CHAPTER-6
CONCLUSION AND SUGGESTIONS

Victim of crime suffers the secondary victimization when he goes through the insensitive and unsympathetic process of criminal justice. Victim needs redress for the harm undergone by him due to the act of victimization. When a victim of crime resorts to the machinery of criminal justice system, he comes to know the reality that he is only a witness to the incidence and no more than that. The system tries to satisfy his justice needs by providing him monetary relief by way of compensation without looking into the aspect of victim perception of justice and his other justice needs. Victims’ justice needs are generally overlooked on the basis of pre-conceived notion that victim is getting proper representation through the State machinery that is taking good care of victims’ concerns or victims’ needs. During the process of criminal justice, victims’ interests are considered as subservient to the interests of State. Another notion that displaces the attention that should be paid towards victims’ concerns is that it is the accused who faces the State might and his rights need protection from being interfered by the State or its agency and not the victim. This research work tries to find out the real meaning of victim justice as perceived by the victims and to what extent criminal justice system is paying due consideration towards victims’ justice needs.

6.1. RESEARCH QUESTIONS:

For this purpose, following research questions were formulated:

1. What are victim’s justice needs that results in victim’s satisfaction from Criminal Justice System and thereby minimize secondary victimization?
2. Whether human right laws in international and regional framework recognize such justice needs as victim’s human rights?
3. To what extent these victim’s justice needs are integrated into normative structure of other jurisdictions?
4. How these victim’s rights have been institutionalised and operationalised through offices of normatively positioned stakeholders/ functionaries of justice?
5. Whether the present normative and institutional measures in Indian criminal justice system provide mechanism to better address victim justice issues?
6.2. IDENTIFICATION OF INDICATORS OF VICTIM JUSTICE:

It emerged from the earlier research work on victim’s perception of justice that secondary victimization obstructs the healing process of effects of primary victimization. Secondary victimization exacerbates victims’ sufferings. Such experiences with the system results into non-reporting of the crime and victims avoid coming into contact with the authorities within criminal justice system. A considerate treatment by the agencies of the criminal justice system helps victims in coming out of the trauma of primary victimization. Victimological studies indicate that victims want recognition in the criminal justice process. Victim wants that he should be given a chance to present his views and concerns. This participation should not be limited to any particular stage but should run throughout the criminal justice process. Earlier studies in the area showed that when given an option to choose between consultation and decision-making power, victim preferred effective consultation and not the say in decision making. He expects that he would be afforded an easy access to the justice delivery system and wants proper safety measures to be applied to ensure protection from intimidation and threats by the offender. Victims’ perception of justice demands fair treatment during various stages of the criminal justice process and that includes a fair investigation, fair prosecution and a fair trial.

In case of any complaint, there should be some system in place to ensure correctability. There should be consistency among treatments of all types of victims. Consistency during treatment makes the outcome acceptable. Victims want timely notification pertaining to the developments in their case. Prior research works also indicate that timely given information and notification creates a sense of fair treatment. Moreover, victim needs justification for why a particular process was adopted in his case and for what reasons a particular decision was arrived at. Various justice models emphasize upon the same criteria by making it clear that victim needs procedural justice. Victim prefers process control and not decision control. They want that they should be given proper information as well as a chance to give their inputs. Fairness of the process makes the outcome appear as fair to them. For systematic conceptualization of procedural preferences of victims during the complex criminal justice process, various theoretical models established that victims are rather concerned with procedural, informational and interactional fairness. On the basis of this study, it was found that justice perceptions of victims get satisfied if they are provided with meaningful
participation in the process, a fair process, consistency of treatment, information and notification as well as are provided with justifications for the procedures adopted and explanations for the outcome arrived.

6.3. INTERNATIONAL RECOGNITION OF VICTIM’S JUSTICE NEEDS AS HUMAN RIGHTS:

Human rights are needed for survival of any human being in a dignified way. These rights are available for all human beings based upon the criteria of a persons’ being a human being. Victim like all other individuals is a human being and therefore is equally entitled for protection of his human rights. Various international and regional human rights instruments recognize victims’ justice needs as their human right to justice. United Nations Declaration of 1985 recognizes four rights as human rights for victims of crimes. The first one among these rights is the right to access to justice and fair treatment.

There emerges a movement in the human rights domain with respect to victims’ rights in the sense that the traditional negative approach of the human rights wherein the state and its agents were under duty not to interfere or encroach upon the human rights of individuals has given way to recent ‘positive approach’ of human rights that recognize ‘positive obligations’ of State whereby State should come forward to ensure protection to individual human rights even though such violation is caused by a non-state actor. State is further required to take effective procedural measures to bring the perpetrator of the crime to justice. Procedural means are required to ensure protection to substantive human rights.

