CHAPTER-3

HUMAN RIGHTS OF VICTIMS OF CRIME IN INDIA

3.1. INTRODUCTION

“Right is a Child of Law, From Real Laws Come Real Rights.”¹

This statement of Jeremy Bentham shows the importance of laws in the process of realization of Human Rights. It leads towards the assumption that though the Human Rights can neither be created nor be amended² but for their realization some form of legal machinery is required.

In India, The Protection of Human Rights Act, 1993³ defines “Human Rights” as,

“Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants⁴ and enforceable by Courts in India.”⁵

From this definition, it can be safely inferred that human rights for victims in India can be gathered from International norms enforceable by Courts in India as well as human rights norms as guaranteed by the Constitution of India.

Taking into consideration the pathetic condition of the crime victims, ascertainment of their human rights has become the need of the day. India is a frontrunner in advancing the cause of human rights but when it comes to human rights of victims of crime, the picture appears to be very bleak with victims

³ As amended by the Protection of Human Rights (Amendment) Act, 2006- No. 43 of 2006.
⁴ Section 2 (1) (f) of The Protection of Human Rights Act, 1993 as amended by the Protection of Human Rights (Amendment) Act (Added by Act 43 of 2006);
Section 2 (1) (f) “international Covenants” means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 [and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify”]
⁵ Section 2 (1) (d) of The Protection of Human Rights Act, 1993 (No. 10 of 1994), as amended by the Protection of Human Rights (Amendment) Act, 2006-No. 43 of 2006.
being at the receiving end. Constitutional ideals reflect three internationally recognised rights towards due protection to victims of crime. Courts over the years have widened the concept of victims’ human rights through its liberal judicial interpretations. It is a welcome note that courts in India, to further the cause of victim justice, have been receptive to the international norms developing in this area. Reports of various committees and commissions not only felt the need for providing protection to victims’ human rights but have recommended measures for the betterment of the victims’ human rights.

3.2. APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS NORMS IN INDIA:

Article 51 of the Indian Constitution imposes an obligation upon the State to promote respect for International law and treaty obligations. Regarding treaty obligations, India has acceded to the International Covenant on Civil and Political Rights (ICCPR), 1966 on 10th April 1979. India has signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 on 30th July 1980 and ratified it on 9th July 1993. India has acceded to the Convention on the Rights of the Child (CRC), 1989 on 11th December 1992. India has ratified the International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965 on 3rd December 1968. India has signed the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 on 14th October 1997.

Regarding India’s status in relation to ICCPR, it was observed by the Supreme Court in D.K. Basu case that India is a signatory to ICCPR, 1966. It has a binding effect on India because of its being a ratifying State. To give effect to the provisions of ICCPR, an ordinance was promulgated that resulted into the Protection of Human Rights Act, 1993.

Of late, the reference to International Covenants being made by Indian Judiciary can frequently be found in various judgements. Though these cases primarily are related with the rights of persons in custody as suspects or accused but they

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show the judicial trend of upholding the human dignity and for the same purpose relying to international instruments on Human Rights.

Supreme Court of India has also recognized the binding legal effects of Articles 55 and 56 of the UN Charter. Article 55 of the UN Charter provides for the promotion of universal respect for human rights and fundamental freedoms. It entrusts the responsibility of ensuring this respect and its observance upon the United Nations. Article 56 of the UN Charter further entrust this responsibility upon the member States to cooperate with the UN to achieve these goals.

Judicial trend in India now shows how judiciary has consciously considered these international instruments as well as international trends regarding the protection of human rights under the mandate of Article 51 of Indian Constitution. Responding in favour of victims’ right to justice including protection, confidence building measures as well as prompt and quality investigation, Rajasthan High Court highlighted the attention being paid towards victims of crime at international level as well as the guarantees given by the Indian Constitution to secure justice to all. It was observed by the court that,

“One of the principle objects of Criminal Justice System is to vindicate the Right to justice of unfortunate victim. Noble concept of victimology is a step towards fulfilling the avowed promises made by our Constitution makers. Thus, the Judicial Administration Mechanism should be established and strengthened, where necessary, to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. International Human Rights Law requires the States to adopt effective measures for the prevention, investigation, prosecution and punishment of sexual violence to ensure its citizens the highest attainable standard of health and to provide reparations to victims of serious human rights violations.”

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8 Article 55 of the UN Charter provides that,
“The United Nations shall promote: (c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”, available at http://www.un.org/en/sections/un-charter/un-charter-full-text/

9 Article 56 of the UN Charter provides that,
“All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”, available at http://www.un.org/en/sections/un-charter/un-charter-full-text/


11 Id at para 19.
Acknowledging the plight of victims under adversarial system, the Court in Sonalal Soni’s case\(^\text{12}\) cited the observations made by the President Task Force (1982) in its report on Victims of Crime that,

“Somewhere along the way the system apparently lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and judges and defendants treating the victim with institutionalized disinterest. So far the criminal justice system is concerned for the rights of an accused, it has led to the creation of a structure in which the two principal actors were the State and the accused- -the victim stood distanced from the entire criminal justice system for some time. The system is focused upon the rights of the accused rather than rights of victim.”

The Court further referred to the principles as cherished by the United Nations in its Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985),that

“Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanism of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered- -judicial and administrative mechanism should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.”\(^\text{13}\)

3.3. IDENTIFICATION OF VICTIMS’ HUMAN RIGHTS IN INDIA

3.3.1. VICTIMS’ HUMAN RIGHTS AS REFLECTED IN HUMAN RIGHTS ACT, 1993:

The Protection of Human Rights Act, 1993 (No. 10 of 1994) not only defines ‘human rights’ but prescribes for the constitution of Human Rights Commission, Human Rights Courts or the Special Courts and Special Investigation Teams to look in to the cases of alleged violation of human rights. The Human Rights Commission may give its recommendations or may take any other action as it may deem fit for the protection of human rights.\(^\text{14}\)

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\(^{13}\) Ibid.

The Protection of Human Rights Act, 1993 (No. 10 of 1994) defines “Human Rights” as the rights that relate with life, liberty, equality and dignity of the individual as either guaranteed by the Constitution of India or the rights as embodied in the International Covenants that are enforceable in India.\(^\text{15}\)

As far as rights guaranteed by the Constitution of India are concerned, Part III of Constitution of India guarantees certain rights as fundamental rights and provides a protection mechanism for the same in case of their violation in the form of Article 32 and 226.

In case of international covenants, the Human Rights Act says that to find out rights embodied in International covenants, a reference has to be made to the International covenant on civil and political rights and the international covenant on economic, social and cultural rights as adopted by the general assembly of United Nations on 16\(^{th}\) December 1966. Adding to this list the Protection of Human Rights (Amendment) Act, 2006\(^\text{16}\) provides for insertion of any other covenant or convention that has been adopted by the General Assembly of the United Nations and has been specified by the central Government through notification.\(^\text{17}\)

The Human Rights Act provides that a victim can approach the Human Rights Commission or the Commission itself can take steps to inquire suo-motu or it can inquire on the direction or order issued by any court in case there is a

(i) Violation of Human Rights or an abetment thereof,

(ii) Or there is a negligence on part of a public servant to prevent such violation.\(^\text{18}\)

The commission can also intervene in cases of human rights violations pending before the courts if a court allows for such intervention.\(^\text{19}\)

The Human Rights Commission, after reviewing all the existing constitutional and legislative measures, if need is felt, may recommend for alternative

\(^\text{15}\) Ibid.

\(^\text{16}\) (Act No.43 of 2006).


\(^\text{18}\) Id, Section 12 (a).

\(^\text{19}\) Id, Section 12 (b).
measures for effective implementation of human rights.\textsuperscript{20} The commission may recommend for effective implementation of international instruments and treaties of human rights.\textsuperscript{21} The Human Rights Act provides for the measures that commission may take during or on completion of an inquiry as held under the Act for the protection of human rights.\textsuperscript{22}

In case of disclosure of commission of a violation of human rights by a public servant or negligence in the prevention of such violation of human rights by a public servant or an abetment for such violation of human rights by a public servant, it may give its recommendation to the concerned government or authority for

(i) Making payment of compensation to victim or his family members
(ii) Initiation of proceedings for prosecution, or
(iii) Any other appropriate action\textsuperscript{23}

The commission can approach directly the concerned High Court or the Supreme Court for issuance of any directions, order or writ as the court may deem fit.\textsuperscript{24} The commission may give its recommendation to the concerned government for grant of immediate interim relief to the victim or to his family members.\textsuperscript{25}

The Human Rights Act, 1993 provides for constitution of Special Courts so as to provide speedy trial of offences in cases of violation of human rights.\textsuperscript{26} Under the Human Rights Act, 1993 it has been left upon the discretion of the Government to constitute Special Investigation Team to investigate in to the cases of alleged violation of human rights.\textsuperscript{27}

\textbf{3.3.2. VICTIMS’ HUMAN RIGHTS AS GUARANTEED BY THE CONSTITUTION OF INDIA:}

\textsuperscript{20} Id, Section 12 (d).
\textsuperscript{21} Id, Section 12 (f).
\textsuperscript{22} Id, Section 18.
\textsuperscript{23} Id, Section 18 (a).
\textsuperscript{24} Section 18 (b).
\textsuperscript{25} Id, Section 18 (c).
\textsuperscript{26} Id, Section 30.
\textsuperscript{27} Id, Section 37.
Preamble, Fundamental Rights and Directive Principles consist of the fundamental values that form the soul of our constitution.\(^{28}\) These provisions emphasize upon respect for human dignity, justice, equality and non-discrimination.\(^{29}\) Various provisions that deal with the rights relating to life, liberty, equality and dignity of the individual can be found in Articles 14, 21, 39-A and preamble of the Indian Constitution itself.

Preamble of the Constitution of India\(^{30}\) mandates that justice in its all forms social, economic and political is the soul of Indian Constitution. It is clear from the very language of the Preamble that gives emphasis upon justice and equality. The Preamble of the Indian Constitution gives emphasis upon Justice in the widest terms. It shows that the present Constitution was adopted with an objective to secure and to advance the cause of justice, to provide equal opportunity to all and to assure human dignity of the individual.

Part III of the Constitution of India deals with Fundamental Rights. Fundamental Rights are inherent in nature which cannot be extinguished, abrogated or abridged by any constitutional or statutory provisions. As observed by the Supreme Court, these rights along with other features form the basic structure of Constitution.\(^{31}\) It was mentioned in the Report of the National Commission to Review the Working of the Constitution that,

\[1\text{ as to what are these basic features, the debate still continues. The supreme court has also held that the scope of certain fundamental rights could be adjudged by reading into them or reading them not only in the light of the Directive Principles of State policy but also international}\]


\(^{29}\) Id, Para 3.2.2 & 3.2.3, Ch-3[1] A

\(^{30}\) “We, The People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the nation; In our constituent assembly this twenty sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution.”

