CHAPTER- 5

JUSTICE TO VICTIMS OF VIOLENT CRIMES IN INDIA:
NORMATIVE AND INSTITUTIONAL MEASURES

5.1. INTRODUCTION:

Acknowledging the fact that the drastic consequences of the crime affect more the victim, than what is generally perceived as also affecting the society at large, the Law Commission of India in its 154th Report observed that “Crimes often entail substantive harms to people and not merely symbolic harm to the social order. Consequently, the needs and rights of victims of crime should receive priority attention in the total response to crime.”

Malimath Committee favoured for victim-orientation of Criminal Justice System by stating that, “unless justice to the victim is put as one of the focal points of criminal proceedings, the system is unlikely to restore the balance as a fair procedure in the pursuit of truth.”

5.2. INDIAN CONSTITUTION AND VICTIM JUSTICE:

In India, concept of human rights and justice flows out from various provisions of Indian Constitution. Fundamental values that form the foundation of Indian Constitution are enshrined under Preamble, Fundamental Rights and Directive Principles. Preamble, fundamental rights and directive principles together form the soul of our constitution. Constitutional justice is based upon the ideals of human dignity, justice, equality and non-discrimination which are the pertinent features of these provisions. Preamble along with the Articles namely 14, 21, 32 and 39-A of the Constitution also take into its ambit the concept of victim-justice and his human rights in India.

Preamble of the Constitution of India promises to secure to all its citizens Justice, Equality of status and Dignity of the individual. Justice is the soul of preamble. It discusses justice in its

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2 COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, volume 1, March 2003, 75 at ¶ 6.2. (hereinafter Malimath Committee Report)
4 Id, ¶ 3.2.2 & 3.2.3, Ch-3[1] A.
5 INDIA CONST. preamble.

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widest sense by including social, economic and political justice. Supreme Court observed in
the case of Kesavananda Bharati v. State of Kerala that preamble, “declares the great rights
and freedoms which the people of India intended to secure to all citizens” … “attainment of
those objectives forms the fabric of and permeates the whole scheme of the Constitution.”

Part III of the Indian Constitution provides for Fundamental Rights. Fundamental rights are
those rights that cannot be extinguished, abridged or abrogated by any means of any provision
whether constitutional or statutory. In the case of State of West Bengal And Others v.
Committee for Protection of Democratic Rights, West Bengal and Others, Constitution Bench
of Supreme Court observed as under, “The fundamental rights, enshrined in Part III of the
Constitution, are inherent and cannot be extinguished by any constitutional or statutory
provision. Any law that abrogates or abridges such rights would be violative of the basic
structure doctrine.”

Article 14 of the Indian Constitution establishes ‘Equality before law.’ It provides for equal
protection of law. Victim has a right to justice and to ensure justice in a case, fair
investigation is a must. ‘Equality before the law’ demands that victim should be given equal
access to justice. In Mst. Rijiya Bibi’s case, wherein investigation in to a murder case was
kept pending for 13 years, recognizing victims’ right to fair investigation as a fundamental
right it was observed by Justice Tapabrata Chakraborty of Kolkata High Court that

Such dereliction of duty to fairly investigate a crime is a brutal denial of the
fundamental right, of access to justice and equality before law, to the family
members of the deceased. Fair investigation is a fundamental right of every
individual. Criminal Justice System is based on bulwark of a fair and impartial
investigation at the behest of the investigating agency. In the event, there is an

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

REPORT OF THE NATIONAL COMMISSION, supra note 3 at ¶ 3.2.3., Ch-3[1] A,
Id at ¶ 520.
Id at ¶ 533.
State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others,
(2010) 3 SCC 571 at ¶ 68 (i).
INDIA CONST. art. 14,
“14. Equality before law. - The State shall not deny to any person equality before the law or the equal protection
of the laws within the territory of India.”

In Re Mst. Rijiya Bibi case W.P. 10061 (W) of 2008 decided on 19.03.2014
judis.nic.in/Judis_Kolkata/content.asp accessed on 11.09.2016 at 20:02:53.
infraction of such basic duty it results in complete eclipse of Rule of law and a denial of access to justice and equality before the law to a victim and his family members in the matter of seeking justice and redressal against crime in society and gross infraction of Rule of law by failing to ensure an effective and impartial investigation.\textsuperscript{13}

Article 21\textsuperscript{14} of the Indian Constitution in unequivocal terms says that no one shall be deprived of his life except according to the procedure established by law. This right to life is guaranteed to all persons including a victim of a crime. Supreme Court through its various pronouncements has given a wider scope to Article 21 including into its ambit the right to justice not only for an accused but for a victim of crime too. Constitution Bench of Supreme Court emphasized in the case of State of West Bengal And Others v. Committee for Protection of Democratic Rights, West Bengal and Others that,

\textbf{Article 21 of the Constitution} in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations, even a witness to the crime may seek for and shall be granted protection by the State.\textsuperscript{15}(emphasis added)

The extended dimension of Article 21 provides for speedy justice to victims of crime and makes the victim entitle to know the action taken in the case. Recognizing this right of a victim, it was stated by the Madurai Bench of Madras High Court that, \textit{“Actually, the victim, the real sufferer of crime is the de facto complainant, while police is de jure complainant. Sufferers of a criminal act are also entitled to speedy justice. They are entitled to know the result/ action in the case given by them.”}\textsuperscript{16}

Constitution itself provides for remedy under Article 32, in case any of the fundamental right if infringed or violated. Highlighting the significance of the Article 32 the Supreme Court in State of West Bengal And Others v. Committee for Protection of Democratic Rights, West Bengal and Others, observed,

\footnotesize{
\begin{itemize}
\item \textsuperscript{13}Id.
\item \textsuperscript{14}INDIA CONST. art. 21, “21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.”
\item \textsuperscript{15}State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others, (2010) 3 SCC 571 at ¶ 68 (ii).
\item \textsuperscript{16}Mohamed Maraikkayar v. The Director General of Police, 2014 SCC OnLine Mad 9759 at para 7.
\end{itemize}
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It is pertinent to note that Article 32 of the Constitution is also contained in Part III of the Constitution, which enumerates the fundamental rights and not alongside other articles of the Constitution which define the general jurisdiction of the Supreme Court. Thus, being a fundamental right itself, it is the duty of this Court to ensure that no fundamental right is contravened or abridged by any statutory or constitutional provision.\textsuperscript{17}

Part IV of the Indian Constitution provides with Directive Principles that are considered as fundamental for governance of the country. It mandates that it as a duty of the State to take into consideration these principles while making laws for the country.\textsuperscript{18} These principles further provides for securing such an environment where justice is the dominant feature of all institutions of the national life.\textsuperscript{19} Part IV of Indian Constitution that consists of the Directive Principles of State Policy tries to secure justice for all by providing under Article 39-A for ‘Equal justice and free legal aid.’ Directive principles imposes an obligation upon the State to ensure that justice is not denied to anyone. State is required to provide with such system that promotes justice. The agencies of criminal justice system are therefore under an obligation to act in such a manner that advances the cause of justice. Supreme Court observed in the case of Kesavananda Bharati v. State of Kerala\textsuperscript{21} that, “The Directive Principles and the Fundamental Rights mainly proceed on the basis of Human Rights.”\textsuperscript{22}

Witnesses do have right to protection to be provided by the State. It was emphasized by the division bench of Punjab and Haryana High Court in the case of Rohtash @ Pappu v. State of Haryana that, “Right of access to justice” under Article 39-A and principle of fair trial

\textsuperscript{17} State of West Bengal And Others v. Committee for Protection of Democratic Rights, West Bengal and Others, (2010) 3 SCC 571 at ¶ 53.
\textsuperscript{18} INDIA CONST. art. 37, “37. Application of the Principles contained in this Part- The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”
\textsuperscript{19} INDIA CONST. art. 38, “38. State to secure a social order for the promotion of welfare of the people- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”
\textsuperscript{20} INDIA CONST. art. 39- A, “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” Inserted by the Constitution (Forty-Second Amendment) Act, 1976, S.8 (w.e.f. 3-1-1977).
\textsuperscript{22}Id at ¶ 646.
mandate right to legal aid to the victim of the crime. It also mandates protection to witnesses, counselling and medical aid to the victims of the bereaved family.”

5.3. HUMAN RIGHTS ACT IN INDIA AND VICTIM JUSTICE:

In India, the term “Human Rights” has been defined under the “The Protection of Human Rights Act, 1993” as “Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by Courts in India.” This definition emphasizes upon two aspects while determining the status of Human Rights. It says that in Indian Context human rights are the rights that are guaranteed either by the Indian Constitution or provided under the International Covenants and are enforceable by courts. Recognition of international norms in India can be seen from various judgments of apex court and very prominent judgments of State High Courts.

Article 55 of the UN Charter deals with ensuring universal respect for human rights and fundamental freedoms and entrusts United Nations with these responsibilities. Article 56 of the UN Charter imposes this obligation upon the Member States to come forward for providing cooperation in achieving these goals. It was observed by Chief Justice S. M. Sikri of the Supreme Court in the case of Kesavananda Bharati v. State of Kerala that in view of

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28 U.N. Charter art. 55.
29 The United Nations shall promote:(c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”, http://www.un.org/en/sections/un-charter/un-charter-full-text/
30 U.N. Charter art. 56.
31 All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55”, http://www.un.org/en/sections/un-charter/un-charter-full-text/
Article 51\textsuperscript{31} of the Indian Constitution, Constitution should be interpreted in the light of the United Nations Charter. It was emphasized by the Supreme Court in this case that,

> The Preamble, Articles 1, 55, 56, 62, 68 and 76 of the United Nations Charter had provided the basis for the incorporation in the Universal Declaration of Human Rights. Although there is a sharp conflict of opinion whether respect for human dignity and fundamental human rights is obligatory under the charter (see, Oppenheim’s International Law, 8\textsuperscript{th} Edn. Vol. 1, pp. 740-41; footnote 3), it seems, to me that, in view of Article 51 of the directive principles, this Court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of the United Nations Charter and solemn declaration subscribed to by India.\textsuperscript{32} (Emphasis supplied)

Supreme Court in D.K.Basu v. State of West Bengal and Others\textsuperscript{33} observed that India has ratified ICCPR, 1966 and thus it has a binding effect for India. Protection of Human Rights Act, 1993 was enacted to give effect to the provisions of ICCPR and is the recognition of the provisions of ICCPR in India. Acknowledging the measures being taken at international platform to ensure Victims of Crime their ‘right to justice’, Rajasthan High Court in Suo Moto v. State of Rajasthan\textsuperscript{34} stated as

> One of the principle objects of Criminal Justice System is to vindicate the Right to justice of unfortunate victim. Noble concept of victimology is a step towards fulfilling the avowed promises made by our Constitution makers. Thus, the Judicial Administration Mechanism should be established and strengthened, where necessary, to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. International Human Rights Law requires the States to adopt effective measures for the prevention, investigation, prosecution and punishment of sexual violence to ensure its citizens the highest attainable standard of health and to provide reparations to victims of serious human rights violations.\textsuperscript{35} (Emphasis supplied)

\textsuperscript{31} INDIA CONST. art. 51, “The State shall endeavour to-

- (a) Promote international peace and security;
- (b) Maintain just and honourable relations between nations;
- (c) Foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and
- (d) Encourage settlement of international disputes by arbitration.”


\textsuperscript{35} Id at ¶ 19.
5.4. CONSTITUTIONAL AND STATUTORY MEASURES OF PROCEDURAL JUSTICE IN INDIA

In India, some steps are being taken to ensure that victims are not denied justice due to procedural hurdles or obstructions. Reflecting the position of victim it was stated by the Court in the case of Sonalal Soni v. State of Chhatisgarh\(^{36}\) that,

> It is true that in the Criminal Justice System of India the complainant, victims of the Crime and relatives of the victims have no free hand at the stage of investigation or at the stage of trial, but in the recent times, the Indian courts as well as the Indian legislatures have tried to make the procedural rules of criminal justice system more victims friendly in relation to crimes against women and weaker sections of society.\(^{37}\)

In India, victims of specific offences (sexual offences) and vulnerable victims have been provided protection under various laws but there is no specific law that deals with and provides for ‘procedural and informational justice’ to general victims of violent crimes. Vulnerable victims such as child victims have been protected by means of “protection of children from sexual offences Act, 2012”. As far as general victims of violent crimes are concerned, they are governed by Code of Criminal Procedure, 1973, Indian Penal Code, 1860 and Indian Evidence Act, 1872 as amended by Criminal Law Amendment Act, 2013. To what extent these normative structures provides various rights to victim of crime so as to ensure procedural and informational justice.

5.4.1. VICTIM DEFINED:

In India, ‘Victim’ has been defined under Section 2 (wa) of the Code of Criminal Procedure, 1973 as, “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.”\(^{38}\) Division Bench of Delhi High Court, in the case of Chattar Singh v. Subhash\(^{39}\) held that the phrase loss or injury as used under Section 2 (wa) is limited to, “the person whose suffering is the direct and most proximate result of the crime.”\(^{40}\) As per the Division Bench, the definition


\(^{37}\)Id at ¶ 21.

\(^{38}\)CODE CRIM. PROC. 1973, § 2 (wa), inserted by the Code of Criminal Procedure (Amendment) Act, 2008, w.e.f., 31-12-2009.


\(^{40}\)Id.
of victim has two set of people under its ambit. First set belongs to the persons who has suffered loss or injuries and the other set belongs to the persons who can qualify as “legal heirs” of the first set of persons. These two set are two distinct and non-overlapping categories.\textsuperscript{41} It was reasoned by the division bench regarding these two set of persons that the term “victim”, denotes to, “a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged.”\textsuperscript{42} And regarding the second set of persons, the phrase “legal heirs” was limited to, “a person who is entitled to the property of the victim under the applicable law of inheritance.”\textsuperscript{43}

Agreeing with the view of Division Bench of Delhi High Court in Chattar Singh case regarding the meaning of “legal heir”, it was noted by the Guwahati High Court, in the case of Gouranga Debnath v. State of Tripura,\textsuperscript{44} that ‘victim’ should be given a broader interpretation and it was held that father of the deceased has the locus standi to file an appeal. Court noted as;

as the words ‘loss’ and ‘injury’ were not defined in the Code, we have to consider that loss and injury, as mental and physical injury and also emotional sufferings and the deceased being the lone daughter of the petitioner, absence of his daughter due to alleged murder by the accused respondents created a void in the heart of the petitioner and also his family members.\textsuperscript{45}

In D. Sudhakar v. Panapu Sreenivasulu,\textsuperscript{46} agreeing with the view held by Delhi High Court in the case of Chattar Singh, it was held by the Andhra Pradesh High Court that,

In Section 2 (wa) of Cr.P.C., since the word heir is preceded by the word “legal”, it must be construed in the legal sense as that is the clear intention of the Legislature. The expression “legal heir” in relation to a victim, therefore, clearly refers to a person who is entitled to the property of the victim under the applicable law of inheritance.\textsuperscript{47}

\textsuperscript{41}Id.
\textsuperscript{42}Id.
\textsuperscript{43}Id.
\textsuperscript{45}Id.
\textsuperscript{47}Id.
In Tata Steel v. Atma Tube Products, a full Bench of the Punjab & Haryana High Court, disagreeing with the view of division bench of Delhi High Court in the case of Chattar Singh, held regarding the term “legal heir” as under,

every heir who, in law, is entitled to succeed to the estate of a deceased ‘victim’ in one or the other eventuality, shall fall within the ambit of Section 2 (wa) of the Code, even if the estate of such deceased ‘victim’ is to devolve upon the legal heirs as per the order of preference prescribed under the personal law of such ‘victim’.

Patna High Court, in Parmeshwar Mandal v. the State of Bihar, though concurred with the view of Division Bench of Delhi High Court in Chattar Singh case regarding the meaning of “legal heir”, but also sided with the views expressed by Guwahati High Court that the term ‘victim’ should be given a broader interpretation, it was held by Patna High Court that, “in case of allegations of crime being committed was on the husband of the deceased (e.g.- u/s 304 B IPC), father of the lady (or her any close relation) may also come within the definition of “victim”, on account of loss or emotional injury suffered by him.”

In Ram Phal v. State, a reference was made to a full bench of Delhi High Court due to the issues that arose out of the judgment in the case of Chattar Singh v. Subhash. In the case of Ram Phal v. State, there was a question for consideration that whether the term ‘victim’ under Section 2 (wa) of Cr.P.C. include only the legal heirs entitled to the property of the victim or include any person who has suffered loss or injury due to the offence for which an accused has been charged.

Regarding the interpretation of the term “victim”, Delhi High Court took note of the statutory position as provided under Section 2 (y) of the Cr.P.C, that if any word or expression is used in Cr.P.C. and such word or expression is not defined in Cr.P.C. then these words or expressions shall be assigned the same meaning as provided under the IPC. Referring
Section 44 of the IPC that defines “injury” in the following terms; “any harm whatever illegally caused to any person, in body, mind, reputation or property”, the Court emphasized upon the word “whatever” that qualify the word “harm” and the other terms that appear in Section 44 of IPC and in that light, found the approach adopted by the double bench in the case of Chattar Singh case as not the right one. The court overruled its earlier view in the case of Chattar Singh and noted that, “The use of the term “whatever” as qualifying the word “harm”, and the expansive nature of the terms “body, mind, reputation or property”, reveals that the Division Bench’s approach in limiting the scope of the term to the “direct and most proximate result of the crime” in terms only of physical injuries, is not entirely borne out by the statute. One cannot assume that the Direct and most proximate result of a crime” refers only to the physical harms resulting from the offence, as there can be direct and proximate emotional injuries that equally resulting from the crime. Undoubtedly there should be a relationship of proximity between the injury and the act constituting the offence. However, it does not follow that only physical injuries, and not mental injuries, are direct and proximate results of the crime.

The Court agreed with the view of Patna High Court that it has to be left to the prudence of the Court to decide in the context of the facts of the case whether appellant has suffered some loss or injury due to the crime.

With regard to the phrase “legal heirs”, this Court observed that,

This Court is of the view that while Section 2 (wa) includes “legal heirs” within “victim”, the first part of the definition cannot be lost sight of. In other words, the first part i.e., “victim’ means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged” is already of wide enough import to include at least some legal heirs within its ambit. Therefore, “victim”, by its natural and ordinary meaning, given the definition of “injury” in section 44 of the IPC, must include those legal heirs that suffer ‘harm to the mind’, on account of the injury to a loved one.

Court noted its finding that first part covers those persons who are the real sufferer of any loss or injury whereas under the second part victim denotes to a person who is associated with the victim under this part first. Court interpreted the provision as under,

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56 Id.
57 Id.
58 Id.
59 Id at ¶ 32.
“In this first sense, the class of persons, i.e., victims being those suffering loss or injury, is clear enough; only the actual victim, wherever available, directly affected by the crime or offence (“act or omission”) attributable to the offender (“accused person”) are conferred the right to appeal. The second part of the definition (the “pull in” if one may use that expression) is the associative part, in that, by way of the expression “includes”, Parliament sought to bring in those persons and individuals who are not per se victims of the crime, but associated with her (or him). This was necessary because if the victim were no longer alive (because of the crime itself, such as murder, homicide, etc.), and the victim who suffered “harm to the mind”, as a loved one of the victim simpliciter, was also unavailable to exercise the right to participate in the trial, then such persons would be considered as suffering “loss” as well as “injury”, and thus would be deemed victims. It is merely in this associative sense that such persons are entitled to appeal against an acquittal, and, therefore, the legal heirs cannot possibly exclude victims who have suffered “injury” that is direct and proximate “harm to the mind”.60

In the case of Roopendra Singh v. State of Tripura61, another criminal appeal nos. 691-692 of 2017 arising out of SLP (Crl) Nos. 8316-8317/2012 was also considered and it was held by the Supreme Court that widow of a deceased comes under the definition of victims as provided under Section 2 (wa) of the Criminal Procedure Code, 1973.

