CHAPTER - VIII
CONCLUSION AND SUGGESTIONS

From a detailed study of the law regarding Compensation to Victims of Crime, the following conclusions are drawn:

8.1 The Idea of Compensation

The idea of compensation to victims of Crime by the state is gaining much importance. Though this idea is an age old one. Its development on more scientific lines and also as a branch of Criminology has begun since a few decades ago. Several countries have taken up the schemes of payment of compensation to the victims of crime, through different legislative measures.

Thus at the International level also attempts have been made to streamline the law relating to payment of compensation particularly under the auspices of the United Nations. The modern States which are aptly described as Welfare States have realized the importance of the subject of compensation to the victims of crime and accordingly taking up several victim compensation programmes, as a part of their general welfare.

In India no special legislative attempts are being made to reform and strengthen the law relating to payment of compensation to the victims, excepting the existing few solitary provisions in some statutes. The statutory coverage to the law of compensation to some extent has been provided in the Criminal Procedure Code and to some extent in the Probation of Offenders Act. These laws do have their own limitations and reservations Under Section 357 and 359 of the Code of Criminal Procedure and under section 5 of the Probation of Offender Act the victim is entitled to get compensation only in the event of the conviction of the offender.

8.1.1 Statutory Provisions Regarding Compensation

In India the statutory provisions concerning compensation exists to some extent in the Code of Criminal Procedure and Probation of Offenders Act. Though these statutes contain provisions dealing directly on the subject of compensation they are practically circumscribed by the conditions that the accused person must have been convicted and the fine amount if imposed is recoverable. These statutory provisions confer discretionary powers to the court and it is not mandatory for the courts to award compensation. Further, payment of compensation is linked to the imposition of fine. In the cases of abuse of
power by the state the compensation contemplated to be paid is a paltry sum of Rs 100 only. This statutory provision as they stand today does not provide sure and speedy relief.

India which is a welfare State and which is guided by the constitutional goal justice set for it is yet to take up the subject of compensation to the victims of crime on a large scale. It is only in the recent decades that the State started giving serious thought to the issues pertaining to payment of compensation to victims of crimes.

8.2 Role of Judiciary in Regard to Compensation

In the absence of adequate laws providing for victim compensation, the judiciary with its activism has come to the rescue of victims of crime by providing compensation in appropriate cases, while interpreting the provision of the Constitution and the Statutes. In this direction the judiciary has opened new vistas in the field of victim compensation and contributed to the progressive development of victim compensation laws.

Though initially slow in invoking the provisions of the Constitution and the statutes for providing compensation to the victims of crime, there is definitely a move on the part of the Courts in invoking the application of the Constitution and Statutory provisions for award of compensation to the victims of crime.

The judiciary has expressed its concern for frequent invoking of the provisions of Section 357 Criminal Procedure Code for payment of compensation to the victims of crime through judicious exercise of the discretionary power.

The Supreme Court while considering the significance of Section 357 of Criminal Procedure Code remarked: 1

"...... it is an important provision, but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of court to award compensation is not ancillary to other sentences, but, it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender .....We therefore recommended to all courts to exercise this power liberally so as to meet the ends of justice in a better way".
8.3 Role of Judiciary in Regard to Compensation

The concept of compensation is inextricably linked to the socio-economic and legal norms prevailing in the society. Thus, the issue of the payment of compensation arises several queries which need to be tackled judiciously. These include the level of poverty, crime rate, the causes and consequences, the responsibility of the state and the society at large.

A counter argument is put forth against the scheme of victim compensation, from the point of view of the prevailing conditions of poverty. It is stated that, in a “below-the-poverty-line-economy” with majority of criminals from such a background, compensation recovery is but an unequal provision that benefit those with financial means and seems unrealistic in the poor society with little material benefits. Inquiry as to financial status seems to be good alternative, but on the whole process the victim can turn out to be the looser.

