CHAPTER IV
ROLE OF THE LEGISLATURE IN THE GROWTH OF VICTIMOLOGY IN THE PRESENT TIMES

One of the primary tasks of the Govt is to look after the welfare of its citizens and their various rights. Undoubtedly, the term "citizen" will include the victims. However, as mentioned earlier, the system followed in India for dispensation of justice, is the Anglo Saxon adversarial system inherited from the British. The accused is presumed to be innocent till he is proved to be guilty. The burden of proof is on prosecution to prove beyond reasonable doubt that the accused is guilty. An accused enjoys the right of silence under Article 20(3), which provides for the protection against self-incrimination. He cannot be compelled to disclose any information, which implicates him. The aim of Indian Criminal Justice System is, therefore, to punish the offender and also protect the innocent against false implication.

In this adversarial system, truth is supposed to emerge from the alternative versions of facts put forth both by prosecution and the accused. The role of a Judge is nothing more than that of a umpire to see, as to whether the prosecution has been able to prove its case or not. The Judge is not a part of the investigation, which may be faulty either intentionally and deliberate to save the accused.
While on one hand, there has been an increase in the commission of crimes, there had not emerged anything substantial till the recent past for giving justice to the victims. The records of the National Crime Record Bureau, shows that there has been a nationwide increase in the number of crimes, particularly the serious crimes. As a matter of fact, the vulnerable members of the society i.e. women children, senior citizens and those belonging to the poor and weaker sections of the society have suffered the most. Victims alone truly know the trauma, which a crime can cause upon them.

(I) Malimath Committee on reforms of Criminal Justice System-

For a longer period, victims had been unnoticed by State and they had been the forgotten men of Indian Criminal Justice System. Rarely, the victims could be seen being given help financial help by the State, which they otherwise deserved. However, reforming the Criminal Justice System, which remained unchanged had been the focus of the State in recent times.

However, an attempt was made in this regard by Union Government, with the constitution of the Malimath Committee. The Union Home Ministry on 24.12.2000 constituted a Committee under chairmanship of retired Justice V.S. Malimath. The Committee was named as "Malimath Committee on Reforms of Criminal Justice System."
The Committee was constituted for the purpose of suggesting suitable changes for revamping our criminal justice system and to make it victim friendly. The Committee was entrusted with the various tasks by the Central Government including the following:-

1. To examine the fundamental principles of criminal jurisprudence including the Constitutional provisions relating to criminal jurisprudence and see, if any modifications or amendments are required therein.

2. To examine in the light of the findings on fundamental principles and aspects of criminal jurisprudence as to what was there is a need to rewrite the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act in harmony with the aspiration of the people of India.

3. To suggest ways and means of developing such synergy amongst the judiciary, the prosecution and the police so as to restore the confidence of the common man in the criminal justice system by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal.

(a) Focus of the Central Govt towards victim protection-

The main focus while constituting Malimath Committee on reforms of Criminal Justice System was the plight of the common man and the victims. This new approach towards rights of the victims, is apparent from
the following lines of the notification constituting the committee. ¹

People by large have lost confidence in the criminal justice system. Victims feel ignored and are crying for attention and justice. There is need for developing a cohesive system in which all parts work in co-ordination to achieve the common goal.

(b) Report of Malimath Committee regarding victim protection-

The Committee submitted its report ² containing 158 recommendations. It recommended that a quest for justice should be the true guiding principle and it should be enshrined in the new preamble to be added through amendments in the Cr.P.C. It will not be out of context to say that the concept of justice was sought to be changed from justice to the offender of crime to a balanced approach between the offender to defend himself and the right of a victim of crime to seek justice. As one of the focus of was protection of the victims, the Committee under clause (6) of the report with the heading “justice to the victims of crime” made several suggestions to make justice accessible to the victims. Clause (6) of the report read as follows:-

6. justice to the victims of crime-

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¹ Notification dated 24th November 2000 issued by Union Home Ministry and published in official gazette.
An important object of the criminal justice system is to ensure justice to the victims yet he has not been giving any substantial right not even to participate in the criminal proceedings. Therefore, the Committee feels that the system must focus on justice to the victims. Therefore, the Committee has made several recommendations, which include right of the victim to participate in cases involving serious crimes and to adequate compensation. Hence, the committee has made the following recommendations-

(14)(1) The victim if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceedings, where the offence is punishable with 7 years imprisonment or more.

(II) In select cases notified by the appropriate government, with the permission of the court, an approved voluntary organization, shall also have the right to implead in Court proceedings.

(III) The victim has a right to be represented by an advocate of his choice provided that an advocate shall be provided at the cost of the State if the victim is in a position to afford a lawyer.

(IV) The victim's right to participate in criminal trial shall inter-alia include-

a) To produce evidence oral or documentary with leave of the court and /or seek directions for production of such evidence.

b) To ask questions to the witnesses or to suggest to the Court questions which may be put to the witness.

c) To know the status of investigation and remove the Court to issue directions for further investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search of truth.
d) To be heard in respect of the grant or cancellation of bail.

e) To be heard whenever prosecution seeks to withdraw and to offer to continue the prosecution.

f) To advance arguments after the prosecution has submitted arguments.

g) To participate in the negotiations leading to settlement of compoundable offences.

h) The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence imposing inadequate sentence or granting inadequate compensation. Such an appeal shall be to the Court to which an Appeal shall ordinarily be against the order of conviction of such Court.

(iii) Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

(V) Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament the draft bill, on the subject submitted to the government in 1995 by the Indian society of Victimology, provides a tentative framework for consideration.

(VI) The victim compensatory law, will provide for the creation of a victim compensatory fund to be administered possibly by the legal services authority. The law should provide for the scale of compensation in different offences for the guidance of the court. It may specify offence in which, the compensation may be granted and the conditions under, which it may be awarded or withdrawn.
The report of the Malimath Committee further observed that

It is the considered view of the committee that Criminal Justice System administration will assume a new direction towards better and quicker justice once the rights of the victims are recognized by law and restitution for loss of life, limb and property are provided in the system. The cost for providing it, is not exorbitant as something made out to be. With the increase the quantum of fine recovered diversion of funds generated by the justice system and soliciting of public contribution, the proposed victim compensation fund, can be mobilized at least to meet the cost of compensating the victims of violent crimes. Even if part of the assets confiscated and forfeited in organized crimes and financial funds is also made part in the fund and it is managed efficiently there will be no poverty of resources for this well-conceived reform. In many case, dispensing justice to victims of crime, cannot any longer be ignored on grounds of scarcity of resources.

The report of Malimath Committee on Reforms of Criminal Justice, became a bench mark of the emerging role of victims in our Criminal Justice System. Contrary to the traditional notion that a crime committed by an accused is a crime committed against the State, which is also the prosecution, the Committee through its report made an effort to emphasize that the crime is actually committed against the victim and they cannot be ignored anymore and suggested changes in the trial
procedure to give a right of participation in the trial to the victims.

**(II) Draft National Policy on Criminal Justice**

The Malimath Committee on Criminal Justice Reforms constituted by the Government of India had recommended that Government should come out with a clear and coherent policy statement on all major issues of criminal justice.

In these circumstances, the Ministry of Home Affairs, Government of India accordingly appointed a Committee in May 2006 by issuing a notification in the official gazette for the purpose of drafting a Policy Paper on the subject under the Chairmanship of Prof. (Dr.) N.R. Madhava Menon, former Director of the National Law University at Bangalore and Kolkata and Director of the National Judicial Academy, Bhopal. Shri Anil Chowdhary, a former Secretary (Internal Security) to Government of India and Shri Mohan Dayal Rijhwani, a senior member of the Bombay Bar were the members of the Committee. Shri Kamal Kumar, former Director of the National Police Academy was also inducted as a member of the Committee, after his retirement. The Joint Secretary (Judicial), Ministry of Home Affairs acted as the Convenor.

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3 Notification no 12/30/2006-Judicial cell dated 3.5.2006
Officers and staff of the Judicial Division of MHA extended the secretarial support to the Committee.

The Committee, during its overall tenure of just over a year, met on sixteen occasions and had a few zone consultations with a cross-section of the stakeholders of the criminal justice system. In this regard, the support was extended by the National Judicial Academy, Bhopal, the School of Criminal Justice and Administration of the National University of Juridical Sciences, Kolkata, the National Academy of Legal Studies and Research University, Hyderabad, Symbiosis College of Law, Pune, the LJN National Institute of Criminology and Forensic Science, New Delhi, the Centre for Development Studies, Trivandrum and the Indian Space Research Organization, Bangalore as stated by the Committee in its report.

A tentative draft paper prepared to elicit views from a cross-section of the public was put on the Home Ministry’s website which received a good deal of response from the public and the media. The Draft Policy thus evolved was then organized in terms of the mandate of the Committee and the concerns expressed by the different stakeholders. The Draft was then sent by the Home Minister to the Parliamentary Consultative Committee of Parliament for the Ministry of Home Affairs as well as to the key Ministries/Departments of the Central and the State
Governments for eliciting responses for possible revision even before finalization of the Policy Paper.

A significant event which guided the revision of the Policy Paper was a series of three Consultative Committee meetings of Members of Parliament convened by the Home Minister, exclusively to discuss the Draft. The Committee took into consideration, the observations and comments given orally and in writing by the Parliamentarians. Another meeting to discuss the Draft was convened at the instance of the Home Minister in which, besides the Union Law Minister, several law officers including the Attorney General, Solicitor General of India and the Law Secretary actively participated. The guidance received at the highest level from all concerned enabled the Committee to revise the Draft Policy several times during the finalization.

The Committee submitted its report to the Ministry of Home affairs (Central Government). The Committee dealt with various issues and areas concerning the Criminal Justice System such as three legs of the Criminal Justice System i.e police prosecution and the courts, new approach in criminal law including victim orientation in criminal justice, sentencing in penal offences, standard of proof, appointment of public Prosecutors, role of defence lawyers, training of Judges advancement of forensic labs and the role of Criminal

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Justice System towards the weaker sections of the society. The issues relating to victims were also deliberated upon by the Committee and the same are referred as follows-

(i) **Focus of the Committee on the victims**

The Committee in its report while submitting its report specifically focused on the victims of crime and the neglect of the victims was one of the key element of the National Draft Policy proposed by the Committee. This focus of the Committee is apparent from Para 3.1 of its report, which reads as follows-

3.1 **contents of policy on Criminal Justice**

*System-*

The key elements of a National Policy on Criminal Justice may, thus, include:

(a) The role of the Central and State Governments, given the scheme of the Constitution in respect of law and policy making as well as their implementation;

(b) The imperatives of human rights protection and the obligations of the state under the Constitution and international human rights instruments;

(c) The changing nature of crime and its management in the context of developments in technology, market economy and globalization on the one hand, and the shifting trends in the modern warfare strategies with 'proxy wars' increasingly substituting the conventional wars on the borders, on the other;

(d) The implications of terrorism and organized crime which raise issues of national security;
(e) The relative neglect of victims in the criminal justice system;

(f) The lack of adequate data and systematic planning for better co-ordination, increased efficiency and performance evaluation of the system;

(g) The special needs of weaker sections of the people in policy making and allocation of resources for the system;

(h) The need for diversion, settlement and alternate ways of dealing with crime;

(i) The question of deterrence and effectiveness of punishments;

(j) Institutional reforms in the police, prosecution, courts and the correctional services; and

(j) The role of media, civil society, and NGOs in prevention of crime and treatment of offenders etc.”

(ii) **Victim Orientation** -

The Committee separately dealt with the issues concerning the victims of crime in Para 5.2 of its report which reads as follows-

**5.2 A Victim Orientation to Criminal Justice**-

5.2.1 There is justifiable criticism that the present criminal justice system is totally centred around the accused, ignoring the victim for whom the system purportedly exists and is supposedly operating. The United Nations has also acknowledged this in difference to victims of crime and called upon Member-States to amend their laws, giving special rights to victims to participate
in criminal proceedings and to claim compensation irrespective of the outcome of the criminal case.

The Committee on Criminal Justice Reforms recommended (2003) empowering of the victims of serious offences with the right to implead themselves as a party, right to be represented by counsel, right to produce independent evidence and cross examine witnesses with leave of the court, right to be heard in the matter of bail, right to continue with the case if the prosecution sought withdrawal, and the right to advance arguments and to prefer an appeal against an adverse order. There may also be need for victim protection schemes in certain situations. The state should also ensure rehabilitation of hapless victims of crime and violence.

5.2.2 The case for a nation-wide victim compensation scheme and compensation fund has been acknowledged for a long time. It is clearly an obligation of the state both under international and national laws. The Criminal Procedure Code (Amendment) Bill, 2006 which is now under consideration of the Parliament does stipulate the State Governments to establish a Victim Compensation Fund and authorize the legal services authority to administer the compensation scheme. It will be a step in the right direction. Much more, however, requires to be done to compensate the victims of crime promptly and satisfactorily, particularly in respect of victims of rape, communal violence, terrorism and other heinous crimes. The policy needs to be pursued and expanded with the intervention and support of the Union Government.

There have been special legislations like the SC/ST (Prevention of Atrocities) Act, Civil Rights Protection Act, Domestic Violence Act, Immoral
Traffic (Prevention) Act etc. under which victims have been given special rights and privileges which signifies the legislatures' concern for victims of crime. This policy also needs to be given a comprehensive and progressive push to restore the balance which the system badly needs.

5.2.3 Given the increasing incidence of crime in contemporary times, it is difficult to estimate the financial costs involved to compensate victims of all types of crimes. As such, the National Policy should aim at a phased programme of victim compensation under which victims of violent crimes may be compensated to begin with. In the second phase, it may be extended to property offences and so forth. The principles for determining the quantum of compensation may be borrowed from the law of torts with suitable modifications. Inappropriate cases, the compensation amount with interest can be realized from the offenders themselves and remitted to the State Compensation Fund. The fine amounts realized may also be directed to be paid into the Compensation Fund. There is also scope for imposing a security cess on large industrial houses and high security establishments in order to mobilize resources for enriching the Victim Compensation Fund. A part of the legal aid budget can also be legitimately diverted to the Victim Compensation Fund as the nature of services is similar in both schemes.

(iii) Balancing of the rights of the accused, the victims and the society at large—

The Indian Criminal Justice System has been accused friendly, wherein the victims have no role to play. The Committee, therefore, recommended to adopt a balanced approach between the rights of the accused, the
victims and the society at large as it recommended in Para 6.1.4 of its report that -

The National Policy on Criminal Justice will have to restore a balance between the constitutional rights of accused persons, the rights of victims of crime and the security of public at large. While the policy should not excessively empower the police because of possibility of abuse, it should not hesitate to enable the Courts to draw out the facts and make the right conclusions in appropriate cases.

(iv) **Role of lawyers in the Indian Criminal Justice System**

The Committee also dealt with the role of the Public Prosecutor’s as well the services rendered to the victims under the provisions of the Legal Services Authorities Act. The Committee after examining the present system of appointment of Public Prosecutor’s, was of the view that they are not able to meet the professional standards of defence lawyers, which causes injustice to the victims and the society at large and, therefore, suggested to bring professionalism in the appointment of the Public Prosecutor’s. It recommended so in Para 6.7 of its report which reads as follows-

**6.7 prosecution to be made professionalized and made accountable**- Prosecutor’s are officers of Court whose duty is to assist the Court in the search for truth in order to administer justice. If the prosecutor’s are not competent or are corrupt, administration of justice will suffer to the detriment of interest of victims and the society at
large. Hence the selection, training and supervision of personnel of the prosecution wing are important, which today is a much neglected field. Therefore, the policy in respect of the prosecution system has to change towards greater professionalism and accountability. A series of recommendations in this regard have been made by several expert committees in the past and the Law Commission of India which warrant immediate attention. Recognizing the right of victims to implead themselves in the prosecution in select situations is a step which will go a long way to save the system from total collapse.