It can be seen that Victims’ definition under the Indian Law is very narrow as compared to the definition of victim given under the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 198562.

Both these definitions can be compared as follows:

i. Both the declarations take the sufferings of victim into consideration to assign the status of victim to an individual.

ii. Both emphasize that victimization may result either due to the commission of an act or due to the omission.

iii. UN declaration recognize the status of victim, irrespective of the consideration of the status of the offender whether identified, apprehended, prosecuted or convicted whereas the definition under the CrPC recognize a persons’ status as a

60 Id at ¶ 51.
victim of a crime if the accused has been charged with the offence. This denies a person, status of ‘victim’ in case accused is not charged due to any factor.

As compared to the definition of “victim” in U.S. as envisaged under the Crime Victims’ Rights Act, 2004, the definition of “victim” under the CrPC has another drawback. Victims’ definition under Crime Victims’ Rights Act 2004 specifically mentions that, “in no event shall the defendant be named as such guardian or representative.”

Whereas the provision under CrPC includes the guardian or legal heir into the definition of victim irrespective of the consideration that whether such guardian or legal heir is the defendant in the case or not.

5.4.2. RIGHT TO PARTICIPATION:

5.4.2.1. PARTICIPATION DURING INVESTIGATION:

To facilitate recording of victim-witness statements, various provisions have been incorporated under the Code of Criminal Procedure, 1973 as amended by Criminal Law Amendment (Act), 2013 so that they can participate in the investigation or their version comes on record. Proviso to Section 157 (1) of CrPC provides for recording of statements of rape victims. It says that any such statement shall be recorded by a woman police officer as far as practicable. Such statements shall be taken either at her residence or at a place of victims’ choice. Recording of such statements shall take place in the presence of her parents or guardians or close relatives or social worker.

Section 160 of the CrPC deals with police officer’s power to require attendance of witnesses. Its proviso specifically mentions that in case of a male under 15 years or above 65 years of age or in case of a woman or in case of a mentally or physically disabled person, their presence can only be required at the place of their residence.

Proviso to Section 161 (3) provides that in case of a woman victim of particular offence as specified under this proviso, her statement shall be recorded by a woman police officer or any woman officer.

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63 18 U.S.C. § 3771 (e).
65 Proviso as substituted for “under the age of fifteen years or woman” by the Criminal Law (Amendment) Act, 2013, w.e.f., 3-2-2013.
66 Against whom an offence under Sections 354, 354 A, 354 B, 354 C, 354 D, 376, 376 A, 376 B, 376 C, 376 D, 376 E or Section 509 have been committed or attempted.
Section 164 (5) provides for recording of statements of witness made during the course of an investigation under this Chapter XII of the Code of Criminal Procedure, 1973. It says that magistrate shall record such statements after administering oath to such persons. According to Section 164 (5A), if the offence is mentioned under clause (a) of this subsection than such recording shall be made by the judicial magistrate and at the earliest from the time of reporting of the offence to the police.

In case of any temporarily or permanently mentally or physically disabled person, statement shall be recorded with the help of an interpreter or a special educator and such statement shall also be video graphed.

In the case of Bhagwant Singh v. Commissioner of Police, it was held by the Supreme Court that, at the time of consideration of and before accepting the ‘final report’, it is necessary to provide the informant/complainant an opportunity to be heard and therefore it is required that magistrate should give a notice to the informant to present his concerns.

In Gangadhar Janardan Mhatre v. State of Maharashtra and Others, it was noted by the apex court that informant is entitled to present his concerns during the proceedings when final report of police is to be considered by the Magistrate, therefore, he is entitled to be given a notice as to the time and place when such consideration has to take place.

Therefore, there is no shadow of doubt that the informant is entitled to a notice and an opportunity to be heard at the time of consideration of the report. This Court further held that the position is different so far as an injured person or a relative of the deceased, who is not an informant, is concerned. They are not entitled to any notice. This Court felt that the question relating to issue of notice and grant of opportunity as afore described was of general importance and directed that copies of the judgment be sent to the High Courts in all the States so that the High Courts in their turn may circulate the same among the Magistrates within their respective jurisdictions.

It was observed by Justice Arijit Pasayat of the Supreme Court in the case of Minu Kumari and Another v. State of Bihar and Others that where on a police report, magistrate takes cognizance and case proceeds further, informant is not prejudicially affected, but in case, of a

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67 Inserted by the Criminal Law (Amendment) Act, 2013, w.e.f. 3-2-2013.
68 “In cases punishable under section 354, section 354 A, section 354 B, section 354 C, section 354 D, sub-section (1) or sub-section (2) of section 376, section 376 A, section 376 B, section 376 C, section 376 D, section 376 E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police.”
72 Id at ¶ 7.
decision, that there is lack of sufficient grounds for proceeding further, and thus the proceedings are dropped or in case of a decision that only against some accused out of the all accused, there are sufficient evidence to proceed further and with regard to the remaining accused the proceedings are dropped, informant would certainly get affected as it is going to make the first information report lodged by him ineffective either wholly or partially. In such circumstances informant should be given a notice for the same and be afforded with a chance to present his views and concerns. Supreme Court referred to its earlier judgment in the case of Bhagwant Singh v. Commr. Of Police wherein it was held that,

Where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory.

Court further made its observation that there is lack of any such provision under the Code of Criminal Procedure but a provision of notice can be seen in various police manuals. Court noted its observation as,

Section 173 in terms does not refer to any notice to be given to raise any protest to the report submitted by the police. Though the notice issued under some of the Police Manuals states it to be a notice under Section 173 of the Code, there is nothing in Section 173 specifically providing for such a notice.

Supreme Court reiterating its earlier position as stated in the case of Gangadhar Janardan Mhatre v. State of Maharashtra and Others emphasized in the case of Minu Kumari and another v. State of Bihar and Others that if informant is not given any such notice by the Magistrate, he will not be aware of such proceedings or when the matter is going to be considered, and thus will not be able to file the protest petition within time. In such case, it cannot be said that informant is at fault if he files any belated protest petition in reply to the notice issued by the police. Emphasizing that a Magistrate is required to give notice to the informant and further required to provide him an opportunity to be heard, it referred its earlier judgment in Bhagwant Singh case wherein it was observed by the Supreme Court that, “[T]he

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74 Id at ¶ 12.
Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.”

In the case of Dina Chetan Shah v. Government of U.S.S.R., court held that at the time of discharging certain accused in a case under Section 169, complainant should be given a chance to present his concerns. Court observed as, “it is well settled position of law that when an order is passed by the Magistrate under Section 169 discharging certain accused, the complainant should be given an opportunity of being heard before such order is passed.”

It was asserted by the Court that victims’ concerns should be paid due attention despite the fact that it may result into interference into criminal justice system. Court made it clear that an apprehension that there might be some interference or victim may try to dictate his own terms should not come in the way of victims’ participation during investigation. To ensure justice to victim, they should be allowed to participate in the investigation up to a certain extent.

Favouring for victims’ participation Court recommended as,

At least, the legislature can consider that the victim or the relatives of the victim should be informed about the progress of the police investigation concerning the relevant offence, except where such disclosure might jeopardize the investigation, the victim should be informed of the charges laid against the accused and of any modification of the charges, he should be informed about the progress of the investigation, evidence collected, at the trial stage he should be informed about the progress of the trial, about the result of investigation and trial with reasonable intervals. The investigation officer and prosecutor should remain in touch with them as and when their assistance or any information is required from them. Without allowing such a participation of the victims and relatives of the victims to our mind nothing is going to improve the Criminal Justice System which is being criticized by every now and then.

Proviso under Section 437 (1) provides that in case of an offence punishable with death, imprisonment for life, or imprisonment for seven years or more, before releasing an offender on bail it is necessary that Public Prosecutor be given an opportunity of hearing. This proviso does not mention that victim of such crime should also be given a right to hearing. If victim is provided with any such opportunity, it would be easy for the courts also to identify

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80 Dina Chetan Shah v. Government of U.S.S.R., 2011 Cr LJ (3546) (Bom), at ¶ 11. Though the case does not pertain to violent crime, still the observation made by the court is apt to be cited here.
82 Id.
83 CODE CRIM. PROC. § 437 (1), Proviso, inserted by the Code of Criminal Procedure (Amendment) Act, 2005.
where there is a risk of retaliation or where victims’ protection measures are needed to be taken into consideration.

5.4.2.2. PARTICIPATION DURING PROSECUTION:

It was observed by the Bombay High Court in Balasaheb Rangnath Khade v. The State of Maharashtra and Ors\(^84\) that it is necessary for the Courts to accept **victims’ right to participation in criminal prosecution** to do complete justice with the victim. Courts in the past also have made such attempts to confer such rights upon victims. It made a reference to the case of Vijay Valia v. State of Maharashtra\(^85\) wherein during consideration of the question of appointment of Special Public Prosecutor, division bench of this court recognized the fact that for ensuring victim justice, victim should be allowed to participate in criminal prosecution.

Both the State and **private party** have a right to prosecute the offender whether the offence is cognizable or non-cognizable, and the prosecution whether launched by the private party or the State, is a prosecution on behalf of the State.\(^\ldots\) The right to be heard includes the right to be represented by an able spokesman of one’s confidence. This right belongs both to the accused and the complainant. It is not only the accused who is in need of assistance and protection of his rights but also the complainant. In fact, **it is to vindicate the rights and grievances of the complainant** and through him, of the State, that the prosecution is launched- whether by the State or the Private party\(^\ldots\) whenever there is a request made by a private party to engage an advocate of his choice to be paid for by him, the request should be granted as a rule.\(^86\)

Taking note of the victims’ plight of having only a right to appeal that also after an unfair, inequitable and unequal treatment **at the stage of prosecution** or trial, where he has a right to engage his own advocate but only to assist the public prosecutor upon courts’ permission, the Bombay High Court observed in Balasaheb case,

> It need hardly be stated that even the rights granted by the legislature fall far short of the standards of fairness and equity expected of a vibrant democracy such as India. The legislature may do well to apply its mind in that behalf and make law taking directions from the Anglo- American jurisprudence that the citizens of this country equally deserve.\(^87\)

5.4.2.2.1. WITHDRAWAL OF PROSECUTION:

\(^84\) Balasaheb Rangnath Khade v. The State of Maharashtra and Ors. 2012 SCC OnLine Bom 635.
\(^86\)Id.
\(^87\) Balasaheb Rangnath Khade v. The State of Maharashtra and Ors. 2012 SCC OnLine Bom 635 at ¶ 33.
In the case of Abdul Karim and others v. State of Karnataka\(^{88}\), Supreme Court accepted this petition for special leave to appeal against the order consenting for withdrawal of prosecution. The appellant was the father of a police SI who was killed by dreaded criminal Veerappan and his men. He opposed the withdrawal application filed by Special Public Prosecutor on the ground that Karnataka government had yielded to the demands made by Veerappan due to the abduction of actor Rajkumar, and had issued notification for withdrawal of cases against him and his associates. Special judge found that the application filed by the Public Prosecutor under Section 321 CrPC was filed after applying his mind and therefore consented for withdrawal of charges against the accused under the TADA Act. Case was transferred to District and Sessions Judge, Mysore who despite noting the fact that appellant has filed a petition for special leave to appeal against the order made on the withdrawal application of Public Prosecutor, allowed the bail applications.\(^{89}\) Abdul Karim, father of deceased Shakeel Ahamed, stated in this appeal that withdrawal of criminal cases against these hard-core criminals may expose families of the victims to terror. On the basis of this appeal filed by the father of the deceased, Supreme Court set aside the order granting withdrawal of prosecution and the order granting bail to the accused and made its observation that, “The locus standi of the present appellant has not been contested before this Court. Had it not been for his appeal, a miscarriage of justice would have become a fait accompli.”\(^{90}\)

Acceptance of this appeal filed by the father of deceased victim and Supreme Court judgment setting aside the order of lower court regarding withdrawal of prosecution and setting aside of the orders that granted bail indicate towards recognition of victims’ status in withdrawal of prosecution. Recently in another case recognizing victims’ interests in a fair prosecution, Supreme Court expressed its views that withdrawal of prosecution affects the victim as under, “If anyone is aggrieved in such a situation, it is the victim, for the case instituted against the accused persons on his FIR is sought to be withdrawn.”\(^{91}\)


\(^{89}\) Id.

\(^{90}\) Id at ¶ 33.


This case though does not relate with violent crimes but the observation made by the Supreme Court is quite relevant to be cited here.
5.4.2.2. VICTIMS’ SAY IN PLEA NEGOTIATION:

‘Plea bargaining’ has been dealt with under Sections 265 A- 265 L of Chapter XXIA of the Code of Criminal Procedure, 1973. This chapter was inserted in the Code by the Criminal Law (Amendment) Act, 2005. Section 265 B (1) provides that an accused may file an application for plea bargaining in the trial court. In case such an application is filed by the accused, Section 265 B (3) provides that the court should give notice to the Public prosecutor or the complainant as per the case and to the accused to appear before the court. Court shall give time to the parties to work out a mutually satisfactory disposition of the case. Such disposition may include the amount of compensation and other expenses to be paid to the victim.

In Girraj Prasad Meena v. State of Rajasthan, a case of kidnapping, accused filed an application for plea bargaining, pleading guilty for the offences under Sections 323 and 343 of the Indian Penal Code. On the basis of this application, trial court, without issuing notice to the appellant victim concluded the trial. This judgment of the trial court was challenged before the High Court on the ground that the statements made by the appellant under Section 164 of the CrPC was not taken into consideration pertaining to the seriousness of the crime and nature of threats made to the victim. High Court rejected the application on the ground that victim has not raised any objection either at the time of taking cognizance or at the time of reading over of charges to the accused. Appellant or any other witness has no such right to be given a hearing at this stage and the decision taken by the trial court was correct. Against this decision of the High Court, this appeal was presented before the Supreme Court. Supreme Court vitiated the trial conducted by the trial court due to the adoption of a procedure by trial court that is not provided under the law. Apex court also recorded the failure of High Court in properly appreciating the fact that victim was not given any chance to present his concerns. Recognizing rights of victims to present his concerns, it was observed by the Supreme Court that,

The High Court failed to appreciate that before the statement of the appellant or any other witness could be recorded, the trial court disposed of the matter on the date when the application itself had been submitted admitting the guilt. Even otherwise if the trial court wanted to entertain any issue of plea bargaining under Chapter 21-A, inserted w.e.f. 5-7-2006, then too the court was obliged thereunder to put the victim to notice before extending any such benefits that have been given

92 This came into effect from 05.07.2006.
93 CODE CRIM. PROC. § 265 B (4).
in the present case. The procedure therefore appears to have been clearly violated. Therefore, in the facts and circumstances of the case, the appellant had no opportunity to raise any grievance before the appropriate forum.  

Victims’ Party Status: Though the ‘Victim’ has not been mentioned under Section 265 B (3), but this has been clarified by inclusion of ‘Victim’ under Section 265 C that provides guidelines for mutually satisfactory disposition. Sub clause (a) of Section 265 C provides as under,

In a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting (emphasis added)

In the same manner, Sub clause (b) of Section 265 C provides that,

In a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting (emphasis added)

Section 265 C further gives ‘Party’ status to the ‘Victim’ as is clear from the language of the Section 265 C. ‘Saving Clause’ under Section 265 J emphasizes upon the status of ‘Victim’ to be considered as ‘party’ in plea bargaining process, by further providing as under,

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter (emphasis added)

Sub- clause (a) of Section 265 C deals with the cases instituted on a police report and sub-clause (b) of Section 265 C deals with the cases instituted otherwise than on police report.

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95 Id at ¶ 20.
96 Id § 265 C (a).
97 Id § 265 C (b).
98 Id § 265 J.
The distinguishing feature between these sub-clauses (a) and (b) is that under clause (a) only an accused can engage his lawyer in plea bargaining whereas under sub clause (b), both the accused and the victim can engage his own lawyer. This can be seen in the last proviso of sub-clause (b) that, making the treatment consistent with an accused, provides victim with a chance to engage his own lawyer in such meeting for plea bargaining. This proviso provides as under “Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.”

Plea bargaining has to be completed while taking victims’ interests into consideration. This can be seen from Section 265 C that provides for completion of such disposition voluntarily and Section 265 D that provides such mutually satisfactory disposition shall be signed by all persons who participated in the process. According to Section 265 D of the Code,

Where in a meeting under section 265 C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting….

5.4.2.3. PARTICIPATION DURING TRIAL:

5.4.2.3.1. SPECIAL PUBLIC PROSECUTOR AND PRIVATE PLEADER:

Section 24 (8) of the Code of Criminal Procedure provides for appointment of Special Public Prosecutor. It says that Central Government or the State Government may appoint an advocate of ten years of practice as a Special Public Prosecutor in a case or in a class of cases.