Human Rights conventions are being interpreted by the human rights treaty monitoring bodies that increasingly reflect upon the positive obligations of State to conduct an effective investigation as well as effective prosecution. ECtHR and has found in a number of cases that under the European Convention on Human Rights, it is the obligation of the State to provide victim with right to participation, right to access to justice, right to protection, a fair and effective investigation, a fair prosecution as well as a fair trial. Similarly, IACtHR has found that victim is entitled to be provided with these rights and it is the positive obligation of the State to ensure protection of these human rights of victims of crime. It has been found that not investigating the matter fairly indicate that State is aiding the perpetrator of crime. IACtHR has recognized victims’ right to resort to the administration of justice for obtaining a fair
investigation and fair prosecution in the case so that the perpetrators are brought to justice. It has further recognized victims’ right to judicial review.

CEDAW committee has recognized state obligations of investigating the matter and punishing the perpetrators of crime. ICC rules also recognizes victims’ right to participation in the criminal justice process. Victim participation through counsel at trial is being permitted by International Criminal Courts. ICC has given victim participatory rights instead of giving party status thus giving a new model. It allows counsel to intervene to inform the court about the submissions victim wants to make regarding evidence for the submissions made by prosecution or defence. Following this trend common law countries have started to allow victims to make submissions distinct aspects of pre-trial process and consideration of views at both investigative and pre-trial stage.

EU Directives, 2012 recognizes greater participatory rights for victim of crime. UN Basic Principles and Guidelines of 2005 has also recognized victims’ right to an effective access to justice and right to be provided with protection. International and regional conventions also emphasize that victim should be provided with relevant information and notification in the case and where needed be provided with explanation regarding the decisions taken by the authorities. Recognizing victims’ needs, UN Handbook on Justice suggest that victim of crime should be given priority attention in the criminal justice process. For smooth discharge of States’ obligation and ensuring victims’ rights, this handbook has suggested set of examples that may be followed by the States while prescribing roles for criminal justice agencies. To ensure victims’ rights, this handbook has suggested for creation of a post of “victim-witness coordinator” so that there may be an easy coordination between the agencies of criminal justice administration and victims of crime.

On the basis of internationally recognized human rights to an effective remedy and right to claim a fair hearing, victims’ rights advocates, demand for recognition of victims’ right to access to and right to participate in criminal procedures for victims of serious human rights violations. They substantiate their contention with the rationale that victims have legitimate interest in the criminal justice process due to their proximity with the subject-matter of criminal justice process. This theory of legitimate interest is well accepted under the jurisprudence of ECtHR as well as of IACtHR. Victims access to and participation in criminal justice process serves triangulation of interests. Victim participation, at one hand, helps in ascertainment of the facts and punishment to the guilty, and on the other hand, it helps in
ensuring victim reparation as well as help in ensuring rule of law and mitigating the secondary victimisation. Victims have legitimate interests in the criminal justice process that can be protected by ensuring right to access to justice and a right to participation to the victim of crime.

6.4. RECOGNITION OF VICTIMS’ JUSTICE NEEDS AS VICTIMS’ RIGHTS IN OTHER COUNTRIES:

Victims’ justice needs have been given some recognition under victim specific initiatives of various countries that follow adversarial and common law tradition including U.S.A., Canada, U.K. and Australia. In U.S.A., federal Crime Victims’ Rights Act provides that a victim of crime is entitled for procedural justice throughout the criminal justice process and is equally applicable in the pre-charging stage as well as during the prosecution. To ensure victims’ participation, victim has been given a right to be reasonably heard and a right to confer with the attorney in the case. To ensure fairness to victims of crime, they have been given various rights including a right to reasonable protection, right to be present during court proceedings, right to speedy proceedings and right to be provided with fair and dignified treatment. Informational justice has been ensured by providing that victims are entitled to get a reasonable, accurate and timely notification. This act also provides that in case of denial of any relief, reasons for the same shall be stated on record. Courts have been entrusted with the duty of ensuring that victims’ rights are respected and properly enforced during the criminal justice process.

In Canada, Canadian Victims’ Bill of Rights, 2015 gives statutory recognition to various rights for victims of crime. Regarding participatory rights of victims of crime, it provides that they have a right to present their views and a right to have those views considered. They have a right to be provided with proper safety measures. Victim is further entitled to get testimonial aid at the time of deposition. This act also recognizes victims’ right to get information regarding their role, progress of investigation, time and place for proceedings, conditions imposed for offenders’ release and redressal rights if he is denied any of the rights under the Act.

