- i) *Protective framework under Evidence Act and Penal Code:* The Evidence Act 1872 clearly provides for court room protection of the witnesses by way of prohibiting indecent, scandalous and insulting questions put to the witnesses by way of cross examination.⁴⁹ Further, the Penal Code 1860 provides for punishment for committing criminal intimidation to any person which may necessarily include the witness and the victim.⁵⁰

(ii) Victim sensitive special laws

Recent special legislative reforms clearly reflect the concern for the wellbeing of the victims of crime especially those who are subjected to offence relating to violence against women. For instance, the statutes listed below will indicate the sporadic legislative attempts aiming at protection of the victims of crime in our jurisdiction:

- (a) *Act for Suppression of Cruelty to Woman and Children*⁵¹: This statute is a special legislative step which offers victim protection in Bangladesh. The law aims to protect only women and children victims of crime including abduction, rape, sexual harassment etc. Various procedures are laid down in sections 13, 15, 16, 32, 33 & 33 of the said Act. For instance, section 20 (6) provides for trial *in camera* for the protection of privacy of rape victim and witnesses to the offences. Section 20(4) provides that the Court must take into consideration the interests of the victim while deciding the issue of custody of a victim. Section 22 makes provision for recording of the statements of the victim by the Judicial Magistrate. Section 31 provides for safe custody of the victims of crime in safe home.
- (b) *Act for Control of Acid*⁵²: This law aims to protect the victims of acid -crime. Its preamble speaks about medical treatment, rehabilitation, legal aid to the victims. It also provides for compensation, examination of witness, chemical test, medical test of the victim. This statute contemplates formation of a council that will make fund available for treatment and rehabilitation of the victims of acid- crime. However, the government is responsible for establishing a rehabilitation centre. It also authorises the local officers to make arrangements for the treatment of acid -victims. It authorises the District Committee to make arrangement for legal aid to them. It also enjoins that any amount of fine realised from an offender shall be given as compensation to the survivors or her surviving heirs.

49 Evidence Act 1872, ss. 151, 152.

50 Penal Code 1860, ss. 503, 506.

51 Act VIII of 2000.

52 Act II of 2002.

- (c) *Acid Offences Act*⁵³: This law provides for protection of victims of crimes. According to section 9, an acid victim is entitled to compensation from the convict. The Court is to realise the amount of money from the property of the convict. In case of death of the victim, such amount goes to her surviving heirs. The statute also dictates the government to establish rehabilitation centres.
- (d) *Law and Order Disrupting Offences (Speedy Trial) Act*⁵⁴: This Act empowers the trial judge to direct the convict to pay appropriate compensation to the victim, be the victim state property, an organisation or any person.⁵⁵
- (e) *Prevention of Human Trafficking Act*⁵⁶: This Act provides for comprehensive victim and witness protection. To ensure justice and speedy trial, the Court may furnish any order including a protective order for the victim and witness. The Court may order for safe custody of the victim to government, non-government home or any other suitable place for the welfare of the victim. There is also a provision for trial *in camera* in appropriate cases. The unique feature of the Act is that court may take evidence of the victim by himself or on commission directly or through electronic way. Likewise, threat to witness is made punishable under this Act.
- (f) *Prevention & Protection of Domestic Violence Act*⁵⁷: This Act also provides for adequate protection for the victim of domestic violence. According to section 10, upon a petition the Court may pass an order directing the opposite party not to obstruct the stay right of the victim in the house. Section 15 states that a victim shall have the right to stay in the joint house. The Court may also order for safe custody of the victim under the supervision of the enforcing officer in an appropriate situation. Under section 13, in appropriate cases the Court may pass a protection for the victim. According to section 16, in case of domestic violence, the court may award compensation order directing the opposite party to pay the same to the aggrieved person. According to section 23, with the consent of the parties or in the opinion of the Court the trial proceeding may be held *in camera*. According to section 6, Enforcement Officer is duty bound to take proper steps for arranging legal aid for the victim within the purview of Legal Aid Act.

53 Act I of 2002.

54 Act XI of 2002;

55 *Ibid.*, s. 4(2).