In the case of Mukul Dalal and Others v. Union of India and Others, before the bench of R.S.Pathak, C.J. and Ranganath Misra and B. C. Ray JJ.) two pertinent questions were to be answered by the Court. First one was with regard to the appointment of Special Public Prosecutor on a request made by the Private complainant and the other one was who had to pay the fees to such Special Public Prosecutor. Regarding the first question it was observed by the Court that this is not a proper course where on each such application, without examining such application, an appointment of Special Public Prosecutor is made. This is against the

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99 Id § 265 C (b), Proviso 2.
100 Id § 265 D.
spirit of the Code of Criminal Procedure and may also result into travesty of justice. Court observed as under,

We are inclined to observe that the request for appointment of a Special Public Prosecutor should be properly examined by the Remembrancer of Legal Affairs and only when he is satisfied that the case deserves the support of a Public Prosecutor or a Special Public Prosecutor that such a person should be appointed to be in charge of the case.\footnote{Id at ¶ 9.}

Regarding the second question that who owes the responsibility to pay the remuneration of such Special Public Prosecutor, it was made clear by the Court through this judgment that,

Ordinarily, the Special Public Prosecutor should be paid out of the State funds even when he appears in support of a private complainant but there may be some special case where the Special Public Prosecutor’s remuneration may be collected from the private source.\footnote{Id at ¶ 10.}

Observation made by the court indicates that if there is a deserving case, then an application for appointment of a Special Public Prosecutor should be considered and in case of such appointment, primarily State is responsible to pay the remuneration of Special Public Prosecutor but in some special cases, this responsibility may shift towards the private person. There should be some justifiable reasons for appointing Special Public Prosecutor dislodging the public prosecutor in a particular case. It was observed by the Karnataka High Court in the case of K. V. Shiva Reddy v. State of Karnataka\footnote{K. V. Shiva Reddy v. State of Karnataka 2005 SCC OnLine Kar 260.} that,

There must be some justifiable reason to dislodge the Public Prosecutor and for requisitioning the assistance of an experienced Advocate for the case. The record must disclose the existence of circumstances which warrants such appointment, application of mind to such material and recording such reasons for such appointment.\footnote{Id at ¶ 29.}

Regarding the disclosure of the reasons court made it clear that reasons for such appointment are not required to be mentioned in the appointment letter but whenever there raises a question as to such appointment, then it is the obligation of the State to justify such appointment on the basis of available records.\footnote{Id at 35.}

Fair trial comprises ‘the right to be heard’ that further includes ‘right to be represented’. An accused and a victim of a crime are both entitled to a fair trial and consequently to a right to
be properly represented. This right makes the victim entitle to request government to consider his application for appointment of a private counsel as a Special Public Prosecutor. Such an appointment should be made with procedural fairness. It was opined by the Karnataka High Court,

A Special Public Prosecutor could be appointed at the request of the complainant or the victim also. As a rule, such a request cannot be accepted and appointment made. The right to be heard includes the right to be represented by an able spokesman of one’s confidence. The right belongs to the complainant and to the accused, both. A fair trial does not necessarily mean that it must be fair only to the accused, it must be fair to the victims also. It must be fair to all. A fair trial is a concept which is much higher than the claims or ends of the parties to it. The accused and the victim are not at par and criminal trial is not a forum for personal vengeance. It is essentially a State action to punish crime. When a request is made for appointment of a private counsel as a Special Public Prosecutor, the Government should be satisfied that the case deserves the support of a Special Public Prosecutor and that such a person should be appointed to be in charge of the case. The satisfaction of the Government should be evidenced by the material on record, the reasons for such appointment, which is reduced in writing, to have transparency in the matter, and to negate any mala fides that may be attributed to the Government. It falls within the realm of administrative law and there is a duty cast on the Government to act fairly, justly and reasonably. In these what matters is the process of decision making rather than the decision itself.\footnote{idat 31} (emphasis added)

Karnataka High Court made it clear that victim is equally entitled to claim a fair trial. Victim has a right for getting equal and effective representation to get a fair trial and this imposes an obligation upon the State to take into consideration the genuine concerns of victim and pass appropriate orders for appointment of any Special Public Prosecutor. The Court observed as under,

The third respondent has been a silent spectator in the whole episode. This Court cannot ignore her rights and genuine apprehension in the matter of effective trial, as her husband is the victim. A fair trial does not necessarily mean that it must be fair only to the accused. It must be fair to the victim also. She has as much right as the accused to represent her case effectively before the Court. If she feels the representation for the State is comparatively less effective and may also be easily tampered with through a variety of nefarious influences, and that the accused are represented by a leading criminal lawyer and feels impelled to engage a counsel of her own choice in whose competence and probity she has full faith and approaches the State to engage a Counsel of her choice, the Government is bound to consider such request and pass appropriate orders in the light of the above and in accordance with law.\footnote{idat 40}
Supreme Court, in the case of, Himanshu Singh Sabharwal v. State of Madhya Pradesh\textsuperscript{109}, permitted the petitioner to suggest two names to be appointed as public prosecutor as well as two names to be suggested by the State and directed the Session Judge, Nagpur to finalize any one name out of these suggested names.\textsuperscript{110}

A proviso was inserted under Section 24 (8) of the Code of Criminal Procedure, 1973 by the Code of Criminal Procedure (Amendment) Act, 2008 that provided for appointment of a private advocate as under, “Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section.”\textsuperscript{111}

According to this proviso, victim may be permitted to engage his own advocate to provide assistance to the public prosecutor. Such an advocate engaged by the victim shall be considered as a public prosecutor if interpreted in the light of definition as provided under Section 2 (u); “Public Prosecutor” means any person appointed under section 24, and includes any person acting under the directions of a public prosecutor.”\textsuperscript{112}

It can be seen that insertion of this proviso, Proviso of Section 24 (8), has given a legal standing to victim for engaging his own advocate with the permission of the court, but such engaged advocate shall be entitled only to assist the prosecution and to submit written arguments after closing of the evidence in the case as provided under Section 301 (2) of the Code of Criminal Procedure.

Section 301 (2) of the Code of Criminal Procedure Code, 1973 says that any private person may instruct a pleader to prosecute any person in a particular case and a pleader, so instructed, may submit the written arguments but with the permission of the court and after the closing of the evidence. Section 301 (2) of the Code of Criminal Procedure Code, 1973 provides as under,

\begin{quote}
If in any such case any private person instructs a pleader to prosecute any person in any court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case.\textsuperscript{113}
\end{quote}

\textsuperscript{110} Id at ¶ 6.
\textsuperscript{111} CODE CRIM. PROC. § 24 (8), Proviso, inserted by the Code of Criminal Procedure (Amendment) Act, 2008.
\textsuperscript{112} Id § 2 (u),
\textsuperscript{113} Id § 301 (2).
In J.K.International v. State (Govt. of NCT of Delhi)\textsuperscript{114}, Supreme Court dealt with the issue that up to what extent a complainant can seek redressal in case of any grievance. It was observed by the court that a private party though has a very limited role to play but this is sufficient to show that he is in picture throughout the criminal justice process and is not wiped off from the scene. It does not make any difference that in such a case, charge-sheet was filed by the police. Such private person is entitled to submit written arguments in the court and court is duty bound to take into consideration such written arguments before arriving at a conclusion. Court observed as under,

When such a role is permitted to be played by a private person, though it is a limited role, even in the Sessions Courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal court merely because the case was charge-sheeted by the police. It has to be stated further, that the court is given power to permit even such private person to submit his written arguments in the court including the Sessions court. If he submits any such written arguments the court has a duty to consider such arguments before taking a decision………The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the proceedings in the criminal court merely because the case was charge-sheeted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them.\textsuperscript{115}

Informant do not have any right to conduct prosecution directly. Though informant may be given a chance to be heard so as to rule out any injustice towards him, but still he cannot be permitted to constantly interfere with the prosecution since it might affect the impartiality in the prosecution. Observing that public prosecutor should always be in control of prosecution and any counsel engaged by a private party can only assist the Public Prosecutor, Supreme Court in the case of Sundeep Kumar Bafna v. State of Maharashtra\textsuperscript{116} (K.S.P.RadhaKrishnan and Vikramajit Sen JJ.) gave its opinion that,

No vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution…….\textbf{The Complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the trial so that his interest in the prosecution are not prejudiced or jeopardized.} It seems to us that constant or even frequent interference in the prosecution should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to

\textsuperscript{114} J.K.International v. State (Govt. of NCT of Delhi), (2001) 3 SCC 462.
\textsuperscript{115} Id at ¶ 10 & 11.
fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing.\textsuperscript{117}

Court in this case referred the case of J.K.International v. State (Govt. of NCT of Delhi)\textsuperscript{118}, wherein Supreme Court reiterated that the task of prosecution is entrusted with the Public Prosecutor. In case the proceedings are going to be quashed, then complainant should be provided with an opportunity to be heard, in the interest of justice. This is so because the private person or the complainant is the first one to get adversely affected in case of quashing of the proceedings. Supreme Court observed as under,

It is the Public Prosecutor who is in the management of the prosecution, the Court should look askance at frequent interjection and interference by a private person. However, \textit{if the proceedings are likely to be quashed, then the complainant should be heard at that stage}, rather than compelling him to assail the quashment by taking recourse to an appeal. Sections 225, 301 and 302 were also adverted to and, thereafter, it was opined that a private person is not altogether eclipsed from the scenario, as he remains a person who will be prejudiced by an order culminating in the dismissal of the prosecution. The three-judge Bench observed that \textit{upon the Magistrate becoming prescient that a prosecution is likely to end in its dismissal, it would be salutary to allow a hearing to the complainant at the earliest; and, in the case of a Sessions trial, by permitting the filing of written arguments}.\textsuperscript{119}

\textbf{5.4.2.3.2. CONSIDERATION OF STATEMENTS IN EXAMINATIONS:}

Section 164 (5A) (b) provides that in case of a temporarily or permanently mentally or physically disabled person, his statements as recorded under Section 164 (5A) (a) shall be taken into consideration as statement in lieu of examination-in-chief in such a manner that his cross-examination can be conducted on the basis of such recorded statements and he is not required to go through the process of recording of statement again during the trial proceedings.\textsuperscript{120}

\textbf{5.4.2.3.3. EXCLUSION OF THE VICTIM FROM THE COURT ROOM:}

Section 327 (1) of the Code provides for an open court for inquiring into or for trying any offence with an access by the general public. This section has a proviso that gives a discretionary power to the presiding judge or the magistrate to debar any particular person

\textsuperscript{117}Id at ¶ 32.
\textsuperscript{120}CODE CRIM. PROC. § 164 (5A) (b), Proviso, inserted by the Code of Criminal Law (Amendment) Act, 2013.
from attending any stage of any inquiry or trial. Proviso to Section 327 (1) of the CrPC provides as under, “Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.” 121

Section 327 (2) that provides for in camera proceedings in case of rape or other sexual offences has a proviso that provides as under;

“Provided that the Presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be remain in, the room or building used by the Court.”

Here legislative intent indicates towards considering victim of rape as a party to the trial proceedings.

5.4.3. RIGHT TO FAIRNESS OF THE PROCESS

5.4.3.1. RIGHT TO ACCESS TO THE JUSTICE MECHANISM:

Registration of FIR is the first step in access the justice mechanism. It has been provided under Section 154 of the Code of Criminal Procedure that every information in relation to commission of a cognizable offence shall be reduced into writing (if it has been given orally) either by the officer in charge of the police station himself or shall be reduced into writing under his direction. The information shall be signed by the informant and substance of such an information shall be entered in the prescribed book. 122

In Sonalal Soni v. State of Chhattisgarh 123, Court made it clear that if there is any delay in filing of rape complaint, then it will not adversely affect the credibility of the complainant.

Proviso inserted under Section 154 (1) by the amendment act of 2013 provides woman victim with dignified treatment when they approach for registration of information in relation to commission of an offence. This proviso mandates for registration of information by a woman police officer or by any woman officer, if the offence committed against the woman victim falls under any of the prescribed sections as mentioned under the proviso to section 154 (1). 124

121 CODE CRIM. PROC. § 327 (1), Proviso.
122 Id § 154 (1).
124 CODE CRIM. PROC. § 154 (1), Proviso, inserted by the Criminal Law (Amendment) Act, 2013.
The proviso to section 154 (1) elaborates the situations where the concerns of woman victims are to be paid special attention to ensure that they are treated in a dignified way when exercising their right to access the justice mechanism. These special measures include the following:

i. Recording of first information report by a woman police officer or by any woman officer.

ii. Where the victim is temporarily or permanently mentally or physically disabled, then recording shall take place at the residence of ‘informant’ and at a convenient place of such persons’ choice who seek to report such offence and in the presence of an interpreter or a special educator depending upon the nature of the case.

iii. Recording of such information shall be video graphed.

iv. The police officer has been imposed with an obligation to get the statement recorded by a judicial magistrate at the earliest as provided under clause (a) of Section 164 (5A).

In Lalita Kumari v. Government of U.P. & Ors., Supreme Court made it clear that mandatory registration of FIR tries to protect the interest of a victim and does not adversely affect the interest of an offender for taking care of whose liberty there are sufficient safeguards within the Code itself. Apex Court noted as under,

It is true that a delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. As already discussed above, there are already sufficient safeguards provided in the Code which duly protect the liberty of an individual in case of registration of false FIR. At the same time, Section 154 was drafted keeping in mind the interest of the victim and the society. Therefore, we are of the cogent view that mandatory registration of FIRs under Section 154 of the Code will not be in contravention of Article 21 of the Constitution as purported by various counsel.

This case, by providing that victim shall not be denied justice by non-registration of the information given by him, shows the judicial recognition of victims’ right to access to...
Supreme Court in Lalita Kumari’s case issued various directions for ascertaining victims’ right to access to justice.

“These are:

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

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

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

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

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

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

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

\[132\text{Id at ¶ 105 & 120.}\]

\[133\text{Id at ¶ 120.}\]
Section 154 makes it mandatory for the officer in charge of a police station to record a FIR, if it relates with the commission of a cognizable offence. In Lalita Kumari v. Government of U.P.\textsuperscript{134}, a submission was made that in the light of newly inserted Section 166 A (c) of Indian Penal Code, registration of FIR is obligatory in cases specifically mentioned under this Section 166 A (c) and hence in other cases of cognizable offences, officer in charge of police station may conduct a preliminary inquiry before recording of first information report.\textsuperscript{135} This submission was rejected by the apex court by making it clear that registration of FIR is imperative in all cognizable offences whether it pertains with the offences specified under the said Section or with any other cognizable offence. It was observed by the Court that,

\begin{quote}
Although, the argument is as persuasive as it appears, yet, we doubt whether such a presumption can be drawn in contravention of the unambiguous words employed in the said provision. Hence, insertion of Section 166-A in IPC vide Criminal Law (Amendment) Act, 2013, must be read in consonance with the provision and not contrary to it. The insertion of Section 166-A was in the light of recent unfortunate occurrence of offences against women. The intention of the legislature in putting forth this amendment was to tighten the already existing provisions to provide enhanced safeguards to women. Therefore, the legislature, after noticing the increasing crimes against women in our country, thought it appropriate to expressly punish the police officers for their failure to register FIRs in these cases. No other meaning than this can be assigned to for the insertion of the same.\textsuperscript{136}
\end{quote}

Though the court has made such an observation that legislative intent makes registration of FIR imperative in both the situations whether a cognizable case falls in the offences prescribed under Section 166 A (c) of Indian Penal Code or not, yet the legislative measures fall short of the prescribed intent. At one side, it has by specific mention of some particular offences against women, made refusal to register FIR a punishable offence, but on the other side in case of remaining cognizable offences, it prescribes only an administrative remedy by approaching the higher authority to register FIR and devoid of any penal consequence.

Section 154 (2) ensures that informant is provided a copy of FIR free of cost.\textsuperscript{137} Victims’ right to access the justice mechanism has been ensured under Section 154 (3) of CrPC that prescribes a remedy in case of a refusal by a police officer to record first information regarding commission of a cognizable offence. Section 154 (3) provides a remedy to an aggrieved person to approach the higher authorities in such situation. It says that any such

\begin{footnotes}
\item[135] \textit{Id} at ¶ 41.
\item[136] \textit{Id} at ¶ 42.
\item[137] CODE CRIM. PROC. § 154 (2).
\end{footnotes}
aggrieved person may send the substance of such information to the superintendent of police and such superintendent of police, on being satisfied that information discloses commission of a cognizable offence, shall either investigate the case himself or shall direct any subordinate police officer to investigate the case.\textsuperscript{138}

A victim may also approach the magistrate under the complaint mechanism to take cognizance of an offence under Section 190. Section 190 of the Code of Criminal Procedure prescribes that a Magistrate may take cognizance of an offence either upon receiving of a complaint or upon a police report or upon information received otherwise or upon his own knowledge. Magistrate may order for an investigation into the case by police under Section 156 (3).

**5.4.3.2. PROTECTION DURING CRIMINAL JUSTICE PROCESS:**

Calcutta High Court in the case of Mosaref Hossain Mondal v. State of West Bengal & Ors.\textsuperscript{139}, emphasizing upon the need of witness protection especially where the victim is a child, referred to the 154\textsuperscript{th} Report of the Law Commission of India (1996) that recommended for providing witness protection as under, “\textit{Witnesses should be protected from the loathe of the accused in any eventuality}.”\textsuperscript{140}

Section 41 of the Code of Criminal Procedure, 1973 provides that under certain circumstances, a police officer may arrest a person without an order from a Magistrate and without a warrant.\textsuperscript{141} This Section provides that in case of a cognizable offence punishable with punishment of more than seven years with or without fine or with death sentence, then the power to arrest may be exercised if a credible information is received that offender has committed the said offence and upon such information the officer has a reason to believe that the said offence has been committed by such person.\textsuperscript{142}

This Section also provides that if a cognizable offence is committed in the presence of the police officer, he can exercise his power to arrest as provided under this Section without an order from a Magistrate or without a warrant.\textsuperscript{143}

\textsuperscript{138} Id § 154 (3).
\textsuperscript{139} Mosaref Hossain Mondal v. State of West Bengal & Ors., 2012 SCC OnLine Cal 4076.
\textsuperscript{140} Id.
\textsuperscript{141} CODE CRIM. PROC. § 41 (1).
\textsuperscript{142} Id § 41 (1) (ba).
\textsuperscript{143} Id § 41 (1) (a).
This Section provides that in case of a cognizable offence punishable with punishment of seven years or less than seven years with or without fine, then the power to arrest may be exercised if there is a reasonable complaint against the offender or any credible information has been received against the offender or there is a reasonable suspicion that the offender has committed such offence provided that,

i. On the basis of such complaint, information or suspicion, Police officer has a reason to believe that the said offender has committed the offence.

ii. Police officer finds it necessary for the purpose of
   (a) Preventing such person from committing any further offence;
   (b) Conducting a fair and proper investigation into the case;
   (c) Preventing disappearance of evidence or tampering with the evidence;
   (d) Preventing dissuasion of any person by the offender from deposing before the court or before the police, true facts of the case, by means of any inducement, threat or promise.\textsuperscript{144}

This power of arrest can be used to provide protection to victims of crime. Though the provisions under Section 41 (1) (a) and Section 41(1) (ba) does not make any specific reference about the victim-witness intimidation by the offender but in case of Section 41 (1) (b), there is specific mention that such a power may be exercised to prevent further commission of offences or to prevent destruction of evidence or to provide protection from victim-witness intimidation.

Code of Criminal Procedure (Amendment) Act, 2008 brought a significant change in this legislative position by inserting Section 41 A in the Code of Criminal Procedure, 1973\textsuperscript{145}. This newly added Section provides that in all cases, where it is found that arrest is not required, Police officer shall\textsuperscript{146} issue a notice to such person (alleged offender) to appear before him or at some other place.

Section 506 of the Indian Penal Code prescribes punishment in case of ‘criminal intimidation’ and what amounts to an offence of ‘criminal intimidation’ has been dealt with under Section

\textsuperscript{144} Id § 41 (1) (b).
\textsuperscript{145} Id § 41 A (1) Inserted by the Code of Criminal Procedure (Amendment) Act, 2008, w.e.f., 1-11-2010, “The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.”
\textsuperscript{146} Substituted for ‘May’ by the Code of Criminal Procedure (Amendment) Act, 2010, w.e.f., 2-11-2010.
503 of the Indian Penal Code. According to Section 503 of IPC, ‘threatening to cause an injury’ may amount to ‘criminal intimidation’ if such a threat is made with any of the following intent and as a means to avoid execution of such threat;

i. Either to cause an alarm to that person;

ii. Either to cause that person to do any such act that he is not legally bound to do;

iii. Or omit to do any act that he has a legal right to do.

Any victim can report the matter to the police and police can lodge the first information report under these provisions. These provisions provided a general remedy with no specific mention of compelling to give false evidence.