In U.K., Code of Practice for Victims of Crime, 2015 specifically ensures respectful and sensitive treatment to victims of crime. His views and concerns shall be taken into consideration. Victim has right to participation during both pre-trial as well as trial
proceedings and has a right to seek internal review of any prosecutorial decision. He can also seek judicial review of any such internal review. During deposition, victim is entitled to get help from special measures. To ensure, victims’ access to justice, victim is entitled to get an acknowledgement for reporting of the crime. This code provides that proper safety measures shall be applied so as to ensure, victims’ protection from intimidation and retaliation. Prosecutor shall take effective steps to ensure protection from aggressive and inappropriate questioning. Code also prescribes that victim shall be kept informed. Interactional justice to victim has been ensured by providing that a victim is entitled to be provided with explanations regarding what he can get from the criminal justice system. He shall be given reasons in case of no-charging decision or of a decision to discontinue the proceedings or an alteration in charge. Victim shall be given explanations if police concludes the case without charging. He is further entitled to receive explanations regarding the status of the offender. Bereaved family members are also entitled to receive such explanations or a meeting with CPS to clear their doubts. Victim shall be provided with reasons for the outcome in the case.

In South Australia, Victims of Crime Act, 2001 establishes certain principles to be applied by the agencies in their treatment of victims of crime. Prosecutor should consult with the victim before making any charging decision and victims are entitled to know the reasons regarding prosecutorial decisions. This Act recognizes victims’ right to be kept informed and to be provided with safety measures taking into consideration their protection need. In New South Wales, Victims’ Rights and Support Act 2013, recognizes various rights for victims of crime. Victim has a right to be consulted prior to any charging decision. His protection needs shall be taken into consideration while granting bail to the accused. He is entitled to be kept informed. To ensure interactional justice to victims, it provides that in case of not laying charges against the accused, victim shall be provided not only with the information but with the reasons for the same.

All these measures indicate that victims’ justice needs have been recognized as their rights under the legislative frameworks of these countries. This trend reflects a movement towards recognizing victims’ procedural, informational and interactional justice needs within the domestic framework and providing a working mechanism to take care of victims’ concerns. Almost all jurisdictions recognize victims’ right to be provided with explanations. But these measures have one major flaw in the sense that these do not grant absolute rights to victims of crime. The drawback of CVRA, 2004 as well as Attorney
General’s Guidelines, 2005 is in respect of the enforceability of victim’s right that has been made limited to the agencies role of making their ‘best efforts’ to ensure victims’ rights. In South Australia, Victims’ right to information has been imposed with a limitation that it should not be such that may jeopardize the investigation. The main drawback of the principles provided under Victims of Crime Act, 2001 again is the unenforceability of these principles as the Act provides that these are only the guiding principles. These principles do not confer any right to claim damages and are ineffective in criminal justice process. In New South Wales, Victims’ Rights and Supports Act, 2013, makes victim entitled for information but with one restriction imposed upon this right that it should not be of a nature that jeopardize the investigation. The drawback of this Act lies in its unenforceability since the provisions are dependent upon the practicability and appropriateness criteria.

In spite of the enforceability issue, these normative measures and initiatives at least reflect how in these countries that follow common law principles and adversarial criminal justice system, victims’ rights are getting wide recognition and efforts are being taken to make the system more victim-sensitive. Recognition of victim’s justice needs through normative measures has a high probability of being more effective in realization and implementation of the victims’ rights and may lead to widespread awareness amongst the victims of their rights and also amongst the agencies of criminal justice system.

6.5. INSTITUTIONALISATION AND OPERATIONALISATION OF VICTIM JUSTICE THROUGH OFFICES OF NORMATIVELY POSITIONED STAKEHOLDERS/ FUNCTIONARIES OF JUSTICE:

For effective compliance and enforcement of the normative measures in respect of victim justice issues, Crime Victims’ Rights Act, in U.S.A., prescribes for appointment of an administrative authority. Attorney General Guidelines provides measures that should be followed by the officers and employees of justice department so as to ensure proper implementation of victims’ rights. These guidelines lay down a machinery for better enforcement of victims’ rights by providing office of “Responsible Officials” under each department of justice. These officials shall further designate other individuals to carry out specific functions. Guidelines provides for submission of annual compliance report. Responsible officials have been entrusted with varying duties as well as for training of
concerned personnel so as to make them victim-sensitive. These officials have the duties to advise victim, to take care of their security concerns, to provide them notification and to bring any reasonable concern of victim before the court.

In Canada, Canadian Victims’ Bill of Rights, 2015 requires each agency of the criminal justice system to provide with a complaint mechanism. Victim, if not satisfied with the decision made by the concerned agency, can go for review of such decision to be made by a senior authority.

In U.K., Victim has a right to get any police decision or prosecutorial decision of not to prosecute or to terminate the proceedings to be reviewed under the internal review mechanism. This code provides with an internal complaint mechanism that can further be processed to Parliamentary and Health Service Ombudsman. Victims’ Right to Review Guidance, 2016 sets out an internal mechanism to ensure victims’ right to seek a review of prosecutorial decisions. In addition to these mechanism, prosecutors’ pledge (though lacks enforceability) prescribes certain commitments that should be followed by prosecutors. These are the commitment in relation to procedural, informational and interactional justice to victims.

