CHAPTER-2

THEORETICAL FRAMEWORK OF VICTIM JUSTICE

2.1. INTRODUCTION

In Criminal Justice System, though victims are the direct sufferer of the crime, but still crime is considered as an act or omission against the State. After performing a limited role of initiating the process by giving information of the crime committed against him, victims are excluded from the Criminal Justice Process and their later role gets limited to as a witness in an offence committed against the State.¹ In adversarial criminal Justice systems, trials are conducted by the State against the accused. These two are considered as two parties of a criminal trial. Both these parties have laws to protect their interests. Victim, though a direct sufferer of the crime is not considered as a party to the criminal trial, thus is devoid of any safeguard to protect his interest. Victim has a very limited role to play in a criminal trial, which is to testify before the court as a witness of a crime against the State.²

This ordeal leaves victims wondering whether they have some rights to justice or they are a non-entity in the criminal justice system. Victims may be expecting various justice needs being fulfilled by the criminal justice system, for some victims a particular justice need is more significant than what other victims may be looking for. The state with its limited resources and the functionaries might not be capable of giving effect to these various justice needs. Some justice needs would be in direct conflict of the well-established rights of the accused. There arises a need to ascertain what are the most significant justice needs that result in more satisfied victims and which the state can prioritise in the view of its limited resources and are not in direct conflict of the accused rights.

²Jo-Anne Wemmers, The Meaning Of Justice For Victims, in INTERNATIONAL HANDBOOK OF VICTIMOLOGY, 27, 28 (Shlomo Giora Shoham et. al., eds. CRC Press, 2010).
2.2. SECONDARY VICTIMIZATION:

Re-victimization by society or by the agencies of the Criminal Justice System is termed as secondary victimization. After primary victimization, further violation of victims’ legitimate rights due to the negative societal reactions as well as the negative reactions of legal authorities, experienced by the victims, while coming into contact with Criminal Justice System, is known as secondary victimization. This victim of personal violence crime suffers the mental agony of victimization again when it faces the Criminal Justice System’s apathetic attitude towards justice to victims. Victim suffers secondary victimization from the insensitive treatment given by the agencies of criminal justice system. An unsympathetic attitude of the agencies results into exacerbating the negative effects of crime. It is a recognized fact that insensitivity shown by the authorities towards victims’ concerns results into ‘secondary victimization’.

Devoid of any formal role in criminal justice process, victims feel anxious and feel frustrated because of the insensitive treatment by the criminal justice agencies. Orth asserts that psychological harm caused due to procedural injustice, amounts to secondary victimization and is much more than mere the disappointment from an unfavourable verdict. This secondary victimization negatively effects a persons’ psychological well-being and recognized these psychological harms as adversely affecting ‘victim’s self-esteem, belief in a just world, trust in the legal system, ability to cope and faith in the future.’ Negative perceptions emerges from the instances of procedural injustices like keeping victim on side lines instead of giving him some control over process and confrontation with the accused, insensitive questioning and

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4 L. Montada, Injustice In Harm And Loss, 7 (1) SOCIAL JUSTICE RESEARCH 5- 28 (1994).
victim-blaming, intrusion of privacy, and reaching to conclusion that his case being not fit for prosecution.

Another factor that leads to secondary victimization or re-traumatization of victims is improper treatment of victims by the agencies within the Criminal Justice System. Expression of detached attitude by the authorities leads to the perceptions of rejection of one’s identity, resulting into a second injury to the victim. This second injury results from the perceived rejection by the agencies of Criminal Justice System and creates a sense of helplessness. This feeling result from one’s experiences of not being able to tell one’s story of criminal victimization due to his limited role in Criminal Justice Process.

Orth mentions ‘victim-blaming, insensitive comments and minimization of harm’ as various forms of interactional injustices resulting into secondary victimization. Earlier ‘respectful treatment’ has been recognized as victim’s need in the field of victimology, though it was not referred as ‘interactional justice.’ ‘Detrimental treatment’ has adverse psychological consequences upon victim’s ability to cope with the effects of victimization, whereas positive experiences or ‘interactional justice’ enhances victim’s ability to cope with the negative outcomes of victimization. Victims’ common complaint about lack of information have been reported in many studies. A research conducted in Pennsylvania shows that the level of informational justice to victims is very low. Victims were not informed about the progress in their cases and as many as 43% of the sample received notification from district attorney’s.

12 R. Campbell et. al., Community services for rape survivors: Enhancing psychological well-being or increasing trauma?, 67 JOURNAL OF CONSULTING AND CLINICAL PSYCHOLOGY 847-858 (1999).
15 D. Levine, Public Wrongs And Private Rights: Limiting The Victim’s Role In A System Of Public Prosecution, 104 (1) NORTHWESTERN UNIVERSITY LAW REVIEW 335-362 (2010).
16 U. Orth, supra note 8.
18 MALINI LAXMINARAYAN, supra note 3 at 58.
office, 17% from victim witness services office, 13% were never notified, 3% inquired themselves and only 16% testified at trial.\textsuperscript{20}

2.3. EFFECTS OF SECONDARY VICTIMIZATION:

Insensitive treatment by the agencies of criminal justice system causes a second wound for the victims resulting into secondary victimization of victims.\textsuperscript{21} Various studies indicate that crime victims feel dissatisfied from the criminal justice system. Their dissatisfaction can be attributed to their negative experience with the agencies of criminal justice system. As a result, thereof, victims tend to avoid reporting of crime. Lack of procedural justice deters victims from reporting crime or to approach the concerned authorities and may leave an impression upon the victim that system is not victim-sensitive. It may further worsen the situation as victims become reluctant to approach the Criminal justice system. While studying the increasing crime rate in Netherland and authorities’ inability to deal with the same in an efficient manner, it was noted by Wemmers that,

At the same time, it became apparent to policy-makers that legal authorities were themselves partially responsible for the quality of the relationship with victims.\textsuperscript{22} Insensitive reactions by authorities working in the criminal justice system could augment victims suffering and deter them from contacting authorities again in the future. Moreover, it was feared that by treating victims with disinterest, they were suggesting to victims what happened to them is okay and that crime is tolerated.\textsuperscript{22} (emphasis added)

Orth cites two possible psychological consequences of procedural victimization namely victims’ losing their self-esteem and victims’ losing their trust in Justice System.\textsuperscript{23} Psychological consequences include variables such as “belief in a just world, self-esteem, ability to cope, trust in the legal system and optimism in the future.”\textsuperscript{24} Effects of legal outcomes can be mitigated by enhancing the procedural fairness such as ‘voice’ and ‘respect’ in the Criminal Justice Process.\textsuperscript{25}

\textsuperscript{20}R. Barry Ruback et. al., supra note 1 at 13 & 14.
\textsuperscript{21}M. Maguire, supra note 7.
\textsuperscript{23}U. Orth, supra note 8.
\textsuperscript{24}U. Orth, supra note 8.
\textsuperscript{25}MALINI LAXMINARAYAN, supra note 3 at 21.
2.4. SIGNIFICANCE OF VICTIM JUSTICE IN REMOVAL OF SECONDARY VICTIMIZATION:

Victims are considered as the “forgotten party” in the criminal justice process\(^{26}\) and the lack of any significant formal role make them feel frustrated. Various studies conducted from time to time indicate that victims need recognition in the process of criminal justice.\(^{27}\) Wemmer in one study of the experiences of victims through the Dutch criminal justice system, found that most victims wanted to be notified but were in fact not notified by the authorities. She concluded that victims who wanted notification and received it felt more fairly treated as compared to the other victims.\(^{28}\) Carr, Logio and Maier found in a study of the cases throughout juvenile justice system in Philadelphia, that overall, victims wanted well informed and fair treatment about their cases and proper information and these played an important role of their fairness judgements.\(^{29}\) In one study, victims were asked as to how much control they should have in the Criminal Justice Process. Victims responded in favour of effective consultation but did not demand decision making power in the outcome.\(^{30}\) Victim justice plays a significant role in removal of secondary victimization. Significance of victim justice in removal of secondary victimization can be studied under the following heads:

2.4.1. HELPS IN COPING WITH THE EFFECTS OF PRIMARY VICTIMIZATION:

‘Primary victimization’ results in victim feeling depressed, shocked, angry, having a low self-esteem and may lose belief also.\(^{31}\) Victims feel themselves as vulnerable, with no self-worth, and feel that world is of no use to them.\(^{32}\) This psychological distress resulting from


\(^{28}\) J. M. WEMMERS, VICTIMS IN THE CRIMINAL JUSTICE SYSTEM (Kugler Publications, 1996).


victimization can be done away with the help of coping mechanisms. Victim satisfaction from the criminal justice system is also helpful in victim’s coping with the effects of primary victimization. An increase in the level of satisfaction with the criminal justice process creates a sense of control upon one’s life. ‘Problem-focused’ strategies of coping with the effects of crime emphasize upon ‘outside support’. Victim expects this support from the agencies of the Criminal Justice System. Getting adequate information ( informational justice) and respectful treatment ( interactional justice) enhances one’s ability to cope with the crime. Victim needs ‘respectful treatment’ so as to easily cope with the crime. Victim’s ability to cope with the crime depends upon the ‘interactional treatment’ he receives at the hands of agencies of Criminal Justice System. Authorities’ disrespectful treatment or ‘interactional injustice’ may be a ‘detriment’ of one’s ability to cope, whereas on the other hand, authorities’ positive attitude lessens or mitigate the negative effects of primary victimization.

2.4.2. VICTIM-PARTICIPATION CREATES A SENSE OF ‘INCLUSION’:

‘Victims’ respectful treatment and sufficient opportunities to participate in the Criminal Justice Process creates a sense of inclusion. Victimological research outcomes call for a greater participatory role of victims in Criminal Justice Process, procedural fairness, and informational and interpersonal justice to the victim. Exercise of participatory rights by the victim depends upon its effective implementation and Notification, itself, is one of the most

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36 MALINI LAXMINARAYAN, supra note 3 at 59.
37 MALINI LAXMINARAYAN, supra note 3 at 59-61.
important victim participatory right. Information and Notification during the criminal proceedings boost victims’ confidence and further ensures them about the procedural fairness into their case.

2.4.3. PROMOTES SELF-REGULATORY BEHAVIOUR:

Punitive approach is not the sole route to achieve social regulation. Social regulation can be achieved by providing the procedural justice and respect. Procedural justice inculcates a sense of law abiding behaviour due to the acceptance of legitimacy of legal authorities, resulting into more self-regulated behaviour. This approach was termed by Tyler as a ‘process-based model of regulation’.

Victim satisfaction due to procedural justice regulates a person’s future course of conduct. Procedural justice in the form of ‘justice in the quality of decision-making procedures’ and ‘justice in the quality of interpersonal treatment’ enhances acceptability of social rules and promotes self-regulatory behaviour. These findings suggest for practical models of proactive social regulation, lacking in threats of sanctions at one hand and encouraging and enhancing law-obedience on the other hand. Just procedural treatment by legal authorities presents law as legitimate to people. Personal experiences play an important role in building the social value of legitimacy. It has been found that,

Procedural justice plays an important role especially during personal interaction with the authorities since it enhances the social value of legitimacy. This encourages law obedience resulting into co-operation with the justice system. This justice at the time of interaction with authorities initiates a chain reaction for law abiding behaviour.

2.4.4. SUPPRESSES THE FEELINGS OF REVENGE:

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43Jo-Anne Wemmers, supra note 2 at 38.
46E. Allen Lind et. al., Individual And Corporate Dispute Resolution: Using Procedural Fairness As A Decision Heuristic,38 (2) ADMINISTRATIVE SCIENCE QUARTERLY 224-251 (1993);
50Tom R. Tyler, Restorative Justice supra note 47 at 312.
Informational and interactional justice increases the faith in the system and thereby reducing the feeling of revenge among victims. Victim satisfaction from the criminal justice system suppresses the feelings of vengeance, and helps in victims’ recovery from the effects of victimization. This may lead towards a less punitive Criminal Justice System.

2.4.5. **CREATE TRUST IN JUSTICE SYSTEM:**

Victim co-operation is an important aspect of Criminal Justice Process. A justice system that is able to satisfy victims by providing fair and respectful treatment is considered as an ethical and effective justice system. The rationale behind procedural justice is to generate the faith in the legitimacy of the Criminal Justice System and to create awareness about doing the things in a fair manner irrespective of its rewards or outcomes. Victim satisfaction from the procedural measures results into perceptions of legitimacy and trust in justice system. Perceived legitimacy and increased satisfaction among victims are the natural outcomes of procedural justice. This legitimacy and satisfaction among victims result into acceptability of authorities’ decisions and obedience to law. Perceptions of fairness lead to acceptability of justice system. Tyler conducted a study in relation to legitimacy leading towards law abiding behaviour, and suggested that legitimacy and morality were closely associated with law-abiding behaviour. Perceptions of legitimacy were dependent upon the chance to present their case and a respectful treatment from the agencies of Criminal Justice System, irrespective of the outcome of the case. Legitimacy can be defined as;

Legitimacy from this social value perspective is the property that a rule or an authority has when others feel obligated to voluntarily defer to that rule or authority. Legitimacy, therefore, is a quality possessed by an authority, a law, or

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50 JO-ANNE WEMMERS, supra note 28.
53 Jo-Anne Wemmers, supra note 2 at 39.
59 T. R. TYLER, supra note 57.
60 T. R. TYLER, supra note 57.
an institution that leads others to feel obligated to obey its decisions and directives.\textsuperscript{61}

Another study conducted by Wemmers in relation to the attitudes of felony victims towards legal authorities’ shows that victims’ attitude and support towards legal system can be obtained by victims’ positive experiences with the legal system. Result shows that fair treatment by authorities culminates into favourable attitudes towards the justice system.\textsuperscript{62} Providing victims with adequate and relevant information and notifications help victims to understand the actions being taken by the authorities.\textsuperscript{63} Victims appreciate, if they are supplied with adequate explanations along with respectful treatment.\textsuperscript{64} Fair treatment enhances the faith in the legitimacy and trustworthiness of organizational authorities.\textsuperscript{65}

2.4.6. ENHANCES ACCEPTABILITY OF THE OUTCOMES:

Whatever may be the outcome of a case, procedural fairness attracts positive responses from victims.\textsuperscript{66} Studies show that the procedural fairness leads to victim satisfaction and prior information about the processes to be followed was directly linked with the acceptance of the situation whether favourable or unfavourable. Representation of victim’s concern and consistency in procedural fairness enhance the acceptability of the outcome.\textsuperscript{67} Polite and dignified treatment rendered by the criminal justice authorities together with respect and sensitivity towards the victim’s pain and sufferings make them accept the outcomes easily though it may not be favourable to them.\textsuperscript{68}

2.4.7. MITIGATES THE NEGATIVE EFFECTS OF OUTCOMES:

Sometimes outcomes of the criminal justice proceedings may not be as favourable to victims as he would have expected.\textsuperscript{69} Unfavourable outcomes leave adverse psychological effects.