The whole problem ingrained in any schemes of compensation is the means the mobilization of funds, in the existing socio-economic environment, the state needs to find ways and means to raise or create compensation fund, to make payment to the victim, not only, as part of its legal duty but also as a moral duty, for its failure to protect the citizens against its own agencies and also the private persons.

Then there are crimes that cannot be measured or made up in terms of monetary compensation especially in the cases of rape that affect the victim psychologically as much as physically. These cannot be weighed to be sufficiently avenged, but to consider such means one can never draw the line.

Thus, on the whole, there are several socio-economic factors which have a definite bearing on the entire frame work of victim compensation.

8.4 Inadequencies of Compensation Laws In INDIA

The existing law relating to victim compensation in India is highly inadequate. The only provisions dealing with crime victim compensation in modern Indian laws generally are Section 357 of Criminal Procedure Code, 1973 and Section 5 of the Probation of Offenders Act, 1985. In the recent past, these provisions are supplemented by a few provisions in the form of Special Laws and the method of compensation under writ jurisdiction wherein the State is ordered to compensate the victims of criminal
actions of State officials.

Section 357, Criminal Procedure Code as it stands does not provide speedy or sure relief to the needy. It is commonly seen that the accused normally does not deny the injury or loss sustained by the complainant, though he denies his own responsibility for the crime. Any compensation awarded under the cover of Section 357 Criminal Procedure Code at the end of normally protracted trial spanning over an average of 8 to 10 years is not immediately available to the victim as he must await the appellate round the conclude. There is a case to provide interim/immediate compensation to the victim, on the lines of Motor Accident Claim cases, so as to make provision for immediate needs arising out of loss of earning, medical care, legal counseling, etc. why should the victim be forced to spend for himself, even during the pendency of the trial, when it is not disputed that he has sustained injury or loss. Any innocent citizen who puts his faith in the Law of the land, by avoiding resort to extra legal means, deserves this much courtesy from the State, as to ensure some immediate relief to the amount of compensation given, through normal painfully slow process of recovery of fine from the offender, as and when convicted.

In the same context, one may refer to the matters of victims in cases which remain un-solved, or which result in acquittal for reasons than false accusation. Should such unfortunate cases remain without remedy or relief? In this regard one may think of applying the principle of "no fault liability" and ask the State to repair the damage, from out of a fund governed by a Law specially designed for the purpose. The fund can be at the disposal of the Criminal Courts, or if necessary, Special Compensation Boards, connected to the Criminal Justice System. In fact, if the State were to take up the basic responsibility in this context, the inability of the offender to pay would cease to be a reason, as it should, for not providing sufficient compensation.

Again, the provisions of Criminal Procedure Code pertaining to compensation to the process groundlessly arrested contained in Section 358, are highly inadequate. Under this provision the courts may award as compensation to the victims who are groundlessly arrested only on paltry sum of Rs.100. This amount is by no means adequate. Infact, arresting a person groundlessly amounts to serious violation of law. Accordingly, there is a need to enhance the compensation under the Section. So, that while the victim gets
sufficient relief, it operates as deterrent factor.

There are hundred of cases in which the accused persons are not convicted although offences are found to have been committed against some innocent persons. In such cases, the victims of crime are left without any remedy.

The prosecution must prove the complicity of the accused in the crime beyond any reasonable doubt. If the Court finds that no offences is made out, according to law, there is no question of having a victim. Although the courts finds that an offences has been committed against the aggrieved complainant yet it may acquit or discharge the accused on one or more of these grounds, namely: (a) even though the case is true, yet no clue was found to implicate the accused in the crime during investigation; (b) no sufficient legal evidence was available against the accused at the trail for holding him guilty; (c) the alleged criminal conduct of the accused could get protected under any of the exceptions provided in the Indian penal code such as right of private defence of property and person, incapacity, insanity of the accused or lack of mens rea (guilt intention) etc; (d) in some cases prior sanctions for prosecution of certain authorities is required to prosecute the offender and for want of such sanctions, the accused is entitled to acquittal, and (e) there may be a case of mistake of fact or mistaken identity of the accused person as the culprit. In such circumstances, it will be unjust to deny compensation to the victims who deserve to get the same, merely on the ground of acquittal of the accused even though a crime has been committed.