How should the Directorate of Prosecution be organized and administered for the required synergy to be achieved in criminal justice administration? Should the prosecution be accountable to the High Court on the administrative side? Can prosecutors be selected along with the civil judges through the same process? How can the co-ordination between the investigation and prosecution wings be achieved after the separation of the executive from the judiciary? How can efficient prosecutor's be retained in service in the context of tremendous opportunities now becoming available in private practice? The National Policy has to find proper responses to these questions for developing the prosecution service efficiently. The Policy needs to recognize the importance of inducting competent, well-trained, well-paid prosecutors at all levels under an independent Directorate, preferably under the control of the Board of Criminal Justice, to ensure professional efficiency, accountability and fairness in the administration of justice.

So far as the services rendered to the victims is concerned, the Committee after examining the present
system of providing legal aid under the legal services authorities act specifically felt that the present system of providing legal aid is not sufficient and recommended for public defender system to provide efficient and good services of lawyers to the victims as a state responsibility. The Committee was perhaps conscious of the fact that the since the accused can get the proper services of defence lawyers, the victim are deprived of the services of efficient lawyers. The Committee recommended regarding the need to provide services of efficient lawyers to the victims in para 6.8 of its report and the same reads as follows-

6.8 Role of defence lawyers in criminal proceedings

The right to be defended by a lawyer of one's choice is a constitutional guarantee. How can this be ensured in the case of indigent accused and victims? The present system of state-sponsored legal aid is inadequate to provide effective and quality service to indigent litigants. There is need for reform in the organization and delivery of legal services which should aim at competitive quality and high standards of professional accountability. A Public Defender System can perhaps be developed to make legal services available to poor victims of crime particularly when victim's rights are statutorily recognized. Like public prosecution service, public defender service could also be part of the state responsibility. It will help make criminal justice fair to both sides promoting the Constitutional promise of equal justice under law. What is the scope of responsibility of the legal profession generally and of a defence lawyer in particular in criminal cases? Are the remedies available to the Court against lawyers
abusing the processes of Court or corrupting the system adequate and efficient? Should there be a special code of conduct for prosecuting and defending lawyers, given the objects of criminal proceedings? Does the Advocates Act require an amendment to subject the defence lawyers to greater accountability in avoidance of delays and miscarriage of justice in criminal cases? These are issues which the Bar Councils need to consider and come up with standards of conduct to ensure professional responsibility in criminal proceedings. Seeking adjournments on one pretext or another, boycott of Courts, corrupting the Court staff, inducing witnesses to turn hostile etc. are practices indulged in by some lawyers with relative impunity. It has already brought the system into disrepute. There is need for setting up independent monitoring bodies including Judges and members of the public to correct unethical practices of a section of the bar putting the system into disrepute. There is a clearly need for amending the Advocates Act to accommodate the concerns in this regard."

A perusal of some of the aspects or the report of the committee reproduced hereinbefore clearly show that while earlier the victims were not in focus at all, but in the present times it has been felt that the victims of crime cannot be ignored. In fact, the Committee in the summary of its report highlighted various factors which were ailing the Criminal Justice System, wherein also it pointed out the neglect of the victims as it observed that

Victims are totally ignored in the system and get no relief for the injuries or losses suffered. Even registration of their complaints often becomes difficult without money or influence.
Though the report of the Committee has not been completely given the shape of a law, yet the concern shown by it certainly had an impact as C.r.P.C1973 was amended in the year 2008 to introduce provisions of section 357-A defining the term “victim” and amending section 372 to provide a right to the victim to file an appeal against the acquittal of the accused or against inadequate sentence.

(III) Scheme for Relief and Rehabilitation of victims of Rape-

The offence of rape in the present times is considered as a heinous crime, which destroys the person of the women and leaves a permanent effect on her which does not heal up easily though the physical injury may heal up. The Supreme Court had also been stressing from time to time to deal with the offenders of sexual offences very strictly and award appropriate sentence in such cases. Further, the Supreme Court in *Delhi Domestic Working Women’s Forum Vs. Union of India* ⁵ had directed the National Commission for Women to evolve a “scheme so as to wipe out the tears of unfortunate victims of rape.”

To give effect to the aforesaid direction of the Supreme Court, the National Commission for Women had sent a draft scheme to the Central Government in the year

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⁵ Ibid at page 68
1995. The process of formulation of the Scheme was, therefore, initiated by the National Commission for Women in 1995. Thereafter, this issue was considered by the Competent authority in the Government, which in 2005 provided detailed guidelines for preparing a Plan Scheme to disburse compensation to the victims of rape. It inter alia, recommended providing interim and final compensation to the victim, setting up of district level committees and a Criminal Injuries Compensation Board. Keeping in view these guidelines, the Scheme was redrafted and was submitted to the Central Government on 5.4.2010 by the National Commission for Women.

Consequently, wide ranging consultations with NGOs, lawyers and activists were organised to discuss the draft Scheme. After going through a process of intensive consultations with various stakeholders, the draft Scheme was finally discussed at the 'National Consultation on Access to Justice, Relief and Rehabilitation of Rape Victims' organised by the Ministry of Women & Child Development on 7th March, 2010. This National Consultation was attended by members of the Judiciary including the then Chief Justice of India k. G. Balakrishnan, National and State Legal Services Authorities, police officials, NGOs and activists. At the Consultation, a consensus emerged on the need for such as scheme which provides support to the victim and
attempts to restore her to a position of dignity. Several suggestions were also put forth, which were incorporated in the Scheme termed “financial assistance and support services to victims of rape: scheme for restorative justice” which is in the process of becoming a law very soon and will be launched soon after being notified.

As such the formulation of the scheme evolved three stages namely preparation of a draft by the National Commission for Women, secondly the re-drafting of the scheme by Commission based upon recommendations of the Central Government and thirdly final draft of the scheme prepared by Ministry of Women and Child Development. The said three stages of formulation of the scheme are discussed as follows –

a) Scheme for relief and rehabilitation for victims of rape 2005 6

As stated above, the National Commission for Women sent a draft scheme to the Central Government in 1995. The main features of the proposed scheme were as follows-

i) Criminal Injuries Relief and Rehabilitation Board

Clause 6 of the scheme provided for establishment of a board in every district for consideration of the claims under the scheme, which read as follows-

6 Submitted by the Commission in 2005 and available on its website www.ncw.in
6. **Criminal Injuries Relief and Rehabilitation Board (CIRRB):**

(a) Upon the notification of the scheme, there shall be established at every District, a Board called the District Criminal Injuries Relief and Rehabilitation Board;

(b) The board shall have exclusive jurisdiction to deal with applications received under the scheme in that district;

(c) The board shall be headed by the Collector or the District Magistrate by whatever name he/she is called who shall be the President and comprise of four other members nominated by the State government, where one of them has expertise in matters relating to criminal law, one has experience in the field of empowerment of women, a Medical doctor and a representative of Panchayati Raj Institution or municipality in the District, out of which at least three members would be women.

**ii) Functions and powers and procedure of District Board**- Clauses 7,8,11 and 14 of the scheme provided for powers and function, procedure and principles to be followed by the board while deciding the question of compensation, which are as follows-
7. Functions of the District Board –
(a) The Board shall consider the claims and award financial relief/ rehabilitation as the case may be in all cases of rape in accordance with the procedure prescribed under this scheme;
(b) The Board shall coordinate and monitor the activities of the District Monitoring Committee (DMC), as provided under the Scheme, and/or with the Governmental and non - Government organizations for rendering assistance to the victim, in the form of any legal, medical, psychological or any other form of aid/ assistance;
(c) Implement any scheme for rehabilitation of rape victims framed by the State or National Criminal Injuries Relief and Rehabilitation Board.

8. Powers of the District Board –
(a) The board shall be the authority to consider the claims and award financial relief in all cases of rape and order such other relief and rehabilitation measures as deemed fit in the circumstances of the case;
(b) The Collector or the District Magistrate as the President of the Board shall exercise the powers conferred upon him under the Cr.P.C. or under any other law by the State Government, for carrying out the functions under the Scheme;
11. Procedure for transaction of business by the District Board-

(a) A victim, or her legal heir or any person/voluntary organization espousing the cause of women, or DMC may apply to the District Board for financial relief and rehabilitation in accordance with the provisions of this Scheme.

(b) Where the legal heir is:

(i) A child, the application may be made on his behalf by a parent or guardian or by any voluntary organization;

(ii) A mentally ill person within the meaning of the Mental Health Act, the Application may be made by the person with whom the victim normally resides or a duly authorized medical officer or a voluntary organization; or

(iii) by a parent/guardian.

(c) An applicant shall submit the following documents, as applicable, with the application:

(i) Medical certificate, where the application is being made by or on behalf of the victim; or

(ii) The death certificate of the victim, where the application is being made by a legal heir;

(iii) Copy of FIR/Complaint.
(d) On receiving the application and after having been prima facie satisfied that a case of rape has been made out, the Board shall order an interim financial relief of Rs. 20,000/-. 

(e) The Board shall as far as possible grant the interim relief within a period of three weeks from the date of receipt of the application; 

(f) Before awarding the interim relief, the Board shall satisfy itself about the claim, make a preliminary assessment about the nature of the claim; 

(g) The Board can take the assistance of the District Monitoring Committee or any one member of the Committee before arriving at any decision; 

(h) The Board may take other measures for the purposes of the rehabilitation or any special needs of the victim in addition to the financial relief; 

(i) In case of victims who belong to schedule caste / schedule tribes, the provisions of the scheme shall be in addition to the provisions prescribed for grant of relief under the scheduled caste and the scheduled tribes (prevention of atrocities) Act 1989. However, the District Monitoring Committee while deciding the relief under this scheme shall take into account the compensation payable to the SC/ST victim under that Act.
(j) The Board shall dispose the application for relief and rehabilitation within one month from the date on which the complainant gives her evidence or within one year from the date of receipt of the application whichever is earlier;

In deciding the application for financial relief, the Board shall be guided by, but not completely controlled by, the stand of the applicant in the trial.

(k) The Board shall as far as possible, award financial and other reliefs, as per the heads specified in the scheme;

(L) Award the compensation to the victim in lump sum subject to a maximum of Rs.2,00,000/- While awarding the final relief, the Board shall take into account the interim relief granted;

(m) The Board shall be guided by the peculiar needs of the victim in deciding the amount of compensation to be granted in each case;

(n) The financial relief that is awarded by the Board is in addition to rehabilitation measures that the Board may suggest/administer in each case;

(o) In cases where the victim is a minor, the amount shall be paid to her guardian or next friend after satisfying itself about the legitimacy of the person;
(p) The Board shall keep the Best interests of the victim in mind at all times;

(q) The Board May reject any application where it is of the considered opinion that:-

(i) The applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Board to be appropriate for the purpose, of the circumstances giving rise to the injury; or

(ii) The applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice; or

(iii) The applicant has failed to give all reasonable assistance to the authority or other body or person in connection with the application;

12. Limitation - The application before the Board has to be made within one year from the date of incident, Provided that upon showing due cause, the Board shall have the powers to condone the delay if any;

13. Sittings of the Board - (i) The Board shall hear the application at such times and in such places as the Board may determine;
(ii) The Board shall notify the applicant of the time and place of the hearing of the relevant application.

(iii) Where the Board makes a decision to hear the applicant it shall be entitled to call and examine any other person;

(iv) The Board shall reach its decision on the basis of evidence and other information available to it at the hearing;

(v) The victim and/or her agent shall have a right of oral hearing;

14. Principles governing the determination of the relief and rehabilitation to the victim- The Board shall while determining the compensation and other relief's be guided by the following Parameters:-

(i) Where Death results as a consequence of rape:

(a) Non-earning member of the family Rs 1, 00,000/- (one lakh) towards relief after the post mortem report establishes a prima facie case;

(b) Earning member of the family- Rs 2, 00,000/- (two lakh) payment after the post mortem report establishes a prima facie case.

(ii) In other cases:
(a) Type and severity of the bodily injury suffered by the victim and expenditure incurred or likely to be incurred on medical treatment and psychological counselling to the victim;

(b) Expenditure consequential on pregnancy, if resulting from rape including expenses connected with abortion, if it is resorted to, in consequence to rape;

(c) Expenses incurred or likely to be incurred in connection with any education or professional or vocational training or training for self employment to the victim;

(d) Loss caused to the victim by cessation or interruption of gainful activity or employment on the basis of an assessment made by the Board and/or the district monitoring committee;

(e) Non pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience;

(f) Expenses incurred in connection with provision of any alternate accommodation in cases where the victim belongs to any other place other then the place where the offence took place;

(g) Expenses likely to be incurred in connection with the Court trial- the Board and DMC shall
arrange for legal aid under the Legal Services Authorities Act 1987 and may if so considered necessary, engage any other lawyer to assist the victim and pay honorarium and travelling allowance as may be determined by the state Board;

(h) While determining the financial and other relief, the Board shall have due regard to the victim being a child or mentally challenged and may consider higher financial relief and special relief measures to be provided;

(i) The Board shall not be guided by the outcome of the trial in allowing the application for relief and rehabilitation;

(j) Relief and rehabilitation shall not be granted under this Scheme in the following circumstances:

Where the applicant has previously lodged any claim in respect of the same criminal injury under this scheme for the relief and rehabilitation of the victim of crime; or

Where the incident is so belated that no evidence would be forthcoming;

Where the applicant after having filed the complaint, Deliberately turned hostile in the
iii) Establishment of District Monitoring Committee - The proposed scheme also provided for establishment of District Monitoring Committees with various powers and functions under clauses 9 and 10, which read as follows:

9. District Monitoring Committee - The State Government shall establish in every District, a Monitoring Committee, which shall be headed by the Superintendent of Police of the District. The committee shall comprise of the following other members, whom the District Collector/District Magistrate would nominate:

(i) A police officer, preferably a woman;
(ii) A woman social activist or a counsellor;
(iii) A Lawyer;
(v) A Medical doctor;
(vi) A representative of the Panchayati Raj Institution or Municipality.

10. Functions of the District Monitoring Committee:

The District Monitoring committee shall perform the following functions;

(a) To arrange for psychological and medical aid and counselling to the victim;
(b) To arrange for legal aid to the victim in filing the FIR till the conclusion of the trial;
(b) To arrange for legal aid to the victim in filing the FIR till the conclusion of the trial;

(c) To initiate suitable measures to ensure the protection of the victim and witnesses till the conclusion of the trial;

(d) Monitor and expedite the progress of the investigation;

(e) To aid and assist in opposing bails, filing appeals and making application for protection of the victim.

(f) In cases of young victims, to see that they receive education or professional training or training for self-employment;

(g) To assist them in securing employment.

