CHAPTER-4

RECOGNITION OF VICTIMS’ JUSTICE NEEDS: VICTIM SPECIFIC INITIATIVES IN OTHER COUNTRIES

4.1. INTRODUCTION:

Acknowledging the fact that a victim of crime is entitled to rights in the process of criminal trial, Victorian Law Reform Commission in its Report, August 2016 observed that,

Victims of crime seek- and are entitled to- acknowledgement and respect; information and support; participation; and protection. Acknowledgment and respect involve victims being treated properly as persons affected, often grievously, by what has occurred. Information and support involve victims being provided with appropriate and relevant material about the process they are to experience and the means to negotiate that process with minimum trauma. Participation involves allowing victims to have their views considered and the ability to make their concerns known. For those victims who give evidence, protection involves ensuring that they are treated properly as witnesses.¹

In the light of this observation, this chapter tries to look into victims’ rights and their entitlements under victim specific initiatives of various countries. Victims of crime has received international recognition and various international instruments reflect upon this position. How far this international recognition has resulted into effective implementation of victims’ rights at domestic level, is required to be studied. This chapter looks into various victim specific initiatives of U.S.A., Canada, U.K., and of Australia. At domestic platform, victims received attention in criminal justice system after going through a long journey of their struggle for recognition. How victim movements contributed in the process of recognition of victims’ interests and his concerns and resulted into government initiatives in the form of constitutional, legislative or other initiatives, recognizing victims’ right to procedural, informational and interactional justice, is the subject matter of this chapter.

4.2. VICTIMS’ RIGHTS MOVEMENTS:

In contrast to the earlier phases of Victimology which centered on the role played by the victim in his own victimization and victim blaming, nowadays, victimology is focused on the issues of helping and assisting crime victims, minimizing their sufferings and ensuring their rights. From an academic discipline, it has now transformed into a humanistic movement.2

4.2.1. VICTIMS’ RIGHTS MOVEMENTS IN U.S.A.:

Beginning of nineteenth century was the beginning of the American Criminal Justice System when the private prosecutions were taken over by the public prosecution system. This system gradually excluded victim from meaningful participation to a mere witness to a crime. It was seen that crime rates were increasing and victims were not satisfied with the Criminal Justice System. They were feeling frustrated because of the rejection by the system. During this period, various victims’ groups were formed who emphasized upon paying attention towards the needs of the crime victims.3 Victims’ movement originated during the 1970s in the United States. During this period victims’ various groups raised their voice for victims’ concerns and tried to draw the attention of authorities towards the effects that crime could leave upon the victim. They also addressed the issue of improper treatment being given by the agencies of Criminal Justice System to the sufferer of a crime. These various voices were the result of precarious situation of victim within criminal justice system that was in an urgent need of some attention.4 Other issues that contributed towards the growth of victim movements in United States, can be described as the existent growth rate of crime at that time, resultant law and order problems, movements demanding rights for suspects, accused persons and prisoners. These simultaneous circumstances made the ground fertile for asking victims’ rights within criminal justice systems.

Women Movement (from early 1970s) raised the concerns about the oppression of female by the male especially the cases of rape. This movement highlighted the common problem being faced by all the victims of crime and that was the ‘humiliating treatment’ of victims by police and by the courts.5 Women movement in United States, drew attention towards the victim-insensitive and unsympathetic attitude of agencies of Criminal Justice System and practice of


5 Id.
disapproving victims’ version and counter blaming rape victim for her victimization. Under this movement, to provide protection from retaliation, women victims were provided with emergency shelters. In later course, feminists, instead of shifting victim out of her own home, started advocating firmer police action to tackle the situation and to remove the offender from the home.6

Increased cases of child abuse drew further attention towards taking care of victims’ concerns. By early eighties, victims of other offences got representation through various voluntary organizations such as Mothers Against Drunk Driving (MADD), Victims of Child Abuse Laws (VOCAL) and Parents of Murdered Children.7

Mike maguire has identified two distinct strands of development of victims’ movement in USA. One was the movement that was run by the government to ensure maximum reporting of crime and maximum deposition by the witnesses in courts. This had nothing to do with the real concerns of victims. Government initiatives provided for better compensatory schemes. Another movement was run by the volunteers without governmental support to ensure that victims get the needed support and assistance. This movement demanded for more legal rights for victims with fair treatment within the criminal justice system.8

During 1967, reports of President’s Commission on Law Enforcement and Administration of Justice9 and reports of “Victim Surveys” conducted by Biderman et al (1967)10, and Ennis (1967)11 and reports of “National Crime Survey (1972)”12 reflected upon victims’ alienation from the criminal justice system. This resulted in funding to a number of “victim-witness assistance” programs by the Law Enforcement Assistance Administration in 1970s. These programmes though took victims’ needs for information about case progress and court appearances, protection from intimidation, better treatment and assistance into

---

6 Id at 370.
7 Id at 371-372.
8 Id at 368-370.
12 Mike Maguire, supra note 4 at 368-370.
consideration,\textsuperscript{13} but were aimed at ensuring reporting of crime and ensuring victim-testimony in the court.\textsuperscript{14}

A cumulative effect of the movements led by the victim groups can be seen as recognition of victims’ needs and a demand for their rights within the Criminal Justice System. Several victim-advocate organizations started demanding rights for specific type of victims. These demands included right to compensation, say in prosecution and parole decisions. Some organizations such as Victim Services Agency (VSA) in New York focused their attention towards the needs of victims instead of claiming rights for the victims. This resulted in establishment of various victim assistance services. This welfare oriented generalist model was already prevalent in other countries like Britain, Canada and Holland.\textsuperscript{15}

In 1971, Criminal Injuries Compensation Act was enacted in New Jersey that resulted into establishment of Victims of Crime Compensation Board. Year 1972 witnessed the creation of several victim assistance programs in Missouri, California, Washington D.C., Florida and Indiana. National Organization for Victim Assistance (NOVA) was formed in 1975.

United States Supreme Court decision in Linda R.S. v. Richard D.\textsuperscript{16}, played an important role in crime victims’ rights movement. In this case, it was considered by the Supreme Court that whether victim could seek an order in case, prosecutors’ office discriminately applied a penal statute criminalizing non-payment of child support. It was held by the Court that since a nexus between the prosecutors’ alleged discriminatory enforcement of child support statute and the woman’s failure to secure child support payments was not established, victim did not have any such standing that entitled her to seek the relief. In dicta, it was acknowledged by the U.S. Supreme Court that due to the lack of judicially cognizable interest of a private citizen in the prosecution or non-prosecution of a person, victim cannot compel for criminal prosecution.\textsuperscript{17}

Along with this observation, court provided a foundation for remedying the existing situation by stating that Congress could, “\textit{enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute.”}\textsuperscript{18}


\textsuperscript{14}Mike Maguire, supra note 4 at 368-370.

\textsuperscript{15}Id at 372-373.


\textsuperscript{17}Id.

\textsuperscript{18}Id.
This observation of the court that Congress could enact legislations to recognize victims’ rights, provided the legal impetus for victims’ rights movement. In 1980, Wisconsin passed the first, “Crime Victims Bill of Rights”. In 1981, first annual National Victims of Crime week was proclaimed by President Regan. In 1982, President’s Task Force on Victims of Crime was established. The report presented by this Task Force highlighted the poor condition of victims of crime within the Criminal Justice System. This report commented upon the victims’ condition as,

Victims have discovered that they are treated as appendages of a system appallingly out of balance. They have learned that somewhere along the way, the system has lost tract of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest.

This report made it clear that the present system does not take into consideration the interest of the victim of crime. Victims are devoid of the protection that are given under the vital guarantees of the Constitution. Task force mentioned that as a constitutional mandate, it is the duty of the State to prohibit itself from such practices that result into trampling of the rights of the individual citizens. Victims of crime are being oppressively burdened by the Criminal Justice System because of its victim-insensitive functioning. It was recommended by the Task Force that victim of crime should be given treatment equal to that of the accused. It said, “Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical states of judicial proceedings.”

In United States, National Organization for Victim Assistance (NOVA, 1976), came forward to demand major policy changes and legislation in favor of victims. In 1982, the Omnibus Victim and Witness Protection Act was passed that provided various rights for victims of crime. These included protections from intimidation, restitution from offenders, stricter bail conditions and consideration of “Victim Impact Statements”. This triggered passing of various subsequent legislations in the field that resulted in present day Victims’ Rights in United States.

---

20 Id at 5, PRESIDENT TASK FORCE ON VICTIMS OF CRIME at iv (Dec. 1982).
21 Richard D. Pompelio, supra note 3 at 6.
22 Mike Maguire, supra note 4 at 377.
24 Mike Maguire, supra note 4 at 379.
During 1980, a Coalition of New Jersey Crime Victims was formed. New Jersey Crime Victim Bill of Rights, 1985 could not make much change due to the lack of training programmes for lawyers, judges, prosecutors and law enforcement personnel. In 1989, it was found by the New Jersey Assemblyman Alex De Croce that there was an urgent need for an amendment to give rights to victims of crime. He introduced into the State Assembly ACR 85, a concurrent resolution that provided for, “A victim of crime shall be entitled to due process of law, including the right to be informed of, to be present at, and to be heard at appropriate criminal justice proceedings, and the Legislature may further define the extent of these rights through legislation.”

This proposed amendment was opposed on the ground that already there existed sufficient safeguards under the “due Process” clause. Some were against amending the constitution and some were of the view that proper implementation of the existing laws was sufficient enough to ensure victims’ rights. The language of this proposed amendment was modified in 1990. Favoring the amendment, it was emphasized by the Richard D. Pompelio (Victim Advocate) that for an accused, sentence awarded to him, gets over in due course of time but in case of a victim of crime, it is a long journey that never ends. Finally, the amendment was passed in 1991 giving victims of crime right to fairness, compassion and respect within the criminal justice system.

First wave of victims’ rights movement secured statutory rights for victims of crime. Second wave of victims’ rights movement resulted into amendments into State Constitutions to provide victims with Constitutional rights. As a result of this movement, thirty-three States amended their Constitutions to incorporate victim rights. Judiciary also recognized this change in Payne v. Tennessee wherein the United States Supreme Court stated that victims of crime cannot be termed as nameless or faceless non-players in the process of criminal justice.

---

25 Richard D. Pompelio, supra note 3 at 6-7.
26 Richard D. Pompelio, supra note 3 at 8.
27 Richard D. Pompelio, supra note 3 at 8-15.
It was noted by Justice Scalia in his concurring opinion that, “a public sense of justice keen enough that it has found voice in a nationwide ‘victims’ rights movement.’”\(^\text{30}\)

These State constitutional rights did not provide with a proper enforcement mechanism resulting into terming these rights as non-enforceable rights. Giving examples of victims and their family members who despite having a State Constitutional right to attend and address the court or to oppose the plea bargain, were refused to attend the court or to oppose the plea bargain, Beloof refers the State Constitutional rights as illusionary rights without any enforcement mechanism, lack of standing, lack of remedy in case of their violation or lack of review mechanism.\(^\text{31}\) Treating victims’ rights as only ‘directory’ instead of ‘mandatory’ or considering them only as ‘advisory’ instead of ‘binding’ results into denial of their rights or make them only illusory for victims.\(^\text{32}\) Beloof identifies government discretion to deny such rights, lack of remedy and discretion of appellate court to deny review as the main obstacles that come in the way of better enforcement of victims’ rights and argues that to convert illusory rights of victims of crime into a reality, it is required that they should be provided with standing, remedy and review rights.\(^\text{33}\)

These drawbacks were taken into consideration at the time of enacting federal CVRA that provided enforceable rights to victims of crime in case of federal offences. In USA, many States not only amended their constitutions but created a special office of ‘victim advocate’ to help victims.\(^\text{34}\) But these provisions are limited merely with the presence of legal representative and not beyond.\(^\text{35}\) Some US States allow victims to appoint their own attorneys.\(^\text{36}\) In Wisconsin, West Virginia and New Hampshire Victims’ counsels are allowed to make representation in cases of consideration of past sexual history of victims by the

\(^{32}\) Id at 259.  
\(^{33}\) Id at 258.  
\(^{34}\) 34 states have amended their constitutions as of 13 July, 2007 as per the list of National Victims’ Rights Constitutional Amendment Network, http://www.nvcan.org  
\(^{35}\) Washington Statute RCW 7.69.030, §1; Illinois constitution Art. 1, § 8.1.  
court.\textsuperscript{37} The South Carolina provision permits victim to defend himself through a counsel, if victim’s reputation is being attacked by the defendant.\textsuperscript{38}

\textbf{4.2.2. VICTIMS’ RIGHTS MOVEMENTS IN CANADA:}

Feminist movement for victims of domestic violence and sexual assault were the main contributors in the development of victims’ rights in Canada. Since 1980, various organizations such as Citizens United for Safety and Justice, Victims of Violence and CAVEAT are working towards recognition of victim in the criminal justice process. Due to the overall impact of victim movements and initiatives taken by the victims, legislations in Canada ensure and respect victims’ rights. Amendment in the Criminal Code in 1976 that limited questions about past sexual history of the victim was a significant step that helped in recognition of victims’ rights in criminal justice process.\textsuperscript{39}

In contrast to the U.S. where victim movements contributed in the recognition of victims’ rights, in Canada, it was mainly due to the efforts taken by the government that some respect were shown towards the victim.\textsuperscript{40} In “Federal-Provincial Conference on Ministers Responsible for Criminal Justice,” (1979), victims’ rights were discussed. This is termed as the key starting point in the growth of victims’ rights in Canada. Other factors that contributed in recognition of victims’ rights in Canada involve; coalition of feminist’s organizations; victim assistance programmes and the victims’ rights movement in U.S.A.\textsuperscript{41} In 1983, to ensure victim-justice, various recommendations were made by the Federal-Provincial Task Force that included among others provision of information regarding the date of trial and its outcome and notification in case offender is released from custody. It was also recommended that victim should be provided with an opportunity to make representations including victim impact statement.\textsuperscript{42}

\begin{flushright}
37 Id.
38 South Carolina Statute 16-3-1510, § 3F (2) states, “a victim or witness has the right to retain counsel in court to represent him in cases involving the victim’s reputation.”
40 K. ROACH, DUE PROCESS AND VICTIMS’ RIGHTS: THE NEW LAW AND POLITICS OF CRIMINAL JUSTICE 281 (Toronto: University of Toronto Press, 1999)
42 I. Waller, Victim V. Regina V. Wrongdoer: Justice, 8, 1, 12, CAN. COM. L. J. 1985.
\end{flushright}
In 1985, first national conference on victims was held in Toronto. Later on, recognizing the UN Declaration of 1985, Federal and Provincial Ministers agreed upon the Canadian Statement of Basic Principles of Justice for Victims of Crime. In 1988, all Federal, provincial and territorial governments adopted a uniform policy statement, “Statement of Basic Principles of Justice for Victims of Crime” that was updated by all Canadian Ministers of Justice in 2003. Canadian Statement of Basic Principles of Justice for Victims of Crime provided with some guiding principles for ensuring victims’ access to justice and fair treatment within criminal justice system. This Statement emphasized that victim should be given respectful and dignified treatment. Inconvenience to victim should be minimized. They should be given prompt and fair redress for the harm undergone by the victim. Information to be provided to victims should include available remedies, mechanisms to obtain remedies, victim participation in criminal proceedings, time of the trial and progress in the proceedings and final disposition of the proceedings. Victims’ views and concerns should be taken into consideration. Victims and their family members should be provided protection from intimidation and retaliation by the offender. This Statement is also important for it emphasized upon the need of making functionaries of criminal justice system, victim-sensitive and for this purpose upon the development of guidelines.

