CHAPTER – IV
MODERN TRENDS

The concept of restitutive justice was sought to be revised in the nineteenth century by some eminent criminal gist like Garofalo and Ferri in Italy and Bentham in England. Bentham in his famous work ‘Theory of Legislation’ has suggested satisfactory remedies are to be adopted earlier than the penal remedies, while discussing the political remedies against evil of offences. According to him satisfactory remedies consist of reparation indemnities, secured to those who have suffered from offences; i.e., the victims. About the satisfactory remedies he says:

“Satisfaction is necessary to put stop to evil of the first order to re-establish things in the state in which they were before the offence was committed and to restore the sufferer to the condition in which he would have been if the law had not been violated.

Satisfaction is yet more necessary to put a stop to the evil of second order. Punishment alone is not sufficient for that purpose. It tends without doubt, to diminish the number of offenders, but this number though diminished, can never be considered as nothing. Examples of the commission of offences as they are more or less known, excite more or less apprehension. Every observer sees in them the chance of suffering in his turn. If it be desired to dissipate this sentiment of fear, it is necessary that the offence should be constantly followed by satisfaction as by punishment. If it were followed by punishment without satisfaction, as many offenders were punished, so many proofs there would be of the inefficiency of punishment and consequently so much alarm upon society.

But here needs to be made an essential observation. To take away the alarm, it is enough that the satisfaction is complete in the eyes of observers, although not complete to the persons interested. How can we determine whether the satisfaction is complete for him who receives it? The balance in the hands of passion, would always incline to the side of interest, to the greedy it would be impossible to give enough. The vindictive never would think his adversary sufficiently humbled. We must suppose, then, an impartial
observer, and regard that satisfaction as sufficient which he would estimate as equivalent to the evil endured.”

Though in 1926 Sweden introduced a system in which victims were paid compensation out of fine imposed on the offenders, some concrete progress was made in Europe, U.S.A and some other countries commencing from early sixties only. However, U.S.A has succeeded in establishing Victim’s Compensation Board for awarding compensation to the victims of crime. In our Country also such Boards may be established to compute and disburse amount of compensation to the needy victims or their dependents.

4.1 Asian Scenario

4.1.1 INDIA

Law defines crime. It also lays down procedure for dealing with crime. The Indian Penal Code, Special and Local Laws, the Code of Criminal procedure and the Indian Evidence Act are inter alia instruments devised by law to sub-serve its purpose. But they are not machinery capable of working on auto-pilot. To deliver goods they need activation by the functionaries of the Criminal Justice System. Though Section 357 of the Code of Criminal procedure and section 5 of the Probation of Offenders Act are powerful devices meant to ensure justice to victims of crimes they have been mostly remaining in the Statute Book with no benefit to the victims of crime. However, a recent landmark judgment\(^1\) the High Court of Kerala, apart from revivifying the principles laid down in an earlier Supreme Court Judgment has made a wholesome attempt to activate the subordinate judiciary and magistracy to become alive to the potentialities of this extant legal provision. It is judicial activism at its best. More of it later.

Crime is on the increase all over the world. India is no exception to this universal trend. It means that larger and larger segments of people are victimized, exposed to risk, anxiety, grief, trauma and despair. The perception of that suffering segment of humanity is that the Criminal Justice System is callously impersonal, its components are at sixes and sevens, it has no functional accountability and is caters only to its own minions. This is an indictment of the system by the common man. It is not an impressionistic opinion expressed off the cuff. It is based on two victimological surveys of victims of homicide

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conducted by the Director of the National Institute of Criminology and Forensic Science in New Delhi. In the first survey which covered cases of homicide in Delhi and Bangalore, exemption from the payment of fees for the surviving school-going children of the deceased or the provision of alternative employment to a grown up member of the family was found to be very limited. There were only 6 cases coming under the latter category in Delhi and they were the families of deceased who had been government servants. The private sector was found to be indifferent to all calls for help from the families of their erstwhile employee. Cash assistance given to families-only 12 in number-was found to be nominal and no thought had been bestowed on the desirability of giving lump sum grants. The research study indicates an impending need for a coordinated policy between the Ministries of Education, Home (Police), Social Welfare, Labor and the Central Social Welfare Board.

In a second victim-oriented research survey conducted by the I C F S, it was found that the incidence of fatal motor vehicle accidents had gone up in Greater Delhi by 50% from 1970 to 1979. Drivers of freight-trucks and passenger buses were the main culprits and pedestrians and cyclists, the principal victims. As was expected, the rush hours during the morning and evening had a disproportionately higher incidence of fatal accidents. The victims were mostly young men around 32 years of age and belonging to the lower and middle strata of society. The most disquieting features were; in 13% of the cases the affected families had none to look after them after the loss of the bread-winner; informal help was limited; employment was provided only to 20% of the affected families. Enforcement of traffic laws were found to be perfunctory; the legal-administrative requirement of getting driving licenses from approved driving schools was observed more often in the breach than in compliance; periodic inspection of vehicles for mechanical fitness was conspicuously absent; regular driving tests were unknown. (The element of corruption in the enforcement agencies was not the subject of the study but was ever present in the minds of the investigators and the persons interviewed who were not forthcoming in answering questions.)

Urban and industrial complexes attract people from rural parts in Developing Countries in search of better employment and educational opportunities and the rural folk carry with them habits like jay-walking, jay-cycling which violate traffic
discipline and find themselves becoming inadvertent victims of the busy traffic movement in cities. In 1980 it was estimated that 300 people used to move into Delhi every day for temporary or permanent settlement. It must be more now and true of all major cities in India. Today's situation should be a challenge for researchers to probe.

Promiscuous lane-changing and overtaking on the left and the right indulged in by all drivers, especially drivers of three-wheelers and motor-cyclists with impunity in all major cities in India introduces a grave risk to the lives and limbs of those who indulge in it and others too. The only other major city outside India where this dangerous practice is followed in Rome. In all other major cities of the world (except the United Stats of America where it is controlled by the right) multiple lane traffic is controlled by the left, the right-most lane being allotted to the fastest and the leftmost to the slowest. So the tendency for any driver to over take on the left is nipped in the bud. It should be possible to monitor the conduct of drivers on the public road by photographic equipment fixed at busy junctions. That is victim protection by pre-emption.

