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## **Realisation of Victims' Interests and Rethinking the Purpose of Criminal Proceedings in China**

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### **Abstract**

This article explores the realisation of victims' interests within China's criminal justice framework, offering a critical re-evaluation of the purpose underlying criminal procedural law. With the growing prominence of victimology and international directives on victims' rights, the judicial reform process in China has increasingly focused on the status and rights of victims in litigation. Traditionally, China's criminal procedure system has prioritised crime control and human rights protection as its dual objectives. However, significant challenges remain in addressing victims' needs for retribution and compensation, often driving them to seek extra-judicial avenues, leading to unintended social consequences. This study argues for a restructuring of this dual-purpose framework. It proposes a reinterpretation of existing principles to more fully encompass victims' interests within the broad scope of human rights protection. By expanding the concept of human rights to explicitly include victims, this approach aims to foster a more balanced and equitable criminal justice system that aligns with the contemporary demands for social justice in China.

### **I. INTRODUCTION**

With the rise of victimology and promulgation of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/34, Annex, 29 November 1985), the litigation status of victims and the protection of their rights have gradually become key themes in judicial reform efforts worldwide.

Chinese scholars specialising in victims' rights protection argue that victims have specific expectations of the criminal justice process. When these expectations are not addressed, victims may experience resentment towards the offenders and

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society, potentially fuelling a desire for revenge. Consequently, safeguarding victims' procedural rights is essential to ensure their protection.<sup>1)</sup>

The progress in protecting victims' rights in China is evident in the amendments to the Criminal Procedure Law, which have introduced significant victim-related provisions.<sup>2)</sup>

### **A. Legislation: China's Criminal Procedure Law (1979)**

In the three decades following the founding of the People's Republic of China (1949–1979), no unified criminal procedure law existed. Instead, the principles and procedures for criminal cases were scattered across various laws and regulations, such as the Constitution, the Law of the People's Courts Organisation, the Organic Law of the People's Procuratorates Organisation, and the Regulations on Arrest and Detention. The drafting of the Criminal Procedure Law commenced in 1954. Between 1954 to 1963, a model version was developed, drawing on both domestic criminal judicial experience and foreign criminal procedure legislations,<sup>3)</sup> including the Regulations of the People's Republic of China on Criminal Procedure (Draft) and the Criminal Procedure Law of the People's Republic of China (Draft) (First Draft). However, with the outbreak of the 'Cultural Revolution', the development of the Criminal Procedure Law was suspended. The drafting resumed in 1979, building on the 1963 'first draft', and the law came into effect on 1 January 1980. This marked the enactment of the first formal Criminal Procedure Law since the founding of the People's Republic of China, ending a period of legal instability.

Regarding the participation of crime victims in litigation, the Code guarantees victims who have suffered property damage due to criminal acts the right to bring incidental civil actions and establishes 'criminal private prosecution procedures'.

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- 1) See Fang Baoguo, *Beihairen De Xingshi Chengxu Baohu* (The Protection of Victims in Criminal Procedure) (Beijing: Law Press, 2007), 88.
  - 2) In response to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 'China's protection and redress system for victims of crime has developed and been perfected gradually since the 1980s. There is much evidence that adequate measures for the improvement of treatment, including changing the legal system, have been taken by the State.' Gao-Feng Jin, 'The Protection and Remedies for Victims of Crime and Abuse of Power in China', 131<sup>st</sup> International Training Course Participants' Papers, Resource Material Series no. 70 (2006), United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, 146.
  - 3) The drafting of the Criminal Procedure Law was primarily based on the Soviet Code (the Criminal Procedure Code of Soviet Union). See Chen Guanzhong, ed., *Xingshi Susong Fa* (Di 7 Ban) (Criminal Procedure Law, 7th ed.) (Beijing: Peking University Press, 2021), 81.

This grants victims the status of ‘private prosecutors’ under the law. These ‘private prosecutors’ are explicitly recognised as ‘parties’ and are entitled to request the recusal of judges, prosecutors or investigators (police officers), to participate in court arguments, and to file appeals. Additionally, during the public prosecution, victims are also identified as ‘participants in the proceedings’.

### **B. Amendments to the Criminal Procedure Law**

In 1996, China’s Criminal Procedure Law underwent its first comprehensive revision, broadening the rights of crime victims to participate in all stages of criminal proceedings; that is, in private prosecution cases, it continues to grant ‘private prosecutors’ the status of ‘party (当事人)’. In public prosecution cases, the victim is formally designated as a ‘litigant (当事人)’, setting them apart from other participants, such as witnesses. In other words, victims are allowed to participate in the proceedings as ‘victims of crime’, affording them the same general rights granted by law to ‘parties’ like criminal suspects and defendants. More specifically, victims now have the right to participate in trial proceedings; make statements; question or cross-examine the accused, experts, and witnesses; request the cross-examination of witnesses and evidence; participate in arguments and express their views; and appeal to the prosecutor if they disagree with the verdict of the first instance. Moreover, victims have the right to be informed of the progress of the proceedings. This includes the right to know the trial date, the reasons for the prosecution, and the right to appoint an agent *ad litem* to handle their case. Additionally, the scope of criminal self-incrimination has evolved. The scope of private prosecution has been expanded to include not only ‘cases that can be handled only upon complaint’ and ‘cases where victims have evidence proving they are minor criminal offenses’ but also ‘cases where there is evidence that criminal responsibility should be pursued, but the investigating or procuratorial organs failed to do so’.