Supreme Court in the case of Zahira Habibullah v. State\textsuperscript{147} observed that for truthful deposition of witnesses is a must in a fair trial and until and unless witnesses are provided with protection from intimidation, same cannot be obtained. To serve the cause of justice, it is necessary to provide for witness protection. An issue of witness protection raised in this case was described as under,

The present appeals have several unusual features and some of them pose very serious questions of far-reaching consequences. The case is commonly to be known as "Best Bakery Case". One of the appeals is by Zahira who claims to be an eyewitness to macabre killings allegedly as a result of communal frenzy. She made statements and filed affidavits after completion of trial and judgment by the trial court, alleging that during trial she was forced to depose falsely and turn hostile on account of threats and coercion. That raises an important issue regarding witness protection besides the quality and credibility of the evidence before court.\textsuperscript{148}

This case highlighted the pathetic condition of victims of crime who after suffering the violent crime are left to suffer the intimidation caused by the offenders so that they do not come forward to depose in order to get justice. Emphasizing upon the need for protective measures if justice is to be administered, Supreme Court made its observation that,

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


\textsuperscript{148} Id at 2.
Public interest in the proper administration of justice must be given as much importance, if not more, as the interests of the individual accused.\textsuperscript{149}

In Suo Moto v. State of Rajasthan\textsuperscript{150}, Rajasthan High Court also emphasized that there is an urgent need to provide with victim protection law if the truth is to be ascertained. It observed as under,

Thus, the machinery of Criminal Justice System is also required to put into gear when an offence is registered of sexual violence and then investigated. This includes protection to the victims, restoration of confidence building measures and the prompt and quality investigation. Thus, in pursuit of truth, particularly in offence pertaining to the sexual violence, there is urgent need to focus on victim protection law.\textsuperscript{151}

An attempt was made to provide protection to victim-witness from being intimidated or harassed by the offender by insertion of clause (c) in sub-section (3) of Section 437. Section 437 of the Code of Criminal Procedure, 1973 provides the procedure when bail may be granted in case of non-bailable offence. It provides that bail may be granted to any person except under the following circumstances i.e., if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or with life imprisonment and in case of commission of a cognizable offence if the offender had been previously convicted as provided under the clause (ii) of Section 437 (1) of the Code of Criminal Procedure, 1973.\textsuperscript{152}In case of release under Section 437 (1), Section 437 (3) provides for mandatory imposition of certain conditions, if the alleged offence relates with violent crimes. The mandatory nature was incorporated into the Section by substitution of the phrase “The Court may impose any condition” with the phrase “the Court shall impose the conditions” by the Code of Criminal Procedure (Amendment) Act, 2005. This amendment brought another significant change by addition of clause (c) under Sub-section (3) of Section 437 that provides as under, “that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.”\textsuperscript{153}

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\textsuperscript{151} \textit{Id} at ¶ 21.

\textsuperscript{152} \textsc{Code Crim. Proc.} § 437 (1) (ii).

\textsuperscript{153} \textit{Id} § 437 (3) (c).
It further empowers courts to impose any other condition as may be necessary in the interest of justice.\textsuperscript{154}

These provisions are significant from victims’ point of view since these provisions take into consideration the threat perception or the risk of danger of further harm that may arise as a result of offender’s release. Imposition of certain conditions at one hand will prevent the offender from committing any act of victim intimidation or harassment and on the other hand will provide support to victim to come forward to depose the factual truth before the court.

In Mosaref Hossain Mondal v. State of West Bengal & Ors.\textsuperscript{155}, Calcutta High Court also emphasized upon the need of providing protective measures for victim-witnesses if truthful deposition is to be secured. It referred the above Supreme Court decided case of Zahira Habibulla H. Sheikh & Ors. v. State of Gujarat & Ors.\textsuperscript{156} to state that providing protection to victim witness is the need of the hour.

Delhi High Court in the BMW Hit and Run case\textsuperscript{157} also recognized victim-witness protection as the need of the hour. It made reference to Supreme Court decided case of Javed Alam v. State of Chhattisgarh and Anr.\textsuperscript{158} wherein a need for creating a witness protection mechanism was felt. Supreme Court made its observation,  

> It is a classic case of deficiency in the criminal justice system to protect the witnesses from being threatened by accused. As appears from the record, the witnesses are the classmates of the deceased who were there with her. As appeared from the evidence of witnesses they backed out from what was stated during investigation. The statement made before the Police during investigation is no evidence. Unfortunately, in cases involving influential people the common experience is that witnesses do not come forward because of fear and pressure.... The plight of the girls who were under pressure depicts the tremendous need for witness protection in our country if criminal justice administration has to be a reality.\textsuperscript{159}

\textsuperscript{154} \textit{Id} § 437 (3).
\textsuperscript{155} Mosaref Hossain Mondal v. State of West Bengal & Ors., 2012 SCC OnLine Cal 4076.
\textsuperscript{157} Sanjeev Nanda v. The State 2009 SCC OnLine Del 2015 (Commonly known as BMW Hit and Run case).
\textsuperscript{158} Crl. A. No. 1240/2006 decided on 08/05/2009 as cited in Sanjeev Nanda v. The State 2009 SCC OnLine Del 2015 (Commonly known as BMW Hit and Run case) at ¶ 137.
\textsuperscript{159} Crl. A. No. 1240/2006 decided on 08/05/2009 at ¶ 8, as cited in Sanjeev Nanda v. The State 2009 SCC OnLine Del 2015 (Commonly known as BMW Hit and Run case) at ¶ 137.
To instill a sense of credibility in the working of criminal justice system and to provide a protective umbrella from being harassed by anti-social elements, Delhi High Court in BMW case\textsuperscript{160}, emphasized upon the need of protective measures being provided. It stated as under,

“It is no time for slumber. It is high time that we wake up and act for the protection of the citizens who appear before the courts to testify so as to render a helping hand in the dispensation of justice. Best Bakery Case, Jessica Lal murder case and many other like cases, if repeated, would shatter the strength and credibility of our criminal justice system. Every country is expected to make laws to meet the situations prevalent in that country. However, there is nothing wrong, rather it is wise, in imbibing the spirit shown by other countries in the matter of witness protection. No nation can afford to expose its righteous and morally elated citizens to the peril of being haunted or harassed by anti-social elements, for the simple reason that they testified the truth in a court of law. If the State continues to turn a blind eye to the ground realities, the plight of an honest witness will be pathetic and calamitous.”\textsuperscript{161}

Delhi High Court went on to note down that such concerns need to be paid serious consideration. State should take measures to introduce such legislations that are sufficient enough to deal with the situation. In the wordings of Court, “\textit{Therefore, the State must give serious thought to protect the interest of witnesses and to introduce suitable legislation in this regard at the earliest so that the witnesses are not discouraged to come forward to give evidence for fear of harassment, humiliation and danger to their lives.}”\textsuperscript{162}

To provide an enhanced punishment and to make a specific mention of compelling to give false evidence as an offence, Section 195 A was inserted in the Code of Criminal Procedure by the Code of Criminal Procedure (Amendment) Act, 2008. Now, if any threat is given to victim-witness by the offender or on his behalf as a means to compel him to give false evidence, he can file a complaint for threatening against them. Section 195 A of the Code of Criminal Procedure provides the procedure for filing of a complaint in case of any threat made to him, as under, \textit{“A witness or any other person may file a complaint in relation to an offence under section 195 A of the Indian Penal Code (45 of 1860).”}\textsuperscript{163}

Section 195 A of the Indian Penal Code (45 of 1860) provides punishment in case of threatening or inducing any person to give false evidence, as under,

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\textsuperscript{160} Sanjeev Nanda v. The State 2009 SCC OnLine Del 2015 (Commonly known as BMW Hit and Run case).
\textsuperscript{161} Id at ¶ 138.
\textsuperscript{162} Id.
\textsuperscript{163} CODE CRIM. PROC. § 195 (A), \textit{inserted by} the Code of Criminal Procedure (Amendment) Act, 2008.
\end{flushright}
“Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;

And if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.”

Calcutta High Court in the case of Mosaref Hossain Mondal v. The State of West Bengal & Ors.\(^{164}\), referred to Supreme Court decided case of National Human Rights Commission v. State of Gujarat and Others\(^{165}\) wherein it was held that victim witness should be provided protection from intimidation so as to ensure justice in the case. Apex Court held as under,

It is an established fact that witnesses form the key ingredient in a criminal trial and it is the testimonies of these very witnesses, which established the guilt of the accused. It is, therefore, imperative that for justice to be done, the protection of witnesses and victims becomes essential, as it is the reliance on their testimony and complaints that the actual perpetrators of heinous crimes during the communal violence can be brought to book.\(^{166}\)

In National Human Rights Commission v. State of Gujarat and Others\(^{167}\), Supreme Court stated that not only to prevent any miscarriage of justice, but to provide victim with a dignified treatment it is necessary that their protection needs are taken into consideration. Court made its observation that,

In most of the cases, witnesses are the victims of the crime. Most vulnerable amongst them are women and children. Under the existing system they are mere pawns in a crime trial and there is very little concern for protecting their real interests. The protection is necessary so that there is no miscarriage of justice; but protection is also necessary to restore in them, a sense of human dignity.\(^{168}\)

In the above case of Mosaref Hossain Mondal\(^{169}\), Calcutta High Court issued certain directions to ensure victim-witness protection which are relevant to be cited here,

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


\(^{166}\)Id at ¶ 7.

\(^{167}\)Id at ¶ 18.

\(^{168}\)Id at ¶ 7.

(i) Respondent Nos. 2 and 6 shall take all necessary steps to ensure the safety and security of the petitioner, the minor victim and other witnesses in the instant case from any act of violence, coercion, undue influence and/or criminal intimidation from the accused persons.

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

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

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

(v) The respondent Nos. 2 and 4 shall take all other steps which is necessary in order to ensure a free and conducive atmosphere so that the victim girl and other witnesses can depose with confidence in the forthcoming trial.**170**

In Nepal Krishna Roy v. State of West Bengal171 wherein an apprehension of threat to life was feared, Kolkata High Court directed the Superintendent of Police to provide protection to the private respondents and to make it sure that they are not subjected to any physical harm.

**NO CONFRONTATION BY THE ACCUSED DURING DEPOSITION:**

Section 273 of the CrPC provides a general rule for taking of evidence in presence of accused and in case his presence is dispensed with, then in presence of his pleader. A proviso was inserted in this Section 273 by Criminal Law (Amendment) Act, 2013 to provide protection to victim from intimidation and to secure his truthful deposition without any associated fear due

**170**Id.

to the presence of the offender. Proviso of Section 273 of the Code of Criminal Procedure, 1973 provides that,

where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.\textsuperscript{172}

This proviso has its own limitation since it takes into consideration only the matters in relation to the deposition of woman victims of sexual offences below the age of eighteen years only thus is not of any help to general victim or to the victim of sexual offences above the age of eighteen years or to victim of sexual offences other than woman victim.

**IN CAMERA PROCEEDINGS:**

Section 327 (2) of the Code of Criminal Procedure, 1973 prescribes for in-camera proceedings in case of victims of rape or other sexual offences.\textsuperscript{173} Proviso to Section 327 (2) empowers the court to take any decision to allow the presence of a particular person, in case an application is made by any of the parties to the proceedings. This provision of in-camera proceeding is not available in case of general victims of violent crimes and in that case the applicable provision is mentioned under Section 327 (1) of the CrPC that, as a general rule, prescribes for all inquiries and trials to be conducted in an open court with an open access by general public.

Proviso to Section 327 (2) further provides that such in camera trials shall be presided over only by a woman judge or magistrate.

**5.4.3.3. FAIR AND SPEEDY INVESTIGATION:**

Extended dimension of Article 21 includes fair trial that in turn depends upon fair investigation. A victim of crime is entitled to claim a fair trial in the same manner as an accused in the case. It is the obligation of State agencies to conduct a fair investigation into the case to ensure a fair trial. Patna High Court in the case of Ram Padarath Singh v. The State of Bihar\textsuperscript{174} observed that,

\textsuperscript{172} CODE CRIM. PROC. § 273, Proviso, inserted by the Criminal Law (Amendment) Act, 2013.

\textsuperscript{173} CODE CRIM. PROC. § 327 (2), amended by the Criminal Law (Amendment) Act, 2013,

“Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376 A, section 376 B, section 376 C, section 376 D or section 376 E of the Indian Penal Code (45 of 1860) shall be conducted in camera.”

\textsuperscript{174} Ram Padarath Singh v. The State of Bihar 2014 SCC OnLine Pat 6564.
Article 21 of the Constitution of India, undoubtedly, vests in every accused the right to demand a fair trial. This right, which is fundamental in nature, casts a corresponding duty, on the part of the State, to ensure a fair trial. If the State is to ensure a fair trial, it must ensure a fair investigation. Logically extended, this would mean that every victim of offence has the right to demand a fair trial meaning thereby that he/she has the right to demand that the State discharges its constitutional obligation to conduct a fair investigation so that the investigation culminates into fair trial. The State has, therefore, the duty to ensure that every investigation, conducted by its chosen agency, is not motivated, reckless and that the investigating officer acts in due obedience to law. It is only when the State ensures that the investigation is fair, can it (The State) be able to say, when questioned, that the trial conducted was a fair trial. Article 21 of the Constitution of India, therefore, does not vest in only an accused the right to demand fair trial, but it also vests an equally important right, fundamental in nature, in the victim, to demand a fair trial. Article 21 of the Constitution of India does not, thus, confer fundamental right on the accused alone, but it also confers, on the victim of an offence, the right, fundamental in nature, to demand fair trial.  

Patna High Court in the case of Ram Padarath Singh v. The State of Bihar observed that, Article 21 guarantees for fair investigation as a part of fair trial. Without properly conducted investigation, there can be no fair trial. To be termed as fair, an investigation is required to be thorough, without bias, without any ulterior motive. All facts that may have a bearing on the case or on its outcome must be contemporaneously recorded. Motivated investigation cannot ensure fair trial. A fair investigation must look into all aspects of an offence irrespective of the consideration that it is in favour of or against the accused. Courts must be vigilant to ensure such fairness into the investigation of a case. Court observed as under,

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

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175 Id at ¶ 2.
177 Id at ¶ 1.
investigation would mean an investigation, which looks into all aspects of an accusation, be it in favour of the accused or against him.178

Madras High Court in the case of P. Sathish Kumar v. State of Tamil Nadu179 observed that, Right to life as interpreted through various Supreme Court pronouncements include ‘right to fair trial’ and this right to fair trial include right to fair investigation. Prompt registration of a case, swift investigation and quick final report have been identified by Madras High Court as essential ingredients that constitute a fair trial. Police has the constitutional obligation towards the accused, towards the society as well as towards the victims of crime to ensure fair investigation.180 Court made its remarks that,

The salutary concept of “Fair Trial”, which has received recognition under the “Universal Declaration of Human Rights, 1948” and guarantee under Article 21 of the Constitution of India, has received wider interpretation at the hands of the Hon’ble Supreme Court so as to include fair investigation of a crime as well. Thus, Prompt registration of a case by a competent police officer followed by swift investigation resulting in a quick final report are all concomitants of a fair trial. To be fair to the victim, fair to the Accused and fair to the society at large are the Constitutional obligations of the Police. If there is any deviance, it is likely to result in failure of justice.181

Supreme Court in the case of Babubhai v. State of Gujarat and others182 observed that, fair investigation is a constitutional right guaranteed under Article 21 of the Constitution of India. Apex court, in this case, recognized fairness, transparency and judiciousness as the main component of an investigation under the rule of law. An investigation cannot be permitted to be conducted in a tainted and biased manner and in such circumstances, in the interests of justice, courts can interfere and direct for fresh investigation to be made by an independent agency.183

On the basis of the ‘crux of ratio’ laid down by the Supreme Court in the case of Babubhai v. State of Gujarat184, Punjab and Haryana High Court in the case of Gurbax Singh Bains185 made its observation that, fairness and judiciousness are the main essential elements to ensure fairness in an investigation. The constitutional guarantee of a fair investigation is equally

178 Id.
180 Id at ¶ 1.
181 Id.
183 Id.
available to a victim in the case. Any deviation from the fairness during investigation amounts to violation of victims’ constitutional rights. Injudicious investigation leaves its effect upon the victims and their right to fair trial since unfair and injudicious investigation provides ample scope for offenders to escape clutches of law.\footnote{186} According to the observation made by Punjab and Haryana High Court,

“The investigation, thus, has to be fair and judicious, which is the minimum requirement of rule of law. This constitutional guarantee is not only available where the tainted investigation is directed against the accused persons having an effect on him. \textit{It would equally be for the aggrieved person and a victim to allege that he is not being treated fairly by injudicious investigation to favour the accused persons. Thus, it would violate his constitutional rights.} The concept of fair trial and fair investigation is not only to be considered from the point of view of liberty or the right of the accused. At the same time, the society and the victim would also suffer on account of injudicious investigation and fair trial becomes a casualty. Similarly, the person, who is accused of a serious offence, would be let off not because of lack of any evidence or material, but because of unfair and injudicious investigation.”\footnote{187}

It was further observed by the Punjab and Haryana High Court in the case of Gurbax Singh\footnote{188} that every citizen has a right to claim fair investigation as his constitutional right. In the administration of criminal justice, both fair trial and fair investigation are vital parts. As part of a constitutional right of a citizen, an investigation should be conducted in a fair manner and not as a formality. Police should perform its duties of investigating into the facts and circumstances of an offence and should not interfere with the judicial task of ascertaining the intricate questions of commission of a particular offence.\footnote{189}

Section 157 (1) of the Code of Criminal Procedure prescribes procedure for investigation of cognizable cases. It says that officer-in-charge of a police station shall send a report to the magistrate concerned and proceed to initiate investigation if either on the basis of an information received or otherwise he has reason to suspect that a cognizable offence has been committed. He shall proceed himself to the spot or depute some other officer as prescribed by the government, to proceed to the spot. He shall investigate the facts and circumstances and take measures to discover and to arrest the offender.\footnote{190} In case the information is given by name and offence is not of serious nature or where there is lack of sufficient grounds for

\begin{footnotesize}
\begin{enumerate}
\item \textit{Id} at ¶ 3.
\item \textit{Id}.
\item \textit{Id} at ¶ 4.
\item \textit{Id}.
\item \textsc{CODE CRIM. PROC. § 157 (1).}
\end{enumerate}
\end{footnotesize}
initiating an investigation, the officer shall not investigate the case\textsuperscript{191} but in these cases, it is required that he should mention in his reports the reasons for not initiating an investigation and should give notification to the informant.\textsuperscript{192}

Section 160 of the Code of Criminal Procedure describes the power of police officer to require attendance of witnesses for the purpose of an investigation. It provides that if it appears to the police officer, either on the basis of an information or otherwise, that a particular person is aware of the facts and circumstances of any case, he may require his attendance before himself by issuing an order in writing,\textsuperscript{193} but attendance of any male person under the age of fifteen years or above the age of sixty five years or of any woman or of any mentally or physically disabled person shall not be required at a place other than the place of their residence.\textsuperscript{194} Section 161 of the Code of Criminal Procedure provides for examination of witnesses by police. It says that any investigating officer may examine any person, supposed to be acquainted with the facts of the case, orally.\textsuperscript{195} Investigating officer may reduce statements, made during these oral examinations, in writing and if he reduces these statements in writing, he should make a separate and true record of statements of all such examined persons.\textsuperscript{196}

Section 164 of the Code of Criminal Procedure provides for recording of Statements by Magistrates. Statements made during the investigation shall be recorded by the Magistrate in the prescribed manner and on oath.\textsuperscript{197} Section 164 A of the Code of Criminal Procedure provides for medical examination of rape victims. It provides that if it is proposed then, rape victim should be sent within 24 hours for medical examination by a medical practitioner as prescribed under the Code and same should be done with their consent or with consent of a person competent to give such consent.\textsuperscript{198} There is lack of any such provision to make medical examination mandatory in case of victims of personal violence crimes.