56 Act III of 2012.

57 Act of 2010.

- (g) *National Legal Aid Act*⁵⁸: Though the National Legal Aid Act does not specifically mention about protection, rights and privileges of the victims of crime, in essence many beneficiaries of our legal aid program are victims of crime. The term ‘incapable justice seeker’ used in the statute necessarily includes the victim of crimes in criminal proceeding.⁵⁹
- (h) *Children Act*⁶⁰: In 2013 Bangladesh enacted the Children Act in view of Convention on the Rights of the Child 1989. The Children Act 2013 offers a new paradigm aiming at justice for children in Bangladesh. According to Children Act 2013, Children Court is given ample power to pass necessary orders for the better protection of the child victim. Some measures to reduce fear through the avoidance of face-to-face confrontation with the accused may be placed for the child victim. For instance, shielded testimony, *in camera* session, presence of parent or guardian as support for the child, withholding the identity of the child, evidence by video linkage etc. are few illustrative measures aiming at juvenile victim.⁶¹ The Children Court may direct the convict (adult) to pay compensation to the child victim of crime in appropriate case. If the convict is child, the Court may direct his parent or guardian to pay compensation to the child victim.⁶²
- (i) *Torture and Custodial Death (Prevention) Act*⁶³: In furtherance of our adherence to Convention Against Torture, death and torture in custody is made punishable under Torture and Custodial Death (Prevention) Act 2013. Viewing the torture as serious infringement of fundamental human rights, the Act creates two core offences: firstly, torture by a law enforcement officer, punishable with at least 5 years imprisonment and a Taka 25,000 fine, and secondly, custodial death due to torture, punishable with life imprisonment and a Taka 100,000 fine. The Act applies to all law enforcement agencies and renders inadmissible various excuses for torture. The Act also provides for easy avenues of complaint and investigation. If a person brought before a Court complains of torture, the Court will immediately record the statement of the person, send a copy to the police and direct that a case be registered. The police must then complete the investigation within 3 months. The law further provides that victims or their families may apply to the Court for protection

58 Act VI of 2000.

59 Act VI of 2000, Preamble, s 2(a).

60 Act XXIV of 2013.

⁶¹ *Ibid.*, s 55

⁶² *Ibid.*, s 39

⁶³ Act LX of 2013.

measures. If a person is convicted, monetary compensation is available to the victims or their families.

(i) Institutional framework for victim protection

Under the auspices of the government, the One Stop Crisis Centre (OCC) and the Victim Support Centre (VSC) are providing support for the protection of the victims of crime. The Ministry of Women and Children Affairs in joint collaboration of other four ministries has established OCC for victims of violence that provide medical, legal and social services to victims in six divisional governmental hospital.⁶⁴ The functions of most of police stations and investigating agency in providing immediate support to the victim of crimes appear to be meagre due to plethora of reasons. The role of District Legal Aid Office (DLAO) in providing legal aid service to the victims of crime is praiseworthy. In addition, many Non- Governmental Organisations (NGOs) are actively working in safeguarding the victims of serious crimes. The Ain Salish Kendra (ASK), the Bangladesh Legal Aid Services Trust (BLAST, the Bangladesh National Women Lawyers' Association (BNWLA), and the Acid Survivors' Foundation (ASF) are popular NGOs working towards victim justice within their own terms and references.

Major Challenges in victim protection

Based on constitutional framework⁶⁵ and substantive vis-a-vis procedural laws, at least theoretically it can be termed that ours is founded on 'due process model' in contrast to 'crime control model'.⁶⁶ The criminal justice system in Bangladesh is based on the adversarial model. It predominantly focuses on the rights of the offender and is often blamed for its inertia and insensitivity towards victim protection.⁶⁷ It is often articulated that current criminal justice system rather places the victims in a passive position. The victims feel powerless and vulnerable; some

64 See generally Md. Abdur Rahim Mia, "Role of One Stop Crisis Centre (OCC) in Protecting Women's Rights: An Analysis with Special Reference to Rajshahi District", *Bangladesh Journal of Law*, Volume 11, 2011, pp. 149-174.

