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Victim Participation in the Criminal Process in Japan

SHIGENORI MATSUI*

Introduction

Victims of crime and their families (generally “victims”)¹ have been grossly neglected in most countries in the past. However, the increasing concern for the plight of victims has driven many countries to improve their treatment.² One of the heatedly debated topics includes the possibility of allowing victims to participate in the criminal process.³ In the United States, although the status of victims has significantly improved in recent years and a bill of rights for victims has been declared, victim participation in the criminal process has thus far been limited to an opportunity to state or submit a victim impact statement during the sentencing stage.⁴

Japan similarly provided virtually no protection for victims before the 1980s. Victims were denied any opportunity to actively participate in criminal justice proceedings and were essentially excluded from the criminal process. Gradually, the frustration of these victims came to attract media attention and broader public support. Ultimately, the government recognized the necessity of protecting victims and introduced various reforms to protect

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1. There is no uniform definition of “victims.” The Code of Criminal Procedure defines “victims” as “victim” and “his or her spouse, lineal relatives and siblings when the victim died or seriously disabled” (family member) for the purpose of victim participation. Keiji soshōhō [Code of Criminal Procedure], art. 290-2(1) (cited as C. Crim. Pro.). See *infra* note 8 (definition of “victims” who are entitled to government measures for the protection of victims), note 38 (definition of victims who can file appeal to the Prosecution Review Commission), note 56 (definition of “victims” for the purpose of protecting rights and interests of victims), and note 122 (definition of victims who are entitled to government victim assistance grant).

2. Shigenori Matsui, *Justice for the Accused or Justice for the Victims: The Protection of Victims’ Rights in Japan*, 13:1 ASIAN PACIFIC LAW & POLICY JOURNAL 54 (2011).

3. For comparative study and recommendation, see Kerstin Braun, *Victim Participation Rights* (Springer 2019); Institute for Security Studies (ISS), *Victim Participation in Criminal Law Proceedings: Survey of Domestic Practice and Application to International Crimes Prosecutions* (2015), <https://redress.org/wp-content/uploads/2017/11/Englishvictim-rights-report.pdf>.

4. Crime Victims’ Rights Act, 18 U.S.C. § 3771; National Center for Victims of Crime, *Victim Impact Statements*, <https://victimsofcrime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/victim-impact-statements>.

victims. As this paper highlights, victims in Japan are now provided with various protective measures during the criminal trial to testify as a witness and with an opportunity to present their opinions on the impact of crime. Some victims are now even allowed to participate in certain criminal trials; they may sit next to the prosecutor, question the witness and defendant, and make final arguments before the conclusion of the trial. Victims can also file civil damage claims during the criminal trial and can receive damage awards more easily. In Japan, the opportunities of victims to participate in the criminal process are therefore far more wide ranging than in the United States.⁵

What is the current status of victims during the criminal process in Japan? Is the current system working as intended? Is there any problem? This article aims to examine and evaluate the current status of victims' opportunity to participate in the criminal process in Japan and to see whether there is something more the Japanese government can and should do. This article will also show that there are very important lessons to be learned from Japan's experience with victim participation.

I. Victim Participation in the Criminal Process: Statutory Framework

A. Path to the Introduction of Victim Participation

Government reforms to protect victims of crime in Japan were first introduced through the 1980 *Act on Government Grant to Victims of Crime* ("Crime Victim Assistance Act").⁶ The Act created a government "victim assistance grant," which provided public financial support for victims of crime. The grant, however, was very limited, and left many victims without adequate financial support. Victims came to call for an increase in the amount of payment they were entitled to, and to demand additional protective measures as well. The government eventually felt the need to expand and enhance various measures for the protection of victims of crime.⁷

In 2004, the Diet, the national legislature in Japan, enacted the *Basic Act*

5. Masahiko Saeki, *Victim Participation in Criminal Trials in Japan*, 38:4 INT'L J. OF L. CRIME AND JUSTICE 149 (2010); Erik Herber, *Victim Participation in Japan: When Therapeutic Jurisprudence Meets Prosecutor Justice*, 3:1 ASIAN J. OF L. & SOCIETY 135 (2016); Erik Herber, *Victim Participation in Japan*, 27 WASH. INT'L L.J. 119 (2017).

6. Hanzai higaishatō kyuhukin no shikyutō niyoru hanzai higaishatō no shien nikansuru hōritsu [Act on Government Support of Victims of Crime by Providing for Victim Assistance Grant], Law no. 36 of 1980 (hereinafter cited as Crime Victim Assistance Act).

7. Matsui, *supra* note 2.

on *Victims of Crime* (“*Basic Act*”),⁸ which laid the foundation to all protective measures for victims of crime. It declared as a basic principle that victims have a right to be respected for their individual dignity and are guaranteed treatment deserving of their dignity.⁹ The Act also mandated the government to formulate and implement comprehensive measures for the protection of victims.¹⁰ It specifically obliged the protection of victims during criminal investigations and trials, paying sufficient respect to the reputation and peaceful life (privacy) of the victims, and to alleviate their burdens.¹¹ It also required the government to secure the safety of victims against further victimization.¹² Moreover, the *Basic Act* required the government to provide special measures to protect victims when testifying as a witness during criminal trial¹³ and measures for victims to participate in the criminal proceedings.¹⁴ It further mandated the government to provide further financial support for victims¹⁵ and to provide assistance for victims to recover damages from offenders.¹⁶

All these measures for the protection of victims of crime are now rooted in this *Basic Act*. In 2005, the Cabinet approved a Basic Plan for Victims of Crime.¹⁷ The government updated it in 2011 and adopted the Second Basic Plan for Victims of Crime.¹⁸ Then, in 2016, the government updated it once again and adopted the Third Basic Plan for Victims of Crime.¹⁹ The various measures for the protection of victims of crime can be divided into three main categories: (1) the government grant for victims; (2) victim

8. Hanzai higaishatō kihonhō [Basic Act on Victims of Crime], Law no. 161 of 2004 (hereinafter cited as Basic Act). The Basic Act defines “crime victims” who are entitled to all government measures for the protection of victims as “victim who suffered as a result of crime and their surviving family.” *Id.* art. 2(2).

9. *Id.* art. 3(1).

10. *Id.* art. 4.

11. *Id.* art. 19.

12. *Id.* art. 15. In addition, the Basic Act mandated the government to adopt necessary measure to secure the place to reside and the employment for the victims. *Id.* art. 16 and art. 17.

13. *Id.* art. 15.

14. *Id.* art. 18.

15. *Id.* art. 13.

16. *Id.* art. 12.

17. Hanzai higaishatō kihon keikaku [Basic Plan for Victims of Crime], Cabinet decision (Dec. 27, 2005), https://www.npa.go.jp/hanzaihigai/kuwashiku/keikaku/basic_plan.html.

18. Dainiji hanzai higaishatō kihon keikaku [2nd Basic Plan for Victims of Crime], Cabinet decision (Mar. 25, 2011), https://www.npa.go.jp/hanzaihigai/kuwashiku/keikaku/pdf/dai2_basic_plan.pdf.

19. Daisanji hanzai higaishatō kihon keikaku [3rd Basic Plan for Victims of Crime], Cabinet decision (Apr. 1, 2016), https://www.npa.go.jp/hanzaihigai/kuwashiku/keikaku/pdf/dai3_basic_plan.pdf. English version is available at https://www.npa.go.jp/hanzaihigai/kuwashiku/keikaku/pdf/dai3_basic_plan_english.pdf. The government is expecting its update in 2021.

participation; and (3) the damage order system for victims.²⁰ Under the current system, the treatment of victims is now required to be significantly improved from the time of injury or damage to the end of trial, and even until sometimes the victims are fully recovered and are able to resume their normal lives.

As a result of these measures, victims' treatments have been significantly improved and enhanced in Japan. The most significant of these measures is the opportunity for victims to participate in criminal trials. The *Victim Participation Act*, which allowed victim participation in criminal process, was passed by the Diet in 2007,²¹ and victim participation in criminal trials began on December 1, 2008. The Diet at the same time amended the *Victim Protection Act* in 2008, which introduced various additional accompanying measures to further protect the rights and interests of victims during criminal trials,²² which were enforced at the same time with the *Victim Participation Act*. These measures completely changed the criminal process for the benefit of victims. But in order to understand the significance of victim participation in criminal trials, we need to take a closer look at how victims are treated from the beginning of the criminal process to the end, and to what extent they are allowed to initiate or assert their claims during the criminal proceeding.

B. Victim Participation during the Criminal Investigation

When a person is victimized by a crime, that person has several means of facilitating a criminal investigation. The victim can, for example, file an injury or damage report (*higai todoke*) and the police may investigate the crime. The victim can also file a criminal complaint (*kokuso*), which would oblige the police to investigate the crime.²³ Some crimes, such as criminal defamation, require a criminal complaint to be filed as a condition of prosecution and, as a result, the police are generally reluctant to start an

20. Keisatsuchō [National Police Agency], Omona sesaku [Available Primary Measures for Victims of Crime], <https://www.npa.go.jp/hanzaihigai/sesaku/omonasesaku/omonasesaku.html>.

21. Hanzai higaihatō no kenri rieki no hogo wo hakarutame no keijisoshōhōtō no ichibuwo kaiseisuru hōritu [Act to Amend Parts of Code of Criminal Procedure in order to Protect the Rights and Interests of Victims of Crime], Law no. 95 of 2007 (hereinafter cited as Victim Participation Act).

22. Hanzai higaihatō no kenri rieki no hogo wo hakarutame no keijitetsuzuki ni huzuisuru sochi nikansuru hōritsu [Act concerning Ancillary Measures to Criminal Proceeding in order to Protect Rights and Interest of Victims of Crime], Law no. 75 of 2000 (hereinafter cited as Victim Protection Act).

23. C. Crim. Pro., arts. 230 and 242. Everyone could also file a criminal accusation (*kokuhatsu*) when he or she believes that the crime was committed. *Id.* art. 239. Similar obligation of criminal investigation is attached to the criminal accusation. *Id.* art. 242.

investigation until a complaint is filed.²⁴ A general requirement for a criminal complaint is that it must be filed within six months of learning the identity of the offender.^{25, 26}

Occasionally, victims will contact the police for consultation or advice (*soudan*). This is often the case when victims are the target of stalking, for example. In these cases, depending on the seriousness of the harm, the existence of evidence, and the risk of much more serious harm, the police may provide protection to the victim.²⁷

The *Stalking Regulation Act* prohibits stalking activities²⁸ and imposes criminal punishment if they are repetitive.²⁹ However, before that stalking constitutes a crime, the police chief can issue, for instance, a warning to the stalker to prevent stalking activities,³⁰ and the local public safety commission can issue an administrative order to cease stalking activities.³¹ Generally, the police cannot act unless some kind of crime has been committed, but in cases like these, the police will try to intervene as early as possible in order to prevent the crime before it is committed.

When a police officer needs to obtain a statement, he or she will interview the victim (*jijo choushu*). During the interview, the police officer will make a statement document after hearing the statement and, once completed, will show that statement to the victim. If the victim is satisfied with the statement, he or she will sign it and add his or her personal stamp to the document. Once the police investigation begins, there is very little that the victim can do; the criminal investigation is left entirely in the hands of the police. On occasion, the police may ask the victim to attend the crime scene for investigation (*genba kensho* or *jikkyo kenbun*). When the police find that there is probable cause to believe that a suspect committed a crime, the police can arrest the suspect with a warrant issued by a judge. The police

24. Keihō [Pen. C.], art. 232(1) (cited as Penal C.).

25. C. Crim. Pro., art. 235(1).

26. Rape used to require a complaint for prosecution. But under the 2000 amendment to the Code of Criminal Procedure, this time limitation for complaints is extended for victims of sexual crimes. Victims of sexual crimes could file complaints at a much later time; rape victims could file a complaint within ten years after the assault. The complaint requirement was dropped in 2017 when the substantial amendments were added to the rape provision, making the police to start investigation without complaint for the crime of “forced sexual intercourse et al.” Penal C., art. 177.

27. Keisatsuchō [National Police Agency], Stalker taisaku [Countermeasures against Stalking], <https://www.npa.go.jp/bureau/safetylife/stalker/index.html>.

28. Stalker koutō no kiseitō ni kansuru hōritsu [Act on Regulation of Stalking Activities], Law no. 81 of 2000 (hereinafter cited as Stalking Regulation Act), art. 3.

29. *Id.* art. 18.

30. *Id.* art. 4.

31. *Id.* art. 5. A violation of the order can lead to criminal punishment. *Id.* art. 19 and art. 20.

can detain the suspect and question him or her during detention. The victim may be called to attest to the identity of the offender (*men doushi*).

The general mandate of the *Basic Act*—to respect the individual dignity of victims and to treat them appropriately for their individual dignity—applies equally to the police. The *Basic Act* also mandates the police to notify victims of progress in the investigation;³² to respect the victim’s reputation and privacy during the criminal investigation; to alleviate the victim’s burdens; to assign staff with expertise and skills; and to introduce other measures as necessary to facilitate protection.³³ The obligations imposed by the *Basic Act* on central and local governments also include the obligation of the central and local police to adopt necessary measures to provide temporary protection to victims; to provide placement in shelters; to give advice on the prevention of crime; and to make sure that the personal information of victims is protected in order to prevent further victimization from the same offender and to ensure their safety.³⁴

C. Prosecution

When the police collect evidences and found the suspect, they send the case file and the suspect to the prosecutor’s office except for minor offenses when offenders expressed serious remorse and show no serious possibility of committing other offences. The assigned prosecutor reviews the file, meets with the suspect, and decides whether to indict the suspect or not.³⁵ The victim may be called by the prosecutor to provide a statement before he or she decides to indict. Ultimately, the prosecutor has the discretion to file charges.³⁶ If the prosecutor decides to charge the suspect, the case moves on to criminal trial.

If the prosecutor decides not to file charges, the victim can file an appeal to the Prosecution Review Commission (“Review Commission”) (*kensatsu shinsakai*), which is a kind of grand jury, consisting of eleven randomly selected citizens who review whether the prosecutor’s decision not to file charges was appropriate.³⁷ The 2000 amendment to the *Prosecution Review Commission Act* allows the victim’s “spouse, lineal relatives, and siblings”

32. Basic Act, art. 18.

33. *Id.* art. 19.

34. *Id.* art. 15. The police organization in Japan is divided into local prefectural police forces and central Nation Police Agency.

35. C. Crim. Pro., art. 247.

36. *Id.* art. 248.

37. Kensatsu shinsakaihō [Prosecution Review Commission Act], Law no. 147 of 1948, art. 2(2) (hereinafter cited as Prosecution Review Commission Act). See also Carl Goodman, *Prosecution Review Commissions, the Public Interest, and the Rights of the Accused: The Need for a “Grown Up” in the Room*, 22 PAC RIM L. & POL’Y J. 1 (2013).

to file an appeal if the victim dies.³⁸ The 2004 amendment to the *Prosecution Review Commission Act* further gives the Review Commission's decisions legally binding effect.³⁹ If the Review Commission concludes that the prosecutor should file charges, the prosecutor needs to reconsider the case.⁴⁰ If the prosecutor reconsiders the case and still decides not to file charges, the Review Commission must review the prosecutor's decision⁴¹ and it may conclude that the prosecutor must file charges again.⁴² Then the court will appoint a prosecutor from private attorneys to file charges against the suspect.⁴³

Moreover, the statute of limitations for filing charges was modified in 2010. Before the 2010 amendment to the Code of Criminal Procedure, a criminal homicide defendant had to be prosecuted within twenty-five years of the offence, causing frustration to victims' families of cold homicide cases. The amendment removed the time limitation for filing charges against a criminal homicide defendant.⁴⁴ The statute of limitations for filing charges with respect to other crimes has also been significantly extended. These extended limitations provide significant relief for victims.

The general duty to respect the individual dignity of victims as well as the mandate to adopt special measures for the victim to testify as a witness of the *Basic Act*⁴⁵ and the mandate to introduce measures to expand the opportunity of victim to participate in the criminal trial⁴⁶ triggered the new measures to protect the victim as a witness and to facilitate the victim participation in criminal trial. The mandate to adopt measures to respect the human rights of victims, such as reputation and privacy, and to reduce the burden on victims during the course of criminal trial⁴⁷ also necessitated the various protection measures for the victim's identity.

38. Prosecution Review Commission Act, art. 2(2).

39. Keijisoshōhōtō no ichibu wo kaiseisuru hōritsu [Act to Amend Parts of the Code of Criminal Procedure and Others], Law no. 62 of 2004.

