CHAPTER - IV

LEGISLATIVE PROVISIONS OF COMPENSATION IN INDIA

I. Introduction

The awarding of compensation for injuries and wrongs done to human beings and properties is evident under criminal and constitutional law. The Constitutional law in its own way extended the ambit of compensation to the victims of crimes. The criminal law also provides compensation to the victims of crime and abuse of powers.

From time to time many Acts have been passed by the parliament to award compensation. It is not possible to discuss all the provisions of these legislations as there is possibility of violation of every law and if law is violated, it is followed by consequences which may be compensated. Therefore, it would be legitimate to point out that compensation may be related with violation of any statute. However, an attempt has been made to point out the provisions of compensation under some of the social legislations in which new dimensions of compensatory jurisdiction has been developed.
II. The Workmen's Compensation Act, 1923

The law of workmen's compensation was introduced in India in 1923, thirty-six years after it has been introduced in England. Even in England it came from Germany where it was introduced in 1884. One of the basic benefit secured to the worker by a new law was a right to secure compensation from their employer for injuries suffered during the course of their employment, irrespective of any fault or breach of duty on the part of the employees.¹

The basic object of the Act was to make provision for the payment of compensation by certain class of employers to their workmen for injury by accident. This type of law also reduced the number of accidents to workmen in a manner, and the employers were encouraged to provide adequate medical treatment for their workmen to mitigate the effects of such accidents. Compensation is in the nature of insurance of the workmen against certain risk of accident. In order to make the employer liable to pay compensation, death or injury must be the consequence of an accident arising out of or in the course of his employment and is dependent upon the following conditions:

Firstly, a casual connection between the injury and the accident and the work done in the course of employment is essential.

Secondly, the onus lies upon the claimant to establish that the injury or its aggravation was the outcome of the work.

Thirdly, it is not necessary that the workmen must be actually working at the time of his death or that death must occur while he is working or has just closed to work.

Lastly, if the evidence adduced shows greater probability which satisfies a reasonable man that the work contributed to the causing of personal injury, it would be sufficient ground for the workmen to succeed in his claim.²

The word compensation means, a lump sum provided to the workmen in case of death, permanent disablement or temporary disablement. It may be pointed out that in case of temporary disablement the mode of payment of compensation differs as it is payable in such an event in the form or securing half monthly payments.³ In other words compensation means which is equivalent in money for a loss sustained or giving back

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² Bai Shakri vs. New Maneek Mills Co., AIR 1961 Guj. 34.
³ Sec. Workmen Compensation Act, 1923, Sec. 2 (1)(c).
an equivalent in either money which is the measure of value, or in actual value otherwise conferred, or recompense in value for some loss, injury or services especially when it is given by statute. It means when one pays the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value.⁴

The Section 3 of the Workmen's Compensation Act, 1923 lays down that:

(1) If a personal injury is caused to a workman by accident arising out of and in the course of his employment his employer shall be liable to pay compensation in accordance with the provisions of the chapter:⁵

Provided that the employer shall not be so liable:

(a) in respect of any injury which doesn't result in the total or partial disablement of the workman for a period exceeding (three) days;

(b) in respect of any injury, not resulting in death (or permanent total disablement) caused by an accident which is directly attributable to:

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⁴ Rath Menon vs. Union of India, AIR 2000 SC 1333.
⁵ See, The Workmen's Compensation Act, 1923, Section 3.
(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the workman to an order expressly given or a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the willful removal or disregarded by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen, or

(2) If a workman employed in any employment specified in Part-A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which permit shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Scheduled III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a
workmen whilst in service of one or more employers in any employment specified in Part C of scheduled III of such continuous period as the central government may specify in respect of each such employment, contracts any disease specified therein as occupational disease peculiar to the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section, and unless the contrary is proved, the accident shall be deemed to have arisen out of, and in course of the employment.

Provided that if it is proved, -

(a) That a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule II has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) That the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:
Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part-B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be all injury by accident within the meaning of this section.

[(2A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be all injury by accident within the meaning of this section, and such employment was used more than one employer, all such employers shall be liable for the payment of the]
compensation in such proportion as the Commissioner may, in the circumstances, deem just.]

(3) [The Central Government or the State Government], after giving, by notification in the official Gazette, not less than three months, notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of this section to be occupational diseases peculiar to those employments respectively, and thereupon the provisions of sub-section (2) shall apply [in the case of a notification by the Central Government, within the territories to which this Act extends, or, in case of a notification by the State Government, within the State] as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.]

(4) Save as provided by [sub-sections (2), (2A)] and (3), no compensation shall be payable to a workman in respect of any disease unless the
disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any Court of law in respect of any injury-

(a) If he has instituted a claim to compensation in respect of the injury before a Commissioner; or

(b) If an agreement has been come to between the workman and his employer, providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.6

It is clear from the definition of Section 3 that if injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the

\[\textit{Ibid}\]
provisions of the Act. Further, the whole analysis of the section shows the following conditions are necessary:

Firstly, the workman must have sustained personal injury; Secondly, the personal injury must have been caused by an accident. Thirdly, the accident may have arisen out of and in the course of his employment. Lastly, the personal injury caused to the workmen must be resulted either in the total or partial disablement of the workmen for a period exceeding three days or it must have resulted in death of the workman.

The plain reading of the provision of Section 3 reveals certain things as explained above. However, over a period of time courts have given wider interpretations to the various essential elements thus enlarging the scope of this Section. Accordingly, compensation is payable in cases of personal injury caused to the workman by accident arising out of and in the course of his employment. Personal injury is not defined in the Act but it includes any harmful change in the body.

It is clear from the above analysis that personal injury means any injury caused to the person of a workman affecting his efficiency of labour or reducing his earning capacity in any employment in which he was
engaged at the time of accident or in every employment which he was capable of undertaking at that time.

Second requirement is that whenever personal injury as interpreted must be caused by an accident arising out of and in the course of his employment. Accident which has not been defined in the Act also means some unexpected event happening without design, even if it be found that there was negligence on the part of the workman concerned.

In order to give rise to rightful claim for compensation, it is necessary that the personal injury caused to the workman must result in the total or partial disablement for a period exceeding three days or the workman must have died due to personal injury caused to the workman concerned by accident arising out of and in the course of employment. The provisions of Section 3(1) expressly excluded the liability of the employer in cases contained therein. Section says, the employer, shall not be liable in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days.

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7 In the case of Mrs. Santan Feznendez vs. Bharat Petroleum (India) Ltd. 58 Bom L R 149, death from heat stroke has also been held to be personal injury entitled to compensation.

8 An injury which reduces his capacity to earn is personal injury though it is not physical. A workmen becomes entitled to compensation, if it is caused to him by an accident arising out of and in his employment provided he is disabled for a period exceeding 3 days. Lipton (India) Ltd. vs. Gokul Chandra Mondal (1982) 1, LLJ 225 (cal).
the death of the workman. Even the preamble of the Act shows that it is placed on the statute book to provide for compensation for injuries sustained in accidents during the course of employment by workmen of certain classes of employees. Under the Act, injuries are classified into firstly, permanent total disablement; secondly, permanent partial disablement; thirdly, temporary total disablement and lastly, temporary partial disablement.⁹

Further the quantum of Compensation is to be determined based on the nature and degree of disablement which in turn depends upon the percentage of loss of earning capacity of the workmen, in accordance with section 4 read with section 2(1)(g), 2(1)(1) and schedule 1 of the Act lays down:

(1) Subject to the provisions of the Act the amount of compensation shall be as follow:

| (a) Where death results from the injury. | An amount equal to [eighty thousand rupees] or the monthly wages of the deceased workman multiplied by the relevant factor; or An amount of [ninety thousand rupees], whichever is more; |

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⁹ Samir v. Prakash vs. Sikander Zahiruddin (1984) 2 LLJ 90 (Bom.).
(b) Where permanent total disablement results from the injury.

| An amount equal to [sixty per cent] of monthly wages of the injured workman multiplied by the relevant factor; or |
| An amount of [sixty thousand rupees] or more; |

**Explanation** - For the purposes of clause (a) and clause (b) "relevant factor" in relation to a workman means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the workman on his last birthday immediately preceding the date on which the compensation fell due.