In addition, the Criminal Procedure Law was comprehensively revised for the second time in 2012 to address several new challenges arising in practice. The revision emphasised the inclusion of provisions on ‘respect for and protection of human rights’. As part of this focus, a ‘party reconciliation procedure in cases of public prosecution’ (hereinafter referred to as ‘criminal reconciliation procedure’) was established to safeguard the human rights of both the accused and the victims. The ‘criminal reconciliation procedure’ is similar to civil settlement. It allows criminal suspects and defendants who meet certain legal conditions to express sincere repentance and obtain the victim’s forgiveness (through compensation or

apology) if the victim wishes to settle independently. Specifically, in cases where a settlement agreement is reached, police officers may recommend leniency to prosecutors. Furthermore, the prosecutor may propose a lighter punishment to the judge or decide not to prosecute if the offence is minor and does not merit a penalty. Judges, in turn, may apply more lenient punishments in accordance with the law. The settlement system (established in the 2012 Amendment Act) is seen as an attempt to counterbalance the trend towards 'restorative justice' or 'informal justice'. The system grants legal rights to victims, acknowledges their desire for revenge, and gives greater weight to compensation claims for harm suffered. In particular, the 'criminal reconciliation process' respects the victim's right to choose. Victims have the right to sue and can decide to either pursue the case independently through a potentially-lengthy trial process or to accept advance compensation, an apology, and other reparative actions to recover their losses. In some criminal cases (e.g. minor crimes or those involving sentences of less than three years of imprisonment), the victim's choice in handling the case is seen as an expression of their right to participate in the proceedings. However, China's approach to 'restorative justice' is still in the tentative stage, and its reconciliation system has faced criticism. Whether China can align its practices with the established 'restorative justice' and 'informal justice' models of the West remains a topic of further discussion.

The third revision was implemented in 2018, with the provisions for victims remaining unchanged. Thus, the established statutory procedural rights enjoyed by victims in China have been affirmed.

## **II. Current status and challenges in the protection of victims' rights and interests in criminal procedure**

### **A. Current situation in China**

Unlike in most countries, China's Criminal Procedure Law explicitly grants victims the status of 'litigant (当事人)' in criminal proceedings, allowing them to participate as a 'party (当事人)'. Consequently, victims are afforded rights similar to those of other parties in criminal proceedings, including common procedural rights, specific procedural rights, and the rights common to all participants in the justice process. Moreover, special procedures have been established specifically for the victims, ensuring that they can actively participate, seek redress, and protect their interests throughout the proceedings.

As 'party (当事人)' to the proceedings, victims are entitled to rights similar to those of defendants and criminal suspects, along with additional special rights in

certain situations. Key areas include:

(1) Common procedural rights of parties: Victims can exercise rights, such as applying for the recusal of judicial personnel,<sup>4)</sup> requesting the exclusion of unlawful evidence,<sup>5)</sup> and seeking reconsideration.<sup>6)</sup> They also have the right to participate in trial proceedings<sup>7)</sup>; be informed of case progress, such as receiving written judgments (Article 202) and duplicates of the petition of appeal (Article 231); and express opinions during second-instance hearings.<sup>8)</sup>

(2) Procedural rights specific to victims: Victims have the right to report crimes, file private prosecutions (Articles 114 and 210), and under certain conditions, directly initiate lawsuits.<sup>9)</sup> They are also entitled to present their opinions during case examinations and trials.

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4) The parties involved in a case and their legal representatives shall have the right to request the withdrawal of any judicial, procuratorial, or investigatory personnel, as well as court clerks, interpreters, and expert witnesses, if deemed necessary. (Article 29–32)

5) The party concerned, along with his/her defender and litigation representative, shall be entitled to apply to the relevant people's court to exclude the evidence obtained through unlawful means, in accordance with the law. (Article 58(2))

6) Parties have the right to seek reconsideration if a withdrawal request is denied and may file petitions in cases of suspected judicial misconduct (Articles 31, 117). Victims involved in private or incidental civil actions may appeal to higher courts, though this option is not available in public prosecution cases (Article 227). Additionally, parties may petition for a review of legally effective judgments, allowing for potential retrials under trial supervision (Articles 252–258).

7) The right to participate in trial allows victims to join pre-trial meetings, raise objections to testimonies from key witnesses, question witnesses and experts, review evidence, and express their views on the case, with permission from the presiding judge (Articles 187(2), 192, 194, 195, 198(2)).

8) The law stipulates that a written hearing shall be adopted for second-instance trials, and no court hearing shall be held except when a court hearing is required by law. The people's court of second instance shall interrogate the defendant and consult the other parties, defenders, and litigation representatives when deciding to proceed without a court session. (Article 234)

9) When the people's procuratorate decides not to initiate prosecution in a case involving a victim, it must notify the victim in writing. If the victim disagrees with this decision, they may, within seven days of receiving the notice, submit a petition to the higher-level people's procuratorate, requesting that it initiate a public prosecution. The higher-level procuratorate must inform the victim of its decision after reexamination. If the decision not to prosecute is upheld, the victim may file a lawsuit in a people's court. Alternatively, the victim can choose to directly file a lawsuit in a people's court without first submitting a petition. Once the court accepts the case, the people's procuratorate must transfer the relevant case files to the court.

- Right to be heard: The procuratorate must consider the victims' statements during case examination and consult them before making conditional non-prosecution decisions (Articles 173(1), 191(1), and 282(1)).
- Trial Rights: Victims have the right to question and cross-examine witnesses, challenge evidence, and question defendants with the judge's permission (Articles 61 and 191(2)).

They also have the right to know why a case is not being prosecuted, receive relevant notifications, access expert opinions used as evidence (Articles 112, 46(2), 148, 180), and request reconsideration of non-prosecution decisions. They may also appeal judgments and challenge decisions regarding compulsory medical treatment and conditional non-prosecution (Articles 112, 229, 180, 305(2), and 282(2)).

(3) The rights of all participants in the proceedings: Victims, along with other parties, have the right to use their native language in court, file complaints regarding procedural violations,<sup>10)</sup> and be protected under law.

(4) Criminal reconciliation and incidental civil actions: Victims may enter into reconciliation agreements in eligible cases<sup>11)</sup> and pursue incidental civil actions<sup>12)</sup> during criminal proceedings to recover property losses resulting from a crime.