Section 170 of the Code of Criminal Procedure provides the procedure in case of sufficiency of evidence against the accused. It says that on there being sufficient evidence or reasonable

\textsuperscript{191}Id.
\textsuperscript{192}Id § 157 (2).
\textsuperscript{193}Id § 160 (1).
\textsuperscript{194}Id.
\textsuperscript{195}Id § 161 (1).
\textsuperscript{196}Id § 161 (3).
\textsuperscript{197}CODE CRIM. PROC. § 164 (5).
\textsuperscript{198}CODE CRIM. PROC. § 164 A (1), inserted by the Code of Criminal Procedure (Amendment) Act, 2005.
grounds, the officer-in-charge shall forward the accused to the magistrate so empowered to
take cognizance and to try or commit him for trial. In such cases, the officer-in-charge is
required to send to the magistrate any weapon or other article necessary to produce before
him. He shall also require the concerned persons acquainted with the facts and
circumstances of the case and the complainant (if any) to execute bond so as to ensure their
presence before the concerned magistrate. Investigating officer is required to enter the
proceedings in a case on a day to day basis in a diary that is a volume and duly paginated.
He is required to mention the timings of receiving the information, timings of beginning and
closing of the investigation, places visited by him and statement of circumstances ascertained
by him after his investigation. He shall insert the statements of witnesses recorded under
Section 161 of Cr.P.C. in a case diary. Section 173 of the Code of Criminal Procedure
provides the procedure to be followed in case of completion of an investigation. Section 173
(1) of the Cr.P.C. provides for speedy disposal of the case. After completion of an
investigation, the officer-in-charge of a police station is required to send a report with all
relevant details as provided under Section 173 (2) (i) of Cr.P.C. to the magistrate empowered
to take cognizance. He is further required to inform the informant about the action taken on
his report. Section 173 (5) that where there is sufficient evidence or reasonable grounds for
forwarding an accused to a magistrate for trial or to commit for trial, police officer is required
to send with the report necessarily;

“(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other
than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution
proposes to examine as its witnesses.”

If after forwarding of a report as mentioned under Section 173 (2), there is a further
investigation and officer-in-charge finds further evidence, he shall forward a further report to
the magistrate and in that case all provisions from sub-section (2) to (6) of Section 173 shall

199 CODE CRIM. PROC. § 170 (1).
200 Id § 170 (2).
201 Id § 170 (2).
202 Id § 172 (1B).
203 Id § 172 (1).
204 Id § 172 (1A).
205 Id § 173 (2) (i).
206 Id § 173 (2) (ii).
207 Id § 173 (5).
apply. This provision indicates that in case of further investigation, informant shall be informed with regard to the further investigation in the prescribed manner.

To ensure that the investigating agency works within its bounds as prescribed under the Code of Criminal Procedure, 1973, Section 166 A was inserted in the Indian Penal Code, 1860 by the Criminal Law (Amendment) Act, 2013 that provides punishment in case there is any deviation from the directions under the law. Insertion of this Section is aimed at ensuring fairness in the investigative process. This Section provides that if a public servant knowingly disobeys the direction of law with regard to the presence of witnesses or if he disobeys any direction of law that regulate investigation or if he fails to record first information report in cognizable offences, shall be punished with rigorous imprisonment of a term not less than six months but may extend to two years with fine.

**SPEEDY INVESTIGATION:**

In Kartar Singh v. State of Punjab, it was observed by the Supreme Court that right to speedy trial runs through all stages of criminal justice process. Supreme Court in the case of Pankaj Kumar v. State of Maharashtra and Ors., emphasized that right to speedy trial flows from Article 21 and it consists speedy police investigation too. As observed by the Court,

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

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208 Id § 173 (8).
209 Indian Penal Code, § 166 A, inserted by the Criminal Law (Amendment) Act, 2013, “Whoever, being a public servant-
   (a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or
   (b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or
   (c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326 A, section 326 B, section 354, section 354 B, section 370, section 370 A, section 376, section 376 A, section 376 B, section 376 C, section 376 D, section 376 E or section 509

> Shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.”

212 Idat ¶ 22.
Section 173 (1) of the CrPC provides that every investigation shall be completed at the earliest and without an unnecessary delay. It further provides under sub-section (1A) that any investigation in the case of a rape of a child may be completed within three months of lodging of FIR.\textsuperscript{213}

Use of the “term” may denote that the provision is devoid of any mandatory nature and gives the concerned authorities an ample scope to complete it or not to complete it within the prescribed time limit.

Regarding victims’ right to fair investigation, it was made clear by the Rajasthan High Court in its judgment in the case of Prakash Chandra v. State of Rajasthan\textsuperscript{214} that not only an accused in the case but a victim of crime too deserves a right to fair investigation as provided under the Code of Criminal Procedure. Court observed that victims’ right to speedy investigation reflects from the Constitutional spirit as well as from the mandate of the CrPC as provided under its Section 173 (1) that says in very clear terms that every investigation under this chapter XII shall be completed without an unnecessary delay. Various provisions of Constitution indicating its spirit together with the mandate of CrPC, confer the right to speedy investigation, speedy inquiry and speedy trial upon every citizen of the country. A victim or a complainant have the right, to claim a fair investigation to be done at the earliest, in the same manner as an accused in the case have.\textsuperscript{215} Court made the position clear through its remarks that,

\textit{It is the mandate of the Code of Criminal Procedure under Section 173 (1) that every investigation under chapter XII shall be completed without unnecessary delay. Similar is the spirit of the Constitution of India as envisaged in its various provisions and obviously so because it is right of every citizen to have a case, particularly a criminal case, to be investigated; inquired and tried at the earliest. As it is the right of the accused to have a criminal case decided expeditiously, \textbf{similar is the right of a victim/complainant to have the investigation done, on the report lodged by him, immediately and without any delay.}}\textsuperscript{216} (emphasis added)

To ensure fair investigation, newly inserted Section 166A of Indian Penal Code provides punishment for knowingly disobeying any direction of law regarding investigation into an offence.

\textsuperscript{213} CODE CRIM. PROC. § 173 (1A), inserted by the Code of Criminal Procedure (Amendment) Act, 2008.
\textsuperscript{215} Id.
\textsuperscript{216} Id.
5.4.3.4. FAIR PROSECUTION:

In Sunil Kumar Pal v. Phota Sheikh and Others\textsuperscript{217}, appellant’s younger brother was murdered. It was alleged by the appellant that the investigation conducted into the case was perfunctory and unfair because the alleged accused belonged to the ruling party. Witnesses despite their making of representations, were not provided with any protection. Witnesses were intimidated and threatened with dire consequences if they come forward to depose before the court. Government did not respond to the request made by the appellant for appointing a Special Public Prosecutor in the case. Despite specifically being enquired from the Public Prosecutor as to when the trial is going to commence, no information was provided to him by the Public Prosecutor. Public prosecutor appeared for the defence. Additional public prosecutor who was conducting the case from prosecution side did produce only two witnesses out of 12 and refuse to call the appellant and other witnesses to depose despite the appellant being a material witness in the case. Witnesses who were examined, turned hostile due to the threats and because of not being provided with any protection. Additional Session Judge found accused not guilty and acquitted all the nine accused. An application under Section 401 of the CrPC was made for leave to prefer an appeal against this order that was rejected by the Division Bench of the Calcutta High Court, thus the appellant presented this appeal with special leave from this court. Supreme Court Bench of Justice P. N. Bhagwati and Justice V. Balakrishna Eradi finding the role played by public prosecutor as inconsistent with legal profession ethics, commented that, “It is difficult to understand how consistently with ethics of the legal profession and fair play in the administration of justice, the Public Prosecutor of Nadia could appear on behalf of respondents 1 to 9.”\textsuperscript{218}

Vitiating the trial conducted by Additional Sessions Judge, it was observed by the Supreme Court that Session trial was not fair and heavily loaded in favour of the accused and High court also erred in rejecting the application made by the appellant under Section 401 of the CrPC for leave to appeal against such acquittal. Supreme court held that a retrial must be done on same charges.\textsuperscript{219}

We would also direct that in order that there should be fair yet effective prosecution, the State Government should appoint a senior advocate practicing on the criminal side in the City Civil and Sessions Court, Calcutta as Special

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\textsuperscript{218} Id at ¶ 9.

\textsuperscript{219} Id at ¶ 9 & 10.
Public Prosecutor in consultation with the appellant and the complainant and any suggestions made by the appellant or the complainant shall be taken into consideration in making such appointment.220

In Sidhartha Vashisht alias Manu Sharma v. State,221 Supreme Court Division Bench of Justice P.Sathamvam and Justice Swatanter Kumar discussed the aspects in relation to the role of public prosecutor and his duty of disclosure. Court recognized the office of Public Prosecutor as a statutory office with high regard. A Public Prosecutor should perform his duties fairly. Court made the observation that,

Therefore, a Public Prosecutor has wider set of duties than to merely ensure that the accused is punished, the duties of ensuring fair play in the proceedings, all relevant facts are brought before the court in order for the determination of truth and justice for all the parties including the victims.222

In the case of State of Rajasthan v. Mohammad Muslim Tagala,223 Supreme Court before disposing of the appeal as infructuous, expressed its displeasure on the way Public Prosecutor handled the case in High Court. It was noted by the Court that in an appeal against the order of conviction, offenders’ (respondent’s) pleader instead of arguing the case on merit, asked for issuance of direction to the concerned authorities to give benefit to the accused under Section 433 of the Code of Criminal Procedure. Public Prosecutor did not oppose the prayer made by the respondent on which the High Court, directing the authorities to give the appellant benefit under Section 433 of the CrPC, disposed of the appeal. This was challenged before this court.224 Supreme Court observed that High Court cannot direct the government to exercise its sovereign powers to commute the sentence. Court can only give a direction for consideration of the case only.225 Regarding the role played by the Public Prosecutor, Court expressed its displeasure upon the way the case was handled by the Public Prosecutor in a grave offence and that too without going through the legal position. Supreme Court made its observation in the following terms,

Before closing, we must express our extreme displeasure about the manner in which the Public Prosecutor made a concession in the High Court. Firstly, the offence is grave and in such grave offence, the Public Prosecutor ought not to have made a concession that the court should direct the Government to commute the sentence. Besides, the Public Prosecutor made a concession without

220 Id at ¶ 10.
221 Id at ¶ 187.
222 Id at ¶ 8 & 11.
223 Id at ¶ 10.
224 Id at ¶ 2 & 12.
225 Id at ¶ 11.
examine the legal position. The Public Prosecutor plays a very important role in a criminal case. It is distressing to note that in such a serious case, the Public Prosecutor should have shown such a casual approach.\(^\text{226}\)

5.4.3.4.1. ROLE OF A PRIVATE LAWYER ENGAGED BY THE VICTIM:

It was observed by the Madras High Court (Madurai Bench) in the case of Sathyavani Ponrani v. Samuel Raj\(^\text{227}\), that a conjoint reading of Sections 301 and 24 (8) of the Code of Criminal Procedure makes it clear that though the public prosecutor is entrusted with the duty of conducting prosecution in a case but it does not mean that a lawyer engaged by a victim has no role to play. A lawyer engaged by the victim may also supplement in conducting of the case to ensure fair trial. Such private lawyer may be permitted by the court not only to argue but to examine the witnesses in the case.\(^\text{228}\) Court observed as under,

It is the sole prerogative of the public prosecutor to pick, choose and examine a prosecution witness. However, if the public prosecutor fails in the above-mentioned duty either accidentally or designedly in the opinion of the Court, then in such a circumstance it can permit a victim’s lawyer even to examine a witness. Such a power can also be exercised by the court for the purpose of conducting a free and fair trial and in the interest of justice.\(^\text{229}\)

5.4.3.5. FAIR AND SPEEDY TRIAL:

Supreme Court in the case of Zahira Habibulla H. Sheikh v. State of Gujarat\(^\text{230}\) noted that, everyone deserves to be treated fairly in criminal justice process. To ensure Justice, it is needed that no one should be denied a fair trial. Fair trial cannot be ensured by ensuring fairness towards the accused only. Victim is equally entitled for a fair trial as an accused in the case. A trial can be termed fair only when it is not biased towards anyone. A trial where material witnesses are either not given an opportunity to present their version of events or where they are threatened or intimidated to depose falsely cannot result into a fair trial.\(^\text{231}\) Supreme Court observed in this case that,

It will not be correct to say that it is only the accused who must be fairly dealt with. That would be turning Nelson’s eyes to the needs of the society at large and

\(^{226}\) *Id* at ¶ 12.  
\(^{228}\) *Id* at ¶ 35, 36 & 37.  
\(^{229}\) *Id* at ¶ 36.  
\(^{231}\) *Id* at ¶ 36.
the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.

It is not only an accused that suffers due to the delay in conclusion of the trial. Both parties get affected due to the delay. It would not be correct to say that if there is any delay in conclusion of trial then all benefits should be given to the accused. Quite often it is the victim of crime who suffers more due to the delay. In Mangal Singh and another v. Kishan Singh, where high court altered the conviction from under Section 307 to Section 326 of the Penal Code, reduced the custodial sentence of a term of five years rigorous imprisonment to the period undergone by the accused already in custody and imposed a fine of Rs. 3500 on each of the offender, it was observed by the Supreme Court that,

Any inordinate delay in conclusion of a criminal trial undoubtedly has a highly deleterious effect on the society generally, and particularly on the two sides to the case. But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.

Supreme Court in the case of Vikas Kumar Roorkewal v. State of Uttarakhand and Others cited its earlier judgment in the case of K. Anbazhagan v. Superintendent of Police wherein fair trial was stated as a pre-requisite of Article 21 as under,

Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner.
In the case of Mina Lalita Baruwa v. State of Orissa and Others,238 (F.M.Ibrahim Kalifulla, J) Supreme Court observed that both the prosecutor and the court should play an active role in ensuring administration of justice to all concerned. Informant (appellant) was brutally assaulted, molested and gang raped. Test identification parade was conducted before the PW 18 i.e., Sub-Divisional Judicial Magistrate. Proceedings recorded by him were marked as Ext. 8 and description of test identification parade was marked as Ext. 8/6. Counsel appearing for the appellant pointed out that Ext. 8, no reference to any statement made by the appellant with regard to the behavior of respondent was mentioned. An undertrial prisoner namely, Santosh Kumar Swain was wrongly identified as Santosh Patnaik by the PW 18 in his specific statement. It was submitted on behalf of the appellant that the specific statement made by the PW 18 was an incorrect version but prosecution did not even put a suggestion to PW 18 in this regard that therefore remained an uncontroverted statement. It was further submitted that the said statement was to the effect that appellant told to him that nothing else than an overt act of slapping, pulling of the saree and squeezing of her breasts was committed. In such circumstances, appellant submitted that it was necessary for the prosecution to confront PW 18 on such inconsistencies otherwise the whole complaint lodged by the appellant would become frustrated.239

During her cross-examination, it was made clear by the appellant that the version of PW 18 regarding the statement of appellant during test identification parade was never made by the appellant.240 When Special Public Prosecutor did not make any attempt to set right the deliberate misstatement, appellant made an application but the same was rejected by the court on its being filed by the victim instead of the Special Public Prosecutor.241 Appellant approached High Court. High Court expressed its opinion that an informant has a very limited role in trial proceedings and under Section 301 of CrPC, informant has no such role to ask for recalling of witnesses and she can only file her written submission that should be considered by the lower court.242 After going through the hearing and the relevant orders made by the trial judge and the high court, Supreme Court expressed its opinion that not only the learned trial judge but the High Court as well have failed miserably to deal with such a case where the offence pertains with a charge under Section 376 (2) (g) and where the statutory authority that

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239Id at ¶ 7 & 8.
240Id at ¶ 9.
241Id at ¶ 10.
242Id at ¶ 11.
is the judicial officer before whom the test identification parade was made, himself made a
blatant and wrong statement contrary to his record of identification parade (that is Ext.8)
causing serious illegality in the process of administration of justice.\textsuperscript{243} Supreme Court found
serious irregularities in the orders made by High Court. Supreme Court remarked that,

we are of the firm view that the \textit{inability of the trial court in failing to take appropriate action} as and when it was brought to its notice about the fallacy in the oral version, \textit{would certainly cause a serious miscarriage of justice, if allowed to remain}. Unfortunately, in our considered view, the \textit{High Court appears to have adopted a very casual approach} instead of attempting to find out as to the appropriate procedure which the trial court should have followed in a situation like this. The \textit{High Court also committed a serious illegality in merely stating that under Section 301 CrPC there is no scope for a victim as a private party to take any effective step to rectify a serious fallacy committed by a statutory witness} who is supposed to maintain cent per cent neutrality while giving evidence before the court......\textsuperscript{244} (emphasis added)

Supreme Court further made its observation that instead of rejecting the application made by
the victim of such outrageous offence, the trial court as well as the high court should have
taken steps to set right the anomaly indicated by the victim between the statement made by
the statutory witness and the report made by him, himself. For this purpose, court could call
the Special Public Prosecutor to take the necessary steps or could call the witness and could
put questions to him in this regard.\textsuperscript{245} Recognizing the sufferings of victims and the harm
undergone by the victim, court discussed the duties of State and the agencies of criminal
justice system to take effective measures to ensure that justice is delivered to the victim. Both
the prosecutor and the court have duties to take care that justice should be served and in that
process no guilty should escape and no innocent should be punished. Supreme Court made its
observation reflecting upon the duties of State, public prosecutor and court that,

\begin{quote}
In criminal jurisprudence, while the offence is against the society, it is the 
unfortunate victim who is the actual sufferer and therefore, it is imperative for the 
State and the prosecution to ensure that no stone is left unturned. \textit{It is also the 
equal, if not more, duty and responsibility of the court to be alive and alert in 
the course of trial of a criminal case and ensure that the evidence recorded in 
accordance with law reflect upon every bit of vital information placed before it}. 
It can also be said that in that process the court should be conscious of its 
responsibility and at times when the prosecution either deliberately or 
inadvertently omit to bring forth a notable piece of evidence or a conspicuous 
statement of any witness with a view to either support or prejudice the case of any
\end{quote} 

\textsuperscript{243}Id at ¶ 16. 
\textsuperscript{244}Id at ¶ 17. 
\textsuperscript{245}Id at ¶ 18.
party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. **Neither the prosecution nor the court should remain a silent spectator in such situations.**  

Supreme Court took note of the legislative position that a private person has a limited right to participation in criminal prosecutions as provided under Section 301 (2) but the court is empowered to take an appropriate measure regarding witness examination, if the need arises, as provided under Section 311. It can be said that if it was not permissible to invoke Section 301 (2), trial court could examine witness with the help of Section 311 and could set right the anomaly as shown by the application of victim.  

It observed as under,

> While under Section 301 (2) the right of a private person to participate in the criminal proceedings has got its own limitations, in the conduct of the proceedings, the ingredients of Section 311 empower the trial court in order to arrive at a just decision to resort to an appropriate measure befitting the situation in the matter of examination of witnesses.

Courts have wide powers to ensure fair trial and to ensure justice in the case. A combined reading of Section 165 of the Evidence Act and Section 311 of the Code of Criminal Procedure indicates wide powers of the courts to examine witness and in case justice necessitates then mandatory duty of the court to examine witness to arrive at the just conclusion.  

Discussing the provisions under Section 311 of CrPC and Section 165 of the Evidence Act, Supreme Court in the case of Zahira Habibulla H. Sheikh emphasized that the courts are not supposed to be a tape-recorder for witness testimonies. They are required to play an active participatory role. Section 311 of the Code of Criminal Procedure along with Section 165 of the Evidence Act gives wide powers to court to elicit the required material during the evidence collecting process, that is required to arrive at a just conclusion. If the role being played by the prosecuting agency is biased or not in a fair manner, then court should play an active role by taking control of the proceedings in the interest of justice. Supreme Court emphasized upon the role to be played by the courts as under,

> The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active

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246 *Id* at ¶ 19.  
247 *Id* at ¶ 21.  
248 *Id*.  
role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e., truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness. 251 (emphasis added)

In the case of Manu Sharma252, Supreme Court reiterated this position while emphasizing upon the active role to be played by the courts in ensuring justice as under, “It is also important to note the active role which is to be played by a court in a criminal trial. The court must ensure that the Prosecutor is doing his duties to the utmost level of efficiency and fair play.”253

Supreme court while setting aside the orders of trial court and high court, held that both the Public Prosecutor and trial court have failed in their duties. High court also failed in not handling the matter in a proper manner. Supreme Court discussed the role to be played by the criminal court and said that a criminal court should take care of public interest and should play an active participatory role while using its power as entrusted under the provisions of the Code of Criminal Procedure as well as under the provisions of Indian Evidence Act to recall any witness for examination. 254

To ensure fairness towards women victims, Proviso to Section 26 (a)255 of CrPC provides that the offence shall be tried by a woman judge as far as it is practicable in case the offence relates with Section 376, Section 376 A, Section 376 B, Section 376 C, Section 376 D or Section 376 E of the Indian Penal Code.