\(^{31}\) State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571 at para 68.
covenants or conventions which were in harmony with the Fundamental Rights.”  

Article 14\textsuperscript{33} of this part III of the Constitution of India provides for ‘Equality before law’. This Article gives emphasis upon ensuring that all persons are accorded equal protection of laws.

Article 21\textsuperscript{34} of the Constitution of India ensures protection of life and personal liberty to all. It says that no one shall be deprived of his life or personal liberty. The protection provided under this Article is available to non-citizens also.\textsuperscript{35}

Above provisions of the Constitution of India make it the main source of Human Rights Jurisprudence in India. In India, Human Rights have been recognized and given its due place through the preamble of Indian Constitution, Fundamental Rights and the Directive Principles of State. Fundamental Rights secure human rights and Directive Principles together with Preamble ensure for such an environment where the human rights can be realized.

\textbf{3.4. VICTIMS’ RIGHT TO JUSTICE IN INDIA: CONSTITUTIONAL PROVISIONS:}

To understand the victims’ position in India with regard to their Human Rights, it is must to evaluate their status as per the existing constitutional and statutory provisions, judicial pronouncements and reports and recommendations by various committees and commissions, since there is no clear cut guidelines for victims’ human rights in India.

As far as Victims’ ‘right to justice’ is concerned, a glimpse of it can be seen from the preamble of the Constitution itself wherein ‘justice’ has been taken as a soul of the Constitution. Articles 14 providing equal protection of law and article 21 providing for right to life further guarantee this right to victims. In


\textsuperscript{33} “14. Equality before law. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

\textsuperscript{34} “21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.”

case of any violation or infringement of this right, Constitution provides for remedy under its Article 32.

Article 21 as expanded by the Supreme Court of India, is the source of accused’s right to speedy justice including speedy investigation. This extended dimension of Article 21 has recognized the speedy justice (including speedy investigation) due towards victims of crimes also. The extended dimensions of Article 21 provides not only for justice but for Speedy Justice to Victims. It entitles the victim - the de facto complainant to know the result/ action taken in the case. It has been recognized by the Madurai Bench of Madras High Court that,

“Actually, the victim, the real sufferer of crime is the de facto complainant, while police is de jure complainant. Sufferers of a criminal act are also entitled to speedy justice. They are entitled to know the result/ action in the case given by them.”

Another provision that deals with securing justice to all can be seen in Part IV of the Indian Constitution that is related with Directive Principles of State Policy. Article 39-A of Part IV of the Indian Constitution provides for ‘Equal justice and free legal aid’.

It imposes an obligation upon the State to ensure that its Criminal Justice System is such that works for promoting the cause of justice and in no way creates an impediment in ensuring justice to all. It specifically states that ‘justice’ shall not be denied to anyone because of any disability.

The preamble and provisions under, part III and part IV of the Indian Constitution establish that victims also have a ‘right to justice’.

**Three components of Victims right to justice:** This right to justice can be ensured by providing victims with adequate protection, proper and timely access to justice and by fair investigation that brings out the real unvarnished truth, therefore Victims’ Right to Justice can be studied under three heads.

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37 Article 39-A speaks of ‘Justice’ in the following terms:

“The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” Inserted by the Constitution (Forty-Second Amendment) Act, 1976, S.8 (w.e.f. 3-1-1977).
3.4.1. VICTIMS’ RIGHT TO PROTECTION:

The protection of right to life or personal liberty is available to every person under Article 21 of the Indian Constitution and no person can be deprived of this right except according to the procedure established by the law. Article 21 relates with the Human Rights of every person and thus has an equal application for protection to an accused as well as the victim of a crime. To safeguard the human rights of every person is the duty of the State. It was emphasized by the Constitution Bench of Supreme Court that,

“The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim—In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”

Article 39-A directs the State to provides for such conditions that the operation of the legal system promotes justice, on a basis of equal opportunity. This article has been invoked to strengthen the victim-witness protection. It was observed by the division bench of Punjab and Haryana High Court that,

“Right of access to justice under Article 39-A and principle of fair trial mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family.”

3.4.2. VICTIMS’ RIGHT TO ACCESS TO JUSTICE:

The scope of Article 21 of the Constitution of India, as interpreted through various judicial pronouncement, is wide enough and it includes into its sphere victims’ right to fair trial. A fair trial cannot be ensured if access to justice is denied to the victim of a crime. In the case of P.Sathish Kumar v. The State of Tamil Nadu, Court, while expanding the scope of Article 21, recognized, victims’ right to access to justice as a constitutional right. Explaining the essentials of a fair trial, it was observed by the Madras High Court that,

38 State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571 at para 68.
“Prompt registration of a case by a competent police officer followed by swift investigation resulting in a quick final report are all concomitants of a fair trial.”

Part IV of the Constitution of India that deals with the Directive Principles of State Policy contains the provisions that though not enforceable by Courts in India but still are fundamental in the governance of the country as is clear from the language of its Article 37. Article 37\textsuperscript{41} of the Constitution of India provides that the provisions in this part shall be considered as fundamental by the State in the governance of the country. Article 38\textsuperscript{42} of this Part IV provides that state shall work towards ensuring protection to such social order where justice informs all institutions of national life.

These principles of State policy further gives emphasis upon the concept of justice by providing for equal justice under its Article 39A. Victims right to ‘access to justice’ has been recognized under Article 39-A of the Indian Constitution. Article 39-A of the Indian Constitution provides for ‘Equal justice and free legal aid’. Article 39-A provides that State shall ensure that access to justice is not denied to any citizen because of any disabilities.

3.4.3. VICTIMS’ RIGHT TO FAIR INVESTIGATION:
3.4.3.1. Fundamental right of a victim of a crime
There is no provision in constitution directly recognizing right to fair investigation but court over the years have gone on to interpret Art 21 as taking within its fold the right to fair investigation. Article 21 of the Constitution of India that deals with the Directive Principles of State Policy contains the provisions that though not enforceable by Courts in India but still are fundamental in the governance of the country as is clear from the language of its Article 37. Article 37\textsuperscript{41} of the Constitution of India provides that the provisions in this part shall be considered as fundamental by the State in the governance of the country. Article 38\textsuperscript{42} of this Part IV provides that state shall work towards ensuring protection to such social order where justice informs all institutions of national life.

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\item “37. Application of the Principles contained in this Part.- The provisions contained in this part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”
\item “38. State to secure a social order for the promotion of welfare of the people.- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”
\item It provides that, “39A. Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”
\end{itemize}
India deals with Right to Life and Liberty that is a fundamental right. Right to life has been interpreted by the courts in a wide manner encompassing various rights that are needed to ensure dignified life of a human being. This right as interpreted by the courts includes into its ambit, right to fair trial that further includes right to fair investigation.

Regarding the application of Article 21, it was emphasized by the Supreme Court in Subrata case that,

“The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the Human Rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers.”

In the case of Ram Padarath Singh v. The State of Bihar Patna High Court observed that the logical extension of Article 21 gives Victim a fundamental right to fair trial and fair investigation. Article 21 confers upon the accused a fundamental right to demand a fair trial from the State machinery, thereby imposing an obligation upon the State to ensure fair trial that in turn depends upon the fair investigation. Article 21 thus imposes a constitutional obligation upon the State machinery to conduct a fair investigation so as to ensure fair trial. The Court observed as,

“Article 21 of the Constitution of India, undoubtedly, vests in every accused the right to demand a fair trial. This right, which is fundamental in nature, casts a corresponding duty, on the part of the State, to ensure a fair trial. If the State is to ensure a fair trial, it must ensure a fair investigation. Logically extended, this would mean that every victim of offence has the right to demand a fair trial meaning thereby that he/she has the right to demand that the State discharges its constitutional obligation to conduct a fair investigation so that the investigation culminates into fair trial. The State has, therefore, the duty to ensure that every investigation, conducted by its chosen agency, is not motivated, reckless and that the investigating officer acts in due obedience to law. It is only when the State ensures that the investigation is fair, can it (The State) be able to say, when questioned, that the trial conducted was a fair trial. Article 21 of the Constitution of India,

44 State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571 at para 68 (ii).
therefore, does not vest in only an accused the right to demand fair trial, but it also vests an equally important right, fundamental in nature, in the victim, to demand a fair trial. Article 21 of the Constitution of India does not, thus, confer fundamental right on the accused alone, but it also confers, on the victim of an offence, the right, fundamental in nature, to demand fair trial.”  

3.4.3.2. Fair Trial is inclusive of Fair Investigation:
Hon’ble Supreme Court has given wider interpretation to Article 21 by recognizing right to fair trial including right to fair investigation as part of right to life and liberty. Explaining the essentials of a fair trial Court made it clear that,

“Prompt registration of a case by a competent police officer followed by swift investigation resulting in a quick final report are all concomitants of a fair trial. To be fair to the victim, fair to the accused and fair to the society at large are the constitutional obligations of the police. If there is any deviance, it is likely to result in failure of justice.”

It was held by the Supreme Court in the case of Babubhai v. State of Gujarat and others (2010) that the investigating officer is not meant for strengthening the prosecution version to ensure conviction in any case. His duty is not to ensure conviction or to provide with such evidence that conviction may take place. His duty is to bring out the real unvarnished truth, be it in favour of or against the accused. Court emphasized that fair investigation is also a constitutional right that is guaranteed under Article 21 of the Constitution of India. Rule of law demands that investigation should be carried out in a fair, transparent and judicious manner. It is the duty of the court to ensure that investigation is fair so as to prevent any subsequent failure of justice. Investigation agency is required to conduct investigation in a fair and unbiased manner. Where it is found that investigation was tainted and biased, it is in the interest of justice to transfer the investigation to a better agency for fresh investigation. It was observed by the Supreme Court that,

“Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency

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46 Ibid.
cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.”

Any investigation that is tainted and biased cannot legally be permitted to continue. The Supreme Court further went on to say that, “Tainted, biased investigation, the consequent prejudice and harassment to any party cannot legally be permitted to continue.”

Punjab and Haryana High Court observed in the case of Gurbax Singh Bains that ‘crux of ratio’ laid down in the Apex Court judgment in Babubhai v. State of Gujarat clearly leads towards victim’s constitutional right of ‘fair investigation’.