Added to this foie of existing law relating to compensation other bottleneck in the way in that the existing law grants immunity to the public servants from prosecution for any offence while discharging their duties. Under Sections 132 and 197(1) of the Criminal Procedure Code, when a public servant is accused of any offence alleged to have been committed by him, while acting or purporting to act in discharge of his official duty, no court shall take cognizance of such an offence, except with the prior sanction of the government. It gives protection to the police members guilty of torture. Similarly, Section 6 of the Armed Force Special Powers Act, 1983 grants similar immunity to the security forces for the alleged crime. This concept of "sovereign immunity" should be abolished and members of the Police and Security Forces be held accountable for the acts of torture.
It is distasteful to note that even these enabling provisions are not put to liberal use by the courts and it was for the Supreme Court to lament that the Section 357(1), Criminal Procedure Court is a very important provision but the courts have seldom invoked it. Even when awarded, payment of compensation is enforced as payment of fine. If the offender defaults in payment compensation, then little will be achieved by committing him to prison, for it would then suck up precious social resources. Thus, some clear rules should be desirable from a development point of view to divert the public resources in payment of compensation to victims.

The constitutional goal of social justice demands that an equitable remedy in the form of an aid and assistances to the victims of crime should be provided by the state. The constitution provides for social justice. Therefore, the need is for equitable and effective reparation of victims of crime. But with the present law seemingly inadequate and fragmentary in nature, justice for victim of crime seems a distant possibility.

It is evident that only marginal action is possible under Section 357 of the Code of Criminal Procedure to compensate the victims of crime. The various constraints and limitations may be summed up as follows:

1. Much depends upon the paying capacity of the offender and, in most cases, this act as a bar against victim getting any compensation.

2. There is a general reluctance on the part of the criminal courts regarding the use of criminal law process for compensation purposes coupled with the indifference and even ignorance on the part of lawyers and clients and many opportunities are lost because of their default.

3. The courts are reluctant to impose fine along with substantial imprisonment in serious offences and the scope of fine in any case is very limited in terms of quantum in minor offence.

4. Maximum fines have been laid down for various offences which were fixed long time ago and their monetary value must now be a very small fraction of what it might have been at the time when these fines were introduced in the Penal Code.

5. The rules of Criminal law are in favour of the accused; the onus of proof is on the prosecution.

6. Compensation to the victim under Section 357 Criminal Procedure Code is at the
discretion of the court and not compulsory. A victim is awarded compensation on proof of loss and injury. The loss or injury must be of such magnitude to justify a civil action.

7. Compensation awarded to the victim under Section 357 Criminal Procedure Code does not exceed the fine imposed on the offender.

8. The procedure under Section 421 and 422 Criminal Procedure Code for realization of the fine is lengthy and cumbersome. Due to this procedure courts are reluctant to award compensation to the victim.

8.5 Need for Reforms and Revision of Fines

So far as sentences of fine are concerned, time has come to have a fresh look on the amounts of fine mentioned in the IPC and the mode of recovery. As the law stands we have two classes of offences for which only fine can be imposed. Then there are offences for which fine can be imposed in addition to imprisonment. Further for non-payment of fine, imprisonment is also provided. So far as imprisonment in case of default of payment of fine is concerned it is time that the same is done away with. In view of the acceptance that custodial sentences are only to be imposed in grave crimes there are many areas where correctional approach or community sentences etc., will have the desired effect.

Section 64 of the IPC should be amended and Sec.65 which say that where in addition to imprisonment, fine is imposed as also punishment in default of the payment of fine imprisonment shall not exceed 1/4th of the sentences that may be fixed should also be deleted. Sec 66, 67 should also be deleted as also 68 and 69 of the IPC and in all these crimes community services for the specified periods should be prescribed.

