CHAPTER-4

ROLE OF POLICE AND VICTIMS’ HUMAN RIGHTS

4.1. INTRODUCTION

Police is the main agency in the law enforcement machinery. Emphasizing the significance of law enforcement agency in any society Charles Reith has observed as under,

“More Communities have perished by their inability to enforce laws than have been destroyed by Nature or hostile aggression. In the history of communities, absence or weakness of effective law enforcement machinery can be seen to be very frequently the true call for failure in battle.”

Besides being the main organ of law enforcement machinery, police play an important role in determination of ‘right to fair trial’. ‘Right to Fair Trial’ is a most significant Human Right which is considered the most sacrosanct right in a democratic society governed by Rule of Law. Police role during investigation can affect this right in any manner i.e., it may be positive (i.e., this right being protected by police role) or negative (i.e., this right being subverted by police role). An unethical or unlawful investigation may subvert the cause of justice, even before the initiation of actual trial process.

Investigation is the first essential step in any judicial process. This is the very first stage of judicial process where evidences are collected for the true ascertainment of the facts by the judiciary. Police is entrusted with the task of investigating crimes for collecting evidences. An effective and lawful investigation leads towards punishing the guilty, whereas an ineffective and unlawfully conducted investigation may at one hand, lead towards punishment

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of innocent persons and on the other hand result into acquittal of the guilty. Such guilty persons may remain undetected or go unpunished because of such faulty investigations.³

It cannot be disputed that police performance can get effected due to various factors whether it be the frustrations resulting either from the work culture or resulting from any other cause such as effect of criminality but it is pertinent that investigation conducted by police should always be in an objective, ethical, human and lawful manner.⁴ For the purpose of an effective and lawful investigation, it is must that police should be occupied with technical policing skills. This skill can be developed in two ways, one by undergoing repeated training and another by going through the lawful and ethical means of investigating crimes. In case police bend the rules for their convenience or adopts short cuts for speedy results, they are not going to develop this ‘technical policing skill’. Devoid of this essential feature, police may go towards using of unethical means while detecting crimes, or may commit criminal acts or may violate one’s human rights while investigating crimes.⁵

It was observed by the Delhi High Court in BMW Hit and Run case⁶ that,

“Investigation is basically an art of unearthing the truth for the purpose of successful detection and prosecution.”⁷

This duty of bringing out the unvarnished truth rests with the investigating agencies involved in the case. At one hand, their efficient performance can make the prosecution version credible or on the other hand perfunctory investigation by police can lead towards the failure of entire prosecution case. In the same BMW Hit and Run case, Delhi High Court observed that,

“Police and other investigating agencies are at the heart of the criminal justice system of India. The foundation for the Criminal Justice System is the investigation by the police. When an offence committed is brought to the notice of the police, it is their responsibility to investigate into the matter to find out who has committed the offence, ascertain the facts and

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³ Id at 175.
⁴ Id at 176.
⁵ Ibid.
⁷ Id at para 283.
circumstances relevant to the crime and to collect the evidence, oral or circumstantial, which is necessary to prove the case in the court. The success or failure of the case depends entirely on the work of the investigating officer. "8

Highlighting the duty of the police to bring out the unvarnished truth by conducting fair investigation, the Delhi High Court in Sanjeev Nanda case, 9 referred to the apex court decided case Jamuna Chaudhary v. State of Bihar, 10 wherein it was held by the Hon’ble Supreme Court that,

“The duty of the Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth.”

Police plays a significant role in dispensation of criminal justice. Justice delivery depends upon fair investigation conducted by the police. Police is required to perform this task carefully. Any error may subvert the cause of justice. In performing its role of investigation, police is required to bring out the real truth from the garbled version. Police is required to use diverse methods in the process of ascertaining the true facts pertaining to a crime. For this purpose, police has been entrusted with wide powers. Reflecting upon the wide powers given to police during investigation and corresponding duties of investigating officer while he is conducting the investigation, it was observed by the Hon’ble apex court in State of Bihar v. P.P.Sharma 11 that,

“The investigating officer is the arm of the law and plays pivotal role in the dispensation of criminal justice and maintenance of law and order. The police investigation is, therefore, the foundation stone on which the whole edifice of criminal trial rests - an error in its chain of investigation may result in miscarriage of justice and the prosecution entails (sic) with acquittal. The duty of the investigating officer, therefore, is to ascertain facts, to extract truth from half-truth or garbled version, connecting the chain of events. Investigation is a tardy and tedious process. Enough power, therefore, has been given to the police officer in the area of investigatory process, granting him or her great latitude to exercise his discretionary power to make a successful investigation. It is by his action that law becomes an actual positive force. Often crimes are committed in secrecy with dexterity and at high places. The investigating officer may have to obtain information from sources disclosed or undisclosed and there is no set procedure to conduct

8 Id at para 281.
9 Sanjeev Nanda vs. The State 2009 SCC OnLine Del 2039.
10 (1974) 3 SCC 774.
11 1992 Supp(1) SCC 222 at para 47.
investigation to connect every step in the chain of prosecution case by collecting the evidence except to the extent expressly prohibited by the Code or the Evidence Act or the Constitution. In view of the arduous task involved in the investigation he has been given free liberty to collect the necessary evidence in any manner he feels expedient, on the facts and in given circumstances. His/her primary focus is on the solution of the crime by intensive investigation. It is his duty to ferret out the truth. Laborious hard work and attention to the details, ability to sort through mountainous information, recognized behavioral patterns and above all, to co-ordinate the efforts of different people associated with various elements of the crime and the case, are essential. Diverse methods are, therefore, involved in making a successful completion of the investigation.”

4.2. POLICE SPECIFIC INSTRUMENTS – INTERNATIONAL:

4.2.1. UNITED NATIONS CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS (1979):

1. International instruments mandates that it is the duty of police to provide protection from illegal acts. This protection includes the need for the victims to be protected from illegal acts and protection from crimes. Since harassment or threatening as a means to dissuade the victim–witness from making testimony is also a crime, this protection may be said to include into its ambit not only the protection provided by the State agency against an act of primary victimization but the protection provided by the State agency against any act of further victimization. Law enforcement officials are supposed to work in such a responsible manner that ensures due respect and protection of human dignity. It has been provided under Article 1 of the United Nations Code of Conduct for Law Enforcement Officials that while performing its duty of providing protection the concerned officer should maintain high degree of professional responsibility.13

2. Article 2 of The Code of Conduct further emphasizes upon the duty of police personnel to uphold the human right of all persons. Use of the term ‘all persons’ shows that human rights of victim of crime should

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12 Ibid.
also be respected in the same manner as of any other person whether an accused or a convict.}

3. It is the duty of the investigating officer to maintain the secrecy of the investigation in the case until it becomes necessary to disclose the facts either for the performance of his duty or if it is necessary to ensure justice in the case.

4. The guidelines provided under the United Nations Code of Conduct for Law Enforcement Officials are not limited to securing and protecting the interests of a person in police custody but also extends to the victims of violations of law also. Article 6 demands that medical needs of persons in custody as well as medical needs of victims of violation of law should be treated alike.

5. Any malpractice in performance of their duty is strictly prohibited. Not only this that they have to keep them away from indulging in acts of corruption but going a step ahead, it is supposed to be their lawful duty to rigorously oppose acts of corruption.

6. The Code of Conduct for Law Enforcement Officials make it obligatory for the law enforcement officials to respect the provisions of this Code of Conduct and to put their sincere efforts in preventing any violation of its provisions. They are required to approach their superior authorities or to other such authorities that can be helpful in remediying such violations. This Code provides that wherever this Code has been incorporated into national legislations and there are provisions under the national legislations also with regard to the same subject matter, the stricter ones among the two provisions would be given effect to.

4.2.2. COUNCIL OF EUROPE’S GUIDELINES (1985):
Meeting the needs of victims and providing them with adequate safeguards to protect their interests were considered as the fundamental function of Criminal Justice System at the Committee of Ministers of Council of Europe. Victims needs are of paramount concern that deserve due consideration at all stages of

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14 Id, Article 2.
15 Id, Article 4.
16 Id, Article 6 and its commentary.
17 Id, Article 7.
18 Id, Article 8 and its commentary (a).
the Criminal Justice Process. This committee recommended Member States to review their laws and practice to incorporate the following guidelines:\textsuperscript{19}

1. These guidelines suggest that when victim approaches justice system, he should be dealt with by the police officers in a “sympathetic, constructive and reassuring manner”. This means that victims’ concerns and his interests should be given due consideration and victim should be treated in such a manner that encourages victims to have faith and trust in justice delivery system.\textsuperscript{20}

2. As a frontline agency of state, police comes first in contact with victims of crime. The duty of informing victim that he can get the needed legal advice to access justice in his case rests with the police authorities. Victims’ should be informed about the various types of assistance that he can get in the aftermath of a crime.\textsuperscript{21}

3. Not only the victim be informed of obtaining legal advice but he should further be provided with the information pertaining to the outcome of police investigation.\textsuperscript{22}

4. Police is supposed to provide a clear and complete account of injuries suffered by the victim meaning thereby that whatever medical reports are there with the police authorities should be placed along with the charge-sheet by the police authorities. These guidelines emphasize upon providing a true account of injuries and harm suffered by the victim to the prosecuting authorities.\textsuperscript{23} Guideline 12 further adds to this that a clear account of all the injuries and losses suffered by the victim should be made available to the court so that, at the time of awarding sentence, victims’ need for compensation, can be taken into consideration.