“The investigation, thus, has to be fair and judicious, which is the minimum requirement of rule of law. This constitutional guarantee is not only available where the tainted investigation is directed against the accused persons having an effect on him. It would equally be for the aggrieved person and a victim to allege that he is not being treated fairly by injudicious investigation to favour the accused persons. Thus, it would violate his constitutional rights. The concept of fair trial and fair investigation is not only to be considered from the point of view of liberty or the right of the accused. At the same time, the society and the victim would also suffer on account of injudicious investigation and fair trial becomes a casualty. Similarly, the person, who is accused of a serious offence, would be let off not because of lack of any evidence or material, but because of unfair and injudicious investigation.”

3.4.4. VICTIMS’ RIGHT TO CONSTITUTIONAL REMEDIES FOR VICTIMS’ RIGHT TO JUSTICE:

These rights of victims have further been protected by providing another right in the form of ‘right to Constitutional Remedies’ under Article 32 of the Constitution as well as under Article 226 of the Constitution that deals with the power of High Courts to issue certain writs.

In case of violation of any fundamental right, victim has another fundamental right to approach Supreme Court for issuance of any appropriate direction, order

49 Ibid.
50 Ibid.
or writ so as to ensure that justice is not denied to the victim. This fundamental right to approach directly the highest court of justice in the country, is embodied in Article 32 of the Constitution.54

Article 226 entrusts the same power in every High Court in the Country to issue appropriate directions, orders or writs in case of violation of fundamental rights so as to ensure victim justice.55

In India, with the help of these Constitutional mandate, judiciary has come forward not only to protect the victims and their family members from the vices of Criminal Justice System but time to time has recommended for changes in the legislative measures so as to make it much more victim friendly system. Following instances reflects the efforts of the judiciary to ensure justice to victims of crime;

3.4.4.1. Court’s Obligation To Ensure Administration Of Justice And To Prevent Undue Miscarriage Of Justice:

In the case of Major Gurjinder Singh Benipal v. State of Punjab56, it was ruled by the Punjab and Haryana High Court that it is the responsibility of the State

54 “32. Remedies for enforcement of rights conferred by this Part-
(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
(2) The Supreme Court shall have power to issue directions or orders or writs, including the writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.
(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.”

55 Article 226 of the constitution of India provides that,
“226. Power of High Courts to issue certain writs.—
(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

to ensure that rule of law prevails. In case, State fails in its duty to ensure the
rule of law and it is found that there is a violation of rule of law, then Courts are
required to play their role of ensuring justice. If such a step is not undertaken,
then the people at large would lose their confidence in the administration of
justice. In cases of biased and motivated investigation, it is for the courts to
come forward to prevent undue miscarriage of justice. Accused cannot be
permitted to go scot-free with the help of manipulative investigations. Punjab
and Haryana High Court made the observation that,

“Rule of law is supreme. Law has to prevail at any cost. The prime
responsibility to see that rule of law prevails may be that of the State
and the State machinery but the violation thereof, if ever noticed, when
some bigwigs are involved where the State may be seen faulting in
performance of its duties, the courts have to step in to ensure that the
law prevails. An over-riding duty of the courts has always been to ensure
administration of justice. This is to maintain public confidence of people
at large in the rule of law and justice and to uphold the majesty of law.
When some complaint is made of any indifferent action or lethargy
against the might of administration and where the State machinery fails
to protect citizen’s lives, liberty and property or where investigation is
conducted to help the highly placed accused persons, it would be but
natural for the Courts to step in to prevent this undue miscarriage of
justice. Doing justice is the paramount duty of the Courts and the same
cannot be abrogated, diluted or diverted by permitting manipulative
investigation to leave the accused off the hook by some crook methods.
The Courts have then to ensure that the authority of the State is not
misused in this manner to shield men of might. The Courts have to do so
to maintain the trust of the society in the rule of law and majesty of law,
otherwise justice delivery system would suffer a serious scar, rendering
the Courts almost nugatory.”

It is the duty of the judiciary to ensure fairness to all concerned in a criminal
trial. Giving respect only to the Human Rights of accused is not sufficient. There
is a basic need to consider triangulation of interest that means interest of
accused, victim and society should all be taken into consideration. Criminal
investigation should be fair and justice should not be denied to any of the
concerned party. It was observed by the Bombay High Court in the case of
Sandeep Rammilan Shukla v. The State of Maharashtra through the Secretary,
Home Department and Ors, that

“It is expressed that to keep the weal balanced must be the prime duty
of the judiciary. In interpreting and applying a penal statute, it has to be

57 Sandeep Rammilan Shukla v. The State of Maharashtra and others 2008 SCC OnLine Bom
996.
borne in mind that respect for human rights of the accused is not the only value at stake. The purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interest of every one that serious crime should be effectively investigated and prosecuted. There must be fairness on all sides. In criminal cases, this requires the Court to consider triangulation of interest i.e. the accused, the victim - his or her family and the public. Besides all this, the paramount duty and the very foundation of criminal investigation and justice delivery system is fairness in the entire process and to ensure that there is no denial of justice to any of the stated parties. Importantly, it is the fairness during investigation or trial that achieve the ends of criminal justice. Particularly, the procedural law thus needs to be examined and interpreted with the object of ensuring fairness even in the process of investigation. Whatever be the standards of legal conscience but they ultimately should be founded on law. *Conscientia legalise lege foundatur.*”

3.4.4.2. Invoking Powers Of Judicial Review To Protect Fundamental Rights:

In India, constitution of India guarantees fundamental rights of the citizens and to protect these Fundamental Rights, power of ‘judicial review’ can be exercised since this power is itself a basic feature of Constitution. Emphasizing this point the Supreme Court observed that,

“Being the protectors of civil liberties of the citizens, this court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.”

In Himanshu Singh Sabharwal vs State Of M.P. And Ors, the petitioner alleged that in the murder case of his father, where assaults were made in presence of police, public and media but it was projected as an accident, several eye-witnesses turned hostile, even three police witnesses also resiled from their statements due to the coercion and threatening, investigation was not free and fair. Though the facts alleged were opposed by the State but since there was no opposition for transfer of the case, therefore without examining the correctness

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58 Id at para 3.
59 State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571.
60 Id at para 69.
of the allegations made, the Court transferred the case from Ujjain to Nagpur, Maharashtra. It was observed by the Supreme Court that,

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz, whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted.”

In the case of George Muthoot v. State of Kerala, writ petitioner was the father of deceased Paul who was killed in a homicidal attack. This writ petition was filed under Article 226 of the Constitution of India to seek a direction for transfer of investigation to CBI. There were two issues to deal with in this writ petition. First one is in relation to victims of crimes. It relates with the role that victim of heinous crime has during investigation and trial. Second issue pertains with the role of courts in respect of investigation. In this case, it was found by jurisdictional magistrate that there are some discrepancies and suspicion about investigation. Further investigation is required to unearth various missing links. Therefore the magistrate directed police to complete investigation properly. This order was challenged on the ground that magistrate has limited jurisdiction over investigation and returning of final report is an illegality. With regard to this second issue, Kerala High Court made the observation that the law is well settled on this aspect that Magistrate cannot sift the materials collected during the investigation, therefore without going into the correctness of the findings of the Magistrate, we allow the writ petition of the State and quash the impugned order.

But with regard to the first issue, finding many infirmities in the investigation, the division bench of Kerala High Court directed the CBI to conduct investigation in the case. It was held by the court that,

“As such, we hold that the victim has every right to question the correctness of the investigation, especially in heinous crimes, indicating

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62 Id at para 5.  
64 Id at para 62.
not imaginary but definite suspicion about the veracity of the investigation."65

3.4.4.3. Directions To Transfer The Investigation:

Writ petitions seeking transfer of investigation are quite common in India.66 Deciding upon such writ petition it was held by the court that to protect the fundamental rights of citizens, superior courts can issue writs, directions and orders in exercise of their power of ‘judicial review’ but this power should be exercised very sparingly as observed by the Constitution Bench in the case of State of West Bengal and Ors. v. The Committee for Protection of Democratic Rights, West Bengal and Ors.

“This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights."67

Referring to various decided cases, following principle was deduced by the Bombay High Court that in cases where it is found that higher level authorities are also involved in crime and where justice warrants so, the case may be transferred for another investigating agency even if the charge-sheet has already been filed by the earlier investigating agency. Court noted its observation as,

“(g) In an appropriate case, where high officials are involved in crime, when the court feels that the police investigation is not in the proper direction in order to do complete justice, investigation can be transferred to CBI even after the charge-sheet is submitted.”68

In Mohammed Anis v. Union of India69, the Supreme Court ordered for transfer of the investigation to an independent agency to ensure fair investigation and to maintain the confidence of the people in the justice delivery system. Taking note of the fact that the investigating agency is itself privy to the dispute, Court made the observation that,

65 Id at para 33.
67 State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571 at para 70.
68 V. P. Patil v. The State of Maharashtra through the Chief Secretary, General Administration Department Mantralaya and ors. 2011 SCC OnLine Bom 913 at para 18 (g).
“Fair and impartial investigation by an independent agency, not involved in the controversy, is the demand of public interest. If the investigation is by an agency which is allegedly privy to the dispute, the credibility of the investigation will be doubted and that will be contrary to public interest as well as the interest of justice.”

Discussing the importance of fair trial in Criminal Justice System, Supreme Court in ‘Vikas Kumar Roorkewal v. State of Uttarakhand and Others’ has emphasized that a case can be transferred in the interest of fair and impartial justice if there is a reasonable apprehension in the mind of the petitioner that trial is not free and fair. The Court while transferring the concerned case i.e., State Vs. Akash Tyagi & Others bearing ST No. 6 of 2007 pending in the Court of learned First Fast Track Court / A.D.J., Haridwar, Uttarakhand arising out of Crime No. 182/2006 and FIR No.169 of 2006 to competent Court of jurisdiction at Delhi, made reference to its earlier judgment in ‘K. Anbazhagan vs. Superintendent of Police’ wherein observing that fair trial is sine qua non of Article 21 of the Constitution, it was held by Supreme Court that,

"Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner."

It was found by the division bench of Kerala High Court in the case of George Muthoot v. State of Kerala that investigation in the case was not impartial and was full of infirmities, court directed for transfer of investigation of the case to CBI. Holding that victim is entitled to question the veracity of the investigation, it was further added by the Court in its judgment that,

“According to us, we feel that to in order to assure the victims of heinous crime an assurance of fair, proper, impartial and complete investigation and to restore faith, it is just and proper to direct the C.B.I. to conduct investigation particularly when gross allegations are made against

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70 Id at para 1.
jurisdictional investigating agency justifiable and as such interest of justice would be better served if C.B.I. investigates the case.”