The amount of fine as fixed in 1860 has not at all been revised. We live in an age of galloping inflation. Money value has gone down. Incomes have increased and crime has become low risk and high return adventure particularly in matters relating to economic offences and offences like misappropriation breach of trust and cheating. For all matters involving in money or money related crimes new legislation have also created offences, a case in point is Section 138 of the Negotiable Instruments Act where huge sums of money are involved, fine extending to twice the cheque amount can be
imposed/levied. In matters of sentences of fine it is not desirable that the paying capacity of the rich criminal and that of the poor is taken into account.

Further it is universally accepted that victims rights should not be ignored for the victim, he or she, pays a heavy price. Therefore from out of the fine imposed victim, is also to be compensated. The provisions of Minimum Wages Act are applicable to many wage earners. Therefore in the organized sector or even in unorganized sector wages have gone up and then even the earning capacity of the individuals increased. Hence time has come when attention should be focused on increasing the amount of fine in many cases. There are certain sections where Penal Code authorizes the imposition of fine but the amount of fine is not mentioned. In such cases Sec.63 of the IPC says where the sum is not indicated then the amount of fine may be unlimited but should not be excessive. When a fine is imposed and is not paid the court can prescribe default sentence of imprisonment. This may act harshly in some cases of genuine incapacity to pay. Therefore the committee suggests that community service may be prescribed as an alternative to default sentence. In view of the circumstances enumerated the fine amount should be revised. Time has come when the amount of fine statutorily fixed under the Penal Code also should be revised by 50 times.

8.6 Payment of Compensation by the State- The Alternative Paradigm

Compensation by the state to the victims of crime is the only proper remedy but it is very unlikely for such a scheme to materialize in India and other developing and poor countries due to financial constraints etc. One of the stumbling blocks in implementation of such programmes is the financial constraint of the State. It can be modestly estimated that at least in 50 percent of pending criminal cases, victims of crime may be eligible to get compensation. The amount of compensation to the victims of a case could range from rupees one thousand to rupees one lakh. The approximate number of criminal cases pending in different courts in India is about five million. Out of that at least 21/2 million cases of victims may be eligible to claim compensation. If compensation on an average is calculated at the rate of Rs5000 per case, the minimum requirement to meet the demand would be Rs1250 crores at present. If the state is called upon to pay the entire compensation, then there will be heavy burden on the exchequer. It may not become
possible to recover the compensation from the offender if he is untraceable, acquitted or impecunious

The other option is to create a public fund for the purpose. An appeal may be made to the people and philanthropic societies to generously extend their co-operation in contributing money to organise such a fund, if the state fails to provide it.

However, to start with payment of compensation may be confined to the victims of crimes of violence. One who causes personal injury to another or death of another by committing unlawful or reckless acts may be said to have committed a crime of violence. They may be grievous hurt (except those, including death, arising out of accidents and war) murder, rape, dowry relate torture an dowry death. Amount of the loss of moveable or cash cannot be precisely determined objectively. Very often the victims make exaggerated statements on this score. Hence, such claims may be exclude from the purview of any scheme relating to the grant of compensation to the victims. The fact, however, remains ineffective means of preventing and controlling the crime are the main factors leading to victimization. There is a great need for the constant evaluation and improvement of law and enforcement procedures in order to reduce the crime victimization. Government and non-governmental agencies have to perform effective roles in providing to victims both and prolonged medical, psychological and social services which are altogether lacking at present in the country.

In the light of the above discussions and other considerations, the idea of compensations to the victim of crime could be evaluated as under:

1. The present system of courts order of payment of compensation to the victim by the accused requires order of conviction and sentence as a pre-condition. The victim needs to be compensated at the earliest. Since it is the obligation of the state to protect the individual interests, State should be made to pay immediate compensation to the victim without the burden of any additional civil suit to be filed by the victim.