**Explanation II.** - Where the monthly wages of a workman exceed [four thousand rupees], his monthly wages for the purposes of clause (a) and clause (b) shall be deemed to be [four thousand rupees] only:

| (c) Where permanent partial disablement |
| (i) In the case of an injury specified in Part II of Schedule I, such percentage of the compensation which would have been payable in the case of permanent total |
results from the injury

disablement as is specified therein as being
the percentage of the loss of earning
capacity caused by that injury; and

(ii) In the case of an injury not specified in
Schedule I, such percentage of the
compensation payable in the case of
permanent total disablement as is
proportionate to the loss of earning
capacity (as assessed by the qualified
medical practitioner) permanently caused
by the injury;

Explanation I - Where more injuries than one are caused
by the same accident, the amount of compensation
payable under this head shall be aggregated but not so
in any case as to exceed the amount which would have
been payable if permanent total disablement had resulted from the injuries.

Explanation II - In assessing the loss of earning capacity
from the purpose of sub-clause (ii), the qualified medical
practitioner shall have due regard to the percentages of
loss of earning capacity in relation to different injuries
specified in Schedule I:
(d) Where temporary disablement whether total or partial results from the injury with
A half monthly payment of the sum equivalent to twenty five percent of mostly wages of the workman, to be paid in accordance the provisions of sub section (2).

[(1A) Notwithstanding anything contained in sub-section (1), while fixing the amount of compensation payable to a workman is respect of an accident occurred outside India, the Commissioner shall take into account the amount of compensation, if any, awarded to such workman in accordance with the law of the country in which the accident occurred and shall reduce the amount fixed by him by the amount of compensation awarded to the workman in accordance with the law of that country.]

(2) The half-monthly payment referred to in clause (d) of subsection (1) shall be payable on the sixteenth day -

(i) From the date of disablement where such disablement lasts for a period of twenty-eight days or more, or

(ii) After the expiry of a waiting period of three days from the date of disablement where such
disablement lasts for a period of less than twenty-eight days; and thereafter half-monthly during the disablement or during a period of five years, whichever period is shorter:

Provided that

(a) There shall be deducted from any lump sum or half-monthly payments to which the workman is entitled the amount of any payment or allowance which the workman has received from the employer by way of compensation during the period of disablement, prior to the receipt of such lump sum or of the first half-monthly payment, as the case may be; and

(b) No half-monthly payment shall in any case exceed the amount, if any by which half the amount of the monthly wages of the workman before the accident exceeds half the amount of such wages, which he is earning, after the accident.

Explanation - Any payment or allowance which the workman has received from the employer towards his medical treatment shall not be deemed to be a payment
or allowance received by Wm by way of compensation within the meaning of clause (a) of the proviso.

(3) On the ceasing of the disablement before the date on which any half-monthly payment falls due there shall be payable in respect of that half-monthly a sum proportionate to the duration of the disablement in that half-month.]

[(4) If the injury of the workman results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of [two thousand and five hundred rupees] for payment of the same to the eldest surviving dependant of the workman towards the expenditure of the funeral of such workman or where the workman did not have a dependent or was not living with his dependent at the time of his death to the person who actually incurred such expenditure.]

It is crystal clear that under Section 4 of the Workmen's Compensation Act, 1923, the rate of compensation specified under this section expressed in terms of given rate and subject to the prescribed minimum have become too obsolete when compared to the present day cost of living even after amendment.\textsuperscript{10}

There is great need for revising these rates as specified.

\textsuperscript{10} See, The Workmen's Compensation (Amendment) Act, 1995
(a) Compensation for Occupational Diseases

Regarding the payment of compensation under the Workmen Compensation Act 1923, two types of cases were found. Firstly, in case of personal injury and secondly, in case of occupational diseases. Under Section 3 sub-rules (2) to (4) deals with occupational diseases. Contracting of any one of the diseases specified in Scheduled III of the Act is deemed to be an accident injury caused by accident out of and in the course of employment.\(^\text{11}\) Besides this, Scheduled III is divided into three parts. Part A supports any claim for compensation in case of occupational diseases, where no specific period of employment is necessary. Whenever there is a disease mentioned in Part B there is a requirement to be satisfied, namely, that the workman contracting the disease must have been in the service of the employer concerned for a continuous period of not less than six months. With regard to diseases mentioned in Part C, the workman must have been in continuous service of one or more employers for such period as the Central Government may specify. Under these circumstances, the employer shall be liable to pay compensation to the workman.

\(^{11}\) Ibid; Section 3 (2).
Further, if a workman whilst in the service of one or more employers in any employment specified in Part-C of Schedule-III for such continuous period as the Central Government may specify in respect of each of such employment, contracts any disease specified therein, as an occupational diseases peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and unless the contrary is proved, the accident shall be deemed to have arisen out of and in the course of the employment.

The State Government in respect of employments specified in Part A and Part B and the Central Government in respect of any employment specified in Part C of Scheduled III is authorized to add by a Gazette notification any description of employment and occupational disease by giving not less than three months notice of its intention to do so.

(b) Compensation in case of Death

The Act provides a provision that if the injury from the accident results in the death of a workman, the compensation is payable by the employer to the dependents of the workman. In case of death, the amount of compensation is to be determined by making
a reference of Schedule IV. Under the Schedule, the maximum amount payable to the dependent of a worker in case of death is Rs. 80,000/- or an amount equal to 50% of the monthly wages multiplied by the relevant factor as laid down in schedule whichever is more.  

Section 4 of the Act has been amended in the year 1984. The provisions lays down that where shall be an amount equal to 40% of the monthly wages of the deceased workman multiplied by the relevant factor or an amount of Rs. 20,000/- whichever is more. After the amendment now in place of 40%, it is 50% and in place of Rs. 20,000/- it is Rs. 50,000/-

(c) Compensation in Case of Permanent Disablement

When the workman got injuries not resulting in death, the amount of compensation depends upon the nature of the disablement. Question under consideration is whether the disablement is total or partial, temporary or permanent. Whenever injury is caused and there is 100% loss in the earning capacity of a workman, it will be treated as a case of permanent total disablement. This amount is based on the wage group of which the specific workman is concerned. In all those cases the

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12 See, Workmen’s Compensation (Amendment) Act, 1984, Section 4(1) Schedule IV.
amount of compensation payable to the worker shall be the amount equal to the 60% of the monthly wages by the relevant factor or 24,000/- as laid down in the Schedule, whichever is more.\textsuperscript{14}

Further, provided that in case of injury not specified in Schedule I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity permanently caused by the injury.

(d) Compensation in case of Temporary Disablement

Whenever an employment injury may cause a workman, temporary disablement whether total or partial exceeding three days. According to clause (d) of section 4(1), the employer is liable to pay compensation equivalent to 25% of monthly wages of the workman. The above said compensation is paid to the workman in the form of half-monthly payment in accordance with section 4(2) of the Act. This section lays down –

Firstly, on the 16\textsuperscript{th} day from the date of disablement where such disablement lasts for a period of 28 days or more; or secondly, after the expiry a waiting period of 3 days from the date of disablement

\textsuperscript{14} See, Workmen's Compensation (Amendment) Act, 1984, Section 4(1) Schedule IV.
where such disablement lasts for a period of less than 28 days.

Accordingly section 4(2)(ii), the compensation in the form of half-monthly payments is payable to the workman during the period of disablement or during a period of 5 years, whichever period is shorter.

Section 4(3) provides that on the ceasing of the disablement before the date on which any half-monthly payment falls due, these shall be payable in respect of that half month a sum proportionate to the duration of disablement in that half month.

So from the above observation, it can be concluded that in order to complete the amount of compensation payable under the Workmen Compensation Act are nature of injury, result of the injury, nature of the disablement, the wage of the workman in accordance with the Schedule I and Schedule IV.

Further, under the Workmen Compensation Act, 1923, Section 4-A provides for the payment of compensation and penalty for the default. Section 4-A lays down that compensation must be paid as soon as it is due. It is mandatory for the employer to pay compensation amount as soon as it falls due to victim or his or her legal heirs.
III. Provisions of Compensation under Employees State Insurance Act, 1948

The Employee's State Insurance Act 1948, is another important social security legislation. It makes available as many as six benefits to the insured employees under the provision of the Act. It applied in the first instance, to the perennial factories using power and employing 20 or more persons.

The Government of India for the first time examined the question of sickness insurance in the year 1928. It was considered due to the reason of the convention and recommendations adopted at the 10th International Labour Conference in the year 1927. After this, even in the year 1931, the Royal Commission on Labour also made a suggestion for its consideration. After 17th International Labour Conference in 1933, the Government of India, decided not to introduce such scheme.\textsuperscript{15}

In the year 1942, a tentative scheme of sickness insurance prepared by the labour department of Government of India was placed before the Third Conference of Labour Ministers. In March, 1943, Prof. B.P. Adarkar was appointed as special Officer by the Government of India on health insurance. Ultimately

\textsuperscript{15} Basic reason for not introducing the scheme was lack of administrative and financial considerations.
after a lot of discussion in March 1945 it was generally agreed:

(a) that the Central Government should proceed with the preparation of a health insurance scheme applicable to all perennial factories and covering employment injuries and maternity benefits, if possible and;

(a) that the scheme should be circulated to Provincial Governments, Association of Employees and Trade Union before a bill is drafted.