40. Prosecution Review Commission Act, art. 41(1).

41. *Id.* art. 41-2(1).

42. *Id.* art. 41-6.

43. *Id.* art. 41-9. There is also a petition to the court for prosecution with respect to crime of police brutality or abuse of police power. With respect to these crimes, it is natural that the police are reluctant to investigate and that the prosecutor is reluctant to file a prosecution. Therefore, if the prosecutor refused to file a charge, a victim can directly petition the court for hearing. If the court decided to hold a hearing, the prosecution is deemed to be filed. C. Crim. Pro. art. 262 to art. 269.

44. *Id.* art. 250(1).

45. Basic Act, art. 15.

46. *Id.* art. 18.

47. *Id.* art. 19.

D. Protection of Victims during the Trial

Various measures have been introduced to protect victims during the criminal trial stage. First, to protect the privacy of victims, the court can decide not to reveal the victim's identity in the open courtroom upon the petition of the victim, legal representative (parents of minors or legal guardians) or representing attorney, after hearing opinion from the defendant or defense counsel. This measure is possible only in certain cases, including sexual crimes, child prostitution cases or cases where there is a danger that the reputation or the privacy of the victim might be seriously damaged by the publication of the victim's identity in the open courtroom in light of the manner of crime, degree of injury or damage or other factors.⁴⁸ Even without such petition, the court can decide not to reveal the victim's identity if it believes that, in light of the manner of the crime, the degree of injury or damage, or other factors, there is a danger that bodies or properties of victims or their family members might be harmed or they might be intimidated or harassed. The court must hear the opinion of the prosecutor and defendant or defense council before making the decision.⁴⁹ When the court decides not to reveal the identity of the victim, the prosecutor reads the writ of prosecution without revealing the victim's identity.⁵⁰

Furthermore, when the court decides not to reveal the victim's identity, the presiding judge can restrict the examination or statements of the parties when the victim's identity is likely to be disclosed, unless the restriction would place serious impediments to proving the case or present a substantial disadvantage to the defendant.⁵¹ In addition, when the victim testifies as a witness and the prosecutor notifies the witness's identity to the defense or presents evidence, he or she can ask defense counsel not to disclose the victim's identity to the defendant or others. This is allowed only when the prosecutor believes that the disclosure would seriously harm the reputation and privacy of the victim; endanger the safety of the victim or the victim's family, or their property; or cause the victim or their family to be intimidated or embarrassed by the disclosure, except when the disclosure is vital to the

48. C. Crim. Pro. art. 290-2(1). The petition needs to be filed by victim to prosecutor and the prosecutor needs to notify the court with his or her opinion. *Id.* art. 290-2(2).

49. *Id.* art. 290-2(3).

50. *Id.* art. 291(2). But the prosecutor needs to show the writ to the defendant. *Id.*

51. *Id.* art. 295(3). If the prosecutor or defense attorney failed to comply with the court order, the court can refer the matter to the prosecutors' office or local bar association for appropriate disciplinary action. *Id.* art. 295(5).

defense.⁵² When the prosecutor reads an evidentiary document in court, he or she is also expected not to reveal the victim's identity.⁵³

The court can also decide not to reveal the witness's identity when it believes that the witness or a member of the witness's family, or their property, may be harmed; when the witness or their family may be intimidated or harassed; or when the reputation or privacy of the witness or their family may be seriously harmed.⁵⁴ This protective measure for the witness's identity was introduced in anticipation of the criminal trials of organized crime groups and is not limited to victims, but it may be used by the victim as well. It may be also available for victim's friends or family members when they testify as witnesses. The similar kind of protection as is provided to victim's identity is available to the witness's identity when the court decides not to reveal it.⁵⁵

Second, victims can observe the trial and are offered preferential seating arrangements in court. Victims or their legal representatives can apply to the court to observe the court proceedings. The presiding judge is obliged to ensure that the applicants are able to observe the trial by providing preferential seating after considering the number of seats, the number of persons who wish to observe the trial, and other factors.⁵⁶

Victims may also be called as witnesses at trial. Various measures have been adopted to ease the burden of victims in these circumstances. When the court believes that testimony poses extreme anxiety or strain to the victim witness, the court may allow a "support person" to help alleviate the anxiety or strain.⁵⁷ The court will consider the age and the physical or mental condition of the victim, after hearing the opinion of the prosecutor and the defendant or defense counsel, before making its decision. If the court allows a support person to be present, a family member, psychological counselor, or member of a support organization can sit as a support person behind a victim witness while he or she testifies. The support person must be a person who is unlikely to interfere with the questioning of judges or parties, who will not hinder the testimony of the victim witness, and who will not place undue influence upon the victim witness.⁵⁸ And the support person is prohibited from interfering with the questioning of judges and parties, hindering the

52. *Id.* art. 299-3. The prosecutor can ask not to disclose the information to the defendant only when it is concerned with information not described in the writ of prosecution. *Id.*

53. *Id.* art. 305(3).

54. *Id.* art. 290-3.

55. *Id.* art. 305(4).

56. Victim Protection Act, art. 2. The "victims" are defined as "victim and his or her spouse, lineal relatives and siblings when the victim died or seriously disabled." *Id.*

57. C. Crim. Pro., art. 157-4(1).

58. *Id.*

testimony of the victim witness or placing undue influence upon the victim witness.⁵⁹

There are other measures to protect victims when they are called to testify as a witness. If the court believes that the witness feels pressured or seriously disturbed while testifying in front of the defendant, due to the nature of the crime, age of the witness, physical and mental condition of the witness, relationship with the defendant or other factors, the court may visibly shield the witness from the defendant.⁶⁰ The court will only shield a witness after hearing the opinion of the prosecutor and defendant or defense counsel. In addition, the court will only shield the witness from the defendant when defense counsel is present.⁶¹ The court has discretion to place a shield between the witness and the general public in order to protect the witness. This measure is possible only when the court believes it proper in light of the nature of crime, the age of witness, physical or mental condition of witness, the impact on the reputation of witness, or other factors, after hearing the opinion of the prosecutor and defendant or defense counsel.⁶²

Another method of shielding the victim from the defendant and the general public includes the use of video-link during victim testimonies. Using video-link allows victims to testify in a different room in the same courthouse and to transmit the video to the courtroom so that the victim does not have to face the judges, the defendant or the public.⁶³ Much like the nondisclosure of victim's identities, this measure is only available for victims of sexual crimes, minor victims of child prostitution and child pornography, or victims who are in danger of feeling pressured or seriously disturbed by testifying in front of the defendant. The court needs to hear the opinions of prosecutor and the defendant or defense council and must consider the nature of the crime, age of the witness, physical or mental condition of the witness, relationship with the defendant or other factors before making this decision. The court can even allow the victim to testify in another room outside the courthouse in certain circumstances.⁶⁴ When the

59. *Id.* art. 157-4(2).

60. *Id.* art. 157-5(1).

61. *Id.*

62. *Id.* art. 157-5(2). The Constitution of Japan has a provision mandating the open trial as a constitutional mandate: "Trials shall be conducted and judgment declared publicly. Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly." Constitution of Japan, art. 82. As a result, the exclusion of the public from the courtroom is extremely difficult in Japan.

63. C. Crim. Proc. art. 157-6(1).

64. *Id.* art. 157-6(2). This measure is permissible only when (i)there is a danger that the

court believes that the same witness may be called to testify on the same facts in subsequent criminal proceedings, the court can record the testimony, with the consent of the witness, thus preventing the witness from going through the testimony again.⁶⁵

Access to trial records has also been improved. If the prosecutor files charges and the defendant is prosecuted, victims have the right to access the court records. The court reviewing the criminal case must allow the victim, their legal representatives or representing attorneys to inspect or copy the court records after the first trial date and before the conclusion of the trial, after hearing the opinion of the prosecutor and defendant or defense counsel. This is allowed unless the reason for inspection or copy is not appropriate or there is reason to believe that the inspection or copy is inappropriate in light of the nature of the crime, progress of the trial, and other factors.⁶⁶ The court can restrict the purpose of use of the records or impose appropriate conditions for their use.⁶⁷ The person who inspected or copied the records is not permitted to use the information obtained improperly to harm the reputation or privacy of the other person concerned or to impede the investigation or trial.⁶⁸

The court reviewing the criminal case can, after the first trial date and until the end of the pending criminal case, allow the victim of the identical or similar cases, his or her legal representatives, spouse, lineal relatives or siblings above listed when the victim died or seriously disabled, or their representing attorney, to inspect or copy the court records when it is necessary for them to seek damages after hearing the opinion of the defendant or defense counsel.⁶⁹ This is permissible only when the other case shows a similar manner of repetitive or continuous conduct as the crime

witness might be deeply disturbed for coming to the same courthouse in light of the nature of crime, age of witness, physical or mental condition of the witness, relationship with the defendant, or other factors, (ii) there is a danger that body or property of the witness might be harmed or the witness might be intimidated or harassed during the movement to come to the same courthouse, (iii) there is a danger that the residence or workplace, or places where the witness can be usually found is identified by following the witness after coming to the same courthouse or other method and bodies or properties of the witness or his or her families might be harmed or they might be intimidated or harassed, or (iv) when it is extremely difficult for the witness to come to the same courthouse in light of the age, occupation, medical condition of the witness or other factors because the witness is living far away.

65. *Id.* art. 157-6(3). The recorded video will be attached as a court record and is included as a part of the transcript. *Id.* art. 157-6(4).

66. Victim Protection Act, art. 3(1).

67. *Id.* art. 3(2).

68. *Id.* art. 3(3).

69. *Id.* art. 4(1).

allegedly committed by the defendant or its accomplices. In short, a victim may be granted access to court records of other similar pending cases.⁷⁰

E. Victim Participation during the Trial

With respect to the participation of victims in the criminal trial, two important measures have been introduced to facilitate participation. First, upon petition, the court will allow victims to present a statement of opinion and to express their feelings about their experience of crime during trial.⁷¹ Victims' legal representatives as well as family members of the victims who died or seriously disabled are also allowed to present a statement of opinion.⁷² In essence, this would allow victims to state their opinions on the impact of crime.

In order for victims to state their opinion, a petition must be filed by the victim with the prosecutor, after which the prosecutor notifies the court with his or her opinion as to the appropriateness of the statement.⁷³ After the victim presents his or her statement of opinion, the presiding judge or associate judges may question the victim in order to clarify the statement.⁷⁴ Parties may also ask judges to question the victim in order to clarify the thrust of the opinion.⁷⁵ The court has the authority to restrict the victim's statement or the defense's questions if they are repetitious or irrelevant.⁷⁶ When the court believes that the statement of opinion is inadequate in light of the progress of the trial and other factors, it can deny the statement of opinion or simply allow the victim to submit a written statement.⁷⁷ If a written statement is submitted, the judge will note the submission during the trial and may read or summarize the written statement if appropriate.⁷⁸ The opinion or submitted statement by the victim, however, does not have evidentiary value in determining the defendant's guilt.⁷⁹

Second, a victim may request more active participation in the trial. This is available only for victim of serious crimes, including intentional crimes

70. The petition needs to be filed to the prosecutor with substantiating documents. *Id.* art. 4(2). And the prosecutor needs to notify the court with his or her opinion with substantiating documents. *Id.* art. 4(3). The court can similarly limit the purpose of use of obtained information and the persons who got access should not use them improperly. *Id.* art. 4(4).

71. C. Crim. Proc., art. 292-2(1).

72. *Id.*

73. *Id.* art. 292-2(2).

74. *Id.* art. 292-2(3).

75. *Id.* art. 292-2(4).

76. *Id.* art. 292-2(5).

77. *Id.* art. 292-2(7).

78. *Id.* art. 292-2(8).

79. *Id.* art. 292-2(9). This means that the statement could influence upon the sentencing.

resulting in the human death or injury, such as homicide or bodily injury, forced sexual intercourse, forced obscene act, illegal imprisonment or detention, or negligent operation of motor vehicle resulting in death or injury. In these cases, victims as well as their legal representatives, their representing attorneys, and family members of the victims who died or seriously disabled, may request the court to allow participation of victims and their legal representatives.⁸⁰ The court will determine whether victim participation is appropriate considering the nature of the crime, the relationship between the victim and defendant, and other factors, after hearing the opinion of the defendant or defense counsel.⁸¹

If permitted, the victim participates in the criminal proceedings as a “victim participant.”⁸² A victim participant and representing attorney are allowed to sit next to the prosecutor in the courtroom,⁸³ and may state their opinions as to how prosecutors should conduct the trial, such as submission of evidence, final argument, and sentencing to be asked.⁸⁴ Prosecutors also have an obligation to explain to victim participant how they will conduct the trial. If the prosecutor refuses to act as requested by the victim participant, the prosecutor must explain to the victim participant why he or she is refusing to act.⁸⁵

Moreover, after consulting with the defendant or defense counsel, the court must allow the victim participant or representing attorney to question the credibility of witnesses with respect to character and mitigating testimony. The questioning is allowed only when it is appropriate in light of the progress of the trial, the questions to be asked, the number of victim participants wishing to ask questions, and other factors.⁸⁶ The victim participant’s petition must be filed with the prosecutor immediately after the prosecutor has finished questioning witness and must clarify the questions to be asked.⁸⁷ Unless the prosecutor asks these question by himself or herself to witness, he or she needs to notify the court with his or her opinion.⁸⁸ When the presiding judge allows victim participant to question the witness, he or she

80. *Id.* art. 316-33(1). The petition needs to be filed with the prosecutor and the prosecutor needs to notify the court with his or her opinion. *Id.* art. 316-33(2).

81. *Id.* art. 316-33(1).

82. *Id.* art. 316-33(3).

83. *Id.* art. 316-34(1). If there are too many victim participants or representing attorneys to ask for attendance, the court can ask them to choose representatives. *Id.* art. 316-34(3). The court can also refuse attendance if it believe that the attendance is not appropriate. *Id.* art. 316-34(4).

84. *Id.* art. 316-35.

85. *Id.*

86. *Id.* art. 316-36(1).

87. *Id.* art. 316-36(2).

88. *Id.*

can restrict the questioning of victim participant or representing attorney if he or she believes that it goes beyond the permissible scope.⁸⁹

The court must also allow victim participant or representing attorney to question the defendant if it is necessary to state their opinions. This is permissible only when it is appropriate in light of the progress of the trial, the questions to be asked, the number of victim participants who want to question the defendant, and other factors after hearing the opinion of defendant or defense council.⁹⁰ Similarly, the petition must be submitted to the prosecutor immediately after the prosecutor concludes his or her questioning of the defendant and must clarify the questions to be asked. Unless the prosecutor ask these questions to defendant by himself or herself, he or she must notify the court with his or her opinion on the questions.⁹¹ When the presiding judge allows the questioning of the defendant by the victim participant or representing attorney, he or she can restrict the questioning if it believes that the questioning goes beyond the permissible scope.⁹²

Finally, the court must allow victim participants or their legal representatives to state their opinions as to the findings of fact and application of the law within the scope of prosecution, after the closing argument of the prosecutor, if it is proper in light of the progress of the trial, the number of victim participants who want to make arguments, and other factors.⁹³ The petition needs to be submitted to the prosecutor with clarification of the summary of opinion and the prosecutor needs to notify the court with his or her opinion.⁹⁴ The presiding judge can restrict the statement of opinion if the statement goes beyond the permissible scope.⁹⁵ The stated opinions of victim participant cannot be admitted as evidence for a crime.⁹⁶ It is significant, however, that some victims can now state their opinions on the findings of fact and the sentence to be imposed before a judge in the courtroom. Victim participant can thus ask for much harsher sentences than those recommended by the prosecutor.

There are also measures in place to ease the difficulty of participation by victims. Victim participants who feel extreme anxiety or strain may be accompanied by support persons for victim participation.⁹⁷ Victim participants

89. *Id.* art. 316-36(3).

90. *Id.* art. 316-37(1). The judge and the prosecutor can ask questions to defendant although the defendant has a right to refuse to answer to any questions.

91. *Id.* art. 316-37(2).

92. *Id.* art. 316-37(3).

93. *Id.* art. 316-38(1).

94. *Id.* art. 316-38(2).

95. *Id.* art. 316-38(3).

96. *Id.* art. 316-38(4).