65 Constitution, arts 27, 33, 35 provide for provisions relating to procedural due process in criminal trials.

66 See L. H. Packer, "Two Models of Criminal Process", in George F. Cole (ed.), *Criminal Justice: Law and Politics*, Massachusettes, 1990, pp. 17-33. However, as failure of the law enforcing agencies to quickly apprehend and prosecute the real offenders for trial, long delay in disposal of cases, increasing costs of litigation and at times those give rise to lack of respect in the law and induces many to take the law in their own hand. See generally Kazi Ebadul Hoque, *Administration of Justice in Bangladesh*, (Asiatic Society of Bangladesh 2003), pp. 252.

67 Abdullah Al Faruque, "Victim Protection in Bangladesh: A critical appraisal of legal and institutional framework", *Bangladesh Journal of Law*, Volume 13, 2013, p. 33.

even feel twice victimised, first by the accused, and then by the justice sector officials who often overlook their concerns and needs. In particular, insensitive questioning by the police, inadequate provision of information, delays, or unexplained decisions by prosecutors to discontinue cases entail further suffering to the victims.⁶⁸ Criminal law, which reflects the social ambitions and norms of the society, is designed to punish as well as to reform the criminals; however it takes little notice of the victims of crime. In our jurisdiction, the poor victims of crime are entirely overlooked in misplaced sympathy for the criminal. A distinguished scholar thus pointed out that ‘the guilty man is lodged, fed, clothed, warmed, lighted and entertained in a model cell at the expense of the State, from the taxes that the victim pays to the treasury’.⁶⁹ In absence of legal and institutional victim protection scheme, our criminal litigation is bound to suffer.⁷⁰ The Appellate Division also found that rights of the victim in most of the cases have been ignored while granting *ad interim* bail to the accused.⁷¹ The Law Commission rightly observed that absence of protection of victim and witnesses renders our justice system into jeopardy.⁷²

Following challenges are apparent in the exercise of the rights of the victims of crime in our criminal justice system:

- (a) *Hurdles in instituting case*: In most countries including Bangladesh, officially reported crimes are only ‘the tip of the iceberg’ as many crimes go unnoticed and unreported to the machinery of law due to myriad of reasons.⁷³ It is not always easy to set the law in motion by instituting the case by a victim. In particular, stigma and other cultural barriers keep the women and girls from reporting sexual offences and seeking justice. Further,⁷⁴ accessing justice can be practically daunting and challenging for victims of gender based violence. Sometimes, the real culprit lodges First Information Report of the occurrence with concocted or different story to divert the attention of people and it causes hardship to the hapless victim in institution of FIR of cross case.⁷⁵ In practice,

68 Lucia Zender, *Criminal Justice*, (Oxford University Press 2004), p. 143.

69 K. D. Gaur, *Commentary on Indian Penal Code*, (Universal Law Publishing Co. 2006), p. 155.

70 Hussain M. F. Bari, “An Appraisal of Sentencing in Bangladesh: Between Conviction and Punishment”, *Bangladesh Journal of Law*, Volume 14, 2014, p. 112.

71 *Op. cit.*, note 28.

72 *Op. cit.*, note 17.

73 *Op. cit.*, note 16.

74 *Op. cit.*, note 30, p. 49.

75 Md. Hamidul Haque, “About First Information Report”, *Journal of Judicial Administration Training Institute*, Volume VII, 2008, pp. 7-15.

in many instances there is a procrastination tendency in registering the cases involving serious offences like dacoity, rape, extortion, human trafficking.

- (b) *Victim's challenges during investigation and pre-trial proceeding:* The victim has no right to withdraw a case at investigation stage. It is the exclusive domain of the investigating officer to conduct the investigation where the victim has nothing to do unless being called for by the investigating officer. Sometimes, the investigating officer refrain himself from recording the statements of the victim and the witnesses at the earliest opportunity. The statement of victim or other witness cannot also be recorded under section 164 of Code of Criminal Procedure by the Magistrate unless s/he is produced by investigating officer. Same is the position about holding Test Identification Parade (TIP) of person or property, forensic examination of any seized article or viscera etc. If the police submits the police report after investigation, result of the investigation is supposed to be transmitted to the informant in BP Form ⁷⁶. If the crime victim himself is not the informant, he remains unaware about the result of the investigation. In practice, the victim or the informant may not also receive notice about the police report. If the prosecution fails due to faulty investigation, the victim of crime never gets justice.