After lot of considerations the law was passed in the year 1948. It covers compulsory sickness, maternity and employment injury benefits for workers in perennial factories.

(a) Objectives of the Act

The preamble of the Employees State Insurance Act 1948 lays down:

"The object of the Employees State Insurance Act is to provide for certain benefits to employees in case of sickness, maternity and employment injury".
The basic object of the Act is to provide certain benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. Every human being has the right to love and feed himself and his dependent. Security of one's life and livelihood is a pre-condition for orderliness. Liberty, equality and dignity of the person are intertwined precious rights to every citizen. The Preamble of the Constitution of India, the Fundamental Rights in Part - III and Directive Principles of State Policy in Part IV, particularly Article 39(e), 42 and 47, it should be the duty of the State to consider that welfare measures are implemented effectively and efficaciously.  

The provision of the Act also provide for the contributory insurance fund. This contribution is made by the employees as well as by the employer. The payment of benefits to the insured persons in the event of his death extended to his dependents from the insurance fund. The Employees State Insurance Act provides for the sickness benefit, maternity benefit and disablement benefit, medical benefit and dependants benefits for the benefit of insured person.

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The application of the Employees State Insurance Act, 1948 is to (1) factories other than seasonal factories and (2) other establishments.\(^{17}\)

(b) Features of the Act

The first important feature of Act is the establishment of Employees State Insurance Corporation. It means the Corporation established by the Central Government on 1\(^{st}\) October, 1948. The scheme of the Employees State Insurance in accordance with the provision of the Act and administered by the Corporation. Secondly, the constitution of Employees State Insurance fund. This fund is financed mainly by the contribution of the employees and the employer. This fund is also grants, donations and gifts accepted by the Corporation from the Central and State Government or from local authority or though any individual.

Thirdly, contribution to be paid by the employers and by the employees to the Corporation. All such contribution received by the Corporation are paid into the Employees State Insurance funds. The contribution

\(^{17}\) See, Employees State Insurance Act, 1948, Section 1(4)
It shall apply in the first instance to all factories (including factories belonging to the government) other than seasonal factories: provided that nothing contained in the sub-section shall apply to a factory or establishment belonging to or under the control of Govt. whose employees are otherwise in receipt of benefit substantially similar or superior to the benefit provided under the Act.
are paid on such rate as prescribed by the Central Government. Fourthly, the basic fields covered by the Act are sickness, maternity and employment injuries in respect of whom the whole of the amount is payable towards the common fund. Lastly, the Act provides for the creation of Employees Insurance Court also. Even no civil court has jurisdiction to decide or deal with the question which covers within the purview of Employees State Insurance Act.

(c) Compensation in Case of Injury During the Course of Employment

Under the Employees State Insurance Act, Employment Injury include both industrial accidents and occupational diseases. The accident may result in total and partial disablement or even in death. Employment injury provides a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment being an insurable employment whether the accident occurs or the occupational disease is contracted. So to get the benefit under the Employees State Insurance Act following requirements must be fulfilled.
(1) Injury must be personal to an employee caused by accident, or occupational disease.\textsuperscript{18}

(2) The injury must have been caused by accident or occupational disease.

(3) The injury must have been arisen out of and in the course of his employment.\textsuperscript{19}

Whenever, an injury is caused, accidental or occupational disease, it is presumed that it has been arisen out of and in the course of employment. According to section 51-B, an accident shall be deemed to arise out of and in the course of an insured person’s employment notwithstanding that:

(i) he is at the time of accident acting in contravention of the provision of any law applicable to him; or

(ii) he is acting in contravention of any order given by or on behalf of his employer; or

(iii) that he is acting without instructions from his employer if-

(a) the accident would have been deemed so to have arisen had the act not been done in

\textsuperscript{18} For detail see the Employees State Insurance Act, 1948, Schedule - III; Also see Employees State Insurance (Amendment) Act, 1984, who has substituted on new Schedule for Schedule III.

contravention as aforesaid or without
instruction from his employer as the case may
be; and
(b) the act is done for the purpose of and in
connection with the employer’s trade or
business.

Secondly, under Section 51 B, an accident
happening while an insured person is, with the express
and implied permission of his employer, traveling as a
passenger by any vehicle to or from his place of work
shall, notwithstanding that he is under no obligation to
his employer to travel by that vehicle be deemed to arise
out and in the course of his employment if –
(a) the accident would have been deemed so to have
arisen had he been under such obligation; and
(b) at the time of accident, the vehicle
(i) is being operated by or on behalf of his
employer or some other person by whom it is
provided in pursuance of arrangements made
with his employer; and
(ii) is not being operated in the ordinary course of
public transport service. The vehicle referred
to include a vessel and aircraft.

Thirdly, an accident happening to an insured
person is or about any premises at which he is for the
time being employed for the purpose of his employer's trade or business shall be deemed to arise out of and in the course of his employment, if it happens while he is taking steps, on an actual or supposed emergency at those premises, to rescue, secure or protect person who are, or imperiled or to avert or minimize serious damage to property.\textsuperscript{20}

Lastly, the employment in a factory or establishment is said to be insurable where provision of the Act apply viz. Employment specified in Schedule III. The person claiming under the Act must be insured.

The Employees State Insurance Act, had been enacted to provide for various benefits in different contingences such as employment injury, sickness and maternity. The whole of the Act makes the provision for the benefits\textsuperscript{21} of workmen.

**IV. Compensation under Consumer Protection Act, 1986**

In the year 1985 the United Nations General Assembly passed a resolution directing the countries all over the world to frame consumer protection legislations. It considered the interest and needs of

\textsuperscript{20} See, Employees State Insurance Act, 1948 under Section 51D.

\textsuperscript{21} Such as sickness benefit, maternity benefit, disablement benefit, dependent benefit, medical benefit and funeral expenses.
consumer in all countries particularly, in the developing countries the consumer protection measures should essentially be concerned with firstly the protection from hazards to health and safety secondly, the promotion and protection of economic interest thirdly, access to adequate information fourthly, control of misleading advertisements and deception representation, fifthly, consumer education and lastly, effective consumer redressals.

In India, to protect the interest of the consumer in the society, the Consumer Protection Act, 1986 was passed. It was one of the most important legislation in the shape of providing the redressal machinery for setting the consumer disputes in a convenient, effective and speedy way. The Consumer Protection Act 1986, incorporates the ingredients of the United Nation General Assembly resolution passed in the year 1985. The Act is to protect the right of the consumer against marketing of goods which are hazardous to life. The Act also provides the right to inform about the quality, quantity, potency, purity of the product. The main object of the Consumer Protection Act is better protection of the interest of the consumer dispute. This Act initiates the new dimension to the concept of law as a tool of social engineering. Under the Act, consumer is
a person who has the ability to pay for product, who possesses the power to make buying decision. According to Sec. 2(d) of the Act 'Consumer' means any person.

(i) Buys any goods for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use in made with the system of deferred payment when such use in made with approval of such person, but does not include a person who obtain such goods for resale or for any commercial purpose;

or

(ii) Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised or partly paid and partly promised, or under any system of deferred payment, when such services
are availed of with the approval of the first mentioned person.\textsuperscript{22}

Keeping the definition in view the consumer is treated as the kind of the market. The exploitative attitude of the sellers by way of adulteration, sub-standard material, short weights and measures, high prices, deceptive packaging, misbranding etc. has given rise to protect or safeguard the consumer interest.

Besides this the main aspect of the Consumer Protection Act in the basic problem of claiming compensation against the producer where the goods and services are defective.

So far as the litigation is concern it is no doubt costly and troublesome to the consumer. So there is great need that legitimate complaints are promptly dealt with one hand and encourage the claims and arbitration procedures to solve actual disputes expeditiously, cheaply, and relatively informally.

Presently, marketing of goods injurious to health and life, deception of the consumer through unfair trade practices such as sub-standard quality, adulteration, non-supply of correct quantity, excess pricing etc. are rampant in the society. Large numbers of consumers are helplessly at the mercy of the ruthless and rapacious

\textsuperscript{22} See, Consumer Protection Act, 1986, Sec. 2(d)
exploiters hoarders, black-marketers and profiteer etc. Keeping whole this in view the Consumer Protection Act 1986 provide effective and relevant provisions against such type of exploitation against consumer in the society.