5. As far as questioning of victims during police investigation is concerned, it should be conducted in a dignified manner while giving

\textsuperscript{19} Council of Europe, committee of ministers’ recommendation no. R (85) 11 of the committee of ministers to member states on the position of the victim in the framework of criminal law and procedure (Adopted by the committee of ministers on 28th June 1985 at the 387th meeting of the ministers’ deputies, available at http://www.barobirlik.org.tr/dosyalar/duyurular/hsykkanuteklifi/recR(85)11e.pdf
\textsuperscript{20} Id, Guideline No. 1.
\textsuperscript{21} Id, Guideline No. 2.
\textsuperscript{22} Id, Guideline No. 3.
\textsuperscript{23} Id, Guideline No.4.
due consideration to victims’ situation as a victim of violent crime as well as his rights and his dignity.24

6. Information and public relation policies should be designed in a manner that recognise victims’ interests and his dignity and no such publicity should be allowed that adversely affects his private life or dignity. It shows that victims’ safety concerns should be dealt with on a priority basis. Where safety demands for such protection then trial may be held in camera.25

7. Victims are not only the source of information or the witnesses in a criminal case but they are the sufferer of a violent crime whose right to life and liberty has been violated by the act of a non-state actor. Victims need special protection from the State and they should be accorded this special protection from further intimidation and retaliation by the offender as per the need of the case.26

4.2.3. GUIDE FOR POLICY MAKERS (1999)27: This guide was developed by the United Nations as an initiative to help Member States in their efforts of curtailing victimization and ensuring victims’ right into their national Criminal Justice Systems. It was observed in this guide that, police is the frontline agency of the Criminal Justice System in whose contact victim comes first after the incidence of victimization and in most of the cases where the case does not proceed beyond the police domain, it becomes the only agency to leave an impression of the functioning of the Criminal Justice System. This is the reason why the treatment given by the police plays a significant role. Victim makes his perception of the Criminal Justice System through the functioning of police. His satisfaction is decided by the treatment he receives from the police. This makes the better treatment by police, a must, for ensuring victim sensitivity in the Criminal Justice System. Police should treat

24 Id, Guideline No. 8.
25 Id, Guideline No. 15.
26 Id, Guideline No. 16.
victims of crime in a sympathetic and dignified manner. Guide also emphasized upon development of such victim assistance services that are capable of restoring the victim to wholeness and are capable of minimizing or preventing the risk of further victimization of the victim of crime. Police training should be imparted with an objective of creating sensitivity towards victims’ needs. Victim should be considered as a human being. This guide suggested for inclusion of on-site crisis intervention, securing emergency medical assistance, informing victims about their rights and making of referrals to services in Police-Training Programmes.

This guide suggested that essential services should include the following among others,

(a) Explaining police procedures and investigation;
(b) Providing information to victims on how to protect evidence;
(c) Accompanying victims to emergency medical services where needed;
(h) Establishing procedures to ensure that at least the victims of violent crime are provided with information pertaining to the status and closing of investigations.\textsuperscript{28}

4.2.4. \textbf{HANDBOOK ON JUSTICE FOR VICTIMS (1999)\textsuperscript{29}}: This handbook helps in development of victim-sensitive policies, procedures and protocols for the agencies of Criminal Justice System. This handbook suggests that what role and responsibilities should be assigned to front-line professionals in relation to victims of crime. Recognizing that front-line professionals play a significant role in ensuring human rights of victims of crime, it was observed that an insensitive, unsympathetic treatment may result into causing secondary victimization of the victims of crime. To recover from the trauma of primary victimization, victims should be given a dignified treatment.

\textsuperscript{28} Id, at point 16, at page 31.
Codes of Conduct should provide with the expected minimum standards of behaviour from police personnel. An unsympathetic attitude from police functionary may result into victim losing his trust into Criminal Justice System whereas a dignified treatment may be helpful in extracting the information easily from the victims. It was observed that a dignified treatment coupled with condemnation of the incidence and an assurance that victim is in safe hands now is sufficient enough to provide victim with a ‘psychological first-aid’. This handbook suggested for inclusion of the following in Police -Training Programmes

(i) Training in the trauma of victimization so that the officer is able to understand the pain and sufferings of the victim and his reactions and is able to deal with them effectively.

(ii) Training in empathizing with victims so as to easily develop a rapport with the victim and set him at ease.

(iii) Training in dealing with victims in practical situations so as to make the officer able to refer victim to the concerned support group and to provide him with the needed information.

(iv) Training in dealing with special categories of victim.

4.3. POLICE SPECIFIC GUIDELINES- NATIONAL: THE CODE OF CONDUCT FOR THE POLICE IN INDIA (1985)\textsuperscript{30}:

The Code of conduct for Police in India (1985) provides the duties of Police as consisting of prevention of crime before it happens, providing protection in case there is an apprehension or risk of crime to any person or the crime is still in progress and investigating crime if a crime has already taken place. Police is required to perform its duties strictly in accordance with Constitutional mandate and statutory measures. They should perform their duties without any bias or

malice towards anyone. They should give due respect to the rights of individuals as guaranteed by the Constitution of India.31 The Code of Conduct provides that,

1. The Code of Conduct for the Police in India (1985) provides that police should respect constitutional ideals with full sincerity and devotion. Constitution guarantees certain fundamental rights to citizens that should be taken care of by the police personnel while performing their duties.32

2. Without questioning the necessity of any law, police should enforce the law of the land firmly without being biased or revengeful to anyone.33

3. While performing their duties they should take note of the fact that their role is circumscribed by certain limitations and in any case, they should not cross it. They are not the judges in the case and their role is limited with the role entrusted upon them by legislative enactments. They should not even try to cross these boundaries to give verdicts in the case to take their personal scores settled.34

4. Police is primarily concerned with prevention of crime and disorder in society. They should perform their role in such a manner that minimises the crime and disorder and brings respect for law in the society. The test by which their efficiency can be tested is the absence of lawlessness in the society. If there are evidences of police action dealing with the prevalent lawlessness, then it shows the ineffectiveness of police functioning rather than their efficient functioning.35

5. Police should be sympathetic and considerate towards the people. Police should always be ready to provide necessary service and assistance to all irrespective of their social status.36

6. While performing its duties police should maintain calm and should always be ready to sacrifice their lives to protect the life of others.37

31 Ibid.
32 Id, Guideline No. 1.
33 Id, Guideline No. 2.
34 Id, Guideline No. 3.
35 Id, Guideline No. 5.
36 Id, Guideline No. 8.
37 Id, Guideline No. 9.
7. They should maintain a high standard of discipline, obedience to lawful commands and loyalty to the force. Above all they should perform their duties faithfully and in accordance with the law. To make this happen they should keep them in a state of continuous training and preparedness.\(^{38}\)

8. They should rise above their personal prejudices, give respect to the ideals of a secular democratic state and always be ready to relinquish the practices derogatory to the dignity of women and disadvantaged sections of the society.\(^{39}\)

**4.4. ROLE OF POLICE UNDER CRIMINAL PROCEDURE CODE AND POLICE ACTS:**

National Police Commission (1977-81), gave eight reports taking into consideration police role as a law enforcement agency and as an agency entrusted with the task of providing protection to citizen’s rights. The main term of its reference that required recommendation was in relation to “how to prevent misuse of powers by police”.\(^{40}\)

Fourth report of National police commission (NPC) observed the prevalent practice of non-registration of FIR on the ground that the incident occurred in different jurisdiction. NPC recommended an amendment in Section 154 CrPC to make it obligatory for the police to register FIR, irrespective of the place of its occurrence and then transfer the case to the concerned police station.\(^{41}\)

Taking into consideration the arduous task involved in investigation, various committees have recommended for separation of investigation wing from law and order police to make investigation more effective and fair. Regarding separation of investigation from law and order duties, conflicting recommendations can be seen in the report of NPC. Sixth report suggests for

\(^{38}\) Id, Guideline No. 12.

\(^{39}\) Id, Guideline No. 13.


such bifurcation at para 48.15 whereas the seventh report at para 50.22 says against such bifurcation stating that police work cannot be performed in water tight compartments.\textsuperscript{42}

Ribeiro Committee (1998) recommended for separation of law and order from investigative functions. This Committee further recommended for establishing a Security Commission to evaluate the police performance and its accountability towards the law of the land. It recommended manner for selection of DGP so that the investigation wing of the police will be made insulated from undue pressure.\textsuperscript{43}

Supreme Court, in its judgment in Prakash Singh’s case, on September 22, 2006 gave the directions to Central government and to State governments to set up separate departments for investigation to prevent political interference and to make the force accountable. Supreme Court emphasized upon insulating the police to make it more efficient and ordered for separation of investigation police from law and order police to ensure speedier investigation with better expertise. Regarding police role it was observed by the Supreme Court that,

“The commitment, devotion and accountability of the police has to be only to the rule of law. The supervision and control has to be such that it ensures that the police serves the people without any regard, whatsoever, to the status and position of any person while investigating a crime or taking preventive measures. Its approach has to be service oriented, its role has to be defined so that in appropriate cases, where on account of acts of omission and commission of police, the rule of law becomes a casualty, the guilty police officers are brought to book and appropriate action taken without any delay.”\textsuperscript{44}

Criminal Law Amendment Act, 2013\textsuperscript{45} increased the police accountability in relation to proper registration and investigation of crimes against women. This


\textsuperscript{43}“Summary of Ribeiro Committee’s Recommendations”, available at http://humanrightsinitiative.org/old/publications/police/recommendations_ribeiro.pdf

\textsuperscript{44}Prakash Singh and others v. Union of India and others (2006) 8 SCC 1 at para 12.