If the crime- victim is not the informant in FIR, s/he does not get information in the above mentioned matters. Therefore, after institution of FIR, the victim has no other alternative but to visit the Court every day to verify as to whether any bail application, release application or criminal revision against any order has been filed by accused.

- (c) *Uncomfortable testimony:* As stated earlier, a victim is a mere prosecution - witness in trial of cases where s/he can provide a testimony if s/he is summoned by the Court. In most cases, the victim and other witnesses lost enthusiasm to depose during trial that usually takes place after long time. Sometimes the prosecution side may fail to produce the prosecution - witnesses including the victim as their present trace and location change. More so, in some heinous crimes including offence relating to violence against women, the victim is often compelled to offer obliging evidence in favour of the accused due to some 'local compromise'. Lack of protective measures for the witnesses is obviously a major concern in our paralysed trial system. In practice, many a time hardened -criminals and gangsters hold out threats to the victim and witnesses not to lead evidence. In certain cases, the victim feels uncomfortable while giving answers in the immediate presence of the offender. Further, many victims of crime relating to violence against women become vicious target of

76 Police Regulations of Bengal 1943, BP Form 40, 40A.

further psychological assault by way of unhealthy cross-examination by the defence lawyer. Law Commission observed that victims of sexual violence feel uncomfortable to depose in open trial proceeding.⁷⁷ Though many special laws provide for trial *in camera*, the judges rarely resort to such protective measures.

- (d) *Rare utilisation of compensation order*: According to the Code of Criminal Procedure, when a monetary fine is imposed as the sole or an additional punishment, the court may, at its discretion, direct all or part be paid to the victim.⁷⁸ In practice, such power of sentencing judges is sparingly exercised, and even if it is, compensation amount is poor. In many cases, the courts order for compensation considering the number of dependents of the deceased and capacity of the accused to pay. However, if there is an acquittal or if the offender cannot be apprehended, there is no opportunity for victim compensation. That is, the status of victim for the purpose of compensation solely depends upon the determination of guilt. In cases where the state is the perpetrator, the Supreme Court, exercising the writ jurisdiction for the violation of fundamental rights, very rarely order compensation to be paid by the state for certain crimes. Nevertheless, such avenue for providing compensation to the victim remain largely unused perhaps due to insensitivity of judges towards victims.⁷⁹ The Law Commission rightly pointed out that the victim's right to get justice, protection and compensation to cover the loss sustained by him is not less important than the right of the accused to defend him.⁸⁰ Justice Krishna Iyer emphatically identified that victim reparation is still the vanishing point of criminal law in this region and this is a deficiency in the system which must be rectified by the Legislature.⁸¹
- (e) *Victim term is not defined in law*: Victims have long played a secondary role in criminal trials. Several pieces of national legislation utilise the term "victims" without defining it.⁸²

⁷⁷ *Op. cit.*, note 29.

⁷⁸ Code of Criminal Procedure 1898, s 545.

⁷⁹ Abdullah Al Faruque, "Goals and Purposes of Criminal Law", *Bangladesh Journal of Law*, Special Issue, 2007, p. 1.

⁸⁰ Law Commission, 75th Final Report on a proposed law relating to payment of compensation and other reliefs to the crime victims; available at <http://www.lawcommissionbangladesh.org/reports.htm>; last accessed 01 January 2016.

⁸¹ *Rattan Singh v State of Punjab* [1980] AIR 84 SC (India).