In 1995, Ontario passed ‘Victims Bill of Rights’ but Vanscoy decision of 1999 confirmed that this ‘bill of rights’ does not give any right to victims of crime. In Canada, most of the legislations enacted by the provincial governments reflect the principles enshrined under the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. Except of one legislation, enacted by Manitoba in 2000 which provide victims with a complaint mechanism, there is a lack of enforcement mechanism in other legislations. These legislations do not confer ‘true rights’ upon victims of crime. The rights provided under these legislations only reiterates what entitlements victim should be given without providing of any complaint mechanism in case of violation of any of these said rights. Provincial bill of rights provide that Crown Attorneys should take care of victims’ rights by providing them

---

43 Victims’ Rights in Canada, supra note 39.
45 Victims’ Rights in Canada, supra note 39.
46 Alan N. Young, supra note 44.
47 Alan N. Young, supra note 44.
48 Victims’ Rights in Canada, supra note 39.
49 Victims’ Rights in Canada, supra note 39.
information and consultation in relation to court dates and plea bargains. Due to the disagreement among the Crown, police and service providers as who owes the responsibility to provide this information, victims are often left with no information as to their rights and in relation to the progress of the case.\textsuperscript{50}

In recognition of Canadian Charter of Rights and Freedoms that guarantees rights to victims of crime, Canadian Victims’ Bill of Rights, 2015 was passed that recognized that victims of crime should be given a respectful treatment. In the interest of justice, victims’ rights should be paid due consideration throughout the criminal justice system.\textsuperscript{51}

\textbf{4.2.3. VICTIMS’ RIGHTS MOVEMENTS IN U.K.:}

In Britain, victim movement were basically focused on providing of welfare services.\textsuperscript{52} Till the start of 1979, thirty such schemes were in existence that formed together the National Association of Victim Support Schemes (NAVSS) that is known as “Victim Support”.\textsuperscript{53} On one side, “Victim Support” was getting government funding due to the political factors, and on the other side, there were other local organizations providing victim services, but these organizations were working on their own without any support either from the “Victim Support” or from the government funding.\textsuperscript{54} There was an inclination towards providing of victim services in UK. “Victim Support” was the main organization providing various types of services to victims in the United Kingdom.\textsuperscript{55}

Victims’ movement got success due to the positive response of police that provided a greater willingness to take care of victims’ welfare. In Britain, it is not because of the legislations mandating police role, but because of the departmental instructions that police show sympathetic treatment towards victims of crime.\textsuperscript{56} In Britain, victims were able to get increased attention towards providing improved court-facility and provision of information only in mid-1980s.\textsuperscript{57} Earlier, even the Courts were of the view that victims should not be given any different treatment from rest of the witnesses. They were not at all inclined to bring

\textsuperscript{50} Victims’ Rights in Canada, \textit{supra} note 39.
\textsuperscript{53} Mike Maguire, \textit{supra} note 4 at 373.
\textsuperscript{55} Mike Maguire, \textit{supra} note 4 at 384.
\textsuperscript{56} Mike Maguire, \textit{supra} note 4 at 381.
\textsuperscript{57} Mike Maguire, \textit{supra} note 4 at 370.
any change in their attitude towards victims. Now, in UK, Human Rights Act ensures that legislature and domestic courts provide protection to victims’ rights as per the jurisprudence of Strasbourg court. Due to the EU Framework Decision, Strasbourg jurisprudence, domestic legislation and case laws, victims are now able to enjoy various rights under English Criminal Justice System. This fact has been recognized by the Law Commission of England and Wales (1997) at 5.22 as, “victims of crimes have Human Rights as well, and if a country’s rules of criminal law, procedure of evidence are ineffective to protect such victims, this deficiency sometimes enables them to complain that their rights under the convention have been breached.”

In 1998, it was recommended by Sir Iain Glidewell in his final report on review of CPS that any decision of not proceeding with a charge or acceptance of a guilty plea for a lesser offence should be communicated to the victim or to his family members by the office of the prosecutor instead by the police since police might be in a position of not understanding that particular decision and might be unable to explain the same to the victims. This report recommended for written notification and offer of meeting in case any necessity of an explanation is felt. Recommendation emphasized only upon providing of a notification until and unless there is a demand from victim for its explanation.

Regarding information and notification to the victims, responsibility of CPS to inform victims or to their family members was considered in the death case of Stephen Lawrence wherein it was emphasized that any decision pertaining to discontinuance of proceedings should be communicated to the victim or to his family members by the CPS. Describing the responsibility of CPS, it was noted in by Sir William Macpherson in his Report (1999) that, “The CPS should have the positive duty always to notify a victim and a victim’s family personally of a decision to discontinue, particularly in cases of racist crime, with speed and sensitivity.”

These reports (Reports of Sir Iain Glidewell and Macpherson Report) resulted into incorporation of new processes for ensuring access of information to victims under the

---

59 JONATHAN DOAK, supra note 36 at 245.
60 JONATHAN DOAK, supra note 36 at 245.
62 THE STEPHEN LAWRENCE INQUIRY—REPORT OF AN INQUIRY BY SIR WILLIAM MACPHERSON OF CLUNY. Cm. 4262 (1999).
Prosecutors’ Pledge (2005) and Code of Practice for Victims of Crime (2006). Practically these documents only consolidated already existing processes for providing services to victims.

A significant change in victims’ position was brought by enactment of Code of Practice for Victims of Crime or the Victims’ Code, 2006. Established by the Domestic Violence, Crime and Victims Act, 2004, it is the statutory code in England and Wales, prescribing the services to be provided by the agencies of criminal justice system to the victims of crime. This Code was criticized on the ground of insufficient enforceability of the rights provided under the Code. No criminal or civil liability could be imposed on any person on account of failure to comply with any of its provisions, though such failures could be taken into consideration by courts in other proceedings. This Code of Practice for Victims of Crime or the Victims’ Code, 2006 was first revised in December 2013 to provide with victims’ entitlements and corresponding obligations of criminal justice agencies. Recently updated version of this Code came into force in November 2015 incorporating measures to comply with the European Union Victims’ Directives. Definition of victim was broadened so as to include victims of all offenses. Agencies were made responsible to provide services and information to victims of crime. Police were imposed with the obligation to provide written acknowledgement, on reporting a crime, to victims.

4.2.4. VICTIMS’ RIGHTS MOVEMENTS IN AUSTRALIA:

In Australia, victim movements started during early 1980s. This was pioneered by a former Commissioner of Police, Ray Whitrod, who established ‘Victims of Crime Service’ (VOCS) in Adelaide in 1979. At a non-governmental platform, it was an active and effective force providing counselling and advocacy services to victims. This resulted into establishment of similar services for victims of crime throughout Australia. Due to this initiative official

---

64 Dan Jones & Josie Brown, supra note 63 at 218-219.
67 Victim Support: Victims’ Code, supra note 65.
68 Id.
inquiries in Australia started considering victims’ role in criminal justice system. Various factors that contributed in the development of victims’ rights in Australia include attention paid by State Governments and the Federal Government to victims of domestic violence and child victims and developments in the field of human rights resulting into an overwhelming feeling by victims that they should also be given justice. This paved the way for victim lobbies and pressure groups. Increase in the field of higher education also contributed significantly due to the factor that higher education brought a greater level of awareness among a large section of victims as to their rights and entitlements and the mechanism for their enforcement. During 1990s there was a shift in victims’ movements in Australia away from victims’ rights movements towards victim support services. Organisations started concentrating their efforts towards removal of the sufferings of victims primarily, though continued secondarily with their demand of structural and systematic change within criminal justice system. Now in Australia, there is a Charter for Victims’ Rights, 1996 endorsed by the then Standing Committee of Attorneys- General. Every State has its own principles or charter of rights to deal with victims of crime. In furtherance of these charters, National Framework of Rights and Services tries to identify the basic principles that provide support for victims’ rights. This framework outlines the principles that support victims’ rights in most jurisdictions in Australia. These are respectful and dignified treatment, information, justice and fair treatment to victims of crime.

4.3. VICTIM SPECIFIC INITIATIVES IN U.S.A.

4.3.1. CRIME VICTIMS’ RIGHTS ACT 18 U.S.C. 3771 (OF 2004)

4.3.1.1. OBJECTIVES OF THE ACT:

---

71 W. Clifford, Victimology In Australia, 8 (3-4) VICTIMOLOGY: AN INTERNATIONAL JOURNAL 39 (1983).
Crime Victims’ Rights Act of 2004 was signed by President Bush on October 30, 2004 to strengthen the federal statutes providing protection to crime victims’ rights. This federal statute enumerates victims’ rights in case of a commission of a federal crime and provides with enhanced enforcement.74

4.3.1.2. DEFINITION OF VICTIM:

Crime Victims’ Rights Act of 2004 defines ‘Crime victim’ as

The term “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights under this chapter, **but in no event, shall the defendant be named as such guardian or representative.**75 (emphasis added)

This definition provides that the Act is applicable only if a federal offense has been committed against a person and such person has been harmed. In certain circumstances as provided under this definition, legal guardian, representative, family member or any other person may also assume the rights provided for the benefit of the crime victim. Definition of the term “crime victim” as provided under this Act clearly mentions that any person, if he is the defendant in the case, shall not be considered as a guardian or representative of the victim of that offence.

4.3.1.3. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

Under the CVRA, victim has been provided with various rights ensuring procedural justice to victims of crime. These rights include participatory rights and extend throughout the criminal justice process including the stage of investigation and prosecution. These rights include the right to reasonable protection, right to notification, right to be present during court proceedings, right to be reasonably heard, right to confer with the government attorney, right to speedy proceedings and right to be provided with fair and dignified treatment.76 The Act provides that either the victim or his lawful representative and Government attorney can assert

74 DOUGLAS E. BELOOF et. al., VICTIMS IN CRIMINAL PROCEDURE 728 (Carolina academic press, 2010).
76 Id at § 3771 (a).
these rights. This Act makes it obligatory for the courts to ensure that crime victims are afforded the rights recognized under CVRA.

Various provisions of CVRA indicate that victim has been given participatory rights even during investigation stage or before filing of formal charges. CVRA provides victims with “the right to be treated with fairness.” Act also provides that not only the Justice Department but “other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime” should afford these rights to victims of crime. Imposition of obligation upon investigating agency show that these rights extend to pre-charging situations. Agreeing with CVRA’s Senate cosponsor, Senator Jon Kyl’s view, Paul G. Cassell et al. contends that, “CVRA does extend crime victims’ rights during criminal investigations.” They emphasize that federal agencies involved in the process of “detection and investigation” of crime are covered under CVRA and this Act entitles crime victims to file motions in case there is no prosecution of the offender.

In U.S., Courts are of the view that CVRA gives rights to crime victim before filing of a formal charge. In United States v. BP Prods, it was concluded by the district court for the Southern District of Texas that victims are entitled to CVRA rights during the investigation of a crime. It was observed by the Court that, “There are clearly rights under the CVRA that apply before any prosecution is underway.”

Paul G. Cassell et al. are of the view that, “Crime victims’ CVRA rights attach before formal charging” and that an analysis of various provisions of CVRA show that Act is equally applicable even in cases where charges are not filed. Victims need right to confer with the prosecution not only after but before filing of charges otherwise they can easily be excluded from participating in plea bargaining process or in case of a non-prosecution agreement between the prosecutor and the offender.

77 Id at § 3771 (d) (1).
78 18 U.S.C. Section 3771 (b) (1).
80 18 U.S.C. § 3771 (a) (8).
81 18 U.S.C. § 3771 (c) (1).
82 Paul G. Cassell, supra note 79 at 72.
83 Paul G. Cassell, supra note 79.
84 Paul G. Cassell, supra note 79 at 62.
86 United States v. BP Prods. supra note 85.
87 Paul G. Cassell, supra note 79 at 61-62.
88 Paul G. Cassell, supra note 79 at 61.
In re Dean\textsuperscript{89}, observing that CVRA rights are applicable even before the trial, the appellate court held as under, “The district court acknowledged that “[t]here are clearly rights under the CVRA that apply before any prosecution is underway.” Logically, this includes the CVRA’s establishment of victims’ “reasonable right to confer with the attorney for the Government.”\textsuperscript{90}

In Does v. United States\textsuperscript{91}, Court rejected the contention of the government regarding applicability of CVRA only after filing of charges, it was held by the court that, “the statutory language clearly contemplates pre-charge proceedings.”\textsuperscript{92}

Observations made by the court in this regard shows the applicability of CVRA during investigative stages of a case. The court observed that,

Requirement that officials engaged in ‘detection [or] investigation’ [of crimes] afford victims the rights enumerated in subsection (a) surely contemplates pre-charge application of the CVRA……if the CVRA’s rights may be enforced before a prosecution is underway, then, to avoid a strained reading of the statute, those rights must attach before a complaint or indictment formally charges the defendant with the crime.\textsuperscript{93}

It says that imposing an obligation upon the agencies entrusted with the task of detection and investigation, clearly indicates that the Act is applicable during the investigative or pre-charge proceedings. Another important provision that reflect upon the issue is the provision regarding the venue to assert rights under the Act. This provision says that,

The rights described in subsection (a) [of the CVRA] shall be asserted in the district court in which a defendant is being prosecuted for the crime or, \textbf{if no prosecution is underway}, in the district court in the district in which the crime occurred.\textsuperscript{94}

(emphasis added)

Use of the phrase “if no prosecution is underway” indicates that the provisions of the CVRA are applicable even if there is no prosecution in the case.

Federal Crime Victims’ Rights Act (CVRA) Provision (a) (4) deals with victims’ right to participation. It provides a right to be ‘reasonably heard’ at any public court proceeding if the proceeding relates with release, plea, sentencing or parole proceedings. This right can be

\textsuperscript{89} In re Dean, 527 F. 3d at 394 (5th Circuit 2008).
\textsuperscript{90} In re Dean, \textit{supra} note 89.
\textsuperscript{91} Does v. United States, 817 F. Supp. 2d 1337 (S.D.Fla.2011) at 1341.
\textsuperscript{92}Does v. United States, \textit{supra} note 91.
\textsuperscript{93} Does v. United States, \textit{supra} note 91 at 1342.
\textsuperscript{94} Paul G. Cassell, \textit{supra} note 79 at 72.
exercised in any district court.95 Victims right to be reasonably heard at plea bargains have been recognized subject to one condition that is the nature of proceedings. The provision says that victim has such right only in public proceedings that means the open court therefore denying victim any right in the negotiations that take place between the defendant and the prosecutor where there is no public proceeding.96 Rule 60 of Federal Rules of Criminal Procedure provides for victims’ right to be heard. This rule prescribes for a right to be reasonably heard in case of a release and plea involving the crime.97

Various State Constitutions in U.S. provide victims with a right to fair treatment and that has to be ensured “throughout the Criminal Justice Process”.98 Regarding the position of victims’ say in the charging decisions or prosecution it has been found that, majority of states allow victim to participate at almost all crucial stages of proceedings, allow victim to have an advocate present with them, to confer with the prosecutor.99 Under CVRA, Victim also has the reasonable right to confer with the government attorney in the case.100 This right is an extensive right starting with the commission of an offense including the manner of investigation and charging decisions.101 Section (d) (1) provides that the crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights described in subsection (a) but an accused in the case may not obtain any form of relief under this chapter.102

CVRA gives victims a right to be present during the court proceedings unless the court on the basis of clear and convincing evidence determines that victims’ presence may affect his testimony, order for his exclusion from the court.103 In such circumstances, it has been provided that before making a determination for excluding victim from the proceedings, court shall permit the fullest possible attendance by the victim and shall consider reasonable

95 DOUGLAS E. BELOOF, supra note 74 at 728.
97 Rule 60 (a) (3) of Federal Rules of Criminal Procedure.
100 18 U.S.C. § 3771 (a) (5).
101 CHARLES DOYLE, supra note 96 at 32.
102 18 U.S.C. § 3771 (d) (1).
103 18 U.S.C. § 3771 (a) (3).
alternatives of such exclusion. Under the Crime Victims’ Rights Act, 2004 it is the court that is primarily under the obligation to see that rights of victims are respected and enforced. Regarding the obligations of the Court, Federal Rules of Criminal Procedure also provides that, “the court must promptly decide any motion asserting a victim’s rights described in these rules.”

but in practice it has been noted that this burden is upon the prosecutors to take care of victims’ concerns. In case prosecutor fails to respect victims’ rights, victim can complain to an ombudsperson who can act in such a situation by issuing a citation against the defaulting prosecutor. In the case of US v. Heaton, wherein the prosecutors wanted to dismiss two charges, the court enquired from the prosecutors whether they have complied with the requirement of the right of victims to confer with the prosecution highlighting the prosecutors’ obligation to ensure that victims’ rights are respected. When court found that same had not been done, it denied the dismissal of the two counts until victims were consulted. The court observed that, “the court will expect to see the prosecutor recount that the victim has been consulted on the dismissal and what the victim’s views were on the matter.”

