CHAPTER 4
INTERNATIONAL PERSPECTIVE OF COMPENSATION

INTRODUCTION

The compensatory jurisprudence adopted in developed countries like U.S.A, U.K., Australia and New Zealand etc., along with the role of U.N. in the field of victimology is discussed in the present chapter. Margery Fry led the feminist movement in Great Britain directed attention in her Classic Arms of the Law towards the victims and the failure of state to develop a plan to compensate victim. This discussion resulted into the enactment of Criminal Injuries Compensation Legislation, first in New Zealand in 1963, followed by the United Kingdom in 1964 with New South Wales enacting the first legislation in Australia in 1967. Thereafter on the legislative front a large number of countries passed several bills for victims. The ‘U.N. Declaration of basic Principles of Justice for Victims of Crime and Abuse of Power 1985’ adopted by the General Assembly of the United Nations, Victims Bills of Rights were passed by the legislative bodies in many countries. United Nations Declaration of 1985 must be called ‘Magna Carta’ of victims’ rights. At international level, it was for the first time that serious efforts were made to define the victim and his rights. Access to justice and fair treatment, restitution, compensation and assistance were the most important rights of this declaration. The Right to Reparation for Victims of Human Rights Violation 1997, Handbook on Justice for Victims’ in 1999 and ‘UN Convention on Justice and Support for Victims of Crime and Abuse of Power- 14 November 2006’ are other major achievements of victims’ rights.

‘The Statute of the International Criminal Court’ (Roman Statute) dated 17th July 1998 also recognises the rights of victims reparation from the individual offender. It has also made the provision of creating ‘trust fund’ for the victims.

In United States, rights of victims have been given under both Federal laws as well as State Laws. Main rights of victims are: right to notice, right to be represented, right to be heard, right to protection, right to a speedy trial, right to restitution, right to privacy or confidentially, right to employment protection, victims’ right in juvenile proceeding and victims right when the defendant is mentally ill etc.

In England, the rights of victims were first recognised in 1964 with the efforts of Margery Fry. In 1988 the State Compensation was formalized in legislation called the ‘Criminal Justice Act’ came into being. Thereafter Several acts have been enacted in order to strengthen the position of the victims. The Victim’s Charter of UK published in 1990 largely
set out, in general terms, the existing arrangements for victims. It lacks any mention of informal dispute resolution. Basically these provisions provide welfare based support rather than any actual right. The needs of victim in Britain are addressed in two ways: officially through criminal justice system and unofficially through a large voluntary network of support schemes, most notably the Victim support Schemes (VSS). However, in both approaches victims have only opportunities rather than rights.

New Zealand is given the credit of being first country to enact Criminal Injuries Compensation Legislation in 1963. The victims of Offences Act 1987 (1987 No 173) which was repealed by Victims’ Rights Act 2002 also empowered many rights to victims. The Victims’ Right Act 2002 has made comprehensive provisions for rights of victims. It also facilitates greater participation of the victim in criminal justice system. This Act has complete provisions regarding victims’ rights and duties of various agencies. The basic aim of this Act is to improve provisions for the treatment and rights of victims of offences.

It is also seen that Australia is among the frontrunners in recognising the need to improve the positions of crime victims. Therefore in 1969 Criminal Injuries Compensation Scheme was introduced. The feminist movement in 1970 drew the attention towards emotional stress experienced by the victims of sexual assault and victims of domestic violence. South Australia was the pioneer in implementing legislation and specialized Services eg. in the form of a hospital based Sexual Assault Referral Centre, Child Protection Teams and a Crises Care Unit. The establishment of the Victims of Crime Service (VCCS) in 1979 worked as very active and effective non-Government force for counselling and victim advocacy. A Committee of Inquiry into Victims of Crime was also established in the same year. These laws of different organizations and countries are discussed hereunder:

UNITED NATIONS

The General Assembly of the United National in its 96th plenary meeting on 29th November, 1985 made a Declaration of Basic Principles of Justice for Victims of Crime and abuse of power, recognizing that millions of people throughout the world suffer harm as a result of crime and the abuse of power and that the rights of these victims have not been adequately recognized and also that frequently their families, witnesses and others who aid them, are unjustly subjected to loss, damage or injury. The Assembly affirmed the necessity of adopting national and international norms in order to secure universal and effective recognition of and respect for, the rights of the victims of crimes and abuse of power. It was

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1 (GA/RES/40/34)
declared that the offenders of third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. This Declaration has been described is a kind of *Magna Carta* of the Rights of the Victims worldwide.\(^2\)

With a view to ensuring that crime victims are not neglected by society, the Declaration gives a comprehensive definition of victim. The definition defines victim as a person who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative with in member states, including those laws prescribing criminal abuse of power.\(^3\) A person may be considered a Victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familiar relationship between the perpetrator and the Victim. The term "Victim" also includes, where appropriate, the immediate family or dependants of the direct Victim and persons who have suffered harm in intervening to assist Victims in distress or to prevent victimisation.\(^4\) On the other hand, Rehabilitation means to restore to useful life, through therapy and education or to restore to good condition, operation, or capacity. The assumption of rehabilitation is that people are not permanently criminal and that it is possible to restore a criminal to a useful life, to a life in which they contribute towards themselves and the society. Goal of rehabilitation is to prevent habitual offending, also known as themselves Recidivism.\(^5\) And, the rights of an accused or a convict, are well safeguard both by the Constitution and other laws of the country which have often been discussed and debated at various forums, but in all these, there has been hardly any reference to the "Rights" of the Victims of crime towards rehabilitation.

**Figure 4.1: The various modes of Right of Rehabilitation**

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\(^3\) Principle 1 of the UN declarations, 1985

\(^4\) Principle. 2, *Id*

Thus UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power constituted an important recognition of the need to set norms and minimum standards in international law for the protection of Victims of crime.\(^6\) The U.N. Declaration recognized four major components of the rights of victims of crime:

**Access to justice and fair treatment**

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.\(^7\)

Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.\(^8\)

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.\(^9\)

Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.\(^10\)

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\(^6\) Supra note 1

\(^7\) Principle 4, *Supra* note 3

\(^8\) Principle 5, *Id*

\(^9\) Principle 6, *Id*

\(^10\) Principle 7, *Id*
**Restitution**

Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.\(^1^1\)

Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. \(^1^2\)

In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community. \(^1^3\)

Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims. \(^1^4\)

**Compensation**

When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; po

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization. \(^1^5\)

The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm. \(^1^6\)

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\(^{11}\) Principle 8, *Id*

\(^{12}\) Principle 9, *Id*

\(^{13}\) Principle 10, *Id*

\(^{14}\) Principle 11, *Id*

\(^{15}\) Principle 12, *Id*

\(^{16}\) Principle 13, *Id*
**Assistance**

Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.\(^{17}\)

Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.\(^{18}\)

Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.\(^{19}\)

In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.\(^{20}\)

Thus, there are various services for victims of crimes the most significance one is to financially assist them for loss or injury suffered by them. Looking at available arrangements, two types of mechanisms are existing. They are restitution and compensation. Restitution refers to the responsibility that offenders hear to their victims. Compensation refers to financial obligations of governmental agencies to reimburse sufferings of citizens or of third parties like insurance companies to indemnify their customers. Restitution takes places when the trial court imposes sanctions that require the offenders to either return stolen goods to their owners, handover equivalent amount of money to cover out of pocket expenses, or to provide services to those they have harmed. The offender was held liable to restitute their victims. Although the declaration has also made certain suggestions for dealing with the problems of Victims of crime including Victims of abuse of power.

**An appraisal of UN Declaration**

The UN Declaration has opened up to new vistas in compensatory jurisprudence. Unlike the earlier international conventions and Declarations, the Declaration of 1985 specifically provides comprehensive principles related to payment of compensation to the victims of crime and abuse of power. This Declaration deals with various aspects of victim compensation like the concept of victim, the rights of the victims, the modes of restitution and other incidental aspects, like social and health care assistance, etc. The Declaration has made a positive attempt in evolving concrete principles for doing justice to the victims of

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\(^{17}\) Principle 14, Id

\(^{18}\) Principle 15, Id

\(^{19}\) Principle 16, Id

\(^{20}\) Principle 17, Id
crime and abuse of power. It also provides several constructive victim compensation programmes that can be taken up by the international community to compensate the victims.