\textsuperscript{45}Criminal Law (Amendment) Act, 2013 w.e.f. 04/02/2013.
Act has inserted a new section namely Section 166 A in the Indian Penal Code, 1860 that deals with, “public servant disobeying direction under law”. This section provides punishment in case a public servant knowingly disobeys, to the prejudice of any person, the direction of law in relation to the manner in which he was required to conduct the investigation. This section, by providing punishment fixes the liability of the concerned investigating officer, but fall short of the standard of ‘due diligence’ requirement as is the norm under international best practices. Use of the term ‘knowingly’ and ‘to the prejudice of any person’ makes its application limited.\textsuperscript{46}

Still, this provision is a welcome step and if widely interpreted can ensure fair investigation to a large extent. Cr.P.C. imposes an obligation upon the police to investigate offences in a prompt and fair manner and knowingly disobeying such direction of law to promptly and fairly investigate an offence would be a punishable offence under this Section.

Other two provisions of Section 166 A are also useful from victims’ point of view. Section 166 A (a) make it a punishable offence if any public servant knowingly violates any direction of the law in relation to requiring of the attendance of any person for the purpose of investigation at a place other than the prescribed ones.

Section 166 A (c) make it a punishable offence if any public servant fails to record any information given to him under Sub-Section (1) of Section 154 of the Code of Criminal Procedure, 1973 in relation to a cognizable offence punishable under some particular Sections Namely Sections 326 A, 326 B, 354, 354 B, 370, 370 A, 376, 376 A, 376 B, 376 C, 376 D, 376 E or Section 509.

Scope of this particular sub-section (c) of Section 166 A is required to be extended so as to cover cases of all victims of personal violence crimes and it should not be limited only to the women victims of some particular crimes.

\textsuperscript{46} Section 166 A (b) provides that, “whoever, being a public servant knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.”
4.4.1. POLICE ROLE AND VICTIMS’ RIGHT TO PROTECTION:

Policy statement of the International Association of Chiefs of Police on Victim Rights, 1983 provides that, it is the incontrovertible right of all crime victims to be free from intimidation.\(^47\)

Highlighting the significance of the police playing a vital role in providing protection to society. Supreme Court quoted Lord Denning in his work “The Due Process of Law” thus,

“In safeguarding our freedoms, the police play vital role. Society for its defence needs a well-led, well-trained and well-disciplined force or police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.”\(^48\)

Police is entrusted with the responsibilities of protecting the precious Human Rights of the citizens. In providing protection to human rights of individuals, they have to perform various duties that include maintenance of law and order and investigation of offences. It was observed by the Malimath Committee that,

“The primary responsibility of Police is to protect life, liberty and property of citizens. It is for the protection of these rights that Criminal Justice System has been constituted assigning important responsibility to the Police. They have various duties to perform, the most important among them being maintenance of Law and order and investigation of offences. The police are charged with the responsibility of protecting precious Human Rights of the citizens.”\(^49\)

In State of West Bengal and others v. Biswanath Mitra\(^50\) where representation as to threat to life was made to police and police protection was sought, it was observed by the Supreme Court that right to life is a precious human right and in case there is a threat to one’s right to life, he shall be provided with the needed protection. In case of such a representation being made, same shall be examined


\(^{48}\) Manohar Lal Sharma v. Principal Secretary and Others (2014) 2 SCC 532 at para 25.


\(^{50}\) State of West Bengal and others v. Biswanath Mitra 2015 SCC OnLine SC 1460.
promptly and if the threat perception is found, he shall be provided with free protection.

“When such a representation is made by the respondent to the police authorities, the same shall be examined and a decision shall be taken thereon within one week of the receipt of such representation. In case it is concluded that there is a threat to the life and liberty of the respondent, he shall be provided free protection.”

Police has the role of providing protection as well as to investigate the offences. Explaining the role of police, Apex Court in Manohar Lal Sharma v. Principal Secretary and Others case has observed that,

“One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book.”

In acknowledgement of the victim’s right to protection, Standing Order No. 303 of 2009 of Delhi while making reference to the guidelines issued by the High Court of Delhi in W.P. titled ‘Delhi Commission for Women v. Shri Lalit Pandey and another’ W.P. (Crl.) No. 696/2008, lays down the guidelines Subject to the outcome of the W.P. (C) 2596/2007 titled Rajeev Mohan v. State”, pending before the Hon’ble High Court, to be followed by the police while investigating cases of rape. This standing order which include among others, the following guideline,

“(n) cases where the victim informs the police about any threats given by the accused family, the concerned DCP should consider the matter and fresh FIR must be registered under Section 506 of the Indian Penal Code.”

Similarly, the same Standing Order No. 303 of 2009 lays down certain guidelines with reference to the guidelines issued by the High Court of Delhi in ‘Court on its own motion v. State & Amr’ W.P. (Crl.) No. 930/2007 to be followed by investigating officers in cases of child sexual abuse. These include among others the following directive in terms of protection to victim,

51 Ibid.
52 Manohar Lal Sharma v. Principal Secretary and Others (2014) 2 SCC 532.
53 Id at para 26.
“8. The investigating officer to ensure that at no point should the child victim come in contact with the accused.”

Among the various stages identified as stages of investigation following two are significant in providing protection to victims of crime i.e., proceeding to the spot and discovery and arrest of the suspected offender. Though right to protection is significant from victims’ point of view, but as far as corresponding duty of State to provide this protection is concerned, very few legislative provisions can be identified to the effect.

4.4.1.1. Timely Proceeding To The Spot For Averting Further Harm Being Inflicted Upon The Victim:

Describing the significance of police response in the aftermath of a crime, Joutsen (1987) stated that police is the first State representative with whom the complainant comes into contact with. Since police interact with the complainant in the situation when he is still under the shock resulting from the crime, quality of police interaction will influence impression he forms about the administration of justice and how cooperative he will be. ‘Police Response Time’ has been considered as an objective indicator of police performance. Studies support the fact that victim justice can be ensured by minimizing police response time, since it places the police in a better position to collect and preserve evidences. Delayed arrival may worsen victims’ situation. It may also result into manipulation or destruction of physical evidence. On the other hand, timely arrival of police helps not only in taking control of the situation but helps in collection of best evidence before they are destroyed.

From the point of view of victim, ‘police response time’ has many advantages such as early arrest of the offender, easy identification of witnesses, and

collection of physical evidences and quick administration of life saving first aid.\textsuperscript{58} Studies show that extremely short response times may be productive in making an arrest\textsuperscript{59} whereas exceeding the response time may be detrimental in the case.\textsuperscript{60}

Delayed medical examination, either because of victims’ ignorance or because of the absence of timely guidance by those who are duty bound by the procedure to provide assistance may make the prosecution lose out on many significant forensic evidences. In Nagina Devi v. State of U.P.,\textsuperscript{61} Allahabad High Court referred to Section 164 A (1), wherein the investigating officer is required to send the victim woman for the examination to the registered medical practitioner within 24 hours of information concerning the offence. Section 164 A (1) of the Code of Criminal Procedure, 1973 provides that, “Such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.”\textsuperscript{62}

\textbf{4.4.1.2. Arrest Of Offender To Provide A Sense Of Security To Victims Of Crime:}

Arrest of the offender may instil a sense of security in the victims of a crime up to a certain extent but if there is a risk or threat to victims’ life or intimidation or retaliation from the offender then police role demands for providing special protection to the victims of crime. Police role of providing protection to right to life and liberty does not ceases with the incidence of a crime against the victim rather it extends with the duty of providing special protection to the victims of crime from intimidation or retaliation from the offender.

It was observed by the Malimath Committee that arrest of the offender is not only necessary to prevent his evading process of law but it is necessary to bring

\textsuperscript{59} C. Clawson & S.K.Chang, “The Relationship of Response Delays and Arrest Rates” 5 \textit{JPSA}, 53-68 (1977);
\textsuperscript{62} Inserted by the Code of Criminal Procedure (Amendment) Act, 2005, w.e.f., 23/06/2006.
his movements under control and to further instil a sense of security and confidence among the victims. By apprehending the suspect, law enforcement officer can help both the present victim of the crime as well as potential victims of crime.

The Code of Criminal Procedure, 1973 provides that in case of victim intimidation and retaliation from the offender any police officer may arrest a person without an order or a warrant.

Section 41 of Code of Criminal Procedure, 1973 prescribes when any police officer may, without an order from a magistrate and without a warrant, arrest any person. It provides that a police officer may arrest a person if the cognizable offence is committed in police officer’s presence, or if he receives a credible information of commission of a cognizable offence, punishable with imprisonment of more than 7 years or with death sentence, or if he receives a credible information of commission of a cognizable offence punishable with imprisonment up to 7 years. But in this last case, fulfilment of two conditions are essential i.e.