In U.S.A. 39 States have provisions to provide protection to victims of crime from harm or threats of harm. In U.S., federal crime victims have been provided with a number of rights under the Crime Victims’ Rights Act including ‘the right to protection’. According to it, a crime victim shall be provided with reasonable protection from the accused. There was a comparable provision in 108th Congress-proposed Constitutional amendment but a distinction can be made with that provision in the sense that proposed amendment emphasized upon

104 18 U.S.C. § 3771 (b).
105 18 U.S.C. § 3771 (b) (1).
106 Rule 60 (b) (1) of the Federal Rules of Criminal Procedure.
109 Id.
111 18 U.S.C. § 3771 (a) (1).
“adjudicative decisions” imposing obligations to consider safety of the victims of crime whereas the ‘right to protection’ under this Act gives victim a right to be protected from the accused. Victors’ right to fair trial is well recognized in U.S., where 25 States have enacted statutes that give victims a right to fair and speedy trial. In U.S., various jurisdictions provide victim with a right to speedy trial. There are provisions for limitation on continuances that means where the proceedings are delayed due to the court-orders. These jurisdictions provide that, “In ruling on a continuance requested by a party, the court must also consider the impact of the delay on the victim.” 18 U.S.C. Section 3771 provides victim with a right for speedy proceedings. There should not be an unreasonable delay in the proceedings. In U.S., federal statutory victims’ bill of rights was devoid of any right for victim to claim speedy disposal of the case but the states were encouraged by the Congress to incorporate such provision in their victim specific legislations that ensure victims’ a right to reasonable expeditious trial.

4.3.1.4. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

A crime victim has a right to get reasonable, accurate and timely notification in matters pertaining to any public court proceeding or parole proceeding in which crime is involved or of offender’s release or escape from the custody. The provision of notification has some salient features such as;

i. Notice should be “accurate”, “reasonable” and “timely”.

ii. It encompasses government obligation to inform victim about his rights and his right to get consultation from an attorney.

112 S. J. Res. 1 (108th Cong.) (“the right to adjudicative decisions that duly consider the victim’s safety”); H. J. Res. 48 (108th Cong).
113 CHARLES DOYLE supra note 96 at 12.
115 “About Victims’ Rights”, https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp
118 18 U.S.C. § 3771 (a) (2).
119 CHARLES DOYLE, supra note 96 at 15.
Inclusion of “timeliness” is appreciated since it reduces the chances of providing victim with a “reasonable” but ineffective notice.\textsuperscript{120} Though it is also suggested that “timely” could be read into “reasonable” even if it was not added specifically. As noted by Charles Doyle,

The obvious purpose for the right to notice was to provide a gateway to the amendment’s other rights. Even without the addition of the clarifying “timely” requirement, what was reasonable might have been judged by whether the efforts were calculated to permit meaningful exercise of the amendment’s other rights.\textsuperscript{121}

Under the present legal system in U.S., right to notice is a component of due process.\textsuperscript{122} Any notice cannot be considered as “timely” or “reasonable” until and unless this fulfill the next criteria that is “accuracy”. Lack of “accuracy” may defeat victims’ chances to avail his rights. Victim should be provided accurate information as to the scheduled changes.\textsuperscript{123} This right has certain limitations such as;

i. Victim may be denied notice if giving of the same may endanger the safety of any person.\textsuperscript{124}

ii. Seeing the vast number of victims if it is impracticable to accord rights as described under Subsection (a) to all crime victims, court can fashion the procedure in any reasonable manner that saves the procedure from being complicated or prolonged.\textsuperscript{125}

The main drawback of this right to notification is that it does not confer in its true sense any right upon the victim of crime rather it intends to impose an obligation upon the concerned government officials.\textsuperscript{126} This act imposes an obligation upon the agencies entrusted with the task of criminal justice administration to ensure that victims are provided with reasonable, accurate and timely notice of the concerned public court proceeding. It has been provided under the Act that, “Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).”\textsuperscript{127}
A corresponding provision can be seen in Rule 60 (a) (1) of the Federal Rules of Criminal Procedure wherein it has been provided that, “The government must use its best efforts to give the victim reasonable, accurate, and timely notice of any public court proceeding involving the crime.”

This rule imposes an obligation upon the government to use best efforts so as to provide a crime victim with a reasonable, accurate and timely notice regarding any public court proceeding that involves the crime.

4.3.1.5. VICTIMS’ RIGHT TO INTERACTIONAL JUSTICE:

CVRA provides that crime victim should be given a fair and dignified treatment. It provides that a crime victim has the right to be treated fairly and in a respectful manner for victims’ dignity. It further provides that the prosecutor shall advise the crime victim that he can seek the advice of an attorney in relation to the rights described in subsection (a). It was observed by the Court in re Dean that government should take steps to find out a way to make victim informed regarding the likelihood of criminal charges. According to the Court,

At least in the posture of this case (and we do not speculate on the applicability to other situations), the government should have fashioned a reasonable way to inform the victims of the likelihood of criminal charges and to ascertain the victims’ views on the possible details of a plea bargain.

Crime Victims’ Rights Act of 2004 imposes an obligation upon the court to ensure that rights enumerated under Subsection (a) are afforded to the victims of crime. In case a victim is denied any of the relief specified under this chapter, reasons for such a decision shall be stated on record. Act provides if victim approaches court of appeal, on denial of relief by the district court, for issuance of writ of mandamus, and court of appeal also denies the relief sought, it shall record the reasons in writing for such denial.

4.3.1.6. COMPLIANCE MECHANISM:

There are two mechanisms provided for enforcement of victims’ rights under the CVRA. These are ‘judicial enforcement’ and ‘administrative complaint’.

---

128 CHARLES DOYLE, supra note 96 at 13.
129 18 U.S.C. § 3771 (a) (8).
130 18 U.S.C. § 3771 (c) (2).
131 In re Dean, 527 F. 3d at 394 (5th Circuit 2008).
132 Id.
133 18 U.S.C. § 3771 (b).
134 18 U.S.C. § 3771 (d) (3).
4.3.1.6.1. JUDICIAL ENFORCEMENT:

Federal Crime Victims’ Rights Act (CVRA)\textsuperscript{135} ensures enforceable rights for crime victims by providing that victim or his representative is entitled to assert his right in court and in case of denial of his right, he can approach a higher court for re-opening of plea or sentence.\textsuperscript{136} Regarding the enforcement of the rights prescribed under the Crime Victims’ Rights Act, the Act says that either the crime victim or his lawful representative and the government attorney are entitled to assert the rights as mentioned under subsection (a).\textsuperscript{137}

It provides that no new trial shall be conducted on the ground of failure in affording any of the prescribed rights to the victim of crime but victim has been given a right to make a motion for re-opening of a plea or a sentence if the following conditions are fulfilled\textsuperscript{138};

i. An assertion to present his views and concerns either prior to or during the proceedings was made by the victim and that was denied.

ii. A petition was filed for issuance of writ of mandamus in court of appeals within 14 days of such denial and

iii. The accused has not pled guilty for the highest offense for which he could be charged.

CVRA provides that in case a prosecution is proceeding, victim can assert his rights in the concerned district court where defendant is being prosecuted but in case there is no prosecution, such assertion may be made in the district court where the incidence of crime occurred. District court shall decide upon such motion. In case of denial of relief by district court, victim may petition court of appeals for issuance of writ of mandamus. Such petition shall be disposed of within 72 hours of its filing. In case court of appeal denies the relief sought, court shall record in writing the reasons for such denial.\textsuperscript{139} A victim of crime has no right to be heard or to present his views or concerns on appeal. He can do so only through a writ of mandamus.\textsuperscript{140} In United States v. Hunter\textsuperscript{141}, it was observed by the Court that, “A crime victim does not have an express right under the CVRA to appeal the defendant’s conviction and sentence based on alleged violations of the statute. Rather, the CVRA provides

\textsuperscript{136} 18 U.S.C. § Section 3771 (2004), (d) (1), (d) (3) and (d) (5).
\textsuperscript{137} 18 U.S.C. § 3771 (d) (1).
\textsuperscript{138} 18 U.S.C. § 3771 (d) (5).
\textsuperscript{139} 18 U.S.C. § 3771 (d) (3).
\textsuperscript{140} CHARLES DOYLE, supra note 96 at 31.
\textsuperscript{141} United States v. Hunter, 548 F. 3d 1308, 1311 (10th Cir. 2008).
that if the district court denies a crime victim his rights, the victim may immediately petition the court of appeals for a writ of mandamus."\textsuperscript{142}

It is the for the government to advocate for victims’ rights if a denial in a court is found but this government advocacy for victims’ rights is dependent upon the discretion of the prosecutor.\textsuperscript{143} Crime Victims’ Rights Act provides that, “In any appeal in a criminal case, the Government may assert as error the district court’s denial of any crime victim’s right in the proceeding to which the appeal relates…. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.”\textsuperscript{144}

\textbf{4.3.1.6.2. ADMINISTRATIVE COMPLAINT:}

CVRA provides that within 1 year from the date of enactment of this Chapter, to enforce the rights of crime victims, to ensure compliance by the officials respecting victims’ rights and imposing obligation upon the officials, Attorney General of the United States shall promulgate regulations.\textsuperscript{145} Such regulation shall provide for the following.\textsuperscript{146}

i. An administrative authority shall be designated in Department of Justice that shall be responsible for receiving and investigating complaints made by victims of crime for alleged violation of their rights.

ii. Measures shall be taken for imparting training to those employees and offices of the U.S. Department of Justice, that have failed in complying with the provisions of federal law in relation to the treatment of crime victims. These employees and offices shall be assisted so that they can respond more effectively to the needs of victims of crime.

iii. In case of employees of the Department of Justice who wilfully or wantonly do not comply with the provisions in relation to treatment of crime victims, disciplinary sanctions including suspension or termination shall be provided.

iv. In disposal of any such complaint, Attorney General or his designee shall be the final arbiter and there shall not be any judicial review of any such decision taken by the Attorney General.

\textsuperscript{142}Id.
\textsuperscript{143}Id.
\textsuperscript{144}Id.
\textsuperscript{145}18 U.S.C. § 3771 (f) (1).
\textsuperscript{146}18 U.S.C. § 3771 (f) (2) (A), (2) (B), (2) (C), (2) (D).
4.3.1.7. STRENGTHS AND WEAKNESSES OF THE ACT:

CVRA strengthens victims’ rights in case of federal offenses by providing enforceable rights to victims of crime but it clearly mentions that neither any of the provision of this Act shall be construed in a manner to authorize a cause of action for damages nor will it create, enlarge or imply any such duty towards victims of crime for whose breach any of the officers of United States could otherwise be held liable for damages. Furthermore, victims’ rights cannot come in the way of prosecutorial discretion of Attorney General or any of the officer working under his direction. Act further provides that it shall not be given any such meaning that impairs prosecutorial discretion.\(^{147}\)

4.3.2. ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE, 2005:

4.3.2.1. OBJECTIVES OF THE GUIDELINES:

Attorney General Guidelines for Victim and Witness Assistance, 2005 provides that the purpose of this document is to establish guidelines that is required to be followed by the officers and employees of Department of Justice in their treatment of victims of and witnesses to the crime.\(^{148}\)

While forwarding this document, Attorney General reflected upon the duty of ensuring protection to the rights of victims of crime. In the wordings of Attorney General,

> We at the department of justice have a duty not only to uphold the rights of individuals who are accused or convicted of a crime but to protect the rights of the victims of crime. Dedicated professionals throughout the Department of Justice work to vindicate the rights of crime victims under law, to offer them aid through the Crime Victims’ Fund, and generally to ease their interaction with the criminal justice system. Crime victims deserve no less.\(^{149}\)

This statement emphasizes recognition of the fact that department of justice does not have the obligation only towards the accused to see that their rights are respected but has an equal obligation towards victims of crime that their rights are respected within the criminal justice

\(^{147}\) 18 U.S.C. § 3771 (d) (6).

\(^{148}\) Attorney General Guidelines for Victim and Witness Assistance, 2005, Article II (A) (U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime).

system. Justice department works to vindicate the rights of crime victims and to ensure interactional justice to victims of crime.

4.3.2.2. DEFINITION OF VICTIM:

Attorney General Guidelines for Victim and Witness Assistance, 2005 defines “Crime Victim” in the same manner as defined under 18 U.S.C. Section 3771 (e) of the Crime Victims’ Rights Act, 2004. For the purposes of providing services to victims, these guidelines provide that a victim shall be construed as, “a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.”

Both these definitions mention clearly that a person who has suffered harm as a result of criminal victimization shall be considered as a victim of crime. In case of a victim being under 18 years of age, incompetent, incapacitated, or deceased, these guidelines provide that any one out of the person mentioned under these guidelines, in the preferential order may be provided with the services for the benefit of direct victim. These persons include spouse of the direct victim, a legal guardian, a parent, a child, a sibling, another family member or any other person as designated by the court.

4.3.2.3. COMPLIANCE MECHANISM:

These guidelines mention that under the Act there are two types of enforcement mechanisms to ensure that crime victims are accorded with the rights provided to them under the CVRA. One is judicial enforcement and the other is administrative complaint as provided under 18 U.S.C. Section 3771 (d) (3) and 18 U.S.C. 3771 (f) (2) respectively. These guidelines ensure fair treatment to victims of crime by imposing corresponding obligations upon the agencies for enforcement of victims’ rights. These guidelines are applicable to officials of the Department of Justice engaged in investigation, prosecution, correctional or parole functions within the criminal justice system and further serves as a model for State and federal law enforcement agencies with regard to fair treatment of victims of crime.

---

150 42 U.S.C. § 10607 (e) (2) as provided under Article II D (2) of Attorney General Guidelines for Victim and Witness Assistance, May 2005.
151 Id.
152 Attorney General Guidelines, 2005, supra note 148 at Art. I (D)
153 Id at Art. II (E).
4.3.2.3.1. “RESPONSIBLE OFFICIALS” AND THEIR RESPONSIBILITIES:

Attorney General shall designate the persons in each component of Department of Justice as “responsible officials” to identify the victims of crime and performing of services to them. These officials are obliged for providing services to victims and in case they delegate their responsibility to subordinates, it would be their duty to ensure compliance of such responsibilities. The persons designated by Attorney General includes the special agent in charge of the concerned division responsible for conducting an investigation, U.S. Marshal in the district where case is being conducted and the inspector general. In case of prosecution, the U. S. Attorney of the district where the prosecution is pending or the chief of the section of litigating division. These “responsible officials” shall further designate the individuals to carry out victim-witness services in the concerned Department of Justice. Such designated individuals shall be instructed by the “responsible officials” for compliance of AG Guidelines. “Responsible officials” shall delegate the authority for the purpose of carrying the activities. It is required for all responsible officials to coordinate with each other in ensuring victim-services. These officials are responsible for promoting interagency teamwork and coordination in performance of their duties. When a case transfers from one component of Department of Justice to the other, it is required that prior to such transfer, there should be sharing of information so as to remove any gap in providing of services or of notification. Provision of sharing of information helps in ensuring that victim gets a uniform treatment rather than getting fragmented treatment throughout the criminal justice process.154

4.3.2.3.2. ANNUAL COMPLIANCE REPORT:

To ensure compliance of these guidelines, it has been provided that “responsible officials” shall submit an “Annual Compliance Report” to the Attorney General through the Director of the Office for Victims of Crime. The Director of the Office for Victims of Crime (OVC) has been entrusted with the statutory responsibility to monitor such compliance.155

4.3.2.3.3. PERFORMANCE APPRAISAL:

Guidelines further provides that “Performance Appraisal” of all concerned officials shall encompass about implementation and evaluation of adherence or nonadherence with victims’

154Id at Art. II (F).
155Id at Art. III (A).
rights and services. Discharge of such responsibilities shall be considered as criteria for reviews and evaluations.\textsuperscript{156}

4.3.2.3.4. DISCIPLINARY SANCTION:

Guidelines, pursuant to 18 U.S.C. Section 3771 (f) (2) (C) provides for disciplinary sanction including of suspension and termination of employment in case of there being a willful or wantonly failure on part of the concerned official in providing treatment to the crime victims.\textsuperscript{157}

4.3.2.3.5. TRAINING ON VICTIMS’ RIGHTS:

“Responsible Officials” shall be responsible for ensuring that concerned officials are provided with the copy of these guidelines along with the mandatory training for one hour on these guidelines and on rights of victims of crime. Such training shall be imparted within 60 days of assuming of such responsibilities. Additional training shall be imparted accordingly to make the official aware with the change in these guidelines or the law in relation to victims’ rights.\textsuperscript{158}

4.3.2.3.6. RESPONSIBILITIES OF “RESPONSIBLE OFFICIAL” UNDER INVESTIGATING AGENCY:

As per the Attorney Generals’ Guidelines Responsibilities of investigating agency begin as soon as the crime is reported and runs through the prosecution stage.\textsuperscript{159} These include following\textsuperscript{160}:

i. “Responsible Official” shall be responsible for victim identification. Components involved in Victim Notification System shall enter the name and contact information of victim in that system.

ii. “Responsible Official” is required to advise victim, provide him a printed brochure informing him about the available rights and services for victims of crime.

iii. Victim must be provided with name, address and contact number of official responsible for providing of such services.