⁸² For instance, UN Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power defines victim as 'persons who individually or collectively have suffered harm including physical and mental injury, emotional suffering, economic loss,

- (f) *Absence of victim's voice during trial:* In our jurisdiction, victims are often reluctant to participate in the justice process due to the fear of re-victimisation, fear of retaliation by the accused, a general lack of knowledge or notification of their right to present their arguments and finally very poor conviction rate in criminal cases. It can be argued whether a judge can take a proper view in sentencing if he cannot juxtapose the accused and victim through the balanced scale. The prosecutor, being appointed on *ad hoc* basis, may not fully aware of the sufferings and agony the victim has undergone. Many victims will receive psychological healing if he is allowed to present 'victim impact statement' during sentencing. Absence of sentence hearing is also a challenge of our criminal proceeding.⁸³
- (g) *Absence of an exhaustive law:* A widespread concern has been raised over the lack of rights and protection of the victims and witnesses.⁸⁴ At present, there is no specific law on the protection of victim and witnesses in Bangladesh. However, in *BNWLA v Government of Bangladesh*⁸⁵ The High Court Division observed that the government shall take immediate steps to enact law for introduction of witness and victim protection system for effective protection of victims and witnesses of sexual harassment as well as the people who come forward to resist sexual harassment. Further, Law Commission in its reports strongly advocated for enactment of legislation on protection of victims and witnesses.⁸⁶
- (h) *Absence of plea bargaining and restorative justice:* Unlike other standard legal systems we have no plea bargaining stage. In absence of legal framework of plea bargaining, there is little institutional space for settling the occurrence in between the accused and the victim. Though there is scope for compounding of offences at a later stage of trial, the victim has very feeble voice to have his grievance compromised under the existing system. Though in recent time restorative justice paradigm has been gaining currency with academia and NGO workers, in absence of specific legal framework such avenue can never be fully explored for the benefit of the victims of crime.

or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws'.

83 *Op. cit.*, note 69; Also see, M. Imman Ali, "Sentenced without a hearing", *Journal of Judicial Administration Training Institute*, Volume 8, at p. 16.

84 *Op. cit.*, note 29.

85 Writ Petition No. 8769 of 2010 (HCD).

86 Law Commission, *Op. cit.*, note 16, 29,80.

- (i) *Sporadic victim protection in special laws:* Though few special laws often refer to sporadic victim and witness protection, these provisions appear to be mere marginal and hence insufficient in absence of exhaustive legal and institutional framework. The justice sector agencies including the judges also seem to be lukewarm in resorting to such protective measures aimed at victims and witnesses.
- (j) *Oblivious justice sector professionals:* In practice, justice sector agencies are often indifferent to the plight of the victims in implementing the existing laws affecting their rights and well-being. The officials are either ill-equipped or have little idea about the development, trend, scope and sensitisation regarding concerns of the victims. Paucity of funding in government institutions is also a challenge in giving adequate protection to the victims of crime.
- (k) *Poor institutional scheme on victim protection:* Though many actors are working in victim protection, the existing legal and institutional framework on victim protection is inadequate and has not also developed in a coherent fashion.⁸⁷ The Government initiatives do not appear to be adequate, both the institutions work mostly at capital with poor facilities and equipment. They are not immune from institutional maladies as well. District Legal Aid Office can be highly explored in this regard.⁸⁸ National and regional committees on victim protection as contemplated in special laws have not been either fully formed or their actions are yet to be clearly visible. Abdullah Al Faruque *et al* observed that the victims are not getting full support and protection according to their needs.⁸⁹ The role of Non-Government Organisations (NGOs) in protecting the victims of crime is praiseworthy; nevertheless, there is still room for greater collaboration and continuous development.
- (l) *Huge resource required:* There is no denying that active victim support scheme may require huge financial involvement from state exchequer. Nevertheless, now-a-days victim compensation is neither the sole liability of the offender nor does it depends on the determination of guilt of the offender. Rather, a democratic society should necessarily compensate the victims of grave crimes like murder, rape, kidnapping, decoity, human trafficking, custodial torture and illegal detention etc. A State adhering to rule of law can

87 *Op. cit.*, note 66, p. 48.

88 H. M. F. Bari, "Elusive Victim Protection in Criminal Litigation: Legal Framework and Challenges", *Chancery Law Chronicles*, 2015, at <<http://www.clcbd.org/journal/14.html>>; accessed 01 January 2016.

89 *Op. cit.*, note 67, p. 47.

in no way skew the victim protection and rehabilitation scheme for long. However, resource allocation for such scheme is a huge challenge for an emerging economy like ours. In this regard, donor agencies may come forward to accelerate victim justice.