These rights aim to ensure that victims play meaningful roles in criminal proceedings, thereby upholding their legitimate interests and promoting judicial fairness.<sup>13)</sup>

However, despite this legislation framework aimed at providing procedural

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10) Participants in legal proceedings have the right to file complaints against judges, procurators, or investigators who infringe on their procedural rights or subject them to indignities (Article 14(2)).

11) Chapter II of Part V (Special Procedures) permits reconciliation in public prosecution cases if the suspect or defendant expresses remorse, compensates the victim, issues an apology, and the victim accepts them. This provision does not apply if the suspect has committed intentional crimes in the past five years (Article 288).

12) A victim who suffers property loss because of the defendant's crime may file an incidental civil action during criminal proceedings. In cases where the victim has died or is unable to act, a statutory representative or close relative may file on their behalf (Article 101).

13) See He Yanfang, Xingshi Beihairen Quanli De Chengxu Baozhang Yanjiu (On the Procedural Safeguards of the Rights of Victim) (Beijing: People's Court Press, 2015), 15–18. Wu Dahua, Wang Fei, 'Goujian Hexie Shehui Zhi Xingshi Chufaquan Zhengdanghua Xinsikao' ('New Perspectives on the Justification of Criminal Punishment in Building a Harmonious Society'), *Zhongguo Renmin Gong'an Daxue Xuebao* (Journal of Chinese People's Public Security University) 2007, no. 1: 6–7.

protection for the realisation of victims' interests, both theoretical research and judicial practice face challenges in effectively realising these rights.

For example, in theory, China has its own criminal justice system, and as such, the definition of the parties involved is different from that of other countries. Nevertheless, regardless of the nomenclature, the victim and the defendant are afforded the same status within the framework of China's criminal procedure, as prescribed by the legislative provisions. This equality, however, has resulted in numerous unresolved issues, greatly complicating the situation. Consequently, the rationality of the victim's designation as a 'party' within the procedural law has been questioned.

First, how is the term 'party (当事人)' defined? Should it be understood as a 'party to a criminal case' or a 'party to a criminal proceeding'? The distinction lies in the nature of the relationship: the former refers to the relationship between the injured party and the perpetrator in the criminal incident, which does not involve procedural issues. In contrast, the latter pertains to the relationship between the pursuer and the pursued party once the criminal case enters the legal process. Private prosecutors, criminal suspects, defendants, and parties to incidental civil actions can be both 'parties to the case' and 'parties to the proceedings'. However, the victim is more difficult to categorise under 'procedural parties', because the right to prosecute in a public prosecution case belongs to the State and is exercised by its organs. The victim, therefore, does not enjoy the right to criminal prosecution in the substantive sense. Moreover, China does not follow an adversarial system, with its the litigation structure differing from those of countries like the United States and Japan. In China, the procuratorial organ is not considered a 'litigant' or 'party to the litigation', but rather a 'State organ'. Similarly, the defendant is not viewed as the opposing party to the 'litigant', but as a 'participant in the proceedings'. Furthermore, Article 108(4) of the Criminal Procedure Law of China, when defining the 'participant in the proceedings', classifies the various parties as one. These include the legal representatives, litigation representatives, defendants, witnesses, expert witnesses and interpreters. This broad classification complicates the interpretation of the term 'party' within China's criminal procedure system, making the status of victims even more ambiguous.

Second, for a long time, the State has held the exclusive power of criminal prosecution and punishment in criminal procedures, leading to the ongoing controversy over whether victims should possess the rights to criminal prosecution.

Two primary views dominate this debate:



(1) One view asserts that victims do not have the right to prosecute criminals. Proponents argue that granting victims such a right would fundamentally undermine the State's control over criminal procedural power.<sup>14)</sup> Criminal cases, they contend, not only violate the private rights of the victim but also impact the interests of the country and society. Therefore, maintaining the stability of the country and society is deemed more important than addressing the infringement of individual private rights; with the right to criminal prosecution resting solely with the State.

(2) The opposing view, which supports victims having at least a partial right to criminal proceedings, argues that in modern society, where there is an increasing demand for the protection of victims' rights, public power should appropriately return some of the prosecutorial rights to victims. This would allow them to initiate, promote, and participate in criminal procedures within certain limits.<sup>15)</sup>

From the perspective outlined above, it is evident that although China's legislation recognises private prosecution cases, public prosecution cases remain the primary focus. The victim's recognised right to criminal prosecution is limited to a few cases, whereas in the vast majority of cases, the State retains the authority to initiate public prosecution. This indicates that partial recognition of the victim's right to criminal prosecution cannot serve as a sufficient theoretical basis to support the victim's identity as a party in the criminal procedure.

Third, from the perspective of the structural theory of criminal proceedings, victims cannot secure reasonable positions within the traditional tripartite structure of criminal procedures.

Criminal proceedings consist of the court, procuratorate, and defendant. These three parties represent the prosecution, defence, and trial, each exercising its distinct rights to form a relatively stable framework. Although the victim is recognised a party, their role in court is not clearly defined under Chinese

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14) See Long Zongzhi, 'Beihairen Zuowei Gongsuanjian Susong Dangshiren Zhidu Pingxi' ('An Evaluation of the System of Victims as Parties in Public Prosecution Cases'), *Faxue* (Science of Law Journal) 2001, no. 4: 31–33. Some also argue that granting victims excessive participation rights can hinder the exercise of judicial authority, as public opinion could easily influence judicial decisions, thereby compromising the achievement of judicial fairness. See Ma Guixiang, Lin Jing, 'Xingshi Beihairen Dangshirenhua De Fansi Yu Zhidu Chonggou' ('Reflection and Reconstruction of Criminal Victims' Partyization'), *Hebei Faxue* (Hebei Law Science) 2020, no. 1: 58–60.