\textsuperscript{156}Id at Art. III (B).
\textsuperscript{157}Id at Art. III (C).
\textsuperscript{158}Id at Art. III (D).
\textsuperscript{159}Id at Art. IV (A).
\textsuperscript{160}Id at Art. IV (A) (2), Art. IV (A) (3) (a) (1), Art. IV (A) (3) (a) (3), Art. IV (A) (3) (b).
iv. Victim must be informed as to his right to make a statement regarding the pretrial release of the defendant mentioning the danger or threat perception so that a determination on pre-trial release or determination of its conditions can be made.

v. Victim shall be informed that he has the option to be included in VNS scheme to get the notification of case developments or to decline for such inclusion.

vi. Victim should be provided information with regard to available protections and remedies to get protection from intimidation and harassment by the offender.

vii. “Responsible Official” shall provide victim with the notice about the status of investigation and arrest of the offender.

viii. “Responsible Official” shall make arrangements to provide reasonable protection to victim from intimidation or harassment by the offender, by means of change of telephone numbers or in very limited circumstances, by way of inclusion of victim in ‘Federal Witness Security’ Program.

4.3.2.3.7. RESPONSIBILITIES OF “RESPONSIBLE OFFICIAL” UNDER PROSECUTION AGENCY:

As per the Guidelines of Attorney General, prosecution stage commences from filing of charges and includes post sentencing legal proceedings such as appeals.161 “Responsible Officials” are required to provide crime victims with the following services:

i. SECURITY MEASURES: Victims should be provided with proper security measures. Prosecutors are required to keep the court informed as to the threat risk to the victims. Victims should be informed as to the availability of resources that can be used to ensure victim safety. These include protective orders, emergency witness assistance programme, federal witness security program and other state and local level resources. If the circumstances demand for such measure, prosecutor should move for pretrial detention of the accused.162

ii. NOTIFICATION REGARDING RIGHTS: Crime victims are entitled to be notified of their rights under the CVRA and concerned officials and employees of the Department of Justice shall make their best efforts to ensure such notification to the victims of crime.163

161 Id at Art. IV (B).
162 Id at Art. IV (B) (2) (a).
163 Id at Art. IV (B) (2) (b) (1).
iii. ADVISE: As per the mandate of 18 U.S.C. Section 3771 (c) (2), prosecutor is required to advise the victims of crime that they are entitled to seek the advice of an attorney in relation to their rights under 18 U.S.C. Section 3771 (a).164

iv. INFORMATION REGARDING RIGHT TO ATTEND TRIAL: “Responsible Official” should inform the victim about his right to attend the trial irrespective of the consideration that victim wishes to make a statement as to the effects of crime during the sentencing or not.165

v. NOTIFICATIONS REGARDING CHARGE, RELEASE OR ESCAPE OF OFFENDER AND PUBLIC COURT PROCEEDINGS AND GUILTY PLEA: “Responsible Official” shall notify the victim about filing of the charges against a suspected offender as per 42 U.S.C. Section 10607 (c) (3) (C) and about the release or escape of an offender of a suspected offender as per 18 U.S.C. Section 3771 (a) (2) and 42 U.S.C. Section 10607 (c) (3) (E). such official is also required to notify the victim about any public court proceedings in relation to crime. Such notice should be reasonable, accurate and timely. In case of emergency or last-minute hearing or a change in date and time of hearing, the “responsible official” should provide this notice telephonically or by any other expedited means. Such official shall also notify victim with regard to scheduling of any other court proceedings that victim is entitled to attend. “Responsible Official” shall also notify the victim, if there is an acceptance of guilty plea, or in case of conviction of offender, the sentence imposed and conditions for supervised release.166

vi. INFORMATION REGARDING CRIMINAL JUSTICE PROCESS: “Responsible Official” should provide the victim with general information pertaining to the criminal justice process, its significant stages for victim, manner of getting information, victims’ role in criminal justice process, expectations that victim can have from the system and expectations of system from the victim.167

vii. RIGHT TO CONFER WITH THE ATTORNEY FOR THE GOVERNMENT: Without impairing prosecutorial decision making, victim is entitled to be conferred with the attorney for the government in the case. Federal prosecutors should provide victims with such consultancy regarding major

164Id at Art. IV (B) (2) (b) (2).
165Id at Art. IV (B) (2) (b) (3).
166Id at Art. IV (B) (2) (b) (4).
167Id at Art. IV (B) (2) (b) (5).
decisions in the case such as dismissals, release, plea negotiations and pretrial diversions. Victims are required to be informed that any such discussion would not result in creating an attorney-client relationship between victims and government lawyers.\textsuperscript{168}

viii. **CONVEY REASONABLE CONCERN TO THE COURT:** Prosecutors should remain available for consultation with victim regarding significant adversities that they may suffer due to the delay in prosecution and in case of there being any reasonable concern should convey it to the court.\textsuperscript{169}

ix. **VIEWS ABOUT PLEA NEGOTIATIONS TO BE CONSIDERED:** “Responsible Officials” should notify to the victims about plea negotiations and should take their views into consideration.\textsuperscript{170}

4.3.2.4. **STRENGTHS AND WEAKNESSES OF THE GUIDELINES:**

Attorney General guidelines provides victims with same set of rights as recognized under 18 U.S.C. Section 3771 (a).\textsuperscript{171} Regarding the obligation of State agencies, these guidelines provide that all concerned officials shall make their best efforts to ensure that crime victims are notified of and are accorded with the rights provided to them under the CVRA.\textsuperscript{172} These guidelines though provide for mandatory nature of obligation by using the term “shall” that is interpreted in a mandatory sense but the phrase “best efforts” indicate that there is considerable room for individual discretion. In case of use of word “should”, employee is required to take a certain action until and unless there is an articulable reason for not doing so. Guidelines favors providing of services as against withholding them.\textsuperscript{173}

4.4. **VICTIM SPECIFIC INITIATIVES IN CANADA**

4.4.1. **CANADIAN STATEMENT OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME, 1999:**

4.4.1.1. **OBJECTIVES:**

This Statement gives recognition to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power that emphasizes that victim should be given

\textsuperscript{168}Id at Art. IV (B) (2) (c) (1).
\textsuperscript{169}Id at Art. IV (B) (2) (c) (2).
\textsuperscript{170}Id at Art. IV (B) (2) (c) (3).
\textsuperscript{171}Id at Art. I (B).
\textsuperscript{172}Id at Art. I (A).
\textsuperscript{173}Id at Art. II (C).
an access to justice along with a fair and dignified treatment. Federal and provincial ministers agreed upon these principles as the guiding principles for the Canadian society so that victims are provided with an access to justice and fair treatment.¹⁷⁴

4.4.1.2. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

Canadian Statement of Basic Principles of Justice for Victims of Crime, provides for taking into consideration views and concerns of victims of crime. It states that victims’ views and concerns should be ascertained, especially when these relate with their personal interests and in case of victims’ interests being affected, the same should be brought before the court provided these concerns are appropriate and are consistent with the existing criminal laws and procedures.¹⁷⁵

These Principles of Justice provides that proper attention should be paid towards victims’ safety concerns. It says that necessary measures to ensure victim safety as well as safety of their family members should be undertaken. Victims and their family members should be provided protection from intimidation and retaliation by the offender.¹⁷⁶ Victims should receive fair and prompt redress for the harm undergone by them.¹⁷⁷

4.4.1.3. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

Canadian Statement of Basic Principles of Justice for Victims of Crime provides that victim should be provided with following information¹⁷⁸:

i. Victim should be provided with the information regarding the available remedies and by what mechanisms these remedies can be obtained.

ii. Victim should be provided information that they can participate in the proceedings.

iii. To ensure victim participation, victim should be provided with all necessary information such as the time and venue of the proceedings, progress in the case and final disposition of the proceedings.

¹⁷⁵ Id.
¹⁷⁶ Id at Principle 7.
¹⁷⁷ Id at Principle 2.
¹⁷⁸ Id at Principle 3 & 4.
4.4.1.4. VICTIMS’ RIGHT TO INTERACTIONAL JUSTICE:

Principle 1 of the Statement provides that victims should be given a dignified treatment with courtesy, compassion and respect for their dignity and it should be ensured that victims suffer minimum of the inconvenience during their involvement within criminal justice process.

4.4.1.5. TRAINING OF CRIMINAL JUSTICE PERSONNEL:

The Statement recognizes that for ensuring fair treatment to victims of crime, it is must that the agencies of criminal justice system are well trained and sensitive towards the needs and concerns of victims of crime. For this purpose, this Statement provides that to sensitize the agencies of the criminal justice system towards victim needs and their concerns, enhanced training should be imparted to the functionaries of the criminal justice system and taking into consideration this objective, if it is necessary, guidelines should be prepared for them.\(^\text{179}\)

4.4.2. CANADIAN STATEMENT OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME, 2003:

4.4.2.1. OBJECTIVES:

This Statement was intended to provide a guidance in the development of policies, programs and legislation in relation to victims of crime. Taking into consideration the harmful impact of victimization and recognizing that all are entitled to get full protection of their rights as guaranteed under the Canadian Charter of Rights and Freedoms and recognizing the need to make a balance between the rights of victims and that of offenders and giving honour to the United Nations Declaration of Basic Principles of Justice for Victims of Crime, this Statement endorses victims need to be provided with fair treatment. This Statement provides with a set of principles to guide the federal, provincial and territorial laws, policies and procedures so that fair treatment of victims during the criminal justice process can be ensured.\(^\text{180}\)

4.4.2.2. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

This statement recognizes the importance of participatory rights of victims of crime and provides that victims’ views, concerns and representations play an important role during the criminal justice process and these should be taken into consideration as per the prevailing law, policies and procedures.\(^\text{181}\) Victims security concerns should be paid due consideration

\(^{179}\text{Id at Principle 8.}\)
\(^{181}\text{Id at Principle 8.}\)
throughout the criminal justice process. In case of necessity, victim should be provided protection from intimidation and retaliation by the offender.\textsuperscript{182}

4.4.2.3. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

Victims should be provided with following information:

i. Regarding the criminal justice system and they should further be informed about the role that they are supposed to play and the opportunities that they will get to participate in the process of criminal justice.\textsuperscript{183}

ii. They should be given information regarding the status of the investigation.\textsuperscript{184}

iii. Victims should be given information with regard to scheduling, progress as well as final outcome of the proceedings.\textsuperscript{185}

iv. Victim should also be informed as to the status of the offender in the correctional system.\textsuperscript{186}

v. Recognizing the need of a mechanism to address victims’ concerns in case of violation of any of the principles, principle 10 provide that victim should be provided with information as to the available options where victims can raise their concerns.\textsuperscript{187}

4.4.2.4. VICTIMS’ RIGHT TO INTERACTIONAL JUSTICE:

Principle 1 provides for a respectful treatment with courtesy and compassion for victims of crime. Principle 3 says that to minimize inconvenience to victims, reasonable measures should be taken.\textsuperscript{188}

4.4.3. CANADIAN VICTIMS’ BILL OF RIGHTS, 2015:

4.4.3.1. OBJECTIVES OF THE ACT:

Preamble of the Canadian Victims Bill of Rights, 2015\textsuperscript{189} provides for recognition of victims’ rights as under, “Whereas it is important that victims’ rights be considered throughout the criminal justice system; Whereas victims of crime have rights that are guaranteed by the Canadian Charter of Rights and Freedoms; Whereas consideration of the rights of victims of crime is in the interest of the proper administration of justice”

\textsuperscript{182}Id at Principle 4.
\textsuperscript{183}Id at Principle 5.
\textsuperscript{184}Id at Principle 6.
\textsuperscript{185}Id.
\textsuperscript{186}Id.
\textsuperscript{187}Id at Principle 10.
\textsuperscript{188}Id.
\textsuperscript{189}Canadian Victims Bill of Rights, 2015, supra note 51.
Preamble of this Act recognizes that crime leaves its harmful effects upon victims of crime. Victims should be given a dignified treatment. Their rights as guaranteed by the Canadian Charter of Rights and Freedoms should be respected throughout the criminal justice process. Due consideration of victims’ rights during the criminal justice process not only protects victims’ interests but further helps in proper administration of justice.

This Act was enacted taking into consideration the fact that federal, provincial and territorial governments who share the responsibility for administration of criminal justice, have already endorsed “Canadian Statement of Basic Principles of Justice for Victims of Crime” in 1988 and again in 2003.

4.4.3.2. DEFINITION OF VICTIM:

Canadian Victims Bill of Rights, 2015 defines ‘Victim’ as follows; “Victim means an individual who has suffered physical or emotional harm, property damage or economic loss as the result of the commission or alleged commission of an offence.”

This definition says that to be considered as a victim, it is necessary that a person should have suffered some form of harm that may be physical or emotional or in relation to one’s property and secondly this harm should have resulted from the commission or alleged commission of an offence.

In case of a deceased victim or where the victim is incapable of taking action of his own, this act says that person who was either the spouse of the victim, or who was in a conjugal relationship for more than a year or who was a relative or dependent or who is the person responsible for providing care and support to the victim or who is the person responsible for providing care and support to the dependent of the victim, may exercise victims’ rights on his behalf.

Section 4 of this Act provides an exception to Section 3 by providing that though a person may be entitled to act on behalf of victim in case of his death or incapacitation but the

---

190 Canadian Victims Bill of Rights, 2015, supra note 51 at § 2.
191 Canadian Victims Bill of Rights, 2015, supra note 51 at § 3.

“Any of the following individuals may exercise a victim’s rights under this Act if the victim is dead or incapable of acting on their own behalf:
(a) The victim’s spouse or the individual who was at the time of the victim’s death their spouse;
(b) The individual who is or was at the time of the victim’s death, cohabiting with them in a conjugal relationship, having so cohabited for a period of at least one year;
(c) A relative or dependent of the victim;
(d) An individual who has in law or fact custody, or is responsible for the care or support, of the victim;
(e) An individual who has in law or fact custody, or is responsible for the care or support, of a dependent of the victim.”
person is not entitled for acting on behalf of the victim if he himself is the person charged with the offence of if he is found guilty of the said offence or who could not be found guilty due to his mental disorder or due to his being unfit to stand trial.\(^{192}\)

Definition of victim as provided under this Act is wide enough because while considering the family members of the deceased or incapable victim as ‘victim’, it includes spouse of the deceased person as well as persons who were in conjugal relationship for more than a year. Further, this definition excludes any such person from the status of `victim` who himself is the perpetrator of the crime.

### 4.4.3.3. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

The federal Canadian Victims Bill of Rights, 2015 gives statutory recognition to victims’ right to information, protection and participation and provides with a complaints mechanism.\(^{193}\) It ensures victims’ right to participation by providing that victims have the right to present their views and to have those views considered by the authorities. Section 14 of the Act provides as under, “Every victim has the right to convey their views about decisions to be made by appropriate authorities in the criminal justice system that affect the victim’s rights under this Act and to have those views considered.”\(^{194}\)

Regarding victims’ right to Participation above Section 14 provides that every victim has the right to convey his views in relation to decisions to be taken by authorities in the criminal justice system if the decision affect his rights under the Act and to have those views considered.\(^{195}\)

Canadian Victims Bill of Rights 2015 though provides for the participatory rights of the victim under Section 14 and 15 but does not mention of participation through the victim counsel and Sec.19 (1) provides that victims’ rights as provided under this Act are to be exercised through the mechanisms provided by law. After the Supreme Court judgment in R v O’Connor\(^ {196}\) on accused right to discloser of victim’s medical records Government came out

---


\(^{193}\) *Id* at § 6-17, 25 and 26.