(h) To provide the required psychiatric treatment/counselling;

(j) To facilitate the victims' rehabilitation;

(k) Initiate action so as to ensure Anonymity of the victims;

(l) Ensure that Interrogations of the victim be conducted by female police officers. During all stages of interrogation and examination of the victim or the applicant, at least one member of the DMC is present;

(m) To arrange shelter to the victim, for such period as the circumstances warrant;
(n) and such other functions as may be deemed expedient and necessary by the committee given the peculiar facts and circumstances of each case.

iv) Constitution and functions of the State Board-

The scheme also provide for establishment of a State Board with certain functions under clauses 15 and 16 which read as follows-

15. Constitution of the state board –

(i) The State Government shall constitute by notification in the Official Gazette State Criminal Injuries Relief and Rehabilitation Board at State level

(ii) The State Board shall consist of:-

Secretary, of the department of Women and Child development/ department of social welfare who shall be the President;

Joint Secretary of Department of Home;

The Member Secretary or any member of the State women commission;

An officer of the Law department of the State or the Union territory;

Three Representatives from amongst women Activists and eminent lawyers, working in the field of empowerment of women.
16. **Functions of the State Board** - (i) The State Board shall co-ordinate and monitor the functions of the District Board;

(ii) The State Board shall ensure proper disbursement of the Funds allocated to it by the Central Government and any additional amount supplemented by the State Government, to the district Boards;

(iii) Issue directions to the appropriate authorities under the Act for ensuring proper medical, psychological and legal assistance to the victim;

(iv) The Board may inquire, suo moto or otherwise on a petition presented to it by a victim or any person on her behalf into any complaint alleging rape and/or with respect to any matter in connection with the provisions of the scheme and refer the matter to the District Board;

(v) The Board shall entertain all appeals against the decision of the District Board and in deserving cases of extraordinary circumstances, enhance the compensation amount subject to a maximum limit of Rs 3,00,000/- with prior approval of the National Board;
(v) Constitution and functions of the National Board-

The scheme also provided for establishment of a National Board with certain functions under clauses 17 and 18 which read as follows-

17. Constitution of National Criminal Injuries Relief and Rehabilitation Board-

(i) The Central Government shall by notification constitute a body to be known as National Criminal Injuries Compensation Board;

(ii) The Central Board shall consist of:

The Chairperson, National Commission for Women who shall be the President of the Board, ex-officio.

An officer not below the rank of Joint Secretary of the Central Government in the Department of Women and Child Development;

One woman Member to be appointed from amongst persons having knowledge of or practical experience in matters relating to criminal Law;

Two women representatives of NGOs or women Activists working in the field of empowerment of women;

Member Secretary of NCW, who shall be the Member Secretary of the Board ex-officio.
18. Functions of the National Board.- The National Board shall administer the Scheme and to that effect:-

(i) Lay down policies and procedures for the effective implementation and administration of the Scheme;

(ii) Review, from time to time, and advise the Central Government on the quantum payable and other relief's provide under the Scheme;

(iii) Advise the Ministry to issue suitable advisories to state government for directing the public prosecutors to plead before the competent Court to award suitable compensation to the victims and appraise the court on the actions initiated as per the scheme;

(iv) Estimate the requirement of the funds/budget. Administer and Allocate funds to the State Boards;

(v) Issue directions to the appropriate authorities under the Scheme for ensuring proper medical, psychological and legal assistance to the victim;

(vi) Frame and issue guidelines on the rehabilitation schemes in consultation with the Central and State Government;
(vii) Monitor and evaluate the implementation of the scheme and seek periodical reports;
(viii) Co-ordinate and Monitor the functioning of the State and District Authorities constituted under this Scheme for the implementation of the Scheme;
(ix) The Board may inquire or cause to be inquired suo motto or otherwise or on a petition presented to it by a victim or any person on her behalf or by an NGO, into any complaint alleging rape and/or with respect to any matter in connection with the provisions of the scheme and refer the matter to the appropriate District or State Board.

**(b) Re-drafted scheme for relief and rehabilitation for victims of rape 2005**

As stated herein before the National Commission for Women had prepared and sent a draft of the scheme in the year 2005, which was considered by the Central Government and the Commission was asked to make certain changes in the scheme. The Commission as such incorporated the changes suggested by the Central Government. The scheme was re-submitted by the Commission to the Central Government after making certain modifications. The main features of the amended scheme are follows-

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7 Submitted on 5.4.2010. Available on the website of the Commission www.ncw.nic.in
Clause 6 of the proposed amended scheme provided for the Constitution of District Board for Criminal Injuries Relief and Rehabilitation of the rape victims. Clause 6 of the scheme reads as follows-

6. District Board for Criminal Injuries Relief and Rehabilitation

(a) There shall be established at every District, a Board called the District Board for criminal Injuries relief and rehabilitation;

(b) The Board shall have exclusive jurisdiction to deal with applications received under the scheme in that district;

(c) The Board shall be headed by the Collector or the District Magistrate by whatever name he/she is called who shall be the President and comprise of four other members namely:

1) Supdt. of Police or his/her nominee;

2) A woman who has experience in the field of empowerment of women and children nominated by the State Government for a period of 1 year at a time (provided that any nominated member may be nominated twice;

3) District Health and Family Welfare Officer/District Medical and Health officer or his/her nominee;
4) Deputy Director/Project Director/ Gazetted District Officer of WCD of the concerned district, who shall also act as Secretary of the Board, maintain records and act as drawing and disbursing officer;

5) Representative of Child welfare Committee in each district or group of districts;

Provided that in cases where the State Governments have a relief and rehabilitation scheme in force, the constitution of the Board shall be as per those schemes and the benefits that would be granted to the applicant/victim in the present scheme shall be administered by those Boards.

(ii) **Powers, functions and procedure of District Board** -

Powers, functions and procedure to be followed by District Board is provided in clause 6,7,8, 9,14 and 15 of proposed scheme and the same are as follows-

**7. Powers of the District Board** – (a) The Board shall be the authority to consider the claims and award financial relief in all cases of rape and order such other relief and Rehabilitation measures as deemed fit in the circumstances of the Case;

(b) The Collector or the District Magistrate as the President of the Board shall exercise the powers
conferred upon him under the Cr.P.C. or under any other law by the State/Central Government, for carrying out its functions under the Scheme.

8. Functions of the District Board- Upon the Constitution of the Board, it shall:

(i) Consider the claims and award financial relief/rehabilitation as the case may be in all cases of rape in accordance with the procedure prescribed under this scheme;

(ii) Monitor the activities for rendering assistance to the rape victim in the form of any legal, medical, psychological or any other form of aid/assistance;

(iii) Make use of any other scheme(s) for rehabilitation of rape victims framed by the State or Central Government;

(iv) Arrange for psychological, medical and legal assistance to the victims;

(vi) Provide counselling support to the victims;

(vii) Initiate suitable measures to ensure the protection of the victim and witnesses till the conclusion of the trial;

(viii) Periodically review the progress of investigation;

(ix) Provide support to young victims for education, professional training or training for self-employment;
(x) Provide any other assistance for appropriate rehabilitation of the victims;
(xi) Recommend change of investigating officers in appropriate cases on the request made by the victim;
(xii) Arrange shelter to the victim, for such period as the Circumstances warrant;
(xiii) Perform any other function as may be deemed expedient and necessary by the Board or as directed by the State/National Board, given the peculiar facts and circumstances of each case;

9. **Procedure for making claims before the Board**

(a) As soon as an incident of rape is reported and registered, the SHO of the concerned police station, through the SP/DCP, shall forward within 72 hours the copy of the FIR/complaint, medical report and the preliminary investigation report by the IO to the Secretary of the District Board;

(b)(1) A victim, or her legal heir or any person/voluntary organization espousing the cause of women/ Commissions may also apply to the District Board for financial relief and rehabilitation in accordance with the provisions of this Scheme within 60 days.
Provided that in cases where the application is made after 60 days, the Board may, after being satisfied with the reasons for the delay given in writing, condone the delay;

(2) Where the applicant is:—

(i) A child, the application may be made on his/her behalf by a parent, Guardian, by any voluntary organization/commissions;

(ii) A mentally ill person within the meaning of the Mental Health Act or a mentally retarded person, the Application may be made by the person with whom the applicant normally resides or a duly authorized medical officer or a voluntary organization;

(c) The application under clause (b) shall be submitted in the prescribed Performa and shall include the copy of the FIR/complaint, Medical report, death certificate in appropriate cases or complaint made to the court in cases where police have not registered the FIR, indicating reasons for non registration of the FIR Newspaper reports if any.

(d) Upon award of relief by the Board, the same shall be immediately remitted into the Bank Account provided in the application. As far as practicable the amount may be sent immediately
through electronic transfer, so as to provide immediate relief.

14. *Procedure for transaction of business of the Board*— (i) The Board may hear and/or examine the application/complaint at such times and in such places as the Board may determine.

(ii) Ordinarily, the board may on receipt of documents and evidence and on being satisfied that a prima facie case is made out, may dispense with hearing of the victim and/or her agent/representative and order for interim and other relief(s). However, in cases where the Board is of the considered view, that examination of the victim and other parties is necessary and may proceed to hear the case, record the evidences and deliberations and pass a speaking order on admissibility or otherwise of interim and other relief(s).

Provided further that an application shall not be rejected without giving the applicant an opportunity of being heard and without assigning reasons in writing.

(iii) Not less than one third of the members shall remain present to complete the quorum at any sitting;
(iv) The Board shall notify the applicant of the time and place of the hearing of the application.

(v) The Board shall have the powers to call for any records/documents and examine any person for examination before coming to a final conclusion about the application;

(vi) The Board shall reach its decision on the basis of evidence and other information available to it at the hearing;

(vii) The victim and/or her agent shall have a right of oral hearing;

(viii) The proceedings of the Board shall be in camera and the anonymity of the victim shall be maintained at all times and all circumstances;

(viii) The proceedings of the Board shall not be printed, published, telecast or posted in any public forum;

15. **Principles governing the determination of the relief and rehabilitation to the victim** - The Board shall while determining the compensation and other relief's be guided by the following Parameters:

(i) Where Death results as a consequence of rape:
(a) If the victim happened to be a non-earning member of the family, the Board shall award upto Rs 1, 00,000/- (one lakh) towards relief after the post mortem report establishes a prima facie case.
(b) In case the victim was an earning member of the family, the Board shall award an amount of Rs 2,00,000/- (two lakh) to the benefit of minor children after satisfying itself that the victim was an earning member after the post mortem report establishes a prima facie case for the benefit of minor children.

(ii) the Board shall take into account rehabilitation and other expenses if any – subject to a maximum of Rs. 50,000/- which may include:

(a) Type and severity of the bodily injury suffered by the victim and expenditure incurred or likely to be incurred on medical treatment and psychological counselling to the victim.

(b) Expenditure consequential on pregnancy, if resulting from rape including expenses connected with abortion, if it is resorted to, in consequence to rape.

(c) Expenses incurred or likely to be incurred in connection with any education or professional or vocational training or training for self employment to the victim.

(d) Loss caused to the victim by cessation or interruption of gainful activity or employment on the basis of an assessment made by the Board;
(e) Non pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience.

(f) Expenses incurred in connection with provision of any alternate accommodation in cases where the victim belongs to any other place other than the place where the offence took place.

(iii) While determining the financial and other relief, the Board shall have due regard to the victim being a child or mentally challenged and may consider higher financial relief and special relief measures to be provided.

(iv) The Board shall as far as possible make use of the schemes facilities provided by the State or Central Government and also the organizations funded fully or partly by the Government for relief and rehabilitation measures.

(iii) **Reliefs under the scheme**

The proposed scheme provided for grant of interim relief and rehabilitation, final relief by virtue of clauses 10 to 12 of the said scheme which are as follows-

**10. Reliefs that may be awarded by the District Board**

a. The Board may award both financial relief as well as make provisions for rehabilitation;
b. The relief that is provided by the Board shall not exceed Rs.2 lakhs;

Provided that in cases specified under clause 16, the relief may be increased subject to a maximum of Rs.3 lakhs.

11. *Interim Relief and Rehabilitation*— (a) Upon receipt of the information from the police under clause 9(a), the District Board, shall disburse a sum of Rs.20,000/- (twenty thousand) in favour of the Victim preferably within fifteen days and in any case not exceeding three weeks as interim relief;

(b) In cases, where the application is made under clause 9 (b), the Board shall after obtaining police and medical report and having been prima facie satisfied that a case of rape has indeed been made out, order a financial interim relief of Rs.20,000/- as far as possible within fifteen days and in any case not exceeding three weeks to the victim/legal heir;

(c) On receipt of the complaint and examination of the victim the board shall on merits of each case examine/determine the nature of rehabilitation measures required to be provided to the victim and initiate appropriate action towards such measures and may incur a maximum expenditure upto Rs.50,000/- towards rehabilitation of the victim;
(d) Before awarding the interim and other relief's under clause (b) and (c) the Board shall satisfy itself about the claim, make a preliminary assessment about the nature of the claim as well as take into account the medical report and other evidences;

(e) The Board may issue appropriate directions for the purposes of the rehabilitation and/or any other special needs of the victim in addition to the financial relief.

12. Final Relief: (a) Within a period of one month from the date on which the prosecutrix gives her evidence in the criminal trial or within one year from the date of receipt of the application in cases where the recording of evidence has been unduly delayed for reasons beyond the control of prosecutrix, whichever is earlier, the Board shall direct disbursal of the balance amount of relief upto Rs.1.30 lakhs as final instalment;

(b) In cases where the final relief is awarded before the recording of the evidence of the prosecutrix, the Board shall give reasons in writing for doing so along with reason for delay in recording of evidence.
(c) The Board shall be guided by the special needs of the victim in deciding the amount of financial relief to be granted in each case;

(d) The financial relief that is awarded by the Board is in addition to rehabilitation measures that the Board may suggest/ administer in each case.

(e) In cases where the victim is a minor, the amount shall be released to her guardian or whoever has filed the application on behalf of the victim, after the Board is satisfied about the proper utilisation of funds in the best interest of and for and the welfare of the child victim. Wherever practicable the written consent of the victim may be taken.

(f) The Board shall keep the best interests of the victim in mind at all times;

(iv) Rejection of the claims by the Board –

In order to ensure that prosecution against the accused succeeds, a provision was been made in this regard in clause 13 of proposed scheme which enabled Board to deny the claim of victim on account of failure to inform police or did not co-operate with police during the course of the investigation. The purpose of the proposed scheme was twofold. Firstly, to compensate the victim and secondly to ensure that the victim properly informs the
police and cooperates with it during the course of the investigation. Clause 13 of the proposed scheme is as follows-

13 Rejection of the claims- (a) The Board may reject any application where it is of the considered opinion that:-

(i) The applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Board to be appropriate for the purpose, of the circumstances giving rise to the injury; or

(ii) The applicant failed to co-operate with the police or Courts in attempting to bring the accused/assailant to justice; or

(iii) The applicant has failed to give all reasonable assistance to the Board in connection with the application;

(iv) Where the applicant has previously lodged any claim in respect of the same criminal injury under this scheme for the relief and rehabilitation of the victim of crime; or

(v) Where the incident is so belated that no evidence would be forthcoming;

(vi) Where the applicant after having filed the complaint deliberately turned hostile in the trial and has not supported the case of the prosecution;
(vii) In cases of elopement of girls above 16 years of age where a prima facie of case of rape is not made out the Board shall not reject the application but may await outcome of trial, before disbursing any compensation.

(viii) The case prima facie appears to be collusive in nature and the case for rape is not based on verifiable facts.

(v) **Miscellaneous provisions of the scheme**

The proposed scheme also contained provisions for enhancement of the relief in appropriate cases, constitution of the state board etc under clauses 16 to 18 of the scheme-

16. **Enhancement of relief in special cases** –(i) The State Board with prior consultation with the National board shall have the power to provide for enhanced relief subject to a maximum of Rs. Three lakhs in cases where:

(a) Offences against children below 13 years of age, which may involve specialized treatment and care
(b) Offences against mentally challenged, handicapped Women and Children which may involve specialized treatment and care
(c) Victim becomes infected with STDs including affected by HIV/AIDS as a consequence of rape;
(d) Victim gets pregnant as a consequence of rape and due to circumstances beyond her control delivers the child;

(e) Where severe medical problems is faced by the victim including both physical and mental.

