

***In Camera* Proceedings: Conceptualizing the Rights of Victims of Crimes**

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Abstract

There always lies an acute risk that a victim of crime who has already been traumatized by the acts of the accused is again revictimized by unforgiving formal procedures of law. With lot of voices and legal protections for the accused and very little for the victims, legal proceedings can at times turn hostile for victims, thus further ridiculing him/her. Such harsh scenario in turn can have multifarious effects on victims' rights, not only a victim is revictimized by the justice system but also effective and equal participation of victims in the court proceedings gets encumbered. However with emerging concept of victimology and victims' rights and with that the concept of in camera hearing, victims of crime can be protected and theirs effective participation in the court proceedings can be guaranteed.

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INTRODUCTION

The word 'victim', interchangeable to the term 'survivor', generally refers to persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through some acts or omissions. A new theoretical approach which focused on the victim of crime and became known as *victimology* emerged in the middle of the twentieth century.¹ The concept of 'victimology' has since been defined within a framework of social science to treat victims and to study cause and effects of being a victim and to suggest for the remedy.² Gerd Ferdinand Kirchhoff has been quoted writing victimology as the study of victims, victimizations by human rights violations, including crime, and reasons towards both which develops the theories for explanations and for predictions containing the scientific descriptions, measurement, analysis and interpretation of patterns, regularities and probabilities.³ However even after the emergence of the concept of victimology, the rights of the victims have remained 'sidelined'. Till date, concept of victimology in relation to the victims, especially of sexual assault has proved to be largely ineffective and in most cases has left the victims, betrayed (often referred to as 'secondary victimization').

The victim's perspective may be perceived in many societies as complicated, an inconvenient and marginal phenomenon. However, the awareness is growing that redress and reparation for the victims of gross violations of human rights is an imperative demand of justice and a pressing requirement under international law, in particular the law of human rights.⁴

¹ See Stephen Schafer, VICTIMOLOGY: THE VICTIM AND HIS CRIMINAL 33-41 (1977); WILLIAM G. DOERNER & STEVEN P. LAB, VICTIMOLOGY 4-7 (2d ed. 1998). Cited at Peggy M. Tobolowsky, "Victim Participation in the Criminal Justice Process: Fifteen Years", New England Journal on After the President's Task Force on Victims of Crime Criminal and Civil Confinement, 25 N.E. J. on Crim. & Civ. Con. 21, at 27

² See generally, DR. SHANKAR KUMAR SHRESTHA, 'A STEP TOWARDS VICTIM JUSTICE SYSTEM: NEPALESE PERSPECTIVE' (Pairavi Prakashan, Kathmandu, Nepal, 2001)

³ *ibid* at p. 42

⁴ See, generally, Theo Van Boven, preface to publication of the proceedings of the "Seminar on the Right to Restitution Compensation and Rehabilitation of Victims of Gross Violations of Human Rights and Fundamental Freedoms," held in Maastricht, the Netherlands, 11-15 March 1992.

Victims have been the silent partners in the legal process, with little role other than as witnesses. Since there is no protection from the state, victims and witnesses often do not feel part of the criminal justice process and yet they fulfill a valuable and important role: thus there is an urgent need for making their roles more meaningful and to obtain the optimal cooperation from them. To ensure victims' access to and participation in criminal proceedings, it is necessary firstly to 'restore balance' in criminal justice system by better integration of the concerns of crime victims. Therefore, state is responsible to restore such balance by providing due respect to the rights of the victims, including accreditations to their role in the criminal justice process.

The international human rights and humanitarian legal instruments are the effective tools, to be implemented at domestic level in compliance with laws and all other appropriate measures duly recognizing victim participation and status in the justice system that would reduce victim dissatisfaction with the system and loss of control from victimization.

Rights of the victims of violence (or crimes) can be discussed within two level frameworks of victim's justice; firstly, the victims participation in the proceedings with protective special measures and secondly substantive remedies to victims, including compensation, rehabilitation and reintegration. Taking into consideration the substantive participation of victims in judicial proceedings, the paper is limited within the former aspect focusing the international human rights standards and jurisprudence adopted by different jurisdictions that may be inferred in developing advance jurisprudence at national and international level.

RIGHTS OF CRIME VICTIMS

Apart from the exploration of theoretical bases for the study of **victimology**, researchers began to explore the psychological impact of victimization on victims, as well as the impact of their significant exclusion from the criminal justice process.⁵ Researchers also began to identify proposed changes in the criminal justice system which they felt would be more responsive to victim needs and desires. These changes included the restoration of restitution remedies and greater victim participation and input in the criminal justice process.

⁵ See generally, Robert F. Kidd & Ellen F. Chayet, *Why Do Victims Fail to Report?* The Psychology of Criminal Victimization, 40 J. SOC. ISSUES 39 (1984)

The formulation of the status of victim under international law is outstandingly included in the United Nations Declaration of Basic Principles for Victims of Crime and Abuse of Power (hereinafter the Victims Declaration) adopted by the General Assembly in November 1985. The declaration reflects the collective will of the international community to establish a balance between the fundamental rights of suspects and offenders⁶, and the rights and interests of victims. It recognizes that victims should be treated with compassion and respect for their dignity, and recommends measures to improve their access to justice and prompt redress (restitution, compensation and all necessary assistance/rehabilitation) for the harm they have suffered.

The Victims Declaration has given the due respect to the victims of crime that may be summarized as follows;⁷

"Cognizant that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized,

Recognizing that the victims... and also frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury and that they may, in addition, suffer hardship when assisting in the prosecution of offenders,

... affirms the necessity of adopting national and international measures in order to secure the universal and effective recognition of, and respect for, the rights of victims of crime and abuse of power...

"Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress...for the harm that they have suffered."

As the international community has recommended States to include such principles in their domestic legal systems, states should also be prepared to adopt and apply the standards with their strong conviction to implement irrespective of its so-called soft law nature.

⁶ The Victims Declaration does refer the term 'offender' instead of 'accused'. Consequently, the term "offender" is used in a generic sense, without detracting from the presumption of innocence.

⁷ See, paragraph 4, and excerpts from the Declaration United Nations Declaration of Basic Principles for Victims of Crime and Abuse of Power, UN Doc. GA/Res/40/34 (1985).