\(^{195}\) Canadian Victims Bill of Rights, 2015, *supra* note 51.

with Bill C-46 and now almost all the provinces provide assistance to the victim in getting legal counsel to represent their interest to the court before it takes decision to that effect. 197

Victim has also been provided with a right to protection from intimidation and retaliation by the offender. Concerned authorities are required to take into consideration victims’ safety measures and provide them with the needed protection. As per Section 9 and 10 of the Act,

   Every victim has the right to have their security considered by the appropriate authorities in the criminal justice system……Every victim has the right to have reasonable and necessary measures taken by the appropriate authorities in the criminal justice system to protect the victim from intimidation and retaliation. 198

These Sections provide that victim of a crime is entitled to get the reasonable measures applied by the authorities so as to ensure proper safety of the victims and to provide them needed protection from the intimidation and retaliation by the offender.

To ensure fair deposition of victims in the criminal justice process, Canadian Victims’ Bill of Rights, 2015 provides that victim shall be provided testimonial aids if he makes such a request at the time of his deposition as a witness in the case.199

4.4.3.4. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

Regarding victims’ right to information and notification, Canadian Victims’ Bill of Rights, 2015 provides that victim has a right to receive information regarding the criminal justice system, victim’s role, victims’ rights in case of denial of their rights, progress of the investigation, time and place for proceedings and timings and conditions in relation to offender’s release, provided victim makes a request in this regard.200 This act provides that victim has the right to receive information on making request regarding:

i. The criminal justice system and victims’ role in criminal justice system201;

ii. Victims’ right to file complaint in case there is an infringement or victims’ rights as provided under this Act are denied202;

iii. Progress of the investigation and its outcome203;

198 Canadian Victims Bill of Rights, 2015, supra note 51 at Section 9 & 10.
199 Id at § 13.
200 Id at § 6, 7 & 8.
201 Id at § 6 (a).
202 Id at § 6 (c).
203 Id at § 7 (a).
iv. Time, place, progress and outcome of the proceedings\textsuperscript{204};

v. Regarding review procedures to deal with the issue of conditional release as well as about the timings and conditions of such conditional release\textsuperscript{205}; and

vi. Regarding hearings to dispose of the matter in relation to an accused not fit to stand trial and dispositions of such hearings.\textsuperscript{206}

4.4.3.5. COMPLIANCE MECHANISM:

4.4.3.5.1. RIGHT TO MAKE COMPLAINT:

Rights prescribed under the Canadian Victims’ Bill of Rights, 2015 can be exercised through such mechanism that is provided by law.\textsuperscript{207} This Act prescribes complaint mechanism to deal with the cases of violation of any of the provisions of this Act. According to Section 25 (1), “Every victim who is of the opinion that any of their rights under this Act have been infringed or denied by a federal department, agency or body has the right to file a complaint in accordance with its complaints mechanism.”\textsuperscript{208}

This Section provides victim with a right to remedy. A victim of crime is entitled to make complaint, if he finds that his rights under the Act has been violated by any of the agency of the criminal justice system.

4.4.3.5.2. COMPLAINT MECHANISM:

This Act prescribes for complaint mechanism under Section 25 and says that every federal department, agency or body of criminal justice system is required to provide for a complaint mechanism. This mechanism should consist of a review mechanism to look into complaints of alleged infringement or denial of victims’ rights, power to make recommendations to provide remedy in cases of such violations and in case of such reviews and recommendations obligation to notify the victims.\textsuperscript{209} If the victim is not satisfied with such review or recommendations made in consequence of the complaint, Section 25 (2) provides for approaching the authority empowered to deal with review complaints of that department, agency or body. According to Section 25 (2),

\begin{itemize}
  \item \textsuperscript{204}Id at § 7 (b).
  \item \textsuperscript{205}Id at § 8 (a).
  \item \textsuperscript{206}Id at § 8 (b).
  \item \textsuperscript{207}Id at § 19 (1).
  \item \textsuperscript{208}Id at § 25 (1).
  \item \textsuperscript{209}Id at § 25 (3).
\end{itemize}
“Every victim who has exhausted their recourse under the complaints mechanism and who is not satisfied with the response of the federal department, agency or body may file a complaint with any authority that has jurisdiction to review complaints in relation to that department, agency or body.”

In the same manner if the infringement or denial of the rights is done by any provincial or territorial entity, victim is entitled to file a complaint as per the laws of concerned provincial entity.

4.4.3.6. STRENGTHS AND WEAKNESSES OF THE ACT:

Canadian Victims Bill of Rights, 2015 provides with right to informational and procedural justice to victims of crimes. The rights provided under the Act are qualified with a limitation or a condition that such rights should be applied in a manner that do not interfere in investigation, prosecution or in administration of justice or cause excessive delay. As far as interactional justice to victims of crime is concerned this Act does not mention whether victim has a right to get the explanations for the procedures adopted or explanation for the outcomes of such procedures.

This Act supersedes any other Act, order, rule or regulation whether that was enacted before, on or after the day of this Act coming into existence. Section 21 says that any such Act shall be construed and applied in a manner that is consistent with the rights of victims as provided under this Act. Section 22 (1) says that this Act shall prevail in case of any inconsistency between this Act and any other Act. This Act does not confer victim with any new status in the proceedings. Section 27 of the Act mentions it specifically that the provisions of this Act shall not be given any such meaning so as to grant to, or to remove from the victim or from the person acting on his behalf the status either of a party or of an intervenor or of an observer during the criminal justice process.

This Act though provides enforceable rights to victims of crime but the enforcement mechanism mentions only for a complaint that can be filed with the concerned department or with the concerned authority entitled to deal with the review of such complaints and no more than this as is clear from the language of Section 28 & 29. Section 28 makes it clear that in no

\[210 Id \text{ at } § 25 \text{ (2).} \]
\[211 Id \text{ at } § 26. \]
\[212 Id \text{ at } § 20. \]
\[213 Id \text{ at } § 27. \]
case infringement or denial of rights under this Act will provide victim with any cause of action to claim damages or file an appeal on the ground of such failure. Section 29 provides as under, “No appeal lies from any decision or order solely on the grounds that a right under this Act has been infringed or denied.”\textsuperscript{214}

This provision makes it clear that infringement or denial of any of the rights will not provide victim with any right to appeal against any decision or order made. Criticizing the lack of enforceability provision in Canadian Victims’ Bill of Rights (Bill C-32), it was commented by Professor Benjamin Perrin that this act does not confer upon victims of crime a right to attend proceedings or a right to petition a court so that they can get their rights respected. These rights cannot be termed rights in true sense because these rights lack the remedy. According to Professor Benjamin Perrin,

Where things get murky is the question of how these new rights for victims are to be realized. Bill C-32 proposes a complaint mechanism for federal departments and agencies, which could be valuable for victims. However, the proposed legislation denies victims any ability to petition a court to have their rights respected. Nor does it permit victims the right to observe proceedings. What is given with one hand (new legal rights) is taken with the other (no legal remedy if they are breached). There is no right without a remedy in law. This lack of enforceability is the main problem with the proposed Canadian Victims Bill of Rights and it needs to be fixed.\textsuperscript{215}

\section*{4.5. VICTIM SPECIFIC INITIATIVES IN U.K.}

\subsection*{4.5.1. U.K. CODE OF PRACTICE FOR VICTIMS OF CRIME OCTOBER, 2015}

\subsubsection*{4.5.1.1. OBJECTIVES OF THE CODE:}

This Code was issued to incorporate various provisions of the EU Directive 2012/29/EU that establishes minimum standards on the rights, support and protection of victims of crime. This is the key component of Government strategy to transform the criminal justice system as a system much more responsive towards victim and easier for victims to navigate through the criminal justice process. Objective of the Code is to ensure that victims are given a respectful and sensitive treatment without being discriminated. They should be provided protection from

\textsuperscript{214}Id at § 29.

re-victimization. This Code sets out the minimum standards of services that victims are entitled to receive.216

4.5.1.2. DEFINITION OF VICTIM:

A person is entitled to receive services under this Code if he comes in the definition of victims of crime as provided under this Code. This Code defines ‘Victim’ as “a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence. A close relative…. of a person whose death was directly caused by a criminal offence.”217

This Code mentions that a person who has alleged to the police that he has suffered harm as a direct result of criminal victimization or on whose behalf such an allegation was made by someone else or he is the one who were contacted as a victim during the course of investigation, is entitled to be considered as a victim under this Code. The harm for which such allegation was made, may include physical, mental or emotional harm or economic loss.218 With regard to victim support services, a victim is entitled to receive victim support services irrespective of the consideration that he has reported the crime or not.219 This Code also entitles to close relatives of the deceased to receive services as the victims of most serious crimes.220

It further provides that status of victim is not dependent upon the status of an offender. irrespective of the consideration that a person has been charged or convicted, a person shall be considered as a victim of crime if he has suffered some injury as a direct result of the crime for the purposes of accessing services under this Code.221

4.5.1.3. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

To ensure victim participation in the criminal justice process, the Code of Practice for Victims of Crime in England and Wales, 2015 provides that victim may discuss and agree with police regarding the timings of receiving various information to be provided to him under various

217 Id at ¶ 4 of Chapter 1.
218 Id at ¶ 20 of Chapter 1.
219 Id at ¶ 22 of Chapter 1.
220 Id at ¶ 23 of Chapter 1.
221 Id at ¶ 29 of Chapter 1.
clauses of Sections 1.1-1.5 of the Code.\textsuperscript{222} If police takes a decision to conclude the case without any charge, and victim is advised about such a decision, Code mandates for the police to inquire from victim whether he wishes to be informed in case of reopening of the investigation. Police should take into consideration any views and concerns expressed by the victim, if case is reviewed.\textsuperscript{223} In case a decision for out of court disposal of the case is taken by the police or by the Crown Prosecution Service (CPS) or by the Youth Offending Team, if practicable, victims’ views and concerns shall be taken into consideration.\textsuperscript{224}

The decision to prosecute or not to prosecute is taken by the Crown Prosecution Service on the basis of a two-fold test. First limb relates with the ‘sufficient evidence’ needed for conviction and second limb considers ‘public interest’ criteria before initiating proceedings.\textsuperscript{225} A ‘Public interest’ criterion covers the consequences of decision for victim as well as consideration of victim and his family’s views.\textsuperscript{226} The concept of ‘public interest’ is broad enough to cover the victims’ interests as well. This may result into not prosecuting the offender if victims give preference to their right to privacy (as in the case of sexual assault) instead of their right to prosecution.\textsuperscript{227} There are sixteen ‘non-exhaustive’ factors and nine ‘public interest’ factors that affect the charging decisions,\textsuperscript{228} but it is the individual prosecutor who ultimately decides to prosecute.\textsuperscript{229} Under ‘Victims’ Right to Review Scheme, June 2013, victim has been provided with an internal system of review with timeframes in case of any prosecutorial decision of not charging or of discontinuance of prosecution.\textsuperscript{230} Victims can go to High Court seeking judicial review of any such decision.\textsuperscript{231} Prosecutors are under no statutory obligation to inform or consult with victims, in cases of plea negotiation. Victim has not been made a part of decision making process and his interests may be considered only as a part of broad ‘public interest’ concept. Though regarding

\textsuperscript{222} Id at 20 § 1 (1.7) of Chapter 2.
\textsuperscript{223} Id at 20 § 1 (1.10) of Chapter 2.
\textsuperscript{224} Id at 23 § 2 (2.7) of Chapter 2.
\textsuperscript{225} Crown Prosecution Service (2004), Code For Crown Prosecutors at 5.1-5.2.
\textsuperscript{227} JONATHAN DOAK, supra note 36 at 121.
\textsuperscript{228} Crown Prosecution Service (2004), Code For Crown Prosecutors at 5.9 & 5.10.
\textsuperscript{229} JONATHAN DOAK, supra note 36 at 121.
\textsuperscript{230} Crown Prosecution Service, Victims’ Right to Review Guidance, issued by the Director of Public Prosecutions 2 (July 2014).
\textsuperscript{231} Id at 10.
information aspect Attorney General’s Guidelines (2005), requires prosecutors to explain the position to victim or his family.\textsuperscript{232}

Code of Practice for Victims of Crime 2006, (as revised in 2015), brought significant changes in the role that victim can play in criminal justice process. Now victims are entitled to participate during both proceedings i.e., pre-trial proceedings as well as trial proceedings. Victim shall be given a chance to refresh his memory by viewing the statement if he has made it earlier.\textsuperscript{233} To ensure victim participation in criminal justice process and to get the best evidence, victim shall be supported in his deposition by use of special measures and shall be provided with court familiarization visit.\textsuperscript{234}

Code of Practice for Victims of Crime, 2015 provides victim with a right to receive a written acknowledgement for reporting the crime with detail of the offence.\textsuperscript{235} It provides that in case, victim reports a crime, he shall be given an acknowledgement for reporting a crime with the basic details of the offence. The Code further provides that in case, victim is not provided with such acknowledgement, he is entitled to make a complaint and relevant service provider is under an obligation to provide with a full response in the case.\textsuperscript{236}

To provide protection from intimidation and retaliation by the offender, Code of Practice for Victims of Crime, 2006 (updated 2015), mandates it for the police to ensure (wherever possible) that there is no direct contact between suspect and victim or his family members on police premises.\textsuperscript{237} In case an offender escapes from custody and there is risk of any harm to victim, the Code prescribes that victim should be informed of such escape and with protection measures to be applied in the case.\textsuperscript{238} At the time of attending court as a witness, victim may ask for a separate entrance.\textsuperscript{239} To provide protection from intimidation due to the presence of

\textsuperscript{233}CODE OF PRACTICE FOR VICTIMS OF CRIME, 2015, supra note 216 at 25, § 2 at 2.13 of Chapter 2.
\textsuperscript{234}Id at 25, § 2 at 2.14 of Chapter 2.
\textsuperscript{235}Id at 19, § 1 at 1.1 of Chapter 2.
\textsuperscript{236}According to Section 1.1, a victim is entitled to receive from the police, “a written acknowledgement that you have reported a crime including the basic details of the offence. The written acknowledgement could be in the form of a letter, an electronic notification such as an email or text, or it could be written by hand.”
\textsuperscript{237}Pat Strickland, supra note 66 at 4.
\textsuperscript{238}CODE OF PRACTICE FOR VICTIMS OF CRIME, 2015, supra note 218 at 20, § 1 at 1.9 of Chapter 2.
\textsuperscript{239}Id at 25, § 2 at 2.17 of Chapter 2.
the offender, victim shall be provided a separate waiting and seating area wherever possible during court proceedings.240

This Code of Practice, 2015 provides that in case police interviews any victim in relation to the crime, victim is entitled to be accompanied by some person of his choice unless there is a contrary decision, to get the interview conducted without any unjustified delay, to get interviewed only in case of necessity, to get medical examination only if necessary, to be interviewed only at the designed premise, to be interviewed by the same person during the entire course of investigation and in case of gender based violence to be interviewed by the same sex investigator.241

Victims who are not witness in the case can observe the court proceedings from public gallery only.242 Courts have been entrusted with the task of ensuring fair trial by taking into consideration the representations made by the defence and the CPS advocate. CPS is required to treat victims in a respectful manner and to take care of their concerns in case of inappropriate or aggressive questioning as provided under Section 3.3 of the Code, “The CPS will treat victims who are witnesses in court respectfully and, where appropriate, will seek the court’s intervention where cross-examination is considered by the advocate to be inappropriate or too aggressive.”243

Victim is also entitled to be provided with special measures to present the best evidence.244 Victim shall be provided with a separate waiting and seating area in appeal proceedings in Crown Court or in Court of Appeal or in UK Supreme Court. Victim is also entitled to request a copy of court’s judgment after it is published.245

4.5.1.4. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

During investigation, victim is entitled to receive information regarding what he can get from the criminal justice system. Victim is entitled to receive information as to how often he will be provided with the updates on case status.246 In case of serious crime victim or vulnerable or
intimidated victim, victim is also entitled to get an explanation regarding the information on special measures applicable in particular case.\textsuperscript{247}

During pre-trial stages such as charge and bail, victim is entitled to receive information regarding any decision to prosecute the suspect or to give him an out of court disposal or a decision of not prosecuting the suspect.\textsuperscript{248} In case of any decision of not to prosecute the suspect, victim is entitled to be notified of any such decision. Victim should also be informed on ways to obtain further information in this regard, on ways to seek a review in case of dissatisfaction from such decision.\textsuperscript{249} Generally police is required to provide such information within 5 working days, but in case of serious crime or in case of vulnerable or intimidated victims, police is required to provide victim with such information within 1 working day.\textsuperscript{250} Police is required to inform the victim within 5 working days of receiving such information as under;

i. Date, time and place of first court hearing;

ii. In case of police bail, conditions of such bail and changes in bail conditions if any.\textsuperscript{251}

In case of serious crime, vulnerable or intimidated victim, such information is to be provided to the victim within 1 working day of receiving it by the police.\textsuperscript{252}

In case a decision to discontinue a charge or proceed on a new charge or alteration in a charge or discontinuation of the proceedings or of offering no evidence in all proceedings is taken by the CPS, victim is entitled to receive information with reasons for the same.\textsuperscript{253} Victim should also be informed on ways of getting further information in case CPS discontinues proceedings or offer no evidence and in that case too, victim on being dissatisfied with the decision can seek a review.\textsuperscript{254} Information in such cases shall be provided within 5 working days and in case of vulnerable or intimidated victim or victim of a serious crime shall be provided within 1 working day.\textsuperscript{255} Victim shall be provided with following information\textsuperscript{256}:

\begin{itemize}
\item \textsuperscript{247}Id at 19, § 1 at 1.10 of Chapter 2.
\item \textsuperscript{248}Id at 22, § 2 at 2.1 of Chapter 2.
\item \textsuperscript{249}Id at 22, § 2 at 2.2 of Chapter 2.
\item \textsuperscript{250}Id at 22, § 2 at 2.3 of Chapter 2.
\item \textsuperscript{251}Id at 22, § 2 at 2.4 of Chapter 2.
\item \textsuperscript{252}Id at 22, § 2 at 2.3 of Chapter 2.
\item \textsuperscript{253}Id at 22, § 2 at 2.4 of Chapter 2.
\item \textsuperscript{254}Id at 24, § 2 at 2.7 of Chapter 2.
\item \textsuperscript{255}Id at 24, § 2 at 2.8 of Chapter 2.
\item \textsuperscript{256}Id at 24, § 2 at 2.9 of Chapter 2.
\end{itemize}
i. The outcome of bail hearing, bail conditions or any change in bail conditions within 5 working days and in case of vulnerable, intimidated of serious crime victim within 1 working day,

ii. Date, place and outcome of court hearings, within 1 working day of its receiving by witness care unit,

iii. Issuance of an arrest warrant for suspect and outcome of its hearing within 5 working days,

iv. Information regarding victim deposition in court within 1 working day of its receiving by witness care unit.