\textsuperscript{61} Tom R. Tyler, supra note 47 at 311.
\textsuperscript{63} Jo-Anne Wemmers, supra note 2 at 38.
\textsuperscript{64} R. Barry Ruback et. al., \textit{supra} note 1 at 6.
\textsuperscript{68} R. Barry Ruback et. al., \textit{supra} note 1 at 5.
\textsuperscript{69} R. Barry Ruback et. al., \textit{supra} note 1 at 21.
Procedural justice lessens the negative effects of outcomes.\textsuperscript{70} Such negative effects can be done away with the help of procedural justice. Procedural justice creates a sense of belongingness that in turn results into legitimacy of and confidence in the legal system.\textsuperscript{71} Procedural justice and respectful treatment prevent victims from secondary victimization.\textsuperscript{72}

\textbf{2.4.8. BENCHMARK FOR EVALUATION OF JUSTICE SYSTEM:}

To judge distributive fairness is not an easy task but procedural fairness is comparatively easier a benchmark to evaluate the justice system. People form their justice judgements on the basis of procedural fairness.\textsuperscript{73} It was observed by Tyler & Huo, that though the effectiveness of police and courts plays an important role in forming people’s justice judgements, their perception of respectful and fair treatment from police and courts is the major criteria of their fair justice judgements.\textsuperscript{74} Information is the basic requirement during the confusing and complex procedures.\textsuperscript{75} Information (about rules and a person’s right in the procedure) that is prior to its application, effect justice perceptions positively and enhance co-operation with the system.\textsuperscript{76}

\textbf{2.4.9. BENEFICIAL FOR CRIMINAL JUSTICE SYSTEM: “VICTIM AS A SOURCE OF INFORMATION”:}

Victims’ inclusion in the criminal justice system is not only needed for ensuring procedural justice to victims but too many times, criminal justice system is totally dependent upon victim for getting information or for identifying the actual culprit. For detection of crime, police need proper information about the commission of an offence and too many times, it is the victim who is the only witness of the crime therefore the only one aware with such commission. It has been observed that,

\textsuperscript{70} U. Orth, \textit{supra} note 8.
\textsuperscript{71} T. R. TYLER, \textit{supra} note 57.
\textsuperscript{73}R. Barry Ruback et. al., \textit{supra} note 1 at 7.
\textsuperscript{74} T. R. TYLER & Y. J. Huo, \textit{supra} note 56.
“Victims acting as complainants and witnesses to the occurrence of crimes serve as the major source of information about crime. Without such information, police would not be able to fulfill their task properly. Much crime would remain undetected and therefore exempt from control by the criminal justice system.”

Procedural justice in the form of fair process and respectful treatment from the agencies of Criminal Justice System helps in future reporting of the cases. Insensitivity shown by the authorities is a factor responsible for future reporting behavior. Past researches indicate that victims not treated fairly by police were not interested in reporting crime in future.

2.5. NOTIONS OF VICTIMS JUSTICE:

The notions of justice that emerge from the above discussion and various studies conducted by the researchers suggest that victim satisfaction increases if they receive information, notification, fair process, and voice, respectful and sympathetic treatment within different components of the criminal justice system. It gives an idea of the procedural preferences of victims that they consider significant in forming their justice judgments. Systematic conceptualization of victim’s procedural preferences e.g., voice, information, fairness, sympathetic treatment etc., can be obtained by studying theoretical notions of justice. Hence, it becomes pertinent to look into various theoretical notions of justice as suggested in different models of criminal justice system.

2.5.1. JUSTICE AND LEGAL JUSTICE:

Justice can be categorized as natural or moral justice and legal justice. This first category of justice is the ideal that the second category of justice tries to obtain. Natural justice represents and pertains to the divine reason that is to be followed by one and all whereas the legal justice represents the aspects of natural justice, idea of which is not left upon the individual.
discretion but whose compliance has been made obligatory by the law of the State. Legal justice has been described as,

“When the State finds that some portions of natural justice are so important that their observance cannot be left to the option and good sense of each individual, it formulates them in the form of legal rules conformance to which is obligatory on the part of the subjects. The justice dispensed by the court in accordance with these rules is legal justice or justice according to law.”

2.5.1.1. PROCEDURAL JUSTICE MODELS AND ITS IMPLICATIONS FOR VICTIM JUSTICE:

The concept of procedural justice depends upon the ‘fairness’ involved in a procedure. Various models of procedural justice try to explain the attitudes and behavior of individuals in terms of their procedural justice judgments. It has been said that, “The essence of procedural justice models is that the fairness of procedures and processes influence the attitudes and the behavior of those subject to the procedure.”

2.5.1.1.1. JOHN RAWL’S MODEL OF ‘PURE PROCEDURAL’ JUSTICE, 1958:

In 1970s, concept of Procedural Justice was introduced by Thibaut and Walker, but prior to that, in his conception for practices, John Rawls has defined practices as,

Any form of activity specified by a system of rules which defines offices, roles, moves, penalties and defenses- - - -The principles of justice are regarded as formulating restrictions as how practices may define positions and offices, assign power and liabilities, rights and duties.

Rawls emphasizes upon fair procedures to make the outcome fair. His emphasis is not only upon provision of such fair procedures but ensuring that such procedures when prescribed are followed too. Terming his conception as ‘pure procedural’, Rawls states that,

There is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed… the background circumstances define a fair procedure…. What makes the final

82 G. C. VENKATA SUBBARAO, supra note 81.
83 JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 54.
outcome….. fair or not unfair…… A fair procedure translates its fairness to the outcome only when it is actually carried out.85

2.5.1.1.2. THIBAUT AND WALKER’S MODEL OF PROCEDURAL JUSTICE, 1975:

Contrary to the initial trend that based the concept of justice upon outcome satisfaction or distributive justice, John Thibaut and Laurens Walker emphasized upon the concept of procedural justice. They focused their attention upon the ‘manner’ by which distributive justice is ensured.86 Thibaut and Walker emphasized that just end is not sufficient for justice to victims but the means used to achieve this end should also be just for victims. They emphasised upon the fairness of the procedure used to arrive at the outcome.87 Procedural Justice is more important for victims than Distributive Justice since the victim get exposed to Procedural Justice prior than the Distributive Justice, therefore it has a long-lasting impact upon victim about fairness of process.88

According to Thibaut and Walker Procedural Justice has two determinants namely Process Control and Decision Control. Process control was later referred as ‘Voice.’89 Process Control refers to the rights of the victims to present information during the Criminal Justice Process, whereas Decision Control refers to the control over the decision or the power to give their input regarding punishment or sentence.90 They argued that people’s justice judgements are based upon ‘process control’ and ‘decision control’.91 ‘Voice’ as an important determinant of procedural justice has two variables i.e., to be heard and not to feel stuck in making demands. Findings of the study conducted by Wemmers and Cyr., also suggest that Procedural Justice Judgements depend upon the consultation with victim and recognition of victims in the

91 JOHN THIBAUT AND LAURENS WALKER, supra note 87.
Development and selection of information was considered as the crux of the process control. Role of the ‘participant’ as a ‘unilateral determinant’ of the outcome of this process was the crux of decision control. The victim perceives the decision-making process as fair, if the victim’s voice is taken into consideration before arriving at a conclusion or outcome.