3.4.4.4. Court’s Direction For De Novo Investigation:

To prevent miscarriage of justice and to ensure the ends of justice, court can give directions for de novo investigation. It was held by the Apex Court in the case of Babubhai v. State of Gujarat and others, that in case an investigation suffers from irregularities and is tainted and biased, if it is found to be conducted in mala fide exercise of powers by police and where it may cause serious prejudice and harassment to any party, Court in the interest of justice and to prevent any miscarriage of justice should direct for de novo investigation. Court has made it clear that if any charge-sheet is filed or any order is issued by the investigating agency in pursuance of such vitiated investigation then the same is also liable to be quashed.

3.5. VICTIMS’ RIGHT TO JUSTICE IN INDIA:

STATUTORY PROVISIONS:

3.5.1. VICTIMS’ RIGHT TO PROTECTION:

There is no statutory measure that in clear terms prescribes any ‘right to protection’ for victims of crime. Still there are certain legislative enactments that indicate towards victims’ right to protection. Code of Criminal Procedure, 1973, consists of some provisions that prescribe for police role in case of victim-witness intimidation by the offender. On the basis of a complaint by the victim-witness, certain actions such as arrest to prevent victim-witness intimidation can be taken by the police. In case of offenders being released on bail, State can apply for imposition of certain condition to prevent victim-witness intimidation. This shows that victims’ right to protection has been tried to incorporate into legislation by imposing certain corresponding obligation upon the state agency.

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74 Id at para 59.
Under the Indian Penal Code there are some provisions that try to deter the
offenders from threatening victim-witness or from dissuading victim-witness
from truthful deposition in a case. These provisions can be enumerated as;
Section 503 Indian Penal Code deals with the offence of Criminal Intimidation.
According to this Section it is an offence of Criminal Intimidation if any person
threatens another person that any injury may be caused either to him or to any
other person in whom the person threatened is interested so as to compel the
person threatened to, either to do an act which he is not legally bound to perform
or to desist himself from performing any act which otherwise he is legally
entitled to do. This threat may be in relation to one’s person, property or
reputation. Infliction of injury is not necessary for the application of this
Section. It is sufficient that there are chances that the communicated threat can
be executed either by the offender himself or on his behalf by a stranger. 78
Section 506 Indian Penal Code 79 prescribes punishment for criminal
intimidation as imprisonment of either description for a term which may extend
to two years or with fine, or with both. In certain aggravated cases, depending
upon the nature of offence for which the offender threatened another person, the
punishment of imprisonment of either description, prescribed for criminal
intimidation, may extend up to seven years, or with fine or with both. 80
Section 507 Indian Penal Code prescribes that, in case a person threatens
another by an anonymous communication, then he shall be punished with the
imprisonment of either description for a term which may extend to two years,
in addition to the punishment prescribed for criminal intimidation. 81
If the threat or inducement is for the purpose of causing the threatened person
to give false evidence, then Section 195 A prescribes that the offender shall be
punished with imprisonment of either description for a term which may extend
to seven years, or with fine, or with both. 82

3.5.2. VICTIMS’ RIGHT TO ACCESS TO JUSTICE:

78 Section 503 IPC 1860, ‘Criminal Intimidation’.
79 Criminal intimidation is ‘Cognizable’ in Andhra Pradesh- GOM No. 732, dated 15-12-1991
80 Section 506 IPC 1860, ‘Punishment for Criminal Intimidation’.
81 Section 507 IPC 1860, ‘Criminal Intimidation by an anonymous communication’.
82 Section 195 A of IPC 1860, ‘Threatening or Inducing any person to give false evidence’,
Section 154 of the Code of Criminal Procedure, 1973, ensures victims’ right to justice by providing for mandatory registration of First Information Report in case of a cognizable offence. In case, such information is given by the woman-victim of some particular offences, then the proviso of Section 154 of the Code of Criminal Procedure, 1973 says that it shall be recorded by a woman police officer.

To ensure victims’ smooth access to justice, newly added proviso says that in cases where victim has become temporarily or permanently, mentally or physically disabled then such information shall be recorded at a place convenient to victim and in the presence of an interpreter and such recording shall be video graphed, and the police officer shall get the victims’ statement recorded by judicial magistrate at the earliest.

Section 154 (2) of the Code of Criminal Procedure make the victim entitle to get a copy of the recorded information free of cost. To provide a remedy, in case of violation of these provisions, it has been provided that aggrieved person may approach superintendent of police to get his case investigated.

Rejecting the contention that Section 154 of the Code is in contravention of Article 21 or has an adverse effect on the rights of the accused, it was observed by the Supreme Court that mandatory registration of FIR under Section 154 of the Code is not in contravention of Article 21. Supreme Court made the observation that,

“It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society.

84 Proviso to Section 154 (1) of the Code of Criminal Procedure, 1973, inserted by the Criminal Law (Amendment) Act, 2013 w.e.f., 03-02-2013.
85 Proviso (a) to Section 154 (1) of the Code of Criminal Procedure, 1973, inserted by the Criminal Law (Amendment) Act, 2013 w.e.f., 03-02-2013.
86 Proviso (b) to Section 154 (1) of the Code of Criminal Procedure, 1973, inserted by the Criminal Law (Amendment) Act, 2013 w.e.f., 03-02-2013.
87 Proviso (c) to Section 154 (1) of the Code of Criminal Procedure, 1973, inserted by the Criminal Law (Amendment) Act, 2013 w.e.f., 03-02-2013.
Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.

3.5.3. VICTIMS’ RIGHT TO FAIR INVESTIGATION:

Chapter XII of the Code of Criminal Procedure deals with the investigation by the police. In line with the Constitutional ideal of ensuring fair trial, it provides procedure to ensure fair investigation in the case. Constitutional spirit (Article 21) as well as statutory provisions [Section 173 (1)] provide for speedy conclusion of investigation. Not only the accused but the victim of crime is also entitled to avail the benefit of this ‘right to speedy investigation’. It was observed by the Rajasthan High Court that,

“*It is the mandate of the Code of Criminal Procedure under Section 173 (1) that every investigation under chapter XII shall be completed without unnecessary delay. Similar is the spirit of the Constitution of India as envisaged in its various provisions and obviously so because it is right of every citizen to have a case, particularly a criminal case, to be investigated; inquired and tried at the earliest. As it is the right of the accused to have a criminal case decided expeditiously, similar is the right of a victim/complainant to have the investigation done, on the report lodged by him, immediately and without any delay.*”

Information to the informant about the result of the investigation: It has been provided under Section 157 (2) of the Code of Criminal Procedure that in case police officer finds that there is no sufficient ground for entering into an investigation, police shall not investigate the case but it is required to notify to the informant that he will not investigate the case or cause it to be investigated. In case the officer proceeds further and enters into an investigation, Section 173 (2) (ii) requires that he should inform the informant about the result of the investigation. It was held in the case of Smt. Rama Sharma that informant sets the Criminal Justice Process into motion for punishment of the offender, thus has a locus standi to file revision in case the accused is discharged.

Section 173 (2) (ii) provides that after completion of investigation, the officer-in-charge shall communicate to the informant about any action taken by him in the matter reported by the informant. This Section 173 (2) (ii) imposes an

90 Ibid.
obligation upon police to provide information regarding outcome of the investigation but only to the informant in the case. This recognizes informant’s right to get information but does not recognize any such right for the sufferer of the crime.

In Bhagwant Singh v. Commissioner of Police and Another it was held that in case magistrate takes a decision for not taking cognizance, he must give notice to the informant and provide him an opportunity of being heard. While recognizing the right of the informant, Court also paid attention towards the concerns of Victims and held as under,

“The injured person or any relative of the deceased, though not entitled to notice from the magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the magistrate and if he wants to make his submissions in regard to the report, the magistrate is bound to hear him.”

Court further made its observation that though not bound by law to give any notice to the victim or to his family members, still it is the discretion of the magistrate to give such notice if he thinks it fit. Still not giving victim any such notice will not invalidate any order made by the magistrate.

3.6. VICTIMS’ RIGHT TO JUSTICE IN INDIA: JUDICIAL RECOGNITION:

It is State’s duty to create such conditions that are conducive to enjoy right to life with dignity and not only as an animal existence. Safe, secure and protective environment are the conditions precedent to enjoy the rights under Part III of the Indian Constitution. Not providing such conducive environment is a clear violation of constitutional mandate. This means that if a person suffers some grievous injury or loses his life without any fault on his own part, it would be considered as violation of his constitutional rights.

93 Bhagwant Singh v. Commissioner of police and Another, (1985) 2 SCC 537.
94 Id at para 4.
95 Id at para 5.
96 Ibid.
Delhi High Court in BMW Hit and Run case,\(^98\) referred to para 13 of the Apex Court judgment in State of Maharashtra v. Dr. Praful B. Desai,\(^99\) wherein it was simultaneously observed that first and foremost duty of the court is to ensure justice and victims are also entitled to certain rights. While delivering justice in the case, interests of victim should also be taken into consideration.

“One needs to set out the approach which a court must adopt in deciding such questions. It must be remembered that the first duty of the court is to do justice. As has been held by this Court in the case of Nageshwar Shri Krishna Ghobe v. State of Maharashtra courts must endeavour to find the truth. It has been held that there would be failure of justice not only by an unjust conviction but also by acquittal of the guilty for unjustified failure to produce available evidence. Of course the rights of the accused have to be kept in mind and safeguarded, but they should not be overemphasized to the extent of forgetting that the victims also have rights.”\(^100\)

It was observed by the Kerala High Court in the case of George Muthoot v. State of Kerala\(^101\) that to ensure fairness in criminal proceedings, protection of interests of victim is as much desired as the protection of interests of accused, the Kerala High Court emphasized upon these comments made by the Malimath Committee that,

“If criminal proceedings have to be fair for both the parties, i.e., victim and the accused, it is not sufficient only to protect innocents from punishment or punishing the culprits, the aim and object must be basically to give justice to the victim of the crime also.”\(^102\)

3.6.1. **VICTIMS’ RIGHT TO PROTECTION:**

**Need for Witness Protection:** In Zahira Habibullah v. State\(^103\) the Hon’ble Apex Court observing that truthful testimonies of witnesses are needed to serve the cause of justice, emphasized upon the need of witness protection. Para 2 of this case reads as under,

“The present appeals have several unusual features and some of them pose very serious questions of far-reaching consequences. The case is

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\(^98\) Sanjeev Nanda v. The State 2009 SCC OnLine Del 2015 (Commonly known as BMW Hit and Run case).


\(^100\) Id at para 13.


\(^102\) Id at para 29.

\(^103\) AIR 2004 SC 3114.
commonly to be known as "Best Bakery Case". One of the appeals is by Zahira who claims to be an eyewitness to macabre killings allegedly as a result of communal frenzy. She made statements and filed affidavits after completion of trial and judgment by the trial court, alleging that during trial she was forced to depose falsely and turn hostile on account of threats and coercion. That raises an important issue regarding witness protection besides the quality and credibility of the evidence before court."  