15) Fang Baoguo, *Beihairen De Xingshi Chengxu Baohu* (The Protection of Victims in Criminal Procedure) (Beijing: Law Press, 2007), 68–75.

legislation. Therefore, there is insufficient theoretical support for the identity of the victim and the rights afforded to them by law, leading to their inevitable arbitrary implementation in judicial practice.

### **B. Identification of issues**

By summarising the above phenomena, it is clear that in criminal proceedings, the victim is marginalised, and the interests they seek cannot be fully realised. Two main interests must be addressed through the criminal processes: the satisfaction of the victim's desire for revenge, and the satisfaction of their desire for compensation (these two interests will be discussed in detail later). However, owing to the lack of a clearly defined status and role of victims in criminal procedures, achieving these two forms of psychological satisfaction is difficult.

The failure to address of victims' interests through criminal proceedings presents several disadvantages. In their pursuit of retribution and compensation, victims are often compelled to seek alternative avenues outside litigation. For instance, many turn to online media to share their experiences, triggering a wide range of public opinion discussions. Given the rapid growth of the Internet, the consequences of such actions can vary from relatively minor outcomes (e.g. the defendant or their family and friends suffering from online harassment) to more severe consequences (e.g. threats, intimidation, or worse, causing the defendant and those around them to suffer physical violence).

However, the increasing phenomenon of 'Internet judgment' has contributed to a growing distrust among citizens towards national laws and law enforcement, undermining judicial credibility. Owing to the complexity of the online environment, effective regulation is difficult, and citizens often exercise their constitutional right to 'freedom of speech' in excess. Hence, the consequences of widespread and numerous 'Internet judgments' are both unforeseeable and uncontrollable.

In summary, if victims cannot fully realise their interests through criminal procedures, they are likely to resort to extra-procedural means, which may lead to further uncontrollable consequences. This not only is detrimental to the protection of national interests but also constitutes more violation of the defendant's human rights.

### III. The Teleology of Criminal Proceedings in China and the Realisation of Victims' Interests

#### A. The teleology of criminal proceedings

##### 1. The purpose of criminal proceedings

It should be clarified that the purpose of the criminal proceedings discussed here is limited to the 'legislative purpose of the criminal procedure law'. This distinction is necessary to avoid confusion with other concepts such as 'criminal procedure mode theory' or 'criminal procedure value theory'. The purpose of criminal procedure refers to the goals and results to be achieved by complying with the procedures and provisions outlined in criminal procedure law. These objectives represent the ideal outcomes and serve as the foundational legal standards for criminal litigation activities, as directly or indirectly established by the legislature.<sup>16)</sup> The widely supported view among nations is that criminal proceedings activities should prioritise the protection of human rights and adherence to due process, ultimately aiming to uncover the substantive truth and ensure the correct application of criminal law.

For example, Article 1 of the Code of Criminal Procedure of Japan states that the purpose of the Code, with regard to criminal cases, is to reveal the true facts of cases and to apply and enforce criminal laws and regulations quickly and appropriately, while ensuring the maintenance of public welfare and safeguarding the fundamental human rights of individuals. This reflects the two primary objectives of criminal proceedings:

(1) Protecting human rights.

(2) Determining the facts of a criminal case and correctly applying criminal laws.

As procedural law, its primary function is to ensure the correct implementation of substantive law. Therefore, in the context of protecting the victims' interests, we mainly discuss the first objective.

##### 2. Dual purpose of criminal proceedings in China

Scholars generally agree that the core purpose of criminal proceedings in China is twofold: first, to punish crimes (some refer to this as 'crime control') and, second, to protect human rights. Thus, the 'dual-purpose' theory in China's

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16) See Chen Ruihua, Xingshi Susongfa De Qianyan Wenti (Shang) (Frontier Issues of Criminal Procedure Law, Part I) (Beijing: China Renmin University Press, 2016), 40–48.

criminal proceedings encompasses both ‘punishing crimes and discovering the truth’ as well as ‘protecting human rights’.<sup>17)</sup>

The dual-purpose theory in Chinese criminal proceedings has been significantly influenced by legal theories from the United States and Japan. Emerging in the 1990s, this theory drew primarily from the American criminal procedure models of ‘crime control’ and ‘due process’, as well as Japan’s emphasis on substantive truth and due process.

### 3. Problems and doubts about the dual-purpose theory in China

As the mainstream theory in Chinese criminal procedure, the dual-purpose theory has faced growing criticism in recent years.

First, the goals of punishing or controlling crimes cannot be equated with the discovery of substantive truth. The existing criminal procedure law regards these two objectives as simply equivalent without addressing the distinction between them. This leads to confusion regarding the purpose of criminal procedure versus the purpose of substantive law (criminal law).

Punishing and controlling crimes should be seen as the objectives of substantive law (criminal law), rather than procedural law.<sup>18)</sup> Procedural law should mainly focus on establishing due process to uncover the truth. The criminal proceedings should a fair process for discovering the truth, rather than focusing on punishment. Therefore, positioning crime punishment as a primary objective of criminal proceedings requires further justification and validation of its rationale.

Second, regarding the protection of human rights, two main arguments have emerged:

(1) The protection of human rights is secondary in teleology. Although most scholars agree that one of the purposes of criminal procedure is to protect citizens’ human rights through the establishment of due process, this objective is still not explicitly stated as a legislative purpose despite various amendments. Instead, it is mentioned as a supplementary explanation under the ‘Tasks of Criminal Procedure Law’. Therefore, a question arises: is the task of criminal procedure being conflated with the purpose of the criminal procedure? The former can be interpreted as a means to achieve the ultimate end; however, whether the

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17 See Song Yinghui, Xingshi Susong Mudilun (Teleology of Criminal Procedure) (Beijing: China People’s Public Security University Press, 1995), 84.