SPEEDY TRIAL:

 Victim is equally entitled for a fair trial and court should consider triangulation of interest in a criminal trial. It was observed by the Supreme Court in the case of Nar Singh v. State of

251 Id at ¶ 43.
253 Id at ¶ 188.
255 CODE CRIM. PROC. § 26 (a), Proviso, inserted by the Code of Criminal Procedure (Amendment) Act, 2008.
Haryana256 that, “While the right of the accused to speedy trial is a valuable one, the court has to sub-serve the interest of justice keeping in view the right of the victim’s family and society at large.”257

In Suo Moto v. State of Rajasthan258, Rajasthan High Court said that a speedy trial is equally beneficial for both accused and the victim of a crime. In the case of Sanjeev Nanda v. The State259, Delhi High Court emphasized that both victim and the accused are equally entitled for a speedy trial. It was observed by the Delhi High Court that, “It is the right of both, the accused and the victim that the trial should culminate as expeditiously as possible.”260

Section 309 (1) of the CrPC provides for the speedy trial proceedings and in case of any adjournment, makes it mandatory for the court to mention the reasons for such delay on record. As per the provision, every inquiry or trial shall be continued on a day to day basis till the completion of examination of all the witnesses present. In case, it is found necessary to postpone the proceedings beyond the next day, court shall record the reasons for the same.261

Before the amendment of 2013, continuation of the inquiry or trial proceedings on a day to day basis was to be maintained after the commencement of witness examination and not before that. Proviso to Section 309 (1) draws a specific time limit for completion of proceedings i.e, within two months (as far as possible), in case, the same relates with an offence under Section 376, Section 376 A, Section 376 B, Section 376 C, Section 376 D of the Indian Penal Code (45 of 1860) and this time period shall be counted from the date of filing of the charge-sheet.262

Section 309 (2) provides that after taking of cognizance, if necessary, court may adjourn or postpone the proceedings with recording of reasons for the same. This provision is subject to a proviso that mentions that if witnesses are in attendance, then the court shall not grant any such adjournment without examining the witnesses, except for the special reasons that are required to be specifically recorded263. This Section 309 (2) in another proviso (c) mentions that where witnesses are present but a party or his pleader are either not present or not willing

257Id at ¶ 33.
260Id at ¶ 110.
261CODE CRIM. PROC. § 309 (1).
262Id, Proviso.
263CODE CRIM. PROC. § 309 (2), Proviso.
to examine or cross-examine the witness, court may record the statements of the witnesses and order for dispensing with their examination-in-chief or cross-examination.

EVIDENCE OF PAST SEXUAL CHARACTER NOT RELEVANT:
To ensure that victim does not go through the trauma of a humiliating process of cross-examination, it has been provided that, no evidence given to show the character or past sexual history shall be considered as relevant to decide the question of consent or the quality of the consent of victim in any of the offences as provided under section 354, section 354 A, section 354 B, section 354 C, section 354 D, section 376, section 376 A, section 376 B, section 376 C, section 376 D or section 376 E of the Indian Penal Code or an attempt in relation to any of these offences.  

To ensure fair trial to the rape victim, Section 114 A of the Indian Evidence Act, 1872 provides that where the consent of the rape victim is in question in case of an offence under any clause of Section 376 (2) of Indian Penal Code, as specified in this Section, and where the woman claims to have not consented for the act, it shall be presumed that the act was committed without the consent of the victim.

To ensure fair deposition of those witnesses who are unable to communicate verbally, Section 119 of the Indian Evidence Act, 1872 provides for deposition of witnesses in any other intelligible manner. This Section provides that in such cases, court shall record the statement with the help of an interpreter or a special educator and such statement shall further be video graphed. Such evidence shall be taken as an oral evidence.

265 Indian Evidence Act 1872 § 114 A, as substituted by the Criminal Law (Amendment) Act, 2013.
266 Indian Evidence Act 1872 § 119, as substituted by the Criminal Law (Amendment) Act, 2013.
5.4.3.6.  RIGHT TO CORRECTABILITY:

Article 32\(^{267}\) of the Indian Constitution provides for directly approaching the highest court of justice, in case there is a violation of fundamental rights as provided under Part III of the Indian Constitution. This right is itself a fundamental right.

Under Article 226\(^{268}\), Victim can approach State High Courts too for issuance of necessary directions, orders or various writs if they find that there is a violation of their fundamental rights.

To ensure fundamental rights, Courts can exercise their power of judicial review. It was observed by the Supreme Court in the case of State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others\(^{269}\) that, “Being the protectors of civil liberties of the citizens, this court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.”\(^{270}\)

Courts can exercise these powers in the interest of justice and to enforce the fundamental rights but while exercising these powers courts should take due care as observed by the Supreme Court that,

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\(^{267}\) INDIA CONST. art. 32, “32. Remedies for enforcement of rights conferred by this Part-
(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
(2) The Supreme Court shall have power to issue directions or orders or writs, including the writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.
(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.”

\(^{268}\) INDIA CONST. art. 226, “226. Power of High Courts to issue certain writs.-
(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

\(^{269}\) State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others, (2010) 3 SCC 571.

\(^{270}\) Id at ¶ 69.
This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.271 (emphasis added)

Fairness of the process includes right to remedy or a right to access the courts in case of any grievance. Supreme Court in the case of Himanshu Singh Sabharwal v. State of M.P. and ors.272 observed that recourse to the courts of law is necessary for the effective protection of human rights and to cure any miscarriage of justice that might have happened in the process of ensuring fair trial. Court stated as under,

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted.”273 (emphasis added)

Punjab and Haryana High Court, in the case of Major Gurjinder Singh Benipal v. State of Punjab274, concluded that Courts have not only the powers but have an obligation to ensure justice to all concerned in a case. Primarily it is the State obligation to ensure rule of law, but in case of its failure in ensuring rule of law, this burden shifts upon the judiciary to ensure that justice is not sacrificed. Courts have a major role to play during administration of justice so that the general public does not lose trust in the justice delivery system. Court made its observation that,

Rule of law is supreme. Law has to prevail at any cost. The prime responsibility to see that rule of law prevails may be that of the State and the State machinery but the violation thereof, if ever noticed, when some bigwigs are involved where the State may be seen faulting in performance of its duties, the courts have to step in to ensure that the law prevails. An over-riding duty of the courts has always been to ensure administration of justice. This is to maintain public confidence of people at large in the rule of law and justice and to uphold the majesty of

271 Id at ¶ 70.
273 Id at ¶ 5.
law. When some complaint is made of any indifferent action or lethargy against the might of administration and where the State machinery fails to protect citizen’s lives, liberty and property or where investigation is conducted to help the highly placed accused persons, it would be but natural for the Courts to step in to prevent this undue miscarriage of justice. Doing justice is the paramount duty of the Courts and the same cannot be abrogated, diluted or diverted by permitting manipulative investigation to leave the accused off the hook by some crook methods. The Courts have then to ensure that the authority of the State is not misused in this manner to shield men of might. The Courts have to do so to maintain the trust of the society in the rule of law and majesty of law, otherwise justice delivery system would suffer a serious scar, rendering the Courts almost nugatory.275

Bombay High Court in the case of Sandeep Rammilan Shukla v. The State of Maharashtra through the Secretary, Home Department and Ors276 expressed its opinion that balancing of interest is the primary task assigned with the judiciary. While imparting justice in a case, court should consider triangulation of interest. Human rights of all are needed to be taken into consideration. It is not only the human rights of an accused that should be given due consideration. Effective and fair investigation and prosecution in criminal cases take into consideration interests of all concerned. Courts while exercising their powers of judicial review should ensure this fairness to all concerned.

It is expressed that to keep the weal balanced must be the prime duty of the judiciary. In interpreting and applying a penal statute, it has to be borne in mind that respect for human rights of the accused is not the only value at stake. The purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property. And it is in the interest of every one that serious crime should be effectively investigated and prosecuted. There must be fairness on all sides. In criminal cases, this requires the Court to consider triangulation of interest i.e. the accused, the victim - his or her family and the public. Besides all this, the paramount duty and the very foundation of criminal investigation and justice delivery system is fairness in the entire process and to ensure that there is no denial of justice to any of the stated parties. Importantly, it is the fairness during investigation or trial that achieve the ends of criminal justice. Particularly, the procedural law thus needs to be examined and interpreted with the object of ensuring fairness even in the process of investigation. Whatever be the standards of legal conscience but they ultimately should be founded on law.277

Recognizing Victims’ right to question about the correctness of investigation, Kerala High Court, in the case of George Muthoot v. State of Kerala278 observed that victim has a right to

277 Id at ¶ 3.
fair investigation as part of his constitutional right to fair trial and in this light, he is entitled to question the veracity of the investigation if there is a definite suspicion and not an imaginary one. If victim finds himself in such a situation, he can always approach the court for remedy. Recognizing victims’ right to get a remedy in case of unfair investigation, Kerala High Court in the case of George Muthoot v. State of Kerala directed for transfer of the investigation to CBI, stating in the following terms:

According to us, we feel that **to in order to assure the victims of heinous crime an assurance of fair, proper, impartial and complete investigation** and to restore faith, it is just and proper to direct the C.B.I. to conduct investigation particularly when gross allegations are made against jurisdictional investigating agency justifiable and as such interest of justice would be better served if C.B.I. investigates the case.

**APPEAL IN CASE OF PLEA BARGAINING:**

Section 265 G provides that any judgment delivered by the Court in case of plea bargaining shall be final and there shall be no appeal against any such judgment but special leave petition under Article 136 and writ petitions under Articles 226 and 227 of the Constitution may be filed.

**VICTIM’S SUBSTANTIVE RIGHT TO APPEAL UNDER CRIMINAL PROCEDURE CODE:**

Section 372 of the Code of Criminal Procedure, 1973 provides the general rule in relation to filing of appeal from the judgment or order of any criminal court. This rule says that no appeal shall lie except as provided for by the Code or by any other law. A proviso was inserted in this general rule by the Code of Criminal Procedure (Amendment) Act, 2008 that provided victim with a substantive right to appeal. Proviso to Section 372 can be considered as a complete code in itself, since it enriched the criminal jurisprudence of India.

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279 Id at ¶ 33.
281 Id at ¶ 59.
282 CODE CRIM. PROC. § 265 G.
283 CODE CRIM. PROC. § 372, “No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force”
284 Id § 372, Proviso, as inserted by the Code of Criminal Procedure (Amendment) Act, 2008, “Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”
by providing for victim’s right for the first time. This proviso provides that “though none can file an appeal except as provided for in that chapter, the victim had a right to appeal.” According to this proviso “the victim shall have the right to prefer an appeal.” Victim has this substantive right to file an appeal under three circumstances as follows:

i. In case of acquittal of an accused;
ii. In case of conviction only for a lesser offence;
iii. Imposition of an inadequate compensation.

Victim has been given this substantive right to appeal because of the failure of state in fulfilling its obligation towards victims. To provide a cure for the injustice done to victim, this right has been given to him. Objective behind providing victim with a substantive right to appeal can be studied under two points i.e.,

i. Basis of this right to appeal: State’s failure in its obligation:

Bombay High Court considered the aspect that why victim has been granted such a right to appeal and observed, that by such a proviso legislature has tried to right the wrong committed by the State either by not conducting a proper and effective investigation or by not conducting an effective prosecution. Court emphasized,

The effect of Heyden’s rule/ mischief rule in the criminal jurisprudence would not be more striking and poignant as in this amendment. It is the mischief that is done by the State in either not investigating the case properly or in not prosecuting the case efficiently that the right has been given to the victim and remains unparalleled, albeit yet only in appeal. It is a harbinger for other rights which would be expected to flow from this source for all citizens. (emphasis added)

ii. “Objective behind such legislation”:

This substantive right to appeal is the first opportunity for victim for seeking to right the wrong i.e., the miscarriage of justice done to him. Social scenario showed that victims were

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286 Id.
287 Id. at ¶ 65.
288 Id. at ¶ 67.
289 Id.
being re-victimized by the Criminal Justice System by denying them their basic human rights.\textsuperscript{290}

The rights of the Victim were, of course, jeopardized, curtailed, restricted, neglected or breached at all stages of the criminal machinery. Some damage and harm done may be fatal and may not be restorative or remediable e.g., if an important witness is not examined at all by the investigating officer and the victim, not being in charge of the investigation, is unable to assist or even help himself/herself. Similarly, at the trial stage an important witness may not be examined leaving an unfillable hole in the prosecution case which would directly affect the victim’s human rights. The harm and damage could also be done by an ineffective prosecution at the appeal stage.\textsuperscript{291}

This wrong was tried to correct by granting victim a substantive right to appeal to secure his basic human right to justice.\textsuperscript{292} In case of a victim (i.e., first informant in a police case and not the complainant in a private complaint), the court is duty bound to listen the victim. The court has not been given a right in this case to give leave to victim for filing an appeal, since it will result in denial of the only substantive right of victim in Indian Criminal Jurisprudence.\textsuperscript{293} Bombay High Court’s observation is quite relevant to be cited here;

\begin{quote}
The right of the victim to speak, therefore, corresponds with the obligation of the courts to listen and that listening is a must for the right to be free, full and unfettered; it cannot be shackled upon leave granted by the court, the hearing of which the court is obligated to listen. Requiring the victim to obtain leave would mean that it is trammelled by what the court deems fit to do. The court in the case of the victim has no right to use its discretion, sagacity or wisdom to decide whether or not a given victim may appeal a judgment of acquittal, lesser offence or inadequate compensation. The court would be duty bound to hear the appeal on merits and allow it or dismiss it on merits. \textit{To grant the court the right to give leave would be to denude the only right of the victim granted to him or her in Indian Criminal jurisprudence.} That could never be envisaged to be the intention of the legislature when the proviso was inserted as an exception/qualification/clarification to the head section of the chapter dealing with the appeals demonstrating in no uncertain terms that though all appeals would be guided by the Code, the victim shall have the right of appeal.\textsuperscript{294}
\end{quote}

Whether victim is also required to obtain a leave of the court before exercising his right to appeal, the Court, while interpreting the proviso in the light of victim justice, made it clear that any interpretation that read the ‘requirement of obtaining leave’ in the meaning of

\begin{itemize}
\item \textsuperscript{290}Id at ¶ 48.
\item \textsuperscript{291}Id.
\item \textsuperscript{292}Id.
\item \textsuperscript{293}Id at ¶ 52.
\item \textsuperscript{294}Id at ¶ 69.
\end{itemize}
‘proviso’ would result into denying the victim the justice due towards them. Bombay High Court expressed its opinion that a victim is conferred with this right to appeal irrespective of the consideration that in what manner a right to appeal is generally dealt with in the Code of Criminal Procedure, 1973. It is an unqualified right that is untrammelled by procedural requirements such as leave of the court. Emphasizing upon the importance of this proviso in the light of victim justice, court observed that,

The material aspect to consider is that a victim having had his/her human rights violated is entitled to a full and unfettered hearing without the permission of the judicial authority that is obligated to hear him/her but as a matter of right that is a writ large in the proviso “……the victim shall have the right to prefer an appeal……”, no matter that the provisions of the Code provided for any other restrictions.”

Court referred Hayden’s Rule as interpreted by Maxwell and emphasized upon the fourth rule that first it should be ascertained what is the reason behind providing a remedy, then judges should give such construction that are in the direction of advancing the remedy and suppressing the mischief. In this light, the Court observed as under, “The further interpretation would rest on the noble principle that the interpretation of any statute must be such as would advance justice and not frustrate it. That would take us further in the direction of doing justice, long overdue, to the victims of crime.”

But still there remains the question that If investigation is not proper, fair and scientific, the trial is destined to result in a failure and if best evidences are allowed to be destroyed during improper investigation, if important witnesses are not examined by the prosecutor then how can victim get the justice merely by the presence of a right to appeal?

Not only the direct victim of the crime but the ‘legal heir’ as well have the right to prefer an appeal. Regarding the right of legal heirs to prefer an appeal, it was observed by a full Bench of the Punjab & Haryana High Court in Tata Steel v. Atma Tube Products, that the object behind insertion of the proviso to section 372 CrPC was to give victim a restricted participation at one hand and to provide assistance to the court in arriving at a just conclusion.

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295 Id.
296 Id at ¶ 65.
297 Id at ¶ 66.
298 “After knowing the true reason of the remedy, office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy.”
300 Id at ¶ 69.
at the other hand. For this purpose, it is not required that legal heir with a preferential entitlement should file an appeal. Punjab and Haryana High Court found that, “Such an exercise……can be undertaken by the appellate court on presentation of appeal by any ‘legal heir’ irrespective of his proximity with the deceased under the personal law.”

Concurring with the view expressed by the the Bombay High Court, in the case of Balasaheb Rangnath Khade v. State of Maharashtra, it was observed by the full bench of Delhi High Court in the case of Ram Phal v. State that right to appeal given to victim under the proviso to section 372 CrPC is an independent statutory right that does not need the leave of the court.

Regarding the meaning that should be given to a proviso, Court emphasized that it should be interpreted taking into consideration the intention of the legislature. The Court made reference to the Supreme Court decided case of State of Kerala v. B. Six Holiday Resorts (P) Ltd., wherein it was held by the Supreme Court that,

32. A Proviso may either qualify or except certain provisions from the main provision; or it can change the very concept of the intention of the main provision by incorporating certain mandatory conditions to be fulfilled; or it can temporarily suspend the operation of the main provision. Ultimately the proviso has to be construed upon its terms.