(i) there should be a reason for him to believe upon the commission of such offence on the basis of such information, and

(ii) The police officer is satisfied that such arrest is necessary either to prevent further offence, or for the purpose of proper investigation or to prevent destruction of or tampering with the evidence or to prevent the offender from causing, any inducement, threat or promise to anyone either to dissuade him from disclosing the facts either to the court or to the police, or to ensure offender’s presence in the court.

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Preventive Detention: Section 151 of the Code of Criminal Procedure provides for arrest to prevent the commission of cognizable offences. According to Section 151 (1), if a police officer comes to know of a design to commit any cognizable offence and if it appears to the police officer that there is no other way to avoid such commission of offence, then the police officer may arrest such person so designing, without an order from magistrate and without a warrant. Such arrested persons cannot be detained in custody for more than 24 hours from the time of his arrest.71

4.4.1.3. Others Measures To Prevent Victim Intimidation- Externment Orders:

To prevent anti-social activities, various State Police Acts have incorporated the provision of ‘Externment orders’ where Commissioner of Police or the Magistrate may order for externment of any person if he belongs to any of the identified categories such as a body of persons or a gang; persons about to commit an offence and persons convicted of certain offences.72

According to Section 47 of Delhi Police Act73, Commissioner of Police may direct any person to conduct himself in a manner necessary to avoid violence and alarm or to remove himself outside Delhi or from any part of Delhi from prescribed route and within a specified time and not to return to Delhi or to the specified part of Delhi. Delhi Police Acts prescribes the conditions in which any person may be directed to remove himself outside Delhi. These cases where Commissioner of Police, may issue such directions depend upon fulfilment of two conditions i.e.

(i) If it appears to the commissioner of police that a person’s movement or acts are either causing or calculated to cause any alarm, danger or harm to person or property or the person habitually intimidates other persons by showing force or violence or the person habitually passes indecent remarks and overtures on women and girls.

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(ii) The commissioner of police is of the opinion that the presence of such person is intimidating witnesses and because of the fear of such person, witnesses are fearful about their safety concerns with regard to their person and property and not coming forward for deposition against such person.

It was observed by the High Court of Delhi in the case of Ghan Shyam Kapoor @ Dhanu v. LT. Governor of Delhi & Anr, that the relevant provisions i.e., Sections 46, 47 and 48 of the Delhi Police Act are aimed at prevention of crime before their actual commission. Section 47 of this Act was interpreted by the Delhi High Court in the following words,

“Section 47 of the Act, therefore, refers to two aspects. The Commissioner of Police has first to be satisfied about the proceedee to be a dangerous person and that allowing him to roam at large would be hazardous to the society or cause harm and danger to any person or property or reasonable grounds for believing that he would involve himself in offence affecting human body, property, counterfeiting coins and currency notes. Thereafter, the Commissioner of Police is required to formulate his opinion that witnesses are unwilling to come in open to depose against such person for the fear of their lives. Then only a person/offender/proceedee could either be directed to behave himself or remove himself outside any part of Delhi or remove himself completely outside Delhi.”

4.4.2. POLICE ROLE AND VICTIMS’ RIGHT TO ACCESS TO JUSTICE: REGISTERING FIR:

4.4.2.1. Registration of First Information Report Under Section 154:

The Code of Criminal Procedure make it obligatory for the police to register FIR without any delay in case the FIR is in relation to a Cognizable offence. Section 154 of CrPC mandates that every information regarding commission of a cognizable offence shall be reduced into writing and shall be entered in the prescribed book in a prescribed form.

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74 2015 SCC OnLine Del 14180.
75 Section 46, ‘Dispersal of gangs and bodies of persons’, Section 47, ‘Removal of persons about to commit offences’, and Section 48, ‘Removal of persons convicted of certain offences’, The Delhi Police Act, 1978 (No. 34 of 1978), with effect from August 27, 1978. ‘Section 46 deals with the cases where the movement of any gang or bodies of persons are to be restricted and Section 48 deals with the removal of persons convicted of certain offences.’
76 Ghan Shyam Kapoor @ Dhanu v. LT. Governor of Delhi & Anr. 2015 SCC OnLine Del 14180, at para 20.
77 Id at para 12.
Victims’ right to access the justice mechanism has been protected under Section 154 (3) of CrPC. Police cannot refuse to register FIR. In case of refusal to register FIR in cognizable case, the victim has been provided with a remedy to approach Superintendent of Police. Section 154 (3) CrPC provides that in case a police officer refuses to lodge first information in case of a cognizable offence then substance of such information can be sent to the superintendent of police who after being satisfied shall investigate the case himself or may direct any subordinate police officer to investigate the matter. To address the hardships faced by the women victims while lodging the First information Report for the sexual offences certain provisions have been added by criminal Law Amendment Act 2013 under the proviso of Sec.154 Cr.P.C. Informant is also entitled to get copy of information free of cost. A victim can also approach the magistrate directly with a complaint regarding cognizable offence and magistrate U/Sec. 156(3) can order for the investigation by the police.

4.4.2.2. Object Behind Registering FIR:
Lalita kumari case 78 dealt with the issue that whether non-registration of FIR immediately after the crime may lead towards the possibility of manipulation by police adversely affecting victim’s rights? It was observed by the court that registration of FIR brings the investigating machinery into action. The Court further observed that,

“The object sought to be achieved by registering the earliest information as FIR is inter alia twofold: one, that the criminal process is set into motion and is well documented from the very start; and second that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.” 79

Apex Court noted that compulsory registration of FIR ensure transparency in the criminal justice delivery system. It also provides with judicial oversight as Section 157(1) uses the word ‘forthwith’ with the resulting effect that any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate bringing the commission of a cognizable

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79 Id at para 93.
offence not only to the knowledge of the investigating agency but also to the subordinate judiciary.\textsuperscript{80}

Lodging of First Information Report ensures victims’ access to justice by bringing the Criminal Justice System in to motion and lessens the chances of manipulation. In the case of Lalita Kumari v. Government of U.P. & Ors, it was observed that,

“\textit{The obligation to register FIR has inherent advantages:}

\begin{itemize}
  \item[(a)] It is the first step to ‘access to justice’ for a victim.
  \item[(b)] It upholds the ‘Rule of Law’ in as much as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State.
  \item[(c)] It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
  \item[(d)] It leads to less manipulation in criminal cases and lessens incidents of ‘ante dates’ FIR or deliberately delayed FIR.”\textsuperscript{81}
\end{itemize}

\textbf{4.4.2.3. Absolute Obligation Of Police Officer To Register A Cognizable Case:}

In the case of Sandeep Rammilan Shukla v. The State of Maharashtra through the Secretary, Home Department and Ors\textsuperscript{82}, it was observed by the court that a plain reading of Section 154 Cr.P.C., 1973 imposes an absolute obligation upon the police officer to register a cognizable case. In case of violation of this provision the aggrieved person has a right to approach Superintendent of Police for fair investigation. Interpreting to the Section 154 of Cr.P.C., 1973 as self-containing, court made the observation that,

\begin{itemize}
  \item[(a)] Every information relating to commission of a cognizable offence shall be reduced to writing by the police officer or under his direction and read over to the informant.
  \item[(b)] Such information can be given in writing or reduced to writing by the officer concerned and also shall be signed by the informant.
  \item[(c)] The substance whereof shall be entered in a book to be kept by such officer as the State Government may prescribe in this behalf.
\end{itemize}

\begin{flushright}
\textsuperscript{80} Id at para 96.
\textsuperscript{81} Id at para 97.
\textsuperscript{82} Sandeep Rammilan Shukla v. The State of Maharashtra and others 2008 SCC OnLine Bom 996.
\end{flushright}
(d) The scheme of registration of FIR under Section 154 further requires in terms of Section 154(2) the copy of information so recorded shall be given forthwith free of cost to the informant.

(e) Section 154(3) provides a remedy to an aggrieved person in case of refusal on the part of the officer in charge of the police station to record the information by making a complaint to the Superintendent of Police, who if satisfied by such information, having disclosed a commission of cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

Thus, the provisions of Section 154 are self-contained. They impose a duty upon the police officer in charge of a police station to register information of commission of a cognizable offence and supply the copy thereof to the complainant. In the event of default, the remedy is also stipulated. From the essential features of Section 154(1), it is apparent that a police officer has to register information relating to a commission of a cognizable offence.83

In Sandeep Rammilan Shukla v. The State of Maharashtra through the Secretary, Home Department and Ors,84 Court took note of the fact that there is no ambiguity in the wordings used in Section 154 Cr.P.C., 1973, thus a plain reading is sufficient to bring out its essentials. The words used clearly denote the legislative intent of making the registration of complaint mandatory. Provision of remedy further strengthens this construction, and therefore, there cannot be any doubt about the legislative intent of casting an absolute obligation upon the officer in charge of a police station to register a cognizable case.85

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 police officer is supposed to act with fairness and objectivity and with the ultimate objective of serving the rule of law. It was held by the court that,

``Though obligation on the part of the police officer to record/register information in regard to cognizable offence instantaneously is absolute, still there is an exception, of course, a very rare one. In those extra ordinary cases which will fall in this exception, the investigating officer is expected to act fairly, objectively and with unequivocal intention and commitment to uphold the rule of law for maintaining norms of administration of criminal justice. The officer is expected to act without

83 Id at para 12 & 13.
84 Id at para 29.
85 Ibid.
undue delay and without causing prejudice to any of the parties affected in that process.  