In South Australia, Victims of Crime Act, 2001 also provides for appointment of an independent Commissioner for victims’ rights to take care of victims’ concerns. Such commissioner shall take into consideration the needs expressed by the victim and where required issue notices to the concerned agency or official to tender apology for their failure in ensuring victims’ rights. In New South Wales, Commissioner for Victims’ Rights has been assigned with various functions to ensure that victims of crime are paid due consideration. His functions include receiving of victims’ complaints and taking action to resolve them. In case of any breach, the concerned agency is required to apologize. He has further responsibility of conducting training programs to make the agencies, victim sensitive. Commissioner may make reports to be presented before parliament.

There is a post of Victims’ Commissioner or victim-officer who is entrusted with the duties of listening to victims’ concerns and to take them into consideration for further remedying his concerns and to work for advancement of victim justice cause. These measures indicate efforts for creating awareness and sensitization of the functionaries of the criminal justice system.
6.6. TESTING DETERMINANTS (INDICATORS) OF VICTIM JUSTICE IN INDIA:

6.6.1. CONSTITUTIONAL, NORMATIVE AND JUDICIAL RESPONSE:

Preamble, Fundamental Rights and Directive Principles together form the fundamental values of Indian Constitution. A study of the Preamble together with the Articles 14, 21, 32 and 39 reflects upon the cherished ideal of victim justice and human rights of victims. Preamble emphasizes upon the value of justice, equality of status and dignity of the individual and promises to secure these ideals to all its citizens. Article 14 of Indian Constitution enshrines the principle of ‘equality before law’ that mandates for an equal access to justice. Article 21 as interpreted by the Supreme Court through its various pronouncements makes a victim of crime equally entitled for right to justice. It was emphasized by the Constitution Bench of Supreme Court in the case of State of West Bengal And Others v. Committee for Protection of Democratic Rights, West Bengal and Others¹ that Article 21 ensures protection of life of the victim of crime too and is not limited with providing protection to an accused in the case. Victims’ right to justice being a part of Part III of Indian Constitution is a fundamental right that cannot be extinguished, abridged or abrogated neither by constitutional nor by statutory means.

Directive Principles of Indian Constitution provides that it is the obligation of State to ensure that justice is not denied to anyone. State and its agencies should work in a manner that advances the cause of justice. Correspondingly, State has an obligation to ensure protection of human rights of a victim of crime by providing with such an environment where justice can easily be ensured. In pursuance of this constitutional ideal of victim justice and obligation of state to ensure victim justice, it is imperative for the agencies of criminal justice system to conduct a fair and impartial investigation, fair prosecution and fair trial against the perpetrator of crime and to provide protection to victim-witness from intimidation and retaliation by the offender. These various Articles of Constitution along with the Preamble reflect upon the constitutional spirit of ensuring justice to all but there is a lack of any victim specific Article that recognises victim’s entitlements to these justice issues. It is only because

¹State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others, (2010) 3 SCC 571.
of the judicial interpretation of these Articles that victims’ right to justice has been recognised within the Constitutional mandate.

Legislative and judicial measures in India reflect upon the trend of recognizing victims’ right to justice. Recent legislative measures provide more victim-oriented procedural rules within criminal justice process but this attention has been paid only in case of crimes against women, child and weaker sections of society. Though the legislative and judicial response favors for a victim oriented criminal justice system, still there remains ample scope for improvement.

Victims’ definition was included in the Code of Criminal Procedure, 1973 in 2008 but this definition lacks clarity. This definition though makes a reference to the loss or injury suffered by the victim but with a condition attached with it that is, accused person should be charged for the alleged offence, thus leaving outside its ambit those victims in whose case, perpetrator of a crime has not been identified, apprehended and charged. This definition seems very narrow as compared to the definition of victim as envisaged under the UN Declaration of 1985. UN Declaration for this purpose takes into consideration only the aspect of sufferings undergone by the victim irrespective of the status of the offender whether identified, apprehended, prosecuted or convicted. Another shortcoming of victims’ definition under the Code lies in the consideration of a person as a guardian or legal heir of the victim. Definition as provided under the Code does not specifically exclude any such guardian or legal heir from the definition of victim who himself has committed that offence. Under the Crime Victims’ Rights Act, 2004, it has been explicitly mentioned that under no circumstances a defendant in the case shall be considered as a guardian or representative of the victim. Also, in South Australia, Victims of Crime Act, 2001, any party in the commission of an offence is not considered as a guardian or representative of a victim.

An informant or a complainant has been recognized as a person entitled to present his concerns before acceptance of a final report by the magistrate and therefore is entitled to be kept informed but as far as a victim of a crime is concerned he has not been given any such entitlement for presenting his views and concerns and therefore has no right to be kept informed. There is lack of any provision pertaining to the notice to be given to the victims.
At the time of releasing an offender on bail, prosecutor has been given a chance to present his concerns but victim has not been provided with any such opportunity. Victim participation from the stage of reporting of offence till the time of filing of charge-sheet is dependent upon the need of investigating officer and victim has no say in the investigation and is not kept informed. It is only at the time of filing of charge-sheet that informant and not the victim is informed as to the action taken by the investigating officer.