18) See Gao Yong, ‘Xingshi Susong Mudi Shuangchonglun Pipan’ (‘Criticism of the Dual Theory of the Purpose of Criminal Procedure’), Dalian Daxue Xuebao (Journal of Dalian University) 2021, no. 5: 102–105.

protection of human rights should be an end in itself or merely a means has not been clearly defined. Therefore, the rationale behind including human rights protection as part of the dual-purpose theory has been called into question.

From the perspective of legislators, the priority in dual-purpose theory teleology remains on punishing crimes, establishing the facts of the case, and addressing other substantive issues. In addition, the protection of procedural rights remains insufficient, which hinders the development of due process.

(2) The scope of human rights protections remains uncertain. The protection of human rights raises several questions: does it refer to 'protecting innocent people from criminal prosecution', while also safeguarding the legitimate rights and interests of guilty defendants and the litigation rights of the defence? Or does it encompass 'protecting the legitimate rights and interests of victims, witnesses, and other participants in the litigation'? Alternatively, should it extend to 'protecting the legitimate rights and interests of all ordinary citizens'. The matter has not yet been settled.

However, recent studies by Chinese scholars focusing on victim protection suggest that, in practice, the concept of human rights protection includes the rights and interests of victims by default.<sup>19)</sup> While the rationale for this approach requires further justification, this default interpretation has been instrumental in advancing the protection of victims' rights and interests in judicial practice.

## **B. The relationship between the purpose of criminal proceedings and the realisation of victims' interests**

### **1. The benefits the victim is trying to achieve**

As aforementioned, there are two main interests of victims that need to be satisfied: Interest A: Desire for Revenge and Interest B: Desire for Compensation.

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19) See, for example, since the establishment of modern criminal law concepts, crime is no longer viewed solely as an infringement on the rights of individuals but rather as a violation of the broader interests of society and the State. This view has evolved to regard crime as a harm to legally protected interests under criminal law. Consequently, the human rights protections for criminal victims have often been neglected. Hence, to build a harmonious society and achieve judicial fairness, it is essential to consider the protection of victims' human alongside the State's exercise of its punitive power. Wu Dahua, Wang Fei, 'Goujian Hexie Shehui Zhi Xingshi Chufaquan Zhengdanghua Xinsikao' ('New Perspectives on the Justification of Criminal Punishment in Building a Harmonious Society'), *Zhongguo Renmin Gong'an Daxue Xuebao* (Journal of Chinese People's Public Security University) 2007, no. 1: 3-5.

As direct sufferers of the consequences of crime, victims often experience damage to both their personal and property rights, leading to significant psychological trauma. This trauma frequently results in painful emotions that disrupt their psychological balance. To restore this balance, victims often seek two primary forms of redress: retaliation and claims.<sup>20)</sup>

For victims, such psychological motivation needs to be transformed into tangible actions to achieve the goals of revenge and compensation. The victim's desire for revenge drives the pursuit of punishment for the perpetrator, while the desire for compensation seeks to address the financial or emotional loss. Occasionally, these two motivations exist simultaneously without conflict. However, there are instances when these interests conflict, resulting in a trade-off. At times, the desire for revenge may dominate, pushing the victim to focus more on punishment than on compensation. Conversely, in other situations, the need for compensation may take precedence. In some cases, the victim's request for compensation may itself be rooted in the psychology of revenge, where compensation is viewed as a form of restorative justice or retaliation against the harm caused. Additionally, neither psychological motivation may be strong in cases where the victim is at fault. The realisation of these two interests has evolved from private to public mechanisms. In the past, victims sought private relief, addressing their grievances through personal means. However, as State-led criminal justice systems replaced primitive/crude forms of obtaining private relief, public legal processes became the primary avenue for resolving social conflicts. Consequently, victims shifted from pursuing individual efforts to seeking public relief through the State's criminal justice system. In this context, the victims' interests are realised through recourse to the established national judicial system. The victim transfers the right to seek revenge to the State, with the public prosecutor acting in place of the victim. The realisation of the victim's desire for both revenge and compensation is thus dependent on the prosecutor's efforts.<sup>21)</sup> However, the shift from private to public relief greatly limits the realisation of victims' interests. Notably, the victim's desire for revenge is channelled into more rational and legally appropriate forms through public relief, and compensation is pursued in a more legitimate and orderly manner. Nevertheless, it is important to recognise that while the victim's pursuit of revenge forms one of the

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20) See Fang Baoguo, *Beihairen De Xingshi Chengxu Baohu* (The Protection of Victims in Criminal Procedure) (Beijing: Law Press, 2007), 37–44.

21) See Fang Baoguo, *Beihairen De Xingshi Chengxu Baohu*, 33–36.

foundations of the national 'retributive punishment' justice model, it is not the primary or direct goal of the State in administering criminal justice. This is because the State initiates criminal proceedings on behalf of the victim, mainly to achieve social justice, ensure social fairness, and maintain social stability. The focus is on restoring social order and addressing the broader social harm caused by criminal acts, rather than fulfilling the victims' personal interests.

Therefore, in modern society, if a victim wants to realise their interests, they must participate in criminal procedures. In the context of public relief, where the realisation of individual interests is limited, ensuring maximum victim participation through criminal procedures is crucial for the realisation of both their interests.

## 2. Relevancy

This study argues that the teleology of criminal proceedings is the fundamental reason why victims' interests cannot be fully realised. By examining the teleology, we can better understand the underlying causes of the difficulties victims face in judicial practice, and subsequently identify potential solutions for the various issues surrounding the realisation of victims' interests within criminal justice. Therefore, it is necessary to study the purpose of criminal proceedings in the context of victim-centred criminal justice.

In China, there are several reasons why victims' interests cannot be fully realised in criminal procedures, such as the fact that 'while the victim holds the status of a party, they cannot truly exercise the rights of a party', or that 'the criminal procedure law does not recognise that the victim's complete right to criminal proceedings'. However, if we investigate the underlying relationship behind these reasons, we find that the fundamental cause lies in the fact that the teleology of criminal proceedings is not closely aligned with the realisation of victims' interests or protection of their rights.