The study indicated that the operation of the provision of third party insurance under the Motor Vehicles Act left much to be desired, the procedural requirement mandated by law was found to be long-drawn and cumbersome and relief is totally denied to the victims or their next-of-kin in hit and run cases. The need for simplifying procedure was found to be imperative. Significantly, one judge presiding over a Motor Vehicle Accident-Claims tribunal informed that he was insisting on the persons concerned appearing before him and accepting compensation personally, since he had come across instances of unconscionable lawyers cheating their own clients who were ignorant of the law and their rights in the matter. Recurrent evidence was forth coming in the survey to indicate that most of the victims involved in motor vehicle accidents and their next-of-kin were unaware of the legal avenues of relief and assistance available to them, indicating a dire need to utilize different means of mass media to educate the victims and their families on their fundamental human rights. The research on which these observations are made opens up a new vista in an unexplored area as far as fatal traffic accidents are concerned in Greater Delhi. Mutatis mutandis the same remarks should apply to other metropolises like Madras, Bombay, Calcutta, Bangalore, Ahmedabad and

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Hyderabad as well. It should be of advantage to ascertain how far fatalities among two-wheeler-drivers have gone up in the cities of Tamil Nadu consequent on the orders of the State Government that they need not wear self-protecting helmets.

The studies mentioned in the preceding paragraphs are but pilot projects and indicators of a tremendous amount of work that remains to be done in an area which is of vital concern to the citizen. Hence the imperative raison d'etre for the study of victimology without which it is impossible to rectify the existing horrendous imbalance in the Criminal justice System's way of functioning.

Conflict and violence have been the curse of humanity ever since men and women started living in groups. Violence is so much endemic in human life that engenders what Marcuse termed "the normalization of horrors." the "psychological habituation to war" and human and material destruction in the pursuit of what are called national goals. Attuned to this habituation the human psyche takes violent milieu as "normal". Recollect that heartless remark attributed to Stalin:

"When a single person is killed, it is a tragedy.
But when a million people are killed, it is piece of statistics."

The forms that violence takes are numerous-rape, homicide, infanticide, genocide, ethnocide, ecocide and what not. The final denouement, if the going at the present rate continues, will be omnicide. The quantum of suffering, pain, agony, trauma imposed on victims by all this violence is incalculable. They are subjective phenomena which cannot be quantified in absolute terms or Computerized. Yet some sort of estimate by study is required with a view to re-formulate policy and reduce the suffering, the agony and the trauma even when it is not possible to eliminate them altogether. That is what was attempted in the two victim-oriented research studies adverted to earlier. It was meant to be part of Criminal justice dynamics in action, but sadly there has been hardly any follow-through.

In India there is no special legislative enactment for payment of compensation to victims of crime but under section 357 of the Code of Criminal Procedure Courts of law are empowered to pay compensation to victims of Crime. Interalia it says that "the court may when handing down the judgment, order the whole or any part of the fine recovered
in the payment of compensation to any person for the loss or injury caused by the
offence when substantial compensation is recoverable by such persons in a Civil Court;
when any person is convicted of an offence of murder or abetment of murder in paying
compensation to the persons who are, under the Fatal Accidents Act, entitled to recover
damages from the person sentenced; and when any person is convicted of an offence
including theft, criminal misappropriation, breach of trust, cheating etc. Compensation
given to a bonafide purchaser of such property before restitution is ordered "Under
section 359 Cr.P.C. when any complaint of a non-cognizable offence is made to a court,
the court may, on conviction of the accused, order him to pay to the complainant, in
whole or in part, the cost incurred by him in the prosecution, in addition to the penalty
imposed on him.

Under section 5 of the Probation of Offenders Act, 1958, the offender may be
required on release on probation to pay compensation to the victim of his crime.
Section 116 of the Motor Vehicles Act, 1988 provides for the award of compensation to
the injured or next-of-kin of the deceased. In this context, the comments of the Supreme
Court in awarding a compensation of Rs 50,000 to a victim whose power of speech was
impaired as a result of the injury sustained by him in Harikishen and the State of
Haryana versus Sukhbit Singh forms a path finder (AIR 1988 SC 2127):

"Section 357"is an important provision but courts have seldom invoked it, perhaps
due to the ignorance of the object of it. It empowers courts 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 the accused. This power was intended to do something to re-
assure the victim that he or she is not forgotten in the Criminal justice System... We
therefore recommend to all Courts to exercise this power liberally so as to meet the ends
of justice in a better way."

The clear instruction of the Supreme Court quoted above notwithstanding, it is sad to
find the majority of the subordinate judiciary dragging their feet in this regard. Let me
quote from the self-speaking judgment of the Hon'ble Mr Justice Sankaran Nair of the
Kerala High Court referred to earlier:
"Despite the directions of the Highest Court in the land, the provisions of law have not been effectively implemented by the majority of trial courts. Ignorance of law is no excuse for anyone and much less for Courts. The law declared by the Supreme Court of India is binding on all courts and failure to adhere to it can amount to disobedience of the orders of the Supreme Court. The attitude of the Courts must change. They must take inspiration from the law declared in Hari Kishen's case (AIR 1988 S.C. 2127). Criminal Justice System is not penal justice alone; it is restitutive justice too." His Lordship goes on to give a specific direction in ringing terms to the subordinate judiciary: "The Registrar of this Court will bring this judgment and the need to comply with the decisions in Hari Kishen and the State of Haryana vs. Sukbir Singh & Others (AIR 1988 S.C. 2127) to the notice of all Sessions Judge and Chief Judicial Magistrates in the State, who in turn will call the attention of the judicial officers in their districts to these decisions".

The clarion call contained in the Kerala High Court judgment deserves to be brought to the notice of all Courts in all States in the Country. Yet, even when fully implemented, it will not meet the dire needs of the prevalent situation in which victims of Criminality find themselves in India. The reasons are simple enough. First of all, legal pundits can argue that the section only says "may" and not "shall" So it is not incumbent on judges and magistrates to treat it as an, injunction; it is only a permissive clause which leaves much to the discretion of the judicial authority. Beside, of all criminal offences committed, only a fraction reaches the courts and of those that are tried by the courts, only a small percentage ends in conviction (Accurate figures are not available to quantify this problem). The case law quoted above becomes operable only in convicted cases which mean the interests of the vast majority of victims go by default. Even in countries like the United Kingdom, Germany and the United State where statistics are available and reliable, alternative channels of redress -like the institution of civil proceedings, participation as a separate party to the Criminal proceedings etc.-are totally inadequate. In the U K it is estimated that the offender could have been successfully sued by the victim only in less than one percent of the total number of cases referred to the Compensation Board which has come into existence to operate that Country's Victim Compensation Law.