Delhi High Court in BMW Hit and Run case, referred to the observations made by Apex Court in the case of Javed Alam v. State of Chhattisgarh and Anr, where taking note of the fact that witness intimidation is creating an obstruction in the way of justice delivery to all concerned, it was emphasized by the Hon’ble Apex Court that to ensure justice, it is must to put in place some witness protection mechanism. Hon’ble Apex Court observed as under,

“8. It is a classic case of deficiency in the criminal justice system to protect the witnesses from being threatened by accused. As appears from the record, the witnesses are the classmates of the deceased who were there with her. As appeared from the evidence of witnesses they backed out from what was stated during investigation. The statement made before the Police during investigation is no evidence. Unfortunately, in cases involving influential people the common experience is that witnesses do not come forward because of fear and pressure.... The plight of the girls who were under pressure depicts the tremendous need for witness protection in our country if criminal justice administration has to be a reality....”

Necessity of victim-witness protection to ensure justice in the case and to restore a sense of human dignity in victims of crime: In the case of Mosaref Hossain Mondal Vs. The State of West Bengal & Ors, this Court made reference to the case of National Human Rights Commission v. State of Gujarat and Others, where Supreme Court emphasized upon the need of witness protection to ensure effective administration of justice. It was held by the Court that,

“It is an established fact that witnesses form the key ingredient in a criminal trial and it is the testimonies of these very witnesses, which

104 Id at para 2.
established the guilt of the accused. It is, therefore, imperative that for justice to be done, the protection of witnesses and victims becomes essential, as it is the reliance on their testimony and complaints that the actual perpetrators of heinous crimes during the communal violence can be brought to book.”

Supreme Court taking note of the plight of victims of crime, observed that in most of the cases witnesses are the victims themselves. In the present Criminal Justice System, they get a very poor attention towards their concerns. They don’t get the needed protection. This basic need of protection is required to be taken into consideration to instill into them a sense of human dignity. Court went on to note that,

“........In most of the cases, witnesses are the victims of the crime. Most vulnerable amongst them are women and children. Under the existing system they are mere pawns in a crime trial and there is very little concern for protecting their real interests. The protection is necessary so that there is no miscarriage of justice; but protection is also necessary to restore in them, a sense of human dignity.”

In case of sexual offences, especially in case of child sex abuse, witness protection is much more needed. Court referred to the 154th Report of the Law Commission of India (1996) wherein it was recommended that, “Witnesses should be protected from the loathe of the accused in any eventuality.”

Need for legislative measures: Calcutta High Court in Mosaref Hossain Mondal Vs. The State of West Bengal & Ors\textsuperscript{113} referred to the Zahira Habibulla H. Sheikh & Ors. v. State of Gujarat & Ors.\textsuperscript{114} case for placing emphasis upon the need of legislative measures for victim-witness protection wherein it was observed by the Supreme Court that,

“Legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair as noted above to the needs of the society. On the contrary, the efforts should be to ensure fair

\textsuperscript{109} Id at para 7.
\textsuperscript{110} Id at para 18.
\textsuperscript{111} Mosaref Hossain Mondal v. State of West Bengal & Ors., 2012 SCC OnLine Cal 4076.
\textsuperscript{112} Ibid.
\textsuperscript{113} Ibid.
trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interests of the individual accused.”

In the light of various cases such as Best Bakery case and Jessica Lal murder case, it was observed by the Delhi High Court in BMW Hit and Run case,\textsuperscript{115} that witness protection is the need of the hour. People will lose their faith in Criminal Justice System if they are not given the timely protection they need in hour of distress. It is State’s obligation to make such laws that protect witnesses of a crime. Court observed as,

“It is no time for slumber. It is high time that we wake up and act for the protection of the citizens who appear before the courts to testify so as to render a helping hand in the dispensation of justice. Best Bakery Case, Jessica Lal murder case and many other like cases, if repeated, would shatter the strength and credibility of our criminal justice system. Every country is expected to make laws to meet the situations prevalent in that country. However, there is nothing wrong, rather it is wise, in imbibing the spirit shown by other countries in the matter of witness protection. No nation can afford to expose its righteous and morally elated citizens to the peril of being haunted or harassed by anti-social elements, for the simple reason that they testified the truth in a court of law. If the State continues to turn a blind eye to the ground realities, the plight of an honest witness will be pathetic and calamitous.”\textsuperscript{116}

Court emphasized upon the need of providing a victim-witness protection law. It is for the State to take suitable measure in this regard at the earliest. If such a step is undertaken, witnesses will not feel threatened. Court observed that,

“Therefore, the State must give serious thought to protect the interest of witnesses and to introduce suitable legislation in this regard at the earliest so that the witnesses are not discouraged to come forward to give evidence for fear of harassment, humiliation and danger to their lives.”\textsuperscript{117}

**Right to protection: needed for pursuit of truth:**

Victims’ right to protection was recognized in the case of Suo Moto v. State of Rajasthan\textsuperscript{118} that dealt with the issue of violence against women. Court made an observation that victim protection law need to be dealt with on a priority basis

\textsuperscript{115}Sanjeev Nanda v. The State 2009 SCC OnLine Del 2015 (Commonly known as BMW Hit and Run case).

\textsuperscript{116}Id at para 138.

\textsuperscript{117}Ibid.

thus facilitating the factual truth in cases of violence against women. It was observed by the Rajasthan High Court that,

"Thus, the machinery of Criminal Justice System is also required to put into gear when an offence is registered of sexual violence and then investigated. This includes protection to the victims, restoration of confidence building measures and the prompt and quality investigation. Thus, in pursuit of truth, particularly in offence pertaining to the sexual violence, there is urgent need to focus on victim protection law."\(^\text{119}\)

**Directions for Protection:**

Kolkata High Court, in the case of Nepal Krishna Roy, wherein it was submitted by the private respondent, that police had falsely implicated the innocent persons and were trying to save the actual culprit thus there was an apprehension of threat to their life, directed the Superintendent of Police, to ensure the safety of Private respondents and that no physical harm should be caused either to her or to her family members.\(^\text{120}\)

Transferring the case titled as State v. Akash Tyagi & Ors. (bearing ST NO.6 of 2007) from the fast track court ADJ Haridwar to competent court of jurisdiction at Delhi, SC in Vikas Kumar,s case\(^\text{121}\) directed all concerned agencies to provide protection to witnesses so as to ensure fair trial. It was held by the court that,

"18. The investigating agency, the prosecution agency, the State of Delhi as well as State of Uttarakhand and the learned Judge to whom the trial of the case may be made over, are directed to take appropriate steps for protecting the witnesses and to ensure that the trial concludes as early as possible and without any avoidable delay."

Finding it appropriate, Calcutta High Court in the case of Mosaref Hossain Mondal Vs.The State of West Bengal & Ors.\(^\text{122}\) (2009) issued directions to ensure adequate protection to the petitioner, minor victim and their relatives, being the vital witnesses in the Criminal trial. The Court issued the following directions to ensure protection to the victim and witnesses in the case;

"I, therefore, dispose of the instant writ petition with the following directions:

(i) Respondent Nos. 2 and 6 shall take all necessary steps to ensure the safety and security of the petitioner, the minor victim and

\(^\text{119}\) Id at 21.
other witnesses in the instant case from any act of violence, coercion, undue influence and/or criminal intimidation from the accused persons.

(ii) The respondent Nos. 2 and 4 shall forthwith act on the representation made by the petitioner on 13-1-2012 being Annexure P-5 to the writ petition, by drawing up a First Information Report in respect thereof against the accused persons under Section 195A. I.P.C. and/or take such other steps available in law against the accused persons for misusing their liberty while on bail.

(iii) In the event further complaints are made against the accused persons for threatening and/or intimidating the victim girl or other witnesses, the respondent Nos. 2 and 4 having due regard to gravity of such accusation, provide police picket or such other measures as they may deem fit and proper to ensure the safety and security of the witnesses.

(iv) Police escort is to be provided to the victim girl and other witnesses from their residence to the Court house at the time when they go to the Court for deposing in the criminal case.

(v) The respondent Nos. 2 and 4 shall take all other steps which is necessary in order to ensure a free and conducive atmosphere so that the victim girl and other witnesses can depose with confidence in the forthcoming trial."123

3.6.2. VICTIMS’ RIGHT TO ACCESS TO JUSTICE:

Emphasizing the status of victim in Sonalal soni v. State of Chhatisgarh case124, court referred to the victim friendly steps being taken by the legislature and judiciary in that direction,

“It is true that in the Criminal Justice System of India the complainant, victims of the Crime and relatives of the victims have no free hand at the stage of investigation or at the stage of trial, but in the recent times, the Indian courts as well as the Indian legislatures have tried to make the procedural rules of criminal justice system more victims friendly in relation to crimes against women and weaker sections of society."125

It specifically referred that delay in filing of complaints in rape cases will not leave an adverse effect upon the complainant’s credibility.126 Mandatory registration of FIR in case of cognizable offence shows the recognition of victims’ right to access to justice. Victims shall not be denied to access the

123 Ibid.
125 Id at para 21.
126 Ibid.
justice by non-registration of his complaint at the very first step of criminal justice process.\textsuperscript{127}

Lalita Kumari’s case is a milestone in recognizing victims’ right to access to justice, by holding that victim cannot be denied justice by turning them away at the doorstep of criminal justice system. Fair trial can only be ensured by letting the case to be registered. It is victims’ right to get their case registered. Victims’ right to access to justice was recognized by the Court in this case, wherein certain directions were issued for the mandatory registration of FIR in case of cognizable offence.

“These are:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(vii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

3.6.3. VICTIMS’ RIGHT TO FAIR INVESTIGATION:

3.6.3.1. Right to Fair and Speedy Trial:
Right to fair trial is not a right that is available only to an accused in a case. Victim, his family members and the society at large all are equally entitled to claim this right to be fairly dealt with in a criminal trial. Fair trial is a trial that leaves no space for being biased or partial either in favour of or against the accused. Treating right to fair and speedy trial as an important part of right to life and liberty Supreme Court in the case of Zahira Habibulla H. Sheikh v. State of Gujarat (2004) observed as,

“It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson’s eyes to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

128 Id at 120.
130 Id at para 36.
Right to speedy trial as implicit under Article 21 of Indian Constitution is beneficial for both to the accused and to the victim of a crime.\textsuperscript{131}

It was observed by the Apex Court in the case of Kartar Singh v. State of Punjab\textsuperscript{132} that this right to speedy trial is not confined with any particular stage of Criminal Justice Process but it continues through all stages of Criminal Justice Process so as to ensure justice to all concerned.