4.4.2.4. Police Have No Discretion In Registration Of FIR:

Section 154 of the Cr.P.C., 1973 makes it obligatory for the police to proceed to conduct an investigation if the offence committed is a cognizable offence. Only suspicion that such an offence has been committed is sufficient enough to bring the police into action though there might not be any actual information given to the police. This shows the legislative intent of ensuring prompt investigation in case of cognizable offence. This legal position negates any discretion on part of the police officer to decide whether lodge or not to lodge a FIR. Section 154 of the Cr.P.C., 1973 prescribes for compulsory registration of FIR in cases of cognizable offences so as to bring the investigating machinery into prompt action. It was observed by the Court in the case of Lalita Kumari v. Government of U.P. & Ors. (2013)\textsuperscript{87}, that,

“In terms of the language used in Section 154 of the Code, the police is duty bound to proceed to conduct investigation into a cognizable offence even without receiving information (i.e., FIR) about commission of such an offence, if the officer in charge of the police station otherwise suspects the commission of such an offence. The legislative intent is therefore quite clear, i.e., to ensure that every cognizable offence is promptly investigated in accordance with law. This being the legal position, there is no reason that there should be any discretion or option left with the police to register or not to register a FIR when information is given about the commission of a cognizable offence. Every cognizable offence must be investigated promptly in accordance with law and all information provided under Section 154 of the Code about the commission of a cognizable offence must be registered as a FIR so as to initiate an offence. The requirement of Section 154 of the Code is only that the report must disclose the commission of a cognizable offence and that is sufficient to set the investigating machinery into action.” \textsuperscript{88}

The court further stated that it is State’s duty (through its agency police and without any discretion on its part) to register FIR and conduct investigation in cases of cognizable offences except as otherwise provided under Section 157 of the Code of Criminal Procedure, 1973. The Court observed that, giving of any discretion or latitude to police with respect to registration of FIRs may adversely

\textsuperscript{86} Id at para 100.
\textsuperscript{88} Ibid.
affect the rights of the victims to the extent of violation of their fundamental right to equality.  

4.4.2.5. Only Suspicion Is Enough To Register FIR:

First information relates to the occurrence of an offence. It does not require the informant to be aware of minute details of its commission. It nowhere says that the informant should know the whereabouts of the offender or the victim or he should be an eyewitness to the crime. What does it need, is only the disclosure of a cognizable offence. If such information creates a suspicion that a cognizable offence has occurred than this suspicion is enough to register FIR. First information brings the investigative machinery into action. Ascertaining of its (FIR) content or truthfulness is the later stage of criminal process that can be established through a thorough and prompt investigation. It was observed by the Court in C.B.I. v. Tapan Kumar Singh’s case that,

‘It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed.’

Important point to be taken into consideration is that the information discloses the commission of a cognizable offence and this in itself is sufficient enough to create a suspicion in the mind of the police officer that a cognizable offence has been committed. Here it is not required that police officer must be satisfied or convinced regarding the commission of such an offence. In case he suspects such commission, he should record the information and proceed to conduct an investigation. It is also not required that he should satisfy himself regarding the truthfulness of the information. Truthfulness of any such information can be tested only after a thorough investigation. It is also not necessary that such an information should provide with a complete account of the incident. Any such detail can be obtained only after conducting a proper investigation. The first information given to the police is only for the purpose of setting the

89 Id at para 53.
90 (2003) 6 SCC 175.
91 Id at para 20.
investigative machinery in motion to collect all necessary evidence and proceed further as per the mandate of the law. The true test for this information is its sufficiency as to create a suspicion in the mind of the police officer that a cognizable offence has been committed and police officer concerned is empowered to investigate such an offence under Section 156 of the Code.\textsuperscript{92}

\textbf{4.4.2.6. Credibility Of The Information Is Not A Condition Precedent For Registration Of A Case:}

In Sandeep Rammilan Shukla v. The State of Maharashtra through the Secretary, Home Department and Ors.\textsuperscript{93}, Bombay High Court observed that,

“In other words, reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case.”\textsuperscript{94}

Section 154 (1) of the Criminal Procedure Code uses the expression “information” and this expression has not been qualified with the expressions like ‘reasonable’ or ‘credible’ as is found in the case of Section 41 (1) (a) or (g) of Criminal Procedure Code. This differentiation of the expression “information” in two different Sections emphasize upon the fact that information given under Section 154 (1) need not to be reasonable or credible to get a cognizable case registered.

The High Court in the above case relied on the precedents from the Apex Court case of Mohindro v. State of Punjab\textsuperscript{95}, where case was not registered by the police and inquiry was initiated. It was submitted by the State that pursuant to the observation of the High Court, complaint was examined but it was found to be devoid of credibility or genuineness. The Bench of the Supreme Court, while directing for registration of the case, held as under,

“...Though the learned Counsel appearing for the State of Punjab stated that there had been an inquiry, we fail to understand as to how there can be an enquiry without registering a criminal case. On the facts alleged, it transpires that the appellant approached the police for registering a

\textsuperscript{92} Ibid.
\textsuperscript{93} Sandeep Rammilan Shukla v. The State of Maharashtra and others 2008 SCC OnLine Bom 996.
\textsuperscript{94} Id at para 55.
\textsuperscript{95} (2001) 9 SCC 581.
case and get allegation investigated into and yet for no reasons whatsoever the police failed to register the case."\(^{96}\)

Genuineness is not a condition precedent to be taken into consideration before registration of a case. Any complaint made for registration of a cognizable offence cannot be neglected on the ground that some other alternative remedy is available. In the case of Ramesh Kumari v. State (NCT of Delhi)\(^{97}\), the Supreme Court while directing for the registration of the case and its transfer to CBI for further investigation held as under:

"Genuineness or otherwise of the information can only be considered after registration of the case. Genuineness or credibility of the information is not a condition precedent for registration of a case. We are also clearly of the view that the High court erred in law in dismissing the petition solely on the ground that the contempt petition was pending and the appellant had an alternative remedy. The ground of alternative remedy or pending of the contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against the Police Officer."\(^{98}\)

In case of an information pertaining to the commission of a cognizable offence, police cannot embark upon an enquiry to ensure the credibility or reliability of the information provided. Sec 154 of the CrPC provides for mandatory registration of such an information. This section does not attach any condition of its being a genuine or credible information as a condition precedent to be registered. In the case of Lallan Choudhary and ors v. State of Bihar and Anr,\(^{99}\) where Supreme Court found no justification in denial of registration of a case. It was held by the Supreme Court that,

"The mandate of Section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code."\(^{100}\)

\(^{96}\) Ibid.
\(^{97}\) (2006) 2 SCC 677.
\(^{98}\) Id at para 3.
\(^{100}\) Id at para 10.
It was further held by the apex Court that there cannot be any justification in denial of registration of a case on the ground of its being not credible. Supreme Court held that a police officer is under a statutory obligation to register a case without embarking an enquiry into its genuineness. Not registering first information report in a cognizable case results into grave miscarriage of justice.

Court held that,

“...It is well settled principle of law that in criminal trial, investigation is proceeded by an FIR on the basis of written complaint or otherwise disclosing the offence said to have been committed by the accused. In the present case, a grave miscarriage of justice has been committed by the SHO of concerned Police Station by not registering an FIR on the basis of offence disclosed in the complaint petition. The concerned police officer is statutorily obliged to register the case on the basis of the offence disclosed in the complaint petition and proceed with investigation in terms of procedure contained under Sections 156 and 157 of the Code.”

In the case of Lalita Kumari v. Government of U.P., the court issued certain directions for mandatory registration of FIR. Among the various directions, following one relates with the case where a preliminary inquiry ends up in closing the complaint. The court directed for providing of a copy of such closure to the first informant immediately and this time period should not exceed one week in such cases. Court gave the direction that,

“...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.”

4.4.3. POLICE ROLE AND VICTIMS’ RIGHT TO FAIR INVESTIGATION:

4.4.3.1. Efficient, Effective And Fair Investigation:

Referring to the investigative role of the police under Criminal Justice System, it was observed by the Malimath Committee that being the first and foremost agency of criminal justice system, police play an important role in serving the...
cause of justice. Fair investigation in the case determines the success or failure of prosecution case. It observed as,

“The foundation for the Criminal Justice System is the investigation by the police. When an offence committed is brought to the notice of the police, it is their responsibility to investigate into the matter to find out who has committed the offence, ascertain the facts and circumstances relevant to the crime and to collect the evidence, oral or circumstantial that is necessary to prove the case in the court. The success or failure of the case depends entirely on the work of the investigating officer.”

In State of Haryana v. Bhajanlal\textsuperscript{105}, it was observed by the Apex Court, that police enjoy unfettered powers in the field of investigation of cognizable offences provided the same are legitimately exercised in strict compliance of the code.

“Investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is “legitimately exercised in strict compliance with the provisions falling under chapter XII of the code.”