(f) Any other ground as may be prescribed;

17. Constitution of the State Board

(i) The Principal Secretary, Department of women and child or social welfare shall be the Chairperson of the State Board

(ii) The State Board shall consist of:

five other members who shall be an officer of the rank of Joint Secretary of Department of Home, an officer not below the rank of Joint Secretary from the Ministry of Law, three Representatives who have experience in working on women’s children and legal issues to be nominated by the Department of Women in child in consultation with the State Legal Services Authority; the Member Secretary of the State Commission for women shall be the secretary of the Board or any other officer appointed by the Chairperson

(iii) The Term of the nominated members shall be for a period of three years with the provision of extension for one more term;
**Functions of the State Board** –

(i) The State Board shall coordinate and monitor the functions of the District Board;

(ii) The State Board shall ensure proper disbursement of the funds allocated to it by the Central Government and any additional amount supplemented by the State Government, to the district Boards.

(iii) Issue directions to the appropriate authorities for ensuring proper medical, psychological and legal assistance to the victim.

(iv) The Board may inquire, suo moto or otherwise on a petition presented to it by a victim or any person on her behalf into any complaint alleging rape and/or with respect to any matter in connection with the provisions of the scheme and refer the matter to the District Board.

(v) The Board shall entertain all appeals against the decision of the District Board.

(vi) In deserving cases of extraordinary circumstances, enhance the compensation amount subject to a maximum limit of Rs 3, 00,000/- with prior approval of the National Board.
18. Constitution of National Board for Criminal Injuries Relief and Rehabilitation—

(i) There shall be a body known as National Board for Criminal Injuries Relief and Rehabilitation, constituted under the National Commission for Women;

(ii) The National Board shall consist of:

The Chairperson, National Commission for Women who shall be the President of the Board, and five other members comprising of Member-Secretary, NCW, an officer not below the rank of Joint Secretary of the Central Government in the Ministry of Women and Child Development, one member experienced in law and issues relating to women and children to be nominated by the National Legal Services Authority, one member who has experience in working on issues relating to women and one member who may be a medical practitioner or persons having experience on issues relating to rape, nominated by the Chairperson, NCW. The Member Secretary National Commission for Women shall also function as Member Secretary of the National Board. The term of the nominated members of the National Board shall be for a period of three years with a provision of extension for one additional term.
(c) Financial assistance and support services to victims of rape: scheme for restorative justice

The Central Government after consideration of the re-drafted scheme of the National Commission for Women framed a scheme in the year 2011 called "financial assistance and support services to victims of rape: scheme for restorative justice" While framing the scheme, the Central Government made certain modifications in the proposed scheme of the National Commission for Women such as providing for method of payment of the assistance amount etc.

One of the important provision introduced is that rejection of the application by the board will not prevent the affected person from claiming compensation under sections 357 and 357-A C.r.P.C 1973. The main features of the scheme are as follows-

i) Assistance under the Scheme-

Under clause 8 of the Scheme, an affected woman shall be entitled to financial assistance and restorative support/ services, adding up to a maximum amount of Rs 2 lakhs. Assistance under the Scheme shall be available in respect of cases where the FIR is registered on or after the date from which the Scheme comes into effect.

8 Available on the website of the Ministry of Women and Child Development www.wcd.nic.in.
**ii) District Criminal Injuries Relief and Rehabilitation Board**

Clause 5(A) of the scheme provides for constitution of a District Criminal Injuries Relief and Rehabilitation Board in every district with the exclusive jurisdiction to deal with applications for assistance received under the scheme in that district, as one of the authority at the grass root level responsible for its implementation. The composition of the board shall be as follows-

1) The District Magistrate, Deputy Commissioner, District Collector shall be the Chairperson of the Board.

2) The Board shall comprise five other members as under:
   (i) The Superintendent of Police;
   (ii) The Civil Surgeon/District Medical/Health Officer or by whatever name he/she is called;
   (iii) A representative of the District Legal Services Authority, who should preferably be a woman;
   (iv) An eminent woman expert with experience of working on issues relating to women and children in the district, to be nominated by the Chairperson of the Board;
   v) The District Women & Child Development/Social Welfare Officer, who shall be the Member Secretary
of the Board. The Board shall co-opt a representative of the Child Welfare Committee appointed for the district or for a group of districts, as the case may be, where the person affected is a minor. The term of the nominated member shall be for a period of three years with the provision of extension for one more term.

**iii) Powers and functions of the District Board**

The District Board has been vested with wide powers and functions provided under clauses 5 (i) and (ii) of the scheme, which are follows-

1) The Board shall decide the claims made under the Scheme and provide financial assistance as well as order such other support services as may be essential for recovery from physical harm, emotional trauma and protection of the affected person;

2) The Board shall have the powers of summoning and recording of evidence for carrying out its functions;

3) Consider the claims and provide financial assistance and support services, as the case may be, in accordance with the procedure prescribed under this scheme;

4) Arrange for psychological, medical and legal assistance to the affected woman;
5) Arrange for counselling support to the affected woman, including counselling of the spouse in case the affected woman is married;
6) Arrange shelter for the affected woman for such period as may be required;
7) Arrange for education or vocational/professional training, as the case may be, for the affected woman under the ongoing schemes/programmes should she require such a support for rehabilitation;
8) Review the progress of investigation on a periodic basis;
9) Recommend change of investigating officers in cases where a request is made by the affected woman;
10) Issue directions to the appropriate authorities to provide protection to the affected woman, wherever deemed necessary;
11) Ensure, as far as possible, that the identity of the affected woman is protected from public disclosure during the course of referral to and accessing support services, education and vocational/professional training, as the case may be;
12) Review and monitor the progress made on its decisions;
13) Perform such other function as may be considered necessary by the Board or as directed by the State/National Board.

*iv) Procedure to be Followed by the District Board*

As per clause 7 of the scheme, since the objective of the Scheme is to meet the needs of restorative justice, the procedures to be followed in providing financial assistance and support services shall have to be simple, speedy and efficacious. This shall be the guiding principle for the District Board at all times, when considering applications under the Scheme. Clause 7 enumerates the following procedure -

1) Ordinarily, on receipt of application under para 6, and on being satisfied that a prima facie case is made out, the Board shall pass an order for interim financial assistance and other support services. However, in cases where the Board is of the considered view that examination of the applicant/affected woman and other parties is necessary, it may proceed to hear the case, record the evidence and pass a speaking order on admissibility or otherwise of the application, for grant of interim financial assistance and other support services.

2) No application shall be rejected without giving the applicant/affected woman an opportunity of
being heard and without assigning the reason(s) in writing.

3) The applicant shall be notified in advance of the time and place of hearings before the Board;

4) The Board shall have the power to call for any records/documents and examine any person before coming to a final conclusion about the application;

5) The Board shall reach its decision on the basis of evidence made available to it;

6) The proceedings of the Board shall be in camera and the anonymity of the affected woman shall be maintained at all times and under all circumstances;

7) Not less than half of the members shall remain present to complete the quorum at any sitting.

8) The proceedings of the Board shall not be printed, published, telecast or posted in any public forum.

**v) Assistance under the Scheme**- Clause 8 of the scheme provides for interim and final assistance these are as follows-

**(i) Interim Assistance**-

After satisfying the procedure outlined in clause 7 above that a prima facie case is made out, the District Board shall order interim financial assistance of Rs.20,
000/- to the affected woman, as far as possible within fifteen (15) days, and in any case, not later than three (3) weeks from the date of receipt of the application. On assessment of needs of the affected woman and after giving due consideration to the physical injury and emotional trauma faced by her, the Board shall issue appropriate directions for providing necessary support services as detailed in clause 5(A)(iii) of the Scheme, to the affected woman. In doing so, the facilities available under existing schemes of Central or State Government, may be utilized as far as possible. The Board may incur a maximum expenditure up to Rs.50,000/- towards provision of such support services.

**ii) Final Assistance**

(a) Within a period of one month from the date on which the affected woman gives her evidence in the criminal trial or within one year from the date of receipt of the application in cases where the recording of evidence has been unduly delayed for reasons beyond her control, whichever is earlier, the Board shall direct disbursal of the balance amount of Rs.1.30 lakhs as the final instalment.

(b) In cases where the final assistance is awarded before the recording of the evidence of the affected woman in the criminal trial, the Board shall record the reasons in writing for doing so;
(c) The financial assistance and other support services provided/ enabled by the Board shall together not exceed Rs 2 lakhs except for cases specified under Clause 11 in which the relief has been enhanced, subject to a maximum of Rs.3 lakhs.

**iii) Assistance in case of Death of Affected Woman**

Where death results as a consequence of rape, the Board after satisfying itself that the claim is made in good faith, shall, for the benefit of her legal heirs, including her minor children order assistance of

i) Rs 1 lakh if the affected woman was a non-earning member of the family,

ii) Rs 2 lakhs, in case the affected woman was an earning member of the family.

**vi) State Criminal Injuries Relief and Rehabilitation Board**

As per clause 5 (B) of the scheme, a State Criminal Injuries Relief and Rehabilitation Board shall be constituted in every State/UT, which shall have the primary responsibility of coordinating and monitoring the functions of the District Boards in the respective State. Its composition shall be as follows-

1. The Principal Secretary/ Secretary, Department of Women and Child Development or Social Welfare Department shall be the Chairperson of the State/UT Board.
2) A representative of the Department of Home;
3) A representative of the Department of Health or an eminent medical practitioner from the Government Medical College, having experience in dealing with rape cases, to be nominated by the Department of Health;
4) A representative of the Department of Law;
5) A representative of the State Legal Services Authority, who should preferably be a woman;
6) Two eminent women with experience of working on issues relating to women and children in the State, to be nominated by the Chairperson of the Board;
7) Director Department of Women and Child Development or Social Welfare Department, who shall be the Member Secretary of the Board. The term of the nominated members shall be for a period of three years with the provision of extension for one more term.

vii) Functions of the State Board. The State Board shall undertake the following functions:

1) Coordinate and monitor the functioning of the District Boards in the State;

2) Inquire suo moto, or on a petition filed by an affected woman or any person on her behalf, into
any complaint alleging rape, and refer the matter to the District Board.

3) Inquire into complaints regarding any issue connected with the scheme or its implementation;

4) Entertain appeals against the decision of the District Board with regard to:

   i) Rejection of an application filed under the Scheme;

   ii) Delay in granting interim or final assistance;

   iii) Adequacy or otherwise of quantum of assistance provided in the form of support services;

   iv) Any other issue pertaining to the application filed by the affected woman, as may be deemed fit for consideration, by the State Board.

5) Enhance the compensation amount up to 1 lakh, subject to a maximum limit of Rs 3 lakhs of total assistance, in special cases as outlined in Para 11 of the Scheme, on receiving a reference from the District Board;

6) Disburse to the District Boards, the funds transferred by the Ministry of Women & Child Development as grant-in-aid to the State Government as well as any other amount supplemented by the State.
viii) National Criminal Injuries Relief and Rehabilitation Board

The National Criminal Injuries Relief and Rehabilitation Board (hereinafter the 'National Board') shall be constituted with overall responsibility of administering the Scheme. Its composition shall be as follows-

1) The Secretary/Additional Secretary Ministry of Women & Child Development shall be the Chairperson of the Board;

2) The Director-General Central Government Health Services or his/her representative;

3) An officer not below the rank of Joint Secretary to the Government of India in the Department of Legal Affairs;

4) A representative of the National Legal Services Authority, who should preferably be a woman;

5) A representative of the National Commission for Women;

6) Two eminent women with experience of working on issues relating to women and children to be nominated by Chairperson of the Board; and

7) Joint Secretary (Women Welfare) in the Ministry of Women and Child Development, who shall be the Member Secretary of the National Board. The term of the nominated members of the National Board
shall be for a period of three years with a provision of extension for one more term.

**ix) Functions of the National Board**-The National Board shall administer the Scheme and to that effect:

1) Co-ordinate and monitor the functioning of the State Boards constituted under the Scheme;
2) Inquire suo moto or on a petition filed by an affected woman or anyone on her behalf, into any complaint alleging rape and refer the matter to the appropriate District or State Board;
3) Inquire into complaints regarding any issue connected with the scheme or its implementation;
4) Recommend to the Ministry of Women & Child Development to issue appropriate advisories/guidelines to State Governments/UTs/any other agency, on any matter connected with the Scheme or its implementation;
5) Review, from time to time, and advise the Central Government on the quantum payable and other support services being provided under the Scheme;
6) Estimate the requirement of funds/budget for administering the Scheme.
7) Review the issue of reparation to the affected women, and recommend further measures
necessary for restoring their self-esteem and dignity;

8) The District Board may call for the relevant documents from the appropriate authorities where the documents in the case(s) have not been received from the police as required under clause (iv) or in case the woman is not able to produce any or all of such documents at the time of filing the application as required under clause (vii), or for any other reason beyond her control.

**x) Miscellaneous provisions** - The scheme also provides for certain miscellaneous but very important provisions namely-

a) **Manner of Payment of the Amount of Assistance** -

As per clause 9 of the scheme, on the order of the Board, the interim or final financial assistance shall be immediately remitted into the bank account provided in the application. As far as practicable, the amount may be transferred electronically, so as to provide efficacious and immediate assistance to the affected woman. In cases where the person affected is a minor girl, the amount shall be remitted to the bank account of her parent or guardian after the Board is satisfied about the proper utilisation of funds, in the best interest of and for the welfare of the minor girl.
b) Principles Governing the Determination of Assistance to the Affected Woman-

As per clause 10 of the scheme, while determining the financial assistance and support services to be provided based on the restorative needs of the affected woman, the District Board shall be guided by the following factors:

1) Type and severity of the bodily injury suffered by the affected woman and expenditure incurred or likely to be incurred on her medical treatment and psychological counselling;

2) Expenditure consequential on pregnancy, if resulting from rape including expenses connected with abortion, if resorted to;

3) Age and financial condition of the affected woman so as to determine her need for education or professional or vocational training, as the case may be;

4) Non pecuniary loss entailing suffering, mental or emotional trauma or humiliation faced;

5) Expenses incurred in connection with provision of any alternate accommodation in cases where the affected woman resides in a place other than where the offence was committed and the FIR has been recorded/ criminal trial initiated;
6) The Board shall have due regard to the fact that the affected woman is a minor or is mentally challenged, and in such cases, may consider higher financial assistance and special support services in accordance with Para 10 of the Scheme;

7) The board shall as far as possible make use of the schemes and facilities provided by State or Central Government, as well as seek the assistance of organizations funded fully or partly by the Government for providing the restorative measures under this Scheme.

c) Enhancement of Assistance in Special Cases- As per clause 11 of the scheme, keeping in view the particular vulnerabilities and special needs of affected women in certain cases and on a reference from the District Board, the State Board shall, in consultation with the District Board, have the power to provide for an additional assistance of up to Rs 1 lakh, subject to a maximum of Rupees 3 lakhs where:

1) The affected woman is a minor girl requiring specialized treatment and care,

2) The affected woman is mentally challenged or differently able, requiring specialized treatment and care
3) The affected woman is infected with STD, including HIV/AIDS as a consequence of rape;

4) The affected woman gets pregnant as consequence of rape;

5) Where severe medical problems are faced by the affected woman including both physical and mental;

6) Any other ground as may be deemed fit by the Board.

d) Rejection of the claim made under the Scheme-

Clause 12 of the scheme provides for rejection of the application by the Board where-

1) The applicant failed to take, without delay, all reasonable steps to inform about the incident, to the police, or any other agency or person considered to be an appropriate authority for this purpose;

2) The applicant has failed to give all reasonable assistance to the Board in connection with the application;

3) Where the complaint regarding the incident/the FIR is made so late that it is difficult to verify the facts of the case;
4) Where the applicant, after having filed the criminal complaint turns hostile during the trial and does not support the case of the prosecution;

5) The case appears to be collusive in nature and is not based on verifiable facts;

6) The bonafides of the applicant are suspect, such as in a case involving solicitation, and not based on verifiable facts;

7) Where the case is of elopement of girls above 16 years of age and a case of rape is not made out, the Board shall not reject the application forthright, but may await outcome of trial before disbursing any assistance;

8) Rejection of the application on any of the grounds prescribed above shall not prevent an affected woman from seeking assistance from the Court(s) under Sections 357 and 357A of the CrPC.

e) Analysis of the aforestated schemes-

As stated hereinbefore, the scheme for rehabilitation and compensation of the rape victims has been evolved after due deliberations and consultations with those interested in the same and having experience in this field. The scheme provides not only for grant of compensation but also for their rehabilitation. It cannot be said as to whether what will be exactly the scheme will be notified by
the Central Government. But it quite clear that the focus will be on rehabilitation and compensation of the scheme and for this purpose various provisions have been included such as interim relief and medical aid to the victim.