The relationship between the purpose of criminal proceedings and the realisation of victims' interests can be explored from the following perspectives.

(1) The relationship between the protection of human rights and victims' rights hinges on whether victims' rights are included within the scope of criminal procedure. The question arises: Where are human rights protected in this context? Traditionally, the theory of criminal procedure law holds that protection of human rights pertains to the rights of suspects and defendants. However, there is also a growing discussion regarding whether the fundamental scope of human rights guarantees should be extended to include the rights of victims, as enshrined in the Universal Declaration of Human Rights: All persons are entitled to legal protection

and a fair trial.

However, the core objective of criminal procedure is to ensure that the defendant receives a fair trial through due process, while safeguarding their legitimate rights and interests throughout the trial. Therefore, this study argues that the connection between human rights protection and victims' rights protection is weak, and demonstrating this relationship is complicated and challenging. The issue at hand is how to reinterpret the concept of human rights to reasonably include victims' rights within this framework, offering a coherent theoretical analysis that recognises victims' rights as part of the broader category of human rights.

(2) The most direct correlation between the discovery of substantive truth (or punishing a crime)<sup>22)</sup> and the protection of victims' interests lies in accurately determining the facts of a criminal case, properly presenting the evidence, and restoring the case details. These steps directly influence the conviction and sentencing by the judge, which in turn impacts the realisation of the victim's revenge and compensation desires. The mainstream view is that the primary purpose of discovering the truth in criminal proceedings is to prevent wrongful convictions and unfair sentencing of the defendant.<sup>23)</sup> Nonetheless, it is equally important to recognise that the discovery of substantive truth directly protects the victims' interests. When a defendant is found guilty, the victim's desires for revenge and compensation can be realised. Even if the defendant is declared innocent, the victim can swiftly seek alternative means, such as civil litigation, to address their concerns and pursue their demands.<sup>24)</sup>

(3) It is important to keep the balance between the two. In criminal justice, the interests of the victim are not always consistent with the interests of the State. When conflicts of interest arise, the interests of the State often take precedence

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22) In China, the discovery of substantive truth discovery is equated with the punishment of a crime. Although there are doubts regarding this, no decisive conclusion has been reached. Therefore, in this paper, the punishment of a crime is interpreted as the discovery of substantive truth, in alignment with the Chinese situation.

23) See Chen Ruihua, *Xingshi Susongfa De Qianyan Wenti* (Shang) (Frontier Issues of Criminal Procedure Law, Part I) (Beijing: China Renmin University Press, 2016), 65. Morikazu Taguchi, *Criminal Procedure Law*, 7th ed. (Tokyo: Koubundou, 2017), 16–18.

24) Whereas China's dual-purpose theory appears to offer more advantages than disadvantages in terms of victim protection. By emphasising the punishment of crimes, the determination of the truth becomes the primary focus of criminal proceedings. The realisation of victims' interests is closely linked to the investigation of the truth of the case, and the protection of human rights, by extension, includes victims' interests as well. This framework provides a



over those of the individual, as per the common practice of balancing values to achieve the objectives of criminal procedure. In China, the fundamental values upheld by the criminal procedure system can be summarised in three key aspects: a) The primary goal is to pursue objective truth and uncover the truth of the case, b) Maintaining law and order and ensuring social peace are important, and c) The effectiveness of crime control serves as the evaluation standard.<sup>25)</sup>

It is evident that China's core value orientation prioritises the protection of national interests. Within this framework, the purpose of criminal proceedings in China often involves sacrificing individual interests, including human rights, in the pursuit of truth. Consequently, balancing crime punishment and protecting human rights becomes challenging. Therefore, when conflicts arise between the victim's personal interest and State demands, the victim's demands are frequently sidelined. For instance, to expedite the discovery of substantive truth, the prosecution authorities may employ China's 'leniency system of guilty plea', which offers the defendant a more lenient punishment. However, this system can undermine the victim's sense of justice, particularly in terms of satisfying their need for revenge. Notably, in the application of this system, any objections raised by the victim are typically disregarded.

Conversely, in recent years, the growing influence of 'due process' in China has shifted focus towards protecting human rights through established procedural safeguards. This shift has gradually aligned China with the trend of 'emphasising due process over truth discovery'. Given the emphasis on due process, the discovery of substantive truth can sometimes be hindered. If due process and the protection of the human rights of the accused are overemphasised at the expense of discovering substantive truth, the interests of the victims may be left unaddressed. When procedural justice takes precedence, part of the truth may be compromised, particularly when conflicts arise between the two. For example, to uphold due process, critical evidence with flaws may be abandoned, which is not conducive to the realisation of victims' interests. Thus, balancing the relationship

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legal basis for a series of victim protection measures. As sufficient attention is paid to the investigation of truth, it is important for victims to participate in criminal proceedings and voice their opinions. Therefore, China grants victims the status of litigants. Despite challenges in judicial practice, the independent identity of victims is recognised in legislation, making it possible to realise their litigation rights.

25) See Zhang Jianqiu, *Xingshi Beihairen Quanli Wenti Yanjiu* (Research on the Rights of Criminal Victims) (Beijing: China People's Public Security University Press, 2009), 126–129.

between the two is necessary for ensuring victim protection.

**C. Summary: Revaluating teleology in criminal proceedings to better protect victims' interests**

In summary, current research on teleology of criminal proceedings mainly focuses on the protection of defendants, with limited consideration of victims' rights. However, the protection of human rights and the discovery of truth are also relevant to the victims' interests.