After the conclusion of trial, victim is entitled to receive information about the outcome of trial proceedings within 1 working day of its receiving by the witness care unit from the court.257 Victim is entitled to receive information on sentence given to the suspect in case of his conviction and this information shall be provided to the victim within 1 working day of its receiving by witness care unit from the court.258

Where an appeal is filed to Crown Court, against a conviction or sentence by Magistrate Court, victim is entitled to receive information regarding notice of appeal, date, time and location of hearing and outcome of appeal including changes in the original sentence.259 Where an appeal is filed against conviction or sentence to the court of appeal or to the UK Supreme Court, on a law point, victim is entitled to receive information regarding grant of leave to the appellant within 5 working days and in some cases within 1 working day. Victim shall also be provided information pertaining to the date, time and place of hearing, release on bail, change if any in bail conditions, changes in hearing dates if any, contact point and the result of such appeal and changes in the original sentence if any.260

4.5.1.5. VICTIMS’ RIGHT TO INTERACTIONAL JUSTICE:

In 2001, prosecutors were made responsible for providing victims explanations in case of dropping of charges and in cases of substantial alteration in charges.261 Crown Prosecution Service (2005a) codifies victim’s expectations that includes taking in to consideration victim impact statement while forming charging decisions, satisfying queries regarding court

---

257 Id at 26, § 3 at 3.6 of Chapter 2.
258 Id at 27, § 4 at 4.2 of Chapter 2.
259 Id at 27, § 5 at 5.2 of Chapter 2.
260 Id at 28, § 5 at 5.4 of Chapter 2.
procedures and helping in communications between barristers and victims.\textsuperscript{262} Another CPS document\textsuperscript{263} prescribes for prosecutor’s duties as ensuring that victims are provided with the required information and needed support at all procedural levels.\textsuperscript{264} It was felt that providing proper attention towards victim’s concerns should be the main task of CPS.\textsuperscript{265} An explanation regarding the decision of dropping or altering the charge, given by the prosecutor himself boosts the morale of the victims.\textsuperscript{266}

Under the provisions of Code of Practice for Victims of Crime, 2015, a victim is entitled to receive a clear explanation regarding what he can get from the criminal justice system. Victim shall be provided with a discussion with the police about the updates in the case. In case a decision of not to investigate is taken by the police, victim is entitled to receive an explanation of the same and that too within 5 working days of such decision. Victim shall be advised in case an investigation concludes without charging any person and reasons for such conclusion shall be explained to the victim.\textsuperscript{267} In case a victim makes a witness statement, police is required to explain him that it may require him to give testimony in the court.\textsuperscript{268} This code also entitles victim to not only receive an information about the suspect but to get an explanation for any decision taken in his relation like his arrest, interview with caution, release without charge, release on police bail and if there is any change or cancellation of police bail conditions and that too within 5 working days of taking of such actions.\textsuperscript{269} In case of a vulnerable or intimidated victim or a victim of a serious crime, the Code mandates for providing of this information within 1 working day.\textsuperscript{270}

In case police or CPS decides for not prosecuting the offender, victim is entitled to get not only the information but an explanation too, mentioning the reasons for taking such a decision.\textsuperscript{271} In certain specified cases, if CPS takes a decision of not charging the suspect, victim is entitled to information of the same with being offered a meeting with the CPS and in case CPS decides for not holding such a meeting, victim shall be provided explanation for the

\textsuperscript{262} JONATHAN DOAK, supra note 36 at 128.
\textsuperscript{264} JONATHAN DOAK, supra note 36 at 128.
\textsuperscript{266} JONATHAN DOAK, supra note 36 at 128.
\textsuperscript{267} CODE OF PRACTICE FOR VICTIMS OF CRIME, 2015, supra note 216 at 19, § 1 at 1.1 of Chapter 2.
\textsuperscript{268} Id at 20, § 1 at 1.3 of Chapter 2.
\textsuperscript{269} Id at 20, § 1 at 1.5 of Chapter 2.
\textsuperscript{270} Id at 20, § 1 at 1.6 of Chapter 2.
\textsuperscript{271} Id at 22, § 2 at 2.2 of Chapter 2.
same.272 In any case of discontinuation of a charge or of substantial alteration in a charge or proceeding on a new charge or discontinuation of proceedings and a decision of not offering any evidence in proceedings, victim shall be provided with reasons for taking such a decision.273 If victim is a bereaved family member, he shall be offered a meeting with CPS to explain the decisions regarding to discontinue of the charge or of substantial alteration of the charge, discontinuation of proceedings or offering of no evidence and in case CPS decides that such meeting is not necessary, decision for that too shall be explained to the victim.274 Victim shall be informed about the outcome of bail hearing, bail conditions or any change in bail conditions with reasons.275

The Code of Practice for Victims of Crime in England and Wales, 2015 provides that bereaved close relative is entitled to be offered a meeting with CPS or the concerned advocate and in such meeting, victim may clear any of his doubts regarding the case.276 The Code further provides that such meeting shall be offered either prior to or after a charging decision by CPS. In case of any charging decision, victim shall be explained how the case is going to progress. CPS shall provide victim with answers as to his queries. CPS shall take into consideration the needs of victims and shall jointly agree with the victim on frequency of contact.277

Victim (appearing as witness) is entitled (if circumstances permit) to meet the CPS or the concerned advocate representing the case to clear his doubts regarding the court process and the time they are required to wait for giving their testimony.278 Victim (witness) shall be provided with a contact point to know the happenings in the case during its hearing.279 In case there is a delay, CPS advocate shall provide to the victim an explanation as to the delay and the time that victim is required to wait.280

After the trial concludes, victim shall be provided information regarding its outcome and he shall also be provided with reasons for such decision.281 Where the trial results into conviction of a suspect, victim shall be provided with information as to the sentence awarded to the

272 Id at 23, § 2 at 2.6 of Chapter 2.
273 Id at 24, § 2 at 2.8 of Chapter 2.
274 Id at 24, § 2 at 2.11 of Chapter 2.
275 Id at 24, § 2 at 2.13 of Chapter 2.
276 Id at 25, § 2 at 2.16 of Chapter 2.
277 Id at 23, § 2 at 2.5 of Chapter 2.
278 Id at 25, § 3 at 3.1 of Chapter 2.
279 Id at 26, § 3 at 3.1 of Chapter 2.
280 Id at 26, § 3 at 3.1 of Chapter 2.
281 Id at 26, § 3 at 3.6 of Chapter 2.
convict along with an explanation clarifying the meaning and effect of sentence.\textsuperscript{282} In case witness care unit is not able to satisfy your queries regarding the sentence, victim is entitled to be referred to the CPS for getting an explanation.\textsuperscript{283} Bereaved family members are also entitled for such meetings with the CPS.\textsuperscript{284} Bereaved family members are entitled for a meeting with CPS to get an explanation as to the nature of the appeal and the court processes involved.\textsuperscript{285}

4.5.1.6. COMPLIANCE MECHANISM:

4.5.1.6.1. VICTIMS’ RIGHT TO REVIEW SCHEMES:

In England and Wales if a victim is dissatisfied with the decision of police or of CPS of not to prosecute the offender or otherwise to terminate the criminal proceedings, victim can apply for a review of such decision under the relevant provision of National Police Chiefs Council (NPCC) or of CPS Victims’ Right to Review Schemes. Taking into consideration victims’ need for sufficient information for taking a decision of applying for review or not, victim should be provided with sufficient information.\textsuperscript{286}

4.5.1.6.2. RIGHT TO MAKE A COMPLAINT:

If victim is not treated in a respectful, sensitive and professional manner prescribed under this Code and without any kind of discrimination or if victim is not provided with the services as provided under this Code, he is entitled to make a complaint according to the complaint mechanism. Such complaint is also required to be addressed swiftly and fully. In this case, a victim can make a complaint to the dealing person at that service provider and on being dissatisfied can make a complaint through the internal complaint procedure. In case victim complains to a wrong service provider, that service provider shall direct his complaint to the correct service provider and provide victim with such an information. He shall further be informed about how he can make a complaint to the Parliamentary and Health Service Ombudsman. Victim can refer his complaint to Parliamentary and Health Service

\textsuperscript{282}Id at 27, § 4 at 4.2 of Chapter 2.
\textsuperscript{283}Id at 27, § 4 at 4.3 of Chapter 2.
\textsuperscript{284}Id at 27, § 4 at 4.4 of Chapter 2.
\textsuperscript{285}Id at 28, § 5 at 5.5 of Chapter 2.
\textsuperscript{286}Id at 23, § 2 at 2.6 of Chapter 2.
Ombudsman via a Member of Parliament and in such cases, such Ombudsman after considering the complaint can undertake independent investigation.\textsuperscript{287}

A victim is entitled for information on how to make complaint with contact details and process of such complaint, either acknowledgement or full response within 10 working days, timeframe for substantive response, full response within set timeframe, information on further processing to Parliamentary and Health Service Ombudsman.\textsuperscript{288}

\section*{4.5.1.6.3. THE COMMISSIONER FOR VICTIMS AND WITNESSES OR ‘VICTIMS’ COMMISSIONER’:

Victims’ Commissioner is not a service provider under this Code because he is entrusted with the statutory duty to regularly review this Code. He has a role to listen to victims’ views and take their perspective into consideration to understand the criminal justice system and make efforts to improve victim services.\textsuperscript{289}

Victims’ Commissioner is entrusted with the role of promoting the interests of victims of crime and encouraging good practice in their treatment of victims of crime.\textsuperscript{290}

\section*{4.5.1.7. STRENGTHS AND WEAKNESSES OF THE CODE:

Code of Practice for Victims of Crime, 2015 recognizes that victims need interactional justice in terms of being provided with justifications or explanations for procedures adopted and explanations for the outcome of such procedures. To ensure interactional justice to victims of crime, this Code mandates that victims should be provided with reasons or explanations almost at every stage of or throughout the criminal justice process.

This Code provide with various measures to ensure procedural, informational and interactional justice to victims of crime but as far as remedy for their violation is concerned, it provides only with an internal complaint mechanism and victims have no recourse to court.

Failure in complying with the provisions of the Code of Practice for Victims of Crime, 2015 does not make the concerned person liable in criminal or in civil proceedings, but in determining any question in the proceedings, court may take into account any such failure.\textsuperscript{291}

\begin{footnotesize}\begin{align*}
\text{287} & Id \text{ at } 38, \text{ § } 9 \text{ of Chapter } 2. \\
\text{288} & Id \text{ at } 38, \text{ § } 9 \text{ at } 9.4 \text{ of Chapter } 2. \\
\text{289} & Id \text{ introduction at } 15 \text{ (3). } \\
\text{290} & Victims’ Commissioner, Ministry of Justice, https://victimscommissioner.org.uk/ \\
\text{291} & Pat Strickland, supra note 66 at 5. \\
\end{align*}\end{footnotesize}
4.5.2. U.K. VICTIMS’ RIGHT TO REVIEW GUIDANCE ISSUED BY THE DIRECTOR OF PUBLIC PROSECUTIONS REVISED JULY, 2016:

4.5.2.1. OBJECTIVES:

As per the Introduction of this guidance, its objective is to set out the way in which victims can give effect to their right to seek a review of decisions taken by the Crown Prosecution Service. This scheme brings into effect the principles laid down by the Court of Appeal in R v Christopher Killick as well as to bring into effect Article 11 of the European Union Directive that establishes minimum standards on the rights, support and protection of victims of crime. In R v. Killick, Court considered the aspect of a victims’ right to seek a review in case CPS takes a decision of not to prosecute. It was held by the court in explicit terms that, “A victim has a right to seek a review in such circumstances…..A victim should not have to seek recourse to judicial review…..The right to a review should be made the subject of a clearer procedure and guidance with time limits.”

Victims’ Right to Review arises in case, CPS after applying the evidential and public interest test, takes a decision of not to prosecute. This right is co-extensive with victims’ right to seek judicial review. In R v. Killick case, when an offender who was informed earlier that he would not be prosecuted, was prosecuted, he challenged this prosecution as an abuse of legal process. Responding to his objection, it was observed by the Court of Appeal that any decision that prosecution is not going to take place is a final decision for a victim, therefore, victim should be given a right to seek for its review. Court of Appeal observed as under,

It has for some time been established that there is a right by an interested person to seek judicial review of the decision not to prosecute….. it would therefore be disproportionate for a public authority not to have a system of review without recourse to court proceedings……As a decision not to prosecute is in reality a final decision for the victim there must be a right to seek a review of such a decision.

---

293 Id Introduction at 1.
299 R v. Christopher Killick (2011) EWCA Crim 1608, as cited at point 7 of
This observation emphasizes that victim has a right to seek review of any prosecutorial decision and this review guidance is intended to provide a mechanism in which victims can exercise their right to seek review effectively.

4.5.2.2. DEFINITION OF VICTIM:

For the purpose of applicability of this scheme, a victim has been defined in following terms, “a person who has made an allegation that they have suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by criminal conduct.”

This definition talks about the sufferings undergone by the victim due to his criminal victimization. These sufferings may result either in the form of physical or mental or emotional harm or of economic loss provided these are the direct consequence of the criminal conduct. What amounts to this ‘criminal conduct’, this guidance provides that any behavior that constitutes a criminal offence under the Standards prescribed by the National Crime Recording Statement is to be termed as ‘criminal conduct’.

There are other persons who are considered as victims of crime despite their not being the direct sufferer of the crime. These include the close relatives of the deceased victim, parents or guardian of a person under 18 years of age, police officers being the victims of crime and family spokespersons of such direct victims who are suffering from disability or unable to communicate due to their being severely injured.

4.5.2.3. VICTIMS’ RIGHT TO REQUEST A REVIEW:

Any victim subjected to a ‘qualifying decision’ is entitled to make a request for review of such decision. This right to make a request arises in the following circumstances that are known as ‘qualifying decisions’:

i. In case, CPS takes a decision of not to bring proceedings;

---

301 Id.
302 Id.
303 Id.
305 CPS, Victims’ Right to Review Guidance, supra note 292 at 10.
ii. In case, CPS withdraws or discontinues all the charges in relation to victim thus resulting into ending of all proceedings pertaining to the victims;

iii. In case, CPS does not offer any evidence in all the proceedings in relation to the victim;

iv. Makes a request to the court to leave all charges to ‘lie on file’.