(a) Consumer Redressal Forums

The Consumer Protection Act 1986, aims at helping a consumer in getting a number of redressal of his complaints through specially established forums, instead of filing a such in a civil court. Under the Act there is provision that no court fee is required to be paid for filing a complaint. Even there is no need to engage a lawyer of purpose of complaint. To provide cheap and speeder remedy the Act provides for setting up of Consumer Protection Councils both at Centre and State level and to establish 'Consumer Disputes Redressal Agencies'.

Under the Consumer Protection Act 1986, the complaint shall be instituted in a District forum within the local limits of whose jurisdiction firstly the opposite party or opposite parties actually and voluntarily reside.

23 (i) Consumer Disputes Redressal Forum known as "District Forum"; (ii) Consumer Dispute Redressal Commission known as "State Commission"; and (iii) National Consumer Dispute Redressal Commissions. For details see Consumer Protection Act, 1986. Section 9.
or carry on business or has a branch office, or works for gain. Secondly, the cause of action, wholly or in part, arises. Further the complaint to be accompanied by court fee as may be prescribed. It may be admitted or rejected within 21 days. On admission of the complaint the District Forum shall refer a copy of the complaint to the opposite party within 21 days directing him to give version of the case within 30 days such period may be extended by 15 days by District Forum. If the District Forum in satisfied that goods complained against suffer from any defect or any of alligators about the service are proved, it shall order the opposite party to remove the defects in the goods or replace the goods or refund the price, or to pay compensation. It shall further order the opposite party to remove the defects in the goods, deficiency in services in question or award compensation or may provide for adequate relief to the parties.

Every proceeding shall be conducted by the President and at least one member of the forum. Any person aggrieved by the order of the District Forum may prefer an appeal against such order to the State

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24 Ibid, Sec. 11.
25 Ibid, Sec. 12.
26 Ibid, Sec. 13.
27 Id.
28 Ibid, Sec. 14.
29 Id.
Commission within the period the 30 days from the date of such order. The limitation in that 50% of the decreed amount or Rs. 25,000/- whichever is less, has to be deposited before making an appeal\textsuperscript{30}.

Section 16 of the Act lays down that each State Commission shall consist of its President, who is or has been Judge of the High Court and at least two other members one of such member shall be a women. The State Commission shall have the power to entertain complaints where the value of goods or services and compensation exceeds Rs. 20 Lakh but does not exceeds Rs. One Crore\textsuperscript{31}. Any appeal against the order of the State Commission can be preferred to the National Commission, where the value of the goods or services and compensation, if any, claimed exceeds Rs. 20 Lacs but doesn't exceeds Rs. One Crore\textsuperscript{32}.

The National Commission can entertain complaints where the value of the goods, or services and compensation, if any, claimed exceed Rs. One Crore.\textsuperscript{33} Further, National Commission is empowered to entertain appeal against the order of any State Commission.\textsuperscript{34} Any appeal against the order of the National Commission

\textsuperscript{30}\textit{Ibid}; Sec. 15.
\textsuperscript{31}\textit{Ibid}; Sec. 17.
\textsuperscript{32}\textit{Ibid}; Sec. 19.
\textsuperscript{33}\textit{Ibid}; Sec. 20.
\textsuperscript{34}\textit{Ibid}; Sec. 21.
shall lie to the Supreme Court. The appellant is to deposit of the decreed amount of Rs. 50,000/- whichever is lower, before making an appeal.

The limitation period for filing a complaint in the District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. Any order passed by these forums may be enforced by these agencies in the same manner as a decree or order of the civil courts. Whenever any complaint which is of frivolous or vexatious, it shall for the reason recorded dismiss the complaint and complainant shall pay cost upto 10,000/- to the opposite party as well.

Sec. 27 lays down that every person who fails to comply with the order of the District Forum, State Commission or National Commission shall be punishable with imprisonment for a minimum duration of one month and maximum of 3 years or with minimum fine of Rs. 2,000/- and maximum of Rs. 10,000/- or with both imprisonment and fine.

35 Ibid: Sec. 24 A.
36 Ibid: Sec. 25.
38 Ibid: Sec. 27.
(b) Claim for Compensation under the Act

Section 14(1)(d) of the Consumer Protection Act, 1986 lays down that if the District Forum is satisfied that the goods or the service complained against suffer from any defect or deficiency specified in the complaint, it may order the opposite party directing him to pay such compensation in the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.  

It is important to mention that the forum may award compensation only if two conditions are satisfied:
(a) the consumer must have suffered some loss or injury, and
(b) the loss or injury must have been caused due to the negligence of the opposite party.

(i) Loss or Injury

Sec. 14 (1)(d) of the Act provides that the loss or injury for which compensation is to be adjudged and awarded should be found to have been caused by the negligence of the opposite party. The complaint has to establish that there was fault on the part of the opposite party and as a consequence there was a loss or injury. Only in such event award of compensation would be

39 Indian Airlines vs. R. K. Upadhyay, (1991) 1 CPR 46 (NCDRC)
warranted under the provisions of the clause (d) of Sec 14(1).

(ii) **Negligence**

Under Sec. 14(1)(D) any consumer claiming compensation must show that the suffered loss or injury due to the negligence of the opposite party. When the loss or injury is suffered without negligence of the opposite party, the consumer shall not be entitled to claim compensation. If no loss or injury is suffered by the consumer and the complaint is that goods are defective, the consumer cannot pursue his remedy to claim compensation under the Act.

Negligence is considered as the breach of a duty to take care, which results in damage to the plaintiff. In a legal sense or careless conduct, than needless or careless conduct, whether in omission or commission, it properly can note the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.

The burden of proof is always upon the injured party to prove negligence that the defect which caused injury was present in the article it left the hands of the party to whom he sues. Secondly, the defect was occasioned by the carelessness of that party and thirdly,
the circumstances are such as to cast upon the defender a duty to take care not to injure the consumer.

It is clear from the above discussion that Consumer Protection Act, 1986 has tried to fulfill its objective to a considerable extent.

V. Compensation under Environment Protection Act, 1986

Environmental Protection has become a matter of serious concern to the World. Decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and bio-diversity, excessive concentration of harmful chemicals in the ambient atmosphere and food grains, growing risks of environmental accident and threat to life support system.\(^{40}\) Besides this development of industrialization and urbanization has resulted in exploitation of resources as well. To cope up with the problem of environmental protection in Stockhome Conference (1972) the world emphasized on the legislative measures to combat the environmental problem.

In India with uneducated masses, poverty, socio-economic problems or conditions there is great lack of awareness regarding ecological and environmental

problem. India is amongst one of the countries in the world which provide constitutional status to the idea of environmental protection in Part-IV of the Constitution of India i.e. Directive Principles of State Policy.

Prior to 1974, Environmental Protection was not the subject matter of special legislation. Only the Indian Penal Code, 1860, the Criminal Procedure Code, 1973 and Code of Civil Procedure, 1908 were having the provisions. Besides this, the procedural requirements of a regular civil action were very difficult. In the year 1974, the Water (Prevention and Control of Pollution) Act, 1974 was enacted.