The Declaration gives a broader meaning to the term victim. It includes not only the real victim himself but also the immediate family and dependants. The Declaration ensures the victims of the crime to get the required assistance and access to justice and fair treatment. It gives victim importance in view of the fact that a victim is normally forgotten in the entire system of administration of criminal justice. The Declaration visualizes the establishment of judicial and administrative mechanism to enable the victim to get remedy through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Thus, the Declaration emphasis on settlement of victim compensation that can be claimed through formal or informal procedures only. Otherwise, in the traditional criminal administration of justice system victim compensation settlement takes lot of time because of the technicalities and intricacies involved.

For the first time in Criminal Justice System, the Declaration proclaims the rights of the victims i.e. the right to information about progress of the proceedings, the right to air his views and concerns at appropriate stages of the proceedings, right to privacy when necessary, right to speedy disposal of the cases protects individual dignity and honour of the victim and make human active participant in the process of administration of criminal justice system. It enables proper and fair estimation of damages caused to the victim and determines a just, fair and reasonable compensation.

Another significant provision of the Declaration has given in Principle 7 is the provision for use of informal mechanisms for the resolution of disputes, including mediation, arbitration, etc. It provides redressal to the victims of crime. The Declaration emphasizes for settlement of victim compensation claims through informal systems only. The Declaration also provides financial compensation and lays equal emphasis on restitution as an effective alternative remedy to restore the victim of his original position prior to the occurrence of loss or injury. The significant aspect of the restitution given by the Declaration is that it covers the cases of individual losses and takes care of the social and community-based issues like harm done to environment etc.

The Declaration also contemplates the establishment of National fund for providing compensation to the victims. It provides for payment of monitory compensation to the victims in two ways, namely, from within the amount collected from the offender in the form of fine or alternatively from the State fund to be created for this purpose. Interestingly, the
Declaration also recognises and identifies the areas where victim of crime needs the assistance which can be of material, medical, psychological or social, etc. Finally the Declaration takes care equally of the victims of abuse of power. The state as the custodian and protector of the citizen’s welfare has both legal as well as moral obligation to compensate the victims who suffer loss for the state emergency.

Principles 14 to 17 take care of measures of assistance to the victims. The Declaration provides that a victim is entitled or receive the assistance of the following nature:

1. Victims should receive the necessary material, medical, psychological, voluntary, community-based and indigenous means.
2. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
3. Police, justice, health, social service and other personnel concerned should receive training to sensitise them to needs of victims, and guidelines to ensure proper and prompt aid.
4. In providing services and assistance to victims, attention should be given to whose who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

Finally, Principles 18 to 21 deal with the cases of victims of abuse of power. While Principle 18 defines the term victims, Principle 19 requires the State to formulate the legal norms governing the cases of abuse of power and provide remedies to victims of such abuses. Principles 20 and 21 call for periodical review of existing legislation and practices and of negotiations of bi-lateral and multi-lateral treaties to strengthen the International Law concerning victims of abuse of power.

INTERNATIONAL CRIMINAL COURT

The need for setting up separate victim and witness protection units in the trial of mass crimes has been acknowledged in the setting up of international tribunals to deal with them. It mandates the court to take appropriate measures to protect the safety, physical and psychological well being, dignity and privacy of victims and witnesses.

Rights of the Victims under International Criminal Court

The Rome statute of the International Court of Justice \(^\text{21}\) recognizes rights relating to the victims. It started with the adoption of “The Rome Statute of the International Criminal

Court” (Roman Statute) dated 17th July, 1998. It emphasizes on reparation for victims 22 and most of the Basic Principles and Guidelines on reparation have been drawn up within the auspices of United Nation Commission on Human Rights. The Roman Statute is the first international statute which allows victims to claim reparation against the offender.

The Rome Statute, adopted in 1998, sets up an International Criminal Court (hereafter ICC). It entered into force in July 2002. The Court is the first permanent international tribunal which is empowered to prosecute individuals, not States, accused of genocide, war crimes or crimes against humanity. It also includes the crime of aggression. 23 The court is to be complementary to national judicial systems and will be able to assume jurisdiction only after it determines that a national system in unwilling or unable to prosecute the crimes relevant to the Statute. 24 The Rome Statute offers a more universal model of how the legal system can respect legitimate victims’ rights without prejudice to a fair trial for the accused. It declares, “Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.” The provisions related to the victim compensation of Rome Statute are as under:

**Protection of the victims and witnesses and their participation in the proceedings** 25

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other

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23 It should be noted, however, that the States Parties must adopt an agreement setting up a definition of aggression and the conditions under which the Court could exercise its jurisdiction. A review conference will be held in 2009, during which the matter will be discussed.


25 Article 68 of Rome Statute
special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness.

3. Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in Article 43, paragraph 6.

5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

6. A State may make an application for necessary measures to be taken in respect of the protection of its servants or agents and the protection of confidential or sensitive information.

Reparations to victims

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

3. Before making an order under this article, the Court may invite and shall take account

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26 Article 75, Id
of representations from or on behalf of the convicted person, victims, other interested persons or interested States.

4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under Article 93, paragraph 1.

5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article.

6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

**Trust Fund**

1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties.

**Compensation to an arrested or convicted person**

1. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

2. When a person has by a final decision been convicted of a criminal offence, and when subsequently his or her conviction has been reversed on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him or her.

3. In exceptional circumstances, where the Court finds conclusive facts showing that there has been a grave and manifest miscarriage of justice, it may in its discretion award compensation, according to the criteria provided in the Rules of Procedure and Evidence, to a

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27 Article 79, *Id*

28 Article 85, *Id*
person who has been released from detention following a final decision of acquittal or a termination of the proceedings for that reason.

**UNITED STATES OF AMERICA**

Crime victim’s rights laws in the United States date back to the late 1800, with the enactment of a limited number of the restitution statutes. In the year 1966, California became the first state to enact a Victim Compensation Law. In USA, California was the first state to introduce laws to compensate the victim of violent crimes in 1965 and, as of now, majority of the states have such programmes. In U.S.A. the compensation are being provided to the victims under both Federal and as well as under States laws.

**Rights of Victims Under Federal Laws**

Federal Governments have passed many laws to provide the rights to the victims particularly right of restitution and compensation. The Victim and Witness Protection Act of 1982 (VWPA) was considered landmark legislation in 1982 because, for the first time, rights for victims of federal crimes were established, including: (i) The fair treatment of victims and witnesses in the federal criminal justice system. (ii) The right to include victim impact statements in presentence investigation reports. (iii) New criminal penalties to protect victims and witnesses from intimidation, harassment, and retaliation, including provisions for civil restraining orders. (iv) Restitution for the victim. (v) Consideration of victim’s interest in bail decisions.

After two years of VWPA, Congress enacted the Victims of Crime Act of 1984 (VOCA) to provide funding for victim assistance, victim compensation, and training and technical assistance for victim service providers across the nation. Crime Control Act of 1990 contained a wealth of new legislation and amendments to the existing federal criminal code affecting the treatment of crime victims, including children. Title V, the Victim’s Rights and Restitution Act of 1990, created a Federal Crime Victims’ Bill of Rights and codified services that should be available to victims. The Victims of Child Abuse Act of 1990, contained extensive amendments to the federal rules of criminal procedure affecting the treatment of child victims and witnesses in the federal system, e.g. allowing the use of closed-circuit television and videotaped dispositions of children. Title XXXI, Bankruptcy and Restitution, protected victims by preventing drunk driving offenders from discharging debts arising from offenses under Chapter 13 of the bankruptcy code.