4.5.2.4. HOW THIS RIGHT IS EXERCISED:

4.5.2.4.1. NOTIFICATION TO THE VICTIM:

In case, prosecution has taken a decision of not to bring proceedings or to terminate the proceedings, Victim will be given a notification with details of the nature of the decision that means whether such a decision pertains with not to charge the offender or whether this pertains with not to continue the proceedings and whether the evidential or public interest grounds were taken into consideration while arriving at such a decision or not.  

In case of a decision being a ‘qualifying decision’, victim will be further notified as to his eligibility for making a request to review. Such notification will provide victim with all such information that he may need in exercise of his right to review. Victim will be given this information so that he can take a decision whether he wishes a review to take place or not and in case he wishes for a review of decision to take place, what steps he is required to take.

4.5.2.4.2. NOTIFICATION BY THE VICTIM:

In case a victim wishes for a review to take place, he is required to notify the CPS regarding his request for review within 5 working days of receiving of the notification given by the CPS. On such notification being given, CPS is required to provide victim with the contact details of the concerned CPS office so that he can contact there for ‘local resolution’.

4.5.2.4.3. LOCAL RESOLUTION:

After receiving of a request from victim, CPS direct the victim to the local CPS office or to the CPS Direct (CPSD), a team that makes majority of charging decisions or to the office

---

306 CPS, Victims’ Right to Review Guidance, supra note 292 at 17.
308 This guidance provides that ordinarily the time is within 5 working days but in certain circumstances, such request can be made up to three months after receiving of the communication from the CPS.
310 Id at 19.
where the concerned decision was taken.  

During this stage, at one side victim is provided with additional information that helps him in understanding how CPS arrived at such a decision and on the other side CPS is given an opportunity to re-look at its charging decision to ascertain whether the decision taken was correct or not. In such a way, local office or CPS Direct (CPSD) easily remove the cause of dissatisfaction.  

During this process, another prosecutor is entrusted with the task of reviewing the decision. Victim is provided with a proper explanation of the decision if the same was not given to him previously. If it is found during local resolution that different decision should have been taken, then proceedings will be commenced accordingly and victim will be notified. If it is not possible to do so, victim shall be given an explanation for the same with an apology.  

But if it is found that earlier decision was correct, victim will be given additional information and explanation with an advice that they should contact the Appeals and Review Unit or Chief Crown Prosecutor accordingly. If victim has already been provided with such an explanation, his request for review will be sent directly to the concerned authority that is Appeals and Review Unit or the relevant CCP.  

4.5.2.4.4. INDEPENDENT REVIEW:  

Cases where qualifying decision was taken by Prosecutors at grade CCP or within Central Casework Divisions go directly to the ‘Independent Review’ without being subjected to ‘Local Review’. Cases where ‘Local Review’ was conducted but victim remains dissatisfied, then the matter will be referred to 'Independent Review'. In such a review, new reviewing prosecutor reconsider the case in the light of evidence and public interest criteria so as to determine whether the earlier decision taken was correct or not.  

4.5.2.5. STRENGTHS AND WEAKNESSES OF THE VICTIMS’ RIGHT TO REVIEW GUIDANCE:  

This Review Guidance provides only an internal mechanism within the Crown Prosecution Service to deal with the cases where victim is not satisfied by the decision taken by the CPS.

---

311 Id at 23.  
312 Id at 24.  
313 Id at 26.  
314 Id at 27.  
315 Id at 29.  
316 Id at 30.  
317 Id at 32.
This scheme is not applicable in all cases. Various cases fall outside the purview of Victims’ Right to Review Scheme. There are certain limitations as to the applicability of this ‘right to review’. The conditions when a victim is not entitled to make a request for review are as follows:

i. In case of a qualifying decision taking prior to 5 June 2013 that is the date of coming into effect of this Victims’ Right to Review Scheme;

ii. Where the case has not proceeded further because of the police decision of not to investigate or not to continue with the investigation whether with or without consulting the CPS and no such request to lay charges have been made to the CPS. Any request for review of such decisions should be addressed to the concerned police force;

iii. In cases where charges are brought but only on some allegations or only against some suspects and Crown Prosecutor has paid attention to the evidence of victim;

iv. Cases where though one or more charges have been terminated but one or more charges are still continuing in which victim is involved;

v. Cases where though the proceedings with regard to one or more suspects are terminated but still these are continuing with regard to other defendants in the case in relation to the victim of the crime;

vi. Cases where though there is substantial alteration of the charge but the proceedings involving the victim are still continuing;

vii. Cases where only some and not all charges are left to lie on file;

viii. Cases where the matter is disposed of out of court;

ix. Cases where a decision of not to charge or to terminate the proceedings is taken after a request made by the victim to stop the proceedings or after the withdrawal of support for prosecution by the victim;

x. Cases that cover under circumstances where prosecution is given a right to appeal or cases where an application for dismissal of charges is not opposed due to the Rule 9.16 of the Criminal Procedure Rules 2015.
4.5.3. THE PROSECUTORS’ PLEDGE:

Prosecutors’ Pledge prescribes the commitment to be followed by the Crown Prosecution Service (CPS) in case of an identifiable victim. This Pledge provides for the CPS to consider various aspects of victim justice that include procedural justice, informational justice and interactional justice.

4.5.3.1. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

This Pledge provides that a Prosecutor should take into account the impact of crime upon the victim or upon his family members when he makes a charging decision, should take into consideration the views expressed by victim or by his family members when he considers the acceptability of a plea, if practicable, should address specific needs of a victim and in justifiable case, seek their identity protection by making an application to the court, should provide assistance to victims by refreshing their memory through written or video statement and should satisfy their queries regarding court procedures and to provide protection from character assassination in case of inappropriate or oppressive cross-examination, seek courts’ intervention.318

4.5.3.2. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

This Pledge provides that a Prosecutor should provide victim with the relevant information in case of withdrawal, discontinuation or substantial alteration of charge and provide victim with the relevant information regarding progress of the appeal.319

4.5.3.3. VICTIMS’ RIGHT TO INTERACTIONAL JUSTICE:

This Pledge provides that a Prosecutor should promote and encourage interaction between victim and prosecutor at court and should provide victim with an explanation regarding effect of the court’s judgment.320 Prosecutors’ Pledge reflects upon the role of prosecutor in fulfilling victims’ right to get explanation pertaining to the criminal justice process in his case. It has been provided under this pledge that, “You will be kept informed throughout the process and given a full explanation as to what is happening and, most importantly, why.”321

319 Id.
320 Id.
It further provides for an opportunity to meet the prosecutor in certain cases as follows,

“In certain crimes, you may also be offered the opportunity of meeting the prosecutor in person who will explain the decision.”

4.5.3.4. **STRENGTHS AND WEAKNESSES OF THE PROSECUTOR’S PLEDGE:**

Main drawback of this pledge is its unenforceability. This pledge provides that victims’ views shall be taken into consideration without being bound by such a provision. There is no explicit rule that makes clear whether such expressed views were taken into consideration during the prosecutorial decisions or not. All this role of prosecutor indicates only one thing that recognition of victims’ needs has resulted in to their service rights since these rights do not give any right or formal position to victim in criminal justice process. CPS Prosecutors’ Pledge is criticized because of lack of enforcement mechanism. This pledge does not entrust any victim specific right in its true sense. Referring to Code of Practice in England and Wales (2006), CPS Prosecutors’ Pledge and the Witnesses’ Charter, it has been pointed out by Matthew Hall,

“All three documents abstain from the term “rights” and are modelled around legitimate expectations, enforced through complaints procedures external to the criminal justice process.”

An important issue in the field of victims’ rights is regarding the lack of enforceability of these rights. According to Jackson, “One of the problems with putting obligations on criminal justice agencies, however, is that they are unlikely to be taken seriously unless consequences attach to non-compliance.”

4.6. **VICTIM SPECIFIC INITIATIVES IN AUSTRALIA**

4.6.1. **SOUTH AUSTRALIA VICTIMS OF CRIME ACT 2001**

4.6.1.1. **OBJECTIVES OF THE ACT:**
Victims of Crime Act, 2001 is primarily aimed at providing principles on how victims of crime should be dealt with, within criminal justice system.\textsuperscript{327} As a statutory recognition to victims of crime and as recognition of the harm suffered by them due to criminal victimization, in South Australia, Victims of Crime Act 2001\textsuperscript{328} was enacted. This Act establishes principles to deal with the victims of crime by the agencies of criminal justice system.\textsuperscript{329}

\textbf{4.6.1.2. DEFINITION OF VICTIM:}

In Australia, different territories provide different definitions of victims as per the purposes of the scheme or legislation. National Framework of Rights and Services deals with victims of crime against the person and accordingly defines a victim as \textit{“a natural person who suffers harm resulting from the commission of a criminal offence under the respective criminal laws.”}\textsuperscript{330}

Section 4 of the Victims of Crime Act 2001, South Australia, defines the term ‘victim’ as under;

\textit{“Victim, in relation to an offence, means a person who suffers harm as a result of the commission of the offence (but does not include a person who was a party to the commission of the offence).”}

This definition says that a person should have suffered harm due to criminal victimization to be considered as a victim of crime under this Act. It excludes from its ambit any such person who himself has committed the concerned criminal offence, as it explicitly mentions that the definition of victim does not consider as victim to a person who was himself a party to the commission of an offence.

Section 4 of this Act defines the term ‘immediate victim’ in relation to an offence as including of persons who suffers physical injury due to the commission of an offence or a person who suffers psychological injury due to his being directly involved in circumstances of the offence or a person who suffers psychological injury because of his involvement in the operations that

\textsuperscript{329} Id at § 3.
\textsuperscript{330} Standing Council on Law and Justice, \textit{supra} note 73 at 3.
were carried to deal with consequences of the offence immediately in the aftermath of offence or a parent or guardian of a child victim or in case of death of direct victim a member of his immediate family.331

4.6.1.3. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

Victims of Crime Act, 2001 (South Australia) provides that when prosecutor makes a charging decision, he should consult victim of serious offences. Section 9 A of this Act provides that in case of serious offences, victim should be consulted prior to any decision in relation to charging of offender; amendment in charge; not proceeding with the charge or in case an application for investigation into offender’s mental health or mental fitness to face trial is to be made. To ensure victim participation as a witness to the crime, Section 9 of this Act imposes an obligation upon the prosecution to provide victim with such timely information about the trial process and rights and responsibilities of victim as a prosecution witness, that he can obtain independent advice and can arrange for independent support if he wishes so.

Section 7 of Victims of Crime Act 2001 (South Australia) provides that victims’ need for protection should be taken into consideration. Any such need should be brought before the bail authority. It provides that in case victim feels a need for protection and the concerned authority either the police officer or the person representing the Crown is aware of such need then they must ensure that such need is brought before the bail authority and all reasonable efforts needed to notify victim of the outcome of bail proceedings must be made. Victim should specifically be informed of any such condition that has been imposed to provide protection to victims of crime. Section 10 (4) of the Bail Act 1985 also provides that while releasing an offender on bail, the concerned authority granting bail must give primary attention towards the physical protection need of the victim.

Section 9 B of Victims of Crime Act 2001 (South Australia) provides Victims with a right to be present in court. This section says that until and unless ordered otherwise by the court, a victim of an offence is entitled to be present in the court during the proceedings. Section 32 A

331Victims Of Crime Act 2001, supra note 328 at § 4 defines the term ‘immediate victim’ as follows; “(a) a person who suffers physical injury as a result of the commission of the offence; (b) a person who suffers psychological injury as a result of being directly involved in the circumstances of the offence or in operations in the immediate aftermath of the offence to deal with its consequences; (c) if the offence was committed against a child- a parent or guardian of the child; (d) if the offence was committed against a person who dies as a result of the offence- a member of the immediate family of the deceased.”
of this Act entitles victim to exercise his rights through an appropriate representative. This section provides that any victim may exercise rights granted to him under this Act or under any other Act through an appropriate representative as chosen by the victim. This right includes the right to make request for information. An ‘appropriate representative’, according to this Section may be an officer of the court, the Commissioner for Victims’ Rights or any other person acting on behalf of Commissioner for Victims’ Rights, an employee or an officer of an organization delivering services or support to victims of crime, a relative of victim of crime or any other person who is suitable to act as a representative as per the opinion of the Commissioner for Victims’ Rights. Section 10 A of Victims of Crime Act 2001 (South Australia) entitles a dissatisfied victim to make a request to prosecution for consideration of appeal against any such determination against which prosecution may file an appeal within 10 days of such determination. Prosecution is required to pay due consideration to any such request.

4.6.1.4. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

In South Australia, Section 8 of Victims of Crime Act, 2001 ensures victims’ right to informational justice by providing that victim shall be provided with the relevant information on a request being made by him. Victim is entitled to get various information not only in relation to the criminal justice processes but with regard to an offender too, provided it does not jeopardize the investigation in the case.

Section 8 (1) of Victims of Crime Act 2001 (South Australia) provides that if victim makes a request then he should be provided with following information;

i. Progress of the investigation;
ii. Charges laid against the offender and name of the offender;
iii. Date and place for proceedings on the charge;
iv. Outcome of the bail application if any such application was made by the offender;
v. Outcome of the charge proceedings and of appeal if any from these proceedings;
vi. Details regarding the sentence imposed or of supervision order;
vii. Outcome of the parole application and conditions imposed on parole to provide protection to victim of crime;
viii. Outcome of any application made for review of supervision order or for its revocation or for variation;
ix. Condition imposed on licence if the offender is released on licence.

Section 8 (2) of Victims of Crime Act 2001 (South Australia) further provides that victim should be provided following information in relation to the offender if victim makes request for the same;

i. The fact of absconding of the offender before trial;

ii. The fact of escaping of the offender from the custody;

iii. The fact that alleged offender has returned back to custody;

iv. In case of release of the offender, when he is to be released;

v. The fact that offender has completed community service and

vi. The fact that offender has complied with the conditions of the bond if he was subject to such bond.

Section 8 (3) of this Act limits this entitlement of victim to obtain information by placing a restriction that any information that may jeopardize the investigation shall not be provided to the victim. Section 8 (4) of this Act further elaborates victims’ right to information by providing that if a victim makes such request then he shall be provided information with regard to the procedures to be followed in case of any grievance for non-recognition or for inadequate recognition of victims’ rights as provided under this part.

4.6.1.5. VICTIMS’ RIGHT TO INTERACTIONAL JUSTICE:

Section 6 of Victims of Crime Act 2001\(^{332}\) (South Australia) provides for fair and dignified treatment towards victims of crime. This Section provides that a victim should be provided with respectful treatment with due courtesy and sympathy. During their interaction with the agencies due consideration should be paid to their special needs. These needs may arise due to their age, or sex, or race or ethnicity, or cultural or linguistic background, or physical or intellectual ability or because of any other reason.

Section 8 (1) of this Act provides victim with the right to information. It also ensures victims’ right to interactional justice by making a provision regarding explanations to be provided to victims along with the information. It provides that in case a request is made by the victim for this purpose, he shall be provided \textbf{with the reasons} for prosecutorial decisions if prosecutor

\[^{332}\text{Victims Of Crime Act 2001, supra note 328.}\]
makes any decision of not proceeding with the charge or of amending the charge, or of accepting any plea to a lesser charge or for leniency.\textsuperscript{333

\textbf{4.6.1.6. COMPLIANCE MECHANISM:}

\textbf{4.6.1.6.1. VICTIMS OF CRIME ADVISORY COMMITTEE:}

Under Section 15 of this Act, Attorney-General is entitled to establish an advisory committee so as to get advice on practical initiatives that might be undertaken by the government to ensure proper treatment of victims of crime with due consideration and respect within the criminal justice system, to provide help to victims of crime so that they can recover from the harm undergone by them and to advance victims’ interests in other possible ways. Attorney-General may refer any other matter to the advisory committee for getting advice. Members of such advisory committee will be appointed by the Attorney-General on such terms and conditions as shall be determined by the Attorney-General.\textsuperscript{334

\textbf{4.6.1.6.2. COMMISSIONER FOR VICTIMS’ RIGHTS:}

Section 16 provides for appointment of Commissioner for Victims’ Rights. Government may consider any suitable person, not being a member of Public Service to be appointed as Commissioner for Victims’ Rights. Such Commissioner is a member ex officio of the advisory committee. This Section enumerates the functions that a Commissioner for Victims’ Rights is required to perform in victims’ interests. These are as follows:

\begin{itemize}
  \item[i.] To make best use of the government resources so that they can be used in most efficient and effective way for the benefit of the victims.
  \item[ii.] To provide assistance to victims of crime when they come into contact with the agencies of criminal justice system such as prosecution authorities and other governmental agencies.
  \item[iii.] To monitor and review the effect that law, court practices and procedures leave upon victims of crimes.
  \item[iv.] To carry out such functions as are required to fulfill the objects of this Act assigned by the Attorney-General.
\end{itemize}

\textsuperscript{333}Id.\textsuperscript{334}Id at § 15, Division 1.
v. To make submissions either through personally or through counsel in any proceedings when such submission is either authorized or is required by any other act to be made by the Commissioner.

vi. To perform any such functions as assigned to him under any other Acts.