In the light of this Supreme Court observation, Delhi High Court in the case of Ram Phal v. State held that proviso provided under Section 372 is not to be construed as an exception to that Section. It enacts a rule in itself and establishes an independent substantive right for victims of crime by dispensing with the requirement of leave as is required under the general rule for all appeals. Court made its observation as under,

In the present context, given the text of Section 372 and the scheme of the Act, it is clear that the proviso establishes an independent right, and must be interpreted within that framework……Given the rule enacted in Section 372, it cannot be said that the proviso to that provision carves out an exception to the rule. According to the rule in Section 372, appeals must be in accordance with the Code; according to the proviso-which is itself part of the code- victims have the right to appeal under certain circumstances……The proviso to Section 372 dispenses with the requirement of leave in case it is the victim who is appealing. From the scheme of the Act, therefore, it seems clear that the proviso

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302 Id.
is better understood to be one of the many provisions governing appeals under Chapter 29 of the Cr.P.C. while Section 372 enacts that no appeal shall lie except as provided for by the Code, it refers to the various provisions of Chapter 29, including the proviso, each of which prescribe the requirements and procedures for appeals under different circumstances. The **proviso, therefore, is not an exception to Section 372, but a stand-alone legal provision.**

In the case of Satya Pal Singh v. State of Madhya Pradesh\(^{309}\), it was found by the apex court that this full bench decision of Delhi High Court in Ram Phal v. State\(^{310}\), on which the reliance was placed, was not legally correct. In Satya Pal Singh v. State of Madhya Pradesh\(^{311}\), there was a question that whether the father of the deceased had a statutory right to prefer an appeal and that too without obtaining a leave of the court? It was emphasized by the Supreme Court that victim has a right to appeal but that right is to be determined after taking into consideration the main enactment of which this rule is a proviso. Referring back to the main enactment that is Section 372 of the CrPC, Supreme Court observed as under,

> Thus, from a reading of the above said legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the **proviso to Section 372 Cr.P.C. must be read along with its main enactment i.e Section 372 itself and together with sub-section (3) of Section 378 Cr.P.C. otherwise the substantive provision of Section 372 Cr.P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a criminal court except as provided by Cr.P.C.**

In the light of this observation apex court made it clear that the requirement of obtaining the leave of the High Court is a mandatory requirement before exercising victims’ right to prefer an appeal as provided under the Proviso of Section 372 of the Code of Criminal Procedure, 1973. Supreme Court in this case of Satya Pal Singh v. State of Madhya Pradesh\(^{313}\), setting aside the order of the High Court, held as under,

> “this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2 (wa) Cr.P.C., under the proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) of Section 378 Cr.P.C.”\(^ {314}\)

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308 *Id* at ¶ 20.
312 *Id* at ¶ 14.
314 *Id* at ¶ 15.
In Supreme Court decided another case of Roopendra Singh v. State of Tripura, appellant was tried for offences under Section 342, 376 (2) (b) and 506 of the IPC and was acquitted by the trial court on all the charges. Victim challenged this acquittal by filing an appeal under Section 372 of CrPC. This appeal was objected for being filed without obtaining leave of the court. Victim then, filed a petition under Section 482 of CrPC claiming that the appeal filed by the victim should be read with Section 378 CrPC. It was observed by the Guwahati High Court, Agartala Bench that victim has an unfettered right to file such appeal under Section 372 CrPC and no leave was required for filing of such appeal, therefore there is no need to convert the appeal filed under Section 372 CrPC in a appeal filed under Section 372 CrPC read with Section 378 CrPC. Gauhati High court made its observation that,

The proviso to Section 372 has created a right to appeal unfettered of any leave or sanction and it shall automatically lie to the forum where an appeal ordinarily lies against the order of conviction of such court if the said appeal against the judgment and order of acquittal is filed by the victim as defined in Section 2 (wa) of Cr.P.C…..for the reasons as stated above, this court is of the view that even though the right to appeal for the victim has been created by the proviso to Section 372 of Cr.P.C., the said proviso itself is a comprehensive provision, not fettered by any leave or sanction as required for the categories of appeals as depicted in Section 378 (1), 378 (2) and 378 (4) of Cr.P.C. No leave is required for the victim to file an appeal as against the order of acquittal under the proviso to Section 372 of Cr.P.C.

This decision of the Guwahati High Court was challenged before the Supreme Court. Supreme Court referred to its earlier decision in the case of Satya Pal Singh v. State of Madhya Pradesh. Though the learned amicus curie submitted for referring these matters to a larger bench for reconsideration and to remove the anomalies in the decision in the case of Satya Pal Singh v. State of Madhya Pradesh, the apex court, in the present case i.e., Roopendra Singh v. State of Tripura, taking into consideration the decision in Satya Pal Singh and taking into consideration the fact that the victim had preferred to treat the appeal filed under Section 372 as the one filed under Section 372 read with Section 378 Cr.P.C., granted leave and held that the appeal shall be considered on merits by the High Court.

316 Id at ¶ 2.
317 Id at ¶ 3.
318 Id.
320 Id.
In Roopendra Singh v. State of Tripura\textsuperscript{322}, wherein another criminal appeal nos. 691-692 of 2017 arising out of SLP (Crl) Nos. 8316-8317/2012 was also considered, it was held by the Supreme Court that High Court should not have rejected an appeal filed by the widow of the deceased on the ground that leave to appeal was not granted to the State. Victim has a substantive and independent right to appeal against an acquittal and a widow of a deceased comes under the category of victim thus is entitled for this right.\textsuperscript{323}

5.5. STATUTORY MEASURES OF INFORMATIONAL JUSTICE IN INDIA

Section 265 C recognizes victims’ right to notification in case of plea bargaining whether a case was instituted on police report or otherwise.\textsuperscript{324}

Section 154 (2) of the Code of Criminal Procedure, 1973 provides that, “A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.”\textsuperscript{325}

Section 154 (2) makes an informant entitle to receive a copy free of cost but not to the victim of the crime except where the informant and victim is the same person.

Section 157 (1) of the CrPC prescribes procedure for investigation. Clause (b) of its proviso says that in case of lack of sufficient grounds for initiating an investigation, officer-in-charge of a police station shall not investigate into the case but in such case, it is the duty of the police officer to notify the informant, in a prescribed manner, that “he will not investigate the case or cause it to be investigated.”\textsuperscript{326}

Section 170 of the Code of Criminal Procedure, 1973 prescribes procedure to send the case to the Magistrate, if officer-in-charge of police station finds that there is sufficient evidence. Section prescribes that concerned persons (complainant and the persons acquainted with the facts) are required to execute bond for their appearance before the magistrate. In such circumstance, if the Court of Chief Judicial Magistrate has been mentioned in the bond, then it shall be considered as including any other court, where the case is referred by such Court.

\textsuperscript{322}Id.
\textsuperscript{323}Id at ¶ 11.
\textsuperscript{324}CODE CRIM. PROC. § 265 C.
\textsuperscript{325}Id § 154 (2).
\textsuperscript{326}Id § 157 (2).
Section 170 (3) provides that in any such circumstance, it is required to notify to the complainant or concerned persons about such reference. According to the Section 170 (3), “If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.”327 (emphasis added)

Section 173 (2) provides for forwarding a report to the magistrate empowered to take cognizance after completion of investigation and to notify the informant about any action taken by the police in this regard. Section 173 (2) (ii) provides for a police officer’s duty to communicate to the informant about the action taken by him as under,

“The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.”328 (emphasis added)

This Section specifically mentions that an informant is entitled for being notified after completion of an investigation but does not mention “victim” as entitled to such notification. Victim cannot claim any such information until he is the same informant in the case.

In the case of Bhagwant Singh v. Commissioner of Police and Another329, it was held by Supreme Court that, magistrate must give a notice to the informant in any case he decides for not taking cognizance on the basis of police report. Informant should be afforded with an opportunity to present his concerns.330

It was recognized in the same case331 that victim though not entitled to ‘notice’, is still entitled to present his concerns. Magistrate is not bound to give such notice. It is his discretion to give such notice or not to give. In case he does not give any such notice, the order issued by him is not going to be treated as invalid.332 Supreme Court noted as under,

“The injured person or any relative of the deceased, though not entitled to notice from the magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the magistrate and if he wants to make his submissions in regard to the report, the magistrate is bound to hear him.”333 (emphasis added)

327 Id § 170 (3).
328 Id § 173 (2) (ii).
329 Bhagwant Singh v. Commissioner of police, (1985) 2 SCC 537.
330 Id at ¶ 4.
331 Bhagwant Singh v. Commissioner of police, (1985) 2 SCC 537.
332 Id at ¶ 5.
333 Id.
This present a strange scenario where victims’ right to present his concerns is being recognized without being given him a notice when such proceedings are under consideration. Strangely Supreme Court did not clarify what this “otherwise” source is? From where victim is expected to know that the report is going to be considered and he can exercise his “locus to appear” to present his concerns.

In another Supreme Court decided case of Gangadhar Janardan Mhatre v. State of Maharashtra and Others, notice to informant was recognized as a right of the informant. Though it was recognized by the court that the Code of Criminal procedure does not contain any provision in relation to filing of protest petition by the informant but this has been in practice. Court referred the case of Bhagwant Singh v. Commr. Of Police, wherein it was emphasized by the Court that informant must be intimated when a report submitted under Section 173 (2) is to be considered by the magistrate.

In Gangadhar Janardan Mhatre v. State of Maharashtra and Others, Supreme Court at one hand confirmed the position that an informant has, with regard to the notice to be given and on another hand, clarified that it is the right available only to the informant and not to the victim of a crime until he is the same informant.

Section 173 (7) of the CrPC provides that police officer may furnish the copies of all or any of the documents to the accused. It is submitted that there is a lack of any such provision with regard to the victim of a crime.

Section 173 (8) prescribes procedure for submission of a report after further investigation, if any. It provides that, if after completion of an investigation, police officer obtains any further evidence, during further investigation, he is required to forward a further report to the Magistrate in the prescribed form. In such cases, police are required to inform the informant about submission of such further report in a manner prescribed by the State government. According to the Section 173 (8),

whereupon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation

335Id at ¶ 6.
336Id.
337CODE CRIM. PROC. § 173 (7).
“Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).”
to such report or reports as they apply in relation to a report forwarded under sub-section (2).  

5.6. STATUTORY MEASURES OF INTERACTIONAL JUSTICE IN INDIA:

Section 41(1) of the Code of Criminal Procedure provides the circumstances when a police officer may arrest a person without an order from a magistrate and without a warrant and in every such circumstance where he makes an arrest, this sub-section (1) of Section 41 makes it mandatory for the police officer to record the reasons for the same. Proviso to this sub-section (1) of Section 41 provides as under, “Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.” (emphasis added)

This proviso is quite significant from victims’ point of view, since it will make him know as to what were the reasons for not arresting the accused of an offence, provided he is made aware of such reasons. Victim should be provided with these justifications for not arresting a person.

Victims’ need for interactional justice was recognized in the case of Delhi Domestic Working Women’s Forum v. Union of India and Others, wherein indicating towards broad parameters for providing assistance to rape victims, Supreme Court emphasized upon the need of legal representation in case of rape victims as follows;

It is important to have someone who is well-acquainted with the criminal justice system. The role of the victim’s advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant’s interests in the police station represent her till the end of the case. (emphasis added)

On the same lines, victims of violent crimes should also be provided with an equal treatment and be provided with legal representation.

338 Id § 173 (8).
340 Id at ¶ 15.
5.7. INSTITUTIONAL MEASURES OF VICTIM JUSTICE IN INDIA: ROLE OF AGENCIES OF CRIMINAL JUSTICE SYSTEM

Malimath Committee emphasizing upon the importance given to the right to protection of life and liberty and upon the corresponding obligations of State to take care of the same, made its observation that,

Protection of life and liberty have been given a pre- eminent position in our Constitution by enacting Article 21 as a fundamental right and imposing a duty on the State to protect life and personal liberty of every citizen. Any deprivation or breach of this valuable right is not permissible unless the procedure prescribed by law for that purpose is just, fair and reasonable. Has the State been able to keep up to this promise in a substantial measure? The ground reality, however, is that this precious fundamental right is turning out to be a mere pipe dream to many millions to whom justice is delayed, distorted or denied more than its delivery in accordance with the ideals enshrined in the Constitution. The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System. 341

In the case of Rohtash @ Pappu v. State of Haryana, Division Bench of Punjab & Haryana High Court reflected towards the handicaps present in the Indian Criminal Justice System that are adversely affecting victims’ right to justice as under,

Should the victims have to wait to get justice till such time that the handicaps in the system which result in large scale acquittals of guilty, are removed? It can be a long and seemingly endless wait. The need to address cry of victims of crime, for whom the Constitution in its Preamble holds out a guarantee for ‘justice’ is paramount. How can the tears of the victim be wiped off when the system itself is helpless to punish the guilty for want of collection of evidence or for want of creating an environment in which witnesses can fearless present the truth before the Court? 342

5.7.1. POSITIVE OBLIGATIONS OF STATE:

To maintain law and order and to provide protection to individual human rights, is the obligation of the State. Right to justice due towards victim should be ensured by the criminal justice system. Victims’ right to justice is denied when an offence is committed against him by the perpetrator of the crime and his right to justice is denied once again when the defender

341 MALIMATH COMMITTEE REPORT, supra note 2 at 10 ¶ 1.19.
of his right i.e., State does not come forward to ensure his right to justice. Bombay High Court made its observation as under, “Justice is given to him/ her upon upholding the rule of law. It is denied to him/ her upon any breach by the perpetrator of the violation or even by the defender of his rights- the State.”  

It was emphasized by the Supreme Court in the case of Prithipal Singh and Others v. State of Punjab and another that State has both positive and negative obligations as corresponding obligations to ensure the ‘right to life’. Under these obligations, state is required to take measures to protect the right to life and in case of violation of this right, take suitable measures to investigate the matter and punish the perpetrator. Supreme Court gave its observation as under,

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

National human rights commission after Godhra incident reflected upon the issues of positive obligations of State by making it clear that State has both negative and positive obligations. ‘Negative obligations’ of state responsibility makes it responsible for the violation caused by the State actors or its own agents and on the other hand ‘positive obligations’ of state responsibility makes it responsible not for the violation caused by the state actor but the violation caused by an act of a non-State actor in its individual capacity. It described the role of State as under,

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

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State has an obligation to provide protection to ‘right to life’ as provided under Article 21 of the Indian Constitution and as considered as a human right under the international human rights norms. This obligation cannot be performed only by providing of preventive and punitive measures. There is a further obligation to provide with such mechanism that such rights can be enforced. Malimath Committee emphasized that this is the obligation of the State to provide with such procedural laws that can effectively ensure protection to victims’ human rights. According to the observation of Malimath Committee,

> Substantive penal laws are enacted prescribing punishment for the invasion of the rights. **When there is an invasion of these rights of the citizens it becomes the duty of the State to apprehend the person guilty for such invasion, subject him to fair trial and if found guilty to punish him. Substantive penal laws can be effective only when the procedural laws for enforcing them are efficient.** This in essence is the function of the Criminal Justice System.\(^{346}\)

Providing substantive and procedural laws are not sufficient to ensure protection to victims’ human right to justice until and unless there is a proper implementation mechanism for implementation of these laws. Reflecting upon the need of proper implementation of such laws, it was observed by Justice Y. Bhaskar Rao that, “**The implementation of the same stricto sensu protecting the rights of the accused as well as the victims is the essence of the justice system in the democratic countries governed by the Constitution.**”\(^{347}\)

Human rights cannot be ensured by only providing with a normative framework until and unless it is supported by institutional measures for their proper implementation. For ensuring human rights of victims of crime it is required that the gap that exist between the sensitivity towards human rights and practical measures that are required to bring them in existence is filled. It has very rightly been observed that,

> While human rights awareness and sensitivity has grown by leaps and bounds over the last few decades, their actual application and realization at the ground level has been rather modest. The gap between growing awareness and sensitivity vis-à-vis practical application has therefore been recognized as the central obstacle in the substantive realization of human rights…..**A very important link in this process is equipping the grass-root level judiciary.**\(^{348}\)

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\(^{346}\)MALIMATH COMMITTEE REPORT, *supra* note 2 at 23 ¶ 2.1.

\(^{347}\)Y. Bhaskar Rao member, NATIONAL HUMAN RIGHTS COMMISSION, preface to the first edn. of HUMAN RIGHTS BEST PRACTICES RELATING TO CRIMINAL JUSTICE IN A NUTSHELL at v (NHRC, New Delhi, 2007).

\(^{348}\)Justice J. S. Verma, former Chairperson, National Human Rights Commission, as cited by Prof. B. B. Pandey, in Prefatory Note at p. ix, HUMAN RIGHTS BEST PRACTICES RELATING TO CRIMINAL JUSTICE IN A NUTSHELL, NATIONAL HUMAN RIGHTS COMMISSION (first edition, New Delhi, 2007).
In the context of victims’ right to get compensation, it was recognized by the Orissa High Court in the case of Abdul Rashid v. State of Odisha & Others,\(^{349}\) that in present Criminal Justice System there are wide loopholes sufficient enough to deny justice to the victims of crime.

Question for consideration is whether the responsibility of the State ends merely by registering a case, conducting investigation and initiating prosecution and whether apart from taking these steps, the State has further responsibility to the victim….When the State fails to identify the accused or fails to collect and present acceptable evidence to punish the guilty, the duty to give compensation remains. Victim of a crime or his kith and kin have legitimate expectation that the State will punish the guilty and compensate the victim. **There are systemic or other failures responsible for crime remaining unpunished which need to be addressed by improvement in quality and integrity of those who deal with investigation and prosecution,** apart from improvement of infrastructure but punishment of guilty is not the only step in providing justice to victim.\(^{350}\) (emphasis added)

State is obliged to ensure equal access to justice to all victims to which they are entitled to under Article 14 of the Indian Constitution. Victim is to be considered as a part of the criminal justice system in the same manner as an accused in the case is considered. Failure on part of State to ensure victims’ effective access to justice amounts to violation of ‘equality protection clause’ as is provided under the Constitution. It was observed by the Calcutta High Court in Mosaref Hossain Mondal vs. The State of West Bengal & Ors,\(^{351}\) that,

A victim is as much a part of the criminal justice system as the accused is. **It is the bounden duty of the State to ensure a free and effective access to justice to all victims of crime,** more particularly, victims of sexual assault. Failure to do so, infracts the "equality protection clause" enshrined in Article 14 of the Constitution of India which provides for "equal protection of law" to all the citizens of India. Bearing in mind socio-psychological impact of sexual offences on victims, the prosecuting agency must be alive and sensitive to its duty to ensure all forms of support and/or protection to such victims so that their access to justice is not impaired by the hostile acts of the accused or the insensitivity which is endemic in our male dominated society.\(^{352}\)

In Mosaref Hossain Mondal vs. The state of west bengal & ors, Calcutta High Court emphasized upon state obligation to provide protection to victim-witnesses from threats and intimidation by the offender as follows,

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\(^{350}\) *Id at ¶ 6.


\(^{352}\) *Id.*
The efficacy of criminal justice administration depends on the security and safety of the witness. It is the bounden duty of the State to create a congenial atmosphere so that confidence is instilled in the minds of the witnesses so as to enable them to depose truthfully in a Court of law without any fear or favour. Supreme Court in the case of Zahira Habibulla H. Sheikh & Ors. v. State of Gujarat & Ors. emphasized upon the role of the State to provide protection to victim-witness in a case, so that they can come forward for truthful deposition. It was observed by the apex court that,

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

Supreme Court in the case of Vikas Kumar Roorkewal v. State of Uttarakhand and Others, at one side transferred the case from ADJ Haridwar to a court of competent jurisdiction at Delhi, and on the other side directed all agencies of criminal justice system to provide protection to witnesses to ensure intimidation free and fair trial. Supreme Court held in the case that,

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

State is responsible to maintain law and order in society and to take measures to suppress and prevent crime and in case a crime occurs, it is further obliged to take such measures as are required to identify and punish the perpetrator of the crime. In J.A.C.Saldanha and others case, Supreme Court emphasized upon State’s role to fairly investigate the matter so as to collect the evidence that establishes the guilt of the offender.