Considering the emergency of victim oriented rules, the framework carried out by the Victims Declaration has further been expanded by a resolution adopted by UN General Assembly on its 60th session in December, 2005.⁸

The rights of the victims should be adopted, applied and interpreted from rights-based approach that provides guidelines for realization, recognition and assertion of entitlements with greater scope and application of access to adequate remedy to all at all level. The rights of a crime victim may be summarized as follows: ⁹

- The right to be treated with fairness and with respect for the victim's dignity and privacy.
- The right to be reasonably protected from the accused offender.
- The right to be notified of court proceedings.
- The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
- The right to confer with [an] attorney for the Government in the case.
- The right to restitution.
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.
- Rights to have his/her residential address withheld unless disclosure is deemed by the relevant court to be material to the defense.¹⁰
- Right to have an explanation of the outcome of criminal proceedings, and to be fully apprised of the sentence, when imposed, and its implications.

⁸ See, GA Res/60/147 adopted on 16 December 2005

⁹ The Guidelines applicable to All Components of justice adopted by the United States of America is one of the benchmarks adopted as recognized rights of victims. See, for detail 'Guidelines Applicable to All Components' Article III, 42 U.S.C. § 10606(b): See also, Idaho Manual on the Rights of Victims of Crime, adopted by Office of the Attorney General, Idaho, United States June, 1998 (reprinted in April, 2003)

¹⁰ See for detail the report No. 6 published by Community Law Reform Committee of the Australian Capital Territory in 1993 available at <http://www.jcs.act.gov.au/eLibrary/lrc/r06/Report6c1.html#RTFToC3> (Date visited 9th December, 2007)

PARTICIPATORY RIGHTS OF VICTIMS

The victim in a criminal prosecution has several roles which relate to his/her entitlement to be present and participate at various proceedings in the criminal justice process. For crime victims, to exercise their participatory rights, they must first be made aware that such rights exist. Just as a crime victim must be made aware of the existence of participatory rights may be exercised, the victim must also be notified of the particular proceedings at which such rights may be exercised in order to use the rights. Even if a crime victim chooses not to actively participate in relevant proceedings, the victim can maintain involvement in the process if informed of important actions and outcomes in the prosecution and punishment of the offender

As the *Hance* case illustrates, notification of the *existence* of a victim's rights of participation in the criminal justice process is in many ways the most important victim participatory right because it is the right on which the exercise of all other rights depends. The effectiveness of its actual implementation determines whether it is the linchpin of or the barrier to the exercise of the remaining participatory rights.¹¹

IN CAMERA PROCEEDINGS

Degree of vulnerability of a crime victim, especially in gender based violence against women is very high. The stigma embedded in the social mindset regards even victims of rape and other sexual assaults, negatively once the matter is made public. Thus the entire social and public life of such victim is ruined. In addition components of justice system like police, prosecutor, defense lawyer, court personnel and judges are mostly unaware about victims-friendly-norms. Hence, rape incident which is supposed to be a serious matter, gets projected in a theatrical manner making it enjoyable show in the court.

In this context, the notion of '*in camera* proceedings' justifies the participation of victims in entire criminal proceedings. It ensures substantive participation of victims and minimization of the risk of victims being re-victimised. In relation to *in camera* proceedings, victim's participation should consider at least the following three levels of analysis;

¹¹ See for detail, *State ex rel. Hance v. Arizona Board of Pardons and Paroles*, 875 P.2d 824 (Ariz. Ct. App. 1993). Cited at supra note 2

First, these norms should be viewed as reaffirming in principle the more settled procedural norms, including in the context of conflict victims about their right to participate in the criminal process.

Second, there are several valid pragmatic concerns about the application of these norms. For example, many observers have argued victim participation in the criminal process would not only endanger their lives but could lead to duplication, inefficiency, and conflicting agendas.

Third, each proposed norm of victim participation in the criminal process should be assessed for its effect on others' fundamental rights. For example, many have cautioned that victim's participation will substantially diminish the hard-earned, fundamental procedural rights of defendants.

Protection of victim's dignity and privacy mentioned above may be the better justification of '*in camera* proceedings' as a matter of procedural fairness where victims participation needs to be guaranteed and ensured by adopting laws, mechanism and all other necessary measures. Similarly, the 'right to be reasonably protected from the accused further respects the right to life and security, by which the victims can freely take part in proceedings. Even though camera trial is the exception to open trial system, it ultimately follows the notion of victim-friendly due process and procedures that are consistent with the norms and practice of fair trial guaranteed to the accused.

SCOPE OF '*IN CAMERA*' PROCEEDINGS UNDER INTERNATIONAL STANDARDS

Since the 1980s, international human rights law has developed norms that respond to concerns expressed by the victims of human rights violations, about their exclusion from criminal proceedings, especially when states rampantly refuse to comply with their duty to prosecute. Among the norms developed, victim-focused prosecution norms establish that prosecutions are an essential component of the remedy states owe victims of certain grave crimes. Moreover, these norms began to recognize certain participatory rights of victims in criminal proceedings, other than as witnesses.¹²

¹² Raquel Aldana-Pindell" In Vindication of Justiciable Victims' Rights to Truth and Justice for State-Sponsored Crimes", Vanderbilt Journal of Transnational Law, 2002, at p. 1414

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Before touching the issue of camera proceeding or trial, it is essential to understand the general rule of procedural fairness. The right to a public hearing in both civil and criminal cases is expressly guaranteed by article 14(1) of the International Covenant on Civil and Political Rights¹³ (hereinafter ICCPR) which states “everyone shall be entitled to a fair and public hearing”¹⁴. The provision further elaborates the requirements of a “fair hearing”¹⁵ that considers publicity of hearings as an important safeguard in the interest of the individual and of society at large. At the same time article 14, paragraph 1 of ICCPR acknowledges that courts have the power to exclude all or part of the public for reasons as follows;

The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent *strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice*; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children. (*emphasis added*)

The procedure in the case of juvenile persons has been specifically addressed by ICCPR accordingly.¹⁶

JURISPRUDENCE OF THE HUMAN RIGHTS COMMITTEE:

In General Comment No. 13, on article 14 of the ICCPR, the Human Rights Committee emphasized, “the publicity of hearings is an important safeguard in the interest of the individual and of society at large”. Apart from the “exceptional circumstances” provided for in article 14(1), “a hearing must be open to the public in general, including members of the press, and must not, for instance, be limited only to a particular category of persons”.¹⁷ Notwithstanding the non-publicity of the trial itself, “the judgment must,