The enactment of a Federal Crime Victims’ Bill of Rights was historic and paralleled legislative activity in the states. Section 502 of the Act mandated that federal officials....
Shall make their best efforts to see that victims of crime are accorded the rights described in subsection B. Four years later, Congress enacted comprehensive crime legislation entitled the Violent Crime Control and Law Enforcement Act of 1994 (Crime Act). The Mandatory Victims Restitution Act of 1996 amends the federal criminal code to require judges to order mandatory restitution for victims of violent crime, certain property offenses, fraud, and consumer product tampering.

In the Attorney General Guidelines for Victim and Witness Assistance 1995: As a result of the passage of the 1994 Violent Crime Control and Law Enforcement Act, the Attorney General revised and re-issued new comprehensive guidelines to establish procedures for the federal criminal justice system for implementing victims right and assistance as enacted under federal law.

Rights of Victims Under States Laws

Besides these Federal enactments, the different States in U.S.A. have also enacted their own laws to provide compensation and restitution to victims of crime. The court may order a defendant to pay a crime victim for costs relating to physical injuries, mental health, counseling, lost wages, property lost or damaged or other related costs. The restitution is important because it “forces the defendant to confront, in concrete terms, harm his or her actions have caused.” Out of 32 states which have provided the victims’ rights, 18 states amended their constitutions to provide the right to restitution to victims. The first compensation program was created in 1965, and nine states were operating such programs by 1972, when the earliest programs providing other types of victim assistance were established. Most of this money comes from offenders, since a larger majority of states fund their programs entirely through fees and fines charged against those convicted of crime, rather than tax dollars. Compensation programs can pay for a wide variety of expenses and loses related to criminal injury and homicide. Beyond medical care, mental health treatment, funerals, and lost wages, a number of programs also cover crime-scene cleanup, travel costs to receive treatment, moving expenses, and the cost of housekeeping and child care. Currently, all 50 states, plus the District of Columbia, the Virgin Islands and Puerto Rico, are operating

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29 The right to be treated with fairness and with respect for the victim’s dignity and privacy. The right to be reasonably protected from the accused offender. The right to be notified of court proceedings. The right to be present at all court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial. The right to confer with the attorney for the Government in the case. The right to restitution. The right to information about the conviction sentencing, imprisonment, and release of the offender (42 U.S.C. s. 1060(b)).

compensation programs. (It’s worth noting that a number of European countries, plus Canada, Australia, New Zealand, and Japan also have victim compensation programs fairly similar to those in the U.S.). Following rights have been given to the victims in States.

1 **Right to be Treated With Dignity and Respect**

   The right to be treated with dignity and respect asserts that crime victims will be treated with sensitivity during all phases of justice processes and by all agents of justice systems. This critical right is included in most states’ constitutional amendments that define victims’ rights, most states’ victims’ bill of rights, and the Federal Crime Victims’ Rights Act within the Justice for All Act that became law in 2004.

2 **The Rights to Notification**

   The right to notice is often called fundamental right of victim. It is of two kinds: the right to general information of interest to victims of crime and right to be kept informed throughout the criminal justice system. The victim can not exercise other rights which are connected with proceedings and other events if he is not notified regarding them. Information is also important to crime victims as they recover from the crime. Their sense of safety and security is enhanced when they are kept informed of the status of the offender. The right to notice include information about the victim compensation programme, referral to local services such as rape, crisis of domestic violence shelters, information about the steps involved in a criminal prosecution, contact information for an individual in the criminal justice system who can answer questions about the case, and information about their rights as crime victims. Some states in USA give victims a right to notice of “all critical stages” or “important criminal justice hearing.”

3 **The Right to be Present**

   Another basic right given to the victims to attend criminal justice proceeding, such as pretrial hearing, the trial sentencing, and parole hearing. This right is important as the victim or his family wants to see the justice at work and hear the information presented and arguments made. But there are two opposite views regarding this right. That’s why thirty-nine states give crime victims a right to attend the trial. However, the majority of states impose limitations on the right. There concern is this that victim’s right to attend the proceedings may conflict with the rights of the accused. Thus victims are given a right to be

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present only “to the extent that it does not interfere with the constitutional or statutory rights of the accused.”

4  The Right to be Heard

Another principle right of crime victim is right to be heard at the various stages of criminal justice system. The right basically takes two forms:

(I) The right to consult with key criminal justice officials before certain decisions are made, such as the pretrial diversion of defendant or a plea agreement.

(II) The right to address or submit a written statement to the court or the other authority at various proceedings of sentencing.

The right to be heard is significant in two senses that it is an opportunity to acknowledge that the victim is harmed by the crime and has interest in the case. It also provides victims an opportunity to make known any safety concerns or need for restitution, as well as the impact of the offence on their lives. Many states require prosecutors to obtain the views of victims before entering a plea agreement, dismissing a case, or taking similar dispositive action. Crime victim is also given right to address or submit a written statement at a number of stages like pretrial release or bail hearings, plea entry proceeding, parole release and lastly, at the sentencing stage.

5  Right to Information and Referral

A victim’s right to information and referral includes the provision of information about basic victims’ rights, the justice process, and community- and system-based services that are available to help victims cope in the aftermath of crime. As noted earlier, there are more than 32,000 constitutional and statutory rights for victims of crime, which differ from state to state and among various justice systems. There are also more than 10,000 organizations that provide a wide range of services to help victims cope with the physical, financial, psychological, social, and spiritual impact of crime. Information about the range of victim assistance programs in the United States is described in Appendix F. Information about the range of victims’ rights and services in the United States is described in Appendix G.

6  The Right to Protection

Victim safety is the most crucial issue in these day. Therefore approximately half of the states give victims the right to be reasonable protected from the offender during the

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33  Ibid

34  Ibid
criminal justice process. Many of those states require that victims be informed regarding protection available to them, of measures to take in event of intimidation by the defendant. In Colorado there is a mandatory protection order issued against any person charged with a violation of state’s criminal code, which remains in effect from arraignment until final disposition. Such order includes restraining the accused from harassing, molesting, intimidating, retaliating against, or tampering with an witness or victim of the acts charged. In Maryland law requires that the court at the pretrial release stage consider reasonable protections for the safety of the alleged victim.

7 The Right to Speedy Trial

Even in USA, the criminal justice system is not always timely. An individual case can drag for years, as the parties seek repeated delays and continuance. Meanwhile, the victim’s life and recovery are put on hold. Approximately half of the states have given to victim a right of speedy disposition or speedy trial. In the state of Utah, the court shall consider the interests of victim of a crime speedy disposition of charges while determining a date for any criminal trial, in ruling on any motion by a defendant or if a continuance is granted.

8 Right to Apply For Compensation (For Violent Crime Victims)

Victim compensation programs reimburse violent crime victims for crime-related expenses that are not covered by collateral sources—such as medical costs, mental health counseling, funeral and burial costs, and lost wages or support. Every state has a crime victim compensation program that can provide substantial financial assistance to crime victims and their families. State laws dictate the range of compensation benefit levels available to crime victims. As a result of the passage of the Victims of Crime Act (VOCA) in 1984—and to qualify for VOCA funding—compensation programs must agree to consider for eligibility all U.S. citizens who are victims of crimes within their states, regardless of the residency of the victim. In addition, compensation programs also must cover their own residents who are victims of terrorism in foreign countries and crimes falling under federal jurisdiction within the states, such as crimes occurring on Indian reservations, national park lands, or military bases.

9 The Right to Restitution

“Restoration” is an act of restoring someone to a position they would have been in without the wrongdoing. In the context of criminal cases, it generally refers to the defendant,
acting under the order of the court, paying back those who were harmed by the criminal acts. The court may order a defendant to pay a crime victim costs relating to physical injuries, mental health, counseling, lost wages, property lost or damaged or other related costs. The restitution is important because it “forces the defendant to confront, in concrete terms, harm his or her actions have caused.”

All states allow the courts to order to give restitution to the victims at different stages of trial. More than one third states are required to order restitution unless there are extraordinary or compelling circumstances why it should not be ordered. Out of 32 states which have provided the victim’s rights, 18 states amended their constitutions to provide the right of restitution to victims. The defendant’s assets, earning capacity, and other financial obligations are considered when payment schedule is set.