97. *Id.* art. 316-39(1). Support person is permitted only when the court believes it proper for

can also hire attorneys for participation and those who cannot afford an attorney may be appointed an attorney by the court without charge.⁹⁸ The hired or appointed attorney is called a “victim participant attorney” and can exercise the rights of the victim participants in the courtroom on their behalf.

If the victim participant feels intimidated or distressed at any point in the trial due to the nature of crime, the age of victim participant, physical or mental condition, relationship with the defendant, or other factors, the court can, after hearing the opinion of the prosecutor and the defendant or defense counsel, shield the victim participant from the defendant, so long as defense counsel is present.⁹⁹ Similarly, the court can shield the victim participant from the general public when he or she is at trial or at a pre-trial proceeding, if it believes it proper in light of the nature of crime, age of victim participant, physical or mental condition, impact on their reputation and other factors. The court will only shield the victim participant after hearing the opinion of the prosecutor and defendant or defense counsel.¹⁰⁰

Furthermore, there is a financial help for victim to participate in criminal process as victim participant. For instance, the government provides travel expenses, stipends and hotel charges to victim participants to attend the trial.¹⁰¹ As stated above, for those victim participants who cannot afford to hire an attorney, the court-appointed attorney is also available.

the victim participant to attend the trial or pretrial proceedings because the victim participant will feel extreme anxiety or strain in light of the age of the victim participant, physical or mental condition or other factors to alleviate the anxiety or strain after hearing the opinion of prosecutor and defendant or defense counsel. *Id.* It is a person who is unlikely to hinder questioning of judges or parties, prevent asking the defendant to make a statement, prevent the witness to make statement or place improper influence upon its statement that can be approved as a support person. *Id.* And the support person should not prevent judges or parties from questioning defendant, parties from making statement, or place improper influence upon them for making their statement. *Id.* 316-39(2).

98. Victim Protection Act, art. 11. The victim participants who want the court-appointed victim participant attorney and are qualified for the maximum income requirement can ask the court through the Legal Aids Center for court-appointed attorney. *Id.* The Legal Aids Center will notify the court with recommendation of the candidate from the qualified attorneys. *Id.* art. 12(1). In making this recommendation, the Legal Aids Center needs to hear the opinion of the requesting victim participant. *Id.* art. 12(3). Usually, the victim participant’s choice is honored by the court.

99. C. Crim. Proc., art. 316-39(4).

100. *Id.* art. 316-39(5).

101. Victim Protection Act, art. 5(1). These supports are provided through Legal Aids Centre, Ho-terasu. *Id.* art. 8. *See infra* note 207.

F. Appeal and Post-Conviction Protection

Not much has been provided by statutes for the protection of victims after conviction or acquittal and during the appeal. But prosecutors as well as the Ministry of Justice that manages the correctional institutions are all obliged to implement government measures to protect victims.¹⁰²

G. Seeking Civil Damages during the Criminal Process

When victims are found to have suffered damage or injury, they can demand that the offenders pay damages. If the offenders fail to pay damages, victims may file civil suits to demand tort damages.¹⁰³ The financial hardship of victims is now partly alleviated through two mechanisms.

First, when the parties reach a settlement outside of court, victims can request the court to include the settlement in the trial transcript.¹⁰⁴ This makes the settlement enforceable as a judgment of the court.¹⁰⁵ In other words, if the offender fails to comply with the settlement, the victim does not have to file a suit to enforce the settlement but can directly enforce the agreement through the courts.

Second, victims may request that the defendant pay damages before the end of the criminal trial.¹⁰⁶ This measure is available only to heirs of deceased victims¹⁰⁷ or to victims injured as a result of an intentional crime, such as homicide or injury, forcible sexual intercourse, forced indecency, child abduction, abduction for ransom, and other offenses.¹⁰⁸ The application fee is 2,000 yen (roughly \$18.00 USD), which is quite inexpensive compared to the complaint fee, which must be paid in order to file a civil suit.¹⁰⁹ The judge who handled the criminal case will determine the defendant's civil liability after conviction.¹¹⁰ To determine the defendant's civil liability, the judge will use the same evidence adduced at the criminal trial and in the court

102. See *supra* notes 9-10.

103. MINPŌ [CIV. C.], art. 709. The Code of Civil Procedure was amended in 2007 to allow victim witnesses to testify with a support person, the shielding of victim witnesses from the defendant offender and the general public, and the use of video-link. MINJI SOSHŌHŌ [MINSOHŌ] [C. CIV. PRO.] 1996, arts. 203-2, 203-3, 204.

104. Victim Protection Act, art. 19(1).

105. *Id.* art. 19(4).

106. *Id.* art. 23(1).

107. In Japan, when someone is killed by an offender, it is the established view that the victim acquired the civil claim for damages for deprivation of life and that this civil claim is succeeded by his or her heirs when he or she died. That is a reason why it is only legal heirs that are entitled to ask for damage order against the offender.

108. *Id.*

109. *Id.* art. 42(1).

110. *Id.* art. 30(1).

transcripts, which lessens the burden on victim.¹¹¹ Hearings are limited to four times at most.¹¹² Judge is even relieved from duty to hold oral hearing.¹¹³ When the judge believes that the defendant is liable, he or she orders the defendant to pay damages by written judgment¹¹⁴ or by oral order.¹¹⁵ If the defendant accepts the order, the order will have the same force of law as the judgment of the court.¹¹⁶ If the defendant refuses to accept the order by filing an objection within two weeks after it is issued,¹¹⁷ the case will be treated as filed to the court as a regular civil suit.¹¹⁸ The court follows the regular civil procedure to hear and decide this suit. Nevertheless, the court can still use the evidence and trial transcripts from the criminal trial¹¹⁹ and it is supposed to approve the original damage order when the judgment of the court is the same as original damage order.¹²⁰ This system is generally called a “damage order system.” This system substantially reduces the burden on victims who seek damages.

Japan’s damage order system of allowing victims to seek damages at the criminal trial and allowing judges to issue orders after a conviction, was adopted after a careful examination of the American system, which allows judges in criminal proceedings to order restitution as a part of sentencing. The European system, which allows victims to file civil actions seeking damages during a criminal proceeding, was also examined.¹²¹ The restitution system was difficult to accept in Japan because of the traditional views on the difference between criminal punishment, designed to deter the commission of crimes, and civil action, designed to compensate the victim with damages. The introduction of restitution also required a radical change with respect to permissible forms of punishment; in Japan, the only available forms of punishment are limited to the death penalty, imprisonment with labor, confinement, and fines. The European system, which allows victims to file civil actions during criminal trials, was problematic because these civil actions would make criminal trials far more complicated for judges,

111. *Id.* art. 30(4).

112. *Id.* art. 30(3).

113. *Id.* art. 29(1).

114. *Id.* art. 32(1).

115. *Id.* art. 32(4).

116. *Id.* art. 33(5).

117. *Id.* art. 33(1).

118. *Id.* art. 34(1).

119. *Id.* art. 35.

120. *Id.* art. 37(1) (when the damage order was issued to allow immediate enforcement for the victim and when the case is deemed to be filed as a regular civil action after defendant’s objection, that court is supposed to approve the original damage order if the judgment of the court is the same as original damage order).

121. Jean Languier, *The Civil Action for Damages in French Criminal Procedure*, 39 TUL. L. REV. 687 (1964-65).

especially when disagreement arose between the prosecutor and the victims and because there is a practical difference in standard of proof between a civil proceeding and a criminal proceeding. As a result, the Japanese government adopted a damage order system, which allows judge to issue nonbinding damage order after the conclusion of the criminal proceeding.

Public financial support is also available to eligible victims. Victims and their surviving families are entitled to public support payment under the 1980 *Crime Victim Assistance Act*.¹²² Seriously injured victims can claim injury benefits, and victims who suffered disability are entitled to disability benefits. Close family members of deceased victims can also claim the survivors' benefits pursuant to the Act.¹²³ To obtain financial support, victims must first apply through the police, and the prefectural public safety commission will decide whether to grant the benefits or not.¹²⁴

In 2001, the benefit amount and the eligibility requirements for victims seeking benefits were expanded.¹²⁵ However, compared to victims of traffic accidents, the benefit amount for victims of crimes was still substantially lower than the amount paid by mandatory traffic accident insurance. As a result, victim groups strongly demanded an increase in the payment amount. In 2008,¹²⁶ the amount was increased to 29.64 million yen (\$270,000 USD) for families of deceased victims,¹²⁷ roughly the same amount paid to families of drivers who were killed in traffic accidents by mandatory traffic insurance. The amount received by victims or their families depends on the victim's previous income and number of dependents.

The availability of public financial support from the government does not preclude victims from filing civil suits to recover damages from defendants. When victims receive damages from defendants, the amount of

122. Crime Victim Assistance Act, art. 3. It is only Japanese citizens or noncitizens who have a residence in Japan that is entitled to this grant. *Id.* The victim is a person who suffered damages by the crime. *Id.* art. 2(3). The "surviving family" mean the spouse, victim's child, parent, grandchild, grandparent and sibling who were supported by the victim's income, and other victim's child, parent, grandchild, grand parent or sibling and they are entitled to the grant according to this sequence. *Id.* art. 5(1)&(3).

123. *Id.* art. 4.

124. *Id.* art. 10.

125. Hanzai higaishatō kyuhukin shikyuhō no ichibuwo kaiseisuru hōritsu [Act to Amend Parts of the Act Concerning the Payment of Benefit to Victims of Crime], Law no. 30 of 2001.

126. Hanzai higaishatō shikyukin no shikyutō ni kansuru hōritsu no ichibu wo kaiseisuru hōritsu no sekō nitomonau kankeiseirei no seibitō nikansuru seirei [Cabinet Order Concerning the Amendment to Relevant Cabinet Orders in Order to Implement the Act to Amend Parts of the Act Concerning Payment of Benefits to Victims of Crime], Cabinet Order no. 170 of 2008.

127. Keisatsuchō [National Police Agency], Heisei 27nendo Hanzai higaisha hakusho [Victim Whitepaper 2015], https://www.npa.go.jp/hanzaihigai/whitepaper/w-2015/pdf/zenbun/pdf/2s1s2_01.pdf.

public benefits is reduced¹²⁸ and the government has the right to seek reimbursement from defendants if the government has paid benefits to the victims.¹²⁹ The government's financial support is extremely significant for victims, who often do not recover any damages from defendants, as most defendants do not have the financial resources to pay damages.

The government also introduced several related systems to facilitate compensation for victims. First, in 2016, the government enacted the *Victim Consolation Benefit Act*,¹³⁰ enabling the payment of benefits ("victim consolation benefit") to families of Japanese victims who were involved in crimes abroad and who suffered injury or damages. Second, the government introduced a system to confiscate the economic profits of criminals and distribute them to the victims. As a result of the 2006 amendment to the *Organized Crime Regulation Act*,¹³¹ it became possible to confiscate the proceeds of crime and to distribute the confiscated money to victims as the "victim damages recovery benefit."¹³² The Diet also enacted the *Victim Damage Recovery Distribution Act*¹³³ to allow victims who paid money to bank accounts of offenders as a result of fraud to recover damages from the assets left in those bank accounts. Although this system is established primarily for victims of economic crimes, it also signifies the commitment of the government to assist victims of crime.

II. Victim Participation in Practice

A. Criminal Investigation

According to the 2018 Crime Whitepaper, there were roughly 600,000 reported cases of crime inflicting injury or damages to victims in 2017,¹³⁴ including 914 homicide cases, 1,707 robbery cases, 31,013 battery cases, 23,286 injury cases, and 1,109 forcible sexual intercourse cases.¹³⁵

128. Crime Victim Assistance Act, art. 8(1).

129. *Id.* art. 8(2).

130. Kokugai hanzai higaisha chouikintō no shikyu nikansuru hōritsu [Act on Consolation Grant for Victims of Crime Who were Involved in Crime Abroad], Law no. 73 of 2016.

131. Soshikitekina hanzaino shobatsu oyobi hanzaishueki no kiseitō nikansuru hōritsu [Act on Punishment of Organized Crime and Regulation of Proceeds of Crime], Law no. 136 of 1999.

132. Hanzai higaizaisantō niyoru higaikaihuku kyuhukin no shikyu nikansuru hōritsu [Act Concerning the Payment of Damage Recovery Benefit from the Proceeds of Crime], Law no. 87 of 2006.

133. Hanzai riyō yokinkouzatō nikakawaru shikin niyoru higaikaihukubunpaikin no shikyutō ni kansuru hōritsu [Act Concerning the Payment of Damage Recovery Distribution Benefit from Assets on Bank Accounts Used in Crime], Law no. 133 of 2007.

134. Hōmushō [Ministry of Justice], Heisei30nendo hanzai hakusho [hereinafter cited as Crime Whitepaper 2018], <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h6-1-1-02.jpg>.

135. *Id.*

In order to secure the cooperation of victims and to allow them to participate in the criminal process, it is vital that they are treated by the police with respect and dignity. Otherwise, victims will be disappointed, and perhaps even angry or hostile toward the police, thus rendering criminal conviction extremely difficult and leaving victims totally frustrated. Presently, it is mandated that, during the criminal investigation stage, the police protect victims and treat them with respect.¹³⁶

The police have adopted some important measures to ensure that victims can prompt the police to investigate a crime. The police reported that they accept injury/damage reports unless the report is apparently unreasonable or false.¹³⁷ They also reported that, once a criminal complaint is filed, the responding office is now assigned and the case is handled by an assigned responding officer, thereby clarifying who should be responsible for handling the criminal complaint.¹³⁸

With respect to criminal investigations, the National Police Agency enacted the Outline of Measures for the Victim of Crime in 1998,¹³⁹ and adopted the Guidelines for the Victim of Crime.¹⁴⁰ The Police Support for Victims of Crime also emphasizes the necessity to respect victims of crime during criminal investigations.¹⁴¹ The Outline of Police Response to Victims of Crime, adopted in February 2018, provides detailed instructions for police officers on how to conduct police investigations and interview victims with proper understanding of the trauma victims suffered, respecting the dignity of victims, avoiding further victimization, and necessitating the provision of support for victims throughout investigation.¹⁴² The Outline thus outlines

136. See *supra* note 9.

137. Keisatsuchō [National Police Agency], *Reiwa gan-nen-do hanzai higaisha hakusho* [Victim Whitepaper on Crime, 2019], <https://www.npa.go.jp/hanzaihigai/whitepaper/w-2019/pdf/zenbun/pdf/hd3s.pdf> (hereinafter cited as *Victim Whitepaper 2019*), at 46.

138. *Id.*

139. Keisatsuchō [National Police Agency], *Higaisha taisaku yōkō* [Outline of Measures for the Victim of Crime] (1998), <https://www.npa.go.jp/higaisya/archive/youkou.html>.

140. Keisatsuchō [National Police Agency], *Hanzai higaishatō sesaku no tebiki nitsuite* [Guideline of Measures for the Protection of Victim of Crime] (April 1998), <https://www.npa.go.jp/hanzaihigai/local/tebiki/mokuji.html>. The National Police Agency later adopted the new Outline of Support for the Victim of Crime in July 2011. Keisatsuchō [National Police Agency], *Hanzai higaisha shien yōkō* [Outline of Support for the Victim of Crime] (2011), https://www.npa.go.jp/hanzaihigai/whitepaper/w-2012/html/zenbun/part2/s2_2_3c06.html. See Keisatsuchō [National Police Agency], *Keisatsu niyoru hanzai higaisha shien* [Police Support for the Victim of Crime] (2018), <https://www.npa.go.jp/higaisya/shien/pdf/higaisyashienNP.pdf> (Police Support).

141. Keisatsuchō [National Police Agency], *Soudan/sousa no katei niokeru hanzai higaisha eno hairyo oyobi johou teikyo* [Respect for Victim of Crime During Consultation and Investigation], https://www.npa.go.jp/higaisya/shien/pdf/higaisyashienNP06_10.pdf.