¹³ Adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966

¹⁴ See Article 14, paragraph 1 of the ICCPR

¹⁵ Ibid , paragraph 3

¹⁶ See Article 14 (4) in conjunction with Article 10 (2) (b) of the ICCPR

¹⁷ United Nations Compilation of General Comments, pp. 123-124, para. 6.

with certain strictly defined exceptions, be made public” under article 14 of the Covenant.¹⁸

The duty to hold suits of law in public under article 14(1) is incumbent on the State, and “is not dependent on any request, by the interested party... Both domestic legislation and judicial practice must provide for the possibility of the public attending, if members of the public so wish”.¹⁹ This duty further implies that “Courts must make information on time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, e.g., the potential public interest in the case, the duration of the oral hearing and the time the formal request for publicity has been made.

Failure of the court to make large courtrooms available does not constitute a violation of the right to a public hearing, if in fact no interested member of the public is barred from attending an oral hearing.”²⁰

The principle of publicity means that trials taking place in secret are contrary to article 14(1). For example, in the case of eight former Zairian parliamentarians and one businessman whose trial – among other shortcomings – was not held in public and who were sentenced to fifteen years of imprisonment, with the exception of the businessman, who received a five-year prison sentence.²¹ Similarly, the Human Rights Committee has found the violation of Article 14(1) of the ICCPR in cases where the hearing has taken place *in camera* when the State party has failed to justify this measure in accordance with the terms of the Covenant.²² However, *in camera* proceeding is still justified in the cases where principle of proportionality and confidentiality is strictly followed the administration of justice. It should also be noted that each case has to be considered in its own background and special circumstance where publicity may jeopardize the interest of justice. In this regard, the element of 'interest of justice' can be

¹⁸ Ibid., para. 6 at p. 124.

¹⁹ Communication No. 215/1986, *G. A. van Meurs v. the Netherlands* (Views adopted on 13 July 1990), in UN doc. *GAOR*, A/45/40 (vol. II), p. 59, para. 6.1.

²⁰ Ibid., p. 60, para. 6.2.

²¹ Communication No. 138/1983, *N. Mpandanjila et al. v. Zaire* (Views adopted on 26 March 1986), in UN doc. *GAOR*, A/41/40, p. 126, para. 8.2.

²² Communication No. 74/1980, *M. A. Estrella v. Uruguay* (Views adopted on 29 March 1983), in UN doc. *GAOR*, A/38/40 p. 159, para. 10.

defined on the triumph of 'rule of reason' in other words justifies the 'rule of law' coherently.

REGIONAL HUMAN RIGHTS FRAMEWORK:

European Convention on Human Rights,²³ in article 6(1) provides although the press and public “may be excluded from all or part of” a trial for certain specified reasons, namely, in the interest of morals, public order or national security in a democratic society, in the interest of the parties’ private lives, or where the interest of justice otherwise so requires. Furthermore, the European Convention also specifically adds “the interest of juveniles” as a ground for holding court proceedings *in camera*.

Under article 6(1) of the European Convention, proceedings must, with the exceptions mentioned above, be held in public. However, the application of this provision “to proceedings before appellate courts depends on the special features of the proceedings involved”, and “account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein”.²⁴

The Court has thus consistently held that “provided that there has been a public hearing at first instance, the absence of ‘public hearings’ at a second or third instance may be justified by the special features of the proceedings at issue. Thus proceedings for leave to appeal or proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even when the appellant was not given an opportunity of being heard in person by the appeal or cassation court.”²⁵

Applying this interpretation in the case of *Bulut*, the European Court found no violation although the Supreme Court used summary proceedings unanimously to refuse consideration of an appeal for lacking merit. The European Court was not satisfied that the grounds of nullity formulated by the applicant “raised questions of fact bearing on the assessment of [his] guilt or innocence that would have necessitated a hearing”.²⁶

²³ Convention for the Protection of Human Rights and fundamental Freedoms signed at Rome of 4th November 1950

²⁴ ECHR, Case of *Bulut v. Austria*, judgment of 22 February 1996, Reports 1996-II, p. 357, para. 40

²⁵ Id. p. 358

²⁶ ECHR, Case of *Bulut v. Austria*, judgment of 22 February 1996, Reports 1996-II, p. 357, para. 40.

As observed by the European Court, the object pursued by article 6(1) with regard to the publicity of judgments is ‘to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial’.²⁷ However, the Court has not adopted a literal interpretation of the words “judgment shall be pronounced publicly” but has instead taken into account, in its case-law, the “long-standing tradition” of many States of the Council of Europe in making public the decisions of some or all of their courts; such traditions may thus not necessarily imply the reading out loud of the judgments concerned, but can consist in depositing the judgments in a registry accessible to the public. The European Court considers, therefore, “that in each case the form of publicity to be given to the ‘judgment’ under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose” of article 6(1).²⁸

Similarly Article 8(5) of the American Convention on Human Rights²⁹ provides this right only with regard to criminal proceedings, which “shall be public, except insofar as may be necessary to protect the interests of justice”.

Unlike the European and American Conventions, the African charter on Human and Peoples Right³⁰ does not provide the explicit provision for a public trial, however, the African Commission on Human and Peoples’ Rights has held that, regardless of the fact that, it is empowered by articles 60 and 61 of the Charter “to draw inspiration from international law on human and peoples’ rights and to take into consideration as subsidiary measures other general or special international conventions, customs generally accepted as law, general principles of law recognized by the African States as well as legal precedents and doctrine”. In support of the notion of publicity of hearings, the Commission then invoked the above-

²⁷ ECHR, Case of Pretto and Others v. Italy, judgment of 8 December 1983, Series A, No. 71, para. 27 at p. 13; (*emphasis added*)

²⁸ Id

²⁹ Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969

³⁰ Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986

quoted terms of the Human Rights Committee's General Comment No. 13 on article 14(1) of the Covenant³¹.