**Victims’ Right to Speedy Trial:**

Recognizing that not only the accused but the victim of a crime is also entitled to a speedy disposal of the case, Delhi High Court in BMW Hit and Run case,\textsuperscript{133} observed as under,

"It is the right of both, the accused and the victims that the trial should culminate as expeditiously as possible."\textsuperscript{134}

**Speedy Trial includes Speedy Investigations:** In the case of Pankaj Kumar v. State of Maharashtra and Ors,\textsuperscript{135} it was concluded by the Hon’ble Supreme Court that right to speedy trial is an inalienable right under Article 21 of the Constitution and it covers into its ambit right to speedy police investigations. It was observed by the apex court that,

"It is, therefore, well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases."\textsuperscript{136}

\textbf{3.6.3.2. Right to Fair Investigation - A Fundamental Right:}

Fair trial as guaranteed under Article 21 of Indian Constitution can be ensured only by ensuring a fair investigation. There can be no fair trial without a fair investigation in the case. To be fair an investigation should be conducted in an objective, fair and unbiased manner without any ulterior motive.\textsuperscript{137}

\begin{itemize}
  \item \textsuperscript{131} Suo Moto v. State of Rajasthan 2005 SCC OnLine Raj 658.
  \item \textsuperscript{132} Kartar Singh v. State of Punjab (1994) 3 SCC 569 at para 86.
  \item \textsuperscript{133} Sanjeev Nanda v. The State 2009 SCC OnLine Del 2015 (Commonly known as BMW Hit and Run case).
  \item \textsuperscript{134} Id at para 110.
  \item \textsuperscript{135} (2008) 16 SCC 117.
  \item \textsuperscript{136} Id at para 22.
  \item \textsuperscript{137} Ram Padarath Singh v. The State of Bihar 2014 SCC OnLine Pat 6564 at para 1.
\end{itemize}
Kolkata High Court in re Mst, Rijiya Bibi case\(^{138}\) found that not only to ensure a fair and impartial investigation and to secure ends of justice but to maintain public confidence into Criminal Justice Process, it is necessary to issue such directions upon CID. Issuing directions upon CID, Court made the remarks that,

“Fair investigation is a fundamental right of every individual. Criminal Justice System is based on bulwark of a fair and impartial investigation at the behest of the investigating agency. In the event, there is an infraction of such basic duty it results in complete eclipse of Rule of law and a denial of access to justice and equality before the law to a victim and his family members in the matter of seeking justice and redressal against crime in society and gross infraction of Rule of law by failing to ensure an effective and impartial investigation.”\(^{139}\)

3.6.3.3. Essentials of a Fair Investigation:

Article 21 guarantees a right to fair trial that is further dependent upon a fair investigation. An investigation that is thorough and impartial can be termed as fair investigation. In a fair investigation, there should not be any bias towards anyone. There should be an objective investigation into all aspects of accusation and all facts that come before the investigating authority must be contemporaneously recorded. Such facts may have a bearing on the outcome of the case therefore there should not be any manipulation in recording of these facts. Manipulation during the course of investigation is contrary to the concept of fair investigation. Emphasizing upon the determinants of a fair investigation, Patna High Court made the observation that,

“Article 21 of the Constitution of India guarantees fair trial. A fair trial is impossible if there is no fair investigation. In order to be a fair investigation, investigation must be conducted thoroughly, without bias or prejudice, without any ulterior motive and every fact, surfacing during the course of investigation, which may have a bearing on the outcome of the investigation and, eventually, on the trial, must be recorded contemporaneously by the investigating officer at the time of investigation. A manipulated investigation or an investigation, which is motivated, cannot lead to a fair trial. Necessary, therefore, it is that the Courts are vigilant, for, it is as much the duty of the Court commencing from the level of the judicial Magistrate to ensure that an investigation conducted is proper and fair. A fair investigation would include a complete investigation. A complete investigation would mean an

\(^{138}\) In Re Mst. Rijiya Bibi case W.P. 10061 (W) of 2008 decided on 19.03.2014 available at judis.nic.in/Judis_Kolkata/content.asp accessed on 11.09.2016 at 20:02:53.

\(^{139}\) Ibid.
Considering the ‘ratio of law’ laid down by the Apex Court in Babubhai case\textsuperscript{141}, Punjab and Haryana High Court in the case of Gurbax Singh observed that fair investigation is the Constitutional right of a citizen. It is the duty of the police to investigate the matter fairly. Police is not meant to decide the case during the investigation of an offence. It is to be left for the courts to decide. Punjab and Haryana High Court observed that,

“The fair investigation and trial are integral part of administration of criminal justice. The investigation is not mere a formality, but at the same time, it should appear to have been conducted in a fair manner, which is a part of constitutional right of a citizen. The police cannot be assigned the role of a Court to decide the intricate questions of commission of a particular offence.”\textsuperscript{142}

3.7. VICTIMS’ RIGHT TO JUSTICE: REPORTS AND RECOMMENDATIONS OF COMMITTEES AND COMMISSIONS:

3.7.1. VICTIMS’ RIGHT TO PROTECTION:

Regarding the Constitutional mandate of ensuring right to life and liberty, Malimath Committed observed that,

“Protection of life and liberty have been given a pre-eminent position in our Constitution by enacting Article 21 as a fundamental right and imposing a duty on the State to protect life and personal liberty of every citizen. Any deprivation or breach of this valuable right is not permissible unless the procedure prescribed by law for that purpose is just, fair and reasonable.”\textsuperscript{143}

Malimath Committee recognized the fact that Victims need protection from intimidation and harassment by offenders. These forms of secondary victimization are the main hurdles in their way of getting justice since these dissuade the victims from pursuing their case. Committee noted that,

“Victims have a right to testify as prosecution witness. However, victims often fall prey to intimidation and harassment by offenders which tend to dissuade them from testifying freely and truthfully. Though it is the duty of the State to prevent such things, the situation according to available evidence is disturbing. There is no victim protection law as

such and police is not in a position to protect every victim. Such conduct, of course, is prohibited under the IPC (Section 504 IPC).”

These observations of Malimath Committee reflect the need of crime victim to be provided with a right to protection.

3.7.2. VICTIMS’ RIGHT TO ACCESS TO JUSTICE:

3.7.2.1. Malimath Committee Report:

Malimath Committee, after considering the issue of non-registration of complaints by police recommended for action against erring police officers. It was observed by the Committee that,

“-According to the Section 154 of the Code of Criminal Procedure, the office in charge of a police station is mandated to register every information oral or written relating to the commission of a cognizable offence.”

It was recommended by the Malimath Committee that prompt registration of complaints should be made mandatory. In case of failure to register the complaint promptly, there should be provision for taking appropriate action against the erring police officer. This would bring the required change in the approach of political executive as well as that of the senior officers that such complaints are not to be taken lightly. Committee recommended that,

“All complaints should be registered promptly, failing which appropriate action should be taken. This would necessitate change in the mind-set of the political executive and that of senior officers.”

Observing the prevalent tendencies of police to avoid registration of complaints or to change the nature of offence, Committee made the following recommendations:

(i) Invoking of appropriate sections of law:

Disapproving the tendency of police of not invoking the appropriate Sections of law, Malimath Committee made the recommendation that “appropriate Sections

145 Id Para 7.19.1 at page 106.
of law should be invoked in each case unmindful of the gravity of offences involved.”

(ii) Information should be reduced in writing by the SHO without any loss of time:

With an objective of prompt initiation of investigation that is often delayed due to the non-registration of complaints or delayed registration of complaints, it was recommended by the Malimath Committee that, “The information should be reduced in writing by the SHO, if given orally, without any loss of time so that the first version of the alleged crime comes on record.”

It was further recommended by the Malimath Committee that in case of absence of SHO from the police station, informant should not be harassed by making him to wait till the time SHO returns back from his other duties and instead case should be registered by senior most police officer present at the station without any consideration of his rank.

(iii) Registration of every complaint obligatory on part of police:

To prevent twisting of facts or treating of cognizable cases as non-cognizable or converting of non-cognizable cases into cognizable cases due to any external influence or due to any malpractice prevalent in the system, it was recommended by the Malimath Committee that, “This menace can be stopped by making it obligatory on the police officer to register every complaint received by him. Breach of this duty should become an offence punishable in law to prevent misuse of the power by the police officer-.”


It was recommended by the ‘National Commission to review the working of the Constitution’ in its report, that an Article, namely Article 30-A, needed to be

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147 Id Para 7.19.4 at page 106-107.
148 Ibid.
149 Id Para 7.19.3 at page 106.
151 Available at lawmin.nic.in/ncrwc/finalreport/v1ch3.htm.
added in the Constitution providing for access to Courts and tribunals and speedy justice. It provided its content as follows:

“30 A: Access to Courts and Tribunals and Speedy Justice:

(1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or, where appropriate, another independent and impartial tribunal or forum.

(2) The right to access to Courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the Courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object.”

It was observed by the National Commission regarding the importance of the Directive Principles that these principles have been referred as the “Conscience” of the Constitution by the Supreme Court. It further made the observation that,

“The Supreme Court held that the Courts can look at the Directive Principles for the purpose of interpretation of the fundamental rights. The Courts will adopt that interpretation which makes the fundamental rights meaningful and efficacious.”

3.7.3. VICTIMS’ RIGHT TO FAIR INVESTIGATION:

Investigation is considered as an exclusive domain of police. Victims’ role, if any, is dependent upon the decision of police. Victim is not provided any information until the charge-sheet is filed. In case, a decision to drop the proceedings is taken, then only magistrate is required to hear the victim by giving him a notice. In this case too if the victim is the same informant, he can get such a notice since informant is entitled to get such notice. Emphasizing upon the very limited role that victim plays in Criminal Justice Process, it was noted by the Malimath Committee that,

“The investigation process is exclusively a police function and the victim has a role only if the police consider it necessary. There are administrative instructions given by police departments of certain States to give information on progress of investigation to the victim when asked for. Otherwise till police report (charge-sheet) is filed under Section 173 Cr.P.C., the victim’s plight is pitiable. This is the time victims need assistance the most and the law is silent on it. After the police report is taken cognizance of by the Magistrate, if he decides to drop the proceedings, it is required of him to hear the victim-informant by issuing notice to him -- The Court seems to have recognized a gap in the

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153 Id, Para 3.25.3 of Ch-3[1] D.
statutory provision and enjoined the Court not to drop proceedings without giving an opportunity to the victim to ventilate his grievance.”