After this legislation seven years later, the Air (Prevention and Control of Pollution) Act, 1981 was also enacted. But the comprehensive legislation with regard to environmental protection was enacted through the Environmental Protection Act, 1986. The main object of the Act was to protect and improve the environment. The Act also gives the authority to plan nationwide programmes against environmental pollution and protection for the standards for quality of environment.41

In India, the civil courts played a limited role to combat pollution and offered no relief for violation of

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enviro-legal right. In personal injury cases, the courts hardly awarded compensation for non-pecuniary loss. However, the courts made awards for pain and suffering or loss for amenities of life but the compensation awarded was notoriously law.\(^{42}\)

The legal provisions relating to environmental pollution are found under certain other legislations also.\(^{43}\) The Environment (Protection) Act of 1986 was passed to protect and improve human environment and to prevent hazards to human beings, other living creatures, plants and property. This new legislation is said to be ‘Umbrella’ legislation passed to provide a framework for the Central Government towards co-ordination of activities of various Central and State Agencies established under various legislations. The Act contains 26 sections with the object of protection and improvement of environment. The remedial measures for protection of environment are made available in case of emergencies due to accidents or unforeseen events. The


\(^{43}\) The Shore Nuisance (Bombay and Colaba) Act 1853; The Orient Gas Company Act 1857; Indian Penal Code 1860; The Series Act 1867; The Northern India Canal and Drainage Act 1873; The Obstruction in Fair Ways Act 1881; The Indian Fisheries Act 1897; The Inland Stream Vessels Act, 1917; The Indian Forest Act, 1927; After Independence, The Factories Act, 1948; The Mines Act, 1952; The Atomic Energy Act, 1962; The Insecticides Act, 1968; The Wild Life (Protection) Act, 1972; The Water (Prevention and Control of Pollution) Act, 1977; The Forest (Conservation) Act, 1980; Air (Prevention and Control of Pollution) Act, 1981 are some of the important legislations.
Act imposes penalties in the form of imprisonment and fine upto Rs. 1,00,000.44

The National Environmental Tribunal Act, 1995 was passed to develop such system under which liability and compensation for the victim of environment pollution and other environmental damages. Besides, this the National Environmental Appellate Authority Act, 1997 was passed to provide for the establishment of a National Environmental Appellate Authority to entertain appeals with respect to restriction of areas in which any industry, operations or processes or class of industries shall not be carried out or shall be carried subject to certain safeguards under Environment (Protection) Act 1986.

VI. Compensation under Public Liability Insurance Act, 1991

The basic object of the Act i.e. Public Liability Insurance Act, 1991 is against the growth of hazardous industries, processes and operation. The protection is not only to the workmen employed in such undertaking, but also to the innocent members of the public who may be in the vicinity.45 Such accidents lead to death and injury of human beings and other living being and

44 See, Environment Protection Act, 1986. Sec. 15.
damage private and public property. Generally the majorities of the people affected are from the economically weaker sections and suffer great hardships because of delayed relief and compensation.\textsuperscript{46} While the workers and employees of hazardous installations are protected under separate laws, members of the public are not assured of any relief except through long legal processes.\textsuperscript{47}

To avoid such hardship, the legislative response such as Public Liability Insurance Act is the first legislation to provide monetary compensation to general public excluding workmen who become victims of industrial disaster. The Act is not applicable to workmen for the reason they are covered and compensated by ordinary labour laws but important thing is that labour laws particularly the Workmen's Compensation Act, 1923 offer the employer certain defences, through which liability can be avoided. On the other hand, the Public Liability Insurance Act is based on no-fault liability.\textsuperscript{48}

The Act also lays down that every industry or operation which handles hazardous substance, to take compulsorily insurance policy covering their liability to
provide immediate relief. It is very important to note that the Public Liability Insurance Act is based on the principle of no-fault, which is available for both death and injury to a person arising from an accident.\footnote{See, Public Liability Insurance Act, 1991, Section 3.}

Further, under the Act, accident means and involves a fortuitous, sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, intermittent or repeated exposure to death of or injury to any person or damage to property.\footnote{Ibid; Section 2(a)} Hazardous substance has been defined as any substance or preparation which by reason of its chemical or physio-chemical properties or handling is liable to cause harm to human beings other living creatures, plants, micro-organism property or the environment.\footnote{See, Environment (Protection) Act 1986, Section 2(c); A list of Hazardous and Toxic Chemicals has been given under Part II of the Schedule I of the Manufacture, storage and Import of Hazardous Chemical Rule 1989 issued by the Central Government in exercise of power conferred by Sections 6, 8 and 25 of Environment (Protection) Act, 1986.} The term 'handling' means to comprehend, manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substances.\footnote{See, Public Liability Insurance Act, 1991, Section 2(c).}
(a) Duty of Owner to Take out Insurance Policies

The Public Liability Insurance Act, under Section 4, made it compulsory for an owner to take out insurance policies, before handling any hazardous substance, to meet any potential liability for an accident that arises. It is further provided that the coverage by insurance must be continuous, meaning to say that policies should be renewed by the owner in time.

These insurance policies are to be taken out for an amount that is not less than the amount of the paid-up share capital of the undertaking that is handling the hazardous substance. The liability of the insurer is also not to exceed the amount specified in the terms of the contract of insurance. The Act also provides that the liability of the Central Government, State Governments and any Corporation owned by these two entities can be excluded by the notification.

Further, the Act also provides that an amount in addition to the premium is to be paid by the owner to the insurer which is turn is to be deposited by the insurer into a special pool called the Environmental Relief fund. If he does not remit this sum, it shall be recovered from him in the same way as arrears of land revenue. This fund established through a notification.

53 Ibid, Section 4(2-C).
under Section 7-A of Public Liability Insurance Act, is to be utilized for the paying of relief to be given under the mechanism prescribed by Public Liability Insurance Act.

(b) Procedural Mechanism

The Collector of the district has powers to entertain a claim for compensation applied for by a victim of an accident as defined in the Act. It is the power or duty of the Collector to verify the occurrence of an accident when it is brought to his notice and cause publicity to be given about it.\(^{54}\) The Act further provides that the person who suffers the injury or damage, or in case he is dead, his legal representative must make an application comprising all necessary documents.\(^{55}\) The Collector is empowered to make an award after hearing both the parties.\(^{56}\) For the purpose of evidence and attendance of witnesses the Collector is having all the powers of civil court.

From the above observations, it can be concluded that conferring the powers of awarding relief on the Collector who is principle revenue and administrative officer of the district, it may result in long delay and may not be entirely wise since there are many technical

\(^{54}\) Ibid, Section 5.  
\(^{55}\) Ibid, Section 6.  
\(^{56}\) Ibid, Section 7.
and legal aspects involving assessing a claim for the purpose of award. The Collector may not have full knowledge of all these technicalities. It is submitted that it would be more useful to give the entire function of granting relief under the Public Liability Insurance Act to Environmental Tribunal constituted under the National Environmental Tribunal Act (NETA) of 1995. Presently, a person who applies to the National Environmental Tribunal under the provision of National Environmental Tribunal Act can also make an application for grant of relief under Public Liability Insurance Act.57

(c) Who Can Claim Compensation58

A victim may claim compensation for injury resulting from industrial disaster under Public Liability Insurance Act, 1991 and National Environment Tribunal Act, 1995. Under the Public Liability Insurance Act, the right of claimant to plead for compensation under any other law subject to deduction for award made under the Act. On the other hand, the National Environment Tribunal Act 1995, the claim for compensation can also be brought by legal representative of the victims. The

57 See, National Environment Tribunal Act, Section 5(2).
58 See, Public Liability Insurance Act, 1991, Section 6
Tribunal can also initiate *suo motu* action as well.\(^5\) Even the Tribunal has also incorporated the basic philosophy of Public Interest Litigation, by granting access to representative body or organization to file an application on behalf of victim. It also give powers to any representative body or organization functioning in the field of environment or recognized by Central Government under all or any heads specified in the schedule to the Act to make an application for claim of compensation.\(^6\)

It is clear from the provisions that the Central Government has unfiltered discretionary powers to recognize or derecognize organization to be entitled to make an application for compensation. Definitely this type of requirement would discourage the fake person to move the tribunal to protect their private interest as well. The Act further provides provisions for claim of compensation by the Central or State Government or local authority under all or any of heads specified in the schedule.

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59 See, National Environment Tribunal Act, 1995 Section 4 (2)(c).
(d) **Who Shall Pay Compensation**

Under both Acts i.e. Public Liability Insurance Act 1991 and National Environment Tribunal Act 1995 no distinction is made between public sector or private sector. Further no distinction is made between individual or a government official. Any person who has having control over any hazardous substance is liable to pay compensation under the Act. In the year 1992, an amendment is made for the establishment of an Environmental Relief Fund and through its provisions owner shall contribute an amount equal to the premium money. This amount will be deposited with the insurer who shall remit the money to the appropriate authorities within a prescribed period. The Public Liability Insurance in order to compensate victims to a reasonable extent requires that even after the payments from the insurer and the environmental relief fund, still the victims are not adequately compensated, the remaining liability shall shift on the owner of hazardous industries.

The National Environment Tribunal Act, 1995 provides for apportionment of compensation among those who are responsible for the pollution on the

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equitable basis. Although the quantification of compensation has not been clearly specified, however, it is expected that a proper application of this provision would ensure a fair deal to every section of the society.⁶³

Even the Judges made law of Environmental Protection in India recognizes international law principles which tend to be treated in more circumspect manner in other common law jurisdiction.⁶⁴ Indian judiciary has incorporated the 'polluter pays' principle, the precautionary principle and the principle of 'sustainable development' into the domestic law and applied it in deciding the claim for compensation.