- Victims' rights are not explicitly included within the scope of human rights protection in criminal procedure.
- From the perspective of punishing crimes and discovering the truth, although most cases are conducive to the realisation of victims' rights, in cases of conflicts, victims' rights and interests are often abandoned.
- The balance between seeking truth and protecting human rights protection critically impacts the realisation of victims' interests. Focusing on truth may lead to sacrificing individual interests for national interests. Meanwhile, emphasising human rights could hinder the discovery of truth, directly affecting victims' rights. Hence, striking a balance between these two factors is crucial.

Therefore, the victim cannot effectively participate in criminal procedures and realise their interests. Teleology must be reconstructed to address this problem. This study takes the dual purpose theory of criminal proceedings in China as a perspective to provide a theoretical basis for 'reconstructing teleology to realise the interests of victims in the procedure'.

**IV. CONCLUSION: Reconstructing the Dual Purpose of Criminal Proceedings to Realise the Interest of Victims as a Countermeasure**

**A. Reasons for Reconstructing the Dual Purpose of Criminal Proceedings**

Based on the above analysis, this study concludes that resolving the issue of unrealised victims' interests in criminal proceedings requires a reconstruction of teleology in China. Research on victim protection should return to foundational theory. By commencing with a theoretical analysis, it is possible to establish a rationale for why the protection of victims should be safeguarded by criminal law, thereby providing a clearer framework for explaining and applying the various scattered and unsystematic protective measures currently in judicial practice.

Why reconstruct a dual-purpose theory instead of developing an entirely new teleological system? Several reasons support this approach:

(1) China's theory of the purpose of criminal procedure was established in the 1990s. Influenced by both domestic and international factors, this theory evolved

into a hybrid model. It not only 'transplants' and 'borrows' theories from other countries but also retains key elements of China's own criminal procedural philosophy.

However, this process of localisation has certain limitations. Early scholars studying the teleology of criminal procedures, influenced by foreign theories, often encountered conceptual misunderstandings and misinterpretations due to language barriers, differing cultural contexts, and other factors. By relying heavily on literal interpretation of some concepts, while ignoring the political, historical and geographical differences between countries, China's dual teleology has become riddled with many unexplained and formulaic elements. A vague definition of the concept has led to deviations from the established premises of the theory. The proponents of the dual teleology failed to clearly define the concept of 'the purpose of criminal proceedings', resulting in significant confusion. For example, they conflated 'the purpose of criminal procedure' with 'the purpose of criminal procedure law'; or confused 'the purpose of criminal procedure' with 'the mode of criminal procedure'. Similarly, 'the purpose of criminal procedure' was often mistakenly equated with 'the task of criminal procedure' or its 'values'. Therefore, the research process has failed to consistently align with the relevant premises or subjects.<sup>26)</sup>

Confusing related concepts can lead to the incorrect absorption of foreign theories that are inconsistent with the underlying theme, resulting in loss of certainty, consistency, and logical coherence in the dual teleology itself. Moreover, in the process of localisation, the relationship between foreign theories and the distinct nature of China's *status quo*, regime, and national conditions has not been adequately addressed, causing these foreign theories to not align well within China's realities. Consequently, the development of criminal procedure legislation and the direction of judicial practice guided by such purpose theories may have numerous negative consequences. In short, the concept of dual teleology in Chinese criminal procedures is complex and foreign in nature. However, as criminal procedure legislation has been established and judicial practice has been conducted under the guidance of this concept, it is not feasible to rebuild a new *skopos* theory system.

(2) Criminal justice involves significant actions, such as the restriction of

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26) See Gao Yong, 'Xingshi Susong Mudi Shuangchonglun Pipan' ('Criticism of the Dual Theory of the Purpose of Criminal Procedure'), *Dalian Daxue Xuebao* (Journal of Dalian University) 2021, no. 5: 103.

personal freedom, deprivation of life, and others. The primary purpose of establishing criminal procedure law should be to ensure the correct application of substantive law and to standardise the exercise of the State's punitive power, with a focus on protecting the rights and interests of the defendant. Forcing changes to the existing teleology to include victim protection would require a complex argument of rationality, making its feasibility relatively low. For example, in discussions on the 'privatisation of criminal law'—which seeks to return the right of punishment to private law—how to grasp and measure the degree should be further explored.

Criminal procedure should protect the rights and interests of the victim; however, the key focus should not be solely on the victim but rather on balancing the relationships: between the victim and the prosecution, the victim and the defendant, and the victim and the witness. Moreover, an appropriate and reasonable status of the victim within criminal procedure must be established, including a defined position of participation. Therefore, 'reconstruction' would imply that when victims seek the realisation of their interests through the criminal process (on the basis of the existing teleology of criminal proceedings), the most effective approach is to reinterpret the goals of human rights protection and the discovery of substantive truth. This involves balancing these aims and reasonably linking them with the protection of victims' rights and interests.

## **B. Approaches to reconstructing double teleology**

### **1. Reinterpreting human rights protection**

The protection of human rights should be interpreted broadly, in line with the perspectives of Chinese scholars and legislators. In China, human rights protection is viewed as a core value that should extend to both defendants and victims. Some scholars even argue that 'human rights' encompass 'the rights of citizens', suggesting that, under criminal procedure law, the legitimate rights of all participants in the legal process—as well as citizens affected by the case—should be considered human rights. This perspective goes beyond the traditional view of 'protecting the basic rights of defendants and suspects', which is a common theme in foreign theories centred on due process. Instead, the interpretation should align with the provisions of the Chinese Constitution, viewing human rights as encompassing 'all legitimate rights and interests of all citizens'. Simultaneously, from the perspective of criminal law, its primary purpose is to protect the legitimate rights and interests of citizens, organisations, the State, and society by combating crime. However, this protection is generally focused on the public at

large. From the viewpoint of crime suppression theory, the function of criminal law is to prevent crimes that have not yet occurred. By contrast, the protection of victims' rights emphasises the restoration of damages that have already been inflicted. Notably, for the victim—who is also a member of society—the infringement of individual rights constitutes not only a personal harm but also a threat to society and the social order.<sup>27)</sup> In an era where individual consciousness is becoming increasingly prominent, focusing solely on the protection of the rights of defendants and criminal suspects risks limiting human rights protection to just the 'protection of basic human rights'. However, the mere safeguarding of 'basic human rights' is insufficient to meet the requirements of rights protection in modern society. This narrow approach would be incomplete and impede the progress of a civilised society.