3.8. VICTIMS’ STATUS IN INDIA:

Despite all these Constitutional guarantees and statutory measures, victims are in a poor state. They are being victimized again and again. Unfortunately victims are devoid of any right at the stage of investigation till today. Malimath Committee, observed the poor state of victims of crime and recommended to shift the attention from accused to victim of crime. Referring to the neglected position, Committee observed that,

“Victims of crime are important players in Criminal Justice administration both as complainant/informant and as witness for the police/prosecution. Despite the system being heavily dependent on the victim, Criminal justice has been concerned with the offender and his interests, almost subordinating or disregarding the interests of victim.”

Depicting the picture of victim under Indian Criminal Justice System, Malimath Committee has observed that under rule of law, it is the duty of the State to provide protection to all citizens from harm through its Criminal Justice System. State deprives individuals from taking revenge themselves and uses its power to punish the wrongdoer. In this system the real victim is marginalized and State takes victim’s position by claiming that offender has not only caused direct harm to the victim because of State’s failure in its duty to protect but indirectly has challenged its norms and authority. Criminal Justice System, instead of taking victims’ issues in consideration, is concerned with the way it deals with the offender.

Bombay High Court referred the Malimath Committee report to highlight victims’ position in Criminal Justice System. This report highlights the poor

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condition by saying that victim has no role to play except of a witness to the crime\textsuperscript{158} though he is the most concerned and affected party with “deepest interest in the vindication of justice.”\textsuperscript{159}

Despite, their being the primary sufferer of the crime, they are devoid of any recognition in Criminal Justice Process. Committee’s observation in this context reflects their poor condition,

“The victim whose rights are invaded by the accused is not accorded any right to participate except as a witness. The system does not afford him any opportunity to assist the court such as adding evidence or putting questions to the witnesses. The system is thus utterly insensitive to the rights of the victim. The focus is all on the accused and none on the victim. The system has denied itself the benefit of this important source.”\textsuperscript{160}

On the issue of substantial fulfilment of the Constitutional mandate of providing protection to life and liberty under Article 21, by State authorities, it was observed by the Committee that,

“This precious fundamental right is turning out to be a mere pipe dream to many millions to whom justice is delayed, distorted or denied more than its delivery in accordance with the ideals enshrined in the Constitution. The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System.”\textsuperscript{161}

Victims are devoid of protection they need in the aftermath of a crime when they are in distress. They do not get the protection from State agency, which they deserve as being the immediate sufferer of a crime that resulted due to the failure of State in its obligation of providing protection. Committee recognized that,

“Victims do not get at present the legal rights and protection they deserve to play their just role in criminal proceedings which tend to result in disinterestedness in the proceedings and consequent distortions in criminal justice administration. In every interaction the Committee had with the police, the judges, the prosecution and defence lawyers, jail officials and the general public, this concern for victims was quite pronounced and a view was canvassed that unless justice to the victim is put as one of the focal points of criminal proceedings, the system is 

\textsuperscript{158} Excerpts from Malimath Committee Report as cited by Bombay High Court in Balasaheb Rangnath Khade v. The State of Maharashtra and Ors, 2012 SCC OnLine Bom 635
\textsuperscript{159} Id at para 24 (2).
\textsuperscript{160} Id Para 1.36 at page 20 Government Of India, Report: Committee On Reforms of Criminal Justice System, (Ministry Of Home Affairs, March 2003).
\textsuperscript{161} Id para 1.19, at page 10.
unlikely to restore the balance as a fair procedure in the pursuit of truth.”162

Malimath Committee observed the lack of witness protection programmes, due to which witnesses suffer intimidation and harassment from the offenders. Committed noted the fact that,

“Many witnesses give false evidence either because of inducement or because of the threats to him or his family members. There is no law to give protection to the witnesses subject to such threats, similar to witness protection laws available in other countries. Unfortunately the witnesses are treated very shabbily by the system.”163

The government notification by which the Criminal Justice Reforms Committee was constituted, observed that people are losing their confidence in the Criminal Justice System. Victims feel neglected and their cry for justice is not being paid any attention. There is an urgent need for developing a cohesive Criminal Justice System, in which all organs work in co-ordination to achieve the common goal of ensuring justice.164

Law commission in its 154th Report on the Code of Criminal Procedure dealt with ‘victim’s rights’. It has mentioned that now the attention has come back to victims of crimes. Since the harm caused to individual victim is more substantive in nature rather than the collective symbolic harm caused to the society, thus victims of crime need protection. This is the reason why they should be paid special attention.165

“Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently the needs and rights of victims of crime should receive priority attention in the total response to crime.”166

Malimath Committee gave its recommendations for the betterment of Victims’ status in India, but still victims suffer a lot and they are being subjugated simultaneously with the recommendations of Malimath Committee Report.167

162 Id para 6.2, at page 75.
163 Id point 11, at page 283-284.
164 Id para 6.1, at page 75.
166 Ibid.
3.9. FAILURE OF STATE IN ITS POSITIVE OBLIGATIONS:

3.9.1. POSITIVE OBLIGATIONS OF THE STATE:

It was observed by the Supreme Court in the case of ‘Prithipal Singh v. State of Punjab & Anr.’\textsuperscript{168} that right to life is the supreme right. Right to life imposes corresponding obligations upon the State. These are inclusive of both positive and negative obligations. At one hand, negative obligations prohibit State actors from performing such acts that violate the right to life and on the other hand, positive obligations requires State to perform its duty of providing protection in case third party actors or the Non-State actors violate this right to life. This positive obligation is not limited only up to the providing of the protection. In case that violation occurs then this obligation requires State to conduct a thorough investigation into the facts of the case. It was observed by the Supreme Court that,

“This right to life has rightly been characterized as ‘‘Supreme’ and basic’; it includes both so-called negative and positive obligations for the State.” The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take administrative and all other measures in order to protect life and investigate all suspicious deaths.”\textsuperscript{169}

Criminal Justice System revolves around the State. In a State governed by Rule of Law, it is State’s obligation to maintain law and order and thereby protecting basic human rights of their citizens. In case of any violation victim looks towards law and justice. Rule of law prevails if the victim is not denied his right to justice. Denial of Justice may be either by the perpetrator or by the defender of his rights i.e., the State. Bombay High Court observed that

“Justice is given to him/ her upon upholding the rule of law. It is denied to him/ her upon any breach by the perpetrator of the violation or even by the defender of his rights- the State.”\textsuperscript{170}


\textsuperscript{169} Id at para 26.

State’s obligation to protect ‘life, liberty and property of the citizens’ cannot be ensured only by providing effective substantive laws rather it needs efficient procedural laws for their enforcement. Regarding the role that State is required to perform in fulfilment of its positive obligation, Malimath Committee stated that

“The State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which also serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society. Substantive penal laws are enacted prescribing punishment for the invasion of the rights. When there is an invasion of these rights of the citizens it becomes the duty of the State to apprehend the person guilty for such invasion, subject him to fair trial and if found guilty to punish him. Substantive penal laws can be effective only when the procedural laws for enforcing them are efficient. This in essence is the function of the Criminal Justice System.”

3.9.1.1. Effective Laws with Effective Procedure:

Criminal Justice System need not only be backed up by penal and procedural laws, but need to be properly implemented in a democratic set up. It was observed by Justice Y. Bhaskar Rao, that not only penal and procedural laws be in tune with the Constitutional ideals and human rights norms but they need to be properly implemented. According to him,

“The implementation of the same stricto sensu protecting the rights of the accused as well as the victims is the essence of the justice system in the democratic countries governed by the Constitution.”

People’s faith in rule of law can only be ensured through a fair procedure. State’s responsibilities towards victims of crime were dealt with in Abdul Rashid Case. One of the questions that was considered in this petition was what Responsibility State owes towards victims of crime? This question was addressed in the form of a counter question by the court in this case where it said,

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173 Id at page vi.
“Question for consideration is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim.”

Whether State can be said to have discharged its responsibilities fully if it has gone through the stages of registering a case, conducting investigation and initiating prosecution? This query was answered by the court by holding that mere formalities like registering a case, conducting investigation and initiating prosecution cannot be held as the standards confirming State’s responsibilities if these do not result into establishment of guilt of the offender. It is failure on State’s part for not being able to identify the accused or for not being able to collect clinching evidence that are sufficient enough to establish the guilt of the offender. Victim’s expectation that guilty should be awarded with punishment has been held as a ‘legitimate expectation’. Punishment of guilty though not the only criteria for ‘victim justice’ but still it is one of the steps that ensure ‘victim justice’.

3.9.1.2. State’s duty to provide Protection from intimidation or harassment:

In the case of Mosaref Hossain Mondal vs. The State of West Bengal & Ors, after submission of charge sheet and during pendency of trial, it was submitted by the petitioner (father of the girl) that the accused having been released on bail, along with their associates are holding out threats and intimidation to the petitioner and his daughter (the vital witnesses in the case). They have threatened the petitioner to kidnap his daughter again so as to deter them from prosecuting their case.

In such circumstances, it was observed by the Calcutta High Court that, it is the duty of the State to provide protection to the Victims of sexual offences from being intimidated by or on behalf of the accused. The Court made the following observation that,

“The efficacy of criminal justice administration depends on the security and safety of the witness. It is the bounden duty of the State to create a congenial atmosphere so that confidence is instilled in the minds of the

175 Id at para 6.
176 Ibid.
177 Ibid.
witnesses so as to enable them to depose truthfully in a Court of law without any fear or favour."\textsuperscript{179}

Calcutta High Court in the above case referred to the decision of the Supreme Court in the case of Zahira Habibulla H. Sheikh & Ors. v. State of Gujarat & Ors.,\textsuperscript{180} wherein the Supreme Court emphasized upon the role of the State. State has the duty to provide protection to witnesses. If witnesses are not provided with this needed protection, then the trial may get tainted and justice may become a casualty. State has to perform its duty of protector so that the factual truth, without any fear of being intimidated, is brought before the court. Supreme Court held as follows:

"The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert the trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose the truth without any fear of being haunted by those against whom he has deposed."\textsuperscript{181}

It was observed by the Bombay High Court in the case of Sandeep Rammilan Shukla v. The State of Maharashtra through the Secretary, Home Department and Ors.,\textsuperscript{182} that State’s primary obligation is to provide protection to person and property of its subjects.\textsuperscript{183}

\section*{3.9.1.3. State’s duty to provide access to justice and protection to victims of crime:}

It was observed by the Calcutta High Court in the case of Mosaref Hossain Mondal Vs. The State of West Bengal & Ors (2009) that it is State’s duty to ensure access to justice to victims of crime. Both the accused and the victim are parts of the Criminal Justice System. Victims of crime are equally entitled to effective access to justice. It is the duty of State to ensure such free and effective access. Article 14 of the Indian Constitution provides for “equal protection of law”. If State fails in its duty of ensuring victims access to justice, then it will amount to violation of this equality protection clause. Court observed that, 

\textsuperscript{179} Ibid.