The reasons for the inadequacy of the conventional Criminal law the world over in
providing adequate recompense to victims of criminality are the same and can be listed as follows:

1. Many victims do not bother to complain to the police because of
   (a) The popular impression of the futility of complaining
   (b) The repeated questioning of the complainant and witnesses-, if the case is to be charge sheeted
   (c) The rigors of vexatious cross-examination in Court.
   (d) Unnecessary adjournments
   (e) Fear of vengeance from the offender

2. Failure of the investigating agencies to arrest the offender.

3. Failure of the victim to identify the offender.

4. Uncertainty of conviction of the offender in court.

5. Exiguous financial position of the offender.

So the thought has been gaining ground that:

(a) Society should overcome its indifference towards victims of crime,

(b) The failure of the Criminal Justice System to award compensation to victim should be recognized,

(c) Emphasis on the theory of compensation and restitution is very much needed in the interests of equality and social solidarity,

(d) Social defence will become more meaningful only under the recognition of the interests of the victim,

(e) Additional financial outlay on policing will not justify neglect of the sufferer for whom the system has come to exist,

(f) Crime victimization surveys should be organized in all parts of the country (since patterns of criminality are different in different part of the country),

(g) Criminal justice policy should be formulated on the bedrock of such surveys (as it is, there is no policy worth the name now and hocism is the rule),

(h) It is necessary to recognize in the tendency to report crime less and less the
inadequacy of and lack of the people's faith in, the system,

(i) Victim-witness assistance programs should be widely organized (there is an impression prevalent now that witnesses are well looked after under the existing dispensation. As a matter of fact, they are not.)

(j) voluntary agencies should be encouraged and helped in the field to begin with (the Jaycees of Palghat in Kerala have blazed a trail in the area and deserve to be emulated by agencies like the Rotary, the Lions and so on),

(k) Special emphasis should be laid on helping victims of terrorism and custodial violence.

4.1.2 PHILIPPINES


The raison d'etre of the legislation was explained in an explanatory note furnished by the Hon'ble Mr. T C Natividad, Deputy Minister of Justice and Chairman, National Police Commission of the Philippines.

The operative clauses of the enactment are as follow:

Two philosophies underlie the movement for victim compensation. The first argues that the government is responsible, for preventing crime and therefore should be made responsible for compensating the victims of the crime it fails to prevent. The second approach, an extension of welfare doctrines, rests on the belief that people in need, specially those in needs because they have been victimized by events they could not avoid, are entitled to public aid.

Victims of violent crimes sometimes lose their homes, fall permanently into debt, and are never again as productive or secure. They may get prompt medical attention but eventually they pay for their own bills, restore their damaged property, shoulder their own attorney's fees, and like all other witnesses they go through the upsetting experience of going to crowded courts, waiting in congested hallways where they
often encounter the very persons against whom they are testifying. On top of all these, media often sensationalize the criminal and his crime while the victims suffer in silence and obscurity.

Historically, the basis of the criminal laws was the requirement that the offender or his family make reparation to the victim or his family, thus punishment and compensation had common origins. The victim and his family were compensated for a crime by means of blood feuds or personal revenge against the offender and his family. As cultures attained greater economic development, material goods or payments of money replaced physical revenge. Social groups larger than the family or tribe began to take responsibility for punishing criminals. As the State's responsibility increased, the king claimed a payment from the offender for the State's participation in bringing the criminal to justice, and for the injury done to the public peace. Thus one part of the compensation went to the victim and one part to the sovereign, in the 12th century in England the victim's share of the reparations began to decrease while the King's share increased. Eventually the king took the entire payment.

The victim's right to receive compensation had been transformed into the State's right to collect a fine. The criminal's obligation to pay damages because separated from the criminal law and developed into the civil law of torts in which the State played a neutral role. Modern concerns about crime have focused more on the relation of society to the criminal who has threatened it than on the victim's rights against the criminal. Thus the offender's punishment is measured by his supposed moral guilt and the injury to the peace of society, not by the more concrete harm to the personal or property interests of the victim.

AN ACT PROVIDING A VICTIM COMPENSATION PROGRAM TO INDEMNIFY VICTIMS OF VIOLENT CRIMES AND FOR OTHER PURPOSES.

Be it enacted by the Batasang Pambansa in session assembled:

Section 1. This Act shall be known as the Victim Compensation Act.

Section 2. The Victim Compensation Program is hereby established which shall be implemented by the Probation Administration herein referred to as the Administration.

Section 3. A victim of a crime of violence, his family, or any person dependent upon
the victim for his support may file a claim with the Administration: *Provided.* That the following conditions are complied with:

(a) The claim must be presented within a period of one year after the date of the death or injury;
(b) The claimant must show financial needs;
(c) The crime must be promptly reported to the police.

Section 4. The maximum amount for which the Administration may approve a claim pursuant to this Act shall not exceed the amount necessary to indemnify reimburse the claimant for necessary expenses incurred for hospitalization or medical treatment, loss of wages, loss of support, or other necessary expenses directly related to the injury. In no case shall a claim be approved in excess of five thousand pesos (5,000.00).

Section 5. The State shall be subrogated to the rights of the claimant to whom such claim was paid against any person causing the damage or injury for which payment was made to the extent of the payment of the claim. The State may recover the amount of the claim paid in a separate action, or may intervene in an action brought by or on behalf of the victim.

Section 6. No victim shall be eligible for assistance under the provisions of this Act if:

(a) The Administration finds that the victim or the person whose injury or death gave rise to the application knowingly and willingly participated in the commission of the crime; or
(b) The victim or the person whose injury or death gave rise to the application failed to cooperate with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

Section 7. An application for assistance may be denied, in whole or in part, if:

(a) The Administration find that such denial is appropriate because of the nature of the victim's involvement in the events leading to the crime or the involvement of the persons whose injury or death gave rise to the application; or
(b) The Administration finds that the victim will not suffer serious financial hardship, as a result of the loss of earnings or support and out-of-pocket expense incurred as a result of the injury which gave rise to the application for assistance. In determining such serious financial hardship, the Administration shall consider all of the financial resources of the victim. The Administration shall establish specific standards by rule for determining such serious financial hardships.

Section 8. Private Citizens injured in the course of preventing a crime, apprehending a criminal or rescuing a person in danger shall be entitled to indemnity provided for under this Act, without requirement of providing financial needs.

Section 9. The decisions of the Administration shall be in writing; copies of the decisions shall be delivered to the applicant or to his representative personally or sent to them by mail.

The Administration may order a reconsideration of all or part of the application for assistance on its own motion or on written request by the applicant or his representative. The board may not grant more than one such request on any application for assistance. The Administration shall not consider any such request filed more than thirty days after personal delivery or mailing of his original decision.

Judicial review of a final decision made pursuant to this Act may be had by filing a petition for Certiorari in accordance with the provisions of the Rules of Court. The right to petition shall not be affected by the failure to seek reconsideration before the Administration. Such petition shall be filed as follows:

(a) Where no request for reconsideration is made, within thirty days of personal delivery or mailing of the board’s decision on the application for assistance.