Reading together proviso to Section 24 (8) and Section 301 of Criminal Procedure Code, victim is not entitled for direct participation during the stage of prosecution but can participate through his pleader who can act only under the directions of public prosecutor with prior permission of the court. Such pleader has no statutory right to present evidence, to advance arguments and to cross-examine witnesses. He can only submit written arguments and that too only after closure of evidence. These limitations in the provisions leave no scope for meaningful and effective participation for the victim.

Some legislative measures indicate recognition of status of victim as a party thus identifying victims’ interests but in a very limited manner such as in case of in camera proceedings in rape cases, this status is recognised by the proviso providing that any particular person may be allowed to remain present on an application made by the parties. The provisions in relation to plea bargaining recognize status of victim as a party to the proceedings wherein it has been provided that the process shall be completed voluntarily by the parties. But, a lack of consistency can be seen in case of plea bargaining where in a case instituted on police report, victim has not been made entitle to engage his own lawyer whereas in a case instituted otherwise on police report, victim is entitled to engage his own lawyer.

Regarding access to justice, section 154 makes it mandatory to record FIR but an anomaly can be seen after the insertion of Section 166 A (c) that prescribes punishment in case a direction regarding registration of FIR is violated in some specified (sexual) offences. The legislative anomaly is clearly visible that on one hand makes non-registration of a FIR in some specific cognizable cases as punishable and
non-registration of a FIR in remaining cognizable case not punishable and prescribes only with an administrative remedy to approach the concerned higher authority. Regarding protection to victims, some legislative provisions provide with some measures such as arrest where there is threat to the victim and possibility of evidence destruction and also in relation to criminal intimidation. Certain conditions can also be imposed where offender is to be released on bail. Both these measures of arrest, if properly applied and the provisions of imposition of bail conditions may provide before the event remedies as provided under international norms but as far as criminal intimidation under section 506 of IPC is concerned, it provides only an after the event remedy when intimidation by the offender has already taken place. Despite these measures to ensure victim-witness protection by providing with penal consequences in case of victim intimidation, quite often there is lack of interest on part of police to take adequate measures for the protection of the victim and witness and it is only the court that directs the police for ensuring victim protection. Intimidation during the trial proceedings has been taken into consideration by providing that rape victim or woman victim of sexual offence below eighteen years of age shall not be subject to confrontation by the accused during their deposition so as to get their truthful deposition without any associated fear, but this provision takes care only of women victims, only below the age of eighteen years and only the victims of sexual offences leaving other victims outside this protective umbrella of legislative measures. Legislative measures provide for medical examination of rape victims but not for all general victims of personal violence crimes.

To ensure fairness in the investigation, the role of investigating agency has been provided extensively, still the courts constantly reminds and direct the investigative agency about their role of ensuring fair investigation. To check frequent misuse of investigating powers, newly inserted provision under Section 166 A provides for the punishment in case of violation of any provision of the criminal procedure code with a major limitation that violation was caused ‘knowingly to the prejudice of any person’. It does not cover the instances of ‘irresponsible investigations’. Victim right to appeal has been recognized under three circumstances that is in case of acquittal of an accused or in case of conviction for a lesser offence or in case of inadequate compensation. Though victim has been given a substantive right to appeal, there are
certain unanswered questions such as if the investigating agency or the prosecution agency has not performed their duties in a fair and impartial manner or has left serious loopholes during the investigation or has not examined important witnesses then how a right to appeal given at a much later stage will ensure victim justice.

Legislative measures indicate that informant has a right to be kept informed not only during the initial investigation but during further investigation too. Section 154 (2) of the Code of Criminal Procedure, 1973 provides that an informant is entitled to receive a copy of FIR free of cost but victim has no such right. Code of Criminal Procedure recognizes only an informant as entitled to be notified and not the victim in the case. Judicial recognition of victims’ interests without any legislative support presents a strange scenario where Supreme Court made its observation that victim is entitled to present his concerns without an entitlement for receiving notice as to when such proceedings are going to take place, if he otherwise comes to know of it. Under Section 173 (7) CrPC, Police Officer is under obligation to provide copies of all relevant documents to the accused only and not to the victim of a crime. Section 41 (1) CrPC provides for recording of reasons if he is not making an arrest in the case. These grounds of not making an arrest, if provided to the victim may be helpful in ensuring interactional justice towards victim.