10 Right to Privacy/Confidentiality

Privacy is a major issue for many crime victims. Many times victims may fear harassment or retaliation by the defendant or unwanted media attention, or they many not wan their friends or family to know the details of the case. Statutory protections of a victim’s right to privacy take many forms. A number of states protect victims from having to testify about their home address, or place of employment in open court particularly where there is a “reasonable apprehension” of acts or threats of physical violence. Alabama’s law provides that confidential information in court records is not considered to be a public record. States have also special provisions of confidentiality with regard to child victim, elderly or vulnerable adult victim, domestic violence victims or sexual victims.

11 The Right to Employment Protection

Crime victims’ right to participate in the criminal justice process are meaningless for victims who must risk their jobs to exercise their legal rights. Therefore, majority of victims have adopted the laws for protecting the employment of the victims who participate in court-related activities. More than 30 states prohibit employers from discharging or penalizing an employee who must miss work as a consequence of responding to a subpoena. Some states provide employment protection when the victim attends hearings or councils with the prosecutor prior to the trial. Some states also expand the protection to victims who miss work due to medical appointments, counseling sessions, or other activities related to the effects of the crime. It is also interesting to note that violation of the victims’ right to employment protection

38 Supra note 30.
40 Supra note 32 at 306-307.
protection carries penalties. However, the penalties against employer are minimal. The most states provide criminal contempt or a low-level misdemeanor, punishable by small fines or terms of reinstatement. Employees typically have the option to sue for back wages and reinstatement.

12 Victims’ Rights in Juvenile Proceeding

Crime victims have more rights in criminal justice system in comparison to juvenile proceeding because of traditional closed and confidential nature of the system involving the disposition of minors. However, many states are the system involving their rights to juvenile in serious offences. Some states Alabama, includes victims of certain juvenile offenders in their general victim’s bill of rights. States like Arizona and Michigan set out a separate bill of rights for victims of serious juvenile offenders.

13 Victims’ Rights When the Defendant is Mentally Ill

The victims’ offender with mental illness who are transferred to the mental health system have fewer rights than the general crime victim population. This can be possible when the offender is not able to face the trial because of insanity or mentally illness. Such offender is treated as a patient rather than perpetrator, and consequently, their victims have been overlooked. The fewer states in the USA have provided to the victims, right to notification, participation, and protection to their laws. However, the victims cannot claim the restitution because such offender is considered mentally ill who is excused from any liability.

14 Enforcement of Victims’ Rights

The rights without teeth are just empty pledges. However, few states have only provided recourses in the even those rights are violated. Several states have designated office or agency to receive, investigate, and attempt to resolve crime victim complaints. Such officers are called ombudsman in South Carolina, a committee in Colorado, and state advocate in Connecticut. While it is important for the victims to have an agency or officials with whom they many register a complaint, many violations of victims’ rights limited legal standing to enforce their rights. Crime victims in Maryland are empowered by the statue to file an application for leave to appeals any final order denying their basic rights.41

Although each State compensation program is administered independently, most programs have similar eligibility requirements and offer a comparable range of benefits. However in USA, the Federal and State Government deal with compensation to victims of

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crime separately since Federal Government and states have their own set of criminal legislations.\(^{42}\)

**UNITED KINGDOM**

The provision of compensation to the victims of crime started in the United Kingdom under the Criminal Injuries Compensation Scheme, 1964. A Criminal Injuries Compensation Board was constituted. The basis of the quantum of compensation is the same as that of damages in civil injuries and the money payable is for pain and suffering, loss of earning capacity and out of pocket expenses. Under the revised scheme of 1973, it was now possible to give compensation for injuries caused by one family member to another. The cost involved in implementing the programme was enormous. In U.K. a sum of approximately six million pound sterling was paid in 1976 as compensation for 16,000 claims and there was annual increase of 15% in the costs. Administrative expenditure itself accounts for 11% of the disbursement. The Criminal Justice Act, 1991 contains a number of provisions which directly or indirectly encourages a greater role for compensation.\(^{43}\)

In England, the Criminal Justice Act, 1988 transformed the Criminal Injuries Compensation Board (CICB), from a body created and supported by administrative fiat to a statutory body. However, the CICB is still faced with a number of problems, including a backlog of cases, increasing cost and criticism over decisions according to which an award is reduced or refused, for example, the victim was partially to be blamed for the offence.

In the UK, Criminal Justice Act, 1988 has made fresh provisions for payment of compensation by the Criminal Injuries Compensation Board. A specialised legislation called ‘The Code of Practice for Victims of Crime’ sets out the services that the Victim can expect to receive from each of the criminal justice agencies, like the police and the Crown Prosecution Service.\(^{44}\)

Nowadays, United Kingdom has introduced an effective rehabilitation mechanism through the Criminal Injuries Compensation Act, 1995 redressing the needs of Victims of crime. The Criminal Injuries Compensation Scheme is a rapidly growing government initiative. First conceived by the Home Secretary in 1995 and the later approved by Parliament, the Scheme began in 1996 with the enactment of the Criminal Injuries

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\(^{43}\) Patjoshi J., “Rape Victim and Compensation Law”, 5 *Victimological Conference* held at National Law School of India University, Bangalore,(1996).

\(^{44}\) “Victims’ rights” available at: http://www.justice.gov.uk/about/vc.rights/html
Compensation Act, 1995. The concept of statutory compensation for criminal injuries reaches as far back as 1964 in the UK.

From that year, until the establishment of the Criminal Injuries Compensation Authority (CICA), this is responsible for running the scheme that has been in place (with minor revisions) since 1996. The Criminal Injuries Compensation Board dealt with similar claims. This makes the UK the first country to have established a scheme of criminal injuries compensation.\(^45\) Far reaching reforms have taken place in England and the year 2000 is a watershed and enactments like the Powers of the Criminal Court Sentencing Act, 2000 modifying earlier laws were enacted introducing a whole range of new and novel punishments such as curfew order, community rehabilitation order, a community punishment order, a community punishment rehabilitation order, a drug treatment and testing order, attendance order, a supervision order, an action plan order. The Power of Criminal Courts Sentencing Act, 2000 provides for a compensation order.\(^46\) In 2008, UK had come out with The Criminal Injuries Compensation Scheme (2008). This Scheme was made by the Secretary of State Under the Criminal Injuries Compensation Act 1995. Applications are received for the payment of compensation to, or in respect of, persons who have sustained criminal injury under this Scheme.\(^47\) The CICA offers purely financial compensation to the Victims, or close relatives or friends of Victims, of violent crime. The intention of these financial awards is threefold. Primarily, they are intended to give recognition to the fact that physical or mental injuries have been caused by a crime. Secondly, they are intended to compensate for lost earnings or any extraordinary expenses incurred as a result of that crime, and finally they are also intended, in certain circumstances, to compensate, a close relative of a Victim of violent crime for their own lost earnings.

When compensation is not fully available from the offender or other sources, the state has a duty to provide monetary compensation to victims of crime. It is on this principle that the legislators devised Injuries Compensation Board which shall determine and grant the amount of compensation to the victim. Presently, the Criminal Injuries Scheme, 2008 determines the standard amount of compensation for the victims.\(^48\) Also, the criminal courts

\(^{45}\) “Criminal Injuries Compensation Scheme” available at: http://www.compensationculture.co.uk.criminal-injuries-compensation-scheme.html

\(^{46}\) Ibid


\(^{48}\) Ss. 26-29, Criminal Injuries Compensation Scheme, 2008
are empowered to provide compensation to the victim\textsuperscript{49} by the Powers of Criminal Court (Sentencing) Act, 2000 upto limit of £5000.\textsuperscript{50}

\textbf{Provisions related to Compensation under Criminal Injuries Compensation Scheme, 2008}

\textbf{Eligibility to receive compensation}\textsuperscript{51}  
S. 13 (1) A claims officer may withhold or reduce an award where he or she considers that:
(a) the applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Authority to be appropriate for the purpose, of the circumstances giving rise to the injury; or
(b) the applicant failed to co-operate with the police or other authority in attempting to bring the assailant to justice; or
(c) the applicant has failed to give all reasonable assistance to the Authority or other body or person in connection with the application; or
(d) the conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made; or
(e) the applicant’s character as shown by his or her criminal convictions (excluding convictions spent under the Rehabilitation of Offenders Act 1974 at the date of application or death) or by evidence available to the claims officer makes it inappropriate that a full award or any award at all be made.