(b) Where a timely request for reconsideration is filed and rejected by the Administration, within thirty days of personal delivery or mailing of the notice of rejection.

(c) Where a timely request for reconsideration is filed and granted by the
Administration or reconsideration is ordered by the Administration, within thirty
days of personal delivery or mailing of the final decision on the reconsidered
application.

Section 10. The Program shall be financed from the following:

(a) Special fines levied on all persons convicted of grave and less grave offenses as
part of their court costs;

(b) Defendants convicted of smuggling shall, in addition to any other penalties, be
ordered to pay a fine to an indemnity fund for the compensation of crime victims;

(c) Additional sweepstakes races should be authorized to raise funds for the Indemnity
Fund.

When a country like Philippines can legislate a law relating to payment of
compensation to the victims of crimes, the same kind of legislation can also be legislated
in our country too.

4.2 European Scenario

Most countries in Europe have enacted legislation and followed it up with
administrative measures to bring the fruits of victimological thinking to the citizen. Only
Greece and Cyprus are the two exceptions to this rule in Western Europe. It is not
proposed to cover here the work done in every country in Europe, but an attempt is made
to highlight the principal features in a few countries.

4.2.1 UNITED KINGDOM

The Criminal Injuries Compensation Scheme was first introduced in the United
Kingdom in 1964 as an experiment on a non-statutory basis to provide ex gratia
compensation to the victims of crimes of violence and to those hurt in their attempts to
arrest the offenders and to prevent crimes. The scheme is administrated by an
independent Criminal Injuries Compensation Board which consists of a chairman with
wide legal experience and some lawyers who practice in the courts and give part of their
time to the scheme. Although the members of the Board are appointed by the minister
and the government is responsible for providing the necessary money and staff to enable
the Board to operate, only the Board is responsible for its decisions and they are is not
subject to ministerial review.
The scheme applies where the injuries are sustained in Great Britain or on a British vessel, aircraft, or hovercraft. It is not confined to British subjects alone but applies equally to visitors from other countries.

The injured victim may receive compensation even if the criminal is not arrested, or can not be accused (for example, because of his age). But compensation will not be paid unless the Board is satisfied that the amount payable will be more than £150 and that the incident has resulted in criminal proceedings, or has been reported to the police without delay (though the Board has the discretion to waive this requirement).

Because of the difficulty in determining the facts, and of insuring that the compensation does not benefit the offender, earlier compensation was not payable if the victim and the offender were living together as members of the same family. This provision has since been amended. Now, even members of the same family are eligible for compensation under certain conditions. (The details are discussed in later paragraphs) The scheme does not apply to injuries caused in traffic offences (except where there has been a deliberate attempt to harm the victim) because an adequate system of insurance also exists.

Compensation is calculated on the same basis as damages in civil proceedings and is paid in lump sum rather than a periodic pension. Compensation includes payment for the pain and suffering caused by the injury and for the loss of earnings or the earning capacity and out-of-pocket expenses. Where the victim has died, the compensation for the loss of income, for the funeral and other expenses is payable to the widow/widower or to the dependants of the victim. The descendants may benefit only if they are dependant. A sum of money as solatium for bereavement is payable under the scheme in Scotland but not in England and Wales. In calculating the loss of income to the victims or the dependants, account is taken of the social security benefits and pensions (though not in non-fatal cases) but not of payment under personal life insurance arrangements. The Board may also reduce the amount of compensation or reject the application if the conduct of the victim before or after the incident, his character, or way of life makes it inappropriate that he should be granted a full award.

The claims are investigated by the staff of the board and the compensation is
assessed by one member of the Board. If the victim does not accept the first assessment, he may appear personally before three other members of the Board. Although there is normally no appeal against the decisions of the Board, a claimant may seek the intervention of the High Court where there has been a substantial error in law on the part of the Board. Compensation is payable only for personal injury and expenses arising directly from the injury. It is not payable in respect of loss of property. The enormous budgetary commitment which the compensation of property offences will entail and the fact that insurance takes charge of the bulk of such losses as far as the victim is concerned are the reasons for this exclusion.

In the financial year ending 31 March 1976, the Board received more than 16,000 applications. The number is said to be growing at an average annual rate of approximately 15 per cent. The total amount of compensation paid in the year ending 31 March 1976 was more than £6 million. The average award is at present approximately £600. The highest award paid by the Board up to March 1976 was £55,000.

A comprehensive review of the scheme was started in 1973 to see what changes were necessary in order to incorporate it into a statute. Matters which were examined included the definition of the types of crime which should attract compensation, whether compensation should be paid to those injured in crimes of violence occurring within the family, the extent to which it is reasonable to take into account the conduct of the applicant or his character and way of life, and whether it should be possible to appeal against the decisions of the Board to the courts.

The government of U.K. has introduced a revised Criminal Injuries Compensation Scheme giving effect from 1 October 1979 to nearly all the recommendations of an official working party which reported in 1978. At the same time it announced a central government grant of £15,000 to the National Association of Victims' Support Schemes and a revision of guidance to the courts relating to the payment of compensation by young offenders.

**Criminal Injuries Compensation Scheme**

The major change in the Scheme is in its extension to the victims of violence within the family. The limit on the amount of earnings which may be taken into account when assessing compensation for loss of earnings is also raised to insure that full compensation
is paid to the great majority of policemen.

The Scheme had previously excluded victims who were living in the same family as the offender, partly because of the difficulties of establishing the facts in such cases and partly because of the risk of the offender benefiting from any award. The working party agreed with the Board that in view of the considerable public concern about the number of Women and, in particular, children who suffered violence within the family, some effort should be made to overcome these difficulties.

The safeguards suggested by the working party, which have been accepted by the government, are that applications should normally be considered by the Board in cases of family violence only where the offender has been prosecuted for the relevant assault; that the injuries should be sufficiently serious to justify compensation of at least £500; and that the Board should be satisfied that the offender would not benefit from the award.

The extension of the Scheme is on an experimental basis. It is expected that an assessment can be made of the effect of these safeguards before any attempt is made to include them in legislation.

At the same time, the Home Secretary announced the acceptance of the recommendation of the Royal Commission on Civil Liability and Compensation for Personal Injury\(^2\) that the Scheme should be made statutory, but said that legislation would be delayed until there had been sufficient experience of the revised provisions to identify and solve any problems.

*National Association of Victims' Support Scheme*

The National Association of Victims' Support Schemes consists of representatives of local victims' support schemes elected on a regional basis. The Chairman of the Association is Christopher Holton, of the Bristol Victims' Support Scheme which is one of the pioneers in this field. There are now over 30 local victims' support schemes in the country and about 20 are in the course of establishing themselves. The government grant is to enable the National Association to employ staff to establish common standards are methods of operation for existing and future schemes and to help coordinate their interests and activities.