Besides this, a reading of the report of the Malimath committee reforms of Criminal Justice System, Draft National Policy on Criminal Justice and clearly show that the Executive has been very interested in making changes in the criminal justice system. Though all the recommendations of these committees have not seen the light of the day, yet it has been an emerging role of victimology in the Indian Criminal Justice system that the approach of the State, which was earlier only accused oriented has changed and the thrust was to make it victim friendly and maintaining a balance between the rights of the accused and the victims.

(IV) Emerging trends in victim compensation -

Victim compensation is a novel idea and if it is properly implemented can retain the equity between the victim and the accused. Victim's ego gets satisfied and he feels a sense of security and an assurance also that he is not being neglected but is rather being looked after as other members of the society and is, therefore, not being neglected. As justice should not only be done but also appear to have been done, punishment imposed upon
the offender sends a message that justice has been done. But, this is only one party of the justice delivery system. The other part is to properly compensate the victim. It may be either by the State or by the offender or by both of them.

As mentioned in chapter IV, the victim compensation has never been the priority of neither the State or the criminal Courts, which try the offenders, since the victims of crime are not a part of the trial process. Their agony, trauma and sufferings are not noticed and are, therefore, not even properly/adequately compensated.

However, in spite of all the above mentioned circumstances, there have been recent developments i.e. amendments in C.r.P.C 1973 by Amendment Act 2008, passed by the Parliament regarding compensation to the victims. Moreover, the Supreme Court in particular has not only been emphasizing the need to properly compensate the victims but has also awarded compensation and even enhanced the same in appropriate case by taking into consideration the nature of the offence, manner of its commission and the impact of the offence on the victim. Therefore, this part of the research work shall analyze the emerging trends of compensation to victims of crime.
A) Background of victim compensation:

To begin with, the Criminal Procedure Code (Amendment Act) 2008, is the recent most emerging trend of Victimology in Indian Criminal Justice System, as it has introduced section 357-A Cr.P.C regarding payment of compensation to the victims.

However, before discussing such amendments passed by the Parliament in C.r.P.C 1973, it is necessary to refer to legislative history of victim compensation with reference to Law Commission of India report’s regarding victim compensation.

(i) Law Commissions’ 42nd report ⁹ and victim compensation.

Way back in the year 1971, the fifth Law Commission of India in its 42nd report discussed the question of compensation to the victims of crime in India. The law Commission in Para 3.12 of its report (page 50) noticed the need of compensate the victims in the following words:

3.12 Reparation of the victim of an offence has been receiving increased attention in recent times. In past, this is due to realization that mere punishment of the offender, though it may exhaust the primary function of the criminal law is not total fulfillment of the role of the law. It has been

⁹ 42nd report of the fifth Law Commission of India on the IPC
observed in crime and punishment reparation of the victim (1959) 227 Law times 117.

The injured party is not always adequately served by Civil Courts and in the criminal law, he often takes a back seat. Having given his evidence, he stands aside and watches the offended majesty of public justice being satisfied by conviction and sentence. He himself is fortunate if he gets compensation, or even his expenses. Often he must have recourse to the civil courts to reclaim his property and not infrequently may have suffered a loss or injury for which, he cannot be recompensed.

At one time in the evolution of criminal jurisprudence, the idea of reparation of the victim of wrong occupied a major place in most legal systems. The punitive or criminal aspect of the wrong gradually claimed recognition and for some time, the two were mixed or combined in the same proceedings. Later, the civil or reparation aspect became subordinate and the criminal Courts concerned themselves almost wholly with the punitive aspect. In recent times, however, the compensation aspect in regaining its importance not of course as the principle aim of criminal proceedings but as a recognized ancillary thereto.

The Law Commission noted three patterns of compensating the victim in Para 3.13 and 3.14 of its report. Para 3.13 and 3.14 are reproduced hereinafter.-

3.13. Three patterns of compensating the victim of crime can be noted. The State may take upon itself, this responsibility in defined classes of cases. Secondly, the offender can be sentenced to pay by way of punishment for the offence and out of that fine, compensation can be awarded to the victim. Thirdly, the Court trying the offender can in
addition to punishing him according to law, direct him to pay compensation to the victim of the crime or otherwise make amends by repairing the damage done by the offence.

3.14 The question whether this direct method of compensating the crime should be adopted and provided for in the Penal Code, was included in the questionnaire. Objection to this suggestion was voiced by a number of persons consulted principally on the apprehension was voiced by a number of persons consulted, principally, on the apprehension that it might convert the criminal trial into a protracted inquiry into matter of a civil nature. There was , however, a large body of opinion in favour of the proposal”.

The Law Commission, also, noted the inefficient working of the provision of section 545 of Cr.P.C. 1898, regarding payment of compensation, to the injured party.

The Commission specifically observed in para 3.17 of its report that

We have a fairly comprehensive provision for payment of compensation to the injured party under section 545 of the criminal procedure code. It is regrettable that our Court’s do not exercise their salutary powers under this section freely and liberally as could be desired. The section has no doubt its limitations. Its application depends in the first instance, on whether the Court considers a substantial fine proper punishment for the offence. In the more serious cases, the court may think that a heavy fine in addition to imprisonment for a long term, is not justifiable especially when the public prosecutor ignores the plight the victim of the offence and does not press for compensation
on his behalf. Another limitation stems from the fact that the Magistrates’ power to impose a fine is itself limited. At present, a Magistrate of the first class, cannot impose a fine exceeding two thousand rupees and a Magistrate of the second class cannot impose a fine exceeding five thousand rupees. Further, under section 545 (1) (b), the Court has to be satisfied that substantial compensation is recoverable in a civil Court by the person to whom, the loss or injury has been caused by the offence. In our last report on the Criminal Procedure Code, we have recommended that the word substantial should be omitted from this section and also the maximum fine imposable by the Magistrate of the first class should be increased to five thousand rupees and the maximum fine imposable by the Magistrate of the second class should be increased to one thousand rupees. When the law is amended as suggested by the commission and a liberal use of section 545 of the Criminal Procedure Code is made by the Court’s, it would in our opinion, go a long way to meet the complaint that the victim of the offence is ignored by the criminal Court’s and if he wishes to recover damages, he has necessarily to resort to a protracted and costly civil litigation.

After examining the pros and cons of various procedural laws applicable at that point of time in other countries particularly European countries, Law Commission recommended insertion of section 62 in IPC immediately before section of 63 in para 3.19 its report which reads as follows:-

3.19 We think, however, the Penal Code should give prominence to this aspect of compensating the victim of the offence out of the fine imposed on
the offender. At present, the legal provision in this regard is tacked away in the last miscellaneous chapter of the Code of Criminal Procedure. It seems to us that as a substantive power of the trial Court, it deserved to be mentioned specifically in the Penal Code chapter on punishments along with the provisions relating to fines, we recommend insertion of the following section immediately before section 63 of the penal code.

62. order to pay compensation out of fine to victim of offence.-Whenever, a person is convicted of an offence punishable under chapter 16, chapter 17 or chapter 21 of this code of an abetment of such offence or a criminal conspiracy to commit such offence and is sentenced to a fine whether with or without imprisonment;

and the Court is of opinion that compensation is recoverable by civil suit by any person for loss or injury caused 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.

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.

(ii) Law Commissions’ recommendation for the State:-

The law Commission was also very much concerned about the duty of the State to compensate the victim being a welfare State. The Commission in Para 3.20 of its report took note of this duty of the State, towards the
victims in the following terms in Para 3.20, which read as follows.-

3.20 We have mentioned above that one of the pattern of compensating the victim of a crime noticeable in other legal systems is the system of the State undertaking this responsibility in defined classes of cases. According to the traditional legal notion, the Courts adjudication in a criminal trial is directed towards the sanction to be applied to the offender, and except in a few isolated cases, when the law allowed the criminal Courts to grant restitution the victims of a crime could not seek compensation in the criminal Court. The responsibility of the State ended with the prosecution and it was not to be regarded as under any legal obligation to protect the lives and property of its citizens from criminal depredations. Consequently these could be no legal claim against the State for compensation.

It was further observed that-

With the emergence of the social welfare State, these traditional notions of the State immunity, are undergoing rapid changes. The idea that the victim of the crime, deserves as much attention from the State as the criminal and that if the State fails to protect its citizens against violence, it can legitimate be called upon the compensate the victim is gaining ground in Western countries.

In England for instance the position was changed in 1964 when a non-statutory scheme ex-gratia compensation payment by the State for compensating victims for violence took effect and the criminal injuries compensation board commenced its work.
However, one of the member of the Commission shri R.L. Narasimha, gave his separate note recommending insertion of sections 70-A, 70-B and certain other sections in the IPC, which reads as follows-

**70 A.** (1) In case of conviction for an offence against the human body, and offence 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 a 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) A 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 persecution, for defraying expense 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 a conviction of any offence for having caused the death of another person or of having abetted the commission of such an offence, to the persons who are under the fatal accidents Act, 1855, entitled to recover damages from the person sentenced for the loss resulting to them form 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 dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having re-purchaser of such property, for the loss of the same, if such property is restored to the possession of the person entitled thereto.

(6) 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 70B. (1) In every case in which the offender is sentenced to payment of compensation under section 70A, it shall be competent to the Court which sentences such offender, to direct by the sentence, that in default of the payment of compensation, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

(2) The provision of sections 65 to 70 (of the Indian penal Code) shall, after substitution of references
to compensation or its monetary equivalent in place of references to fine, apply in relation to imprisonment in default of payment of compensation, as they apply in relation to imprisonment in default of payment of fine.

It was further stated in Para 10 that—

If this suggestion is accepted, consequential provisions will have to be made in the Criminal Procedure Code also for execution of this type of sentence. Section 545 of the Criminal Procedure Code may be omitted altogether and new sections 388A, 388B and 388C, as shown below, may be inserted in the Criminal Procedure Code.

388A.(1) Whenever an offender has been sentenced to pay compensation under section 70A of the Indian Penal Code, the Court passing the sentence shall order the payment of compensation to the person concerned within a specified period. If the said compensation is not paid within that period or within such further period as may be extended by the Court, shall subject to the provisions of sub-section (2), take the same action for recovery of compensation as it could take for recovery of the fine under section 386 of the Code of Criminal Procedure, 1898, and the provisions of sections 386 and 387 of the code shall, after substitution of references to compensation in place of references to fine, apply for the purpose as they apply for the recovery of the fine.

(2) Proceedings for recovery of compensation as indicated in sub-section (1) shall be taken up by the Court on the application of the person in whose favour, the order for compensation was passed. Such an application shall be filed within one month of the last date of the period specified for payment of compensation. If such an application is not filed
within the time so fixed, the right of the person to receive the compensation shall be extinguished.

388B. When an offender has been sentenced only to pay compensation under section 70A of the Indian Penal Code, or to apply such compensation and fine and to imprisonment in default of payment of compensation, and the Court, the court may suspend execution of the sentence of imprisonment by passing the same orders as it could under sub-section (1) of section 388 (of the Code of Criminal procedure, 1898) if the offender had been sentenced to fine only; and the provisions of sub-section (1) of shall section shall, after substitution of references to compensation in place of references to fine, apply for the purpose as they apply in case of a sentence of fine.

388C. For the purpose of section 388 (of the Code of Criminal Procedure, 1898), an offender sentenced to pay compensation under section 70A of the Indian Penal Code and to fine, shall be deemed to be an offender who has been sentenced to fine only.

The Law Commission, as such recognized the duty of the State to compensate the victims of crime and followed the pattern in Western Countries, which shall be discussed later on in this research work.

**Rajan in his book Victimology in India**

stressed upon duty of the State to compensate the victims as he gave the following rationale for victim compensation by the State. He Stated on page 7-9 that-

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1) The best raison d'être for victim compensation is the theory of the State. The State is a complex of rulers and ruled politically conceived territorially organised seeking by the conferment of powers on the rulers the effective maximization of the individual interest and the social welfare of the ruled. The State achieve its purpose through enactment and promulgation of laws and it enforces obedience to the laws by the exercise of power. Power is the capacity to produce the intended effect. If the intended effect cannot be produced in respect of any law, the State has to assume responsibility for the loss, pain, or damage caused to any law abiding citizen by someone's disobedience of the law.

2) The assumption of power by the State necessarily implies deprivation of the citizen of his right to private vengeance or personal retributive action. Such a deprivation is a sine qua non of modern society's civilized existence. Gut for that we would be reverting to the law of jungle. In return for that deprivation, the citizen gets the protection of the State. In cases, in which the State fails in its obligation to protect the individual it has broken its agreement and should thus be liable for the damage done to the victim of crime. Such a rationale will argue for the most liberal type of
compensation programme in principle citizen has a right to advance claim against the State for its failure to protect him.

3) Another justification offered for victim compensation is the “shared risk” argument. In a sense, the government may be viewed as a entrepreneur or an employee who includes the cost of the risk of service it renders to the consumer in the price of the product. Thus each consumer contributes towards the payment made to these individuals, who will be compensated for damages. The taxes paid by the citizens are seen as payment of premium to cover the insurance against the risk of crime victimization, which every citizen shares with every other citizen and compensation to crime victim as payment given to any unfortunate injured individual or deceased individual’s next of kin or victims under the insurance scheme.

4) Another functional justification for victim compensation is the welfare theory arising from the assumption that the government exists and functions for the people. This approach holds that just as the State has a humanitarian duty to the poor, the sick, the un-employed, the under privileged, and so on, it has a duty towards the victims of crime also. However, this duty is based
not only on contractual obligation on the part of the State, but on the social conscience of its rulers and its people.

5) Related to the welfare theory is the theory of “mercy of the government.” Under this rationale, it is argued that the State has the power to deal mercifully with certain individuals. Thus it may, by legislative grace, grant compensation to individuals who have been unfortunate to become victims of crime. This is probably known as ex-gratia payment, made by the government to victims of crime, accidents and other natural calamities.