If the investigating agencies are working within their legal limits, then courts should not interfere with or disturb the track of investigation. According to chapter XIV Cr.P.C., 1973 magistrate can neither interfere with the actual investigation nor can he direct the line of investigation though he is in picture throughout the investigation.\textsuperscript{107}

In Sonalal soni’s case,\textsuperscript{108} the Court observed that serious offences like murder should be investigated by the investigating agency in an efficient, effective and fair manner.\textsuperscript{109}

Investigative powers of Police have been dealt with under chapter XII of Cr.P.C. 1973. Section 2 (h) Cr.P.C. defines “investigation” as including all the proceedings needed for collection of evidence under the Cr.P.C. It can be conducted by a police officer or by any person authorized by Magistrate.

\textsuperscript{104} Para 1.33 at page 19 Government Of India, Report: Committee On Reforms of Criminal Justice System, (Ministry Of Home Affairs, March 2003).


\textsuperscript{106} Id at 62.

\textsuperscript{107} Id.


\textsuperscript{109} Id para 15.
4.4.3.2. **Objective Of An Investigation: Ascertainment Of Truth:**

People conceive truth and justice as one and the same thing. Their notion of justice fails when they find that truth is not being paid any attention in the total response of the crime. It was observed by the Malimath committee that,

“For the common man truth and justice are synonymous so when truth fails, justice fails.”

Investigation helps in ascertainment of the facts or to bring out the real truth. To discover this real truth quality investigation is needed. Emphasizing the value of truth in Criminal Justice System, Malimath Committee observed that,

“Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the Criminal Justice System. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice.”

Ascertainment of truth is the ultimate object of an investigation that can be brought out by skilful collection of best evidence. It was observed in the case of Shreemad Jagadguru v. State of Karnataka that,

“The aim of the investigation is search for truth and bring the offender to book. The essence of Police investigation is skilful inquiry and collection of Material evidence, by which, truth can be ascertained and the offender may be brought to book.”

4.4.3.3. **Steps In The Investigation:**

It was explained in the case of H.N.Rishbud and Inder Singh v. State of Delhi that,

“Under the Code, Investigation consists generally of the following steps:

(a) Proceeding to the spot; Promptly reaching the crime scene
(b) Ascertainment of the facts and circumstances of the case;
(c) Discovery and arrest of the suspected offender;

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111 Id, Para 2.19.4 at page 34.
112 Id, Para 2.16.9 at page 29.
114 Id at para 39.
115 (1955) 1 SCR 1150.
(d) Collection of evidence relating to the commission of the offence which may consist of:

(1) The examination of various persons (including accused) and the reduction of statement into writing, if the officer thinks fit and

(2) The search of places and seizure of things, considered necessary for the investigation and to be produced at the trial;

(e) Formation of the opinion as to whether on the materials collected, there is a case to place the accused before a Magistrate for trial, if so, take the necessary steps for the same for filing necessary charge-sheet under Section 173.\textsuperscript{116}

These steps together mean that the investigation should commence with the prompt reaching to the crime scene to determine the facts and circumstances of the case followed by discovery and arrest of the suspected offender. Then the investigating officer is required to collect all the relevant evidences by examining various persons including accused and taking down their statements and by conducting search and seizure for material evidence. Finally, on the basis of sufficient material, to file the charge-sheet under Section 173.

4.4.3.3.1. Prompt Visit To The Crime Scene For Collection And Preservation Of The Best Evidence

Crime scene visitation is an important aspect in investigation of a crime. Prompt visit to crime scene, by investigating officer is helpful in collection and preservation of best evidence so as to establish the guilt of the offender. It was observed by the Malimath Committee that,

\textit{``Investigation involves several stages and the crime scene visitation is one of the most important of them, excluding perhaps, white-collar crimes. Recognizing this need, the Police Manuals in most of the States have mandated immediate despatch of an officer to the scene of crime for inspecting it, preserving the evidence and preparing the site plan etc. Such inspection of scene crimes should be done by a team consisting of forensic scientist, finger print experts, crime photographer, legal advisor etc. and not just by a single investigating officer.''}\textsuperscript{117}

4.4.3.3.2. Initiation of Investigation: This includes ascertainment of the facts and circumstances of the case. The Questions whether report discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the

\textsuperscript{116} Id at para 5.

\textsuperscript{117} Para 7.22.1 at page 110 Government Of India, Report: Committee On Reforms of Criminal Justice System, (Ministry Of Home Affairs, March 2003).
consideration of the question whether the report discloses the commission of a cognizable offence.

In C.B.I. v. Tapan Kumar Singh\textsuperscript{118} case the court held that “even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can- -.”\textsuperscript{119}

\textbf{4.4.3.3. Arrest Of The Offender To Prevent Chances Of Destruction Or Manipulation Of Evidence By The Offender}

In Som Mittal v. Government of Karnataka\textsuperscript{120}, it was observed by the Supreme Court that even in cognizable offences, a police officer is not bound to arrest an accused. Section 2 (c) of the Code of Criminal Procedure Code, 1973 that defines cognizable offence uses the term ‘may’. Section 41 of the Code of Criminal Procedure, 1973 that provides the circumstances when police may arrest without warrant, also uses the term ‘may’. This shows that a police officer is not bound to arrest. Section 157 (1) of the Code of Criminal Procedure, 1973 that deals with the procedure for investigation also provides that police officer, if finds necessary, then can take measures for the arrest of the offender. This makes the position clear that the officer is not duty bound to arrest even in cognizable offences.

Section 41 of Code of Criminal Procedure, 1973 prescribes when any police officer may, without an order from a magistrate and without a warrant, arrest any person. It provides that a police officer may arrest a person if the cognizable offence is committed in police officer’s presence,\textsuperscript{121} or if he receives a credible information of commission of a cognizable offence, punishable with imprisonment of more than 7 years or with death sentence,\textsuperscript{122} or if he receives a credible information of commission of a cognizable offence punishable with imprisonment up to 7 years.\textsuperscript{123} But for the last circumstance, fulfilment of two conditions are essential i.e.,

\textsuperscript{118} (2003) 6 SCC 175.
\textsuperscript{119} Id at para 20.
\textsuperscript{120} (2008) 3 SCC 753.
\textsuperscript{121} The Code of Criminal Procedure, 1973, Section 41 (1) (a).
\textsuperscript{122} Id Section 41 (1) (ba).
\textsuperscript{123} Id Section 41 (1) (b).
(i) there should be a reason for him to believe upon the commission of such offence on the basis of such information,\textsuperscript{124} and

(ii) The police officer is satisfied that such arrest is necessary either to prevent further offence, or for the purpose of proper investigation or to prevent destruction of or tampering with the evidence or to prevent the offender from causing, any inducement, threat or promise to anyone either to dissuade him from disclosing the facts either to the court or to the police, or to ensure offender’s presence in the court.\textsuperscript{125}

Section 157 (1) of the Code of Criminal Procedure, 1973 prescribes the procedure for investigation of cognizable cases. It provides that if there is a suspicion as to commission of a cognizable offence either on the basis of an information or otherwise then the officer in charge of the police station send a report to the concerned magistrate empowered to take cognizance and then either shall depute some other officer to proceed or shall proceed himself to the spot to initiate investigation and if necessary then take measures for the arrest of the offender.\textsuperscript{126}

It was observed by the Supreme Court in the case of Joginder Kumar v. State of U.P.\textsuperscript{127} that existence of the power to arrest and justification to arrest are two different things and there should not be an arrest because the police has a power to arrest instead there should be some reasonable justification in the opinion of the officer that there are sufficient grounds to justify the arrest made by the police officer. The court referred to the suggestion made by third report of the National Police Commission at page 32 that reads as under,

\begin{quote}
\textit{An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances}
\end{quote}

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.

(ii) The accused is likely to abscond and evade the process of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

\textsuperscript{124} Id Section 41 (1) (b).
\textsuperscript{125} Id Section 41 (1) (b) (ii).
\textsuperscript{126} Id Section 157 (1).
\textsuperscript{127} (1994) 4 SCC 260.
(iv) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.  

4.4.3.3.4. Collection Of Evidence:

4.4.3.3.4.1. Examination Of Various Persons Or Taking Of Their Statements:

Oral Examination: Section 161 of Cr.P.C., 1973 (Ch.XII) deals with oral examination of any person acquainted with the facts and circumstances of the case. Under this section competent police officer may examine any such person.

Recording Of Statements: Section 161 (3) Cr.P.C., 1973 provides for recording of Statements. It provides that statements given by witnesses during investigation may be reduced into writing. Recording of statements depend upon the prudence of police officer. It is not obligatory. If the police officer feels the necessity, he may record it and in that case he shall make a separate and true record of statements of such witnesses. The proviso says that statements may also be recorded by audio-video electronic means. The newly inserted proviso provides recording of statements by a woman police officer in case of a woman victim of specified offences.