(2) No amount awarded in accordance with paragraph 35(1)(e), (f) or (g) (expenses associated with lack of mental capacity or trusts) will be reduced under sub-paragraph (1) above or under paragraph 14, unless the whole award is withheld under those provisions.

S. 14. (1) In considering the issue of reasonable assistance under paragraph 13(1)(c), a claims officer may withhold an award where the applicant has repeatedly and without reasonable excuse failed to respond to the Authority’s communications sent to his or her last known address.

(2) In considering the issue of conduct under paragraph 13(1)(d), a claims officer may withhold or reduce an award where he or she considers that excessive consumption of alcohol or use of illicit drugs by the applicant contributed to the circumstances which gave rise to the

\textsuperscript{49} Ss.126- 142, Powers of Criminal Court (Sentencing) Act, 2000; See also, Part VI (Financial Penalties and Orders)
\textsuperscript{50} Id, S. 131
\textsuperscript{51} Ss 13- 17 of Criminal Injuries Compensation Scheme, 2008
injury in such a way as to make it inappropriate that a full award, or any award at all, be made.

(3) In considering the issue of character under paragraph 13(1)(e), a claims officer must withhold or reduce an award to reflect unspent criminal convictions unless he or she considers that there are exceptional reasons not to do so.

S. 15 Where the victim has died since sustaining the injury (whether or not in consequence of it), paragraphs 13 and 14 will apply in relation both to the deceased and to any applicant for compensation under paragraphs 37-44 (fatal awards).

S. 16 A claims officer will make an award only where he or she is satisfied:

(a) that there is no likelihood that an assailant would benefit if an award were made; or
(b) where the applicant is under 18 years of age when the application is determined, that it would not be against his or her interest for an award to be made.

S. 17 (1) Where a case is not ruled out under paragraph 7(b) (injury sustained before 1 October 1979) but at the time when the injury was sustained, the victim and any assailant (whether or not that assailant actually inflicted the injury) were living in the same household as members of the same family, an award will be withheld unless:

(a) the assailant has been prosecuted in connection with the offence, or a claims officer considers that there are practical, technical or other good reasons why a prosecution has not been brought; and (b) in the case of violence between adults in the family, a claims officer is satisfied that the applicant and the assailant stopped living in the same household before the application was made and are unlikely to share the same household again.

(2) For the purposes of this paragraph, a man and woman living together as husband and wife (whether or not they are married) or same sex partners living together (whether or not they are civil partners) will be treated as members of the same family.

(3) For the purposes of this Scheme, two people are “civil partners” if they are civil partners for the purposes of the Civil Partnership Act 2004.

Standard amount of compensation

S. 25 The standard amount of compensation will be the amount shown in respect of the relevant description of injury in the Tariff appended to this Scheme, which sets out: (a) a scale of fixed levels of compensation; and

52 Ss. 25-29, Id
(b) the level and corresponding amount of compensation for each description of injury. Level 1 represents the minimum amount payable under this Scheme, and Level 25 represents the maximum amount payable for any single description of injury. Where the injury has the effect of accelerating or exacerbating a pre-existing condition, the compensation awarded will reflect only the degree of acceleration or exacerbation.

S. 26 Minor multiple injuries will be compensated in accordance with Note 1 to the Tariff. The standard amount of compensation for more serious but separate multiple injuries will be calculated as:

(a) the Tariff amount for the highest-rated description of injury; plus
(b) 10 per cent of the Tariff amount for the second highest-rated description of injury; plus,
where there are three or more injuries,
(c) 5 per cent of the Tariff amount for the third highest-rated description of injury.

S. 27 Where a woman has become pregnant as a result of rape and an award is made to her in respect of non-consensual vaginal intercourse, an additional amount will be payable equal to Level 10 of the Tariff in respect of each child born alive which she intends to keep.

S. 28 Where the Authority considers that any description of injury for which no provision is made in the Tariff is sufficiently serious to qualify for at least the minimum amount payable under this Scheme, it will, following consultation with the Panel, refer the injury to the Secretary of State. In doing so the Authority will recommend to the Secretary of State both the inclusion of that description of injury in the Tariff and also the amount of compensation for which it should qualify. Any such consultation with the Panel or reference to the Secretary of State must not refer to the circumstances of any individual application for compensation under this Scheme other than the relevant medical reports.

S. 29 Where an application for compensation is made in respect of an injury for which no provision is made in the Tariff and the Authority decides to refer the injury to the Secretary of State under the preceding paragraph, an interim award may be made of up to half the amount of compensation for which it is recommended that such description of injury should qualify if subsequently included in the Tariff. No part of such an interim award will be recoverable if the injury is not subsequently included in the Tariff or, if included, qualifies for less compensation than the interim award paid.

**Promise through U.K. white paper**

Among the many steps proposed to translate this principle into practice, the U.K. White Paper promised to do the following:
(a) Legislate to entitle victims with information about release and management of the offenders and progress of their cases;
(b) Enable victims to submit a “victim personal statement” to the Courts and other criminal justice agencies setting out the effect of the crime on their lives.
(c) Introduce measures for vulnerable and intimidated witnesses, such as screens, pre-recorded video evidence and TV links;
(d) Extend specialized support for victims of road traffic incidents and their families;
(e) Establish a Victim’s Commissioner (ombudsman);
(f) Enable victims to report minor crime online and to track the progress of their case online;
(g) Legislate to produce a Victim’s Code of Practice setting out what protection, practical support and information every victim of a crime has a right to expect from the criminal justice agencies.

This is over and above the victim compensation scheme which has been in operation in Britain for a fairly long period. The idea is to reduce victimization in the first place by reducing crime itself. The idea also is to ensure that the victim gets as much justice out of the system as the accused.53

SOUTH AFRICA

The Service Charter for Victims of Crime in South Africa54 (also referred to as the Victims’ Charter) is an important instrument that promotes justice for victims of crime in South Africa. The Victims’ Charter is in spirit with the South African Constitution, 1996 (Act 108 of 1996) and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.55 Historically, the Victims Charter can date back to the National Crime Prevention Strategy, 1996 as well as the National Victim Empowerment Programme, 1998. The Victims Charter presents a rights framework for services provided under the Victim Empowerment Programme (VEP). In South Africa, victim of crime has following rights, as contained in the Constitution and relevant legislation, will be upheld in your contact with the criminal justice system:

1. The right to be treated with fairness and with respect for dignity and privacy:

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54 Available at: www.npa.gov.za/files/Victims%20charter.pdf
55 Supra note 1
• You have the right to be attended to promptly and courteously, treated with respect for your dignity and privacy by all members of any department, institution, agency or organisation dealing with or providing a service to you (hereafter referred to as a service provider).
• The police, during the investigations; the prosecutors and court officials during preparation for and during the trial proceedings; as well as all other service providers, will take measures to minimise any inconvenience to you by, among others, conducting interviews with you in your language of choice and in private, if necessary.
• These measures will prevent you from being subjected to secondary victimisation.

2. The right to offer information:
• You have the right to offer information during the criminal investigation and trial.
• The police, prosecutor and correctional services official will take measures to ensure that any contribution that you wish to make to the investigation, prosecution and parole hearing is heard and considered when deciding on whether to proceed with the investigation, or in the course of the prosecution or Parole Board hearing.
• This right means that you can participate (if necessary and where possible) in criminal justice proceedings, by attending the bail hearing, the trial, sentencing proceedings and/or Parole Board hearing.
• It means that you will have the opportunity to make a further statement to the police if you realise that your first statement is incomplete; you may also, where appropriate, make a statement to the court or give evidence during the sentencing proceedings to bring the impact of the crime to the court’s attention.
• Furthermore, you may make a written application to the Chairperson of the Parole Board to attend the parole hearing and submit a written input.