Judicial measures also attempt to protect human rights of victims of crime and to ensure that justice is not denied to the victim of crime due to procedural hurdles or obstructions. Various judgments recognize victim as a de-facto complainant and makes him entitle to know the developments in his case. Courts have acknowledged the fact that victim should be kept informed as to the progress of the investigation and they should be allowed to participate and investigation officer as well as prosecutor should remain in touch with the victims. Judicial interpretation has given wider recognition to victims’ interests by providing right to fair and speedy investigation as a fundamental right under Article 21. Case law reflects that time and again, courts have emphasized that investigative agency should work in accordance with the constitutional mandate.

Judicial interpretation recognizes legislative intent of making registration of first information report compulsory. Courts also recognize right of a private party to prosecute the offender. Judiciary has recognized that right to be heard is a part of fair
trial concept and this include right to be represented and in case victim requests for appointment of a special public prosecutor such application should be taken into consideration with procedural fairness. Court has also recognized complainant’s right to be heard if the proceedings are going to be quashed. There is no express provision making victim entitle to have a say in case of withdrawal of prosecution but acceptance of special leave petition for the same by Supreme Court and setting aside of withdrawal of prosecution order shows the judicial recognition of victims’ status in case of withdrawal of prosecution.

Courts have recognized that victims’ have a right to remedy as provided both under the constitutional spirit and legislative intent that provides a substantive right to appeal. Courts have recognized that victims’ right to appeal shows that victims’ right to express his views and concerns should be paid due consideration during criminal justice process.

6.6.2. INSTITUTIONAL MEASURES FOR REALIZATION OF VICTIM’S HUMAN RIGHT TO JUSTICE:

Functioning of the criminal justice system has been a constant subject of concern. Malimath Committee recognized that an effective criminal justice system needs sound and efficient functioning. Courts are of the view that system is suffering with such handicaps that allow large scale acquittals of guilty. Victim though, entitled to justice, is quite often denied the same. It is an established principle that State has positive obligations to ensure right to life and these obligations cannot be fulfilled only by providing of substantive laws. For effective implementation of these substantive measures, it is required that there are effective procedural laws and other mechanism in place to enforce them. Both these measures further need a proper implementation mechanism. Judicial pronouncements reflect that the system is suffering with systemic and other failures because of which guilty remains unpunished.

It is imperative that State agencies perform their duties in a fair manner to advance the cause of justice. Recently taken normative steps (as in Criminal law Amendment Act 2013) and few other initiatives like (in case of Kerala where a need was felt and recognized for creation of a post of victim-liaison officer to ensure better interaction between the victim and the police as functionary of the criminal justice system),
indicate growing recognition for victim justice by the agencies of criminal justice system but this recognition is required at large scale throughout the country and uniformly to be followed by all agencies of criminal justice system. Courts have observed that fair prosecution and fair trial are a fundamental right of a victim. Still case law indicate that functionaries quite often go against this constitutional spirit and there is no effective measure to keep a check on their working. The police system in India lacks any institutional measure to check the police functioning and to make it more responsive and efficient while dealing with victim of crime and to enforce victim’s right to justice. Regarding the prosecution agency, courts have interpreted that a public prosecutor is an officer of the court and he should act in the interest of justice. He is not supposed to be a representative of the State but needs to be fair to all including the accused. Unlike other countries following adversarial criminal justice system (covered in this research) there are no institutional measures through which prosecution office could be made to respond to the justice needs of the victim of crime. Regarding the role of judges, it has been stated by the courts that prosecutor and court should not remain a silent spectator but should come forward to ensure the cause of justice. Various legislative measures such as under Section 165 of Evidence Act and under Section 311 of the Code of Criminal Procedures entrusts court with wide powers to ensure justice in the case. These can be used by the judges to ensure victim justice but quite often it is not the case and victim is required to approach the higher courts to get the remedy for the injustice done to them. Malimath committee observed that judges play only passive role without going in the task of searching the truth. Though in India, it is the only the pro-active role played by the judiciary that victims’ interests are getting some attention but this level of recognition is reflected in the judgements of the superior courts and much action is required at the trial court level. There is lack of any particular legislation that explicitly recognizes the rights of victims and provides for corresponding duties and role to be played by functionaries of criminal justice system to effectively address victims’ justice needs.

6.7. **MAJOR FINDINGS:**

Earlier researches in victimology helped in recognition of the fact that Justice System may itself victimize the victim by denying them status, standing and voice in the criminal justice process. Victims are generally side-lined or are given a subservient
role to that of the State. Victims’ rights movements helped in identifying the key issues relating to victim justice. This journey from the peripheral positioning of the victim to the central positioning in the justice system transitioned through various phases. Initially, the movements resulted in the recognition of victim as an independent subject of criminal justice and a significant stakeholder in the process of justice that owed certain entitlements from the system. Initiatives were taken to identify victims’ social needs and consequently, victims were provided with welfare and social services. It was recognised that victims need various measures like welfare, support and intervention, protection and rehabilitation to cope with the effect of crime. The concept of criminal injuries compensation, court assistance and rehabilitation services were major contribution of the victim movement.