2.5.1.1.3. LEVENTHAL’S MODEL OF PROCEDURAL JUSTICE, 1976:

In 1976, Leventhal asserted that procedural fairness needs representation or an opportunity to present one’s case and consideration of one’s opinion. Accurate information, consistency, impartiality, correctability and ethicality are all needed for fairness of both, process as well as decisions. Among these participation, voice, neutrality and accuracy are the widely accepted elements of procedural justice. Fair process, fair collection of information (victim’s input) along with the fair structured decision-making process form the basic structure of ‘Procedural Justice’.

To determine fairness of a procedure, Leventhal identified five main criteria that are representation, consistency, impartiality (or suppression of bias), accuracy of decisions and correctability. ‘Representation’ denotes consideration of views and concerns of all concerned. ‘Consistency’ is seen in terms of ‘across persons’ or ‘across times’. Process should be impartial or they should not be unduly influenced by the pre-conceived notions or personal interests. Accuracy of decision denotes to informed decisions. Correctability gives scope for modifications, meaning thereby that there should be methods in existence for modifying or reversing the already taken decisions.

92 Jo-Anne M. Wemmers & Katie Cyr., supra note 86 at 128.
94 JOHN THIBAUT AND LAURENS WALKER, supra note 87.
97 JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 57.
Lind and Tyler distinguished between two models of procedural justice i.e., ‘self-interest model (used by Thibaut and Walker)’ and ‘normative model’. Normative model has been described as a model, “which views the procedures as norms of treatment and decision making” In 1988, Lind and Tyler introduced the group value model and later on they introduced its expanded version with the name of ‘the relational model’. Group Value model emphasizes upon the concept of group membership as a dominant factor of social life. Main governing elements of any group consists of ‘group identity’ and ‘group procedure’. Group identity distinguishes one group from the other group. Group procedure refers to those procedure that regulate the activities of a given group.

In 1992, Tyler and Lind proposed the “Relational Model” of Procedural Justice and rejected the concept of “Procedural Justice” only as an instrument to achieve the ends. They emphasised upon the normative value of Procedural Justice that means procedural justice has an inherent value in itself that is reflected by the interactional relations between an individual (such as a victim) and an organization (such as the agencies of the criminal justice system). Their main concern was interactional justice rather than the control over the process or the decision. Tyler and Lind, in their relational model of procedural justice, emphasized upon the ‘normative value’ rather than ‘instrumental value’. Their main focus was the ‘quality of interaction’ between the individual and the agencies that determined the procedural justice perceptions of victims. Wemmers describes that,

“In the relational model procedures are viewed as norms of treatment and decision making that regulate much of a group’s social structure and process. Lind and Tyler argue that when procedures are in accord with fundamental values of the group and the individual, a sense of procedural justice results. While values may differ between groups as well as individuals, they believe that there are some fundamental values that affect procedural justice in all groups.

Relational Model of Procedural Justice has three determinants i.e., trust, standing and neutrality. ‘Trust’ is concerned with an individual’s (victims’) satisfaction with authority’s
intentions.\textsuperscript{104} It has been defined as; ‘Trust’ is defined in terms of concern for the needs of the individual and consideration of the individual’s views.\textsuperscript{105} ‘Standing’ denotes recognition of an individual as a member of a valued group thereby enhancing his self-worth by providing him with a dignified and respectful treatment within the group.\textsuperscript{106} Standing can be defined as, “being treated with dignity and respect and showing respect for the rights of the individual.”\textsuperscript{107}

‘Standing’ refers to ‘victims’ position in criminal justice system i.e. he should be given a respectful and dignified treatment.\textsuperscript{108} ‘Participation’ and ‘Respect’ are considered as two important factors of ‘Standing’. ‘Participation’ is akin to ‘Voice’ or ‘Process Control’, as identified by Thibaut and Walker (1975). Participation makes victim feel more fairly treated.\textsuperscript{109} Respect denotes the interpersonal treatment meted out to victim by the authorities.\textsuperscript{110} The last determinant ‘Neutrality’ imposes an obligation upon the authorities to act in an honest and impartial way and to make informed decisions that are based on factual truth.\textsuperscript{111} Neutrality’ denotes to making of informed decisions with an unbiased or impartial attitude.\textsuperscript{112}

This model recognises the value of quality interaction between the victim and the concerned authorities. ‘Relational model’ can be distinguished from the ‘Self-interest model’ on the basis of whether importance is given to the outcomes or to the process. Relational model of procedural justice excludes outcomes whereas ‘self-interest model’ takes into consideration outcomes too. As stated by Wemmers’ “the self-interest model assumes that fair procedures are important because they insure fair outcomes. The relational model assumes that fair procedures are important irrespective of the outcomes.”\textsuperscript{113}

\textsuperscript{104}T. Tyler & E. A. Lind, supra note 101.
\textsuperscript{105}JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 58.
\textsuperscript{106}JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 58.
\textsuperscript{107}JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 58.
\textsuperscript{108}T. Tyler, supra note 101.
\textsuperscript{109}T. Tyler, supra note 101.
\textsuperscript{110}T. Tyler, supra note 101.
\textsuperscript{111}T. Tyler, supra note 101.
\textsuperscript{112}T. Tyler, supra note 101.
\textsuperscript{113}T. Tyler, supra note 101.
This model also suggests that, procedural justice gives a sense of group membership. Value given by the group by giving respect and due consideration during the procedures promotes loyalty thereby leading individuals to comply with their legal duties. Procedural justice together with the feelings of group membership affects individuals’ judgments about the legitimacy of the decisions taken and thereby results into law abiding behavior together with obedience to authorities.\textsuperscript{114} Wemmers describes relational model as follows, “In this model people are viewed as social beings. Procedures are important because they reflect the values of the individual and the group and provide people with information about their worth in the group.”\textsuperscript{115}

In Thibaut and Walker’s Procedural justice model, ‘control’ is the main decisive factor that affect people’s procedural justice judgments whereas in the relational model of Lind and Tyler, the decisive factor for people’s procedural justice judgments is the treatment with dignity and respect.\textsuperscript{116}

2.5.1.1.5. GREENBERG’S MODEL OF PROCEDURAL JUSTICE, 1993:

Greenberg in his classification of Justice, classifies it into two categories i.e, procedural and distributive justice and proposes two determinants i.e., ‘structural’ and ‘social’ and on the basis of these determinants he classifies Procedural Justice into “Systemic Justice” and “Informational Justice”. “Systemic Justice” is based on the structural determinant and “Informational Justice” is based on the social determinant. Systemic Justice relates with the rules and procedures giving rights to victims, whereas Informational Justice relates with the sharing of information with the victim regarding the necessary aspects of his case.\textsuperscript{117} Greenberg differentiates interactional justice from Procedural Justice since it comprises both Procedural and Distributive aspects.\textsuperscript{118}