- (m) *Dearth of legal scholarship and empirical data*: In Bangladesh there is scarcity of legal scholarship and relevant empirical data on impact of the lack of victim protection in our criminal proceedings. It is mentionable that the Law Commission in its couple of reports tried to assess the necessity of victim and witness protection and proposed the draft law. However, no statute on the basis of such reports has been enacted yet. Though Atwar Rahman *et. al.* opined that the Law Commission proposed draft - legislation does not provide for comprehensive scheme,⁹⁰ in my opinion, the observations, findings and draft law proposed by Law Commission appear to be fair enough to set the victim justice in motion in serious crimes given the practicality of the available human resource and financial liability involving the issues.

Key Recommendations

In view of the above challenges in victim and witness protection in Bangladesh, the following recommendations can be offered:

- (a) The victim, no less than the offender, bears a germane interest in seeing the imposition of a just penalty to the offender. In Bangladesh the victims of crime and witnesses are often denied fair participation in the justice system. Therefore, review of existing procedures and laws for dealing with victims of crime is urgently needed. Obviously, the victims of crime require legal entitlement to participate in proceedings as a matter of right. It is imperative that a national policy for victim assistance and protection in our criminal jurisdiction is drafted.⁹¹ In particular, certain rights and protection of victims and witnesses should, therefore, be granted by enacting an exhaustive law. In this connection, the draft reports of Law Commission may be under consideration for the policy makers.
- (b) The provisions of criminal law be amended in a way that after receiving any information of occurrence of heinous crimes from any person other than the crime- victim, the officer-in-charge of the police station, shall enter such information in the station diary and proceed to search and take statement of victim of crime immediately. It may form the basis of First Information Report

90 *Op. cit.*, note 19, p. 30.

91 *Op. cit.*, note 16.

(FIR) after initial scrutiny. It will thus prevent the accused and their cohorts to institute the concocted case who in practice often try to divert the course of law by bypassing the hapless victim and their relatives. It will ultimately accelerate the victim's access to justice and fair treatment in criminal justice system.

- (c) The officials working in various agencies of the criminal justice system should be more receptive to the needs of the victims of crime and address their issues sincerely and empathetically. In particular, initial compassionate and prompt response from the officials, participatory voice of the victims and rehabilitation scheme of the most vulnerable of victims should be high in the reforms-agenda of the mainstream criminal proceeding. Specifically, immediate medical, psycho-social support and fair treatment to access to justice for victims should be structured, systematic, free of charge, easily accessible and available beyond the immediate post-occurrence period.
- (d) All criminal justice officials should be well-versed with existing legal and institutional scheme on victim protection. They should work together to develop creative methods to generate public awareness to alert the victims about their rights available in law. It is also necessary that criminal justice professionals working with the crime-victims have a complete and thorough understanding of the devastating effects of crime on its victims.
- (e) Some measures to reduce fear through the avoidance of face-to-face confrontation with the accused may be in place especially for the victim of heinous crimes like rape, abduction, trafficking, dacoity etc. For instance, shielded testimony through the use of a screen, curtain or two-way mirror; removal of the public from the courtroom (*in camera* session); presence of an accompanying person as support for the witness and use of statements of victim made under section 161 of the Code of Criminal Procedure etc. should be accommodated during trial. In this way the victims and witnesses will feel assured to narrate the entire occurrence in a free atmosphere at Court without any fear or embarrassment. It will essentially work as a psychological healing for the crime-victims.
- (f) Currently, the judicial discretion in allowing compensation to the victim is very rarely exercised by the judges. Suggestion may be advanced that the trial judge is to assign specific explanatory note in his judgment as to why an order for compensation is not given in a judgment convicting the accused for more than 02 (two) years. Accordingly, the Criminal Rules and Orders (Practice and Procedure for Subordinate Courts) 2009 may be amended containing such directives.