*Compensation payable by young offenders:* The earlier Home Office advice to the
courts suggests that where a young offender sentenced to borstal training or detention in a detention centre has a compensation order outstanding against him, the person to whom the compensation is owed should be asked to agree that it should not be enforced so that the offender has a clean sheet on release.

The revised guidance, which has been issued recently, makes it clear there need no longer be any presumption against leaving a compensation order outstanding but that the courts should consider each case on merits with emphasis on the need for ongoing payments to be made to the victim. This is in accordance with a recommendation made by the Magistrates' Treatment of Offenders Committee in a report on compensation recently sent to the Home Secretary.

The Criminal Injuries Compensation Scheme was set up experimentally in 1964 with parliamentary approval by the Home Secretary and the Secretary of State of Scotland as a non-statutory compensation scheme to provide ex-gratia payments of compensation in any case where the applicant (or where the applicant is a dependant, the deceased) sustained personal injury directly attributable to a crime of violence (or to attempt to arrest an offender or prevent an offence). The Schedule applies to incidents arising in Great Britain (England, Wales, and Scotland) or on a British ship, aircraft, or hovercraft. It does not apply to Northern Ireland where separate statutory arrangements are in force. Since its introduction about £50.5 million has been paid in compensation to the victims of crime.

The compensation Scheme is administered by the Criminal Injuries Compensation Board, which is assisted by the necessary staff. Appointments to the Board are made by the Secretary of State, after consultation with the Lord Chancellor and, where appropriate, with the Lord Advocate. The chairman and the members of the Board, who are legally qualified, are appointed to serve for five years, and their appointment is renewable for such periods as the Secretary of State considers appropriate. They do not serve on the Board beyond the age of 72, or after retirement from legal practice, whichever is the earlier, except that, where the Secretary of State considers it to be in the interests of the Scheme to extend a particular appointment beyond that limit, he may do so. The Secretary of State may, if he thinks fit, terminate a member's appointment on the ground of incapacity or misbehavior.
The Board is funded by a grant-in-aid out of which payments for compensation are awarded in accordance with the principles set out below.

The Board is responsible for deciding what compensation should be paid in individual cases and its decision is not subject to appeal or to ministerial review. The general working of the Scheme is, however, kept under review by the government and the Board submits annually to the Home Secretary and the Secretary of State for Scotland a report on the operation of the Scheme, together with its accounts. The report and the account's are subject to parliamentary control.

The Board entertains applications for ex-gratia payment of compensation in any case where the applicant or, in the case of an application by the spouse or a dependant, the deceased sustained in Great Britain, or on a British vessel, aircraft, or hovercraft or on, under, or above an installation in a designated area within the meaning of Section 1, Sub-section (7) of the Continental Shelf Act, 1964, or any waters within 500 metres of such an installation, or a lighthouse off the coast of the United Kingdom, personal injury directly attributable:

(a) To a crime of violence (including arson or poisoning) or

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

Applications for compensation are entertained only if made within three years of the incident giving rise to the injury, except that the Board may in exceptional cases waive this requirement. A decision by the chairman not to waive the time limit is final. In considering for the purpose of this clause whether any act is a criminal act, any immunity at law of an offender, attributable to his youth or insanity or other condition, is left out of account.

Compensation is not to be payable unless the Board is satisfied that the injury is one for which the total amount of compensation payable after deduction of social security benefits, but before any other deductions under the Scheme, would not be less than the minimum amount of compensation. This shall be £150 except for cases of violence within the family, as defined under these rules, where the minimum shall be
£50. The application of the minimum of the minimum level does not affect the payment of funeral expenses as laid down by these rules.

The Board is empowered to withhold or reduce compensation if it considers that:

(a) The applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances of the injury and to cooperate with the police or other authority in bringing the offender to justice; or

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

(c) Having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character and way of life and, in applications for funeral expenses to the character, conduct, and way of life of the deceased and of the applicant it is inappropriate that a full award, or any award at all, be granted.

Furthermore, compensation is not payable

(d) In the case of an application where the injury was sustained accidentally in helping the police, unless the Board is satisfied that the applicant was at the time taking an exceptional risk which was justified in all the circumstances.

In order to determine whether there is any responsibility either because of provocation or otherwise, on the part of the victim, the Board is expected to scrutinize with particular care all applications in respect of sexual offences or other offences which arise out of a sexual relationship or where the relationship between the victim and the offender is such that there may be difficulty in establishing the facts or it seems possible that the offender might benefit from any award of compensation made to the applicant. In such cases the Board will especially have regard to any delay that has occurred in submitting the application. Compensation will not be payable unless the Board is satisfied that the offender will not benefit from an award.

Where the victim and any person responsible for the injuries which are the subject of the application (whether that person actually inflicts them or not) were living in the
same household at the time of the injuries as members of the same family, compensation are paid only where:

(a) the person responsible has been prosecuted in connection with the offence, except where the Board considers that there are practical, technical or other good reasons why a prosecution has not been brought; and

(b) the injury was one for which compensation - as assessed above - of not less than £500 would be awarded; and

(c) in the case of violence between adults in the family, the Board is satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to live together again, and

(d) in the case of an application under these provisions by or on behalf of a minor, is a person under, 18 years of age, the Board is satisfied that it would not be against the minor’s interests to make a full or reduced award.

For the purpose of these provisions, a man and a woman living together as husband and wife are treated as members of the same family.

If in the opinion of the Board it is in the interests of the applicant (whether or not a minor or a person under an incapacity) so to do, the Board may pay the amount of any award to any trustee or trustees to hold such trusts for the benefit of all or any of the following persons, namely the applicant and any spouse, widow or widower, relatives and dependants of the applicant and with such provisions for their respective maintenance, education, and benefit and with such powers and provisions for the investment and management of the fund and for the remuneration of the trustee or trustees as the Board shall think fit. Subject to this, the Board will have a general discretion in any case in which it has awarded compensation to make special arrangements for its administration. Here "relatives:" means all persons claiming descent from the applicant's grandparents and "dependants" means all persons who in the opinion of the Board are dependant on him wholly or partially for the provision of the ordinary necessities of life.
The Board takes into consideration applications for compensation arising out of acts of rape and other sexual offences both in respect of pain, suffering, and shock, and in respect of loss of earnings arising from consequent pregnancy, and, where the victim is ineligible for a maternity grant under the National Insurance Scheme, in respect of the expenses or childbirth. Compensation is not payable for the maintenance of any child born as a result of a sexual offence.

Applications for compensation for personal injury attributable to traffic offences are excluded from the Scheme, except where such injury is due to a deliberate attempt to run the victim down.