As per the Greenberg’s model of Justice, Interpersonal Justice is a category of distributive justice on the basis of social determinant. It relates with sympathetic attitude for victims’ plight and the outcomes they received.\textsuperscript{119} Greenberg’s model of justice makes ‘Informational Justice’ a class of Procedural Justice, on the basis of its being social determinants of

\textsuperscript{114} JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 59, 63.
\textsuperscript{115} JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 67.
\textsuperscript{116} JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 68.
\textsuperscript{117} Jo-Anne Wemmers, supra note 2 at 33.
\textsuperscript{118} Jo-Anne Wemmers, supra note 2 at 32.
\textsuperscript{119} Jo-Anne Wemmers, supra note 2 at 33.
Procedural Justice. His theory refers informational justice as open sharing of information and explanation for the procedures being adopted in his case.\textsuperscript{120} Colquitt supports Greenberg’s contention and favours for a four-factor structure of justice comprised of distributive, procedural, interpersonal and informational justice.\textsuperscript{121}

### 2.5.1.1.6. WEMMERS’ ‘TWO FACTORS’ MODEL OF PROCEDURAL JUSTICE, 1995:

Wemmer, after analysing Tyler and Lind (1992)’s ‘Relational Model’ proposed a two-factor model of Procedural Justice, best suitable for victims. This model comprises of two determinants i.e., neutrality and respect. ‘Neutrality’ deals with the authorities being honest, impartial and their decisions being informed and based on the facts, whereas ‘Respect’ is concerned with the quality interpersonal treatment by authorities. It includes friendly attitude, concern for his voice and consideration of his interests.\textsuperscript{122} This model proposes that a sense of group-belongingness leaves positive psychological outcomes. Third party acceptance of group belongingness needs consideration of three factors i.e., respectful treatment, trust in the third party and neutrality or impartiality of the decision-making authority. Whereas the ‘neutrality’ seeks an impartial and objective attitude, ‘respect’ demands for consideration of one’s views, showing of interest and friendly treatment from authorities and giving of the opportunity to ‘voice’ one’s concern.\textsuperscript{123}

### 2.5.1.2. INFORMATIONAL JUSTICE TO VICTIMS:

Various studies show that victims’ fairness judgments are more often depends upon the information that they receive first and definitely it is the procedural information that precedes any outcome information in the case and due to this very factor victim satisfaction depends more upon procedural justice instead of the distributive justice.\textsuperscript{124} ‘Informational justice’

\textsuperscript{120} Jo-Anne Wemmers, supra note 2 at 33.
\textsuperscript{121} Jo-Anne Wemmers, supra note 2 at 33.
\textsuperscript{122} J. M. WEMMERS, supra note 28.
helps victim to get the rationale behind the procedural measures used.\textsuperscript{125} Research show that a main reason for discontent among victims was the ‘informational injustice’.\textsuperscript{126} Informational justice demands for proper explanations regarding the use of particular procedures in a particular manner or regarding the allocation of outcomes in a particular manner.\textsuperscript{127} Providing victims with a complete and truthful account of decisions and procedures with their explanations creates a sense of ‘Informational Justice’.\textsuperscript{128} A timely notice of legal proceedings, descriptions of expectations from their case and clarifications of procedural occurrences in their case in a comprehensible manner form the crux of ‘Informational Justice’.\textsuperscript{129} Carr and others identified two stages in Criminal Justice Process. First stage of reporting crimes to the police is shorter than the second stage which continues from receiving of the case by the public prosecutor till the final disposal of the case. But still it is the first stage that victims remember. Second stage needs timely and pertinent notification for fair evaluation of the Criminal Justice System.\textsuperscript{130}

To enhance the effectiveness of a Criminal Justice System and to improve victim justice judgements or for victim satisfaction, ‘victim-participation’ in prosecution is a must.\textsuperscript{131} Awareness regarding the existence of their participatory rights is the first necessity and notification regarding the time when the same may be exercised, are the conditions precedents for exercising ‘right to participation’ by crime victims. Important information keep victim involved in decision making process.\textsuperscript{132} Informational justice to victims does not affect


\textsuperscript{129}R. Barry Ruback et. al., *supra* note 1 at 5.

\textsuperscript{130}P. J. Carr et. al., *supra* note 29.


defendant’s rights adversely.\textsuperscript{133} For victims’ justice judgements, nature of information that they receive, matters most. Their fairness evaluations are based upon such information. If the information is limited up to only one category of justice for example distributive or for example informative, but lacks the other aspects of justice, to say, interactional or procedural, their justice judgements will be formed on the basis of such information only.\textsuperscript{134}

2.5.1.3. INTERACTIONAL JUSTICE TO VICTIMS:

‘Interactional Justice’ was introduced by Bies and Moag in 1986. It refers (individuals’) victims’ sensitivity towards the treatment meted out to him during the enactment of organizational procedures.\textsuperscript{135} The treatment meted out to victims during the decision-making process is known as ‘Interactional Justice’.\textsuperscript{136} The term ‘Interactional Justice’ denotes the quality of the interpersonal treatment received by the people during the implementation of procedures.\textsuperscript{137} Interactional justice does not demand extra resources nor is it an impediment in the way of defendant’s legal rights. It can easily be imparted to the victims.\textsuperscript{138}

Tyler rejecting the concept of interactional justice, regard interpersonal treatment as a part of Procedural Justice rather than a category in itself.\textsuperscript{139} Bies differentiates Interactional Justice from Procedural Justice, since it is concerned with the enactment of procedures not with the development of procedures.\textsuperscript{140} Interactional justice has two dimensions i.e., interpersonal and informational justice.\textsuperscript{141} Bies and Moag supported the notion of interactional justice that was further divided into interpersonal and informational justice.\textsuperscript{142} Victim gets his status recognized through interpersonal justice. Interpersonal justice demands for polite, dignified and respectful treatment by authorities and concerned third parties during the process or at the

\textsuperscript{133}MALINI LAXMINARAYAN, supra note 3 at 72-73.
\textsuperscript{134} P. J. Carr et al., supra note 29.
\textsuperscript{135} Jo-Anne Wemmers, supra note 2 at 32.
\textsuperscript{138}MALINI LAXMINARAYAN, supra note 3 at 74.
\textsuperscript{140} Jo-Anne Wemmers, supra note 2 at 32.
\textsuperscript{141} J. Greenberg, supra note 125.
\textsuperscript{142} R. J. Bies & J. F. Moag, supra note 136.
time of determination of its outcomes.\textsuperscript{143} As compared to informational justice, victims tend to lean towards interactional justice.\textsuperscript{144}