142. Keisatsuchō [National Police Agency], *Sousain no tameno higaishatō taiou yōryō* [Outline of the Police Officer's Response to Victims of Crime] (Feb. 2018), <https://www.npa.go.jp/laws/notification/keiji/keiki/300213keiki.pdf> (Police Response).

specific important points in initial police investigations, including the police visit to the crime scene, the interview of victims, and the necessity of respecting the privacy of victims. It also highlights important points in subsequent police investigations, including the necessity of alleviating the burden on victims by calling them for cooperation, necessity of paying respect to feeling and convenience of victim during subsequent interviews, importance of selecting the best suited place for victim interviews, importance of careful selection of interviewers, special care for minor victims, special care for surviving family when the victim died, and the necessity of special care for collecting information from residents.¹⁴³

As a result of these measures, the treatment of victims has been significantly improved. This is especially the case for victims of sexual crimes. When police officers investigate sexual crimes, they are required to respect the feelings of the victim, and to accompany the victim to the hospital or to the scene of crime for investigation. During the interview, they are instructed to pay extra caution to the privacy of the victim.¹⁴⁴ When the victim goes to the police station for consultation or to report an assault, it is pointed out, the police officers need to explain to the victim the importance of early medical examination and the necessity of evidence collection.¹⁴⁵ In order to reduce the further traumatization of the victim, it is also important for the police officer to ask interviewees for their preferred gender pronouns of the interviewing officer and to respond accordingly.¹⁴⁶ Police instructions also emphasize the need to reduce the burden on victims during interviews by avoiding repetitive and overlapping interviews.¹⁴⁷

The police will also appoint a liaison police officer to provide information to the victims and to answer any questions they may have.¹⁴⁸ The liaison officer will visit the victim's home in order to listen to the victim's concerns and to ensure the safety of the victim. Victims can request that the police use plainclothes officers if they do not want to reveal that they were involved in a crime.¹⁴⁹

The National Police Agency is also trying to alleviate the financial burden of criminal investigation to the victims. For instance, the police are

143. *Id.* It also emphasizes the importance of cooperation with other support groups, the necessity of effective communication with victims, importance of securing the safety of victims and effective prevention of further injury/ damage from the same offender. *Id.*

144. Keisatsuchō [National Police Agency], Higaisha no shinjo ni hairyoshita seihanzai sousa no suishin [Promotion of Sexual Crime Investigation Respecting the Feelings of the Victim] (July 2017), <https://www.npa.go.jp/laws/notification/keiji/souichi/souichi02/290705-souichi.pdf>.

145. *Id.*

146. *Id.*

147. *Id.*

148. Police Support, *supra* note 140, at 7.

149. *Id.* at 9.

obligated to pay for the costs associated with returning a victim's body and repairing the body after an autopsy.¹⁵⁰

The Outline of Police Officer's Response to Victims of Crime is more specific with respect to the investigation of sexual offences. It instructs police officers to use a victim interview room rather than a suspect interrogation room as much as possible. In cases where it is absolutely necessary to use the suspect interrogation room, police officers should ensure that the room is comfortable, organized and quiet.¹⁵¹ The interview room must also be secluded and should be located at a location where the victim can enter and exit the room without being seen by others.¹⁵² Police officers can reduce the potential for further traumatization or stress by ensuring that female victims are not left in an interview room with only one male police officer, and by limiting the number of officers that enter or exit the room during the interview.¹⁵³ In addition to the importance of asking the gender preference of the interviewing officer,¹⁵⁴ the Outline also emphasizes the need for police officers to state their name at the outset, to kindly ask for the victim's cooperation and understanding, and to thank the victim for their time and cooperation after the interview.¹⁵⁵ It also instructs officers not to ask questions simply to satisfy their own curiosity; not to make inappropriate remarks with respect to the victim's clothing or choices; not to suggest that the victim gave consent or that the victim is somehow responsible for the crime; not to ask questions on irrelevant prior sexual experiences, or ask inappropriate questions blaming the victim for not resisting or failing to contact the police immediately.¹⁵⁶

The police are also required to reimburse victims of sexual crimes for their expenses relating to seeing a doctor, receiving an examination, and taking medicine to prevent a pregnancy.¹⁵⁷ The police also introduced sexual crime investigation supervisors to supervise and provide training to other police officers; adopted a special evidence collection manual to reduce the burden on victims; promoted cooperation with support groups and doctors; and, staffed more female police patrol officers at local stations to provide advice and strengthen the local patrol.¹⁵⁸

There has been a significant improvement in the protection of the privacy of victims as well. Prior to 2005, it was common practice for the

150. *Id.* at 8.

151. Police Response, *supra* note 142.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. Police Support, *supra* note 140, at 21.

158. *Id.* at 19–21.

police to release the names of victims to the press, especially when the victims were killed or had died. Now, the police exercise their discretion to refuse to disclose the names of victims in exceptional cases. The 2005 JR Fukuchiyama line derailment accident case was the turning point in this respect. The disastrous accident occurred in Amagasaki City, Hyogo Prefecture, due to an over-speeding train that was trying to keep up with its regular schedule. The accident killed a train operator and 106 passengers, and injured 562 passengers.¹⁵⁹ The police refused to disclose some of the names of the victims based on the wishes of the surviving families. The media strongly protested against the refusal, insisting that the *Government Privacy Act*¹⁶⁰ did not prohibit the disclosure of personal information by the police when there was an emergency or strong public interest.¹⁶¹ Despite this, the police exercised their discretion and ignored the media's criticism, adopting a policy of not disclosing the names of victims on an *ad hoc* basis.¹⁶² Although victims do not have the right to prevent the police from disclosing names, the police are likely to respect a request of nondisclosure, especially when there is a compelling reason for seeking nondisclosure, unless there are overriding public interests at play.¹⁶³

159. Kōkū tetsudō jiko chōsa iinkai [Investigative Commission on Air Transportation and Railroad Accidents], Testsudōjiko chōsa houkokusho [Report on the Railroad Accident] (2007), <http://www.mlit.go.jp/jtsb/railway/fukuchiyama/RA07-3-1-1.pdf> [hereinafter Accident Report]. The police later filed criminal charge against the JR and its current president who used to be the chief safety officer for the operation and was responsible for its failure to install automatic train stop system (since operator died because of the accident, he was not criminally charged). The prosecutors declined to file charges against three former JR presidents who failed to adopt appropriate safety measures to prevent the derailment but they were ultimately prosecuted by the court-appointed attorney as a prosecutor after the decision of the Prosecution Review Commission. See *infra* note 177.

160. Gyouseikikan no hoyūsuru kojīn jōhō no hogo ni kansuru hōritsu [Act Concerning the Protection of the Personal Information Held by the Administrative Agencies], Law No. 58 of 2003 (Government Privacy Act).

161. *Id.* art. 8(2) (iv) (government provision of personal information when there is a special reason). Mass media are also exempted from the legal limitations on collection and provision of personal information for new-reporting purpose as well. Kojīn jōhō no hogo nikansuru hōritsu [Personal Information Protection Act], Law no. 57 of 2003, art. 76(1).

162. Keisatsuchō [National Police Agency], Heisei 18nendo hanzai higaisha hakusho [Victim Whitepaper 2006], https://www.npa.go.jp/hanzaihigai/whitepaper/w-2006/html/zenbun/part1/p1_62.html.

163. When a former care worker of the institution for patients with severe mental disability, out of the motive that the persons with severe mental disability without ability to decide anything should be put to death, stormed into the facility in mid night, and killed 19 patients and inflicted injury to 26 patients and facility workers, the families of the victims strongly urged the police not to release the names of the victims. And the police complied to the request. Sankei Shimbun, Sagamihara 19nin shisatsu, tokumei wa izokuno tsuyoi kibou, kanagawa kenkei ga comment [Sagamihara 19 Disabled Patients Murder Case: Victims' Families Strongly Requested Anonymity, Kanagawa Prefectural Police Said] (Aug. 3, 2016), <https://www.sankei.com/affairs/news/160803/afr1608030028-n1.html>. When a disgruntled fan on the Kyoto Animation, one of the leading

The police are also trying to restructure their organization to respond to the shifting needs of the investigation. With respect to victims of sexual crimes, for instance, the police increased its number of female police officers significantly. In 2009, the police only employed 14,162 female officers out of a total of 253,682 officers (ratio of 5.6%). In 2018, however, the number of female officers increased to 24,587 out of a total of 262,245 officers (ratio of 9.4%).¹⁶⁴ There are also 498 female chief inspectors or captains all across Japan.¹⁶⁵ These female police officers participate in sex crimes investigations by conducting interviews with the victims and providing support as well. It also changed its practice of evidence collection. For instance, the police have provided sexual assault evidence collection kits to medical facilities in 14 prefectures in the event that victims of sexual assault visit a doctor without a police officer present.¹⁶⁶ This was a departure from the traditional customs of allowing only the police officers to collect evidence or allow doctors to collect evidence under the supervision of the police officer.

B. Prosecution

The prosecutors' treatment of victims has also significantly improved. The prosecutor's office now has an advisor and a hotline for victims of crimes. Victims may inquire about the progress of criminal proceedings and the process of obtaining court documents.¹⁶⁷ Moreover, the prosecutor's office adopted a policy that requires prosecutors to inform victims when they have decided to file a criminal charge or suspend a charge.¹⁶⁸ The prosecutors

animation production companies in Japan, stormed into the company studio, spread around prepared gasoline and set a fire causing unimaginable firestorm and killing 35 workers, the police initially released names of the ten victims with the consent of the survivor's family and eventually released the name of all victims, with some protest from the survivor's families and the company. Asahi Shimbun, Kyo Ani houkajiken, 25nin no mimoto kouhyou, zengiseisha akirakani [Names of Remaining 25 Victims Released: All Victims Are Identified] (Aug. 27, 2019), <https://www.asahi.com/articles/ASM8W56V2M8WPTIL00X.html>.

164. Keisatsuchō [National Police Agency], Heisei30nendo Keisatsu hakusho [Police Whitepaper 2018], <https://www.npa.go.jp/hakusyo/h30/honbun/html/u7110000.html>.

165. *Id.*

166. Victim Whitepaper 2019, *supra* note 137. Apparently, still the number of medical facilities provided with such kit is grossly limited. The police reported that they provided instruction to collect evidence to doctors through gynecologist association. *Id.* But apparently still not all hospitals and clinics are well prepared to collect the evidence properly.

167. Houmusho [Ministry of Justice], Higaisha shien notameno ippanteki seido [Outline of the General Support for Victims of Crime], <http://www.moj.go.jp/KEIJI/keiji11-2.html>.

168. Crime Whitepaper 2018, *supra* note 134, http://hakusyo1.moj.go.jp/jp/65/nfm/n65_2_6_2_1_1.html. In 2017, the prosecutors informed of their decisions in 53,728 cases. *Id.* However, the prosecutor is not obliged to accept the opinion of the victim for deciding to prosecute or not. Because there is no general plea-bargaining system in Japan, there is also no system of asking the opinions of victims before offering a plea.

are also supposed to provide the victim with information about the substance of the charges and the substance of opening statements.¹⁶⁹ They will also provide the victim with the written document describing the opening statement to the victim.¹⁷⁰ Prosecutors are also required to notify victims when they decide not to file charges and to explain why they are not pressing charges.¹⁷¹ Prosecutors are allowed to disclose some records to the victims even when they decide not to file charges.¹⁷²

In 2017, there were 2,544 appeals to the Review Commission, resulting in 2,274 decisions, including: 1,895 decisions supporting nonprosecution; 67 decisions finding that nonprosecution was inappropriate; and one decision holding that the prosecution erred in not filing charges.¹⁷³ Of the 85 cases reconsidered by the prosecutors during 2017 after the Review Commission found that the nonprosecution was inappropriate or that the prosecutor should have filed charges, the prosecutions changed its decision and filed charges in only five cases.¹⁷⁴ Between 1949 to 2017, there were 173,008 appeals to the Review Commission in total, and in 18,365 cases, the Review Commission found that the prosecution should have filed charges or that nonprosecution was inappropriate. In response, the prosecutor filed charges in 1,581 cases, with the result of convictions in 1,414 cases.¹⁷⁵ After 2009, when prosecution became mandatory after the Review Commission's second decision that charges should be filed, the Review Commission decided that the charges should have been filed a second time in 14 cases, leading to 10 final dispositions, with 2 convictions and 8 acquittals and dismissal of prosecution.¹⁷⁶ There is no data to show how many of these appeals were filed by victims and how many charges were filed in response to the victims' requests. But, surely, victims play a very important role in appealing the decision not to prosecute, leading to some high-profile cases which resulted in mandatory prosecution.¹⁷⁷

169. Victim Whitepaper 2019, *supra* note 137, at 46.

170. *Id.*

171. *Id.* at 54.

172. *Id.*

173. Crime Whitepaper 2018, *supra* note 134, <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h6-2-1-01.jpg>.

174. *Id.* <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h6-2-1-02.jpg>.

175. *Id.* http://hakusyo1.moj.go.jp/jp/65/nfm/n65_2_6_2_1_2.html.

176. *Id.*

177. In the Akashi fireworks accident case in 2001, which resulted in 11 deaths and 247 injuries to citizens in the overpass which was overcrowded due to failed police and city traffic management, the prosecutors filed charges against police officers in charge and security company workers in charge but refused to file charges against the chief and deputy chief of the Akashi Police Station. The Kobe Prosecution Review Commission (based on the third petition to review the refusal to prosecute the deputy chief of police) twice concluded that deputy should be prosecuted for professional negligence resulting in death and injury after the amendment took effect (in the

C. Trial

The prosecution's office has emphasized the need for all prosecutors to communicate with victims and to consider the victims' wishes on how to proceed with their criminal case.¹⁷⁸ The prosecutor's office will provide the victim with information and updates on the pretrial conference, if requested,¹⁷⁹ and will ask the court, on the victim's behalf, to grant the victim permission to observe the pretrial conference if it is appropriate in the circumstances.¹⁸⁰ If the victim wishes to attend the trial, the prosecutor will notify the court, provide his or her opinion, and confer with the judge to schedule the trial at a time when the victim can attend, if possible.¹⁸¹ The court also now permits family members of deceased victims to carry and display pictures of their loved ones in the courtroom.¹⁸² The prosecutor's office also makes an effort to avoid legal jargons and to use visual aids during trials for victims in the courtroom, as well as the general public, to help them better understand the trial proceedings.¹⁸³

Furthermore, the prosecution's office makes information pamphlets

meantime the police chief had died and was not therefore faced with the decision). The deputy was then prosecuted by attorneys appointed by the court. Nihon keizai Shimbun, Akashi hodoukyo jiko: Motoshochou wo kyouseikiso, kensatsusin giketsu de hajiemte [Deputy Police Chief Prosecuted in the Akashi Overpass Accident Case: The First Mandatory Prosecution based on the Decision of the Prosecution Review Commission] (Apr. 20, 2010), https://www.nikkei.com/article/DGXNASDG2000W_Q0A420C1CC0000/. With respect to the JR Fukuchiyama line derailment accident case (*See* Accident Report, *supra* note 159.), three former presidents of the railway company were also prosecuted for professional negligence resulting in death and injury based on the resolutions of the Kobe Prosecution Review Commission. Nihon keizai shimbun, JR nishi no rekidai 3 shachou wo kyouseikiso: Amagasaki dassenjiko [Former 3 Presidents of the JR West Prosecuted: Amagasaki Derailment Accident] (Apr. 23, 2010), https://www.nikkei.com/article/DGXNASHC2202K_T20C10A4000000/. Both prosecutions were triggered by the appeal of the victims of the accidents to the Prosecution Review Commission.

178. Victim Whitepaper 2019, *supra* note 137, at 47.

179. *Id.*

180. *Id.*; Saikou kensatsuchō [Supreme Prosecutors' Office], Hanzai higaishatō no kenri rieki no sonchou nitsuite [Paying Respect to the Rights and Interest of Victim of Crime] (2014), <http://yamanaka-bengoshi.jp/saibankan/wp-content/uploads/2017/12/261021-犯罪被害者等の権利利益の尊重について（最高検部長通達）.pdf>, at 9.

181. Victim Whitepaper 2019, *supra* note 137, at 47; Houmusho [Ministry of Justice], Kouhan dankai deno higaisha shien [Victim Support during the Trials], http://www.moj.go.jp/keiji1/keiji_keiji11-4.html#3.

182. Mito chihō saibansho iinkai (dai9kai) kaigiroku [Minutes of 9th Meeting of the Mito District Court Committee] (Dec. 12, 2006), http://www.courts.go.jp/mito/vcms_1f/10101009.pdf (the courts admitted that whether the victim's family could bring the picture of the deceased victim into the courtroom is left with the discretion of the judges and that many judges came to allow it so long as it is reasonable). It looks like that the judges are somewhat reluctant to allow the victim's family to bring the urn or cremated ashes into the courtroom, though.