4.6.1.6.3. POWERS OF THE COMMISSIONER:

Section 16 A of Victims of Crime Act, 2001 entrusts Commissioner with certain powers required to fulfill his obligation under the Act. These powers include:

i. On a request being made by the commissioner, a public agency or official must consult with the Commissioner regarding the steps needed to be taken to further the interests of any particular victim or class of victim or victims in general;

ii. On satisfaction of Commissioner after consultation with a public agency or official that such public agency or official has failed to comply with the requirements set out in Part 2 of this Act in such circumstances where it was practicable to comply with it and in case, it is found by the Commissioner that such public agency or official has not tendered apology to the victim or has not dealt with in any other satisfactory way in relation to its failure to comply with the requirements, may issue notice in writing to such agency or official recommending for issuance of a written apology to the concerned victim.

iii. Victim shall be provided with a copy of such notice given under subsection (2) by the Commissioner.

iv. Commissioner is required to specify in his annual report under Section 16 F that how many such notices were issued by him and to which agency or official such notices were issued.

v. The Commissioner while exercising his powers in relation to a particular victim must take into consideration the wishes expressed by the victim.

To ensure fairness in the functioning of Commissioner or to ensure independence of Commissioner, Section 16 E of this Act provides that except as provided under this Section, Commissioner is entirely independent and no direction or control by the Crown or by any Minister or Officer of the Crown can be exercised over the functioning of the Commissioner. Attorney-General may issue directions or furnish guidelines with regard to the functioning of the Commissioner but after consultation with the Commissioner. Such direction or guidelines
must by published in the Gazette as soon as practicable after their issuance and must be presented before each House of Parliament within 6 sitting days of their issuance.335

4.6.1.7. STRENGTHS AND WEAKNESSES OF THE ACT:

To regulate the treatment of victims of crime within criminal justice system, this Act declares the principles to be taken into consideration by the agencies of criminal justice system during their interaction with victims of crime. According to Section 5 of the Act, the principles provided under the Act are the result of national and international concern regarding victims of crime. These principles provide how the agencies of criminal justice system should deal with victims of crime but the main drawback of these principles is there unenforceability as is reflected from Section 5 (3) of this Act. Section 5 (3) makes it clear that these principles are only guiding principles and are not enforceable as such in criminal proceedings, these principles do not create any right to claim damages for breach and are ineffective in the conduct of criminal proceedings. Under Section 5 (4), agencies are required to take these principles into consideration if it is practicable and does not adversely affect other obligations binding on the authorities.336 Salient feature of this Act can be seen in the form of appointment of an independent Commissioner for Victims’ Rights to take care of their concerns and to advance their interests.337 Governor appoints Commissioner as an independent statutory officer. He is assigned with the work of helping victims in their dealings with the agencies of criminal justice system, public officials and public agencies. He can consult public officials to ascertain whether they are treating victims of crime according to the Declaration of Principles governing treatment of victims of crimes or whether there has been a breach of the principles of Declaration.338

4.6.2. VICTIMS’ RIGHTS AND SUPPORT ACT 2013 NO. 37 (NEW SOUTH WALES):

4.6.2.1. OBJECTIVES OF THE ACT:

335Id at § 16 E.
336Id at § 5.
337Id at § 16.
Part 2 of this Act deals with Victims’ Rights. The objective of this part is to give recognition to rights of victims of crime and to promote such rights. To recognize the rights of victims of crime, this Act provides with ‘Charter of Victims Rights’.

4.6.2.2. DEFINITION OF VICTIM:

According to Section 5, “victim of crime” is a person who has suffered harm as direct result of his criminal victimization. Such harm should have been inflicted by another person in the course of commissioning of such offence. Such harm may result in the form of actual physical bodily harm or psychological or psychiatric harm or as harm to the property. If this harm results into death of direct victim, then a member of that deceased person’s family shall be considered as a victim of crime. In case of there being more than one immediate family members, then the immediate family may nominate one member among themselves as a representative for the purposes of the Charter of Victims’ Rights.

4.6.2.3. VICTIMS’ RIGHT TO PROCEDURAL JUSTICE:

In New South Wales, victim of crime has been provided with various rights to ensure procedural justice to victims of crime. Victim has a right to be provided with such legal assistance that is responsive to the needs of the victim. Clause 6.5 of Section 6 of Victims’ Rights and Support Act, 2013 recognizes victims’ right to participation by providing that in case any decision is to be taken for modification of the charge or for not proceeding with the charge or with regard to plea bargaining, victim will be consulted, if the offence charged relates with a serious crime of sexual violence or a serious crime resulting into actual bodily, psychological or psychiatric harm to the victim unless;

(a) There is an indication from victim wishing not to be consulted.

 Victories Rights And Support Act 2013 No. 37, New South Wales.

 "Meaning of “victim of crime”

 (1) For the purposes of this Part, a victim of crime is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence.
 (2) A person suffers harm if, as a result of such an act:
 (a) The person suffers actual physical bodily harm or psychological or psychiatric harm, or
 (b) The person’s property is deliberately taken, destroyed or damaged.
 (3) If the person dies as a result of the act concerned, a member of the person’s immediate family is also a victim of crime for the purposes of this Part.
 (4) If a person dies as a result of the act concerned and there is more than one member of the person’s immediate family, members of the immediate family may nominate a representative for the purposes of the Charter of Victims Rights.”

 Id at § 6.3.
(b) It is impossible to ascertain the whereabouts of the victim even after a reasonable inquiry.343

Taking into consideration the needs of victims for protection, it has been provided that victim shall be provided protection from unnecessary contact not only with the accused but with the defence witnesses as well, during the course of court proceedings.344 victim has further been ensured protection by providing that until and unless, court instructs otherwise, his residential address and contact number will not be disclosed.345 Threat perception to victim shall be taken into consideration by the authority granting bail to the accused. In case, accused applies for bail, it is for the prosecutor to present before the concerned bail authority, victims’ need or his perceived need for protective measures.346

4.6.2.4. VICTIMS’ RIGHT TO INFORMATIONAL JUSTICE:

New South Wales, Victims’ Rights and Support Act, 2013 ensures informational justice to victims of crime by providing for victims’ right to information under its Section 6. Victim shall be provided information regarding availability of services as well as availability of the remedies by the concerned agencies and officials as early as possible.347 Victim is entitled to receive information regarding investigation of a case. Such information as to the progress of the investigation shall be made available to victim on a request being made by victim for the same. A restriction has been placed upon victims’ right to receive information by providing that such information should not be of such a nature that might jeopardize the investigation.348

In relation to prosecution of offenders, victim has a right to receive information in a timely manner. Under Section 6.5, Victim has been given this right to receive notification in case of the following349

i. Charges framed against the accused or not framing of charges against the accused;

ii. Modification in the charges if any, or any prosecutorial decision of not to proceed with any of the charge;

344 Id at § 6.8.
345 Id at § 6.7.
346 Id at § 6.11.
347 Id at § 6.2.
348 TYRONE KIRCHENGAST, supra note 343.
349 TYRONE KIRCHENGAST, supra note 343.
iii. Any decision of accepting a guilty plea for a less serious charge bargained for a full discharge on other counts;

iv. Venue and time of hearing;

v. Outcome of the criminal proceedings, appeal proceedings and sentence imposed.

Victim is also entitled to receive information during the trial process. Victim, in case of his being a witness too, will be provided information about the trial process and about what role he is supposed to play as a witness during the prosecution of the offender.\footnote{Victims Rights and Support Act 2013 No. 37, New South Wales, at § 6.6.}

Victim will be informed regarding the measures taken to ensure his protection. In case, offender has been imposed with any special bail condition taking into consideration the particular needs of victim or to his family members, same will be notified to the victim.\footnote{Id at § 6.12.} If the offence relates with any serious personal violence crime or with sexual assault, victim will also be informed about the outcome of such bail application.\footnote{Id at § 6.13.} Victim also has a right to be kept informed regarding offender’s impending release or escape from custody or in case offender is permitted for unescorted absence from custody, provided victim has made a request for being provided with such information.\footnote{Id at § 6.15.}

4.6.2.5. VICTIMS’ RIGHT TO INTERACTIONAL JUSTICE:

In New South Wales, Victims’ Rights and Support Act, 2013, provides for ensuring interactional justice to victims of crime. It says that a victim will not only be treated with due courtesy, compassion and cultural sensitivity but will also be provided with a respectful treatment paying due regards to his rights and dignity.\footnote{Id at § 6.1.} Clause 6.5 of Section 6 provides that when victim is given a notification regarding framing or for not framing of charges against the accused, it is required to provide victim with \textbf{reasons} for not laying charges against the accused if, charges are not being laid against the accused.\footnote{Id at § 6.5.}

The provision shows that the system has recognized victims’ need for explanations for procedures adopted.
4.6.2.6. COMPLIANCE MECHANISM:

Victim has been provided with a right to make complaint in case of breach of any of his rights under Victims’ Charter. If victim makes a request for information, he will be provided information regarding the procedure that has to be followed for making a complaint for breach of Victims’ Charter.\(^{356}\)

4.6.2.6.1. COMMISSIONER FOR VICTIMS’ RIGHTS:

Commissioner has been assigned with various functions to achieve the purposes of this Act and to ensure that victims concerns are taken into consideration. These functions include\(^ {357}\)

i. To provide information to victims or to their immediate family members about support services and provide assistance to them so that they can exercise their rights as provided under the Act.

ii. To promote and to oversee the proper implementation of the Charter of Victims’ Rights by publishing codes and guidelines.

iii. To make recommendations, conduct training and recommend changes in existing policies and procedures of agencies to improve their compliance with the Charter of Victims’ Rights.

iv. To receive complaints made by victims or by their immediate family members and to make best efforts in resolving the complaints.

v. In case of there being any breach, recommend that the concerned agency apologize to the victims.

vi. To conduct, promote and monitor training programs, public awareness activities and research in relation to victims of crime.

vii. To conduct reviews and inquiries in matters pertaining to victims of crime if a request is made by the Attorney General.

4.6.2.6.2. INQUIRIES AND INVESTIGATIONS TO BE MADE BY COMMISSIONER:

For proper exercise of his functions under Section 10 of this Act, Commissioner may make such inquiries and may undertake such investigations as he thinks necessary in connection to his duties under the Act.\(^ {358}\)

\(^{356}\)Id at § 6.18.

\(^{357}\)Id at § 10.
4.6.2.6.3. **POWER OF COMMISSIONER TO COMPEL PRODUCTION OF INFORMATION:**

To facilitate the functioning of the Commissioner, he has been given certain powers under this Act. Commissioner may, by issuing notice, require any person or any agency to provide with the relevant information within a specific time limit set in the notice itself. In case any person knowingly provides false or misleading information to the Commissioner, he shall be guilty of an offence and shall be punished as provided under Section 12 (3) of this Act. Commissioner may take possession of, may make copies of or may take extracts from such documents and during such possession period, may permit for inspection of the documents by the entitled persons. In case there is overriding public interest criteria, a government agency is under no obligation to provide with such required information.\(^\text{359}\)

4.6.2.6.4. **REPORT TO PARLIAMENT:**

Commissioner is entitled to make any special report to the minister to be presented in Parliament in connection with exercise of his functions or in connection with implementation of the Charter of Victims’ Rights. Commissioner may make any such special report if any agency breaches any of the provision of Charter of Victims’ Rights, but prior to making such report, commissioner is required to advise the head of the concerned agency and to consult the matter with him. In case, commissioner makes any such report, it is to be presented before the Parliament within 14 sitting days. Commissioner’s annual report is to be included in the annual report of the Department of Attorney General and Justice.\(^\text{360}\)

4.6.2.7. **STRENGTHS AND WEAKNESSES OF THE ACT:**

The main drawback of this Act is its unenforceability. Victims’ rights under this Act are dependent upon the criteria of practicability and appropriateness. Victim shall be provided with a treatment consistent with the provisions of Victims’ Charter if it is practicable and appropriate for the concerned agency or official to do so.\(^\text{361}\)

\(^{358}\) *Id* at § 11.

\(^{359}\) *Id* at § 12.

\(^{360}\) *Id* at § 6.13.

\(^{361}\) *Id* at § 7.
4.7. CONCLUSION:

Study of victim specific initiatives in other countries reflect that under the provisions of those countries, the term ‘crime victim’ has been specifically defined mentioning clearly that in what cases, family members shall be treated as victim and who cannot be termed as a guardian or representative of a ‘victim’. The term ‘crime victim’ has been given a wide connotation under the CVRA. It specifically excludes a defendant from its ambit by making a mention that under no circumstances, a defendant shall be considered as a guardian or representative of the concerned victim. In Canada, the term ‘victim’ has been given a wide meaning by making not only the spouse of a person but persons cohabiting with the victim in a conjugal relationship, to be entitled to exercise the rights of victims of crime. In case of U.K., Victim status is not dependent upon the status of the offender for accessing services under the Code. In Australia, victim does not include any such person who himself is an offender or party to the commission of that offence.

Under domestic jurisdictions of U.S.A., Canada, U.K. and Australia, there is wide recognition of victims’ right to procedural and informational justice. Referring to international trend of recognizing victims’ right to participatory, procedural and substantive rights, Tyrone has rightly observed that international instruments reflect a movement that recognize rights of victims enforceable against the accused as well as against the state. These rights make victim entitled to be heard, to present their concerns and to be listened with serious consideration regarding their interests when a decision is to be arrived at by the decision-making authority.362

The right to information is a universalized right. In different jurisdictions, the right may comprise different contents and may be available during different stages of criminal justice process but what is generally accepted is that, now victim has a right to be kept informed of decisions taken and developments in court proceedings and he is also entitled to be informed about the offender’s status as well. Victims’ complaints regarding violation of his right to information is remedied by providing the information demanded by him.363

As far as right to interactional justice with particular emphasis of justification or explanations to be provided to the victims are concerned, it has not been paid attention in the victim

362TYRONE KIRCHENWAGST, supra note 343 at 38.
363Id.
specific initiatives of Canada, though in other jurisdictions, it is well recognized. In Canada, it has been provided that victim is entitled for respectful and dignified treatment and reasonable measures to minimize inconvenience to victims should be taken but it does not prescribe particular provisions ensuring that victim is provided with justification or explanations for the procedures or for their outcomes.

In U.S.A., Crime Victims’ Rights Act provides with enforceable rights to victims of crime though it does not fix any liability for breach of any of its provisions. It further provides that such rights should not come in the way of prosecutorial discretion of Attorney General. Attorney General guidelines try to ensure that all concerned officials pay due respect towards the rights of victims of crime and make their best efforts to ensure these rights. Canada provides with an internal complaint mechanism including of a review mechanism. It provides further that the rights given to victims should not interfere with investigation, prosecution or administration of justice. In U.K., there is a provision for internal review mechanism. There is an officer for Victims’ Commissioner to take into consideration the views and concerns of victims of crime and to promote their interests. In South Australia and in New South Wales also, there is a provision for appointment of an independent Commissioner for Victims’ Rights to promote interests of victims of crime. In South Australia, Victims of Crime Act, 2001 provide only with the guiding principles to govern the treatment of victims of crime and without any enforceability. In New South Wales, enforceability of victim specific provisions is dependent upon their practicability and appropriateness for the concerned agencies.

Victim specific initiatives of these countries reflect that under these jurisdictions, need for a victim officer or Commissioner for Victims’ Rights was recognized and incorporated into their provisions so as to take care of victims’ interests, though the enforceability is still remains a subject for criticism.