(iii) Law Commissions' 152nd Report\textsuperscript{11} and Victim Compensation. –

The Law Commission of India in its 152\textsuperscript{nd} report, 1994 on custodial crimes in chapter 12 titled “Compensation” had recommended insertion of a new section 357-A in Code of Criminal Procedure 1973 regarding compensation to victims of Custodial Crimes, which read as follows:

\textbf{357 –A Compensation in custodial crimes-}

(1) Notwithstanding the provision of section 357, where the Court convicts a public servant of an offence resulting in death or bodily injury, being an offence constituted by an act of such public servant

\textsuperscript{11} 152\textsuperscript{nd} report 1994 of 13\textsuperscript{th} Law Commission on Custodial Crimes.
against a person in his custody. The provisions of this section shall apply;

(2) The Court, when passing judgment in any case to which this section applies, shall order that the government in connection with the affairs of which such public servant was employed at the time when such act was committed, shall be liable jointly and severally with such public servant to pay by way of compensation such amount as may be specified in the order;

(3) An order for payment of compensation under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision;

(4) While awarding compensation in any subsequent suit relating to the same matter, the civil Court, shall take into account any sum paid or recovered as compensation under this section;

(5) The amount awarded under this section shall not be less than

(a) Rupees twenty five thousand in case of bodily injury, not resulting in death;

(b) Rupees one lakh, in case of death;

(c) In fixing the amount of compensation under this section, the Court shall, subject to the revisions of sub-section (5), take into account all relevant
circumstances, including but not necessarily limited to the following:

(i) The type and severity of the injury suffered by the victim,
(ii) The mental anguish suffered by the victim;
(iii) The expenditure incurred or likely to be incurred on the treatment and rehabilitation of the victim;
(v) The actual and projected earning capacity of the victim and the impact of its loss on the person entitled to compensation and other members of the family;
(vi) The expenses incurred in the prosecution of the case;

(6) In case of death or permanent disablement of the victim, the Court may take into account the estimated annual income of the victim as multiplied by the number of years of his estimated span of life;

(7) Pending final determination of the proceeding, the Court may award by way of interim relief, such compensation as it may think proper in the circumstances of the case at any stage of the case, even before judgment of conviction is passed;

(8) The Government may recover any amount paid by it as compensation under this section, wholly or
partly as it may think proper from the delinquent public servant.

Though Law Commission’s recommendations were confined to custodial crimes, yet these recommendations laid the foundation of compensating the victims and the need to have a separate provision for this purpose.

(iv) Law Commissions’ 154th Report12 and Victim Compensation-

Law Commissions’ 154 report 1996, was perhaps the first report of law Commission, wherein the term “Victimology” was used by the Commission. In the opening para of chapter V of its report, the Commission defined concept of “Victimology” as follows-

Increasingly the attention of criminologists, Penologists and reformers of criminal Justice system, has been directed to Victimology, control of victimization and protection of victims of crimes. Crimes often entail substantive harm to people and not merely symbolic harm to the social order. Consequently, the needs and rights of victims of crime should receive priority attention in the total response to crime. One recognized method of protection of victims is compensation to victims of crime. The needs of victims and their family are extensive and varied.

After observing that its earlier recommendations in its 152 report had not been implemented, in para 17 of the report of the law Commission, section 357-A Cr.P.C,

was recommended to be added. The proposed section read as follows:

**S. 357 A. victim compensation scheme.**

(1) Every State Government in co-ordination with the Central Government, shall prepare a scheme for providing funds for the purpose of compensating the victim or his dependents who have suffered loss or injury as result of the crime and who require rehabilitation.

(2) Under the scheme, the District legal services Authority at the District level and State legal Services Authority at the State level shall decide the quantum of compensation to be awarded whenever a recommendation is made by the trial court to that effect.

(3) If the trial Court at the conclusion of the trial, is satisfied that the compensation awarded under section 357 (3) is not adequate for such rehabilitation or where the case ends in acquittal or discharge and the victim has to be rehabilitated, it may recommend to the District Legal Services Authority, if the compensation in its view is less than Rs. 3,0000/-or to the State Legal Services Authority, if the compensation is more than Rs. 3,0000/-
(4) Where the offender is not traced or identified, but the victim is identified and where no trial takes place, it is open to the victim or his dependents to make an application under sub-section (2) to the District Legal Services Authority at the district level and the State Legal Services Authority, at the State level for award of compensation.

(5) On receipt of such recommendation or on the application under subsection (4) as the case may be the District level Legal Services Authority or the State Legal Services Authority as the case may be, shall after due inquiry award adequate compensation by completing the enquiry within two months.

(6) District level Services Authority or the State Legal Services Authority as the case may be, to alleviate the suffering of the victim, may order immediate first aid facility as for medical benefits to be made available free for cost on the certificate of the police officer not below the rank of the officer in-charge of the police station or a Magistrate of the area concerned or any other interim relief as the appropriate Authority deems fit.

The recommendation of the Law Commission in its 154th Report made a new beginning for compensating the victims by the legal services authority, even if the
accused is acquitted, discharged or even when not traced but the victim is identified. Besides this, the recommendation for payment of the term compensation was a new recommendation.

**IV) Victim Assistance fund in Tamil Nadu**

The recommendations made by Law Commission in its 154th report, were implemented by the State of Tamil Nadu up to some extent by the creation of a fund called victim assistance fund and rupees one Crore was allocated to the scheme during the year 1995-96. The scheme provided for financial assistance to the victim of murder, Serious injuries, rape and particularly to help women, children and bread earners in distress. The amount was to be placed at the disposal of director-general of police, who could sub-allocate the amount to commissioners of police of Madras, Madurai and Coimbatore and superintendents of police of other Districts with reference to requirements and the cash relief would be sanctioned to the victims or legal heir in case of murder on the following scales-

<table>
<thead>
<tr>
<th>S. No.</th>
<th>particulars</th>
<th>amount of cash</th>
<th>to whom it should be paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Murder</td>
<td>Rs. 10,000/-</td>
<td>to the legal heir</td>
</tr>
<tr>
<td>2.</td>
<td>Grievous injury</td>
<td>Rs. 5000/-</td>
<td>To the victim</td>
</tr>
</tbody>
</table>
3. Rape Rs. 5000/- (Rs. To the victim

The said scheme provided for setting up District victims assistance committee in each District comprising the following officials with the District superintendent of police/ Deputy commissioner of police (Headquarters) acting as member secretary.

As per the scheme, application received from the victims seeking financial assistance from the fund of District superintendent of police office/commissioner of police office, under the said scheme was required to be placed before the committee for consideration and decision.

However, the assistance from the “victim assistance fund” could not be given to those victims or to legal heirs, if the victim was involved in any cognizable offence, The Tamil Nadu scheme, which was limited only to a certain class of victims, was a model to be adopted in a comprehensive manner covering all victims.


(A) Victim compensation-

The Code of Criminal Procedure (Amendment) Act, 2008 brought into effect from 30th December 2009, paved the way for the emerging role of Victimology in the Indian

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Criminal Justice System, though it took more than 22 years for the Central Government to bring about such amendments. The recommendation for victim compensation which was made by the Law Commission, was incorporated by adding section 357-A in the year 2008 by way of Criminal Procedure (Amendment) Act 2008. Besides this, section 372 was also amended and a proviso was added giving victims a right to file an appeal against acquittal of the accused and these amendments can be analyzed as follows-

(i) **Introduction of Section 357-A CrP.C. 1973**-

The suggestions made by the Law Commission earlier in its 154th report 1996, on Cr.P.C 1973 were incorporated as Section 357-A with certain modifications. The newly introduced section 357-A CrP.C. 1973 reads as follows:-

357-A Victim compensation scheme

1. Every State government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victims or his dependents, who has suffered loss or injury as a result of the crime and who require rehabilitation.

2. Whenever a recommendation is made by the court for compensation as the case may be, District or the State by services Authority of the case may be shall decide the
quantum of compensation to be awarded under the scheme referred to sub section(1).

(3) If the trial Court at the conclusion of the trial is satisfied that the compensation awarded under Section 357 is not adequate for such rehabilitation or where the case ends in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified but the victim is identified and where no trial takes place, the victim of his dependents may make an application to the State or the District Legal Services Authority for award by compensation.

(5) On receipt of such recommendation or application under sub-section (4), the State or the District Legal Services Authority, shall after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim may order for immediate first aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned or any other interim relief as the appropriate authority deems fit.
(ii) **Scope of section 357-A Cr.P.C.-**

The newly introduced section 357-A Cr.P.C. has become a benchmark and will pave the way for newly emerging role of Victimology in the Indian Criminal Justice System. Some of the distinctive features of section 357-A Cr.P.C. can be analyzed as under-

I. This section provides for formation of schemes for providing compensation to the victims, who require rehabilitation. The legislature has knowingly used the word “shall”, which implies that it is mandatory for the State governments to formulate such a scheme. Not only the victims, but his dependents have also been covered by the compensation scheme to be so formulated. Besides this, funding of scheme has to be provided by State government. While u/s 357 (3) Cr.P.C, it is only the responsibility of the accused to pay the compensation to the victim or his dependents. But, under the new provision, it shall be the responsibility of State Govt to provide funds.

II. Secondly, District Level Services Authorities and the State Legal Services Authorities, have been given the duty to decide the quantum of compensation and the same has to be given on the recommendation of the Court concerned.
III. The compensation to be awarded under section 357-A Cr.P.C., is in addition to the compensation directed by the court to be paid u/s. 357 Cr.P.C, if the Court trying the accused is satisfied that the compensation granted u/s. 357 (3) Cr.P.C. is not adequate. In other words, if the accused is unable to pay adequate compensation, the State Govt shall bear the responsibility to pay the adequate compensation to be decided by District Legal Services Authority or the State Legal Services Authority as the case may be.

IV. Another distinctive feature is that even if the accused is acquitted or discharged, the victim or his dependent can be paid compensation under the scheme to be formulated u/s. 357-A(1) Cr.P.C. This is new provision, which lends credence to relevancy of growth of the concept of Victimology and its emerging role in Indian Criminal Justice System. Under section 357 Cr.P.C, an accused can be directed to pay compensation to the victim, only if he is convicted. But, under provision of Section 357-A, victim or his dependents can be paid compensation, even if the accused is acquitted or discharged, though in such event, payment of compensation has to be made by the State Govt.

V. Under the new provision, the victim or his dependents, can seek compensation to be paid by the State Govt, even if the accused is not traceable or not identified. This
provision has been made so as to ensure that the victim or his dependents may be compensated and rehabilitated, irrespective of the fact as to whether the accused is identified or not.

VI. In order to ensure speedy payment of compensation to the victim and his dependents, an enquiry has to be conducted, which has to be completed within a period of six months.

VII. As per section 357 Cr.P.C, a victim could be compensated by the trial Court only after the conclusion of trial and that also if the accused is convicted. There could not be any interim direction for payment of any compensation. However, u/s 357-A (6) Cr.P.C interim compensation can be paid to the victim or his dependents and they can also be given medical facilities or first aid.

(B) Victim Compensatory Schemes of the States in India-

Subsequent to the introduction of section 357-A Cr.P.C 1973, Victim compensatory schemes have been implemented only in some of the States such as Delhi and Bihar, while some of the States such as Haryana, Punjab and Union Territory of Chandigarh are in the process of implementing schemes for victim
compensation. Some of the schemes are discussed hereinafter State wise such as-

1) Bihar Victim Compensation Scheme –

The State of Bihar generally regarded to be backward both financially as well as in policy making including making of welfare schemes, has been the front runner so far as the victim compensatory scheme is concerned, as it formulated and notified the said scheme in the year 2011 whereas the developed States of Haryana and Punjab are yet to notify their respective schemes as on 31.3.2012.

On 28.7.2011, the State Govt of Bihar issued a notification  

14 implementing a scheme for payment of compensation in terms of section 357-A Cr.P.C to be called as “Bihar victim compensatory scheme 2011.” Some of the salient features of the scheme are as follows-

(i) Meaning of the term “victim”-

The scheme has given the definition of the term “victim” differently from the one given in section 2(wa) C.r.P.C 1973. Section 2(d) of the scheme defines the term “victim” as follows-

Victim means a person who himself has suffers loss or injury as a result of crime causing

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14 Notification no L-G-6-01/2011-151/LEG dated 28.7.2011
substantial loss to the income of the family making it difficult to meet their both ends without the financial aid or has spent his means on medical treatment of mental physical injury and require rehabilitation.

(iii) **Meaning of the term “dependant”** -

The term “dependant” has been defined in a very wider sense, which is as under-

2(e) In this scheme “dependent” means member of family of the victim namely husband, wife, mother, father, brother, sister, son/daughter, grandmother, grandfather, father-in-law mother-in-law, and it includes any other person, who is leading life on the income of the victim.

(iii) **Eligibility for compensation** -

As per clause 4 of the scheme a “victim” shall be eligible for compensation if-

(a) the offender is not traced or identified but the victim is identified and where no trial takes place such victim may also apply for grant of compensation u/s 4 of section 357-A;

(b) the victim /claimant reports the crime to the officer in charge of police station or judicial magistrate of the area promptly;

Provided that the district legal services authority if satisfied for reasons to be recorded in writing may condone the delay in reporting;
(c) The victim co-operates with the police and prosecution during the investigation and trial of the accused;

(d) The victims shall be entitled to compensation for loss occurred expenses for medical treatment, amount required for rehabilitation including incidental expenses, but the amount of compensation received by the victim from the Central Govt /State or insurance company in respect of any insurance policy or ex-gratia, shall be treated as compensation.

(e) Right to appeal- The claimant shall have a right to appeal to the State legal services Authority if not satisfied with the amount of compensation awarded.

(iv) Schedule-

The scheme has also included a Schedule specifying the maximum amount of compensation which can be paid to the victim of the particular types of injury suffered specified therein in the scheme and the same is reproduced ass under-

<table>
<thead>
<tr>
<th>S.No</th>
<th>Particulars of Loss or Injury</th>
<th>Minimum Compensation</th>
<th>Maximum Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Loss of life</td>
<td>no amount fixed</td>
<td>Rs 100000/-</td>
</tr>
<tr>
<td>2</td>
<td>Rape</td>
<td>no amount fixed</td>
<td>Rs 50000/-</td>
</tr>
<tr>
<td>3</td>
<td>Loss or injury causing</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Severe mental agony to women and children no amount fixed Rs 25000/-

4 victims of kidnapping and human trafficking no amount fixed Rs 25000/-

5 Grievous hurt as defined in section 320 IPC. no amount fixed Rs 25000/-

6 Injury caused by acid attack no amount fixed Rs 25000/

(v) Pros and cons of the scheme-

(a) The scheme has been made in order to provide as a relief measure to the victims of crime. But there are certain aspects, where the scheme has certain loopholes for example the term “dependent” has been defined to include even father-in-law and mother-in-law, who are generally not regarded to be dependent on their son-in-law or daughter-in-law. Though the scheme uses the words “who is leading life on the income of the victim”, but still the framers of the scheme have defined the term “dependent” in a too wider sense.

(b) Besides this, there is no provision to decide the dependency in order to claim compensation and the absence of such a provision can lead to arbitrariness in the entire process.
2) **Delhi Victims Compensation Scheme 2011**

On 02.02.2012, Delhi Government issued a notification notifying a comprehensive scheme for grant of compensation to victims of crime named as "Delhi Victims Compensation Scheme 2011." The main features of the scheme are as follows-

**(i) Victims and their Dependents**

Under the scheme the victims at the first instance are entitled to claim compensation the term victim has been given the same definition as provided in section 2 (wa) of C.r.P.C. the term "dependent has been defined in clause 2(c) of the scheme which reads as follows-

2(c) **"dependent"** includes wife, husband, father, mother, unmarried daughter and minor children of the victim as determined by the Authority empowered to issue dependency certificate that is to say the Collector, or any other Authority authorized by the Government in this regard;

**(ii) Eligibility etc.**

The eligibility for claiming compensation procedure and method of disbursement of the amount of compensation and has been provided in clauses 4, 5, and 7 of the scheme and the same read as under -

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15 Notification F.No.11/35/2010/HP II Delhi Gazette
4. Eligibility for Compensation.- The victim or his/her dependent(s) shall be eligible for the grant of compensation after satisfying the criteria that he/she should not have been compensated for the loss or injury under any other scheme of the Central Government or the Government of National Capital Territory of Delhi.