3. The right to receive information:
• You have the right to be informed of your rights and of how to exercise them.
• You can, as part of this right, ask for explanations in your own language of anything you do not understand.
• You have the right to receive information and to be informed of all relevant services available to you by service providers.
• You will be informed of your role in the case and of the approximate duration of the case. You can request information regarding court dates, witness fees and the witness protection programme.
You can request to be informed of the status of the case, whether or not the offender has been arrested, charged, granted bail, indicted, convicted, or sentenced.

You may request reasons for a decision that has been taken in your case on whether to prosecute or not.

You are entitled to receive documents that the law entitles you to have access to.

You can request to receive notification of proceedings which you may attend.

You can request the prosecutor to notify your employer of any proceedings which necessitate your absence from work.\textsuperscript{56}

4. The right to protection:

You have the right to be free from intimidation, harassment, fear, tampering, bribery, corruption and abuse. If you are a witness, you must report any such threats to the police or senior state prosecutor.

The police will, if you comply with certain requirements, apply for you to be placed in a witness protection programme.

If such an application is successful, you will be placed in a witness protection programme where you will be protected, as far as possible, from all forms of undue influence, harassment or intimidation.

This will ensure your safety as a witness and the availability of your testimony, and prevent you from withdrawing from giving evidence as a result of undue influence.

This right includes that in certain circumstances the court may prohibit the publication of any information (including your identity), or it may order that the trial be held behind closed doors (\textit{in camera}).

You can request Correctional Services to inform you if the offender has escaped or has been transferred.

5. The right to assistance:

You have the right to request assistance and, where relevant, have access to available social, health and counselling services, as well as legal assistance which is responsive to your needs.

The police will assist you by explaining police procedures, informing you of your rights and making the appropriate referral to other relevant service providers.

The office manager or head of office at the court will provide for the services of an interpreter.

\textsuperscript{56} \textit{Ibid}
• The prosecutor will ensure that special measures are employed in relation to sexual
offences, domestic violence and child support or maintenance matters and that, where
available, such cases are heard in specialised courts.
• If you have special needs, all service providers will, within the scope of their functions, take
all reasonable steps to accommodate you and ensure that you are treated in a sensitive
manner.

6. The right to compensation:
• You have the right to compensation for loss of or damage to property suffered as a result of
a crime being committed against you.
• You can request to be present at court on the date of sentencing of the accused and request
the prosecutor to apply to court for a compensation order in terms of section 297 and 300 of
the Criminal Procedure Act, Act 51 of 1977.
• “Compensation” refers to an amount of money that a criminal court awards the victim who
has suffered loss or damage to property, including money, as a result of a criminal act or
omission by the person convicted of committing the crime.
• The prosecutor will inform you if a compensation order has been granted, explain its
contents and how to enforce it. You can institute a civil action against the accused where the
criminal court did not grant a compensation order. This will usually happen where the
damages are not easily quantifiable in financial terms, for example, in the case of
psychological damages or pain and suffering.
• The clerk of the court will assist you with the enforcement of a compensation order granted
by the court.

7. The right to restitution:
• You have the right to restitution in cases where you have been unlawfully dispossessed of
goods or property, or where your goods or property have been damaged unlawfully.
• “Restitution” refers to cases where the court, after conviction, orders the accused to give
back to you the property or goods that have been taken from you unlawfully, or to repair the
property or goods that have been unlawfully damaged, in order to restore the position you
were in prior to the commission of the offence.
• The prosecutor will inform you what restitution involves and the clerk of the court will
assist you in enforcing this right.\textsuperscript{57}

\textsuperscript{57}Ibid
VICTIMS RIGHTS IN NEW ZEALAND

Newzealand, emerged as the first country to have established a program of compensation to victim of crime. It enacted the Criminal Injuries Act, 1963. In 1964 a Criminal Injuries Compensation Board was established to manage the scheme of compensation to victims of crime. The power of the Tribunal to award compensation is discretionary not only as to the amount of compensation but also to the making of an order of compensation.\footnote{58} The Victims of Offences Act 1987 (1987 No 173) which was repealed by Victim’s Rights Act 2002 also gave many rights to victims.\footnote{59} The Victims’ Rights Act 2002\footnote{60} has made comprehensive provisions for rights of victims.

The Act aims to improve provisions for the treatment and rights of victims of offences. S. 4 provides very exhaustive definition of victim. It says that the victim means a person against whom an offence is committed by another person; and suffers physical injury, or loss of, or damage to, property; and a parent or legal guardian of a child, or of a young person, unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads to the offence concerned; and a member of the immediate family of a person who, as a result of an offence committed by another person, dies or is incapable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned. Further paragraph (b) provides that for the purposes only of ss. 7 and 8,\footnote{61} it includes (i) a person who, through, or by means of, an offence committed by another person, suffers any form of emotional harm; and (ii) a parent or legal guardian of a child, or of a young person, unless that parent or guardian is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned; and, if, an offence is committed by a person, does not include another person charged (whether as a principal or party or accessory after the fact or otherwise) with the commission of, or convicted or found guilty of, or who pleads guilty to,-(i) that offence; or (ii) an offence relating to the same incident or series of incidents as that crime or offence. Section 6 of the said Act binds the Crown. In part 2 general provisions have been given for treatment and

\footnote{59} S. 54 provides that the Victims of Offences Act, 1987 (1987 No 173) is repealed.
\footnote{60} Victims’ Rights Act, 2002
\footnote{61} S. 7 Treatment: Any person who deals with a victim (for example, a judicial officer, lawyer, member of court staff, Police employee, or other official) should (a) treat the victim with courtesy and compassion; and (b) respect the victim’s dignity and privacy. S. 8 Access to services: A victim or member of a victim’s family who has welfare, health, counseling, medical, or legal needs arising from the offence should have access to services that are responsive to the those needs.
rights of victims. S. 7 provides that any person who deals with a victim (for example, a judicial officer, lawyer, member of court staff, Police employee, or other official) should (a) treat the victim with courtesy and compassion; and (b) respect the victim’s dignity and privacy. S. 8 provides that a victim or member of a victim’s family who has welfare, health, counseling, medical, or legal needs arising from the offence should have access to services that are responsive to those needs. In S. 9 it is said that if a suitable person is available to arrange and facilitate a meeting between a victim and an offender to resolve issues relating to the offence, a judicial officer, lawyer for an offender, member of court staff, probation officer, or prosecutor should, if her or she is satisfied encourage the holding of a meeting of that kind.

However, it is very important to mention here that in Section 10 it has been made clear that ss. 7 to 9 do not confer or any person any legal right that is enforceable, for example, in a court of law.

S. 11 makes the provisions to provide information about programmes, remedies, and services to the victim as soon as practicable after the victim comes into contact with an agency. It also makes provisions to provide information to any other person (for example, to a person who was disadvantaged by the offence).

S. 12 is very important since it provides information about proceedings therefore, it gives a greater role to victim for participation in the criminal justice system. It provides that (1) A victim must, as soon as practicable, be given information by investigating authorities or, as the case requires, by members of court staff, or the prosecutor, about the theses matters; (a) the progress of the investigation of the offence; (b) the charges laid or reasons for not laying charges, and all changes to the charges laid; (c) the victim’s role as a witness in the prosecution of the offence; (d) the date and place of each event listed in subsection. (e) every final disposition of all proceedings (at first instance or on appeal (if any) relating to the

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62 Agency means, (a) the Accident Compensation Corporation; (b) the Department of Child, Youth and Family Services; (c) the Ministry of Justice; (d) the Ministry of Social Development; (e) a DHB (as defined in s. 6(1) of the New Zealand Public Health and Disability Act 2000); (f) the New Zealand Police.

63 In this section, investigating authorities means persons or bodies investigating the offence in the performance or exercise of their official functions, powers, or duties; but does not include a person exercising or performing functions, powers, or duties of a probation officer under the Criminal Justice Act, 1985 or any other enactment.