Pointing towards the lack of proper investigating skills, Malimath Committee made the remarks that for efficient functioning of the Criminal Justice System, it is the need of the hour to equip its investigatory agency with better interrogation techniques as well as better investigation skills. The Malimath Committee stated that,

“The accused now-a-days are more educated and well informed and use sophisticated weapons and advance techniques to commit the offences without leaving any trace of evidence. Unfortunately, the investigating officers are not given training in interrogation techniques and

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128 Id at para 20.
129 Proviso to Section 161 (3), inserted by the Code of Criminal Procedure (Amendment) Act, 2008, w.e.f., 31/12/2009.
130 Proviso to Section 161 (3), inserted by the Criminal Law (Amendment) Act, 2013, w.e.f., 03/02/2013.
sophisticated investigation skills. All these factors seriously affect the prosecution. This is a major cause for the failure of the system.”

4.4.3.3.4.2. Skilful Collection Of Material And Scientific Evidence: Search And Seizure:

Police role in relation to investigation of offences demands that they should be well trained in collection of best evidence by scientific methods. Skilful collection of material evidence can be helpful in bringing out the real unvarnished truth. It was observed in the case of Shreemad Jagadguru v. State of Karnataka that,

“The essence of police investigation is skilful inquiry and collection of material evidence in a manner by which the potential and culpable person is not forewarned.”

The pivotal role that scientific evidences plays during an investigation and in proving the guilt of offender was emphasized by the apex court in the case of Dharam Deo Yadav v. State of Uttar Pradesh. With the advancement of science and technology, criminal justice system has seen the emergence of varied nature of crime thus rendering the traditional methods of investigation not too much result oriented rather it demands a change in investigative techniques for being result oriented. The Court observed that,

“The criminal justice system in this country is at crossroads. Many a times, reliable, trustworthy, credible witnesses to the crime seldom come forward to depose before the court and even the hardened criminals get away from the clutches of law. Even the reliable witnesses for the prosecution turn hostile due to intimidation, fear and host of other reasons. The investigating agency has, therefore, to look for other ways and means to improve the quality of investigation, which can only be through the collection of scientific evidence. In this age of science, we have to build legal foundations that are sound in science as well as in law. Practices and principles that served in the past, now people think, must give way to innovative and creative methods, if we want to save our criminal justice system. Emerging new types of crimes and their level of sophistication, the traditional methods and tools have become outdated, hence the necessity to strengthen the forensic science for

133 Id at para 29.
135 Id at para 30.
crime detection.- -we are not advocating that in all cases, the scientific evidence is the sure test, but only emphasizing the necessity of promoting scientific evidence also to detect and prove crimes over and above the other evidence.”

Supreme Court in the case of State of Gujarat v. Kishanbhai etc.\textsuperscript{137} observed that scientific investigation leads towards the genuine determination of the culpability of accused. It is the need of the hour that advancement in the field of science and technology should be used by the investigating agencies to bring out the factual truth so as to serve the cause of justice.\textsuperscript{138}

Scientific investigation leads towards the success of prosecution case simply because of the fact that scientific investigation brings out credible evidence and helps in finding out the factual truth. Lack of scientific investigation may prove fatal to prosecution version. It was observed by the Delhi High Court in BMW Hit and Run case\textsuperscript{139} that,

“One of the well-known causes for the failure of a large number of prosecutions is the poor, faulty and unscientific investigation.”\textsuperscript{140}

Delhi High Court in the case of Sanjeev Nanda v. The State,\textsuperscript{141} attributed the failure of large number of prosecution case upon the lack of scientific investigation. Court also made its observation that time and again apex court has also pointed towards the defects prevalent in the traditional investigating techniques and advocated for up to date and better scientific investigating techniques. Court made its observations as under,

“Scientific inputs help the investigators in solving a number of cases of crime. The latest state-of-the-art equipment are the need of the hour considering the escalating rates of acquittal in India due to faulty and defective investigation. In plethora of cases, the Hon’ble Apex Court has pointed out the need for scientific investigation by the investigating agency and deprecated the practice of failure on the part of the investigating agencies in collecting relevant evidence resulting in the acquittal of the accused due to inefficient and untrained Investigating

\textsuperscript{136} Ibid.
\textsuperscript{138} Id at para 12.7.4 and 12.7.5.
\textsuperscript{139} Sanjeev Nanda vs. The State 2009 SCC OnLine Del 2039.
\textsuperscript{140} Id at para 276.
\textsuperscript{141} Ibid.
Officers, who take the investigation in a very casual, careless and traditional manner.”

In Sanjeev Nanda case, Delhi High Court recommended that methods of investigation should be improved and investigation should be made more scientific.  

4.4.3.3.5. Charge-Sheet Or Final Report:

An officer-in-charge of a police station is required to submit a report on completion of an investigation i.e., a Final Report if there is no sufficient evidence or reasonable grounds to place the accused before Magistrate for trial or a Charge-Sheet if he finds sufficient grounds to place the accused on trial. Section 169 of the Code of Criminal Procedure provides that an officer-in-charge of a police station, if finds after an investigation that no reasonable ground exists or there is lack of sufficient evidence then such officer shall release any such arrested accused and give such police report that there is no reasonable ground that justify the forwarding of the accused to a magistrate for trial. It was held in the case of Niranjan Bhuyan v. State that a court when conducting an enquiry under Section 238 can peruse the police diaries and on such perusal, if the court finds that police have unjustly failed in filing of charge-sheet against an accused, the court can issue summons against such accused who was mentioned in the First Information Report and against whom no charge-sheet have been filed by the police. Magistrate can rely on police diary or statements recorded under Section 161.

Section 172 of the Code of Criminal Procedure provides for maintaining of a ‘Special Diary’ or ‘Police Diary’ by the investigating officer to enter his proceedings in the investigation on a day to day basis. This diary contains the information regarding the time when the officer received information, the time when he commenced or closed the investigation and the places visited by him. Further it is required on part of the police officer to make a statement of the circumstances ascertained through his investigation.

In both the cases where police file a Final Report or a Charge-Sheet, police has an obligation to inform the informant about the action taken on the complaint.

142 Id at para 286.
143 Id at para 381.
144 (1962) 1 CrLJ 96 at 97 (Tripura).
of the victim or the informant. Code of Criminal Procedure, 1973 discusses this obligation of police at two places. First when police arrives at the conclusion that there is no sufficient ground for entering into an investigation and files a Final Report then Section 157 (2) requires the police to inform the informant that his matter is not going to be investigated. Secondly when after completion of investigation police files a Charge-Sheet, then the police is required to notify to the informant about the action taken on the information lodged by the informant. Section 173 (2) (ii) requires to provide information to the informant about the result of the investigation.

4.4.3.3.6. Further Investigation:

Section 173 (8) of Cr.P.C., 1973 provides that even after filing of a charge sheet a further investigation may be conducted if the police officer in charge of the police station obtains further evidence either oral or documentary. This section shall not be deemed to preclude further investigation. After forwarding a report (under sub-section 2) to magistrate, if a police officer (in charge of the police station) obtains further evidence, he shall forward a further report or reports to the magistrate and provisions of sub section (2) to (6) shall, as far as may be, apply to such reports as they apply to a report forwarded under sub section 2.

Taking of cognizance by the court is not an impediment in the way of ‘further investigation’. ‘Further investigation’ can cure a defective investigation, even if it is found to be defective during the course of trial. If there are some fresh facts pertaining to the case in question, then the investigating agency should seek formal permission from the courts to make further investigation. ‘Further investigation’ if necessary in the circumstances of the case, should not be neglected or sacrificed for the sake of preventing ‘further delay’ in an expeditious trial.

146 Ibid.
147 Ram Lal Narang v. State (Delhi Admn.) (1979) 2 SCC 322.
In the case of Sonalal Soni v. State of Chhatisgarh the Court emphasized that what helps in arriving at the ‘truth’ should be given due weightage, and it should not be discouraged because of the fact that it may further delay the proceedings.

“The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.”

It was held by the apex court that “sub-section (8) of Section 173 of the Code of Criminal Procedure, 1973 permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted.”

The court observed in Sonalal soni v. State of Chhatisgarh and Ors., that ‘further investigation’ can be conducted in cases of defective investigation, disclosure of the fresh facts, overlooking of some important aspects during investigation, unfair investigation, overlooking collection of important, relevant and material evidences by the investigating officer either deliberately or mistakenly or knowingly. In such cases by invoking its extra ordinary jurisdiction under Article 226 of the Constitution of India, the Court can issue a direction for ‘further investigation’.