*Basis of compensation:* Subject to the other provisions of this Scheme, compensation is assessed on the basis of common law damages and normally takes the form of a lump-sum payment, although the Board may make alternative arrangements in accordance with the provisions discussed above. More than one payment may be made where an applicant's eligibility for compensation has been established but a final award cannot be calculate in the first instance - for example, where only a provisional medical assessment can be given. In a case in which an interim award has been made, the Board may decide to make a reduced award, increase any reduction already made, or refuse to make any further payment at any stage before receiving notification of acceptance of a final award.

Although the Board's decision in a case is considered final, it has the discretion to reconsider a case after a final award of compensation has been accepted where there has been such a serious change in the applicant's medical condition that injustice would occur if the original assessment of compensation were allowed to stand, or where the victim has since died as a result of the injuries. A case will not be re-opened more than three years after the date of the award unless the Board is satisfied, on the basis of evidence presented with the application for re-opening the case, that the renewed application can be considered without a need for extensive inquiries. A decision by the chairman that a case may not be reopened is final.

Compensation is limited as follows:

(a) The rate of net loss of earnings or earning capacity to be taken into account shall not exceed twice the gross average industrial earnings at the date of assessment
(as published in the Department of Employment Gazette and adjusted as considered appropriate by the Board);

(b) There shall be no element comparable to exemplary or punitive damages.

Where the victim has died in consequence of the inquiry, no compensation other than funeral expenses is payable for the benefit of his estate, but the Board is able to entertain applications from his spouse and dependants. For this purpose, compensation is payable, in accordance with the other provisions of this Scheme, to any persons entitled to claim under the Fatal Accidents Act, 1976, or any Act repealed by that Act, or under the relevant Scottish law. For the avoidance of doubt, "spouse" does not include for the purposes of this provision or the one in the next paragraph so called common-law wives or persons alleged to be married by habit and repute. Funeral expenses to an amount considered reasonable by the Board is paid in appropriate case, even when the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme. Applications may be made under this provision where 'the victim has died from his injuries even after an award has been made to victim in his lifetime. Cases are subject to the conditions set out in the previous paragraph for the re-opening of cases and compensation payable to the applicant is reduced by the amount paid to the victim.

Where the victim has died otherwise than in consequence of the injury, the Board may make an award in respect of loss of wages, expenses, and liabilities incurred before death as a result of the injury whether or not the application for compensation in respect of the injury has been made before the death.

Compensation will be payable for loss of or damage to clothing and other personal adjuncts arising from the injury. Personal adjuncts do not include jewellery, watches, or rings lost or damaged, whether at the time of the offence or after wards or in the course of medical or other treatment arising from the offence. Save as aforesaid, compensation is not payable for loss of or damage to property.

The cost of private medical treatment is payable by the Board only if the Board considers that, in all the circumstances, both the private treatment and the cost of it are reasonable.
Compensation is reduced by the full value of any present or future entitlement to:
(a) U.K. social security benefits,
(b) Compensation awards under the Criminal Injuries (Compensation) (Northern Ireland) Order 1977.
(c) Social security benefits, compensation awards, or similar payments whatsoever from the funds of other countries, or
(d) Payments under insurance arrangements except as excluded below

Which may accrue, as a result of the injury or death, to the benefit of the persons to whom the award is made? In assessing this entitlement, account is taken of any income-tax liability likely to reduce the value of such benefits, and in the case of an application the value of such benefits is not reduced to take account of prospects of remarriage. If, in the opinion of the Board, an applicant may be eligible for any such benefits the Board may refuse to make an award until the applicant has taken such steps as the Board considers reasonable to claim them. The Board has the option to disregard money paid or payable to the victim or his dependants as a result of or in consequence of insurance personally effected, paid for, and maintained by the personal income of the victim or, in the case of a person under the age of 18, by his/her parent.

Where the victim is alive, compensation is reduced to take account of any pension accruing as a result of the injury. Where the victim has died in consequence of the injury, and any pension is payable for the benefit of the person to whom the award is made as a result of the death of the victim, the compensation is similarly reduced to take account of the value of that pension. Where such pensions are taxable, one-half of their value is deducted; where they are not taxable, e.g. where a lump sum payment not subject to income-tax is made, they are deducted in full. For the purposes of this provision, "pension" means any payment payable as a result of the injury or death, in pursuance of pension or other rights whatsoever connected with the victim's employment and includes any gratuity of that kind also similar benefits payable under insurance policies paid for by the employers. Pension rights accruing solely as a result of payments by the victim or a dependant are disregarded.

When a civil court has given judgment providing for the payment of damages or a
claim for damages has been settled on terms providing for the payment of money, or when they payment of compensation has been ordered by a criminal court, in respect of personal injuries, compensation by the Board in respect of the same injuries will be reduced by the amount of any payment received under such an order or settlement. When a civil court has assessed the damages, as opposed to giving judgment for damages agreed by the parties, but the person entitled to such damages has not yet received the full sum awarded, he is not precluded from applying to the Board, but the Board's assessment of compensation does not exceed the sum assessed by the court. Furthermore, a person. Who is compensated by the Board is required to undertake to repay them from any damages, settlement, or compensation he may subsequently obtain in respect of his injuries in arriving at its assessment of compensation the Board is not bound by any finding of contributory negligence by any court, but is entirely bound by the terms of the Scheme.

Procedure for determining applications: Every application is to be made to the Board in writing as soon as possible after the event on a form obtainable from the Board's office. The initial decision on the amount of any compensation awarded is made by one member of the Board and where an award is made the applicant is given a break-up of the assessment of compensation, except where the Board considers this inappropriate, and where an award is refused or reduced the reasons for the decision will be given. If the applicant is not satisfied with the decision, he is entitled to a hearing before three members of the Board other than the member who made the initial decision. An application for hearing has to be made within three months of notification of the initial decision; however, the Board may waive this time limit where an extension is requested with good reason within the three-month period, or where it is otherwise in the interests of justice to do so. A decision by the chairman not to waive the time limit is final. It is also open to the single member where he considers that he can not make a just and proper decision himself to refer the application to three other members of the Board for a hearing. An application has no title to an award offered until the Board has received notification in writing that he accepts it.

It is for the applicant to make out his case at the hearing, and where appropriate this extends to satisfying the Board the compensation should not be withheld or reduced.

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under certain teams. The applicant and a member of the Board's staff may call, examine, and cross-examine witnesses. The Board is entitled to take into account any relevant hearsay, opinion, or written evidence, whether or not the author gives oral evidence at the hearing. The Board arrives at its decision in the light of the evidence brought out.