64 The events referred to in subsection (1) (d) are—(a) the first appearance in court, in connection with the offence, of the person accused of the offence; (b) any preliminary hearing relating to the offence; (c) any defended hearing; or trial, relating to the office; (d) any hearings set down for sentencing for the offence; (e) any hearings of appeals (if any) against conviction of the offence, or against the sentence imposed, or to be imposed, for the offence, or both (3) Nothing in this section prevents information of a kind that, under this section.
offence, for example-(i) any convictions or pleas of guilty entered, and sentences imposed, in relation to the offence; or (ii) any acquittal or deemed acquittal or finding that the charge was not proved; but not (iii) whether the accused or offender is granted bail. Any other person can also have information if he was disadvantaged by the offence.

However under s. 13 there is limit on duties to give information under ss. 11 and 12 for good reasons (where it likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to fair trial) for withholding the information would exist under any of ss. 6, 7, and 9 of the Official Information Act 1982, if a request for that information were made under that Act. But nothing in s.11 or s.12 affects any enactment, rule of law, or order or direction of a court that prohibits or restricts the making available of information of a kind referred to in s. 11 or s. 12 (for example, one forbidding the publication, in a report or account of proceedings in respect of an offence, of the name of, or any particularly likely to identify, a participant in the proceedings). In s.14 provisions are made to provide information to victim’s support persons under s.11 or s.12 if the victim (a) cannot receive it; or (b) is not, or may not be, capable alone of understanding it. S.15 provides ‘Privacy to victims’ from interference of any other person under Privacy Act 1993. S.16 provides restrictions on giving victim’s precise address (for example, his or her postal address, email address, fax number, or phone number) in evidence or information that identifies, or that may lead to identification, provided to court. But the judicial officer can grant leave after being satisfied that (a) the information is directly relevant to the facts in issue in the proceedings; and (b) the evidential value of the information (if any) outweighs any prejudice to the victim’s interest, or any harm to the victim, that is likely to be caused by the giving of the information. However in s.16A balance has been made by providing a fair right to defendant that nothing in s.16 applies to a criminal proceeding if it is necessary to disclose the information in the charge in order to ensure that the defendant is fully and fairly informed of the nature of the charge.

S.17 provides for victim impact statements in sentencing of offender. It is duty of the prosecutor to make all reasonable efforts to ensure that information is ascertained from the victim, for submission under s.21 to the judicial officer sentencing the offender, about the following matters:

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(a) any physical injury or emotional harm suffered by the victim through, or by means of, the offence; and
(b) any loss of, or damage to, property suffered by the victim through, or by means of, the offence; and
(c) any other effects of the offence on the victim.

S.18 provides the procedure before ascertaining information from victim. The prosecutor must make all reasonable efforts to ensure, before information is ascertained from a victim that under s.19 the victim is informed (i) that the information is being ascertained for submission to the judicial officer sentencing the offender, (ii) that the victim must ensure that any information that he or she gives is true; and (iii) that the information must be recorded (for example, on audiotape or videotape under Section 19), and may be verified in the way stated in s.19(3) or (4), and (b) that the victim is informed about who may properly see or make or keep copies of the information ascertained, and about the orders, directions and conditions, relating to disclosure and distribution of it, that may be made under sections 24(3)(b), 25 and 27; and (c) that any views the victim has on whether the prosecutor should apply for orders, directions, or conditions of that kind, are ascertained. S.20 also provides other person to a right to make statements if the person is disadvantaged by offences as per victim. S.21 provides that the information recorded under s.19(1) must be submitted to the judicial officer sentencing the offender. However, if the information was ascertained from a person treated as a victim, under s.20, it may be submitted only with the leave of the judicial officer. Under s.25 judicial officer may withhold part of statement from offender to protect victim’s physical safety or security. Under s.27 judicial officer has vast power to issue direction or impose conditions on other discloser or other distribution of statements for the protection of the victim’s physical safety or security, emotional welfare and privacy on his or

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66 (3) The information may be verified by being submitted to the victim for signature or other approval, and signed or otherwise approved by the victim, after the prosecutor, or some other person on behalf of the prosecutor, has added to statements (a) that the victim gave the information knowing that it was for submission to the judicial officer sentencing the offender, and knowing that he or she was required to ensure that any information that he or she gave is true; and (b) that the information is true to the best of the victim’s knowledge and belief.

(4) The information may also be verified by being signed or otherwise approved by the prosecutor, or some other person on behalf of the prosecutor, after the prosecutor or other person has added to it statements that he or she (a) advised the victim that it was for submission to the judicial officer sentencing the offender, and that the victim was required to ensure that any information that he or she gave is true; and (b) read it or replayed it for submitted it in another way to the victim, and is satisfied that the victim approves of it.
her own initiative or on an application for this purpose by the prosecutor. S.28 provides that court can order under s.140 of the Criminal Justice Act 1985 for prohibiting permanently publication of name of accused or offender, address, or occupation, or of any particulars likely to lead to his or her identification with the consent or application of the victim.

Part 3rd of the Act provides the provisions relating to rights of victims of certain offences. S.29 says that application of section 30 to 48 are only confined to the offences like sexual violation or other serious assault; or offence that resulted ion serious injury to a person, the death of a person, or in a person being incapable; or offence of another kind, and that has led to the victim having ongoing fears and reasonable grounds (i) for his or her physical safety or security; or (ii) for the physical safety or security of one or more members of his or her immediate family. S. 30 provides for taking the victim’s views about release on bail of accused or offender. Ss. 32 to 38 and 47 apply only to victim who asked for notice and gave his or her current address. These sections make the general provisions to give notice or advice to the victim regarding matters or decisions or directions, and copies of orders and conditions, to be given or supplied to victims under ss. 41, 43, 45, 50, and 58 (an and other relevant provisions) of the Parole Act 2002; and given his or her current address (for example, a postal address, email address, fax number, or telephone number) to the New Zealand Police, at the same time as requesting the notice or advice and copies under paragraph and advised the people who would give or supply the notice or advice and copies of any changes to that address, before the time at which the notice or advice is, or the copies are to be given or supplied. Ss. 34 to 39 also provide duties of police in relation to notice. S. 34 makes the provisions that the Commissioner of Police must give notice of release on bail of accused or offender and also about any terms or conditions of a release of that kind (i) that relate the safety and security of the victim, or of one or more members of his or her immediate family, or of both; or (ii) that require the accused or offender not to associate with, or not to contact, the victim, or one or more members of his or her immediate family, or both. Under s. 35 the chief executive of the department of corrections requires to give notice regarding temporary release from, or escape or absconding from, or death in, prison detention or home detention, of accused or offender. S.36 provides that the chief executive must give notice regarding convictions for breaching release or detention conditions and of decisions on recall orders and under s.37, the Director-General of Health must give a victim regarding discharge, leave of absence, or escape or death of accused or offender who is compulsorily detained in hospital or facility. However notice is not required under s.37 if offenders are no
longer liable to detention for sentence imposed for offence. Ss. 40 to 44 provide for representatives for notice. A victim for any reason he or she thinks fit, may appoint any other person to receive on the victim’s behalf, and ensure that the victim is given and understands, any notice to be given to the victim under any of ss. 34 to 39. Victim’s support person may be appointed representative or he may also appoint representative. S. 46 provides the ways in which notice required may be given. Notice to a victim under any of s. 34 to 39 is given within the time required by the relevant section and by any one or more of these means: (a) by telephoning the victim at a telephone number he or she gave as part of his or her current address; or (b) by posting it, or delivering it by courier or otherwise, to the victim at a postal address (for example, one of a house or office, letterbox, rural delivery box, document exchange box, or private box at a postal outlet) he or she gave as part of his or her current address; or (c) by sending it by fax machine to a fax number given by the victim as part of his or her current address; or (d) by sending it by email to the victim at the email address her or she gave as part of his or her current address. (2) Nothing in subsection (1) prevents notice from being given by a means not stated in that subsection.

S.47 provides that victim may participate in the process for making decisions about the offender’s release from prison or release to or from home detention, under ss 43(5), 46(1), 48A, 48B, and 49(4) (and any other relevant provisions) of the Parole Act 2002. Victim also, under s.48, may make submissions on making of deportation order or offender’s appeal against deportation order to the Minister of Immigration and to the Deportation Review Tribunal, in accordance with ss. 93A and 105A of the Immigration Act 1987.