Nevertheless, African Commission eventually noted that the "exceptional circumstances" which might justify exceptions to the principle of publicity under article 14(1) of the Covenant are "exhaustive".³² Where the respondent Government had made only "an omnibus statement in its defence", without specifying which exact circumstances prompted it to exclude the public from a trial, the Commission concluded that the right to a fair trial as guaranteed by article 7 of the African Charter had been violated.³³

In the context of South Asia, the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 has incorporated the idea of *in camera* proceedings as follows:³⁴

"In trying offences under this convention, judicial authorities in members States ensure that the confidentiality of the child and women victims is maintained and that they are provided appropriate counseling and legal assistance."

RULES UNDER INTERNATIONAL CRIMINAL TRIBUNALS

Although International criminal tribunals Criminal Tribunal for former Yugoslavia (ICTY), and the Rwanda (ICTR) established by the UN security Council³⁵ on ad hoc basis are criticized for not being able to provide substantive remedy such as compensation and rehabilitation to the victims of serious crimes such as crime against humanity, including rape, enforced prostitution and other forms of sexual violence, in terms of victims participations in procedures, the tribunals have adopted landmark victim friendly rules and procedures.

³¹ ACHPR, Media Rights Agenda (on behalf of Niran Malaolu) v. Nigeria, Communication No. 224/98, decision adopted during the 28th session, 23 October – 6 November 2000, para. 51 of the text of the decision as published at <http://www1.umn.edu/humanrts/africa/comcases/224-98.html>.

³² Id., para. 52.

³³ Id., paras. 53-54.

³⁴ See Article V of the Convention

³⁵ See UNSC Resolutions 827 (May 25, 1993) and 955 (Nov 8, 1994)

Taking into account the coercive nature of systematic rape, tribunals have adopted Rule 96. The rule stipulates “Evidence in Cases of Sexual Assault” as follows:

- i. Notwithstanding Rule 90(C), no corroboration of the victim's testimony shall be required;
- ii. Consent shall not be allowed as a defense if the victim
 - a. Has been subjected to or threatened with or has had reason to fear violence, duress, detention or psychological oppression, or
 - b. Reasonably believed that if the victim did not submit, another might be so subjected, threatened or put in fear;
- iii. before evidence of the victim's consent is admitted, the accused shall satisfy the Trial Chamber *in camera* that the evidence is relevant and credible;
- iv. Prior sexual conduct of the victim shall not be admitted in evidence.

The abovementioned Rule 96 is one of the most progressive rules in the history of gender-based crimes. Under this rule, unlike other crimes, sexual assault does not require corroboration of the victim's testimony and the consent is also not an element. Moreover, the rule allows for ‘*in camera* hearings’ to protect and encourage victims to participate in the trial. The effectiveness of this rule can be seen in many cases. For example, in *Kunarac's case*³⁶, the victims testified ‘*in camera court*’ without requiring facts to be corroborated. The ICTY using this rule 96 for the tribunal rendered a landmark verdict, by which all three defendants were convicted.³⁷

With regard to the Rules of Procedure and Evidence, Rule 79(a) is landmark of the ad hoc tribunals that refers to the possibility of the Trial Chamber conducting hearings into closed session for reasons of public order or morality, safety, security or non-disclosure of the identity of a victim or witness as provided in Rule 75, or for the protection of the interests of justice. However, “the Trial Chamber shall make public the reasons for its order”,³⁸

³⁶ Prosecutor v Kunarac and others, (decided by ICTY on 22 February 2001)

³⁷ "Heart of darkness" The Sydney Herald, 24 February 2001, p30 (Cited at Geeta Pathak Sangroula 'Defining Rape as Torture: Contribution of International Criminal Tribunals', (KSL Journal, Vol 2 (Kathmandu School of Law (KSL,2004) p55-66

³⁸ See for detail rule 79 (b) of the ICTR

Rule 75(A) of the Rules of Court Procedure for the court of the former Yugoslavia concerns “Measures for the Protection of Victims and Witnesses”, and allows a Judge or a Chamber “*proprio motu*” or at the request of either party, or of the victims or witness concerned, or of the Victims and Witnesses Section [to] order appropriate measures for the privacy and protection of victims and witnesses... provided that the measures are consistent with the rights of the accused...”. Rule 75(A) of Court of Rwanda is almost identical, but instead refers to the...“privacy and security”...of the victims and witnesses. Paragraph (B) of Rule 75 in each case deals with measures that the Court may adopt *in camera* for the purpose of protecting the right to privacy and protection/security of the victims and witnesses. Such measures include:

- the deletion of names and identifying information from the Chamber’s/Tribunal’s public records;
- the non-disclosure to the public of any records identifying the victim;
- the giving of testimony through image- or voice- altering devices or closed-circuit television;
- the assignment of a pseudonym;
- Closed sessions; and appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed-circuit television.

As can be seen from the Rules of Procedure of these two Tribunals, the guiding principle is that measures for the protection of victims and witnesses must be “consistent with the rights of the accused”, and that, to this end, they do not foresee permanent anonymity either of victims or of witnesses as between the parties themselves, their identity having to be disclosed in sufficient time prior to the trial to allow adequate time for the preparation of the trial. The approach adopted by the International Criminal Tribunals provides an interesting solution to difficult problems of security, while at the same time safeguarding the right to an effective defence.

Rule 69 of the Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda and for the former Yugoslavia deals with “Protection of Victims and *Witnesses*” has a close connection with the Rule 75 mentioned above. The Rule 69 reads:

- (a) In exceptional circumstances, either of the parties may apply to a Trial Chamber to order the non-disclosure of the identity of a

victim or witness who may be in danger or at risk, until the Chamber decides otherwise.

- (b) In the determination of protective measures for victims and witnesses, the Trial Chamber may consult the Victims and Witnesses Support Unit.
- (c) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time prior to the trial to allow adequate time for preparation of the prosecution and the defense.”

PROVISIONS UNDER INTERNATIONAL CRIMINAL COURT³⁹

The Rome Statute of the International Court and its Rules of Procedure and Evidence also include more ample participatory rights of victims in international criminal proceedings. Article 68 is especially related with protection of the victims and witnesses and their participation in the proceedings with the provision “appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.” In so doing, the Court shall have regard to all relevant factors, including age, gender...health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children.”⁴⁰ The ICC Statute also ensures adequate measures particularly during the investigation and prosecution of such crimes without being prejudiced to or inconsistent with the rights of the accused of a fair and impartial trial.⁴¹

More importantly, the ICC Statute, as an exception to the principle of public hearings provided as one of the fundamental rights of accused⁴², recognizes the ‘*in camera*’ proceedings in the provisions mentioned below;

“...the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless

³⁹ The Rome Statute of International Criminal Court (here in after referred as ICC Statute) was adopted on 17 July 1998 came into force in 1 July 2002.