At the hearing, and all the information and evidence made available to the Board a member is made available to the applicant at the hearing, if not before it. While it is open to the applicant to bring a friend or a legal adviser to assist him in putting his case, the Board does not pay the costs of legal representation. It has, however, the discretion to pay the expenses of the applicant and witnesses at a hearing. If one of the three designated members is unable to take part in a hearing, the hearing may proceed if the applicant consents with two members.

The procedure at hearings is informal consistent with the proper determination of applications and the hearings are not open to the public. The Board has discretion to permit observers such as representatives of the press radio and television, to attend the hearings provide that they give written undertakings that the anonymity of the applicant and other parties will not in any way be infringed by subsequent reporting. The Board has powers to publish information about its decisions in individual cases; this power is limited only by the need for preserving the anonymity of the applicants and other parties.

While it is plausible to argue that all offenders should be required to make reparation, there are cases where the means of the offender would make enforcement impracticable, or where the court would consider that the ordering of compensation is not consistent with the objectives of the sentence. Reparation is only one aim of sentencing, and the Advisory Council on the Penal System has stressed that courts should decide in each case how much weight should be attached to this principle. The victim or the loser may doubtless find advice couched in such conditional terms as seem confusing. Even sentences may probably concede that it is not entirely satisfactory that compensation should be ordered in some cases and not in others. However, the situation can become clearer and more satisfactory as courts continue to assess how far it is feasible to lay emphasis on the principle of reparation. In this
process research can play a constructive part by taking stock of the experience of the courts and examining the exercise of their wide discretion to order compensation.

The analysis of courts decisions to order or not to order compensation is carried out separately for each type of property offence. Despite variation in the extent to which compensation is ordered for different types of offence, it has been found that factors which are associated with the use of compensation for other types of offence. It is therefore decided to combine all property offences which have resulted in loss or damage. No results are shown for wounding and assaults because the number of compensation orders is very small.

This scheme came into operation with effect from 1 October 1979 in the United Kingdom.

Side by side the Home Office Research Unit has been making a study of all the factors relate to the ordering by courts of law of compensation loss or damage to various persons. In 1974, a national study by magistrates' courts "use of compensation or orders" was undertaken by the Home Office Research Unit with the cooperation of the police and magistrates and judges. In that study they were able to correlate:

(a) The extent to which magistrates court made use of their power to order compensation, and

(b) Aspects of special cases relating to the orders of compensation and the effectiveness of compensation orders being yielding payment of the stipulated amount.

Property offences such as burglary or theft especially were the subjects for study. Compensation for thefts amounted to 59 per cent of the total loss, and for offences of obtaining property by deception and burglary compensation covered 50 per cent and 45 per cent respectively of the loss.

It is seen that in each type of offence some courts ordered to pay compensation while others did not. So the reason for the variation in the orders of the courts was explored. Some other factors other than the nature of the offence that were associated with the variation in court's decision whether or not to order compensation are analyzed below.

There was a slight correlation between the decisions to order compensation and the
value of the loss or damage. Sixty-six per cent of the offenders who caused loss or
damage up to £20 were ordered to pay compensation, while 77 per cent of those who
causd loss or damage greater than £50 were ordered to pay compensation.

There was also a weak negative correlation between the age of the offender and the
use of compensation. Seventy-seven per cent of the offender's age to 17-20 was required
to pay compensation for the loss or damage they had caused, compared with only 62 per
cent of the offenders aged over 30 years. Perhaps some magistrates regarded the ordering
of compensation as a particularly suitable ancillary penalty for relatively young
offenders.

It was also seen that magistrates were manifestly reluctant to order compensation for
loss or damage when they imposed a sentence of minimum imprisonment or detention in
a detention centre and they were less likely to order compensation when the offender was
unemployed than when he was employed.

The Victims' Support Schemes are important adjuncts of victim compensation in the
United Kingdom. These are organized in five regional groups for the whole of the U.K
There is also a National Committee carrying the work of all the regional groups. Finance
has been a problem. The Schemes are operated by local volunteers who are trained to
provide missionary support, practical help, and advice to the victims of criminal offences
and to know when and where to refer the victims for professional assistance, how to
make the best use of the resources available. The Schemes do not give any direct
financial aid to the victims. As far as practicable they are conterminous with police
boundaries. This facilitates communication and practical operation.

There have been some developments in the United Kingdom in this area during the
last decade, for an Inter-departmental Working Party that undertook a Review of the
Working of the Compensation Scheme came to some conclusions and made certain
recommendations which include the following:

(They should be of interest to Developing Countries which may be on the threshold
of enacting Victim Compensation legislation since they highlight problems these
countries are likely to confront why? they come to the nitty-gritty of enforcement)

1. The suggestion that experts in various non-legal fields like medicine, social
science, trade unionism, psychiatry and so on should be made full time members of the Compensation Board has been turned down.

2. The decisions of the Compensation Boards should not be subject to Ministerial Review, but it is considered that the general working of the Scheme should be kept under review by the Government and Ministers will be responsible to Parliament for ensuring that the Scheme is working in the way it is intended to work.

3. It has not been possible (surprisingly) to define what constitutes a "Crime of Violence".

4. Report of a crime to the victim's employer, principal or other authority in institutional establishments is considered equivalent to a report to the police.

5. In cases involving violence in the family, compensation should be paid only when it is quite clear that the offender will not benefit.

6. Compensation to children injured in familial violence is most difficult to decide. Children over 17 years old caught & injured in the Cross-fire of familial violence at home do not present a problem since compensation given to them is not likely to profit the offending parent. Children below 10 are not considered eligible for compensation except in very exceptional cases of injuries leaving a lasting up effect on the child's entire future life. But those between 10 & 17 do present a problem. The solution to it is sought in the recommendation that compensation Boards should keep "the interest of the child" as the guiding beacon in such cases.

7. It is significant that babies born out of on offence of rape are not especially cared for in the scheme. It is held that they are not different from the children of unwed mothers, divorcees and widows and so it will be unfair to differentiate them one from another, though the problem of the single parent family is realized.

8. Inflation is not to be taken into consideration in awarding compensation. Lump sum payments are (to be) preferred over. Staggered payments over a period of time, mainly because of administrative convenience and to resist the temptation
on the part of victims to capitalize on the injury over a period of time.

9. It is agreed in principle that the Compensation Board would have to use subjective criteria to determine the eligibility of violent crime. The general character and way of life of the victim is permitted to be taken into account. No award is given in a case where a victim voluntarily enters into a fight. If in the course of the fight, the offender provides a weapon, the eligibility of compensation is viewed favorably - may be, a reduced award is given. Provocative words (or behavior) and (is) taken into consideration in deciding on eligibility for and quantum of compensation. If the crime of violence formed part of a pattern of violence in which the victim or complainant had been a voluntary participant or the entire episode is the result of the victim's attempt to wreak vengeance against the offender for a previous occurrence, compensation is not awarded.