Part 4 of said Act provides miscellaneous provisions. Under s.49, provisions are made for complaints and other ways in which rights may be enforced. The victim or person may complain to (a) the person who, under the relevant specified provisions, appears to be required to accord the victim or person the right (b) an Ombudsman, in accordance with the Ombudsmen, Act 1975, if the person who, under the relevant specified provisions, appears to be required to accord the victim or person the right, may be the subject of a complain under the at Act (c) the Independent Police Conduct Authority, in accordance with the Independent Police Conduct Authority Act, 1988, if the person who, under the relevant specified provisions, appears to be required to accord the victim or person the right, is a constable (d) the Privacy Commissioner, in accordance with the Privacy Act 1993, if the matter involves, or may involve, an action that is, or appears to be, an interference with the privacy of the
victim or person. S.50 provides other ways in which rights may be enforced. S. 51 makes the provisions to return of property held as evidence.67

In spite of many important provisions in the said act there are still many shortcomings in the act. Recently ‘Ministry of Justice’ has identified three board issues:

(a) Victims find it frustrating having to deal with multiple government agencies to get information about the criminal justice system, their rights, and how to access services.

(b) There are weak mechanisms to ensure criminal justice agencies are accountable for the services they deliver to victims.

(c) Many victims find the current criminal justice processes bewildering. Victims often feel they do not have any role in the criminal case involving them and do not know what is happening. Many processes in the criminal justice system need to be more receptive to victims’ needs.68

Ministry of Justice has also proposed to open the victim support centres and establishment of a Code of Practice (a Code), creating the role of the Victims of Crime Complaints Officer (Complaints Officer), as per U. K. model and requiring criminal justice agencies to report to Parliament each year about their responsibilities to victims. Ministry of Justice has also proposed to enhance communication between victims and prosecutor, providing by providing additional information the court (Victim impact, statement) by non-government organisations, family, whanau, or community members and improving the Victim Notification System.69

CANADA

In Canada compensation program was first initiated in Ontario in 1967 under The Law Enforcement Compensation Act. It was re-enacted in 1971 and further amended in 1973 Ontario program granted compensation both for injuries and death resulting from crimes of violence. Compensation is also granted for injuries sustained while preventing or attempting to prevent an offence and for lawfully arresting.70 The Canadian provisions that govern

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67 Law enforcement agencies that hold property of a person (other than an offender) for evidentiary purposes must, to the extent that it is possible to do so, return it to the person as soon as practicable after they no longer need to hold it for those purposes.


69 Ibid

compensation were amended in 1996, when compensation order provisions were replaced with restitution order provisions.9 Earlier it was available only for loss, destruction, or damage of property, the introduction of restitution order provisions allowed awards for fiscal damages, such as loss of income or support as a result of bodily harm due to an offence, or relocation expenses. Furthermore, orders of restitution were no longer required to be initiated by the victim, but could also be ordered by the sentencing court.71


“Restitution involves acceptance of the offence as a responsible person with the capacity to undertake constructive and socially approved acts. It challenges the offender to see the conflict in values between himself, the victim and society. In particular, restitution invites the offender to see his conduct in terms of the damage it has done to the victim’s rights and expectations. It contemplates that the offender has the capacity to accept his full or partial responsibility for the alleged offence and that he will in many cases be willing to discharge that responsibility by making amends.”72

Restitution differs from compensation, which occurs when the state pays the crime victim for financial and other losses, such as pain and suffering.73 Restitution orders can be applied in various ways in Canada:

- as a stand-alone order, given as an additional sentence (s.738 of the Criminal Code);
- as a condition of probation (s.732.1 (3.1) a); or
- as a conditional sentence (s.724.3(2) f).74

In 1983, the Federal Provincial Task Force on Justice for Victims made several recommendations regarding restitution. In 1986, the Canadian Sentencing Commission recommended that judges be required to consider restitution in all cases and the court be empowered to impose jail terms where the offender willfully defaults on payment. Currently, Canadian crime victims have no right to make a direct application to the court for restitution (except in Alberta, Saskatchewan and Nova Scotia), although they can outline the financial impact of the crime in their victim impact statements. If an offender fails to pay restitution, it is up to the victim to pursue payment in civil court.

AUSTRALIA

73 Supra note 68
74 Ibid
In Australia, the Government enacted a new law to increase maximum compensation available to victim with effect from 1st of September, 1990. The Government recognized the right of victim by implementing the 1985 United Nations Declarations on the Right of Victims. The past three decades have seen the introduction of systems of compensation for victims of crime. Victims of crime may apply for compensation to reimburse their out of-pocket expenses, such as medical or funeral costs, and/or for a lump sum payment that can be used for any purpose. However, financial assistance from crime victim compensation, where it is available, is typically limited to victims of violent crime, and sometimes also to cases where financial hardship can be shown.

In Australia there is considerable variation between the jurisdiction as to the amount of compensation that a victim of crime might receive. The maximum entitlement ranges from $10,000 in Tasmania to $75,000 in Queensland (see Table 4.1), with the result that victims of comparable crimes might receive significantly different amounts of compensation, depending on where the compensation application is considered. The different eligibility criteria are applied in different states in Australia which are shown in table give below:

**Table 4.1: Maximum Amount of Compensation for Crime Victims by Jurisdiction**

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Relevant legislation</th>
<th>Section</th>
<th>Compensation Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Queensland</td>
<td>Criminal Offence Victims Regulations 1995 (Qld.)</td>
<td>Sec. 2</td>
<td>$75,000</td>
</tr>
<tr>
<td>Victoria</td>
<td>Victims of Crime Assistance Act, 1996 (Vic.)</td>
<td>Sec’s 8, 10, 11</td>
<td>$60,000</td>
</tr>
<tr>
<td>New South Wales</td>
<td>Victims Compensation Act, 1996 (NSW)</td>
<td>See. Schedule 1 of this Act</td>
<td>$50,000</td>
</tr>
<tr>
<td>South Australia</td>
<td>Criminal Injuries Compensation Act, 1978 (SA)</td>
<td>Sec. 8 (a) (iii)</td>
<td>$50,000</td>
</tr>
<tr>
<td>Australian Capital Territory</td>
<td>Criminal Injuries Compensation Act, 1983 (ACT)</td>
<td>Sec. 7</td>
<td>$50,000</td>
</tr>
<tr>
<td>Northern</td>
<td>Crimes (Victims Assistance) Act, 1996</td>
<td>Sec. 13</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Territory</th>
<th>Act</th>
<th>Section</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Australia</td>
<td>Criminal Injuries Compensation Act, 1985 (WA)</td>
<td>Sec. 5</td>
<td>$15,000</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Criminal Injuries Compensation Act, 1976</td>
<td>Sec. 6</td>
<td>$10,000</td>
</tr>
</tbody>
</table>

**Conclusion**

At international level, several Acts provide compensatory relief to victims but the existing legal framework in India in relation to the right of victims towards rehabilitation except in the area of providing compensation, very little has been done either statutorily or through schemes. The development of entitling the victim to rehabilitation is at an early stage. Lessons can be learnt from and improve upon the diverse, preliminary efforts towards victim’s rehabilitation. Although there will always be debate about what can and should be offered, it is high time for the legislature to come out with diverse and elevating rehabilitation schemes which would genuinely benefit the victim to forget his plight.

The present position of Victim Rehabilitation Schemes in India needs to be revisited. The provisions under Cr.P.C. are not able to suffice mounting needs of victims. A new specialized legislation needs to be drawn in lines with that of US and UK in order to render meaningful justice, social and legal and facilitate effective rehabilitation such as:

1. Fair, considerate and sympathetic treatment by the police, hospitals, welfare organisations and Courts;
2. Prompt restitution/compensation to the victim for the injury or loss suffered by using the existing provisions; and
3. Security to victims and potential victims against victimization in future.\(^{76}\)

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