⁴⁰ Article 68(1) of the ICC Statute

⁴¹ Id

⁴² See in detail Article 67 of the ICC Statute

otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.”⁴³

Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.⁴⁴

By formulating above provisions, the ICC statute has provided a sound theoretical basis, as well as a reservoir of practical experience, on which to build appropriate mechanisms for the protection of victims/witnesses and to provide assistance to them during difficult appearances they will make before the ICC proceedings. Moreover, to help victims and witnesses face the judicial process - without being (re)traumatized by it - the ICC has a Victims and Witnesses Unit to provide protective measures and security arrangements, counseling, and other assistance for witnesses and victims, while fully respecting the rights of the accused.

An essential advancement for victims' rights in the Rome Statute of the ICC is the historic recognition that victims have the right to participate in the ICC proceedings to express their views and concerns at stages and according to methods to be decided by the Judges. As appropriate, victims or groups of victims will be represented by a legal representative. In this respect, it is important to stress the significance of the January 17, 2006 decision of the pre-trial Chamber of the ICC dealing with the Democratic Republic of the Congo. The Chamber admitted six survivors of atrocities committed in various regions of the Congo to participate in the ICC proceedings through a common legal representative.⁴⁵

While the ICC's commitment in realizing victims' rights and meeting their needs and concerns is undeniable, there remain serious uncertainties regarding full victim protection (including its psychosocial aspects), and

⁴³ See Article 68(2) of the ICC Statute

⁴⁴ Art. 68(3) *id.*

⁴⁵ See, Pre-Trial Chamber I, Situation in the Democratic Republic of the Congo, Decision on the Applications for Participation in the Proceedings of VPRS1, VPRS2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, No. ICC-01/04 (2006). The victims were mobilized by the NGO, Federation Internationale des Droits de l'Homme (FIDH)

serious questions regarding the temptation to bureaucratize the process relating to victims in general and their participation in court proceedings in particular. Two more grave challenges confronting the Court are realizing its reparative mandate when the number of victims and the nature of the suffering are so overwhelming, and balancing the victims' right to justice with society's need for peace. Much has been achieved in principle, but much more needs to be learned and put into practice, both in the ICC's work and in implementing its principles and practices in nations around the world.⁴⁶

STANDARDS RELATING TO THE PROTECTION OF CHILD AS VICTIM AND WITNESS

To be able to give effect to their obligations deriving from numerous international legal rules governing the administration of juvenile justice, States have legal duties to set up specific legal system of juvenile justice, including juvenile courts. According to article 40(3) of the CRC, "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law". In particular they shall seek to establish a minimum age of criminal responsibility, as well as measures to deal with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.⁴⁷

According to Article 40(3)(a) and (b) of the CRC, accused child has the right "to have his or her privacy fully respected at all stages of the proceedings" This right is further developed in Rule 8 of the Beijing Rules⁴⁸, according to which "the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling. In principle, no information that may lead to the identification of a juvenile offender shall be published"⁴⁹ As explained in the *Commentary*, this rule "stresses the importance of the protection of the juvenile's rights to privacy. Young persons are particularly

⁴⁶ Dr. Yael Danieli, "Symposium: the Nuremberg Trials: A Reappraisal and their Legacy: Reappraising the Nuremberg Trials and their Legacy: THE ROLE OF VICTIMS IN INTERNATIONAL LAW", *Cardozo Law Review*, Yeshiva University, 2006, p. 1649

⁴⁷ See for detail art. 40(3)(a) and (b) of the CRC.

⁴⁸ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985

⁴⁹ See for detail, Rule 8.1 and 8.2

susceptible to stigmatization. Criminological research into labeling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as ‘delinquent’ or ‘criminal’”. Secondly, Rule 8 “stresses the importance of protecting the juvenile from the adverse effects that may result from the publication in the mass media of information about the case (for example the names of young offenders, alleged or convicted).” Thus, “the interest of the individual should be protected and upheld, at least in principle”.

The need to protect the juvenile’s right to privacy justifies an exception to the basic rule that court proceedings shall be held in public, as established in particular in article 14(1) of the International Covenant on Civil and Political Rights, article 8(5) of the American Convention on Human Rights and article 6(1) of the European Convention on Human Rights.

In order to protect the juvenile’s right to privacy, Rule 21 of the Beijing Rules also regulates *the handling of records of juveniles* in the following terms:

21.1 Records of juvenile offenders (delinquents)⁵⁰ shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

21.2 Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

This rule “attempts to achieve a balance between conflicting interests connected with records or files: those of the police, prosecution and other authorities in improving control versus the interests of the juvenile offender”. As to the reference to “other duly authorized persons”, it “would generally include, among others, researchers”.

In its report on the general discussion on the administration of juvenile justice held in November 1995, the Committee on the Rights of the Child emphasized that “the privacy of the child should be fully respected in all stages of proceedings, including in relation to criminal records and possible reporting by the media”.

⁵⁰ The term offender used in the Rules has now been outlawed and replaced during the academic discourse as well as in the process of administration of justice.

JUDICIAL PROCEEDING GUIDELINES

Guidelines for Action on Children in the Criminal Justice System has been adopted by the resolution of annexed to Economic and Social Council resolution 1997/30, on Administration of juvenile justice. Guidelines provide some useful principles, which should inspire the work of police, prosecutors, lawyers and judges at the domestic level. According to Paragraph 45 of the Guidelines, the child victims “should be treated with compassion and respect for their dignity with the entitlement to access to justice and to prompt redress provided by national legislation and effective implementation by the competent courts to obtain redress through formal or informal procedures that are prompt, fair and accessible. Child victims and/or their legal representatives should be informed accordingly”

In order to be able to deal with cases involving child victims, the guidelines further requires “police, lawyers, the judiciary and other court personnel should receive training”, a need that is recognized in and for this “States should establish, as appropriate, a code of practice for proper management of cases involving child victims”.