2.5.2. CRIMINAL JUSTICE AND PECKER’S MODELS OF THE CRIMINAL JUSTICE SYSTEM:

Traditionally the Criminal justice system has been considered as having the primary objective to ensure determination of guilt before punishing the offender and imposing appropriate punishment necessary for controlling the crime and administering justice to the offenders in a criminal case in a fair and reasonable manner. Criminal justice system was categorized by Herbert Packer in 1964 into Crime Control Model and Due Process Model. Emphasis in Crime Control Model is on repression of crime with efficiency in dealing with the offender. Efficiency is to be seen in relation to limited resources available in a criminal justice system for determination of guilt and controlling of crime and this efficiency can be achieved by ‘Speed’ and ‘Finality’ of the decision. Crime Control Model is dependent upon informality in the process and rely heavily on pre-trial agencies during the pre-trial process for screening of the innocent person. Crime control model is also not free from criticism. One of the most common criticism is on the ground that such an objective may lead to unethical conduct by the agencies of criminal justice system. Such an objective will result in terming the police as a crime control force (that is employed to arrest an offender) and terming the criminal as the enemy of the society (that is fundamentally different from the concept of inclusive society as a whole).\textsuperscript{145}

Due Process Model on the other hand is like an ‘obstacle course’ with an emphasis on Quality control. In this model, every subsequent stage and authority in the guilt determination process reviews the action taken at the previous stage thus creating an impediment in the criminal justice process. In the Due Process Model numerous review stages are available throughout the criminal process with the result the finality in the case is deferred but the criminal justice system is considered more reliable. ‘Efficiency’ value of the Crime Control Model is replaced by the ‘Reliable’ value in the Due Process Model. Due process model is criticized because of its being ineffective in the present criminal justice system. Offenders prefer to opt for other

\textsuperscript{143}J. A. Colquitt et. al., supra note 127.  
\textsuperscript{144}J. M. WEMMERS, supra note 28.  
ways rather to contest for their constitutional rights.\textsuperscript{146} Both these Models do not take into consideration the position of victim within the criminal justice system. These models also lack in providing victim with any opportunity to participate in the prosecution.\textsuperscript{147}

\textbf{2.5.3. CHANGING NOTIONS OF CRIMINAL JUSTICE AND VICTIM JUSTICE}

There is a change of perception towards the objectives of and notions of criminal Justice and attention is shifting towards ensuring justice to all the stakeholders in the criminal justice system including the victims of crime. Victim-justice is being recognized as the objective of justice delivery system. It is being recognized that, “\textit{This goal is the other side of the criminal justice system’s spectrum because every crime has simultaneously the offenders and victims. Balance of justice can ill-afford to ignore any of the sides.}”\textsuperscript{148}

\textbf{2.5.3.1. THE VICTIM PARTICIPATION MODEL,1999:}

In 1999, Beloof proposed a third model of criminal justice system i.e., “The Victim Participation Model”. Expanding Packer’s assembly line analogy, Beloof argued for inclusion of active participatory role of the victim in the criminal justice process wherein victim could follow their case, consult informally with the agencies of criminal justice system and to address the court formally. Beloof describes this model as;

\begin{quote}
The primacy of the individual victim- reflected in values of fairness, dignity and respect- is the value underlying the Victim Participation Model. The value of primacy of the victim derives from primary harm that is causally linked to the alleged criminal liability of another, taken together with the concept of minimizing secondary harm (governmental harm) to the victim.\textsuperscript{149}
\end{quote}

This model provides for a participatory role where victim is consulted at every crucial stage but without any decisive role. This participatory role is subject to a limitation as described by Beloof as;

\begin{quote}
There is a significant limit to the victim consultant’s role. The victim is a consultant about their case, but cannot control the critical decisions made in the factory by grand and petite juries, prosecutors or judges. At every critical stage in the factory, victims are consulted by government actors. This victim consultation may indirectly result in greater or lesser efficiency. Similarly, the consultation
\end{quote}

\textsuperscript{146}HERBERT L. PACKER, \textit{supra} note 145.
\textsuperscript{147}HERBERT L. PACKER, \textit{supra} note 145.
\textsuperscript{148}P. ISHWARA BHAT, LAW AND SOCIAL TRANSFORMATION IN INDIA, 845 (1\textsuperscript{st} ed. Eastern Book Company, Lucknow, 2009).
with the victim may indirectly support or challenge the primacy of the individual defendant.\footnote{Douglas Evan Beloof, supra note 149.}

This model can be termed as a “victim influence model” since “the value of the primacy given to individual defendant” is limited to his participatory role in the sense that victims have a right to influence the case without any control upon the decision-making power of prosecutors, judges or jurors.\footnote{John William Stickels, Victim Satisfaction- A Model of the Criminal Justice System, 41-42 (December 2003) (Ph.D. dissertation, The University of Texas at Austin), available at https://repositories.lib.utexas.edu/handle/2152/979}

**2.5.3.2. VICTIM SATISFACTION MODEL OF THE CRIMINAL JUSTICE SYSTEM, 2003:**

As an alternative to the above models, John Stickels presents an alternative model of Criminal Justice System, namely the ‘Victim Satisfaction Model’. In this model, Stickels contends that if the primary objective is focused upon satisfying victim of crime rather than upon ensuring the true guilt of the offender or imposing an appropriate punishment in the case, then due process model or crime control model would not be sufficient to explain the criminal justice system. Emphasizing upon the evolution of victims’ role in criminal justice system, he proposes a new model of criminal justice system wherein, “the criminal justice system is no longer solely focused on the personal culpability and the appropriate punishment for a specific defendant. Instead this model proposes that the criminal justice system seeks to satisfy the victim through the course of the prosecution and relegates the defendant to a secondary status.”\footnote{John William Stickels, supra note 151.}

‘Victim Satisfaction Model’ consists of three main characteristics\footnote{John William Stickels, supra note 151.} i.e.,

a. Recognition of victim as a de facto party to the prosecution with an active role in criminal justice process,

b. Prosecutor role to represent victim and to satisfy his interests,

c. Primary determinant of the criminal justice system is to make such attempts that satisfy victims’ interests.

\footnote{John William Stickels, supra note 151.}
2.6. OPERATIONALIZATION OF NOTIONS OF JUSTICE:

To make the criminal Justice system more ‘Humane’ it is needed that victims should be included in the justice system as subjects of the law and not as the objects. The meaning of Justice may vary from person to person, depending upon the perspective in which it has to be applied. To evaluate presence of ‘Justice’ in a given situation, it is necessary to set a notion that can be operationalised.

John Rawls in his ‘A Theory of Justice’ supports the conception of ‘Justice as fairness’. The concept of fairness demands equal rights in case of basic liberties and benefit of inequalities to the least advantaged members of society. This notion of ‘Justice as fairness’ may be used in the field of criminal justice system where ‘fairness’ is the criteria for evaluation of procedures adopted in criminal justice process. Studies have indicated that in the process of evaluation of the justice system people form their justice judgements based on procedures adopted and outcomes delivered. Studies have found similarity in the nature of evaluation of procedures and outcomes when people form their justice judgements. These researches show that when people interact with the procedures there is a tendency to evaluate it on the basis of justness and fairness.