2. The discretionary power of the court in awarding compensation after trail could be modified by requiring the court to compulsorily grant interim relief on prime facie evidence of loss or injury to the victim to be given by the State. However, the mode and extent could be worked out on the mode already available under
the present legal system.

3. The compulsory payment is likely to lead to false or fraudulent claims and likely to be misused. Measures for plugging such loopholes have been taken.

4. Requiring the victim to invoke his right under the civil law for claiming compensation would on the one hand delay the redressal, and on the other, impose an additional burden of establishing the case to claim the right to compensation. This may lead to further victimization.

5. Since the State functions through the officers of state, a thinking in the direction of evolving the concept of “duty of care” to protect citizens, failing which, such officers should subject to civil liability, could be made. But this to be balanced with officers efficiency that is likely to be hampered by the hanging of the threat of civil liability like Damocles sword while discharging their duty.

6. There is need in Welfare State, to evolve a scheme of payment of compensation by State in cases of crimes. Whether State should pay it directly out of its exchequer or through an insurable scheme as in Motor Vehicles Accident Claims or by creation of separate fund is the alternative available. In case a separate fund scheme is adopted, the power of operation could be given to the judiciary as it is required to decide at the first instance the existence of a prime facie case of loss or injury due to crime committed.

7. The existing provisions of the Code of Criminal Procedure may be suitably modified so as to indemnify the State which has paid compensation in the beginning. On conviction, the accused should be made to pay compensation to extent of repayment of the amount paid by the state.

8. However, the interest of the dependants of the accused should not be jeopardized. If that is ignored it will only add to the list of victims.

9. As regards the basis of compensation, the mode of computation as accepted under the existing legislation such as Motor Vehicle Act, Workmen’s Compensation Act, etc. as well as yardsticks adopted by Civil Courts could be affective guidelines.

10. On the lines of the development victimological jurisprudence legislature should take positive steps in amending the existing inadequate provisions of
legislations and bring a far more comprehensive law. A shift from offender oriented system to offender oriented system to offender-State-victim related system, avoidance of multiplicity of proceedings, victim-rehabilitation together with offender-reformation and State compensation scheme system is the need of hour.

8.7 Suggestions

After an attempt at jurisprudentially reconstructing the concept of victim compensation and providing various alternatives to implement the idea of victim compensation, one would have to think circumstantially suitable paradigm for the Indian scenario. Therefore, the following guidelines may be provided to develop a comprehensive system of victim compensation:

1. A comprehensive Legal Code for victim compensation is a dire necessity. The time has come for the legislature to stop shirking its duty. Hence, a comprehensive Legal Code should be enacted providing for fair treatment, assistance and adequate compensation to victims of crime. Only on embarking on this step can justice in its more altruistic forms be obtained.

2. It should be made mandatory for the state to pay compensation to the victims of crime of not only the private criminal wrongs but also for the criminals acts perpetrated by its agencies. This mandatory duty of the state gains importance from two points of view namely as a welfare state committed to the constitutional goal of social justice and secondly for its failure to protect to life, liberty and security of its citizen.

3. In India there is an urgent need to establish a "Compensation Board" and of quick disposal of cases of victims of crime and lock-up deaths in police custody. In case of delay in investigation on trail of the case, the victim should be granted some compensation on the merit of the case and on final disposal of the case an interim relief, the full settlement of compensation by way of increase or reduction or recovery of compensation to needy victims. The compensation to the victim or his dependents should be granted without delay taking into account victim’s age, occupation etc., so as to substantially compensate the loss suffered by the victim and his dependents.
4. A victim is always a victim, so compensation should not be dependent on the conviction of the accused. Where the accused could not be apprehended or his acquitted by the Court the victim should not be deprived of getting the compensation is his case is genuine.

5. Measure should be taken to minimize inconvenience to victims, protect their privacy, wherever necessary and ensure their safety.

6. Compensation does not mean a marginal benefit extended to the victim. It ought to be proportionate to the offence committed, the details of which are to be worked out scientifically. Compensation may be paid by the offender or by Criminal Injuries Compensation Board to be constituted for the purpose.