With regard to child witnesses, paragraph 49 of the Guidelines states that they “need assistance in the judicial and administrative process”. Consequently, “States should review, evaluate and improve, as necessary, the situation for children as witnesses of crime in their evidential and procedural law to ensure that the rights of children are fully protected. In accordance with the different law traditions, practices and legal framework, direct contact should be avoided between the child victim and the accused (the term offender has been used in the guidelines) during the process of investigation and prosecution as well as during trial.”

The identification of the child victim in the media should be prohibited, where necessary to protect the privacy of the child. According to paragraph 50 of the Guidelines, States should also consider, “if necessary, amendments of their penal procedural codes to allow for, inter alia, videotaping of the child’s testimony and presentation of the videotaped testimony in court as an official piece of evidence. In particular, police, prosecutors, judges and magistrates should apply more child-friendly practices, for example, in police operations and interviews of child witnesses”.

Finally, paragraph 51 provides that “the responsiveness of judicial and administrative processes to the needs of child victims and witnesses should be facilitated by:

- (a) Informing child victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved;
- (b) Encouraging the development of child witness preparation schemes to familiarize children with the criminal justice process prior to giving evidence. Appropriate assistance should be provided to child victims and witnesses throughout the legal process;
- (c) Allowing the views and concerns of child victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and in accordance with the relevant national criminal justice system;
- (d) Taking measures to minimize delays in the criminal justice system, protecting the privacy of child victims and witnesses and, when necessary, ensuring their safety from intimidation and retaliation.”

Given the increasing number of children who appear in court proceedings as victims and witnesses, in particular in cases of abuse, it is of primordial importance that members of the legal professions focus on ways and means of respecting these children’s rights and needs, while at the same time also respecting the rights and needs of the accused, who must be granted due process.

The responsibility of the legal professionals is particularly great when the judicial proceedings concern children under age. Such proceedings require special knowledge and skills on the part of judges, prosecutors, lawyers, court personnel and other professionals concerned, and the Committee on the Rights of the Child has therefore often recommended that States parties introduce or strengthen training programmes on relevant international standards for all professionals involved in the juvenile justice system.⁵¹ It has also consistently suggested that the States parties consider seeking technical assistance in the area of juvenile justice, including the police, from the

⁵¹ See as to Venezuela, in UN doc. CRC/C/90, *Report on the twenty-second session (1999)*, para. 61, and as to Mexico, *Implementation Handbook*, pp. 275-276. (cited as Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, 2002)

Office of the United Nations High Commissioner for Human Rights and the United Nations Children's Fund (UNICEF), among other organizations.

Child victims are entitled to prompt redress for the harm suffered and, to this end, they have the right of access to various kinds of assistance to meet their needs during the legal proceedings and thereafter.

Child victims should be able to obtain redress through formal or informal procedures that are prompt, fair and accessible, and they and/or their legal representatives should be informed about the availability of such procedures and also need to develop the contextual guideline in order to maintain the disciplines required for the adequate treatment to the victims or survivors.

To meet this requirement, the following alternatives have been suggested to conduct *in camera* proceedings;⁵²

- employing special courtrooms where the child's testimony is observed;
- through a one-way mirror or,
- via a closed circuit television setup
- having the child testify on videotape with only cross-examination taking place in the court room, and using,
- Partition blocking the child's view of the accused as they testify.

It has also been suggested that 'clinicians may be asked to testify about potential damage of forcing a child to testify (in the case of psychological unavailability) or to use the special procedures. In *Maryland v. Craig (US SC 1990)*, it was ruled that the emotional distress the child might experience be more than mere nervousness or some reluctance to testify and that it be reaction to the defendants presence, not just the court room. The case was decided on the basis of stronger research suggesting child witnesses could suffer trauma as a result of confrontation in criminal trial.⁵³

The above-mentioned measures can be seen being applied mostly in developed countries in many trials, however, availability and accessibility

⁵² See, "Should the Child or Adolescent Victim Testify?" at *Assessment of Family Violence; A Clinical and Legal Sourcebook*, second edition, edited by Robert T. Ammerman et.al. John Wiley & Sons, Inc. (USA, 1999) p. 61

⁵³ See for detail, Small and Melton, G.B. (1994), evaluation of child Witnesses for confrontation by criminal defendants. *Professional Psychology: Research and Practice*, pp. 25, 228-233 (cited at id at p. 62)

of this kind of technologically advanced measures in the developing countries is far-from being achieved. Nevertheless, this can be considered as a matter of progressive realization requiring step-by-step process.

TREATMENT TO THE WOMEN VICTIM AND WITNESS

Many of the procedures associated with the criminal justice system do not provide adequate remedy to women victims including their participation in the proceedings. The magnitude of the problem is even higher in the cases relating to sexual violence. For a victim of violence, especially a victim of rape, a criminal trial can be a humiliating and degrading experience. The adversarial system overwhelmingly justifies the rights of the accused than the victim's participation.⁵⁴ Thus victims and the witnesses, end up being sandwiched by the arguers. Often women victim may have to undergo a rigorous and hostile experience during the cross-examination. The defense counsel, quite often, found harassing the victims of rape by asking the questions especially relating to the consent.

To minimize the risk mentioned above, the notion of '*in camera*' proceedings needs to be internalized in the domestic legal regime. In some countries the testimony of the victims is video recorded and cross-examination takes place without the public being present. In order to make such proceedings productive and effective, some suggest for more women as defense lawyer. A woman prosecutor in Sri-Lanka observed that more women as defense counsel would make a difference and make the criminal trial less traumatic for women victims. Following is the extracts of the interview;⁵⁵

I wish there were more female defense counsel... especially in a case of rape you find that the victim when being cross-examined, the defense counsel, most often than not, makes unnecessary expeditions. She is raped twice over in courts. In the interest of their clients, of course, they would make all kinds of suggestions. They would try to bring her past boyfriend in to the scene, and you find 'dirty' suggestions being made. You find some defense counsel who stoop really low in courts...they would try to make the whole thing so

⁵⁴ Generally the adversarial system places the judge as an umpire and the lawyers as arguers of both the sides opposing each other.

⁵⁵ See, SHYAMALA AND MARIO GOMEZ, GENDER VIOLENCE IN SRI LANKA: FROM RIGHTS AND SHAME TO REMEDIES AND CHANGE, Published by CIDA's, 1999, p. 112

vulgar and to intimidate the victim to the point that she will probably break down and thereafter, they somehow manage to get their way by making the victim contradict herself because under stress, she might say the wrong thing. That I feel might not come through from a female defense counsel. I cannot see for instance, female counsel saying crude things....