VII. Compensation for the violation of Human Rights under Human Right, Act 1993

Human rights means the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. India is a party to the International Covenant on Civil and Political Right and the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on the 16th

⁶³ See, National Environmental Tribunal Act, 1995, Section 3(3).
December 1966. Universal Declaration of Human Rights, 1948 also formed the basis for protecting and safeguarding human rights against any type violations at the national and international levels. For the protection and promotions of these human rights exhaustive provisions are laid down under Constitution of India.

No doubt, the courts are performing their duties very well to protect these basic rights, there was a need to establish independent machinery which would be entrusted the task of protecting and safeguarding the human rights. To make the provisions for such independent machinery, The Protection of Human Rights Act, 1993 envisages the creation of National Body i.e. the National Human Right Commission. Further at the State levels the Act created State Human Right Commission.

The human right embodied in the Covenants stands substantially protected by the Constitution. The main purpose of creation of Commission is to conduct inquiry regarding the complaints received by the Commission.\textsuperscript{65} The National Human Rights Commission as protector of

\textsuperscript{65} Such as custodial violence (I the nature of abusing, slapping, not allowing to sleep, Threats of various kinds, forcing to sit in abnormal position, whipping in public, non granting of bail in bailable matters etc.), Atrocities on schedule caste and schedule tribe, child marriage, protection of Human Rights, Prevention of Congential Mental Disabilities, Rights of the vulnerable, Abolition of Child Labour and Bounded Labour etc.
the human right is deeply concerned over the Police excesses, custodial death, torture, Police harassment, right of child and women, health rights of the vulnerable section of the society, atrocities against Scheduled Castes and Scheduled Tribes etc.

(a) Provisions under the Act

The presence of the Human Rights Act influenced the decision making process in India, legislature, executive and judiciary has had its impact on the right to life and compensation. The journey of compensatory jurisprudence began in the case of Rudal Shah, who has witnessed the transformation made by the Apex Court in exercise of its jurisdiction. The Human Rights Act provided teeth and value to its decision making process.

Under the Protection of Human Rights Act, 1993, Sec. 3 lays down the provision of constitution of a National Human Rights Commission. According to Section 3 of the Act the Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the power conferred upon, and to perform the function assigned to it under the Act. The Commission shall consist of a Chairperson,
who should have been a Chief Justice of the Supreme Court, one member who is or has been, a the Chief Justice of the High Court. Further two members to be appointed from persons having knowledge or practical experience relating to human rights.

The Commission is empowered to perform all functions like, *suo moto* inquiry or on a petition presented to it by a victim or any other person on his behalf, into complaint of any violation of human rights or abetment, any negligence in the prevention of such violation by a public servant. The Commission is also empowered to intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. It can review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation. The Commission also performs the functions like review the factors, including acts of terrorism, study treaties and other international instruments on human rights and make recommendations, undertake and promote research, spread human rights literacy among various sections.

68 Ibid.
encourage the efforts of non-governmental organizations and such other functions as may be considered necessary for the promotion of human rights. 69

The Commission while inquiring into the complaints may call for information or report from the Central and State Government or any other authority or organization. 70 After inquiry, the Commission shall take following steps. Firstly, where the inquiry discloses the commission of violation of human right or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned government or authority for the initiation of proceedings for prosecution or such other action as Commission may deemed fit. It may approach the Supreme Court or the High Court concerned for such order or writs as that court may deem necessary. Secondly, recommend to the concerned government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary. Thirdly, the Commission shall send a copy of its inquiry report together with its recommendations to the concerned government or authority and the concerned government shall within a period of one month forward

69 Id.
70 Ibid, Section 17.
his comments on the report, including the action taken or proposed to be taken by them to the Commission. Lastly, the Commission shall publish its inquiry report together with the comments of the concerned government or authority.\textsuperscript{71} Sec 21 of the Act lays down the provisions for the constitution of State Human Rights Commission. For the purpose of providing speedy trial of offences assign out of violation of human rights, the state government may with the concurrence of the Chief Justice of the High Court by notification, specify for each district of Court of Session to be a Human Rights Court to try the said offences.\textsuperscript{72} It is provided that nothing in the Section shall apply to a Court of Session where it is specified as a Special Court and secondly a Special Court constituted for such offences under any other law for the time being in force.\textsuperscript{73} The Commission is not empowered to inquire into any matter which is pending before the State Commission or any other Commission duly constituted under any law for the time being in force. Further the Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date of which the act

\textsuperscript{71} Ibid; Section 18.
\textsuperscript{72} Ibid; Section 30.
\textsuperscript{73} Ibid; Section 30.
constituting violation of human rights alleged to have been committed.\textsuperscript{74}

The victim of crime has not been given the right to claim compensation for violation of human rights. The Commission can only make recommendations to the government for award of compensation. Implementation of the recommendations is left to the discretion of the Government.

The National Human Right Commission has successfully devised many ways to handle cases of human right violation.\textsuperscript{75}

\textbf{VIII. Compensation Under the Code of Criminal Procedure, 1973}

The Criminal Procedure Code is the first and may be the oldest legislation in India to deal with the subject of compensation to victim of crime. The provision of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive developments of the law relating to victim compensation.

\textsuperscript{74} Ibid. Section 36.
\textsuperscript{75} For example, Atrocities on Schedule Caste and Schedule Tribes, Child Marriage, Protection of Human Right, Prevention of Congenital Mental Disabilities, Rights of the Vulnerable, Abolition of Child Labour and Bounded Labour etc.
The provisions for compensation envisaged in the Code of Criminal Procedure, 1973 are contained in Sections 357, 358 and 359-A of the Code. Some other provisions on the subject matter are under Sections 237 and 250 of The Criminal Procedure Code.

(a) Power of Court to Pay Compensation on Conviction

Specifically, Section 357 of the Criminal Procedure Code, 1973 enables the passing of an order of compensation by the Trial Court, the Appellate Court and the High Court or Court of Session in revision at the time of passing of judgement, out of fine imposed by the Court under the following circumstances:

Firstly, (a) to the complainant, for meeting expenses properly incurred in the prosecution; (b) to any person, who has suffered loss or injury by the offender, when he can recover compensation in Civil Court; (c) to a person entitled to recover damages under the fatal Accidents Act, when there is a conviction for causing death or abetment thereof; (d) to a bonafide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust,
cheating, or receiving or disposing of stolen property and which is ordered to be restored to its rightful owner.

Secondly, where there is an appeal against any sentence or fine, no compensation shall be paid till the appeal period lapses.

Thirdly, in all cases where no fine is imposed, the Court may order the payment of compensation to the victims of crime who have suffered any loss or injury.

Whenever compensation is paid under Section 357 it shall be taken into account by any Civil Court which subsequently takes up the civil suit claiming compensation. Section 357 of Code of Criminal Procedure Says:

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgement, order the whole or any part of the fine.

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when
compensation is, in the opinion of the Court recoverable by such person in a civil Court;

(c) when any person is convicted of any offence for having abetted the commission of such an offence in paying compensation to the persons who are, under the fatal Accident Act 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death.

(d) When any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust or cheating or of having dishonestly received or retained, or of having voluntarily assisted in disposing of stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property for the loss of the same if such property is recorded to the possession of the person entitled thereto.
(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or if an appeal be presented before the decision of the appeal;

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgement, order the accused person to pay, by way of compensation such amount may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this Section may also be made by an Appellate Court or by the High Court or the Court of Session when exercising its power of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter the Court shall take into account any sum paid or recovered as compensation under this Section.

Section 357 visualizes a wide range of situations under which compensation may be ordered to be paid to
the victims of crime. Under the Section, the categories of victims which becomes entitled to claim compensation are the complainant victim or any person who has suffered loss or injury because of the offence. He can recover compensation in Civil Courts under the fatal Accidents Act, 1855 and when there is a conviction causing death or abetment thereof or a bonafide purchaser of property, etc. can claim compensation.

Considering Section 357, sub section (1) of the Code empowers a Criminal Court to award the whole or any portion of the fine recovered for the purposes mentioned in clause (a) to (d). Further clause (a) and (d), in essence, deal with defraying pecuniary losses incurred by a person in prosecution\(^76\) and by a bonafide purchaser of stolen goods, respectively. Clause (b) and clause (c), on the other hand, respectively deals with recompensating ‘any loss’ (pecuniary or otherwise) or injury caused by any offence\(^77\) and by death.

