

13. It's Personal

After a six-year ordeal in the courts, Balal Gheisari, who came from northern Iran, was convicted of killing 18 year old Abdollah Hosseinzadeh by an Iranian Court and sentenced to die by hanging. He walked up to the gallows and a noose was placed upon his neck. Under a literal interpretation of a part of Sharia Law called *qisas* or retribution, the victim's family was allowed to participate in the execution by pushing the chair out from under his feet. Instead of this happening, however, the mother of the victim climbed the stairs to the gallows, slapped Balal across his face, and forgave him. Hosseinzadeh's father took the noose from his neck and effectively spared his life. Instead of hanging, he would go to jail because the victim's family opted for mercy.⁵⁷

The above scene could not happen in an American death penalty case. Victims do not have the power to commute a convict's sentence because it is the state that condemns the person to die or live according to the law. In criminal cases in general, victims do not have much say in the carrying out of a sentence. However, the American justice system does allow a fact-finder involved in sentencing (such as a judge or jury) to hear victim impact statements during the penalty phase of a trial, before sentencing even in capital cases. While the judge or jury does not have the power to deviate from the parameters of sentencing guidelines under the law, victims' statements are frequently cited in the harshness or leniency of the sentence.⁵⁸

The relationship between criminal proceedings and the voice of victims can be complicated. Some philosophers and criminal justice scholars believe the influence of victims on the court dilutes the impartiality of justice.⁵⁹ The duty of impartiality idealizes a lack of emotion in trial or sentencing. Proponents of impartiality argue that people who are convicted of similar crimes deserve similar punishments. One should not get a lighter punishment if, say, one's victim lacks connections to the community that would give rise to more victim impact statements from friends, family, and cohorts. Put another way, it seems unjust to weigh the hurt of a loner victim with no social supports in place (to help them recover after victimization) less than a victim who has friends and family to support him or her through additional victim impact statements – if anything, the loner victim may deserve a legal system that values and supports him when no one else does. Similarly, more emotion on the part of a victim may lead to a harsher sentence for one guilty party than another.

Others argue that the purpose of justice cannot wholly be impartial application of the law but should also consider the needs of victims. Victims' advocates deem the victim to be in a particularly knowledgeable position with regard to the crime committed and its intensity. They argue that an ideal of impartial application of the law may cause further harm to a victim by failing to account for the severity lived by the victim, as some victims will see more trauma and thus, the actual result of the crime imports more harm on the community and should be punished accordingly. Such victims may look to the justice system as part of their healing process, and a

⁵⁷ "Iranian killer's execution halted at last minute by victim's parents" The Guardian, April 16th, 2014.

<https://www.theguardian.com/world/2014/apr/16/iran-parents-halt-killer-execution>

⁵⁸ Dubber, Marcus. "The Victim in American Penal Law: A Systematic Overview". *Buffalo Criminal Law Review*. 2000.

⁵⁹ Paul Cassell and Edna Erez (2011), "Victim Impact Statements and Ancillary Harm: The American Perspective". *Canadian Law Review*, 15(2): 150-204

denial of their need to “feel that justice has been done in their case” may require a stronger or more lenient punishment in one case vs. another, and the victim’s rights to see the system aid in their recovery, as well, should be considered. Most immediately these advocates think that handing down a sentence the victim sees as unjust would pose the greatest risk of harm to a victim, although the needs of victims are complex. Some victims who are opposed to harsher punishments, particularly the death penalty, can endure great emotional pain knowing that a killer is going to be put to death.⁶⁰

⁶⁰ Erez, E., Kilchling, M. and Wemmers J.(eds).(2011) Therapeutic Jurisprudence and Victim. Participation in Justice: International Perspectives Carolina Academic Press.