Second major development brought forth significant changes in victims’ positioning with the growth of international and regional human rights framework that provided with a globalized system of justice with wide recognition of victim’s human rights. At international level, human rights framework started recognizing normative rights of victims. A closer analysis reveals some movement away from a rigid adversarial position in Common law countries more prominently seen in investigative and pre-trial phases. U.S.A., Canada, England and Australia including India (in a limited way) moved from strict adherence to adversarial process. These subtle movements have been influenced by international law, international human rights discourse and international declarations, instruments like ECHR and decisions of ICC, ECHR and ACtHR. This has resulted in the development of criminal procedural laws away from the traditional requirements of adversarial justice that demands exclusion of victim from criminal proceedings. Investigation and pre-trial stages are traditionally considered as centred on state decisions out of the need that crime needs to be checked and prosecuted in the public interest, excluding views of victims. There has been an enhanced international attention and concern for the role of victims in all the phases of criminal justice process. Reform are taking place recognising victims’ desire to access information and have consultation in decision making. This opened the access for the victim to functionaries with a corresponding duty to speak and respond to the victim. A shift is easily discernible from the level creating non-enforceable rights and protective measures in criminal and evidence law to the level granting right based framework for
victim’s participatory right through access to private counsel and enforceable rights against state and accused. Recent development in the field of victims’ rights focusses upon inclusion of victims’ rights at the institutional and organisational level.

This study after finding out the international best practices in the field of procedural, interactional and informational justice to victims of crime evaluated these practices under different jurisdictions and then analyzed the position of victim under the framework of Indian criminal justice system. A systematic study helped in finding out the grey areas where the victim justice needs some reforms. Analysis of constitutional and legislative measures reflects upon the areas where the normative structure is lagging far behind the international norms. Positive obligation of the state is not discharged by prescribing for victim justice normatively only unless corresponding institutional framework is provided for the actioning of the normative measures. The research found that in comparison to the other jurisdictions, in India there are no institutional framework and measures to make the functionaries accountable and responsive to the victim’s justice needs for procedural, informational and interactional justice.

6.8. SUGGESTIONS:

1. **Constitutional Amendment:** Constitution should be amended so as to provide with Victim-justice specific Articles. In the spirit of positive obligation of state an Article in the Constitution should be included recognising specifically human rights and right to justice of victim of crime in tune with Article 14, 21, 39 A..

2. **Victims’ Charter or Victims’ Rights Act:** A Victims’ Charter or Victims’ Rights Act should be enacted wherein details of the rights pertaining to procedural, interactional justice and informational should be prescribed, mechanism for complaint in case of violation be formulated. It should also provide corresponding obligations of agencies of criminal justice system towards victim.

3. Human rights act should be amended to provide specifically that the Act is equally applicable to victims of non-state crimes.

4. **Code of Criminal Procedure:**
   i. Anomalies and deficiencies in Procedural Code should be removed in the light of the victims’ rights that are well recognised in international sphere and are not in conflict with the accused rights.
ii. **Amendment in victims’ definition:**

a. Victims’ definition should be amended so as to take into consideration only the harm undergone by the victim irrespective of the status of the offender whether charged or not.

b. Victims’ definition should be amended so as to mention clearly that in no circumstance a defendant be considered as a guardian or representative of the victim.

5. **Procedural Justice:**

i. **Victim as de-facto party:** Legislative measures be provided to accord victim a status of de-facto party, a status recognized by courts.

ii. **Statements in Narrative Form:** Victim should be allowed to give narrative statement (VPS) to the Police during investigation and narrative evidence in the court during the trial.

iii. **Participation of victim instead of an informant/complainant:** Instead of making a complainant or informant to present his view and concerns, victim should be made entitled for expressing his views and concerns.

iv. **Right to hearing should not be given only to the prosecutor:** Victim should be given an opportunity to present his security concerns and threat perception and the same should be taken into consideration at the time of releasing an offender on bail or at the time of imposition of conditions of bail.

v. **Victim participation at the time of withdrawal of prosecution:** In case of withdrawal of prosecution, victims should be given a chance to present his concerns and prosecutor should be under obligation to consult the victim on withdrawal of the prosecution.

vi. Victims’ right to be heard should be recognized if criminal proceedings are going to be quashed.

vii. All cognizable offences should be brought under the ambit of Section 166 A (c) to remove the present anomaly where registration of FIR is mandatory in all cognizable cases but non-registration is punishable in some cases.

viii. Victims’ protection need should be paid due attention by the police and emphasis should be given upon taking before the event remedies.
ix. Medical examination at State expense in all cases of violent crimes should be made mandatory that shall ensure victims’ easy access to medical services and avoiding of loss of vital evidence too.

x. Under Section 173 (7) of the Code of Criminal Procedure, victim should also be provided with copies of all relevant documents.