- (g) It is necessary for taking legal steps to minimise the inconvenience to victims, protect their privacy where necessary and ensure their safety as well as that of their relatives and witnesses on their behalf, from intimidation and retaliation. The victims of rape, sexual harassment etc. should also be protected from being overly exposed in the media. The distinction between investigating journalism and media trial should always be maintained.⁹² Medical examination of rape victim should be conducted by the female medical officers. Investigation of crimes involving rape, other violence against women and girls etc. should preferably be done by the female investigating officer. Likewise, examination of female victim under section 22 of the Act for Suppression of Cruelty to Woman and Children should preferably be conducted by the female Judicial Magistrates.
- (h) Bangladesh can in no way readily ignore victim compensation for want of resource allocation. It is rather expected that a State owes an obligation of providing state - compensation to victims of serious crime, whether the offender is apprehended or not, convicted or acquitted. Thus, an exhaustive victim compensation scheme will be in order. Accordingly, a victim compensation fund is to be administered possibly by an autonomous quasi-judicial body. It should provide for the scaling of compensation in view of gradation of offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn. There must be a provision to compensate the crime-victim if the prosecution fails due to laches in investigation and the State can reimburse itself by realizing the amount of compensation from the delinquent officers. Review of the availability of existing resources to meet victims' needs and the capacity of existing agencies to provide effective protection and assistance to victims of crime is also needed. Accordingly, required budgetary allocation should be in place.
- (i) Due to the transnational effects of acts of terrorism, human trafficking etc., it has become increasingly important to establish cross-jurisdictional links that facilitate the functioning of victim support mechanisms in appropriate cases.
- (j) Legislation may be amended for providing crime victims the right to submit victim impact statements at the time of sentencing in heinous offences punishable with more than 5 (five) years' imprisonment.

92 See, Hussain M. F. Bari, "Legal Aspects of Media Trial in Bangladesh: Free Press versus Fair Trial Dilemma", *Bangladesh Journal of Law*, Volume 13, 2013, pp. 89-104

- (k) In addition to legal aid services, Government and non-governmental organisations require to be pro-active in providing both emergency and prolonged medical, psychiatric, psychological and social services to the victims of crime.
- (l) The Office of the Ombudsman for Victims of Crime may be established with clear mandates so that it can spearhead victim justice in our jurisdiction.
- (m) A Victim Justice Centre should be established in each district keeping in view the aspects of restorative justice paradigm which will in turn improve the quality of justice. It may ultimately reduce the huge backlog of criminal cases.
- (n) More shelter homes should be established for the women and children victims of serious crimes.
- (o) Co-ordination among various ministries and agencies is also important for ensuring victim justice.

Conclusion

Though active participation of victims of crime and witnesses is crucial for successful prosecution and trial of criminal cases, the criminal justice system in Bangladesh lags behind international standards for protection, compensation, restitution and rehabilitation of victims and witnesses. There has been widespread concern about the the lack of rights and protection of the victims and witnesses in our legal regime. Though we are constitutionally committed to speedy and fair trial, the balance between the rights of the accused and of those of the crime- victim appears to be lopsided in favour of the offender.

Our legal and institutional framework for the protection of victims and witnesses appear to be sporadic, piecemeal, passive, and hence inadequate. It may be noted that victim protection was not a prominent issue 150 years ago when British colonial rulers imposed the modern criminal law in this region. With the passage of time, advancement in human value, philosophy and technology, exhaustive review of Penal Code 1860, Code of Criminal Code 1898 and Evidence Act 1872 may be under serious consideration aiming at paradigm shift in balancing the scale of justice.

Despite the challenges as indicated above, the investigators, prosecutors, judges and probation officials still require to be pro-active in accelerating victim justice within the framework of existing legal regime. In particular, an exhaustive statute for the protection of victims and witnesses is urgently required. The raising voice of the victims in criminal litigation, state sponsored compensation scheme, quick and

compassionate response of the justice sector officials to the concerns of the victims, collaborative efforts of the Government and Non-Governmental Organisations and creative intervention of the judiciary will surely ameliorate the current dismal status of the victim protection in our jurisdiction. A victim protection scheme should provide a full range of physical protection, psychosocial support, compensation and rehabilitation to the victims thereby creating a conducive environment to report the cases and to follow the criminal proceedings accordingly. It is a key to ensuring access to justice which in turn combats impunity of the perpetrators of crimes. More participatory role of the victims of crime will ultimately enhance the quality of criminal justice in Bangladesh.