The Bottom-up approach perceives ‘Justice as fairness’ from individual’s point of view. When the fairness experienced by the people during the process of grievance resolution is perceived as ‘Justice’, it is referred as ‘Bottom-up Justice’. Notion of justice has a relation to ‘fairness’ as is perceived by people while encountering dispute resolution system. In Bottom-up approach, the means of assessing ‘Justice’ are the ‘fairness perceptions’ of people interacting with the justice system. This perception of justice depends upon the extent of access to justice as well as fair processes and fair outcome that is obtained from the justice

154 Jo-Anne Wemmers, supra note 2 at 40.
158 MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at 8.
159 MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at ii.
160 MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at 8.
system. This means that the presence of accessible justice mechanisms and the resulting fair resolutions both are the determinants of justice.\textsuperscript{161} Assessment and evaluation of this bottom-up approach of ‘justice’ depends upon three criteria i.e., quality of the procedure, quality of the outcome and costs.\textsuperscript{162}

A system’s effectiveness depends upon people’s co-operation with the system and this co-operation is dependent upon satisfaction from the system.\textsuperscript{163} This satisfaction on part of the victim leads to his co-operation which in turn enhances the efficiency of system.\textsuperscript{164} Satisfying the victims’ needs helps them to cope with the effects of victimization,\textsuperscript{165} makes them feel in full control of their life,\textsuperscript{166} and suppresses the feelings of revenge.\textsuperscript{167} This highlights the importance of determining the indicators of justice, necessary to evaluate victim’s satisfaction in relation to Criminal Justice Process.\textsuperscript{168} These “Procedural preferences” denote the expectations of victims coming into contact with the Criminal Justice System.\textsuperscript{169}

Studies show that victims feel satisfied if they are provided with procedural and interactional justice within the Criminal Justice System. To meet the ‘needs’ of ‘the victim’ a system should incorporate such mechanisms and qualities that are helpful in bringing these elements into the Criminal Justice System.\textsuperscript{170} Researches in the domain of procedural preferences of victims investigated the procedural and interactional justice indicators and concluded that these were essential for satisfying the victims and are needed for their well-being.\textsuperscript{171} Shapland in one of the study concluded that justice system was not able to satisfy victims in terms of participation, information and interactional justice.\textsuperscript{172}

\textsuperscript{162} M. Gramatikov et. al., Measuring The Costs And Quality Of Paths To Justice: Contours Of A Methodology, 3 HAGUE JOURNAL ON THE RULE OF LAW 349-379 (2011).
\textsuperscript{163} A. S. Goldstein, Defining The Role Of The Victim In Criminal Prosecution, 52 MISSISSIPPI LAW JOURNAL 515–561 (1982).
\textsuperscript{165} S. E. ULLMAN, TALKING ABOUT SEXUAL ASSAULT: SOCIETY’S RESPONSE TO SURVIVORS (Washington, DC: American Psychological Association, 2010).
\textsuperscript{166} M. BARD & D. SANGREY, supra note 35.
\textsuperscript{167} H. Zehr & M. H. Umbreit, supra note 52.
\textsuperscript{168} MALINI LAXMINARAYAN, supra note 3 at 49.
\textsuperscript{169} MALINI LAXMINARAYAN, supra note 3 at 12.
\textsuperscript{170} MALINI LAXMINARAYAN, supra note 3 at 49.
\textsuperscript{172} J. SHAPLAND ET. AL., supra note 79.
A system to be considered as just and fair, should be able to provide fair and accessible processes and outcomes. The important ingredients of main theoretical approaches to justice include participation, voice, respect, restoration of harm, equality, equity and attribution as per the needs.\textsuperscript{173} A criminal justice process to be considered as fair is dependent upon the quality of the procedure that may comprises three operationalised aspects of justice such as procedural, interpersonal and informational justice.\textsuperscript{174}

2.6.1. PROCEDURAL JUSTICE INDICATORS:

Perceptions of victims regarding the procedure being fair indicate ‘procedural justice.’\textsuperscript{175} Criteria of Procedural justice is deemed to be satisfied if the procedures adopted for solving a problem are perceived as ‘fair’. Perception of procedural fairness, up to a large extent, determines the perceptions of outcome fairness.\textsuperscript{176} This further leads to the perception of a fair outcome.\textsuperscript{177} Earlier research had indicated that due to its effect over outcome, people tend to seek role in procedures, but subsequent researches suggests that irrespective of the outcome they obtain, people care about the procedures.\textsuperscript{178}

Procedural justice instils into victim a sense of confidence and legitimacy of the legal system.\textsuperscript{179} Procedural Justice results into belief in legitimacy of authorities, enhanced victim satisfaction and acceptability of authorities’ decisions. These outcomes of procedural justice are dependent upon procedural fairness on part of authorities.\textsuperscript{180} Procedural fairness includes concerns for victim’s voice and respectful treatment. An opportunity to present their case, coupled with indications of fair and dignified treatment lead towards victims’ perceptions of procedural fairness.\textsuperscript{181} Leventhal supports Tyler’s conception of procedural fairness by

\textsuperscript{173}MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at 9.
\textsuperscript{174}MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at 10.
\textsuperscript{176}G. S. Leventhal, supra note 96.
\textsuperscript{177}MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at 10.
\textsuperscript{178}MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at 10.
\textsuperscript{179}TOM R. TYLER, WHY PEOPLE OBEY THE LAW, supra note 57.
\textsuperscript{181}TOM R. TYLER, supra note 179.
inculcating six components in his theory of procedural fairness. These can be enumerated as representation, impartiality, accuracy, ethicality, consistency and correctability.\textsuperscript{182}

Paternoster and his colleagues suggested that an opportunity to participate in the process creates a sense of being properly ‘Represented.’\textsuperscript{183} Tyler refers the ‘representation’ as ‘voice’ and gives it a sense of meaningful participation in the process.\textsuperscript{184} Preferential treatment to offenders (who violated the law), results into jeopardizing the interests of victim (who suffered the victimization due to the criminal act of the offender) and thus are considered as unfair to the victim. Treating victim as a forgotten entity during the criminal justice process may result into his secondary victimization.\textsuperscript{185} By recognizing victims’ right to participation in the prosecution as well as in all the important decisions in the prosecution, unfairness towards the victim can be removed.\textsuperscript{186} John Stickels contends that victim participation should not be limited with the role only of a witness to an incident and should not exceed to have complete control over the prosecution.\textsuperscript{187}

Regarding the need of ‘fairness of the process’, it was observed by Lind and Van den Bos in their studies that ‘uncertainty’ is the main factor that makes the ‘fairness’ a necessity. Lack of any formal control of victim over the criminal justice process make it more uncertain.\textsuperscript{188} Reactions of offenders may also create ‘uncertainty’ for victims of crime. The fear of intimidation and retaliation from the offender may affect their perceptions.\textsuperscript{189} Crime victims feel this uncertainty in the aftermath of their victimization. They are neither sure about the role they are supposed to play in the criminal justice process nor they know what will happen in their case.\textsuperscript{190} A process can be termed as fair if the concerned authorities function in an impartial manner and without being unduly influenced by personal interests or by pre-conceived notions.\textsuperscript{191} Tyler terms ‘impartiality’ as ‘neutrality’. If the victim perceives authorities’ decisions as guided by rules and free from personal biases, it is referred as