Moreover, from the perspective of granting victims the *status* of 'parties' in China, despite the ongoing debates, this development indicates that lawmakers implicitly extend the interpretation of 'human rights protection'. Therefore, to better protect the rights of victims, China should clearly stipulate in its legislation that 'respecting and protecting human rights' encompasses 'respecting and protecting the legitimate rights of all citizens'. By clarifying the scope of 'human rights protection', the rationale for the victim's *status* as a party will also be enhanced.

## 2. Clarify the relationship between punishing crime and discovering substantive truth

The formation for the 'punishment of crime' as one of the purposes of criminal proceedings in China is very complicated. This complexity largely stems from early scholars' simplified understanding of the American criminal justice system, which categorised criminal proceedings into the dichotomy of 'crime control' and 'due process'. For example, in Japan, the purpose of criminal proceedings is framed around 'discovering the reality of the truth' and 'due process', which are considered specific goals of the system. In contrast, the United States' litigation model is adapted to align 'crime control' with the 'punishment of crime' and 'due process' with the 'protection of human rights'.<sup>28)</sup> Thus, the

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27) See Zhang Jianqiu, *Xingshi Beihairen Quanli Wenti Yanjiu* (Research on the Rights of Criminal Victims) (Beijing: China People's Public Security University Press, 2009), 129.

28) See Gao Yong, 'Xingshi Susong Mudi Shuangchonglun Pipan' ('Criticism of the Dual Theory of the Purpose of Criminal Procedure'), *Dalian Daxue Xuebao* (Journal of Dalian University) 2021, no. 5: 104.

purpose of criminal procedures is to punish crime. Some scholars argue that terms such as ‘crime control’ and ‘truth discovery’ are intended to reflect the pursuit of basic values, with both expressions ultimately grounded in the same underlying concept: the pursuit of security. The principles of substantive truth and due process were proposed by Japanese scholars based on the specific characteristics of their own criminal proceedings. Applying this terminology to explain the purpose of criminal proceedings in China may create ambiguity. The choice of terms should take into consideration the unique histories and backgrounds of each country. Although there may be some deviation in this choice, it should not be a primary concern. Given various considerations, ‘crime control (punishment)’ and ‘human rights protection’ are more appropriate terms.

However, based on the value concept of Chinese criminal procedure, it is reasonable to interpret the punishment of crime as one of the purposes of criminal procedure. As mentioned above, the underlying value pursuit of both is roughly the same. However, the purpose of criminal proceedings is not equivalent to the value of criminal proceedings themselves. In terms of purpose, there is a critical difference between ‘punishing crime’ and ‘discovering truth’. The former is a means to realise the latter, making it unreasonable to equate the two. Moreover, although ‘punishing crime’ is one of the purposes of criminal law, how can we achieve the goals of substantive law through the implementation of procedural law? This study argues that a more logical approach should be to achieve the purpose of ‘discovering truth’ through the implementation of procedural law, and then use the substantive law to fulfil the purpose of ‘punishing crime’. There is an essential link between ‘discovering truth’ and ‘punishing crime’: the use of substantive law cannot be bypassed.

Therefore, we must address the confusion between ‘punishing crime’ and ‘discovering truth’ by clearly distinguishing the purposes of criminal substantive law from those of procedural law. ‘Punishing crimes’ requires more forceful measures, which can easily lead to unjust, false, and incorrect cases, as well as procedural violations, all in the pursuit of punishing defendants. If China’s Criminal Procedure Law shifts its focus from blindly pursuing punishment to prioritising the discovery of truth as one of its core objectives, it will better protect the procedural rights of both defendants and victims, ultimately contributing to the realisation of victims’ interests.

### 3. Balancing the discovery of substantive truth and the protection of human rights

Achieving a balance between truth discovery and human rights protection is

essential to safeguarding victims' interests. As one Japanese scholar noted, due process requires balancing human rights with practical considerations, suggesting that genuine due process supports both truth discovery and the protection of rights.<sup>29)</sup> When criminal procedures balance these goals, victims are less likely to suffer from conflicts of interest, and due process can be established to protect the rights of all parties involved.

Traditionally, China has adopted procedures that focus heavily on truth discovery, often at the expense of human rights. Although this approach may satisfy victims' desire for retribution, neglecting human rights can undermine their procedural rights and limit their participation in the proceedings. Conversely, adopting a common law-style due process focused solely on human rights may hinder discovering the truth and harm victims' interests. Thus, a balanced approach is needed, one that does not overly prioritise one goal at the expense of another.

China is increasingly emphasising human rights protection and gradually shifting away from an overemphasis on truth discovery. Chinese scholars have long explored ways to establish a version of due process suited to China's unique situation, aiming to protect the rights of all participants while accurately uncovering the truth. Developing a balanced theory of criminal procedure provides a strong foundation for effective victim protection mechanisms.

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29) See, 'The determination of whether a certain procedure is due process must depend on the degree to which the procedure attaches importance to human rights protection, so it is almost entirely possible to equate human rights protection and due process. However, the importance of human rights protection is also a question of degree, and not all human rights violations will hinder the pursuit of truth. Since due process is a procedure that attaches importance to the protection of human rights, from the requirement of realism, due process should keep the balance between realism and human rights protection. It can also be said that the so-called due process is a procedure that achieves a proper balance between realism and human rights protection.' Morikazu Taguchi, *Criminal Procedure Law*, 7th ed. (Tokyo: Koubundou, 2017), 21.