xi. Providing a uniform treatment to victims during plea bargaining, victims should be equally provided with a chance to engage their own lawyer whether the case has been instituted on police report or otherwise.

xii. Section 24 (8) proviso, 301 and 311 of the Code of Criminal Procedure can be reconciled and victim justice can be ensured if the court, in the interest of victim-justice, liberally allows victim participation, on his representation, by means of allowing recalling of an important witness not examined properly by public prosecutor and by allowing written submissions at the end of every crucial stage of criminal proceedings and filing of written arguments.

xiii. Victims’ representative or lawyer should be given opportunity to present his concerns at each crucial stage of the trial and same should be taken on record.

xiv. Victims’ pleader acts under the public prosecutor who conducts the prosecution in the case. This mechanism demands greater emphasis upon a fair and effective prosecution by the prosecution agency. Therefore, guidelines should be developed to ensure effective and fair prosecution.

xv. Measures such as ‘no confrontation by accused’, that prevent intimidation at the time of deposition should be applied in case of victims of all violent crimes. There should be a consistency among the treatment to be given to all victims.

xvi. State has positive obligation to provide effective remedy for secondary victimization. Institutional framework and guidelines should be put in place and all the functionaries of criminal justice system should be under a mandate to enforce and give effect to victims’ rights to justice.

xvii. Since offence against human body is a violation of Article 21 and also violates human rights, no distinction should be made in respect to entitlements for procedural, informational and interactional justice among various categories of victims. Over and above these minimum entitlements, special measures should be provided to vulnerable victims (child and sexual offence).
6. Informational Justice:
   i. **Victim-notification**: Provisions in relation to ‘Notification’ to the complainant or the informant be amended to make victim entitle for such notification since victim is the party getting affected.
   ii. Recognizing the need of informational and participatory justice to victims, victim should be kept informed regarding the progress of the investigation.
   iii. **Narrative form**: At the time of first interaction with first contact agency (Police), Public Prosecutor, victim should be provided a literature (drafted in most simple language), mentioning his rights and entitlements within the criminal justice process.

7. Interactional Justice:
   i. Interactional justice should be aimed not only at providing of respectful and dignified treatment but providing with justification for the procedures adopted in the case and explanations for the decision arrived in the case. Interaction with the victim be promoted by creation of specific post of victim-officer in investigation, prosecution and judicial wing of criminal justice system. These officers be entrusted to satisfy victim queries in relation to investigation, prosecution and trial in the case.
   ii. If police take a decision of not to arrest an accused, victim should be provided with grounds of taking such a decision.

8. Creation of Victim offices:
   i. Apex office of Chief Commissioner should be created with mandate to coordinate with State Commissioner for victims and to formulate policies for addressing victims’ issues. He may act as final grievance redressal authority. He should be responsible for tabling annual report in parliament to be prepared in consultation with State Commissioner.
   ii. State Commissioners for victims should have mandate to coordinate with criminal justice functionaries in resolving grievances of victims. Should conduct research in respective State to identify State specific issues encountered by victims and grievance settlement.
   iii. More than Supervisory role, Commissioner’s office should evolve as consultative office and should work in collaborative spirit with the functionaries of criminal justice system.
iv. On the lines of NCRB yearly crime data, a victim survey should be conducted every three years by State Commissioners to be submitted to the Chief Commissioner for compilation.

v. All new criminal law amendments bills (Substantive, Procedural and Evidence) should be vetted by the Chief Commissioner Office and his suggestions should be given due weightage.

9. **In-House Mechanism for each Agency:**

   i. Each agency of criminal justice system should appoint one senior person from the department in each district to coordinate with officers at every level regarding victims’ rights and issues in the district.

   ii. A Handbook specifically targeting each agency of criminal justice system should be drafted prescribing roles, responsibilities of functionaries and same should form part of professional training courses which should be mandatorily undertaken. Performance strictly in adherence to this handbook should be linked with promotion.

   iii. Training curriculum for agencies of criminal justice system should include components on victim-justice.

10. **Mandate for Functionaries:**

   i. Police should interact with the victim in a respectful and dignified manner and provide victim with explanations regarding the procedures adopted by police and regarding the outcome of police decisions.

   ii. Victim should be provided information regarding progress of the investigation and outcome of the investigation.

   iii. Police should be made responsible to ensure victim protection from any form of intimidation and retaliation by the offender.

   iv. Prosecutors should interact with the victim in a respectful and dignified manner and provide victim with explanations regarding the procedures adopted in his case and regarding the outcome of those decisions.

   v. Prosecutors should be made responsible to provide victim with notification during trial proceedings and to satisfy victim’s queries relating to the trial process.

   vi. Prosecutors training module should have component on victim-justice.
vii. Judges should ensure that victim’s justice issues are paid due attention by the functionaries.

viii. Judges training programme should include components on victim-justice.