In order to claim compensation under clause (b) it is necessary to show that person suffered a loss. ‘Loss’

\(^76\) See, Code of Criminal Procedure, 1973, Section 359 also empowers a Court, in its discretion to order a convict in addition the penalty imposed upon him, to pay reasonable costs, in whole or in part, incurred by the complainant in prosecution of a non-cognizable offence.

\(^77\) Ibid. Sec. 358 also empowers a magistrate; in his discretion to award a compensation, not exceeding Rs.100 to an accused from a complainant for loss of time and expenses incurred on account of being groundlessly arrested at the instance of the complainant.
means that can be compensated in money including some substantial detriment from a worldly point of view and loss of support and even loss of mere gratuitous liberty while the word 'injury' has been given a very wide meaning and connection in Indian Penal Code, 1860.

The compensation under this Section not only corresponds to damages awarded in civil proceedings but is also to be taken into consideration by a Civil Court in determining the quantum of damages in a subsequent civil suit relating to the same matter.

Further, sub-section (3) was inserted in Section 357 of the Code of Criminal Procedure, in 1973, unlike sub-section (1), empowers a Criminal Court, in its discretion, to order the accused to pay by way of compensation a specified amount to victims of the offence even if fine does not form part of the sentence imposed on him.

Keeping this in view, Section 357(3) of Criminal Procedure Code has not only recognized the philosophy of the compensation simplicitor to the victims of crime even in the situation where no sentence of fine has been imposed but it also added a new dimension to the idea of re-compensating them. Prior to inclusion of this clause no compensation could be awarded unless a
substantive sentence of fine was passed and then too this was limited only to the extent of the fine actually realized. So it can be for any amount and not limited to the amount of fine imposed or recovered.

(b) Compensation to the Persons Groundlessly Arrested

Section 358 of the Code provides:

(1) Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient grounds for causing such arrest, the Magistrate may award such compensation, not exceeding one hundred rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

(2) In such cases, if more persons than one are arrested, the Magistrate may in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.
(3) All compensations awarded under this Section may be recovered as if it were a fine and if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding 30 days as the Magistrate directs, unless such sum is sooner paid.

Thus, Section 358 visualizes when any person has been caused to be arrested by the police, at the instigation of a person and the Magistrate finds that such arrest was caused on insufficient grounds, than he may order a sum of rupees not exceeding hundred to be paid to the victim of such arrest.

Further, it is pertinent to note that Section 358 obviously aims at protecting the constitutionally guaranteed personal liberty of the person under Article 21 of the Constitution of India and also save them from illegal and arbitrary arrest, even without reference to any accusations or charge levelled against such person. Thus, this is definitely, important piece of legislation against groundless arrest by the police and while upholds the rule of law by having democratic values. 78

78 See, supra note 41, p. 75.
(c) Order to Pay Costs in Non-Cognizable Cases

Under Section 359 of the Code when any person has been convicted in non-cognizable case the Court may order for the refund of expenses incurred by the complaint in launching the prosecution. So under Section 359, the complaint victim is entitled to claim only the expenses incurred in the launching of the prosecution for loss or injury suffered by him.

Similarly, Section 250 of the Code also lays down special provision for the payment of compensation to the accused person in cases where he is discharged or acquitted as a result of finding no reasonable ground existing for launching such prosecution. The Section 250 read as follow:

(1) If in any case instituted upon complaint or upon information given to a police officer or to Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the
Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information or the accusation is present, call upon him forth show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable ground for making the accusation, may for reasons to be recorded, make an order that compensation to such amount not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under subsection (2) further order that, in default of payment, the person ordered to pay such compensation shall undergo simple
imprisonment for a period not exceeding thirty
days.

(4) When any person is imprisonment under sub-
section (3), the provisions of Sections 68 and
69 of the Indian Penal Code (45 of 1860) shall,
so far as may be, apply.

(5) No person who has been directed to pay
compensation under this Section shall, by
reason of such order, be exempted from any
civil or criminal liability in respect of the
complaint made or information given by him:

Provided that any amount paid to an accused person
under this Section shall be taken into account in
awarding compensation to such person in any
subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been
ordered under sub-section (2) by a Magistrate
of the second class to pay compensation
exceeding one hundred rupees, may appeal
from the order as if such complainant or
informant had been convicted on a trial had by
such Magistrate.
(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this Section apply to summons-cases as well as to warrant cases.

Section 250 of the Code of Criminal Procedure, thus, covers only those specific cases where case has been instituted upon a complainant or upon the information given to police or to the Magistrate accusing some person of having committed certain act or offence triable by a Magistrate and the case should have been ended in an acquittal when the Magistrate trying the case should have found that complaint or the information given was false and either frivolous then the magistrate may order the informant to pay compensation.
Further, Section 237 of the Code lays down

(1) A Court of Session taking cognizance of an offence under sub-section (2) of Section 199 shall try the case in accordance with the procedure for the trial of warrant cases instituted otherwise than on a police report before a Court of Magistrate:

Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

(2) Every trial under this Section shall be held in camera if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of
(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this Section:

Provided that any amount paid to an accused person under this Section shall be taken into account in awarding compensation to such person.
in any subsequent civil suit relating to the same matter.

(7) The person who has been ordered under subsection (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed or, if an appeal is presented, before the appeal has been decided.

This Section lays down the provision of the payment of compensation to victims of crime by the Session Court in the cases involving the defamation of a person. The maximum amount of compensation that the Court may award under this Section in Rs. 1000/-.

Under Section 237 to award the compensation the accused must have been discharged or acquitted on the ground that no reasonable cause for making the acquisition against the accused exists.

Further, Section 250 of the Criminal Procedure Code, 1973 lays down special provision for payment of
compensation to an accused person in cases where he is discharged or acquitted as a result of finding no reasonable ground existing for launching such prosecution. The Section 250 reads as under:

(1) If in any case instituted upon complaint or upon information given to a police officer or a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or if such person is not present, direct, the issue of a summons to him to appeal and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that there was no reasonable
ground for making the accusation, may, for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

(3) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding thirty days.

(4) When any person is imprisoned under sub-section (3) of the provisions of Sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(5) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person
in any subsequent civil suit relating to the same matter.

(6) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by a such Magistrate.

(7) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed; or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

(8) The provisions of this section apply to summons-cases as well as to warrant cases.\(^7^9\)

It is clear from the above legislative provision that the Court is empowered to award compensation to the victim or his dependents out of the fine imposed upon

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\(^{79}\) See, Code of Criminal Procedure, 1973, Section 250
the offender. After considering all the provisions of the Code it is clear that Section 357(3) confer wider powers on the Court to award compensation irrespective of the fine amount imposed. Further, it is clear from the above provision which at least visualize a minimum scheme of compensation, for the victims. If the provision of Section 357(3) is excluded then the purpose of the provision, become futile in case the offender in unable to pay the fine imposed. Therefore, in most of the cases where compensation is awarded, it remains unreal.

**IX. Compensation under Indian Penal Code, 1860**

In India, criminal law does not provide for payment of compensation to victim of crime for any 'loss' or 'injury' - physical, mental or psychological caused to him by offender. Even the Law Commission is not in favour of creation of legal right in favour of the victim to join hand in criminal proceedings. As a third party definitely it will mix up civil and criminal proceeding. Further, the Law Commission is of the opinion that there is no advantage in providing for duty to make amend for the harm caused or payment of compensation to the victim of the offence as an additional punishment.

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There may be cases where the offender is not in a position to pay compensation owing to his pecuniary conditions. In such cases scheme may be framed for payment of compensation by the State, based on sound and certain legal premises. The payment of compensation can also be made out of the earning of the offender during imprisonment.\(^81\)

However, the Penal Code should give prominence to this aspect of compensating the victim of the offence out of fine imposed on the offender.\(^82\) With a view to give prominence in the Indian Penal Code, 1860 to the payment of compensation out of fine imposed and to give a substantive power to the Trial Court to this effect. Accordingly, Law Commission of India in its 42\(^{nd}\) report suggested the insertion of Section 62 in the Penal Code in the following manner:

"Whenever a person is convicted of an offence punishable under Chapter XVI, Chapter XVII or Chapter XXI of this Code or of an abetment of such offence or of a criminal conspiracy to commit such offence and is sentenced to a fine whether with or without opinion that


compensation is recoverable by civil suit by any person for loss or injury caused to him by that offence, it shall be competent to the Court to direct by the sentence that the whole or any part of the fine realized from the offender shall be paid by way of compensation to such person for the said loss or injury.\textsuperscript{83}

Explanation - Expenses properly incurred by such person in the prosecution of the case shall be deemed part of the loss caused to him by the offence.\textsuperscript{84}

The Parliament did not pay attention to the recommendations of the Law Commission. But, the existing provision relating to compensation was inserted in the Code of Criminal Procedure through amendment and its application has been expanded.