7. Interim compensation should be provided to the victim to enable him or her to successfully fight a case in Court, meet medical and other ancillary expenses.

8. The criminal trial proceedings and compensation proceedings should be integrated in one continuous process according to which all victims should be compensated adequately and promptly for the injury and/or loss which they sustain. The primary responsibility should be that of the State for paying such compensation.

9. Informal compensation settlement mechanisms like Lok Adalats should be evolved for compensating the women victims of crime without any need to go through the ordeal of a normal court procedure.

10. Forums, like the Consumer Redressal Forums, may be constituted by an Act of Parliament to adjudicate the claims and award compensation and settle the issues arising from payment of compensation.

11. The provision of the criminal procedure code should be amended providing for ample reparative support to the victim by making it obligatory on the part of courts to award compensation in lieu of conviction.

12. Special provision should be made for payment of compensation to the women victims of crime particularly in the cases where the women are the victim are the victim of heinous and inhuman crimes like rapes etc.

13. In cases involving abuse of power, it should be made mandatory to recover the compensation amount awarded personally from the official of the state who is
responsible for such abuse of power.

14. The state should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances. It should enact and enforce, if necessary legislation prescribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanism for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

15. The existing provisions relating to payment of compensation under Section 357 of Criminal Procedure Code needs urgent reform in two respects. Namely: (1) payment of compensation should be made mandatory (2) a special provision providing for compensation to the victims of the abuse of power should be incorporated in the Section.

16. A special fund known as ‘Compensation Fund’ should be established, which should be maintained and managed by a ‘Special Compensation Board’, created for this purpose.

17. Laws should be enacted by the Parliament, adopting and incorporating the principles concerning payment of compensation to the victims by the International Treaties and Conventions, so as to strengthen the legislation relating to the payment of compensation and also make the law more uniform.

18. Special model schedules on the lines of Workmen’s Compensation Act and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rule, 1995 should be developed in fixing the compensation recoverable by the victims of different kinds of injuries sustained by them in different cases.

19. Expedient steps should be taken to curtail the delay in disposal of the cases and the relevant procedures should be made cut short.

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

21. The Victim compensation law will provide for the creation of the Victim
Compensation Fund to be administered possibly by the Legal Service Authority. The law should provide for the scale of compensation may not be granted and conditions under which it may be awarded or withdrawn.

22. i) The victim, and if he is dead, his regal representative shall have the right to be impleaded as a party in every criminal proceeding where the change is punishable with 7 years imprisonment or more.

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

iii) The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the state if the victim is not in a position to afford a lawyer.

iv) The victim’s right to participate in criminal trail shall, inter alia, include:

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

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

c) To know the status of investigation and to move the court to issue directions for further to the investigation on certain matters or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth.

d) To be heard in respect of the grant or cancellation of bail.

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

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

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

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

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

23. Since the IPC was enacted in the year 1860, may development have taken place, new forms of crimes have come into existence, punishments for some crimes are providing grossly inadequate and the need for imposing only fines as a sentence for smaller offences is felt. Variety of the punishment prescribed is limited. Thus there is need to have new forms of punishment such as community services, disqualification from holding public offences, confiscation orders, imprisonment for life without commutation or remission etc. hence there is a need to revive the IPC.

24. The IPC prescribes only the maximum punishments for the offences and in some cases minimum punishment is also prescribed. The judge exercises wide discretion within the statutory limits. There is no statutory guideline to regulate his discretion. Therefore in practice there is much variance in the matter of sentencing. There is no clear indication as to what are all factors that should be taken into account in the matter of assessing the sentences to be imposed. In many countries there are laws prescribing sentencing guidelines. Therefore, a permanent Statutory Committee is to be constituted for the purposes of prescribing sentencing guidelines.

25. As the fine were prescribed more than a century ago and value of the rupee has since gone down considerably, it should be suitably enhanced.
REFERENCES