183. Victim Whitepaper 2019, *supra* note 137, at 47.

available to victims and explains to victims that the trial transcript as well as other submitted documents are available to them for inspection and copying, even during trial.¹⁸⁴ Although the *Victim Protection Act* only allows the inspection and copy of documents after the first trial date, prosecutors are flexible in many cases and allow victims to inspect and copy some of the documents even before the first trial date.¹⁸⁵ There are some 1,500 disclosure and photocopy requests from victims every year.¹⁸⁶

Many victims ask for protective measures during the criminal process. The most recent figure indicates that 3,351 victims asked for anonymity in criminal trials in 2017.¹⁸⁷ In the same year, while testifying as a witnesses in court, 1,105 victims asked for visible shields, 225 victims used video-links, and 78 victims asked to be accompanied by one or more support persons.^{188, 189} In 2017, 1,072 victims stated their opinions in court and 526 victims submitted written statements instead of orally delivering their statements in court.¹⁹⁰

The introduction of the victim participation system was indeed remarkable. It was the first time that victims were officially accepted as participants in criminal trials. The presence of victim participants sitting next to prosecutors, the opportunity for victim participants to ask question to witness as well as the defendant, and the opportunity to state their opinion right after the final argument of the prosecutors significantly altered the criminal process, although nothing is supposed to influence upon the conviction of the defendant.

The victim participation system has been extremely significant in light of the introduction of the citizen judge trial (lay judge) system.¹⁹¹ Today, six

184. *Id.* at 46.

185. The prosecutor's office is also flexible in allowing the victims to inspect and copy the court judgement or court records after the case was closed, including the name and address of the defendant and witnesses, depending upon the necessity of securing the fairness of the trials and harms to be caused by general publication. *Id.* at 46–47. *See infra* note 217.

186. *Id.* at 47. There were 1,270 requests in 2017 and 1,299 requests in 2018. *Id.*

187. Crime Whitepaper 2018, *supra* note 134, <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h6-2-1-04.jpg>.

188. *Id.*

189. From December 1, 2016, when the identity of the witness could be withheld, the 120 witnesses asked for anonymity before 2017. *Id.* http://hakusyo1.moj.go.jp/jp/65/nfm/n65_2_6_2_1_3.html.

190. *Id.* <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h6-2-1-04.jpg>.

191. Saiban-in no sankasuru keiji saiban nikansuru hōritsu [Act on Criminal Citizen Judge Trial], law no. 63 of 2004; Kent Anderson & David T. Johnson, *Japan's New Criminal Trials: Origins, Operations and Implications*, in *NEW COURTS IN ASIA* 371 (Andrew Harding & Penelope Nicholson eds. 2010); Matthew J. Wilson, *Japan's Law Judge System: Expectations, Accomplishments, Shortfalls, and Possible Expansion*, <https://ssrn.com/abstract=2443208>; Noboru Yanase, *Deliberative Democracy and the Japanese Saiban-in (Law Judge) Trial System*, 3:2 *ASIAN J. OF L. & SOCIETY* 327 (2016); Matthew J. Wilson, *Assessing the Direct and Indirect*

citizen judges, randomly chosen from eligible voters for each trial, can sit alongside three professional judges to hear cases and determine the defendants' guilt or innocence, as well as the defendant's sentence in certain serious crimes, such as homicide. The new citizen judge system was designed to introduce the views of regular people into the criminal trial process. The victims are generally welcoming the introduction of the average citizens into criminal process because they had been frustrated with the bureaucratic attitude of professional judges, especially their reluctance to enhance the sentence even when the crime was so brutal and horrific and left very serious impact on the victims and surviving family. Professional judges are more prone to stick to the precedents and unwilling to depart from the "standard."

In 2017, a total of 1,380 victims participated in criminal trials at the district court stage, including 333 citizen judge trials.¹⁹² At the district court stage, 196 victims questioned witnesses at trial; 558 victims questioned the defendant; and 665 victims made a final argument before the conclusion of the trial.¹⁹³ To facilitate their participation, 276 victims asked for visible shields and 115 victims asked for support persons.¹⁹⁴ A further 1,060 victims asked the attorneys for help, including 552 victims who were granted court-appointed attorneys.¹⁹⁵ The appointment is based on the referral from registered court-appointed victim participant attorney candidates from the application of victims and, in 2017, victims applied for the appointment in 562 cases, involving 724 victims.¹⁹⁶

In the ten years since the inception of the victim participation system in 2008, a total number of 11,471 victims have participated in criminal trials.¹⁹⁷ Since 2015, roughly 1,400 victims regularly participate in criminal trials each year. Out of all of these victims, 8,484 of them hired attorneys or requested court-appointed attorneys for victim participants.¹⁹⁸ Roughly 1,100 victims participants are now being accompanied by attorneys at trial, and

Impact of Citizen Participation in Serious Criminal Trials in Japan, 27 WASH. INT'L L.J. 75 (2017).

192. Crime Whitepaper 2018, *supra* note 134, <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h6-2-1-03.jpg>.

193. *Id.*

194. *Id.*

195. *Id.* It is interesting to know that sexual assault and rape is the crime that triggered most court-appointed victim participant attorney. Nichibenren [Japan Federation of Bar Associations], Bengoshi hakusho 2015 [Whitepaper on Attorneys, 2015], https://www.nichibenren.or.jp/library/ja/publication/books/data/hakusho_tokushu2015_1.pdf (177 cases among 462 cases in 2014).

196. Crime Whitepaper 2018, *supra* note 134, http://hakusyo1.moj.go.jp/jp/65/nfm/n65_2_6_2_1_6.html.

197. Victim Whitepaper 2019, *supra* note 137, https://www.npa.go.jp/hanzaihigai/whitepaper/w-2019/html/zenbun/part3/s3_1t03.html. The number for 2018 is still tentative. *Id.* at 51.

198. *Id.* at 50.

roughly 600 victims participants are being accompanied by court-appointed attorneys every year.¹⁹⁹ A total of 2,148 victim participants have questioned witnesses at trial, and another 5,343 victim participants have questioned defendants at trial.²⁰⁰ Recently, the number of victim participants who question witnesses at trial is roughly 170 to 280 per year, while the number of victims who question defendants is approximately 600 per year.²⁰¹ The total number of victim participants who made final arguments at trial was 5,610, and the total number of victims who made statements during trial was 7,790.²⁰² The number of victim participants who were accompanied by support persons was 730, and the number of victim participants who testified with a visible shield was 1,851.²⁰³

We don't know the total number of cases which would entitle the victims to participate as victim participants or the total number of victims who are eligible to claim victim participation each year. It is therefore a little bit difficult to say how many percentage of victims are choosing to participate as victim participants. However, it is amazing to know that more than 1,000 victims actually decided to participate in the criminal process every year. Moreover, although the number of victims who participate in the criminal trial process is more or less constant these days, it is remarkable that the increasing number of these victim participants is victims of sexual crimes.²⁰⁴

Hou-terasu, Japan's Legal Aid Society, offers financial support for victims of crime. The Legal Aid Society refers victims to lawyers who will vindicate their rights and interests, and who will assist victims during the criminal trial process and help them file a civil suit seeking damages against the defendant.²⁰⁵ Low-income victims can also ask for the appointment of a court-appointed attorney for victim participants.²⁰⁶ Financial support is

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. Asahi Shimbun, Seihanzai no higaisha, saiban sankani takamari: Shiritai omoiwa [Increasing Number of Sexual Crime Victims Seeks Victim Participation: They Want to Know ...] (Jan. 15, 2019), <https://www.asahi.com/articles/ASM19759NM19UTIL053.html>. In 2017, 321 sexual crime victims asked for victim participation and this was 23% of all victims who asked for victim participation. *Id.* It is estimated that victim participated in 20% of all sexual crime cases. *Id.*

205. Hou-terasu, Bengoshi hiyotō nikansuru enjo seido nitsuite shiritai [Legal Aids on Attorney Fees], <https://www.houterasu.or.jp/higaishashien/riyoumokuteki/hiyoutatekae.html>.

206. *See supra* note 98. It is only those victims whose financial resources is less than 2 million JPY (\$185,000 USD) after deducting the necessary expenses triggered by the crimes during the six months after the crime that are entitled to assistance. Hou-terasu, Higaisha sankanin no tameno kokusen bengo seido [Court-appointed Attorney for Victim Participant], https://www.houterasu.or.jp/higaishashien/seido/higaisha_sankanin/index.html.

provided to victims for travel expenses and a stipend is also available for victims who wish to participate in the criminal trial process.²⁰⁷

D. Appeal and Post-Conviction Stage

If the court acquits the defendant or dismisses the prosecution, or if the sentence imposed is too lenient, the prosecutor may appeal to the High Court. In deciding whether or not to file an appeal, the prosecutor's office will consult with the victims to see whether they agree with that course of action.²⁰⁸ While the opinion of the victims is not binding, prosecutors must nonetheless give reasons for their decision.

However, if the offender is convicted, the prosecutor must inform the victims of the judgment and notify them about where the offender is incarcerated; the offender's behaviour while incarcerated; and when the offender is expected to be released.²⁰⁹ It is now possible for the victim to receive a letter from the convicted offender and to meet with the offender in prison, if he or she wishes.²¹⁰ The local parole board will also notify the victims of the offender's scheduled parole hearings. At the hearing, victims have the opportunity to be heard before the parole board makes its final decision.²¹¹ Victims are then notified of the parole board's decision. The head of the parole board will inform the victim of the offender's behavior while on parole and when the offender's parole period is expected to end.²¹² If there are concerns that the victim may be at risk of further harm from the convicted assailant, the victim will be notified when the offender is released for parole.²¹³

In 2017, 16,905 victims were notified by the prosecutor's office of the offender's scheduled last day in prison; 18,972 victims were notified of the behaviors in prison; and 2,884 victims were notified when the offender was released.²¹⁴ In 394 cases, to prepare the victims for the offender's release,

207. See *supra* note 101. Ho-terasu, Higaisha sanko ryohitō shikyu seido [Financial Support for Victim Participants], https://www.houterasu.or.jp/higaishashien/seido/higaisha_sankaryohi/index.html.

208. Victim Whitepaper 2019, *supra* note 137, at 47.

209. Ministry of Justice, *supra* note 167.

210. Victim Whitepaper 2019, *supra* note 137, at 54.

211. *Id.* at 55; Kōseihogohō [Rehabilitation Act], Law no. 88 of 2007, art. 38, para. 1.

212. Houmusho [Ministry of Justice], Saibango no dankai deno higaisha shien [Victim Support after the Conviction], http://www.moj.go.jp/keiji1/keiji_keiji11-7.html#1. On the other hand, upon the victim's request, the parole board will hear the feeling and state of the life of the victims and transmit them to the inmates. Victim Whitepaper 2019, *supra* note 137, at 55.

213. Ministry of Justice, *supra* note 167. The planned place of residence of the inmate may be also notified to the victim. *Id.*

214. Crime Whitepaper 2018, *supra* note 134, http://hakusyo1.moj.go.jp/jp/65/nfm/n65_2_6_2_1_4.html.

prosecutors notified victims who wished to be informed as to the planned release date and where the offender would be residing after release.²¹⁵ The parole board also notified victims of the parole hearing in 4,261 cases.²¹⁶

After the close of the criminal proceeding, all transcripts and court records are kept at the prosecutor's office and the prosecutors' office has tried to disclose these transcripts and records to the victims. In principle, the prosecutor's office will not disclose the name and address of the defendant as well as witness to the public for protection of their privacy. But, in exceptional cases, the office may release the names and addresses of the defendants as well as witnesses to the victims after considering the necessity of protecting the victims against the possibility of harming the criminal justice and harms to be caused by public disclosure.²¹⁷

E. Assisting Victims to Recover Damages

The measures to assist victims to recover damages significantly improved the possibility of victims to recover damages. In 2017, twenty-six victims reached a settlement with the defendant, and were allowed by the court to include that settlement in the trial transcript, thereby making that settlement enforceable as a judgment of the court. In the same year, 295 victims asked for damages orders.²¹⁸ From the introduction of the civil damage order system in 2008 to 2018, 2,767 applications were filed, and reaching to finish in 2,677 cases, issuing damage orders in 1,234 cases, and reached a settlement in 619 cases.²¹⁹

In 2017, the government Victim Assistance Grant was paid to severely injured victims or to the families of the deceased victims in 414 cases, involving 353 victims, with the total amount distributed adding up to some one billion JPY (\$9.3 million USD).²²⁰ The victim consolation grant, which is distributed to families of victims that were killed as a result of crimes abroad (2 million JPY or \$18,500 USD per person) or to victims who were injured as a result of crimes abroad (one million JPY or \$9,300 USD per person), was paid to three victims in five cases, the total amounting to 6 million JPY (\$5,5000 USD).²²¹ The victim damages recovery benefit, which is the benefit derived from confiscated money from

215. *Id.*

216. *Id.*

217. Victim Whitepaper 2019, *supra* note 137, at 46–47.

218. Crime Whitepaper 2018, *supra* note 134, <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h6-2-1-04.jpg>.

219. Victim Whitepaper 2019, *supra* note 137, at 3.

220. Crime Whitepaper 2018, *supra* note 134, http://hakusyo1.moj.go.jp/jp/65/nfm/n65_2_6_2_2_1.html.

221. *Id.*

the proceeds of a crime, was paid to victims who lost money in 16 cases, adding up to a total of 390 million JPY (\$3.6 million USD).²²² Damage recovery distribution benefit collected from the bank accounts of criminals in financial rip-off cases was also paid to victims, with the amount totaling 1.3 billion JPY (\$12 million USD).²²³

Hou-terasu also offers legal aid services to help victims recover damages. Hou-terasu has received 13,462 calls to its central victim hotline and 12,717 inquiries at its local offices in total.²²⁴ It also has a referral service of experienced attorneys in the field of victim support, and has made 1,795 referrals in 2018.²²⁵

In addition to facilitating settlements, establishing the damage order system, and granting public financial support to victims, the government has initiated several other measures to ease the economic burden of victims. National public health insurance is available for victims needing treatment for their injuries.²²⁶ When it becomes difficult for victims to live in a previous residence, the government will give preferential treatment to victims who wish to enter public housing.²²⁷ When a single mother needs employment because her husband is killed, the government will provide placement service as a part of the general placement service. When victims are terminated from employment due to injuries, they can utilize the employment dispute resolution system available to all employees.²²⁸

III. Hurdles Left Behind

A. Police Investigation

The victim participation system has garnered general support from victims of crime in Japan. Research shows that victims who participate in the criminal process are more likely to be satisfied throughout the trial and to trust prosecutors and judges, thus leading to a greater willingness to accept the final judgment of the court.²²⁹ Despite significant improvements in the

222. *Id.*

223. *Id.*

224. *Id.* http://hakusyo1.moj.go.jp/jp/65/nfm/n65_2_6_2_1_6.html.

225. *Id.*

226. Kousei roudousho [Ministry of Health, Labor & Welfare], Hanzai higai ya jidōshajikotō niyoru shōbyo no hokenkyūhu no toriastukai nitsuite [Insurance Coverage for the Treatment of Injuries Suffered as a Result of Crime or Traffic Accident] (2011), https://www.mhlw.go.jp/iken/dl/vol11_01.pdf. The patients must pay thirty percent of the expenses, but they can seek damage awards from the offender for medical expenses.

227. Victim Whitepaper 2019, *supra* note 137, at 11.

228. *Id.* at 14.

229. Yuko Shiraiwa and Kaori Karasawa, *The effect of participation of the victims in trials on*

status and protection of victims, however, victims are still faced with significant hurdles to participate in the criminal process.

First, with respect to criminal investigations, victims are limited in what they can do to prompt the investigation, to catch the assailants, and to bring them to prosecution. Even when a victim files an injury/damage report, for instance, the police are not required to start a criminal investigation. The police are limited in their resources and, naturally, must prioritize serious crimes. Consequently, some minor crimes may not be meaningfully investigated. Moreover, the police may be reluctant to start an investigation when there is insufficient corroborating evidence. As a result, some injury/damage reports are not formally accepted by the police and are left uninvestigated.²³⁰ Legally, when a victim files a criminal complaint, the police are obliged to investigate. Unfortunately, however, there are some cases where the police officer intentionally changes a criminal complaint to an injury/damage report to avoid the obligation to investigate.²³¹ Despite police efforts to promote the acceptance of injury/damage reports and criminal complaints, there is still doubt as to whether all police officers share the same solicitude.

Moreover, the police cannot intervene unless some kind of crime is committed. Although the police are granted the power to intervene in stalking cases before a crime is actually committed, these measures may not

their confidence in the criminal justice system: Procedural justice, 85:1 JAPANESE J. OF PSYCHOLOGY 20 (2014).