\textsuperscript{182} G. S. Leventhal, supra note 96.
\textsuperscript{183} Paternoster et. al., supra note 58.
\textsuperscript{184} Tom R. Tyler, Legitimacy In Corrections: Policy Implications, 9 CRIMINOLOGY & PUBLIC POLICY 127-134 (2010).
\textsuperscript{185} S. A. Cellini, The Proposed Victims’ Rights Amendment To The Constitution Of The United States: Opening The Door Of The Criminal Justice System To The Victim, 14 ARIZONA JOURNAL OF INTERNATIONAL & COMPARATIVE LAW 839 (1997).
\textsuperscript{186} John William Stickels, supra note 151 at 2.
\textsuperscript{187} John William Stickels, supra note 151 at 2.
\textsuperscript{188} K. Van den Bos & E. A. Lind, Uncertainty Management By Means Of Fairness Judgements, 34 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 1-59 (2002).
\textsuperscript{189} Jo-Anne M. Wemmers & Katie Cyr., supra note 86 at 105.
\textsuperscript{190} J. SHAPLAND ET. AL., supra note 79.
\textsuperscript{191} JO- ANNE M. WEMMERS, WODC- MINISTRY OF JUSTICE, supra note 22 at 57.
Victim’s perceptions, towards goodness or righteousness of decisions made by authorities, are known as ‘accuracy’. To provide victim with a respectful and dignified treatment by the agencies of Criminal Justice System and conveying a sense of group membership is denoted by the term ‘ethicality’. Creating a sense of group membership is an inherent outcome of procedural fairness.

‘Consistency’ means similarity of treatment. There may be two situations for consistency i.e., consistency for a particular person or consistency among people. Consistency for a particular person may occur when a person experiences consistency with his expectation from the system. Consistency among people results from the similarity of treatment between a victim and an offender, a victim or another victim, an offender with another offender. According to Miller, “It is impossible to assess the justice of actions without a prior identification of just state of affairs.”

Miller’s theory insists upon consistency of treatment. It emphasizes upon similarity of the treatment in like cases and strict adherence to the prescribed rules. If people are treated differently, there should be some rationale behind this differential treatment.

Presence of a mechanism to remedy the authorities’ decisions is known as ‘correctability.’ These are the criteria on the basis of which a person forms his opinion as to the procedural fairness of a system. Procedural justice encompasses these components of

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192 Tom R. Tyler, supra note 184.
194 Sarah Jessica Greenman, supra note 193.
196 Sarah Jessica Greenman, supra note 193 at 11 & 12.
198 D. MILLER, supra note 196.
200 Sarah Jessica Greenman, supra note 193.
procedural fairness as well as an explanation for the outcome (effects) of procedural fairness. 202

2.6.2. INTERACTIONAL JUSTICE INDICATORS:

There has been a debate regarding the interactional justice being an independent entity or it being a part and parcel of ‘Procedural Justice’. There lie conceptual differences between these two notions of justice. Procedural justice provides an appraisal of the formal aspects of the procedure whereas interactional justice assesses the interpersonal treatment. 203

Measuring interactional justice is important since it shows that despite of unfavourable outcomes people may view the system as legitimate if they are given fair treatment during their interaction with the Criminal Justice System. Research conducted by R. Berry et. al., shows that satisfaction from process is much higher than satisfaction from outcomes. 204 Interactional justice encompasses both informational and interpersonal justice:

2.6.2.1. INTERPERSONAL JUSTICE INDICATORS:

The term ‘interpersonal justice’ denotes the quality of treatment meted out to victim by the justice officials. 205 Justice can be effective or meaningful to victims if the authorities deal with the victims in a fair and respectful manner. 206 Authorities treating people with politeness and in a dignified and respectful manner satisfy the thrust for interpersonal justice. Resultantly it impacts people’s justice judgements positively. 207 On the other hand, violation of these norms leaves a negative impact upon the people’s perception of justice irrespective of the outcome. 208

2.6.2.2. INFORMATIONAL JUSTICE INDICATORS:

202Sarah Jessica Greenman, supra note 193.
204R. Barry Ruback et. al., supra note 1 at 13.
205MALINI LAXMINARAYAN, supra note 3 at 82.
206M. Hough et. al., supra note 55.
208MARTIN GRAMATIKOV & RONALD JANSE, HIIL, supra note 75 at 20.
Informational aspects of justice relate with the providing of the information regarding the case progress, source of assistance and procedural explanations, to boost up victim’s confidence and infuse into them a sense of fair proceedings.\(^{209}\) Informational Justice comprises of two essential elements i.e., information and notification. “Information” means providing information to victims with regard to procedures and services. On the other hand, ‘Notification’ means keeping victims abreast of developments in their case.\(^{210}\) Informational justice also includes the explanations and justifications made available to the concerned persons during the justice processes. Providing timely and comprehensive information plays a vital role in forming people’s fair justice judgements.\(^{211}\)

### 2.6.3. INDICATORS OF JUSTICE TAKEN INTO THIS RESEARCH:

Though it is not clear that informational and interactional justice are the different entities from the procedural justice or they stem from the procedural justice itself, still victims’ sensitivity towards these justice aspects show that informational and interactional justice increase the needed faith in the Criminal Justice System.\(^{212}\) Interactional justice deals not only with the way authorities provide treatment in a fair and sensitive manner but with the way they communicate explanations.\(^{213}\) Interactional justice is more concerned with the quality of communication.\(^{214}\) Rational explanations of decisions form the important aspect of interactional justice.\(^{215}\) On the basis of the above study it may be summarised that procedural justice, informational justice and interactional justice are deemed to be satisfied if the relevant indicators of these justice aspects are satisfied. Different models of justice emphasize upon different indicators of justice. There is overlapping of indicators too. Without going into the aspect of overlapping of indicators within various notions of justice, to evaluate the procedural, informational and interactional justice following indicators are taken into consideration:

#### I. PROCEDURAL JUSTICE SATISFYING INDICATORS:

\(^{209}\) J. Greenberg, *supra* note 125.

\(^{210}\) Jo-Anne Wemmers, *supra* note 2 at 34.


\(^{212}\) Jo-Anne Wemmers, *supra* note 2 at 38.

\(^{213}\) *Organizational Justice: Definition And Relevance To Organizational Behavior*,


\(^{215}\) Id.
i. Victims’ participation, i.e., an opportunity to present one’s case or meaningful participation;

ii. Fairness of the Process, i.e., impartiality or neutrality and accuracy reflecting into an access to justice, protection, fair investigation, fair prosecution, fair trial and Correctability (that means remedy for authorities’ decisions);

iii. Consistency or Similarity of Treatment amongst Victims;

II. INFORMATIONAL JUSTICE SATISFYING INDICATORS:

i. Information and Notification i.e., timely and comprehensive information regarding case progress;

III. INTERACTIONAL JUSTICE SATISFYING INDICATORS:

i. Justification or Explanations for procedures adopted and explanations for the outcome (effects) of procedural fairness.

2.7. CONCLUSION:

From the above discussion it can be concluded that victims of crimes look for procedural justice, informational justice and interpersonal justice as the justice needs that help in checking and mitigating the secondary victimization of the victim that may result from the criminal justice system. Based on these justice needs some justice indicators can be used as determinant of the extent the normative and institutional mechanism address and respond to the victim justice needs leading to the satisfaction, the victim gets from the criminal justice system in terms of addressing their secondary victimization issues and also promoting the human right to justice.