\textsuperscript{181} Ibid at para 41.

\textsuperscript{182} Sandeep Rammilan Shukla v. The State of Maharashtra and others 2008 SCC OnLine Bom 996.

\textsuperscript{183} Id at para 1.
“A victim is as much a part of the criminal justice system as the accused is. It is the bounden duty of the State to ensure a free and effective access to justice to all victims of crime, more particularly, victims of sexual assault. Failure to do so, infracts the "equality protection clause" enshrined in Article 14 of the Constitution of India which provides for "equal protection of law" to all the citizens of India. Bearing in mind socio-psychological impact of sexual offences on victims, the prosecuting agency must be alive and sensitive to its duty to ensure all forms of support and/or protection to such victims so that their access to justice is not impaired by the hostile acts of the accused or the insensitivity which is endemic in our male dominated society.”\textsuperscript{184}

3.9.1.4. State’s duty to ensure fair investigation:

State has a prominent role in the field of crime detection and crime punishment. State has a duty to take all effective measures to prevent crime and maintain law and order in society. But once, a crime is committed, it becomes the duty of the State to bring the offender to book. It is State’s duty to investigate the matter, collect all relevant evidence that are necessary to bring out the truth. It has been observed by the Apex Court, in the case of J.A.C.Saldanha and others\textsuperscript{185}, in the light of statutory provisions, that,

\begin{quote}
"There is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence."\textsuperscript{186}
\end{quote}

To provide with a fair and impartial investigation, is the duty of the State, necessary for ensuring Human Rights of a citizen. In State of West Bengal and others v. The Committee for Protection of Democratic Rights, West Bengal and others, Constitution Bench of the Supreme Court had, inter alia, observed’

\begin{quote}
“The State has a duty to enforce human rights of a citizen by providing fair and impartial investigation against any person accused of commission of a cognizable offence which may include its own officers.
\end{quote}

\textsuperscript{184} Mosaref Hossain Mondal v. State of West Bengal & Ors., 2012 SCC OnLine Cal 4076.
\textsuperscript{185} State of Bihar and Another v. J.A.C.Saldanha and others, 1980 (1) SCC 554.
\textsuperscript{186} Id at para 25.
In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”

State’s duty to do justice with the victim was recognized in the case of Balasaheb Rangnath Khade v. The State of Maharashtra wherein it was observed by the Bombay High Court that the reason for granting victim a right to appeal is to right the wrong that has resulted from the mischief committed against the victim by improper investigation by State machinery in his case. This shows that State is under an obligation to ensure justice towards victims of crime.

3.9.1.5. Idea of compensation- failure of state in its positive obligation:

There are various cases decided by the Hon’ble Supreme Court in which Court has directed for payment of compensation or for other rehabilitative measures on the ground that the incident occurred due to the failure of State or its authorities in protecting the life and liberty of victims. These judgement show that State is under an obligation to protect the life and liberty of victims.

It was noted by the Malimath committee (while discussing the subject of Compensation) that State owes the duty towards victims of crime to provide them protection and to deliver fair and speedy justice to them. The Committee referred to various judgments of higher courts in India where an attempt was made to do justice with the victims by awarding compensation.

To do complete justice to victims, courts in India have awarded compensatory remedies in various forms such as Medical justice and Rehabilitative justice. The ratio behind granting these remedies have been the failure of State in providing protection to the victims of crime. It was observed by the Malimath Committee that courts have granted these reliefs on the basis of State’s failure in its obligation towards victims of crime. It went on to state that,

“The principle invoked is the obligation of the State to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably.”

3.9.2. APPLICABILITY OF STATE’S POSITIVE OBLIGATIONS’ THEORY IN CASES OF NON-STATE CRIMES:

State liability is not limited up to the cases of commission of an act by the State or its agencies but is wide enough to include the case of commission of a crime by an individual without any involvement on the part of State or its functionaries.

In Abdul Rashid case a question was dealt with by the Court that relates with the State’s duty in case when neither the State nor its functionaries are guilty of an act of commission of an offence. Responding affirmatively the court, to do justice to victims of crime, expanded the scope of Article 21 so as to include
cases of individual crimes (while awarding compensation), though neither the State nor its functionaries have played any role in the commission of crimes.\textsuperscript{198}

It was observed by the National Human Rights Commission in the aftermath of the Godhra incident on 27th February 2002 that,

\begin{quote}
“It is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-State players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights”.\textsuperscript{199}
\end{quote}

Citizens do have a right to get protection from the State not only for the acts of violence committed by the State agencies but for the acts of violence committed by the third parties or the Non-State actors.\textsuperscript{200}

Malimath Committee that was entrusted with the responsibility of restoring the faith of common men in the Criminal Justice System, by giving its suggestions to improve the investigation, making it more professional, making justice delivery fast and fixing the accountability of functionaries for failure in performing their duties,\textsuperscript{201} was of the view that this protection against third party invasion is the primary function of the government. It stated that,

\begin{quote}
“The ultimate aim of criminal law is protection of right to personal liberty against invasion by others- Protection of the weak against the strong, law abiding against lawless, peaceful against the violent. To protect the rights of the citizens, the State prescribes the rules of conduct, sanctions for their violation, machinery to enforce sanctions and procedure to protect that machinery. It is utter selfishness, greed and intolerance that lead to deprivation of life, liberty and property of other citizens requiring the State to step in for protection of the citizens’ rights. James Madison writes in his book, The Federalist that ‘if men were angels no government would be necessary.’ It is the primary function of the government to protect the basic rights to life and property. The State has to give protection to persons against lawlessness, disorderly behaviour, violent acts and fraudulent deeds of
\end{quote}

\textsuperscript{198} Ibid.
\textsuperscript{200} Para 1.4 at page 5, Government Of India, Report: Committee On Reforms of Criminal Justice System, (Ministry Of Home Affairs, March 2003).
\textsuperscript{201} Id, para 1.7 at page 6.
Efficient functioning of State agencies are required for providing protection to life and liberty. Right to life and personal liberty is the precious right guaranteed by the Indian Constitution. Internationally this right is recognized as a human right. It was observed by the Malimath Committee that it is the primary responsibility of the State to maintain law and order to make a conducive atmosphere where citizens can enjoy their right to life.

“The primary responsibility of the State is to maintain law and order so that citizens can enjoy peace and security. Life and personal liberty being very precious rights, their protection is guaranteed to the citizens as a fundamental right under Article 21 of our Constitution. This right is internationally recognised as a Human Right.”

3.9.3. FAILURE OF STATE IN ITS POSITIVE OBLIGATIONS:

For substantive realization of Human Rights practical measures are required. It was observed by Justice J. S. Verma (former chairperson of National Human Rights Commission), in the context of need for creating a better understanding and awareness about human rights that,

“While human rights awareness and sensitivity has grown by leaps and bounds over the last few decades, their actual application and realization at the ground level has been rather modest. The gap between growing awareness and sensitivity vis-à-vis practical application has therefore been recognised as the central obstacle in the substantive realization of human rights.”

Victims’ poor status is due to the failure of State (through its agency i.e., Police) in performing its ‘Positive Obligations of Ensuring Justice’ towards victims of crime.

Not only the offender is responsible for re-victimization of the victims but Criminal Justice System is also responsible for re-victimizing victims by denying them their basic human rights. It was noted by the Bombay High Court

202 Id, para 1.4 at page 5.
203 Id, para 2.1 at page 23.
in the case of Balasaheb Rangnath Khade v. The State of Maharashtra and Ors.\textsuperscript{205}

“The rights of the Victim were, of course, jeopardized, curtailed, restricted, neglected or breached at all stages of the criminal machinery. Some damage and harm done may be fatal and may not be restorative or remediable e.g., if an important witness is not examined at all by the investigating officer and the victim, not being in charge of the investigation, is unable to assist or even help himself/ herself.”\textsuperscript{206}

In Sonalal soni case, the Court observed that it is a growing concern for victims of crime or their relatives that their matters are not being dealt with by the investigating officers in a fair and transparent manner. Investigations are being conducted in a manner detrimental to victims without keeping them informed about the progress of the investigation.\textsuperscript{207} Despite acknowledging the fact that victim participation or victim’s say in investigation may result into interfering with the Criminal Justice Process, Court asserted that victims and their family members should be given a say during and at the time of investigation. Investigation officer after assessing the situation can allow them to participate up to a certain extent. The apprehension that ‘victims can dictate their own terms to ensure conviction’ should not be given undue weightage to shut the doors for victims to have a say in investigation.\textsuperscript{208}

Victims’ Right to Access to justice has been guaranteed by the Constitution of India and thus should not be sacrificed at any cost but still it suffers a lot because of the handicaps prevalent in the system. It was observed by the Division Bench of Punjab & Haryana High Court in Rohtash @ Pappu v. State of Haryana at para 18,

“Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed? It can be a long and seemingly endless wait. The need to address cry of victims of crime, for whom the constitution in its preamble holds out a guarantee for ‘justice’ is paramount. How can the tears of the victim be wiped off when the system itself is helpless to punish the guilty for want of collection of evidence or for want of creating an

\textsuperscript{205} Balasaheb Rangnath Khade v. The State of Maharashtra and Ors, 2012 SCC OnLine Bom 635.

\textsuperscript{206} Id at para 48.


\textsuperscript{208} Id at para 21.
environment in which witnesses can fearlessly present the truth before the court?"\textsuperscript{209}

3.10. CONCLUSION:

Human Rights Act in India encompasses in the definition of human rights, the rights in relation to right to life and right to dignity as guaranteed by the Constitution of India or embodied in the International Covenants as enforceable by the courts in India. Courts in India are receptive to the changes occurring in International Human Rights Norms. Constitution of India through its preamble, fundamental rights and directive principles recognizes victims’ right to protection, victims’ right to access to justice and victims’ right to fair investigation. Constitution provides protection to fundamental rights including right to life. Legislative measures though do not pose a clear picture and provide only a vague picture of human rights of victims of crime. Certain enactments as interpreted by the courts, have helped in developing the concept of human rights of victims of crime in India. Reports of various committees and commissions constituted in relation to criminal justice system in India also favour protection to victims. It is very unfortunate for victims of crime that despite such a favourable constitutional and legislative mechanism they are not able to receive their due treatment from the criminal justice system because of the State’s failure in performing its positive obligations. These measures whether international or national provide no respite to victims’ sufferings because of the fact that substantive laws without proper implementation are of no use. Victims of crime are in a poor state of affair despite there being, International and National Measure including- Constitutional, Legislative and Judicial.