230. The police instructed all police officers to accept injury/damage report promptly unless it is apparently false or extremely unreasonable. Keisatsuchō [National Police Agency], Jinsoku/kakujitsuna higaino todokede no juri nitsuite [Acceptance of Injury/Damage Report Promptly] (Mar. 25, 1956), <https://www.npa.go.jp/laws/notification/keiji/keiki/011.pdf>. See *supra* note 137. Apparently, however, the notification was not enough to make sure that all police officers commit to this mandate.

231. In 1999, a college girl was killed in front of the JR Okegawa station. She had trouble with her ex-boyfriend and talked with the police over her safety concerns from his violent behavior. But the police never took her concerns seriously and intentionally revised the criminal complaint to an injury/damage report and then ignored her request and left her without any protection. She was killed by her ex-boyfriend's older brother and his friends. Initially, the story that the police intentionally ignored her concerns was not widely noticed, but later came to light because of the sensational expose by one of the magazines. Her ex-boyfriend committed suicide and four persons responsible for her killing were all convicted. The court awarded damage award to her family from the police for their negligent investigation. Shuntaro Torigoe + Yuko Kobayashi, Kyotan: Keisatsu nitsukurareta Okegawa stalker satsujin jiken [Okegawa Stalker Murder Case: False Story Created by the Police (Iwanami shoten 2002)]. The police instructed the local police to create the window for acceptance of criminal complaint and promptly accept the complaint. Keisatsuchō [National Police Agency], Kokuso/kokuhatsu no juritaisei oyobi sidou/kanri no kyouka nitsuite [Intensifying the Supervision and Management of the System to Accept Criminal Complaint/Accusation] (Mar. 27, 1956), <https://www.npa.go.jp/laws/notification/keiji/keiki/009.pdf>. See *supra* note 138. Apparently, however, the notification was not enough to make sure that the police officers accept criminal complaint.

be sufficient. When victims ask for help or advice with respect to a stalker, the police may not properly understand the risk of serious harm and, as a result, may fail to provide adequate protection. When the person who visited the police for help or advice is killed by the stalker, the police is often criticized for their failure to properly respond to the risk of harm.²³²

When police officers interview the victims about the damages or harms they have suffered, they are now mandated to respect victims and treat them with dignity and respect. There are doubts, however, that police officers are actually paying sufficient respect to victims at all times.

Shiori Ito, an alleged sexual assault victim, recently published her memoir on her experience of sexual assault and cast serious doubt on how much improvement has actually been accomplished for victims of sexual assault.²³³ When she went to the police station five days after the alleged rape, she asked to speak to a female detective. When the reception clerk asked her why, Ito had to disclose that she was sexually assaulted at the reception desk. When she met with the female officer to report the assault, she discovered that the officer was a traffic officer and not a detective. Then she had to repeat her story to a male detective. She found out that, despite police efforts to increase the number of female detectives at all police stations, the number of female detectives is still very small and not all victims of sexual assault are guaranteed to speak to a female detective when they visit the police station.

Moreover, when she first went to see the doctor to prevent her pregnancy as a result of the rape, she was greeted by an insensitive gynecologist and discovered that the rape kit was not provided at the general gynecologist or ladies' clinic. She was required to go to the police and to be escorted by a police officer to the hospital's emergency room to be administered a rape kit. She was unaware of this procedure. However, because she contacted the police five days after the sexual assault, apparently it was too late for a blood analysis. Ito believed that she has been drugged, but it was too late to detect any traces of drugs in her system. She had also been under the influence of alcohol during the assault, but it was no longer possible to determine her blood alcohol level around the time of the alleged sexual assault.

During the investigation, Ito was made to repeat her story several times. She was told that criminal prosecutions of sexual assault were very difficult

232. In 2013, a high-school girl was killed at home by her ex-boyfriend who had been stalking her. She consulted with the local police but the police simply attempted to call the ex-boyfriend's cellphone; when they got no answer, the police left message for the ex-boyfriend to call back and did not do anything else. NHK, *Naze kiken wa misugosaretanoka: Kensho Mitaka stalker satsujin jiken [Why Had the Police Failed to Take Action against the Danger?: Mitaka Stalker Murder Case Reconsidered]*, (Oct. 22, 2013), <https://www.nhk.or.jp/gendai/articles/3419/1.html>.

233. Shiori Itoh, *Black box* (Bungei shunju 2017).

and was encouraged to drop the complaint. Moreover, the police officer asked her to explain in detail how the rape was committed, using a dummy doll to illustrate her position and that of the alleged assailant inside the room. This was humiliating experience for her.

It nevertheless filed a criminal complaint and a detective was assigned to the case. The detective investigated the case and, when he was convinced that a rape had been committed, he sought an arrest warrant to arrest the alleged suspect. Before an arrest could be made, however, an order was made by a police superior to hold off the execution of arrest warrant. The arrest warrant was eventually withdrawn, and the case was transferred to a different detachment. No arrest was ever made and, ultimately, the prosecutor declined to file any charges. The alleged suspect, it was discovered, was a very close friend of the Prime Minister, Shinzo Abe, and many believed that the police dropped the investigation because of the suspect's very close relationship with the Prime Minister. But it looks like there was no satisfactory explanation to her as to why the arrest was suspended, why the arrest warrant was withdrawn, and why the case was transferred to other police station.

These accusations, if true, cast serious doubts on whether the police have actually made improvements in responding to allegations of sexual assault and dealing with victims of sexual crimes.

Moreover, some countries, like Canada, have a system of asking the court to issue a publication ban on the identities of victims,²³⁴ and mandate the court to issue such a ban when the individual is a victim of sexual assault.²³⁵ Japan does not have such a system. Therefore, legally speaking, it is not illegal to publish the identities of victims of crime, even for victims of sexual offences. However, in response to victims' growing concerns about their privacy, the police have come to restrict the release of information with respect to the identities of victims when the victims are involved in sex crimes, when the victims could be embarrassed by the incident, and when the victims and their families ask for privacy.²³⁶ The mass media are generally opposed to such restrictions on the release of information about the victims, but since there is no legal publication ban, the mass media may find the information from other sources and publish it regardless.

In the United States, there is no such ban restricting the publication of information identifying victims, except for victims of sexual crimes and, even if there were such a ban, it would likely be struck down as an infringement of freedom of expression, especially if the media obtained the

234. Canadian Criminal Code, #486.4(1) and #486.5(1).

235. *Id.* #486.4(2).

236. *See supra* note 163.

information thorough lawful means and the information was accurate.²³⁷ In Japan, however, the identities of victims are at least somewhat protected as a result of the discretionary practice of the police to withhold information identifying victims in some cases.

This issue was central in a case where four minors held a sixteen-year-old high-school girl captive at one of the assailants' residence for over one month, raping and torturing her, and eventually killing her and dumping her body into a concrete tank and dumped it in the dump ground. It was a brutal and heinous murder and it is beyond imagination how the victim girl must have felt during this one-month ordeal.²³⁸ The victim's identity and her picture were published by the media. This was shocking to many since the identities of the four juvenile assailants were protected from publication by the *Juvenile Justice Act*; their identities were never published by the major mass media.²³⁹ As a result of this case, many victims are now calling for a ban restricting the publication of the identities and pictures of all victims.²⁴⁰

B. Prosecution

Despite significant improvements in the protection of victims during prosecution, many issues still remain. First, the police need to inform victims of the outcome of the investigation and the prosecutor needs to explain what charges will be brought, if any, and why. However, there is no guarantee that the prosecutor will file charges, even if the person responsible is apparent. Of course, the prosecutor needs to consider whether the prosecution is warranted and might decide not to file charges if the injury or damage is minor and the case is not worthwhile for a prosecution, or if the suspect showed sufficient remorse and promised not to repeat the crime again. As a result, in some cases, victims are disappointed by the prosecutor's decision not to file charges.²⁴¹ Although the prosecutor is now mandated to explain to victim on the reason when he or she decided not to file charges, it is still questionable whether the sufficiently satisfactory

237. *Florida Star v. B.J.F.*, 491 U.S. 524 (1989).

238. All four minors were sent back for prosecution from the family court and was convicted. Tokyo chihō saibansho [Tokyo Dist Ct], July 19, 1990, 1396 Hanrei jiho 32; Tokyo kōtō saibansho [Tokyo High Ct], July 12, 1992, 44:2 Kōtō saibansho keiji saiban reishu 123.

239. Shounenhō [Juvenile Justice Act], Law no. 168 of 1948, art. 61.

240. See Masayo Otsuki, *Hanzai higaisha no joho to hodo no arikata* [Information on the Victim o Crime and the Mass Media], 2006: August Reference 3 (2006).

241. The prosecutors decided to file a prosecution in only 7.9% of all cases. Crime Whitepaper 2018, *supra* note 134, <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h2-2-3-01.jpg>. The prosecutors decided to suspend the prosecution in 57% of the all cases. However, among the Criminal Code violation cases, the prosecutors filed prosecution in 37.5% of all cases. *Id.* <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h2-2-3-02.jpg>.

explanation was given to the victim. Ms. Itoh's story implied that she was not satisfactorily informed of the reasons why the prosecutor decided not to file charges against alleged assailant.

Victims may appeal to the Review Commission, but it is very difficult to persuade the Review Commission to find that the charges should have been filed twice, thus leading to an appointment of prosecutor from private attorneys and to a mandatory prosecution. Moreover, the reason of the Review Commission to support the nonprosecution of the prosecutor is often very brief and is not satisfactorily compelling. The reason of the Review Commission to support the nonprosecution in the case involving Ms. Itoh was indeed very brief and was not satisfactory. Frustration with the prosecutor's decision not to file charges is one of the long standing concerns for the victims in many cases.²⁴²

A related concern is the safety of victims. In most cases involving violent crimes, Japanese judges are reluctant to grant bail and the defendant will be kept in detention awaiting trial. Victims do not have to be concerned that they might be revictimized by the same defendant. However, when judges do grant bail in sexual crime cases, for example, victims of sexual offences, such as forced sexual intercourses or sexual touching, are often concerned about their safety.²⁴³ Many defendants live close to the victim and, despite the standard condition for bail not to have contact with the victim, victims often fear that they might run into the defendant and might be subject to additional harm or face retaliation for going to the police. This fear may lead some victims to develop strong feelings of anxiety, and may cause them to be afraid of going out and living a normal life, let alone participating in the criminal process. Many victims feel that bail conditions and police protection is not enough and have called for additional measures to secure their safety and sense of security.

Victims are also frustrated by the limited impact their voices have on prosecutors. As we already discussed, the prosecutor is required to consult with the victim about how they will conduct the trial and before deciding whether to file an appeal. But the prosecutor is not bound by the victim's preferences. Thus, in some cases, the prosecutor may file a lesser charge, contrary to what the victim wanted; ask for a much more lenient sentence than the victim would have imposed; and decide not to file an appeal

242. Hanzai higaishano kai [NAVS], Isao Okamoto, Hanzai higaisha ni shinyou sarenai keiji shihō [Criminal Justice System Not Trusted by Victims of Crime] (Nov. 2000), <http://www.navs.jp/report/1/opinion3/opinion3-1.html>.

243. Sankei Shimbun, "Saibansho wa mamottekurenai": Seihanzai higaisha, hitsuna uttae ["The Courts Are Not Protecting Us": Desperate Plea of the Victims of Sexual Crimes] (May 7, 2019), <https://www.sankei.com/affairs/news/190507/afr1905070025-n1.html>.

despite the victim's wish to seek appellate review. Simply put, victims' voices can be ignored.²⁴⁴

C. Criminal Trials

The protection of victims during criminal trials and the opportunity for victims to participate in criminal trials have both significantly improved. However, the trials in which victims can participate are limited to trials involving certain serious violent crimes, thereby precluding many victims from participation. There is surely a reason why the government needed to limit the number of cases in which victims could be allowed to participate, but some victims are frustrated by the absence of the opportunity to participate because of this limitation.

In order for victims to participate in the criminal process, it is vital that their safety is sufficiently protected. However, victims who participate in trials may be at risk of further victimization. It was reported in one case that a defendant shouted at the victim that he would remember her face and that he would come after her after serving his sentence.²⁴⁵ Such intimidation would surely inflict further trauma on the victim.²⁴⁶

Moreover, even when victims are allowed to participate, they still might face a number of barriers. Masaaki Suwa, a lawyer who acted as a court-appointed attorney for victim participants, wrote an article exposing some of the shortcomings and difficulties associated with the system of victim participant attorney and raised some concerns about the system.²⁴⁷ In a case involving a traffic accident that killed a sixteen-year-old girl, Suwa helped the victim's family to prepare for questioning of the defendant and the defendant's character witnesses; to state their opinion in court; and to make final arguments. Some of the shortcomings Suwa pointed out included, for instance, the lack of evidence revealed to the victims in advance for participation. In the case above, the victim's family was only allowed to

244. In some cases, the court decided to impose much heavier sentence to the defendant compared with sentence requested by the prosecutors. Bengoshi.com news, *Kensatsu wa amainodeha* [Isn't Prosecutor Too Lenient?] (Jan. 5, 2019), <http://www.navs.jp/report/1/opinion/3/opinion3-1.html>. These judgements imply the judges' belief that prosecutor's request was too lenient.

245. J-cast, "Shusshogo orei mairi suruzo": Higaisha wa darega mamoru ["I Will Come After you"; Who will Protect the Victim] (Feb. 13, 2009), <https://www.j-cast.com/tv/2009/02/13035834.html>.

246. The defendant was arrested and prosecuted for additional crimes of witness intimidation and threat.

247. Masaaki Suwa, *Keiji saiban niokeru higaisha sanko seido no mondaiten: Jitsumujō shin no higaisha kyusai ninariuru monoka* [Problematic Aspects of the Victim Participation System in the Criminal Trial: Could It Become the Truly Effective Victim Redress?], 15 *Shinshu daigaku hogaku ronshu* 55 (2010).

inspect police crime scene observation records and statements made by the defendant to the police (except for the personal history) and was only allowed to photocopy the 3-page crime scene observation records.²⁴⁸ As a result, Suwa had extreme difficulty preparing the victim's family for questioning. He did not know what the defendant's character witness, an insurance agent for the defendant, would testify and was required to turn in their prepared questions to the court in advance without knowing the witness's possible testimony. Suwa was also worried that the victim could be too emotional and might not be effective in questioning.²⁴⁹ Suwa also had no idea to what extent he could and should assist the victim family during questioning.²⁵⁰ The victim questioning and victim statement of opinion took longer than expected and, although he appreciated the patience of the judge, he was not sure to what extent he could and should, as a lawyer, control the victim during participation.²⁵¹

The fundamental question he raised was concerned with the legal status of the victim in the criminal trial and what is expected from victim participation. It was apparent to him that the victim does not have independent legal status as a party to the case since it is the prosecutor representing the government that is regarded as a party against the defendant, asking for the criminal punishment.²⁵² But the victim is not merely providing additional evidence as a witness.²⁵³ The victim could be viewed as occupying "unique special legal status" during the criminal trial, but then it is not clear what that unique special legal status is.²⁵⁴

Suwa argued that the primary purposes of criminal punishment are retribution and deterrence (against the defendant as well as for the general public) and, in light of these purposes, the goals of allowing victims to participate in the criminal trial is to make sure that the victim could bring additional evidence to secure an appropriate sentence and to encourage the defendant to feel remorse after hearing the voices of the victims, thus contributing to his or her rehabilitation.²⁵⁵ He argued that the purpose of

248. *Id.* at 64. The Criminal Code allows the inspection and photocopying of the trial transcript only after the first trial but the Supreme Prosecutors' Office instructed local prosecutors' office to disclose criminal evidence but it looks like the practice has not caught up yet. *Id.* at 78.

249. *Id.* at 64–65.

250. *Id.* at 65.

251. *Id.* at 65, 78–79.

252. *Id.* at 71.

253. Initially the victim was supposed to participate as a "assisting participant" but eventually the victim came to be called "victim participant," indicating the legislative will to elevate the status of the victim during criminal trial. *Id.* at 72.

254. *Id.* at 71–72. Moreover, since the defendant was not convicted yet, the victim is merely a possible victim of the defendant. Legally speaking, he raised a question on how such "possible" victim could be allowed to participate in a criminal trial against the defendant. *Id.* at 72.