4.4.3.3.7. State To Hand Over The Matter To Specialized Agency If Investigating Agency Fails:

In State of Kerala v. M. Gopalan, wherein it was alleged by the petitioner that State and the law enforcement agency failed to prevent the murder of their son and investigation into the murder case also was not free and fair, it was opined by Kerala High Court that to ensure fair and speedy investigation is the obligation of the State. Where the investigating agency is not able to complete the investigation in a prompt manner, State should handover the matter to some

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149 Id at para 11.
152 Id at para 12.
153 Id at para 13.
specialized agency with better expertise to complete the investigation within a reasonable time period.¹⁵⁵

4.5. SIGNIFICANCE OF INVESTIGATIVE POWERS OF POLICE IN ENSURING VICTIMS’ HUMAN RIGHTS:

4.5.1. DUTY OF INVESTIGATION AGENCY: QUEST FOR TRUTH:
Dealing with the issue of improper investigation, Kerala High Court in the case of George Muthoot v. State of Kerala,¹⁵⁶ referred to the recommendations of Malimath Committee where emphasizing upon the role that an investigation agency is supposed to play, it was stated by Malimath Committee that,

“"Quest for truth" should be the motto, guiding star and fundamental duty of the investigation agency and the courts.”¹⁵⁷

To play this role efficiently, it is must that the investigating agency should not only be well trained and well equipped but above all it should be independent in its working without any external influence.¹⁵⁸

4.5.2. POLICE ROLE SHOULD BE PERFORMED IN ACCORDANCE WITH STATUTORY PROVISIONS:
Police is not above the law. They are required to work within their legal bounds. While performing the task of investigation they should strictly follow the mandate of law. Though the field of investigation is the domain of police, still police should abstain from being biased or motivated. They should do investigation in a fair and unbiased manner in accordance with the statutory provisions. It was observed by the Court in the case of Mohammed Maraikkayar v. The Director General of Police¹⁵⁹ that,

“In India, the process of investigation is the province of police (Emperor v. Kuja Nazir Ahmed (AIR 1947 PC 18). But, in a democratic country like India police is not above law. They are bound to do investigation strictly in accordance with the mandate of law. Their investigation should be fair and unbiased. It should not be one sided. In fact confidence of the police will be infused in the mind of the public by their

¹⁵⁵ Id at para 33.
¹⁵⁷ Id at para 29.
¹⁵⁸ Ibid.
¹⁵⁹ Mohammed Maraikkayar v. The Director General of Police 2014 SCC OnLine Mad 9759
fair investigation. Winning the hearts of the complainant by due investigation is also a hallmark of the investigation officer.”

4.5.3. FAIR, IMPARTIAL AND UNINFLUENCED INVESTIGATION:

Police plays a pivotal role in ensuring justice to victims of crime. Fair trial is a fundamental feature of criminal justice system. Fair trial depends upon fair investigation. Fair investigation demands that there should be a careful search in finding out the factual truth. This search should be substantiated with best evidences that are sufficient enough to establish the innocence or guilt of the offender. While doing this task of collection of best evidence, police should not be biased for or against the accused. Whatever efforts are needed to bring out the real culprit in the case should be taken by the court. A fair and thorough investigation will result in advancement of the cause of justice whereas an improper and biased investigation will result into serious miscarriage of justice. It was observed by the Malimath Committee that,

“The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. The aim of the investigation and, in fact, the entire Criminal Justice System is to search for truth. To achieve this objective, the investigating officers must be properly trained and supervised and necessary scientific and logistical support should be made available to them.”

Criminal justice system depends upon the conduction of fair investigation by police. There should not be any external influence. Police functioning should not reflect an unfair, biased and a perfunctory investigation under external

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160 Id at para 8.
influence. Supreme Court made its observation in Manohar Lal Sharma v. Principal Secretary and Others\textsuperscript{162} as,

“A proper investigation into crime is one of the essentials of the Criminal Justice System and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences.”\textsuperscript{163}

4.5.4. INVESTIGATION IN ACCORDANCE WITH LAW, FAIR AND UNTAIANTED WITH NO ESCAPE ROUTE FOR THE GUILTY:

It was observed by the Supreme Court in the case of Samaj Parivartan Samudaya v. State of Karnataka\textsuperscript{164} that,

“An investigation should be fair, in accordance with law and should not be tainted. But, at the same time, the Court has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law.\textsuperscript{165}

This shows that ‘justice’ demands not only for the fair and untainted investigation but needs that it should be in accordance with the provisions of the law and there should not be any external influence to the detriment of fair investigation that give way to the perpetrators of crime to escape the punitive course of law.

4.5.5. INVESTIGATING OFFICER IS EXPECTED TO ACT DILIGENTLY:

Discussing the role played by investigating officer it was emphasized by the court that investigating officers are supposed to perform their duties in accordance with the police manual. Supreme Court emphasized in the case of Dayal Singh& Ors, v. State of Uttaranchal\textsuperscript{166} that investigating officers are,

“Obliged to be diligent, truthful and fair in their approach and investigation. A default or breach of duty, intentionally or otherwise, can sometimes prove fatal to the case of the prosecution. An investigating officer is completely responsible and answerable for the manner and methodology adopted in completing his investigation.”\textsuperscript{167}

\begin{footnotesize}
\textsuperscript{162} Manohar Lal Sharma v. Principal Secretary and Others (2014) 2 SCC 532.
\textsuperscript{163} Id at para 33.
\textsuperscript{165} Id at para 56.
\textsuperscript{167} Id at para 21.
\end{footnotesize}
4.5.6. ETHICAL CONDUCT OF AN INVESTIGATING OFFICER TO ENSURE JUDICIOUS, FAIR AND TRANSPARENT INVESTIGATION:

Kolkata High Court in the case of Nepal Krishna Roy & Ors v. State of West Bengal & Ors.\(^{168}\), observed that for an investigating official, ethical conduct is must. His conduct should not be biased. Performing his duties in an impartial and professional manner he should try to bring out the factual truth. Such functioning is not only necessary for maintaining the professional conduct of an investigating officer but simultaneously is needed for restoring the trust of public in the criminal justice system.

"The investigation is a delegate painstaking and dexterous process. The ethical conduct is absolutely essential for investigating professionalism which should be above the allegation of mala fide and/or bias. It is an onerous and responsible duty cast on the investigating officer to conduct the investigation avoiding any possibility of fabrication of evidence and his impartiality dispelling any suspicion or its genuinity. His prime duty is to bring out the real unworthiness truth to instil the confidence of the public and rule out the sense of being partitioned or to suppress or save person holding any high position in the society. Any extraneous force and/or influence in the investigation process may result into tainted and unfair investigation. Any investigation with an object to help a person cannot be taken to have been done judiciously, fairly and transparently.\(^{169}\)

4.5.7. COURT’S POWER TO INTERFERE WITH THE INVESTIGATION:

Ch XII of Code of Criminal Procedure, 1973 deals with the provision in relation to the investigation in case of cognizable offences. It was observed by the Calcutta High Court in the case of Nepal Krishna Roy & ors.\(^{170}\) that according to the provisions of Chapter XII of the Code of Criminal Procedure, 1973, court cannot prescribe any particular manner for the conduction of the investigation. The Court made its observation that,

"The Court cannot direct that the investigation should be done in a manner which is not recognized under the Code nor can direct the inclusion of the person or the arrest to be made by the police. The Court monitoring the investigation can certainly say that the investigation has

\(^{169}\) Id at para 75.
not been done in a fair and transparent manner by the investigating agency and the High Court either in exercise of power under Section 482 of the Code or Article 226 of the Constitution of India can direct reinvestigation/fresh investigation and/or de novo investigation.”"171

Describing the investigation as the exclusive domain of Police, Court in the case of Manohar Lal Sharma v. Principal Secretary and Others172 observed that not performing this investigative role in accordance with statutory provisions may attract Court’s intervention. Where the role performed by the investigating agency jeopardizes the rights of the citizens, courts can intervene to provide protection. The Court held that,

“In very exceptional cases, however, where the Court finds that the police officer has exercised his investigatory powers in breach of the statutory provisions putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the Court may intervene to protect the personal and/or property rights of the citizens.”173

Even in the case of mala fide exercise of investigative powers by police, High Court cannot give the directions for investigation to proceed in a particular line of action but can issue appropriate directions for investigation as prescribed under the provisions of the Code. It was observed by the Court in the case of Divine Retreat Centre v. State of Kerala174 that,

“It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out, requiring interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code.”175

171 Id at para 75.
172 Manohar Lal Sharma v. Principal Secretary and Others (2014) 2 SCC 532.
173 Id at para 24.
175 Id at para 41.
4.6. **CONCLUSION:**

Victims do have a right to justice including right to protection, right to access to justice and right to fair investigation. For substantive realization of these rights, some enforcement machinery is required. For this substantive realization, State has entrusted some responsibilities upon police as its agency.

International instruments provide police duties as consisting of providing protection from illegal acts, upholding Human Rights of all and maintaining high degrees of professional standards. As far as police dealing with victim is concerned, international standards provide for treatment in a ‘sympathetic, constructive and reassuring manner’. National standards prescribe that constitutional ideals including Fundamental Rights should be given due respect. Police should not cross their legal limitations. Police should perform their duties in accordance with the law. Judiciary is of the opinion that prime responsibility of the police is to provide protection, ensure access to justice and ensure fair investigation to the victim of the crime.

Police play an important role in realization of victims’ rights. It is police duty to prevent crime before it happens. Preventing intimidation or harassment of victim-witness is a task entrusted with police. mechanism. Performance of this role in a positive manner brings back victims’ faith in Criminal Justice System. It may further boost victims’ morale to come forward for truthful deposition in the case thus bringing out the factual truth before the courts.

Police play an important role in ensuring victims’ right to fair investigation. Investigation is a task in which evidences are collected to establish the guilt of the offender. Collection of clinching evidence with the help of advance scientific tools help in establishing the guilt of offender and ensures victim justice. Code of Criminal Procedure provides many effective provisions and fair mechanism to guide the police in its investigation exercise to collect evidence and bring the offender to justice.

A positive role discharged by the police can provide protection to victims, can be helpful in providing with a fair investigation in the case and can finally ensure their easy access to justice. On the other hand, a negative police role may
jeopardize victims’ rights. To advance the cause of victim justice, positive police role is the need of the hour.