This story projects anatomically justified identical role of women with the better understanding of women victims of sexual violence. However, the problem still unsolved as professional roles can or should not be genderized.

In a nutshell, the administration of justice requires to respect, protect and fulfill the rights of women victims of violence with a careful consideration of social circumstances. The following may be the minimum standards to be followed by the law enforcement officials, judges, court personnel and the professionals:

- Keep matters, including the documents in the possession confidential.
- The prosecutor must consult thoroughly with the victims before the trial takes place. The prosecutor must ascertain what is victim's fear.
- Make the victim familiarize with the court system, including the physical settings of the courtroom.
- The victims of the sexual offence should not be exposed to the accused, his family or friends outside the courtroom. Even the office or waiting room must be made available to victims to ensure their right to privacy.
- The prosecutor should especially be alerted not to let any people, especially the defence counsel creating fearful or traumatic situation before or during the court proceedings.
- The victims must not be kept in the office or in the court room unless required.
- The judges and lawyers have duty to familiarize and update themselves with the international human rights standards providing the safeguards to the women victims of violence and the growing number of gender jurisprudence in this regard.
- Even in the situation, where the laws are silent in the matter of such measures or safeguards, following the recognized principles of justice and the 'no harm theory', the special arrangements should be

made for the protection and promotion of right to dignity and physical integrity of the victims of violence.

NATIONAL LEGAL FRAMEWORK

Legal Framework of Nepal

The justice system of Nepal, largely fails to guarantee the rights of victims both to procedural fairness and substance justice. Even the provision of ‘rights regarding to justice’ under Article 24 of the Interim Constitution fails to incorporate ‘victims’ rights in justice system’. Nevertheless, the following are the piecemeal provisions that may provide some scope of maintaining victims rights in certain cases:

District Court, Appellate Court and the Supreme Court Rules

All three Court Rules have incorporated separate provisions of *camera court* and its procedures in case of following crimes:⁵⁶

- Cases relating to Children
- Rape
- Trafficking of Human Being
- Divorce,
- Establishment of relationship (paternity confinement), and
- Other cases identified by the court that are required to be heard in the camera court.

Court Procedures⁵⁷

- a. During a trial, defense lawyers, public prosecutors, experts, accused, victim, guardian of victim, police officials and court personnel permitted by the court may only enter the court.
- b. Documents relating to the case shall not be provided to any other persons other than the parties of case and the victims.

⁵⁶ In accordance with Section 11 of the Supreme Court Act, the Regulations for the Supreme Court, Appellate Courts and the District Courts have been enacted respectively. The Regulations have explicitly incorporated the provisions for the management of camera court. See for detail, rules 46(b), 60 (a) and 67 (a) of the Regulations for District Court, Appellate and the Supreme Court respectively.

⁵⁷ See Rules 46 (b) (1-4) of the District Court Regulation, Rule 60 (a) (1-4) of the Appellate Court and Rule 67 (a) (1-4) of the Supreme Court Regulations.

- c. The facts of the cases, heard *in camera* court, shall not be publicized by the press. But, if the court permits to publish the fact of the case, the press may publish without disclosing the identity of the victim.

THE CHILDREN'S ACT 2048 (1992)

Section 49 stipulates the provision of camera court as follows:

1. The legal practitioner or the father, mother, relatives or guardian of the child and if the officer hearing the case deems it appropriate and permits any person or the representative of the social organizations involved in safeguarding the rights and interest of the child may attend in the bench during camera proceedings of any case relating to a child initiated under this Act and other existing laws.
2. The case pursuant to sub section 1 and the particulars of the incident relating to it cannot be published in any paper without the permission of the investigating officer of the case or the officer hearing the case. Such restrictions shall also prevail for the owner of the press, news agency and photojournalists.

Muluki Ain 2020 Chapter on Rape

After a long struggle, the 11th amendment (2000) in the Code brought a lot of changes both in substantive and procedural laws. Clause 10 (a) and (b), of the *Muluki Ain Chapter in Rape* are landmarks for providing the camera court provision for the hearing of the case of rape.

According to Clause 10 (a) the enquiry, investigation and extraction of the statement of the victim should be carried out by the female police officers. In case of unavailability of female police officers, the women social workers may be used for such proceedings.

Clause 10(b) of the same Chapter provides the related lawyers, accused, victim or person permitted by the guardian or investigation officer are allowed to attend in the court

Human Trafficking and Transportation (Control) Act, 2064 (2007)

The Act provides a separate chapter on the provision of Rescue, Rehabilitation and Reconciliation, including rehabilitation fund that could

be viewed as a positive step towards the rights of victims. With regards to the victims' participation in the proceedings, the Act also provides an explicit provision for '*in camera* court proceedings' with the following two safeguards:

1. Case proceedings of an offence under this Act shall be conducted in-camera.⁵⁸
2. Only parties to the proceedings, their attorneys or other non-parties permitted by the court can enter to the court during the court proceedings.⁵⁹

Similarly, the provisions of *in camera* proceedings have been incorporated in other countries of the South Asian Region. The following are some of the provisions to mention:

Best Practices: Policies, Guidelines and Case Law

In order to provide guidelines to the law enforcement officials and other stakeholders of justice components, the guidelines adopted by UN and some other jurisdictions may be considered as best guidelines to be taken into consideration.

The UN Handbook on Justice for Victims (1999)

This handbook may be seen as a complementary instrument. In particular, it highlights selected good or promising practices that illustrate various services provided in the community by the police, courts and so on, and how national governments have been able to multiply the availability and quality of these services.

The handbook concerns police assistance and reparation as well as state compensation and rights. Finally, it introduces national strategies to prevent victimization. It also puts forward recommendations on how to mobilize action to improve services and rights for victims of crime, including respecting the right to privacy justifying human dignity, mainly focusing the sensitive cases of women and children.

⁵⁸ Art. 27(1)

⁵⁹ Art. 27(2)

Case Law

Following Case law of India and Nepal have been extracted as best practice providing the greater scope of implementation of the standards relating to the treatment of victims with the concept of *in camera* proceedings' at domestic level.