255. *Id.* at 72–73.

victim participation should not be to satisfy the victim's wish to impose much a harsher sentence and thus raised objection to allowing the victim to ask for a harsher sentence independently from the prosecutor.²⁵⁶ Moreover, if the purpose of victim participation is to assist the prosecutor, then the prosecutor, rather than the attorney, should take a leading role for assisting the victim participant, since, according to Suwa, the primary role of the criminal attorney should be to represent the defendant.²⁵⁷ Furthermore, many defense attorneys have been concerned about the possibility that the emotional response of the victim could affect the fact-finding process as well as sentencing, especially during a citizen judge trial; Suwa shares this concern as well.²⁵⁸

Suwa was pleased to learn that the victim family in his case was happy to have been able to question the defendant and to state their opinions freely, but he was not sure whether the opportunity to participate in the trial brought closure to the victim family or whether it succeeded in helping them to move on.²⁵⁹ If the defendant, after learning how his or her actions impacted the victim and the victim's family, sincerely apologizes to the victims, then the victims might be able to move on. This is the very ideal of restorative justice.²⁶⁰ But Suwa doubts whether the victim family could be truly happy simply because they are satisfied with the participation to punish the defendant.²⁶¹ He thus doubts whether victim participation in the criminal process right after the commission of a crime contributes to restorative justice and allows for true effective relief for victims.²⁶²

The introduction of the citizen judge system brought high hopes to victims. Many victims were frustrated with the bureaucratic attitude of professional judges who would stick to precedents and impose modest sentences.²⁶³ Victims welcomed the introduction of the citizen judge system believing that citizen judges would bring into the sentencing process different perspectives held by the average citizen. Their hope was partially vindicated. It is reported that citizen judge trials tend to impose harsher prison sentences to sexual offenders and brutal murderers compared to professional judges.²⁶⁴

256. *Id.* at 73, 77.

257. *Id.* at 74.

258. *Id.* at 77.

259. *Id.* at 65, 80.

260. *Id.* at 83.

261. *Id.* at 83.

262. *Id.* at 84–85, 87.

263. Okamoto, *supra* note 242.

264. Sankei Shimbun, Kwaru houtei: Saibanin saiban 10nen (3) [Changing Courtroom: Ten Years of Citizen Judge System (3)] (May 23, 2019), <https://www.sankei.com/affairs/news/190523/afr1905230003-n1.html>.

But their hope was partly shattered when the appeal court reversed the sentence imposed by the trial court together with citizen judges to stick to the precedent and chose much modest sentences. There are several highly publicized cases where the trial courts found the defendants guilty for brutally murdering victims and imposed the death penalty, but the High Court reversed the death penalty, replacing it with a sentence of imprisonment, since there was only one victim as opposed to multiple victims.²⁶⁵ Although the imposition of capital punishment depends on all the circumstances of the case, the number of victims used to be a crucial factor in the past. Therefore, professional judges were extremely reluctant to impose the death penalty when there was only one victim, even if he or she was brutally murdered. The families of these victims were frustrated by the judges' reluctance to impose a much harsher sentence, advocating strongly for the death penalty. Apparently, appellate judges believed that it was more important to follow precedents than to accept the sudden departure triggered by the introduction of the citizen judge system. Victims were thus outraged that the painstaking effort of the citizen judges to choose the death penalty was reversed without participation of citizen judges.²⁶⁶

Furthermore, there is a limitation on victim participation. The victim can question a witness to challenge the credibility of the mitigating statement and question the defendant so long as it is necessary to state their opinion. The victim can make a final argument, right after the prosecutor's final argument, and can also ask for a much more severe sentence than the sentence requested by the prosecutor. Nevertheless, they are precluded from asking questions to witnesses about the crime itself and their arguments have no evidentiary value. Moreover, there is nothing to force the judge to sincerely consider their argument.

D. Assisting Victims to Recover Damages and Financial Support

In order for victims to participate in the criminal process, it is essential that there is sufficient financial support for the victims after the crime. We already saw that there is a government grant to the victims of crime, Victim Assistance Grant, to be paid by the government and that the amount of money paid to families of deceased victims has gradually increased to the level of traffic accident insurance payments for families of drivers who were

265. *Id.* The Supreme Court of Japan apparently supported this tendency. Sankei Shimbun, Koube joshi satsugai, muki kakutei e, saibanin saiban no shikeihanketsu haiki 4 ken [Girl Murder Case in Kobe, Indefinite Term Imprisonment was Upheld: Death Sentence by the Citizen Judge Trials Reversed in Four Cases] (July 3, 2019), <https://www.sankei.com/affairs/news/190703/afr1907030043-n1.html>.

266. Sankei Shimbun, *supra* note 264.

killed by traffic accidents. Even though the victim's family is entitled to recover damages from the defendant, the likelihood that they would actually receive any significant amount of money from the defendant is very slim and, as a result, the government benefit is vital for the victim's family to sustain the way of life after the crime. Many families of victims are frustrated, however, because the benefit is paid only once and is thus not designed to sustain the families over time. Moreover, the benefit is essentially fixed depending on the victim's previous income and number of dependents. The amount is not calculated to suit to the needs of surviving families.²⁶⁷ Many surviving families are thus demanding life support payments, just like pension payments, to fit to the needs of surviving families.²⁶⁸ The government, however, has been rather reluctant to convert the government victim grant into a social security system geared only for families of victims of crime.²⁶⁹

Another issue that remains is the imbalance in benefit payment for families of Japanese victims who are involved in crimes overboard. As we already saw, the Victim Assistance Grant is only available to victims of crimes that were committed in Japan. The system does not cover Japanese individuals who became victims of crime while travelling abroad. Although, a victim consolation benefit for families of victims who were involved in crimes abroad was created in 2016,²⁷⁰ the benefit is a flat 2 million JPY (\$18,500 USD), which is far lower than the amount paid to domestic victims. Families of victims who were involved in crimes abroad remain deeply frustrated by this imbalance.²⁷¹

267. The average amount of the survivors' grant in 2017 was 6,285,000 JPY (roughly \$58,000 USD), hardly sufficient for surviving families to survive. Keisatsuchō [National Police Agency], Heisei 29nendochu niokeru hanzai higaisha kyūhu seido no un-you jōkyō nitsuite [Payment of Crime Victim Assistance Grant in 2017] (May 24, 2018), <https://www.npa.go.jp/higaisya/kyūhu/pdf/H29jyōkyō.pdf>.

268. Keisatsuchō [National Police Agency], Hanzai higaisha kyūhu seido no kakujū oyobi aratana hōshūseido no sōsetsu nikansuru kentōkai torimatome [Summary of the Study Group on the Expansion of the Victim Assistance Grant and Introduction of New Compensation System] (Jan. 2014), <https://www.npa.go.jp/hanzaihigai/kuwashiku/suishin/kentokai/kyūhu/pdf/torimatome.pdf>.

269. However, in 2018, the government increased the amount of the payment for family of deceased victim when the victim had infant children, extended the payment period for severe injury medical charge from one month to three months, nixed the one-third limitation of temporary payment, and partially revised the policy of nonpayment for grant for victim who was killed by family member to allow the payment if the family relationship no longer exist in fact. Keisatsuchō [National Police Agency], Hanzai higai kyūhuseido no kaisei no gaiyō [Summary of the Recent Amendments to Crime Victim Assistance Grant] (Apr. 2018), <https://www.npa.go.jp/higaisya/kyūhu/pdf/kaisei/kaiseigaiyō.pdf>. Victim families are also pushing for the introduction of system for the government to pay the damage award for the offender and allow it to recover from the offender later.

270. See *supra* note 130.

271. Aera.dot, 27sai musume no shibo hōshō wa 35man-en: Kaigaidenō hanzai higaisha enō

E. No Bill of Rights for Victims

Finally, despite the significant improvement in treatment of victims, still there is no comprehensive bill of rights for victims. There is no constitutional guarantee of victim rights and there is no statutory declaration of rights for victims, except the ambiguous declaration in the *Basic Act* that victims have a right to be respected for their individual dignity and to be assured of treatment appropriate for their individual dignity.²⁷² This means that victims would have difficulty in challenging the failure to respect them as victims.

IV. Victim Participation Reconsidered

A. Criticisms against Victim Participation in the Criminal Process

The victim participation system still faces criticism by some individuals in Japan—primarily by defense attorneys. These criticisms have also been echoed by some people in the United States. One anonymous comment posted on the Harvard Civil Rights and Civil Liberties Law Review website, for example, shows deep concerns with the rise of victims' rights movement allowing more victim participation in the criminal process:

Even though it may sound cold, the criminal legal system is not designed to leave room for victim participation. And there is a rationale for this structure. Crimes are prosecuted by the state because the goals of the penal system (namely incapacitation, retribution, and rehabilitation) are not coextensive with the goals of private prosecutors The rights developed over time for criminal defendants are protections against the awesome power of the state. Therefore, the equivalence between defendants' rights and victims' rights is a dangerous rewriting of the legal system. It sets up a false dichotomy that threatens to undermine the defenses a defendant has in the face of state power.²⁷³

shien husoku, *chichioya ga uttae* [Only 350,000 JPY (\$3,000 USD) Compensation for Murdered 27-Year Old Daughter: Her Father Appeals the Insufficient Support for Victims Involved in Crimes Abroad] (June 29, 2019), <https://dot.asahi.com/aera/2019062700022.html>.

272. See *supra* note 9.

273. Amicus, *Justice for Whom?: The Dangers of the Growing Victims' Rights Movement, Criminal Justice*, HARV. C.R.-C.L. L. REV. (Nov. 27, 2018), <https://harvardcrcl.org/justice-for-whom-the-dangers-of-the-growing-victims-rights-movement/>.

Referring specifically to criminal cases involving sexual assault, the comment points out the possible bias that victim participation might bring to the criminal process:

This formalistic, structural argument for diminished roles of victims is compelling because of the severe consequences that criminal defendants face. However, in the context of sexual assault, the correct answer becomes more elusive. Here, reality reveals a legal system that has entrenched biases against victims. With growing awareness about the stigma and bias heaped upon victims of sexual assault, it is deeply unsatisfying to allow the system keep running as it does. The victims' rights movement rejects the cold rules of the legal system and implores legislators to recognize and address the reality of what victims need.

One argument on this front is the difficulty of obtaining convictions in sexual assault prosecutions. There is growing public awareness that sex crimes are underreported, and when they are reported, they are under-prosecuted, not convicted, or under-sentenced for a variety of reasons. The victims' rights movement would tip the scales towards conviction and harsher sentences, in order to correct the seemingly unfair status quo. By allowing victims to voice their perspective and participate more fully in the process, juries and judges may feel compelled to be harsher towards defendants, thus compensating for implicit biases that would otherwise compel them to be too lenient."²⁷⁴

The post also identifies the discriminatory impact of allowing victim participation:

This solution loses much of its appeal when demographics are examined. Increased victim participation tends to play in juror biases in its own way. Victims who are affluent, well-educated, and white tend to elicit greater sympathy from jurors, and also tend to have the resources to know their rights and participate in the first place. Should victims' rights be expanded, black defendants and poorer women of color will doubly suffer in a system that already discriminates against them.²⁷⁵

274. *Id.*

275. *Id.*

The comment also questioned the therapeutic effect of allowing victim participation and the goal of restorative justice:

Another motivation is the victim's cathartic experience when given the opportunity to confront the accused. The resolution in the courtroom may be therapeutic and also empowering. But this actually presents a strong argument for developing alternatives to the criminal legal system, rather than expanding victims' rights. The courtroom and the criminal system are not designed to be productive spaces for restoration, and the project of healing should not be undertaken at the defendant's expense.

Restorative or transformative models of justice are being developed exactly because there is a need for a more positive process than the criminal justice system. And these models are being developed as alternatives to the courtroom because the courtroom precludes the emotional catharsis or reconciliation that parties crave. Victims' rights should not be expanded within the courtroom. Instead, energy should be redirected to developing more appropriate forums for victim and survivor participation, forums that do not rely on the coercion of the state and the threat of incarceration to achieve restorative outcomes. Otherwise, the victims' rights movement will threaten the court's commitment to the core principle of innocence until proven guilty.²⁷⁶

In short, the possible bias with respect to convictions; the discriminatory impact on poor people of color; and doubt on the therapeutic value for victims or the achievement of restorative justice are the main concerns included in this post.

B. In Defense of Victim Participation

These criticisms surely reflect the same concerns expressed by Japanese defense attorneys.

It is true that the legal status of victim participants is somewhat unclear and it is hard to speculate what role they are supposed to play during the criminal process since criminal process is brought by the prosecutor against the defendant, exercising the government power to punish a violator of the law, seeking criminal punishment.²⁷⁷ Nevertheless, it is the victims that have

276. *Id.*

277. Unlike European system, the Japanese victim participant system does not grant the legal

suffered injury or harm and they are entitled to be heard before the court reaches a verdict and imposes a sentence.²⁷⁸ The victims also want to know why they were made to suffer and what caused the defendant to inflict injury or harm onto them. When the defendant makes erroneous statements about the victim, the victim is then entitled to challenge these erroneous statements. They are also entitled to be heard about how the crime has impacted them. Moreover, in many cases, the defendant will express remorse and promise to live a better life. The defense will call witnesses, including family members, to testify that the defendant is a good person and that they will keep an eye on the defendant's behavior to make sure that they will not repeat the same mistakes they have made in the past. If the victim has serious doubts about the defendant's promise or the family's guarantee of supervision, the victim is entitled to question them in the courtroom. Finally, victims are entitled to be heard as to how they want the defendant to be punished, if convicted. They are not parties to the criminal process but they deserve to be allowed to participate. It is wrong to view victims as complete outsiders to the criminal process and to say that they do not have any role to play. Although the criminal process used to be viewed exclusively as a process between the prosecutor (government) and the defendant, now victims have a legitimate place in the criminal process.²⁷⁹

The concern of the risk of bias brought by the victim participation system is legitimate. The concern may be much more intensified because in Japan, victims are allowed to sit next to prosecutors, question witnesses as well as defendants, and make final statements during the criminal process. The biggest difference between the Japanese criminal process and the American criminal process is that the Japanese system does not divide the criminal process into conviction, at one stage, and sentencing, at another. In Japan, judges will hear all arguments, related to both conviction and to sentencing,

status of "party" to the victim participant. Mari Hiramaya, Higaisha no kousho sankā-wagakuni no higaisha sankā seido no ichizuke wo kangaeru [Victim Participation into Criminal Process: Reflection on the Legal Status of the Victim Participant in Japan] (2008), <https://hakuoh.jp/hogaku/pdf/h20houseikennyuukai5.pdf>, at 1. Hiramaya views that the system grants "comprehensive legal status during litigation" as a unique victim participant. *Id.* See also *id.* at 12.

278. Introduction of the victim statement of opinion is surely a landmark development. Unlike witness called to the court to testify, the victim can initiate the statement and the victim is not subjected to cross examination. Hiramaya, *supra* note 277, at 4–5. However, mere statement of opinion on the impact of the crime is not sufficient and that is the reason why victim participation system was introduced.

279. It is true that under the principle of innocence until proven guilty the victim is merely an alleged victim and that allowing victim to participate in criminal process might be viewed as violating the principle of innocence until proven guilty. However, it is the prosecutor that is exercising the power of prosecution and the victim participant merely participate in that process. The victim participation thus does not have to be viewed as violating the innocence until proven guilty. *Id.* at 12.

together in one proceeding. In addition, there are no strict rules of evidence, leaving all issues of credibility to the judges' discretion, while adhering to some admissibility threshold. As a result, judges may be more easily influenced by the testimonies of victims even during the conviction stage. These risks are believed to be much higher and more concerning in citizen judge trials because average citizens are allowed to participate at the conviction stage as well as at the sentencing stage.

It is still unknown whether victim participation leads to increased convictions of defendants by allowing emotions to control the fact-finding process. Conviction rates in the Japanese criminal system are notoriously high, both prior to and after the introduction of the victim participation system.²⁸⁰ Therefore, it is hard to tell whether the establishment of the victim participation system contributed to increased convictions compared with criminal trials without victim participation. Moreover, in Japan, most defendants confess and plead guilty. Even when the defendant pleads guilty, the court must hold a trial to convict the defendant. It is a very small number of defendants who contest the conviction. Therefore, it is even more difficult to say whether the victim participation system somehow altered the conviction rate in contested cases.