5. Procedure for grant of compensation -

(1) Wherever, a recommendation is made by the Court for compensation under sub-sections (2) and (3) of section 357A of the Code, or an application is made by any victim or his/her dependent(s), under sub-section 4 of section 357A of the Code, 1973 to the Delhi Legal Services Authority, it shall examine the case and verify the contents of the claim with regard to the loss or injury or rehabilitation as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.

(2) The inquiry as contemplated under sub-section(5) of section 357 A of the Code, 1973 shall be completed expeditiously and the period in no case shall exceed beyond sixty days from the receipt of the claim/petition;

(3) After consideration of the matter, the Delhi Legal Services Authority, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or his/her dependent (s) on the basis of loss or injury or requirement for rehabilitation, medical expenses to be incurred on treatment and such incidental charges, such as funeral expenses etc.

Provided that – (1) the quantum of compensation to be awarded to the victim or his/her dependent(s) shall not be less or more than what is provided in
the Schedule. (2), if at a later date, compensation awarded by the Court is more than the maximum limit, the amount of compensation paid shall be adjusted.

7. *Method of Disbursement of compensation* - (1) The amount of compensation so awarded shall be deposited in a Nationalized Bank or if the branch of a Nationalized Bank is not in existence, it shall be deposited in the branch of a scheduled commercial bank, in the joint or single name of the victim/dependent(s). Out of the amount so deposited, 75% (seventy five percent) of the same shall be put in a fixed deposit for a minimum period of three years and the remaining 25% (twenty five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.

(2) In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit.

Provided that in exceptional cases, amounts may be withdrawn for educational or medical needs of the beneficiary at the discretion of the Delhi Legal Services Authority.

(3) The interest on the sum shall be credited directly by the bank in the savings account of the victim/dependent(s), on monthly basis.

(iii) *Ancillary Provisions* -

The scheme also provides for ancillary provisions such as medical facilities to be provided to the victims
recovery of the compensation awarded under the scheme from the accused, placing of the order of grant of compensation on the recovery of the trial court, limitation for filling the claims under clauses 6 and 8-11 which are as follows:

6. **Order to be placed on record**— Copy of the order of compensation passed by the Delhi Legal Services Authority under this Scheme, shall be mandatorily placed on record of the trial Court.

8. **Medical aid to the victim**— The Delhi Legal Services Authority may order for immediate first-aid facility or medical benefits or any other interim relief, as deemed appropriate, to be made available free of cost, to alleviate the suffering of the victim on the certificate of a police officer, not below the rank of the officer-in-charge of the police station, or a Magistrate of the area concerned.

9. **Recovery of compensation awarded to the victim or his/her dependent(s)**— Subject to the provisions of sub-section(3) of section 357A of the Code, the Delhi Legal Services Authority, in proper cases, may institute proceedings before the competent court of law for recovery of the compensation granted to the victim or his/ her dependent(s) from person(s) responsible for causing loss or injury as a result of the crime committed by him/her.

10. **Dependency certificate**— The authority empowered to issue the dependency certificate shall issue the same within a period of fifteen days and in no case, this period shall be extended.

Provided that the Delhi Legal Service Authority, in case of non-issuance of Dependency Certificate,
after expiry of 15 days, may proceed on the basis of an affidavit to be obtained from the claimant.

11. Limitation- Under the Scheme, no claim made by the victim or his/her dependent(s), under sub-section (4) of section 357A of the Code, shall be entertained after a period of 3 years from the date of occurrence of the crime.

(iv) Schedule-

The scheme has also included a Schedule specifying the minimum and maximum amount of compensation which can be paid to the victim of the particular types of injury suffered specified therein in the scheme and the same is reproduced ass under-

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<th>S.No</th>
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<th>Minimum Compensation</th>
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<tbody>
<tr>
<td>1.</td>
<td>Loss of life</td>
<td>Rs.3.00 Lakh</td>
<td>Rs.5.00 Lakh</td>
</tr>
<tr>
<td>2.</td>
<td>Rape</td>
<td>Rs.2.00 Lakh</td>
<td>Rs.3.00 Lakh</td>
</tr>
<tr>
<td>3.</td>
<td>Loss of any Limb or part of body resulting in 80% permanent disability or above.</td>
<td>Rs.2.00 Lakh</td>
<td>Rs.3.00 Lakh</td>
</tr>
<tr>
<td>4.</td>
<td>Loss of any limb or part of body resulting in above 40% and below 80% permanent disability</td>
<td>Rs.1 lakh</td>
<td>Rs.1.50 lakh</td>
</tr>
<tr>
<td>5.</td>
<td>Loss of any limb or part of body resulting in above 20% and below 40% permanent disability</td>
<td>Rs.0.60 lakh</td>
<td>Rs.1 lakh</td>
</tr>
<tr>
<td>6.</td>
<td>Loss of any limb or part of</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
body resulting in below 20% permanent disability Rs.0.50 lakh Rs.0.50 lakh

7. Victims of human trafficking, child abuse and kidnapping Rs.0.50 lakh Rs.0.50 lakh

8. Simple loss or injury to Child Victim Rs.0.10 lakh Rs.0.10 lakh

9. Rehabilitation Rs.0.20 lakh Rs.0.20 lakh

10. Victims of Acid Attack

a. In case of disfigurement of face Rs.2.00 lakh Rs.3.00 lakh

b. Other cases of injury Rs.0.50 lakh Rs.0.50 lakh

(v) Pros and cons of the Delhi victims compensation scheme 2011-

(i) As per the scheme, compensation can be claimed by a victim or his or her dependants. So far as the dependants are concerned they have to satisfy the authority regarding their dependency in order to claim compensation or in the alternative an affidavit is to be taken from the claimant. This provision has been kept in the scheme in order to ensure that only those, who are really the “dependants” are able to claim compensation.

(ii) The scheme is also very realistic so far as the relations described in the scheme are concerned. Contrary to the scheme notified by the State of Bihar, where even father - in-law and mother-in-law have been described as “dependants”, the scheme notified in Delhi has adopted a
more practical approach as father-in-Law and mother-in-law are generally not regarded to be dependants of their son-in Law and daughter-in law.

(iii) Furthermore, in order to ensure that the compensation granted actually reaches the claimants/victims, the scheme provides for deposit of the compensation amount in a nationalised bank in the name of the victim/claimant out of which 75% has to be kept in a fixed deposit for a minimum period of three years and in case of a minor, 80% of the total amount of compensation shall be kept in a fixed deposit till the minor attains the age of majority but not for a period of not less than 3 years.

(iv) The victims/claimants have been given a period of 3 years from the date of commission of the offence in order to file a claim which is sufficient to ensure that the victims get sufficient time for filling their claims for compensation.

(v) One of major drawback of the scheme is that the victims have not been given a right to appeal in case they are not satisfied with amount of compensation awarded to them under the scheme.

(vi) The victims of riots or other cases of mass violence should have been treated as a separate category which has not been done in the scheme.
3) Victim compensatory schemes in Haryana, Punjab and Union Territory of Chandigarh-

So far States of Haryana, Punjab and Union Territory of Chandigarh are concerned, High Court of Punjab and Haryana has been passing various directions for implementation of victim compensatory schemes in these States.

As per news item, non-framing of victim compensatory schemes in these States in spite of the mandate contained in section 357-A, came to light when an advocate practising filed a public interest litigation in the High Court of Punjab and Haryana seeking directions to the said States to frame the Victim Compensatory schemes in view of mandatory provision in section 357A C.r.P.C 1973. The High Court issued notice on the PIL to State Govts of Haryana Punjab, Chandigarh administration and Union Home ministry.

Further as per news item, the High Court of Punjab and Haryana made it clear during the hearing of the aforesaid public interest litigation that it was in favour of implementation of victim compensatory schemes.

Lastly as per news item, the High Court of Punjab and Haryana disposed off the writ petition by issuing a direction to State Govts of Haryana Punjab and

Chandigarh administration to notify the victim compensatory schemes at the earliest.

**4) Victim Compensatory scheme in Punjab**

Subsequent to the disposal of the PIL by the High Court, the State Govt of Punjab has formulated its victim compensatory scheme as per which, the victims shall be entitled to a compensation of Rs 1 lakh in case of death, Rs 40000/- in case of loss of limb or any body part resulting in disability of 40% or above, Rs 30000/- in case of Rape victims and Rs 20000/- in case of other injuries. But the scheme is yet to be notified as on 31.1.2012.

**5) Victim Compensation in Rajasthan**

The State Govt of Rajasthan is yet to frame a scheme for victim compensation in terms of section 357-A C.r.P.C 1973 though the provision is mandatory in nature. But it has framed a scheme for compensating the victims of the offence of rape. As per the news item 19 the State govt of Rajasthan has implemented a scheme as per which, the victims of the offence of rape shall be paid a compensation of Rs 2 lakh, which may extend to 3 lakh in case of rape of a minor or mentally or physically disabled victim or in case of gang rape.

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19 Published in Hindustan Times web edition dated 1.8.2011 by its reporter Sanjib kr Baruah.
(C) Is section 357-A Cr.P.C. sufficient in itself ?-

Section 357-A Cr.P.C. introduced in the year 2008, will no doubt will bring a totally new approach towards the victims of crime and manner in which they are compensated. However, the question arises as to whether Section 357-A Cr.P.C. as introduced, is in itself sufficient or that some aspects of “Victim Compensation” have been left out of this new section. For this purpose, it is necessary to make a reference to the concept of “Victim Compensation” as followed in other countries especially the legal position in USA, U.K and other European Nations.

1) Victim compensation in UK:

In England, provisions for grant of compensation to victims came into existence way back in the year 1964 in the form of a scheme for compensation in crimes of violence. The first legislation came in the form of Criminal Justice Act of 1972, which was followed by criminal justice act of 1988. Lastly, English law makers enacted Criminal Injuries Compensation Act, 1995, which is in force as on today. As such, compensation to victims is presently granted under the said Act and the Criminal Injuries Compensation Scheme 2008 formulated thereunder, which is a very comprehensive legislation and one of the best in the world regarding victim compensation.
**a) Criminal Injuries Compensation Act, 1995.**

Section 2 of the Criminal Injuries Compensation Act, 1995 provides for payment of compensation by an award to be determined in accordance with the provisions of the scheme to be formulated under the Act. As per Section 2 (2) of the Act the provisions shall be made under the scheme for the following purposes:-

i) A standard amount of compensation determined by reference to the nature of injury.

ii) In such cases as may be specified, an additional amount of compensation calculated with respect to loss of earning;

iii) In such cases as may be specified, an additional amount of compensation calculated with respect to special expenses and

iv) In cases of fatal injuries; such additional amounts as may be specified or otherwise determined in accordance with the scheme.

**b) The Criminal Injuries compensation scheme 2008 -**

The Criminal Injuries Compensation Scheme 2008 formulated under Criminal Injuries Compensation Act 1995 is a very comprehensive scheme, which provides for the payment of compensation for the victims of crime on various parameters such as injuries, loss of earning, fatal
injuries, special expenses etc, method of filing of claims for compensation and the procedure for its payment. The main features of the schemes are as follows-

i) Power of claim officers to decide the claims for compensation-

As per paragraph 2 of the scheme the claim officer appointed by the Criminal Injuries Compensation Authority are empowered to determine the claim for compensation in accordance with the scheme. Further as per paragraph-3 of the Scheme, the claim officers are responsible for deciding as to what award should be made in individual cases and how they should be paid.

ii) Eligibility to Claim Compensation- The eligibility to apply for compensation is provided in paragraph 6 of the scheme which reads as under:-

6. Compensation may be paid in accordance with this Scheme-

(a) to an applicant who has sustained a criminal injury on or after 1 August 1964;

(b)where the victim of a criminal injury sustained on or after 1 August 1964 has since died, to an applicant who is a qualifying claimant for the purposes of paragraph 38 (Compensation in fatal cases).

For the purposes of this Scheme, “applicant” means any person for whose benefit an application for compensation is made, even where it is made on his or her behalf by another person.
Compensation under the scheme can be paid to a person who has sustained criminal injury or to his dependents. The term "criminal injury" has been worded in a very wider sense, which has been defined by clause 8 which further refers to the "term personal injury" under clause 9. Clauses 8 and 9 same reads as follows-

8. For the purposes of this Scheme, "criminal injury" means one or more personal injuries as described in paragraph 9, being an injury sustained in and directly attributable to an act occurring in Great Britain which is:

(a) A crime of violence (including arson, fire-raising or an act of poisoning); or

(b) An offence of trespass on a railway; or

(c) The apprehension or attempted apprehension of an offender or a suspected offender, the prevention or attempted prevention of an offence, or the giving of help to any constable, who is engaged in any such activity.

9. For the purposes of this Scheme, personal injury includes physical injury (including fatal injury), mental injury (that is temporary mental anxiety, medical verified, or a disabling mental illness confirmed by psychiatric diagnosis) and disease (that is a medically recognised illness or condition). Mental injury or disease may either result directly from the physical injury or from a sexual offence or may occur without any physical injury. Compensation will not be payable for mental injury or disease without physical injury, or in respect of a sexual offence, unless the applicant:
(a) Was put in reasonable fear of immediate physical harm to his or her own person; or

(b) had a close relationship of love and affection with another person at the time when that person sustained physical and/or mental injury (including fatal injury) directly attributable to conduct within paragraph 8 (a), (b) or (c), and

(i) That relationship still subsists (unless the victim has since died), and

(ii) The applicant either witnessed and was present on the occasion when the other person sustained the injury, or was closely involved in its immediate aftermath; or

(c) in a claim arising out of a sexual offence, was the non-consenting victim of that offence (which does not include a victim who consented in fact but was deemed in law not to have consented); or either witnessed and was present on the occasion when another person sustained physical (including fatal) injury directly attributable to an offence of trespass on a railway, or was closely involved in its immediate aftermath does not apply where mental anxiety or mental illness is sustained as described in this sub-paragraph.

iv) Procedure for consideration and disposal of application-

(a) Filing of the applications:-

As per clause 18 of the scheme, an application for compensation under this Scheme in respect of a criminal injury ("injury" hereafter in this Scheme) must be made in writing on a form obtainable from the Authority. It should
be made as soon as possible after the incident giving rise to the injury and must be received by the Authority within two years of date of the incident. A claims officer may waive this time limit only where he or she considers that:

i) it is practicable for the application to be considered; and

ii) in the particular circumstances of the case, it would not have been reasonable to expect the applicant to have made an application within the two-year period.

b) **Responsibility of the claimant**

As per clause 19(1) of the scheme, it will be for the applicant to make out his or her case including, where appropriate:

(a) making out the case for a waiver of the time limit in paragraph 18; and

(b) satisfying the claims officer dealing with the application (including an officer reviewing a decision under paragraph 60) that an award should not be reconsidered, withheld or reduced under any provision of this Scheme.

As per clause 19 (2) of the scheme, where an applicant is represented, the costs of representation will not be met by the Authority. Where an applicant incurs ancillary costs in making the application, such as a fee
paid to an expert for a medical or other specialist report, these will not be met by the Authority unless they are met in accordance with paragraph 21 (medical examination of injury) or the claims officer otherwise considers that it is reasonable for the Authority to meet them, in full or in part.

c) **Consideration of the applications** –

As per clause 20 of the scheme, a claims officer may make such directions and arrangements for the conduct of an application, including the imposition of conditions, as he or she considers appropriate in all the circumstances. The standard of proof to be applied by a claims officer in all matters will be the balance of probabilities. Further, as per clause 21 of the scheme, where a claims officer considers that an examination of the injury is required before a decision can be reached, the Authority will make arrangements for such an examination by a duly qualified medical practitioner. Reasonable expenses incurred by the applicant in that connection will be met by the Authority.

v) **Types and limits of compensation 23**- Subject to the other provisions of this Scheme, the compensation payable under an award will be:

(a) A standard amount of compensation determined by reference to the nature of the injury.
(b) Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his or her death), an additional amount in respect of such loss of earnings.