India

*State of Karnataka v. Krishnappa*⁶⁰

"Sexual violence apart from being a dehumanizing act, is an intrusion on the right to privacy and sanctity of female. It is a serious blow to her supreme honor and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim is helpless innocent child it leaves behind her a traumatic experience."

*Bodhisattawa Gautam v. Subhra Chakrabarty*⁶¹

"it is an experience which shakes the foundation of the lives of the victim for many its effect is a long term one, impairing their capacity for personal relationship altering their behavior and values and generating endless fear."

*Delhi Domestic Working Women's Forums v. Union of India and others*⁶²

"....Thus it is not only crime against person or women (victim), it is a crime against entire society, and it destroys the entire psychology of women and pushes her into deep emotional crisis. It is only her by sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt .Rape is therefore the most hated crime. It is a crime against basic human rights and is also a violation of victims most cherished of the fundamental rights, namely the right to life".

*State of Punjab v. Gurmit Sing and Others*⁶³

Even though "we are celebrating women's rights in all spheres, we show little or no concern for her honor. It is a sad reflection on the attitude of indifference of the society towards the violation of human

⁶⁰ See, 2004, SCC 75 -77

⁶¹ See, 1996, 1, SCC 490

⁶² 1995, 1 SCC-143see,

⁶³ See, 1992,2,SCC,384

dignity of the victims of sex crimes. A rapist not only violates the victim's privacy in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of victims, a murdered destroys the physical body of the victims, a rapist degrades the very soul of the helpless female;"

Nepal

*HMG v. Shree Prasad Upreti*⁶⁴

This was a rape case where a minor girl (9 years) was raped by the principal of the school. The Kathmandu District Court decided the case for the first time after adequately applying the concept of camera hearing during the court proceeding. The honorable judge Dr. Anand Mohan Bhattarai observed;

"Generally the public hearing is the foundation of democracy and natural justice because it inherits the concept of impartial and fair justice. However, where the equal opportunity is provided both the accused and the victims of crime to submit their evidences and witnesses respecting principle of equality to the parties before the court, there is no need to permit the persons who are not concerned to the party or the case to attend in the court, such presence may be harmful to the either parties of the case."

Though this case was decided by the district court, it is still landmark for its norm setting verdict observing the jurisprudence regarding '*in camera proceedings*' which might also prove as an important reference in dispensing cases of similar nature.

Despite these principles setting verdicts, still, the '*in camera proceedings*' in Nepal and other South Asian Countries have proved to be illusive. On the one hand standards are not adequate to address the correct concept of the issue; on the other hand, the law enforcement agencies and other justice components are not sensitive enough in protecting the right to privacy of the victims. The '*in camera proceedings*' has been wrongly understood as a matter of '*in camera proceedings*' only during the court hearings and the victims name and details are found to have been exposed in various stages before or after the trial.

⁶⁴ See, A compilation of the Cases related to Gender Justice (Nepali version) compiled by Pro-Public with the support of UNIFEM, 2003, pp. 312-331

CONCLUSION AND RECOMMENDATIONS

The rights of the victims surrounds within the core values of human justice provided by the framework of equality, life, liberty, privacy and security. Therefore, there is a need for an approach which is underscored by the constitutional value of equality, comprising the equal protection and treatment of victims of crimes. Until and unless justice components themselves are oriented with the realization of victim's justice, the range of international and national standards providing victim-friendly special protection will remain a myth. Hence to provide justice to victims, the following measures should be observed:

- Due respect and compliance of human dignity and worth of human values need to be considered as the conceptual guideline. On this basis, states should develop means of informing the general public and in particular victims of crimes, about national and international laws.
- The participatory rights of crime victims should be respected from holistic perspectives having principles and guidelines along with available legal, medical, psychological, social, administrative and all other services to which victims have right to access.
- Several jurisdictions have enacted laws to make it easier for victims to participate in the criminal justice process. Some give victims the right to refuse or limit any interviews with defense attorneys. Others provide for special court arrangements for vulnerable victims, such as young children. These arrangements may include closed-circuit testimony from outside the courtroom, arranging the courtroom so the victim does not see the defendant, or closing the courtroom to the general public. Following are some of the measures to protect crime victims take various forms, including;
 - Police escorts to and from court;
 - Secure waiting areas separate from those of the accused and his/her family, witnesses and friends during court proceedings;
 - Witness protection programs;
 - Residence relocation; and
 - Denial of bail or imposition of specific conditions of bail release—such as no contact orders—for defendants found to present a danger to the community or to protect the safety of victims and/or witnesses.
- In addition to the above mentioned protective measures, in order to address an emotional reaction to a crime, skilled help in the form of

counseling should be readily available and, where necessary, victims should be referred to a psychiatrist or consulting psychologist for specialist help. These counseling services should be subsidized by the government as a part of its victim assistance program. Care should be taken to ensure that resources are not wasted in counseling every victim of crime as defined above.

- General information that criminal justice officials should provide: notice of the availability of crime victim compensation; referrals to victim services, such as rape crisis centers, battered women's shelters, and general victim service agencies; information about the steps involved in a criminal prosecution; and contact information for an individual within the criminal justice system. In addition, victims should also have the right to be informed of various legal rights, including the rights to: attend a proceeding and/or submit a victim impact statement; sue the offender for money damages in the civil justice system; have a court order that they be protected from the offender and/or the offender's family and associates; and collect witness fees for their testimony, among others.
- Responsible stakeholders shall ensure that the components whose responsibilities include contact with crime victims and witnesses and deal through investigation, prosecution and judicial process at all stages receive at a minimum, a training concerning victims' and witnesses' rights.
- Prosecutors, defense lawyers, juvenile rehabilitation or detention facility and employees should respect a victim's privacy and dignity, especially of those vulnerable victims such as victims of sex offense, domestic violence and child abuse.
- More importantly, it should be taken into consideration that *in camera* proceedings, safeguards victims' confidentiality not only inside the court during hearing, rather requires respecting the right to privacy of the victims of crimes through the maintenance of substantively understood special arrangement in all phases (pre-trial, trial and post trial) of criminal proceedings.

Finally, The Courts of all level should play a key role in examining or observing the participatory rights of victims in general and measures regarding *in camera* proceedings in particular. It is the duty of the courts to see that neither the victim nor the accused suffers by mischief of the investigating or prosecuting agencies or the personnel of the court.

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