It is explicitly prohibited, however, for the court to rely on the victim's statement of opinion or final argument as evidence (a statement of opinion may be used as a factor in sentencing, but the final argument may not be used even as a factor for sentencing). There must be corroborating evidence for a conviction. Therefore, the victim's statement of opinion or final argument should not influence the conviction. Moreover, victims are only allowed to question the witness as to their credibility with respect to character and mitigating circumstances; to question the defendant, if necessary, to make final arguments. Any statements made by the victim are, therefore, unlikely to influence the conviction of the defendant. It might be, of course, much better if the criminal process is separated into a conviction process and a sentencing process, and the victim's participation is limited in the sentencing process. But victims are the ones who were harmed as a result of the crime, they are entitled to participate in the conviction process as well. Therefore, there should not be any objections to allowing the victims to participate in whole criminal process. It was a landmark change of criminal process policy for the government to declare that the criminal process is also serving the interests of justice for victims and to imply that justice for victims may

280. In 2017, for instance, 299,319 defendants are disposed by the courts and it was only 130 of them that was acquitted. Crime Whitepaper 2018, *supra* note 134, <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h2-3-1-01.jpg>. Since most of these cases are summary conviction cases without contest, trial cases were only 54,924. *Id.* <http://hakusyo1.moj.go.jp/jp/65/nfm/images/full/h2-3-2-01.jpg>. Nevertheless, still the conviction ratio was 99.7%.

outweigh the necessity for justice for the accused.²⁸¹ Of course, there is a danger that victims might venture outside the limits and ask inappropriate questions. However, in such cases, any mistakes or abuses could be corrected by judges. Therefore, in my opinion, there should be no objection to allowing victims to participate in criminal process.

Admittedly, not all victims can afford to take advantage of the opportunity to participate in the criminal process. As the Harvard anonymous post claimed, wealthy and middle-class victims are more likely to be able to afford to participate in the criminal process than economically disadvantaged victims. But the Japanese government has provided court-appointed attorneys for victims of crime, and so victims that are economically disadvantaged can rely on these court-appointed attorneys for participation. This would essentially eliminate the differences between rich or middle-class victims and poor victims. But there still is a difference between “strong” victims and “weak” victims; that is, victims who are strong enough to confront the defendant in an open courtroom, and victims who are devastated by the injury or harm, and who are unable to stand up and confront the defendant. The first group is able to participate in the criminal process, while the other is precluded from participation. Victim participant attorneys, including court-appointed attorneys, could off-set these differences to some extents because they can participate for the victim participants and victims themselves do not have to confront the defendants, but there would still remain some differences between “strong” and “weak” victims.

Nevertheless, such differences should not be counted as an argument for the rejection of victim participation. The government should adopt all kinds of measures to allow victims to confront the defendant or witnesses and to make final arguments. The rest is ultimately up to each victim to decide. That is not a choice that the government can make.

Presently, victim participation is only available for a selected range of serious crimes. These crimes are serious crimes that generally have a significant impact on victims. Although some of the victims of crime may be disappointed or frustrated as a result of not being able to participate in the criminal process, this limitation is defensible, since the introduction of victim participation in every trial would necessarily complicate the criminal process and would impose a heavy burden on the courts.²⁸² Again, the concerns with this limitation should not be counted as a legitimate reason to reject the system altogether.

281. Hirayama, *supra* note 277, at 6.

282. *Id.* at 9.

C. Changing Role of the Attorneys

The success of the victim participation system depends on the willingness of prosecutors and judges to help victims. But the future of the victim participation system also depends heavily upon the changing role of private attorneys.

Prior to the introduction of the victim participation system, the role of the attorney in the criminal justice system was solely to defend criminal offenders. Now, however, attorneys are also expected to support victims and to act as guardians of victims' interests. Attorney Tomoe Suzuki outlines step-by-step the role attorneys are now expected to play under the victim participation system, focusing on the attorney's role in relation to the victim of sexual assault.²⁸³ First, many victims of sexual assault feel a loss of sense of security and self-esteem; are often paralyzed by the assault; and may even deny that the sexual assault happened and blame themselves. Then, the attorneys could at least alleviate the trauma and loss of sense of security, by persuading that there is nothing wrong for the victims and there is nothing to feel ashamed. The sexual assault victim who reports the crime must face police officers, prosecutors and judges. The attorney could assist the victims before them. For instance, the attorney may assist the victim to file an injury/damage report or a criminal complaint and may inquire into the status of the police investigation on the victim's behalf. Since police interviews tend to focus on the facts necessary for prosecution, victims sometimes feel that they did not have the opportunity to express what they really wanted to say; that they forgot to mention an important fact; or even that their statement was not properly communicated to the police. Attorneys can alleviate these concerns by communicating with the police and by asking them to conduct a follow-up interview. Attorneys can also schedule police interviews so that they are at a convenient time and place for the victim. Attorneys may also submit evidence that the victim may be able to provide on behalf of the victims. Often times, because a doctor's medical note is recorded right after the sexual assault, it only mentions the victim's physical injuries and does not include any psychological trauma that the victim might come to feel later. If a new medical note is produced, the attorney may submit it to the police on the victim's behalf and ask them to follow-up with the victims' injuries.

It is now common practice for the police to assign a female officer for an initial police interview if the sexual assault victim is a female. Often, however, the detective who is assigned to investigate the case is not the same

283. Tomoe Suzuki, *Practice and Challenge of Lawyer's Supplementary Activities for the Victims of Sexual Crimes*, 10:2 NIHON SAFETY PROMOTION GAKKAISHI 1 (2017), [http://plaza.umin.ac.jp/~safeprom/pdf/JSSP10\(2\)-Suzuki.pdf](http://plaza.umin.ac.jp/~safeprom/pdf/JSSP10(2)-Suzuki.pdf).

as the initial officer and, in many cases, this detective is a male officer. In such cases, the attorney must ensure that the information provided by the victim during the initial interview is properly transferred to the new detective. In some cases, the police officer or prosecutor dealing with the victim may be highly insensitive, asking the victim why she failed to run, for example, or telling her that she will face the serious consequences if she files a complaint. If this is the case, the attorney must strongly protest against the insensitive treatment of the victim. In cases where the presiding police officer does not know the availability of a psychologist who can provide support to the victim, the attorney can ensure that the victim has access to all other available resources for support.

It is imperative that the victim and her attorney be informed of the defendant's identity as soon as possible, so that the victim can try to avoid seeing the defendant and can avoid further traumatization. Yet, the *Code of Criminal Procedure* used to ban the release of court documents before the first trial date²⁸⁴ and, as a result, the information provided to the victim about the defendant was quite limited. Now, however, the prosecutor's office is much more flexible and interprets the Code more liberally to allow victims to inspect and photocopy documents which contain information about the defendant even before the trial date. It is the attorney's role to explain to the victim when the information can be released and the limits of information that are available to them. Generally, the attorney will then explain to the victim what they can expect if the case moves to prosecution or non-prosecution. In many cases, defense counsel will contact the victim to try to reach a settlement, with the hopes that this settlement will stop the case from moving to prosecution. It is up to the victim to decide whether to accept or reject the settlement offer. However, attorney can give advice to the victim.

If the prosecutor decides not to prosecute, the victim is entitled to know. In many cases, the reasons provided by the prosecutor are very brief. In such cases, then the attorney can ask the prosecutor for further details on behalf of the victims and, if they ultimately disagree with the prosecutor's decision, they may help victim to file an appeal to the Review Commission.

When the prosecutor decides to file charges and the case goes to trial, the attorney could talk with the prosecutor on what kind of measures are needed to protect the victim's privacy and to facilitate the victim's participation in the criminal process. One of the first steps the attorney must take is to ensure that the victim's name is not spelled out in the writ of prosecution and that the victim's identity can be omitted during trial. Ultimately, it is up to the judge to decide, but the victim may request these measures. It is also now common practice to omit the victim's identity when

284. C. Crim. Proc. art. 47.

transcribing witness testimony. If the victim's identity appears in the trial transcripts, the attorney must make sure that it is redacted.

If the victim wishes to participate in criminal process as a victim participant, attorney would need to help victim to apply for participation. When the victim does not have sufficient financial resources to hire attorneys for trial, the attorney will need to apply for court-appointed attorneys and, if the victims wish to continue his or her service, need to make sure that the court can appoint him or her as a victim participant attorney.

There is an increasing number of victims who want to participate in criminal trials. In cases where the victims do not want to confront the defendant personally, they may ask their attorney to attend the trial on their behalf to make sure that the defendant does not make any erroneous statements or accusations, and to make sure that the judges are not influenced by these erroneous statements or accusations. In order to question the witness or defendant, the victim needs to provide their questions in advance. The victim's attorney must ensure that the questions are appropriate and that they do not overlap with the prosecutor's questions to avoid repetition. To ensure the victim's safety while testifying, the attorney should also ask for a shield to seclude the victim or the use of a video-link to protect the victim. If a shield is used, the attorney should make sure that the victim can enter and exit the courtroom without being seen by the defendant or the public, and that the shield is properly installed so that the victim can testify without facing the defendant or the public.

Attorneys may also assist victims with drafting their statement of opinion. Attorneys can, for instance help the victim choose and develop the most important points to focus on and can draft the statement together with the victim. It is important, however, that the statement be written by the victim and not by the attorney. The statement must be provided to the prosecutor in advance to ensure that it is acceptable. When the victim reads the statement in court, the attorney can also provide support.

If the defendant is convicted and sent to prison, the victim is entitled to know when the defendant is scheduled to be released. In cases where the victim has not disclosed the fact of sexual assault to his or her family, the victim may ask that the notification letter be sent to the attorney's office rather than his or her personal residence. The attorney must ensure that the victim is properly notified of the scheduled release date. Probably, the same could be said as to the notification of parole hearing date, the decision of the parole board and the date of release and the planned whereabouts of the offender after release.

Suzuki's report demonstrates that there are many things that attorneys can do for victims of crime and that they have a significant role to play in the victim participation system. The role of the attorney is no longer simply

to represent the defendant. Suzuki's report, however, did not discuss the attorney's role in assisting the victim with respect to a proposed settlement during the criminal trial; many defense lawyers try to settle their client's case even during the trial, hoping to reduce their client's sentence. Yet, the attorney can provide valuable information to the victim and can assist the victim with deciding whether or not to accept the settlement offer. Suzuki also didn't mention about the role of the attorney in assisting the victim to file a damage order application and, after conviction, to complete all the steps necessary to convince the judge to issue a damage order. The attorney may also be required to pursue a civil suit if the defendant refuses to accept the damage order. In cases where the victim is awarded damages, but the defendant does not have sufficient financial resources to pay the victim, the attorney needs to make sure that the damage awards are adequately paid to the victim. These tasks are also very daunting for the attorney. In a different report filed by another attorney, Tomoko Murata, who participated as a victim participant attorney in a traffic accident case, pointed out that the attorney is responsible for persuading the judge to grant preferred attendance to trials, for asking the court's permission to allow families to bring in pictures of the deceased victim in the courtroom, and for responding to media requests as well.²⁸⁵

Murata's report is also very interesting because it reveals the significant changes that are made in trial practices when victims are involved. According to Murata, trial proceedings were much more civil and judges were much kinder to victims and took the time to follow up with questioning after the victims finished cross-examining the defendant. In a specific case she participated, although the judge suspended the defendant's sentence despite the victim's plea to send the defendant to prison, the judge kindly explained to the victim, in detail, why the judge decided to suspend the sentence; this is a striking difference from cases in the past where the judges simply explain the chosen sentence briefly. Murata praised the significant changes that the victim participation system brought to the criminal process; that all those in the legal profession must not now ignore the victims and treat them with dignity and respect.

Despite playing a significant role in the victim participation system, however, as Suzuki remarks, attorneys are not adequately supported in financial terms. Although the government pays for court-appointed attorneys for victim participants, anything more needs to be paid by the victim. There is a legal aids system to provide helps for crime victims by

285. Tomoko Murata, Higaisha sanko bengoshi wo keiken shite [My Experience as a Victim Participant Attorney] https://www.nichibenren.or.jp/library/ja/committee/list/data/higaishasanka_bengoshi.pdf.

referring the case to registered attorneys and paying for the court fee and attorney's fee for the plaintiffs.²⁸⁶ But the amount of funding that a victim may receive is extremely limited and the money provided must be reimbursed at a later date, in principle. Because attorneys have such an enormous task, it is vital that they receive sufficient financial support to be able to adequately protect victims' interests.

In addition, as Murata points out, victim participation does not always lead to a different outcome. As stated above, in the case in which Murata participated, the judge ultimately suspended the defendant's sentence upon conviction despite the victim's wish to send him to prison. How victims can have a greater impact in changing the outcome of the case still needs to be explored. Unless there is clear evidence to show that victim participation has an effect on the outcome of the trial, victims will naturally be disappointed and are prevented from participation because of the frustration or despair. It is therefore up to all lawyers, as well as judges, to understand the significance of victim participation and to find a way to show that victim participation actually makes a difference.

Conclusion

In the United States, the debate continues on whether victims should have the right to participate in the criminal process at the sentencing stage.²⁸⁷ Despite calls for an alternative model to the criminal justice system, one that is different from the due process model, such as the victim participation model,²⁸⁸ it appears as though there is not much support for victim participation in the criminal process in the United States. In light of the ten years' experience in Japan, however, there are many lessons that can be learned from Japan.

286. Hou-terasu, Hanzai higaisha hōritsu enjo [Legal Aids for Crime Victims], <https://www.houterasu.or.jp/higaishashien/seido/hanzaihigaienjo/index.html>. These legal aids are supported by the contribution from the Japan Federation of Bar Associations.

287. Edna Erez, *Victim Participation in Sentencing: And the Debate Goes on...*, 3:1-2 INT'L REV. OF VICTIMOLOGY 17 (1994); Ian Edwards, *Victim Participation in Sentencing: The Problem of Incoherence*, 40 HOWARD J. OF CRIMINAL JUSTICE 39 (2001).

288. Douglas Evan Beloof, *The Third Model of Criminal Process: The Victim Participation Model*, 1999 UTAH L. REV. 289.

Appendix

Timeline of expansion of victims' rights and interests in criminal process in Japan.

1999

Keijisoshoho no ichibu wo kaiseisuru horitsu [Act to Amend Parts of the Code of Criminal Procedure], Law no. 138 of 1999 (introducing the protection for "witness identity").

2000

Keijisoshouho oyobi kensatsu sshinsakaiho no ichibu wo kaiseisuru horitsu [Act to Amend Parts of Code of Criminal Procedure and Prosecution Review Commission Act], Law no. 74 of 2000 (introducing various measures to reduce the burden for victims to testify as witness, introducing the opportunity for victims to state their opinion on the impact of crime, expanding the statute of limitation for filing charges, and expanding the eligible persons to file an appeal to the Prosecution Review Commission).

Hanzai higaishato no hogo wo hakarutame no keijitetuzuki ni huzuisuru sochi nikansuru horitsu [Act concerning Ancillary Measures to Criminal Proceeding in order to Protect Rights and Interests of Victims of Crime], Law no. 75 of 2000 (Victim Protection Act) (introducing the opportunity for victims to attend trial, to inspect and copy trial records, to allow victim to ask the court to include settlement into trial records).

2004

Hanzai higaishatō kihonhō [Basic Act on Victims of Crime], Law no. 161 of 2004 (Basic Act).

2006

Hanzai higaizaisantō niyoru higaikaihuku kyuhukin no shikyu nikansuru hōritsu [Act Concerning the Payment of Damage Recovery Benefit from the Proceeds of Crime], Law no. 87 of 2006 (introducing the victim damage recovery benefit).

2007

Hanzai riyō yokinkouzatō nikakawaru shikin niyoru higaikaihukubunpaikin no shikyutō ni kansuru hōritsu [Act Concerning the Payment of Damage Recovery Distribution Benefit from Assets on Bank Accounts Used in Crime], Law no. 133 of 2007 (introducing the victim damage recovery distribution benefit).

Hanzai higaishatō no kenri rieki no hogo wo hakarutame no keijisoshōhōtō no ichibuwo kaiseisuru hōritu [Act to Amend Parts of Code of Criminal Procedure in order to Protect the Rights and Interests of Victims of Crime], Law no. 95 of 2007 (Victim Participation Act) (introducing the victim participation into criminal trial, protection of victim identity during trial, expanding the eligible persons to state opinion, amending the Victim Protection Act to introduce damage order system and expanding the scope of court records for victims to inspect and copy and allowing the assistance of attorneys for victim, including court-appointed victim participant attorneys).

2008

Victim participation started.

2010 Ten years anniversary of the start of victim participation system