(c) Where the applicant has lost earnings or earning capacity for longer than 28 weeks as a direct consequence of the injury (other than injury leading to his or her death) or, if not normally employed, in incapacitated to a similar extent, an additional amount in respect of any special expenses,

(d) Where the victim has died in consequence of the injury, the amount or amounts calculated in accordance with paragraphs 37-43(e) where the victim has died otherwise than in consequence of the injury, a supplementary amount.

Furthermore, where the victim has died in consequence of the injury, the persons who are entitled to claim compensation have been specifically defined in paragraph 38 (2) as qualifying claimant. As per paragraph 38 (2) of the scheme the following persons are entitled to claim compensation:

(a) The partner of the deceased, being only, for these purposes:
(i) A person who was living together with the deceased as husband and wife or as a same sex partner in the same household (or a person who would have been so living but for infirmity or ill health preventing physical proximity in the same house) immediately before the date of death and who, unless married to that person or a civil partner of that person, had been so living throughout the two years before that date, or

(ii) A spouse or civil partner or former spouse or civil partner of the deceased who was financially supported by the deceased immediately before the date of death; or

(b) A natural partner of the deceased, or a person who was not the natural parent but was accepted by the deceased as a parent within the deceased’s family; or

(c) A natural child of the deceased, or a person who was not the natural child put was accepted by the deceased as a child within the deceased’s family or was dependent on the deceased. But a person, who was criminally responsible for the death of a victim, may not be a qualifying claimant.
2) Victim compensation in Germany-

Germany too has a comprehensive legislation regarding victim compensation in the form of victim compensation act 1976. The salient features of the act are as follows.

i) Claiming of compensation-

As per the German Act, in a criminal proceedings any party, who has suffered injury or loss as a result of a criminal act or the heir of such a person can make a claim for compensation. The application for compensation can be made from the stage of investigation till the stage of final submissions.

A very interesting feature of the German act is that the victim need not move to the court concerned directly. As per the German Act, an application claiming compensation can be submitted by the claimant in the office of the public prosecutor conducting the investigation and thereafter, it shall be the responsibility of the office of the public prosecutor to take up the matter with the court for payment of compensation.

ii) Components of compensation-

As per the German Act, compensation is paid on account of injuries suffered as well as compensation for economic and health consequences of the injuries suffered. Victims as such, receive all health treatment
measures to restore or improve their health including occupational rehabilitation measures and psychotherapeutic treatment etc.

**iii) Compensation irrespective of the decision of the case against the accused**

A very interesting feature of the German Act is that compensation can be paid whether the accused has been convicted or not. Besides this, compensation can be paid at the earliest possible stage. As a result, the victim can claim compensation even at the stage of investigation.

**iv) Legal aid to the victims**

In order to ensure that the victims get all possible help in forwarding their claims for compensation, they are provided legal aid at State expense.

**3) Victim Compensation in the United States**

In the United States, each State as well as the District of Columbia and U.S. virgin islands operate a crime victim compensation programme to provide financial assistance to victims of violent crimes or personal crimes. Each States Administers its own programme in accordance with its State statute. The U.S. Department of Justice provides supplemental victim of crimes Act funding and technical supports to the States.
As per the crime victim compensation programmes applicable in most of the States in the U.S. follow some basic requirements for claiming compensation such as:

1. The offence committed must be reported to the police within 72 hrs. within its commission by the accused.

2. Secondly, the claim for compensation should be filed within a period of one year but this period can be extended by the concerned authority after showing good cost for the delay in filing the claim for compensation.

**a) Parameters of Compensation:**

All compensation programmes applicable in the different States in the U.S. cover major type of expenses such as:

i) Medical and dental care.

ii) Mental health counselling for victims and for family members of homicide victims.

iii) Lost wages for victims unable to work.

iv) Lost support for dependents of homicide victims.

v) Rehabilitation which may include physical and occupational therapy.

vi) Funerals and Burial expenses.

**4) Victim Compensation in the Canada**

The victims of crime in Canada are entitled to compensation as per the provisions of Compensation
for Victims of Crime Act 1990. Some of the relevant provisions in this context are as follows-

i) As per section 3(1) of the Act, the question regarding the grant of compensation and the quantum of the same to be granted is decided by a Board called as “Criminal Injuries Compensation Board” consisting of not less than 5 members to be appointed by the Lt Governor in council. Out of the members appointed, one shall be the chairman of the Board, who shall have the overall supervision of the functions of the Board.

ii) As per section 5 of the Act, compensation can be paid to a person called the victim, who shall be regarded so in case of death or injury by an act or omission or resulting from-

   a) The commission of a crime of violence constituting an offence against the Criminal Code of Canada including poisoning arson, criminal negligence but excluding an offence involving a motor vehicle.

   b) Lawfully arresting or attempting to arrest an offender or suspected offender for an offence against a person other than the applicant or his or her dependant or against such person’s
property or assisting a peace officer in execution of his or her lawful duties.

c) Preventing or attempting to prevent the commission of an offence or suspected offence other than the applicant or his or her dependant's against such person's property.

**iii) Limitation**- As per section 6 of the Act, applications can be filed before the Board within a period of two years of the commission of the offence.

**iv) Award of compensation**- The compensation can be awarded under the following heads-

a) Expenses actually and reasonably incurred or to be incurred as a result or the victim's injury or death;

b) Pecuniary loss or damages incurred by the victim as a result of total or partial disability affecting the victim's capacity for work;

c) Pecuniary loss or damages incurred by the dependants as a result of the victim's death;

d) Pain and suffering;

e) Maintenance of a child born as a result of sexual assault;
f) Other pecuniary loss or damages resulting from the victims injury and any other expense that in the opinion of the board it is reasonable to incur.

v) As per section 11 of the Act, the conviction of the accused shall be the proof of his liability to pay compensation, if the period for the appeal is over or where the appeal was filed and was dismissed and there is no further other remedy to the accused.

vi) But as per section 16 (1) of the Act, the Board shall not be bound by the decision of the trial of the accused, but may in its discretion wait for the decision of the said case.

vii) As per section 14 (1) of the Act, the Board may award interim relief, if in its opinion there is possibility of the claimant being awarded compensation.

**VII) European Convention on the Compensation of Victims of Violent Crimes**

Before proceeding further, it will be not out of context to mention the European Convention on the Compensation of Victims of Violent Crimes as per which various principles regarding victim compensation were passed by Council of Europe at Strasbourg on 24.11.1983.
adopted. The said principles were mentioned in part I of the Convention, which reads as follows-

Part-I - Basic Principles

Article 1 - The Parties undertake to take the necessary steps to give effect to the principles set out in Part I of this Convention.

Article 2 - When compensation is not fully available from other sources the State shall contribute to compensate;

a) those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;

b) the dependents of persons who have died as a result of such crime.

2. Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished.

Article 3 - Compensation shall be paid by the State on whose territory the crime was committed;

a. To nationals of the States party to this Convention;

b. To nationals of all member States of the Council of Europe who are permanent residents in the
State on whose territory the crime was committed.

Article 4 - Compensation shall cover, according to the case under consideration, at least the following items; loss of earnings, medical and hospitalisation expenses and funeral expenses, and, as regards dependants, loss of maintenance.

Article 5 - The Compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted.

Article 6 - The compensation scheme may specify a period within which any application for compensation must be made.

Article 7 - Compensation may be reduced or refused on account of the applicant's financial situation.

Article 8 - 1. Compensation may be reduced or refused on account of the victim's or the applicant's conduct before, during or after the crime, or in relation to the injury or death.

2. Compensation may also be reduced or refused on account of the victim's or the applicant's involvement in organised crime or his membership
of an organisation which engage in crimes of violence.

3. Compensation may also reduce or refused if an award or a full award would be contrary to a sense of justice or to public policy (order public).

Article 9-With a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source.

Article 10-The State or the competent authority may be subrogated to the rights of the person compensated for the amount of the compensation paid.

Article 11-Each Party shall take appropriate steps to ensure that information about the scheme is available to potential applicants.

VIII) Pros and Cons of Compensation Schemes under section 357-A C.r.P.C 1973-

As stated hereinbefore, newly introduced section 357-A Cr.P.C 1973, will no doubt bring about a totally
new approach towards victim compensation. But, the question arises as to whether this new provision, is sufficient to meet the need of the victims for adequate compensation or not.

If the provisions of the new section and the various schemes for victim compensation notified by the State Governments are compared with the provisions of various laws applicable in other countries, the Indian legislators, have not considered and taken into consideration various relevant factors. At the first instance, all the offences have been considered at par, which is not the correct approach at all though offences have been categorized by the State Governments in their respective schemes u/s 357-A.

Keeping in view the social aspects, the sexual offences should have been considered as a separate category. Though, there are provisions in the new section for interim relief including medical assistance and first aid to be provided to the victims or their dependents, but the mental trauma, agony social stigma, which victims of sexual offences suffer, have not been considered as a separate provision for grant of compensation. As a result, though it will be the discretion of the Court to grant compensation to the victims of sexual offences on account of mental agony and social stigma etc. suffered by them, but the victims will not be in a position to ask for it as a matter of right.
Besides this, there is no provision for considering the loss of earnings, as a separate factor for determining the quantum of compensation to be granted to the victim on the line of the provisions contained in the English law, which considers the loss of earnings as a separate parameter for determining the amount of compensation to be awarded to the victim. In these circumstances, there is a urgent need to bring about suitable amendments in section 357-A Cr.P.C to include the following parameters for determining the amount of compensation to be awarded namely-

(i) At the first instance, the victims of sexual offences should be considered as a separate class.

(ii) The sufferings of the victims of sexual offences on account of social stigma, mental agony and long term humiliation during the trial, should also be considered as a separate parameter for granting compensation.

(iii) The loss of earnings, permanent or temporary disability of the victim, should be another parameter for grant of compensation in offences relating to human body contained in IPC or any other provision contained in any other law relating to human body for the time being in force.
(iv) The amount spent by the victim or his dependents for the treatment on account of injury suffered by the victim or psychological therapy or treatment should also be paid.

(v) Though the term “dependent” has not been defined in C.r.P.C 1973, it has been defined in schemes framed by the State Governments. But there is no uniformity in the same. In my opinion, the term “dependent” is a very wider term and should be defined to include every person, who is or was financially dependent on the victim and all such relations of the victim, who are directly related to the victim such as wife, children of the victim and parents etc.

(vi) The definition of the term “dependent” has been given differently by the schemes notified by the State governments and as such there is no uniformity so far as dependency is concerned.

(vii) The legislature by virtue of section 357-A (3) has provided that compensation may be provided under this section, if the Court trying the accused is satisfied that the compensation u/s 357 is not sufficient or where the accused is discharged or acquitted, it may recommend for award of compensation u/s 357-A. It is in my opinion, an
inherent defect in the new provision. The parameters under the new provision have a wider scope than that of section 357 and, therefore, compensation u/s 357-A should be granted in every case. Otherwise, section 357-A will fail to serve its purpose. At the most the amount of compensation granted and received in terms of section 357-A can be deducted from the compensation granted under section 357 C.r.P.C 1973.

(viii) There is no provision in section 357-A to provide legal aid to victims for filling their claims for compensation. Even assuming that since compensation will be determined by District Legal Services Authorities, victims may be entitled to legal aid, but the same will not serve the purpose, as victims will have to satisfy the criteria laid under the Act for taking legal aid. As such, a specific clause should be inserted in section 357-A having an overriding effect over the provisions of legal Services Authorities Act to the effect that notwithstanding anything contained in the said act, victims applying for compensation u/s 357-A C.r.P.C, shall be entitled to legal aid.

(ix) Section 357-A provides for grant of compensation even where the accused is not identified in which situation the trial would not be held. But, there is no
provision in the amended section formulating any system to inform the victim or his or her “dependent” regarding their right to claim compensation in the absence of such a provision the police may not inform victim or his or her dependent about their right to claim compensation. One cannot ignore the fact that the Legal Services Authorities Act was enacted in the year 1987. But, it took a very long period of time to start legal aid movement in the country. If the same situation arises so far as victims of crime are concerned, they will continue to suffer. In these circumstances, legislature should evolve a mechanism to ensure that each and every victim is informed about right to claim compensation u/s 357-A. In the meantime, investigating officer’s can be enjoined with duty to inform victims or his or her dependents regarding their such right to claim compensation.

(x) The schemes implemented by most of the States provide for the power of the State Legal Services Authorities to decide the grant of compensation and the amount thereof to be given in terms of section 357-A. But, said schemes do not provide any procedure to be followed by State legal Services Authorities. As a matter of fact, procedure should
have been provided in section 357-A C.r.P.C itself in order to maintain uniformity in procedure.

(x) There is no parity in the schemes framed by various State Governments u/s 357-A regarding the minimum and maximum amount of compensation to be given to the victims.

(IX) Victim’s right to appeal against acquittal

The C.r.P.C (Amendment) Act 2008, also gave victims a right to appeal against acquittal of the accused under amended section 372. The amended section 372 reads as follows-

372. No appeal to lie unless otherwise provided- No appeal shall lie from any judgment or order of a criminal court except as provided for by this code or by any other law for the time being in force.

Provided that the victim shall have a right to prefer appeal against any order passed by the Court acquitting the accused or convicting the accused for a lesser offence or imposing inadequate compensation and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

The amended section 372 Cr.P.C 1973, as such provides the victims the right to file an appeal against the accused in case of acquittal and will go a long way in
helping the victims to seek justice against the accused. Although, earlier also the State had a right to file an appeal against the acquittal of the accused, the fact remains that the State files an appeal against acquittals in very selected cases due to procedural formalities to be followed before filling an appeal.

Besides this, there are a number of administrative procedures to be followed before an appeal is filed by the State against an acquittal of the accused. As a result, the victims used to feel that justice has not been done to them in the case as they could not file an appeal and only depend upon the filling of an appeal by the State against the acquittal of the accused.

Therefore, the new provision will certainly help the accused to approach the appellate Court in case the State does not file the appeal against the acquittal of the accused and will not be remedy less in such a situation.

The key features of the amended section 372 Cr.P.C can be summarized as follows–

1 The legislature has specifically used the word "victim" as defined in section 2(wa) of Cr.P.C 1973, so that accused may not take the plea before the appellate Court that the person filling the appeal is not informant.
2 The Appeal can be filed by the victim not only against acquittal of the accused but also on the point of lack of adequate compensation and quantum of sentence imposed on the accused. As a consequence, if the victim is not adequately compensated though the accused is convicted, he or she can file an appeal for enhancement of compensation.

3 There is also no requirement to take any prior permission or sanction by the victim from any authority or its official before filling an appeal.

4 The Legislature has also not made any distinction between an appeal filed by the victim and the State against the acquittal of the accused so far as re-appreciation of evidence is concerned. While prior to the aforesaid amendment, there could not be re-appreciation of evidence in the revision petition of the victim. But now the Appeal of the accused and the one filed by the victim are considered at par in respect of re-appreciation of evidence.

(X) Right of hearing and compensation in plea bargaining by the accused

The legislature by C.r.P.C Amendment Act 2006 inserted Chapter XXIA in the Act whereby plea bargaining
has been introduced giving the accused persons a right to bargain on the question of sentence. At the same time the victims have been given a right of hearing and compensation in the same plea bargaining proceedings initiated by the accused. The entire scheme of bargaining as introduce by the legislature will be discussed in detail in chapter VII.