It may be provided in the modified Section 357 (545 of old Code) of Criminal Procedure Code that, in every case where the new Section 62 of the Penal Code is attracted, but the Court decides not to make an order for payment of compensation out of the fine, it should record its reasons.
Further, Justice R. L. Narasimham, member of the Law Commission opined that Section 357 (Section 545 of Criminal Procedure Code, 1898) is wholly unsatisfactory because of some reason. Firstly, under Section 545 Cr.P.C (357 New Code) compensation can be given only in money, to the injured party. There is no provision for direct reparation for the harm caused. Secondly, the procedure involved in the Section is circuitous, dilatory, expensive and caused much harassment to the injured complainant. The Court is required first to impose fine on the accused and then await its realizations. Keeping this in view when the injured party has to apply for withdrawal of compensation awarded to him and the procedure as is well known in Courts in India, involves much delay and harassment and also expenses in the form of illegal gratification to the subordinate Court staff. It will be very rarely indeed that any aggrieved party can hope to receive the full amount of the compensation awarded to him within reasonable time. Lastly, it does not cover cases of those accused persons who are unable to pay the fine. The evil effect of short term imprisonment already pointed out persists and the complainant also may not be able to derive any advantage as far as reparation is concerned.
Accordingly Justice R. L. Narasimham recommended deletion of Section 545 (Section 357 New Code) from the Criminal Procedure Code and insertion of the following Clause in Indian Penal Code:

70 A (1) In the case of conviction for an offence against the human body and offence against property, defamation or an offence against privacy, the Court may direct that the person convicted shall pay compensation to the person mentioned in sub-section (4).

(2) Such compensation need not necessarily be monetary and it may be in any form which the Court considers to be sufficient recompense to the injured party. But, while passing the order for compensation, the Court shall estimate its monetary value for the purpose of execution of the order.

(3) The Court shall not, under this Section direct payment of compensation whose monetary value exceeds the amount of fine which it is empowered to impose.

(4) An order under sub-section (1) may be made –
(a) In addition to any other punishment to which the person convicted may have been sentenced.

(b) In substitution of fine, where the offence not being a capital offence, is one punishable with fine.

(5) The compensation under this Section may be directed to be paid -

(a) to any person who has incurred expenses in prosecution for defraying expenses properly incurred;

(b) to any person for any loss or injury caused by the offence, when compensation is in the opinion of the Court, recoverable by such person in a civil Court;

(c) in the case of conviction of any offence for having caused the death of another person or of having abetted the Commission of such offence, to the person who are, under the fatal Accident Act, 1855, entitled to recover damages to
the person sentenced, for the loss resulting to them from such death; or

(d) In the case of a conviction for any offence which includes, theft, criminal misappropriation, criminal breach of trust, or cheating or of having voluntarily assisted in disposing of, stolen properly knowing or having reason to believe the same to be stolen, to any bonafide purchaser of such property for the loss of the same, if such property is restored to the possession of the person entitled thereto.85

These specific provisions recommend improvements in the law concerning payment of compensation by the offender. Basically emphasis is given for compensation by a convict out of the fine imposed upon him for committing an offence against the human body, property, defamation or abetment of or criminal conspiracy to commit such offence. Such compensation is recoverable in a civil suit against the convict for loss or injury caused to the person.

85 Ibid. at 381-82.
Secondly, the provision favours compensation to the victim as an additional punishment and pleads for imposition of a statutory duty on offenders to amend or re-compensate, monetarily or otherwise, the victim.

It is crystal clear that the second approach not only shows equal concern to victim of crime but also visualizes a real, reasonable, re-compensation of victim. But the whole of the recommendations of the Law Commission unfortunately not find a place in the provision of the Indian Penal Code, 1860.

X. Compensation under Probation of Offenders Act, 1958

The meaning of the word ‘Probation’ which is derived from the Latin word ‘Probera’ which means ‘To test’ or ‘To prove’. Homer S. Cunnings has observed that probation is a matter of discipline and treatment. If probationers are carefully chosen and supervision work is performed with intelligence and understanding, it can work miracles in rehabilitation of the offenders. Even the Apex Court in its anxiety and attempt to install the philosophy of correctional method of treatment of offenders in the mind of the trial Judges, has amplified the object of the Act.
In the administration of criminal justice sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Court should have collected materials necessary to help award a just punishment in the circumstances. But now the modern criminal jurisprudence has recognized that no one is born criminal. Many crimes are the product of socio-economic milieu. Basic aim behind this is to separate the young offenders from the hardened criminals.

The modern reformative theory of criminal justice makes a psycho-analytical study of the social background and economic status of the criminal and takes punishment as a means to a social end and the emphasis is that punishment is not an end itself, but as a mean to an end. Moreover, the modern criminologists has emphasized that a man turn into a criminal by force of circumstances like poverty and other environmental conditions and not by choice. Keeping this in view, the reformative theory of criminal justice has gained worldwide support in recent years and all civilized nations and more particularly sociologic and democratic

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87 Ibid.
countries of the world have adopted various measures and statutory enactments to apply correctional methods of punishment.

So in its quest re-establish offender in the community and to reform and rehabilitate them without subjecting them to the deleterious effects of jail life. Probation of Offenders Act, 1958 seeks to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature ages. It accordingly, empowers a Trial Court, in its discretion to release an offender after due admonition and on probating of good conduct in suitable cases. 88

The whole object of the Act is to prevent conversion of youthful offender into obdurate criminals of matured age, in case they are sentenced to undergo substantive imprisonment in Jail. The Probation of Offenders Act enables the Court, directing release of an offender under Section 3 and Section 4 in its discretion to grant 'reasonable compensation' to any person for loss or injury caused to him by commission of the offence and costs of the proceedings.

Sub-section 5(1) lays down powers of Court to Require Released Offenders to pay Compensation and Costs as under:

(1) The Court directing the release of an offender under Section 3 or Section 4, may, if it thinks fit, make at the same time a further order directing him to pay-

(a) Such compensation as the Court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) Such costs of the proceedings as the Court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as fine in accordance with the provisions of Section 386 and 387 of the Code.

(3) A civil Court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.89

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89 Ibid. See 5.
After considering the language of the Section an inference can be drawn that the provisions are inadequate from the victim's point of view. The award of compensation and costs is at the discretion of the Court. The dependent may be paid compensation from within the fine amount which a Magistrate may impose on the accused under Section 357 of the Criminal Procedure Code.

So, this makes it amply clear that such a power vests only with the Court releasing an offender and is purely within its discretion. Even the Appellate Court or High Court cannot interfere unless it is of the view that such power has been exercised capriciously and unreasonably.  

XI. Concluding Remarks Relating to the Provisions under Criminal Law

It is clear from the above observations that Section 357 of the Criminal Procedure Code, 1973 makes provisions for payment of compensation to the victim or his family out of the fine imposed on the accused. Further Section 357 of Criminal Procedure Code *inter alia*, empowers a Criminal Court to award compensation

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out of fine imposed as a sentence as well as a specified amount as compensation when the fine not treated as a part of the sentence. In normal circumstances, no compensation is ordered by the Court in such cases where there is no provision of fine. It is uncontroversial that the award of compensation is solely at the discretion of the Court. But this discretion of the Court is applied rarely.

Similarly, under Probation of Offenders Act, 1958 the Court’s discretion plays vital role when act is both a tort and a crime. Besides this Section 357 of Code of Criminal Procedure does not provide interim or immediate compensation to the victim on motor accidents claim cases.

Section 358 of Code of Criminal Procedure, 1973 enables payment of compensation, but this is granted for misuse of power by the State like compensation for groundless arrest or when police do acts contrary to law. In those instances the State is to proceed against the erring officials and release the amount awarded as compensation. Basic difference between Section 357 and Section 358 is that under previous one it’s offender liability and in the latter case it is State’s liability. But

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91 Code of Criminal Procedure, Sections 357(1) and (3)
victimology study support aids to arrest the victim. The State shall ensure payment of compensation expeditiously and should enact special provisions in this direction to the existing criminal law.

Even the Law Commission of India, with a view to give prominence to compensating victims of offences in Indian Penal Code 1860 and to enable the Trial Court with substantive power to order for the payment of compensation, recommended insertion of a clause requiring the Trial Court to pass an order to award compensation order in the Indian penal Code, which would be payable out of the fine imposed.