The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been

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353 Id.
356 Id at ¶ 18.
357 State of Bihar and Another v. J.A.C.Saldanha and others, 1980 (1) SCC 554.
committed it is its duty to collect evidence for the purpose of proving the
offence.\textsuperscript{358} (emphasis added)

It was observed by the Constitution Bench of the Supreme Court in the case of State of West Bengal and others v. The Committee for Protection of Democratic Rights, West Bengal and others, that fair and impartial investigation is a must for enforcement of human rights. According to Supreme Court, “The State has a duty to enforce human rights of a citizen by providing fair and impartial investigation against any person accused of commission of a cognizable offence which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.”\textsuperscript{359}

State agency is required to perform its duties in a fair and impartial manner so that victims’ right to justice is neither delayed nor denied. In the case of State of Gujarat v. Kishanbhai and others\textsuperscript{360}, wherein the offender could not be punished due to the faulty investigation, Honourable Justice Jagdish Singh Khehar of Supreme Court observed as under,

The investigating officials and the prosecutors involved in presenting this case, have miserably failed in discharging their duties. They have been instrumental in denying to serve the cause of justice. The misery of the family of the victim Gomi has remained unredressed. The perpetrators of a horrendous crime, involving extremely ruthless and savage treatment to the victim, have remained unpunished. A heartless and merciless criminal, who has committed an extremely heinous crime, has gone scot-free.\textsuperscript{361}

In this case, apex court criticised the way in which the investigation and prosecution of this case was carried out by the concerned agencies. Court expressed clearly that it is because of the failure of state agencies that justice to a poor victim or to his family could not be served. Supreme Court expressed displeasure of not being able to serve justice to the poor victim of the crime due to the faulty investigation as under, “\textit{Despite thereof, we feel crestfallen, heartbroken and sorrowful. We could not serve the cause of justice, to an innocent child. We could not even serve the cause of justice, to her immediate family.”}\textsuperscript{362}

5.7.2. MALIMATH COMMITTEE REPORT ON VICTIMS OF CRIME:

\textsuperscript{358}Id at ¶ 25.
\textsuperscript{359}State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others, (2010) 3 SCC 571 at ¶ 68 (ii).
\textsuperscript{361}Id at ¶ 17.
\textsuperscript{362}Id at ¶ 18.
Malimath Committee Report recommended for victim participation during investigation as, “Active participation of the victim during investigation would be helpful in discovering the truth.”

Victim should be conferred with active participatory role during the investigation of a case such as to assist the investigation in finding out the offender or in collecting the evidence or offering suggestions for proper investigation or to move the court for appropriate directions in case the investigation is not proper.

Law does not recognise the interests that a victim may have in granting and cancellation of bail. Victim may move for cancellation of bail subject to the stand taken by the prosecution. Prosecution can withdraw from the case without consulting the matter with the victim.

Recognizing that the object of criminal justice system is to ensure victim justice, it was felt by the Committee that the Criminal Justice System must pay special attention to the victims of crime and they be given an opportunity to participate in the proceedings. Victim should be provided with a right to get represented by an advocate of his choice, and in case of his inability to pay the cost, state should pay the cost. Victim should be given aright to be heard in cancellation or grant of bail and a right to be heard if prosecution is willing to withdraw from the case and an opportunity in such case to continue with the prosecution and right to advance arguments.

Victim should also be provided with a right to representation. In Indian Criminal Justice System, victim has no role to play except that of a witness though he is the person most interested in the vindication of justice and most interested in assisting the prosecution. Committee recommended that victim should be given a party status within criminal justice process with participatory role such as to assist the court, to put questions or to suggest questions that can be put by the court to the witnesses or to indicate towards the availability of any other valuable evidence. It recommended for the following:

i. Victim and in case of his death, his legal representative shall be given right to be impleaded as a party,

364 MALIMATH COMMITTEE REPORT, supra note 2 at 35 ¶ 2.20.3.
365 Id at 79 ¶ 6.7.9.
366 Id at 270, Recommendation 6.
367 Id at 77 ¶ 6.6.
368 Id at 35 ¶ 2.20.2.
369 Id at 270, Recommendation 6.
ii. Victim should be given a right to participation that should further include the following
   a. production of evidence with leave of the court,
   b. to ask questions to the witnesses or to suggest such questions that court may ask from witnesses,
   c. right to move the court in relation to investigation,

Malimath Committee recommended that Victim should be provided protection from secondary victimization. Victim should be given a right to appeal against any order of the trial court.

SEPARATE SCHEDULES FOR VICTIMS IN THE CODE AND THE OFFICE OF VICTIM-OFFICER:

Victim as a sufferer of crime and victim as a witness to the incidence of crime may have different roles and responsibilities in the criminal justice system. It was specifically recommended by the Malimath Committee that separate schedules should be enacted so as to specify what rights and duties victim has under the criminal justice system.

   Rights and duties of the complainant/informant, the victim, the accused, the witnesses and the authorities to whom they can approach with their grievances should be incorporated in separate Schedules to the Code. They should be translated in the respective regional languages and made available free of cost to the citizens in the form of easily understandable pamphlets.

Taking into consideration the pathetic condition of crime victims, it was observed by the Malimath Committee that,

“There is need for an officer equivalent to Probation Officer to take care of victim interests in investigation and trial. He may be called Victim Support Service Co-ordinator who may work closely with the police and Courts to monitor, co-ordinate and ensure delivery of justice during the pendency of the case.”

5.7.3. MALIMATH COMMITTEE REPORT ON CRIMINAL JUSTICE SYSTEM:

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370 Id.
371 MALIMATH COMMITTEE REPORT, supra note 2 at 37 ¶ 2.21 and at 76 ¶ 6.5 and at 270, Recommendation 6.
372 Id at 277, Recommendation 17 (50).
373 Id at 80, ¶ 6.7.12.
Committee recommended for a strong victim orientation and further emphasized upon fixing accountability for all stakeholders in the criminal justice process.\(^{374}\) Training of criminal justice professionals should include a component on victims.\(^{375}\) Malimath committee also expressed the view that functioning of the criminal justice system is in need of paying attention to make the system much more effective. As observed by the Committee that, “There is an urgent necessity in the light of our recommendations to have a detailed look at the way our criminal justice institutions have been functioning.”\(^{376}\)

Committee recommended for appointing a ‘Presidential Commission’ to review the functioning of the Criminal Justice System.\(^{377}\) Referring the present state of criminal justice system, Committee observed that, “The system devised more than a century back, has become ineffective; a large number of guilty go unpunished in a large number of cases; the system takes years to bring the guilty to justice; and has ceased to deter criminals.”\(^{378}\)

It was felt by the Committee that certain features of Inquisitorial system, if adopted along with the present adversarial system, then the system may be made much more effective. These features include providing judges with a duty to search for truth, a pro-active role so as to direct the investigating officers and prosecuting officers with regard to investigation and evidence in the case so that truth can be ascertained and especially focussing upon victim justice.\(^{379}\) To bring effectiveness and to remove chances of any external influence on investigation, Malimath Committee recommended that Investigation wing be separated from law and order wing.\(^{380}\) For ensuring fairness and efficiency in investigation, it was recommended by Law Commission of India in its 154\(^{th}\) report that investigating agency be separated from law and order police. The Committee on Police Reforms also recommended for separation of Investigation wing from law and order wing to bring a greater professionalism and specialisation in the investigation.\(^{381}\)

Committee formed the view that investigation should be guided by a supervisory officer. Regarding the role, a Supervisory officer can play during the investigation of an offence, it

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\(^{374}\) Id at 254 ¶ 22.6.
\(^{375}\) Id at 256 ¶ 22.13.
\(^{376}\) Id at 261 ¶ 23.4.
\(^{377}\) Id at 261 ¶ 23.5.
\(^{378}\) Id at 265, Recommendation 1.
\(^{379}\) Id at 265, Recommendation 2.
\(^{380}\) Id at 265, Recommendations 7.
\(^{381}\) Id at 93 ¶ 7.9.4. & 7.9.5.
was observed that, he should ensure fair and effective investigation and should ensure that witnesses are not kept waiting for long hours and they should be disposed of as early as possible.\footnote{Id at 99 ¶ 7.14.5.}

Committee also suggested for setting up of adequate training centres for imparting training to investigating officers with regard to protection of crime scene, collection of best clinching evidence, art of interrogation as well as development of criminal intelligence.\footnote{Id at 101 ¶ 7.15.2.} Committee emphasized upon enactment of a new Police Act in the light of new role assigned to the police as follows, “the police now have an obligation and duty to function according to the requirements of the Constitution, law and democratic aspirations of the people.”\footnote{Id at 120 ¶ 7.31.2.}

5.7.4. ROLE OF POLICE:

Regarding the role of the police, Code of Conduct for Police in India, specifically emphasizes that police, while performing its duties, should take care of fundamental rights guaranteed by the Constitution of India. Police has a duty not only to prevent crime but if it happens, investigate the matter fairly to bring out the real truth and to provide protection from intimidation and retaliation by the offender. Performance of police duties should reflect respect for constitutional ideals.\footnote{CODE OF CONDUCT FOR THE POLICE IN INDIA, issued by the MINISTRY OF HOME AFFAIRS and communicated to the Chief Secretaries of all the States/ Union Territories and Heads of Central Police Organization on July 4, 1985, http://police.pondicherry.gov.in/MHA%20-%20Model%20Code%20of%20Conduct%20-%20Indian%20Police.pdf}

Recently, recognizing victims’ interest in the criminal justice process, a circular was issued by Kerala Police State Chief Loknath Behera to strengthen and widening victims’ role. This circular was issued in pursuance of the observation of Justice Devan Ramchandran of Kerala High Court in the case of TE Thomas v. State of Kerala & Others, wherein the court observed that victims of crime should not be treated as an outsider in the criminal justice process but should be provided with an equal treatment considering them as an equal stakeholder in the process of criminal justice.\footnote{Kerala Set To Strengthen Role Of Victims In Criminal Jurisprudence System, http://www.livelaw.in/kerala-set-strengthen-role-victims-criminal-jurisprudence-system-read-circular-judgment/} Observations made by the court reflect the changing role of victims in the criminal justice process. Court observed that,
Our system often views victims as outsiders in the criminal proceedings. However, it is ineluctable that victims are, world over, being now considered as equal stakeholders in the criminal justice system. I believe they are owed a right to exercise an effective voice in the decision-making processes like investigation, prosecution, reparation, etc. The victims are generally placed in a subservient position by the collective interests of the society in prosecuting the crime. However, time has now come to give them sufficient latitude in determining how their concerns are identified and how they will be taken into account. In this process, the victims’ needs, concerns, fear and apprehension need to be acknowledged and accommodated. The victims deserve to be treated with respect by the investigatory and prosecuting services and to help them in their recovery process to be kept informed about the progress of all these proceedings.\(^{387}\)

In the light of these observation, the circular emphasized upon interactional justice to be provided to the victims by directing for continuous interaction between the victims and the investigating authority, and further emphasized upon strengthening the role of victim liaison officer with a proper supervision upon his functioning. Circular provides for periodical review of such interactional process till charge-sheet is filed and even after filing of the charge-sheet and during prosecution of the case if it is possible.\(^{388}\)

5.7.5. ROLE OF PUBLIC PROSECUTORS:

Regarding the status of “Public Prosecutor”, it was observed by the Karnataka High Court in the case of K. V. Shiva Reddy that as per the definitions given under section 2 (u) and 24 of the Code, Public Prosecutor includes public prosecutor, additional public prosecutor, special public prosecutor and a private pleader under section 301 (2) of the Code as well. Public prosecutor is a public servant with statutory appointment and a special recognition specially in the light of the Sections 199 (2), 225, 301 (1), 301 (2), 302, 308, 321, 377 and 386 of the Code of Criminal Procedure, 1973. Being a part of the judicial system, a public prosecutor must act independently and in the interest of justice.\(^{389}\) In the case of K. V. Shiva Reddy v. State of Karnataka, Karnataka High Court observed that,“The Prosecutor is bound by law and professional ethics and by his role as an officer of Court to employ only fair means. Public

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Prosecutor must remind himself constantly of his enviable position of trust and responsibility.”

Public prosecutors are supposed to work in a fair manner without any attachment towards anyone. He is not to represent the State or to do what has been directed by the State. He has the duty to be fair, independent and unbiased. In the case of K. V. Shiva Reddy v. State of Karnataka, following observations were made by the Karnataka High Court regarding the role of a public prosecutor,

Public Prosecutors were expected to act in a “scrupulously fair manner” and present the case “with detachment and without anxiety to secure a conviction” and that the Courts trying the case “must not permit the Public Prosecutor to surrender his functions completely in favour of a Private Counsel.” Public Prosecutor for the State was not such a mouth piece for his client the State, to say what it wants or its tool to do what the State directs. “He owes allegiance to higher cause”. He must not consciously “misstate the facts”, nor “knowingly conceal the truth”. Despite his undoubted duty to his client, the State, “he must sometimes disregard his client’s most specific instructions if they conflicted with the duty in the Court “to be fair, independent and unbiased in his views.

In Sanjeev Nanda v. The State, wherein neither in the FIR nor in the challan filed by the police, there was any mention that how the accused were found involved in the alleged offence under Section 201/34 of IPC, Delhi High Court reflected upon the connivance of the investigating agency, prosecution with the defense at the cost of justice to victims in the following words,

Whenever and wherever, either due to money power or political power, the police or the prosecution bend its knees so as to help out the accused of the crime, the task of the courts becomes onerous to ascertain and unravel the truth. In all such cases, the prosecution creates enough loopholes at the stage of investigation itself, and in most of the cases such investigations are more guided by the defense through their legal experts at the cost of sufferings of the victims of the crime and the societal interest.

In R. K. Anand v. Registrar, Delhi High Court, Supreme Court criticized the role played by a public prosecutor in a sensational hit and run case. Court referred that such a role goes beyond the prescribed limits of proper professional conduct. Supreme court in this case endorsed the findings of the High Court that the role played by the public

390 Id.
392 Id at ¶ 17.
394 Id at ¶ 320.
prosecutor I.U.Khan was “inappropriate for a lawyer in general and a prosecutor in particular.”

In the case of Abdul Karim and others v. State of Karnataka, regarding the duty of public prosecutor as well as regarding the duty of court, it was observed by the Supreme Court that,

The law, therefore, is that though the Government may have ordered, directed or asked a public prosecutor to withdraw from a prosecution, it is for the Public Prosecutor to apply his mind to all the relevant material and, in good faith, to be satisfied thereon that the public interest will be served by his withdrawal from the prosecution. In turn, the court has to be satisfied, after considering all that material, that the Public Prosecutor has applied his mind independently thereto, that the Public Prosecutor, acting in good faith, is of the opinion that his withdrawal from the prosecution is in the public interest, and that such withdrawal will not stifle or thwart the process of law or cause manifest injustice.

5.7.6. ROLE OF JUDGES:

Courts have the role to ensure fair trial and to protect the trial from external interferences so that justice is not denied to anyone. Instead of playing an active role, even High Courts play a passive role. They continue to carry on their routine work without looking into the aspects of an investigation being botched up or trial hijacked by external influence or witnesses threatened so that they do not come forward to depose truthfully. In R. K. Anand v. Registrar, Delhi High Court, Supreme Court made the observation that,

We must add here that this indifferent and passive attitude is not confined to the BMW trial or to the Delhi High Court alone. It is shared in greater or lesser degrees by many other high courts. From experience in Bihar, the author of these lines can say that every now and then one would come across reports of investigation deliberately botched up or of the trial being hijacked by some powerful and influential accused, either by buying over or intimidating witnesses or by creating insurmountable impediments for the trial court and not allowing the trial to proceed. But unfortunately, the reports would seldom, if ever, be taken note of by the collective consciousness of the Court. The High Court would continue to carry on its business as if everything under it was proceeding normally and smoothly. The trial would fail because it was not protected from external interferences.

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396 Id at ¶ 196.
398 Id at ¶ 19.
400 Id at ¶ 339.
Due to such external interference, victim is denied the justice and such trial adversely affects the criminal justice system itself and people losses their trust in the justice delivery system. Supreme Court observed in the above case\textsuperscript{401} that,

\begin{quote}
Every trial that fails due to external interference is a tragedy for the victim(s) of the crime. More importantly, every frustrated trial defies and mocks the society based on the rule of law. Every subverted trial leaves a scar on the criminal justice system. Repeated scars make the system unrecognizable and it then loses the trust and confidence of the people.\textsuperscript{402}
\end{quote}

Reflecting upon the pro-active role that a high court can play to ensure justice in the case, Supreme Court stated that now the time has come when courts should play a pro-active role in the interest of justice. High Courts have been vested with wide powers under Article 227 of the Constitution of India that provides for superintendence over the subordinate courts. It can be added with another dimension of monitoring and protecting the criminal trials. Another Article 235 of the Indian Constitution that deals with the control of high courts upon subordinate courts should be added with another dimension of positive nature that is to protect them from external interference and not limited with the matters in relation to posting, transfer and promotion only. High court registry should conduct an enquiry into the aspects of fairness of proceedings in a case that would send a message that the proceedings are being watched by the High Court. This would result in insulating the trial from external interference and from going the case astray. During investigation, the High Court may ask for status report and progress in the case. This may stimulate the concerned agency to ensure fair investigation. During trial, High Court may assign the trial to a particular court with integrity or may change the venue of trial to eliminate the chances of external influence, can provide directions for protective measures to be applied and even give directions to conclude the case within a prescribed time-limit.\textsuperscript{403}

Criticising the present role of judges under the adversarial criminal justice system, Malimath Committee observed that under the present system, a judge does not have any positive duty to find out the factual truth. He plays only a passive role. Commenting upon his role, committee stated that, \textit{“as the adversarial system does not impose a positive duty on the judge to discover

\textsuperscript{401}R. K. Anand v. Registrar, Delhi High Court (2009) 8 SCC 106. \\
\textsuperscript{402}Id at ¶ 340. \\
\textsuperscript{403}Id at ¶ 341, 342 and 343.}
truth he plays a passive role. The system is heavily loaded in favour of the accused and is insensitive to the victims’ plight and rights.”

Committee indicated towards a lack of any provision in the Code of Criminal Procedure that imposes an obligation upon the judge to play an active role to find out the truth. Resultantly courts do not search for the truth. Malimath Committee cited the case of Mohanlal v. Union of India, wherein prosecution failed in bringing out the best evidence before the court, it was observed by the Supreme Court that,

In such a situation a question that arises for consideration is whether the presiding officer of a court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties to take an active role in the proceedings in finding the truth and administering justice? It is a well-accepted and settled principle that a court must discharge its statutory functions- whether discretionary or obligatory- according to law in dispensing justice because it is the duty of a court not only to do justice but also to ensure that justice is being done.

Referring what should be the duty of a court of justice, Malimath Committee emphasized that court should have a duty to search for the truth. Committee suggested for incorporation of a preamble in the code that provide for an inspiring ideal that is ‘quest for truth’ supported with a specific provision in the code providing for a fundamental duty of the judges to seek for the truth. Committee observed that Section 482 of the Code that confer wide residuary power to do justice is limited only with the High Court whereas in civil matters, all court are competent to exercise inherent powers. It suggested that in exercise of their duty to search for the truth, all criminal courts be conferred with such powers that make them competent to exercise this residuary power to prevent abuse of process of law or to secure the ends of justice.

Law commission in its 14th report also favoured for conferment of such inherent powers but only on the sessions courts.

Malimath Committee gave its opinion that in case of loopholes in investigation or inadequacy of evidence or non-examination by prosecution, rather than acquitting the accused, court

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404 MALIMATH COMMITTEE REPORT at 23-24, ¶ 2.2.
405 Id at 29 ¶ 2.16.8.
406 Id at 29 ¶ 2.16.7.
407 Id at 30 ¶ 2.16.10.
408 Id at 30 ¶ 2.17.1.
409 Id at 31 ¶ 2.17.2.
should take measures to remove the anomalies or the deficiencies and for this purpose, court should be imposed with a statutory obligation.\textsuperscript{410}

5.8. CONCLUSION:

It emerges from the analysis of the Constitutional and statutory provisions and also from the evolving jurisprudence of the superior courts in India that Courts are proactively recognising the justice needs of the victims of crime and are also sensitive towards the secondary victimization of the victim but this effort is not uniform and does not reflect any consistency in the interpretation of the procedural laws in favour of the victims. In the absence of any legislation recognising and providing for the rights of the victims and enumerating corresponding duties on the functionaries of the criminal justice system, it is almost impossible for the victims to have their justice needs fulfilled.

\footnotesize{\textsuperscript{410} Id at 34 ¶ 2.19.3.}