10. If a girl who thumps for a hitch-hike and accepts a lift in a vehicle is raped by the vehicle - driver, she is eligible for compensation.

11. Information contained in Police investigation records; medical certificates etc. relevant to the issues of Compensation should be made available to the victim complaint or his/her next-of kin if they call for it.

12. Consistent with the informality of the proceedings, it is not considered necessary to take statements of witnesses under oath.

13. In practice it is seen that only 4% of the applicant victims appear before the Compensation Boards in person; others are represented by legal counsel, trade Union representatives or friends. Those who are professionally represented enjoy a success rate of 70% to 85% in getting compensation awards whereas only 43% of those who argue their own cases succeed. The compensation Boards do not suo motu sanction expenses of legal advisers but there is provision for legal aid to be obtained under the Legal Aid Scheme - this is brought to the notice of shy or reticent victim - for applicants even at the initial stage by the Boards.

14. There is provision for payments of traveling expenses of victim - applicants
and witnesses by the Boards.

15. Proceedings of the Compensation Boards are informal and private. Media representatives are permitted to be present at hearings, by previous arrangement, on the specific understanding that the privacy of the applicant and other parties is not violated.

16. Insanity plea of the offender is irrelevant as far as compensation claim is concerned.

17. The experience of the British magistrates who have ordered compensation is worthwhile noting. In the case of assault victims who were awarded compensation, courts based their assessment largely on financial loss directly attributable to the offence and did not quantify the injury, pain and suffering. Secondly, victims of violence were not aware of this whereas those who lost property were. Thirdly, the time lag between an offence and the award of compensation was a source of dissatisfaction with the functioning of the system.

18. Another interesting development is that guidelines have been issued to the Metropolitan Police in London on Victim Support Schemes. They include training methods, vetting of volunteers by police, identification of volunteers through the issue of cards, consent of the victim for the Support Scheme and so on.

4.2.2 FRANCE

In March 1977, Act No. 77.5 of 3rd January 1977 came into force throughout the Republic of France guaranteeing state compensation for certain categories of physical injury resulting from crime.

The legislation had been drafted and debated in 1975 and 1976, and when it was being framed, account was taken of the work being done in other European countries on compensating the victims of crime.

The bases of the legislation on the subject were clearly brought out during the parliamentary debates. The intention is that the community as a whole shall accept an obligation towards the victims of offences which endanger life or physical well-being. The state guarantees payment of compensation to victims who are the most deprived and
who cannot be compensated through the resources or the processes of ordinary law.

This ideal of communal solidarity and responsibility largely underlines the conditions and the procedure of compensation analyzed below.

**Conditions of Compensation**

The conditions to which compensation from public funds for victims of crime is subject relate to the cause of the injury, the loss or damage, its nature, the subsidiary nature of state compensation, and, above all, the behavior of the victim.

(i) *The cause of injury, loss, or damage:* By the terms of the Act, the injury, loss, or damage suffered must result "from willful or involuntary acts which have the material features of an offence".

The idea behind this formula is that once the deeds giving rise to the injury, loss, or damage are held to constitute a crime, the primary duty of the authority responsible for dealing with the applications for compensations is to consider the material nature of the crime rather than their legal status. In other words the facts are to be ascertained and the legality is not to be quibbled about. It is thus immaterial whether the perpetrator of the crime in question is being prosecuted or whether he or she can not be prosecuted by reason of, for example, death or insanity or absence of identification or other legal infirmity. Besides, the judicial authority responsible for the decision on compensation is not required to await the outcome of any criminal proceedings. The raison d'etre for this specific exception to the general rule that civil proceedings should await the outcome of criminal proceedings is one of equity. There is no point in making the victim await the conclusion of possibly lengthy criminal proceedings when all the conditions for granting compensation have been met. Also, the crimes giving rise to the injury, loss, or damage may constitute a willful or an involuntary offence. The term "offence" covers both indictable offences or crimes and petty offences or contraventions. The victims of foreign countries are also treated in the same way as the French nationals. All victims, whatever their nationality, may apply for the benefit under the provisions of the Act.

(ii) *The nature of injury, loss or damage:* First of all, the injury resulting from the offence has to be physical. The criminal acts just have resulted either in death or in permanent disablement or in total incapacity for work exceeding one month.
. Secondly, the harm resulting from bodily injury must entail financial loss which is defined as "a loss or reduction of income, an increase in expenses or unfitness to carry on an occupation". It becomes operative if a person has to stop work for a time or has a change of occupation, or is compelled to give up any future practice of a profession appropriate to his or her abilities, even if at the time of the offence he or she did not have a professional occupation (e.g., students or unemployed persons). It also applies to anyone whose injuries require prolonged or expensive treatment or whose disablement necessitates assistance. The dependents of a deceased victim personally entitled under existing legislation to reparation are also entitled to receive such compensation.

On the other hand, material, moral or cosmetic injury, pain or loss of enjoyment of life is not taken into account.

(iii) The subsidiary nature of state compensation: This is a fundamental principle. The state compensates the victims only if they have no other right to compensation and are suffering serious hardship as regards their material circumstances. In translation, the phrase "lack of any other right to compensation" has certain vagueness. It means not only compensation by the perpetrators of the offence, the accessories to it, and those responsible in civil law but all other means which the victims may have of obtaining compensation (e.g., personal insurance, social security, friendly, legislation on industrial accidents, guarantee fund for road or hunting accidents).

In practice, compensation can only be awarded if it proved for example, that the perpetrator of the offence is Insolvent, unknown, or at large (together with any other person who is responsible in civil law) and that the victim has no other rights to compensation.

Such reparation or compensation must, however, be real and sufficient to preclude the granting of compensation from public funds.

Thus, if a victim can not secure enforcement of a judgment awarding damages (this situation could arise, for example, if the convicted person resides in a foreign state where French judgments can not be enforced either de facto or de jure) he or she will have the right to submit a claim for compensation to the Board.

The same will apply to injured persons who do not receive sufficient reparation; if
for instance, the perpetrator of the offence can only pay part of the damages which he or she has been ordered to pay. It is also applicable if the victim has only limited insurance cover for his or her injury or if such injury, loss, or damage is only partly compensated for by a welfare organization. Obviously, however, if reparation is to be regarded as not effective, there must be factors other than mere difficulties relating to formalities, procedural delays, or the cost of proceedings.

In such cases there are provisions for civil proceedings whereby by assistance can be given to the applicants before a final judgment is delivered on the issue (e.g., provisional enforcement, award of a provisional sum, or even in award chambers of sum under the terms of Article 809 of the new Civil Proceedings Code).

(iv) Serious hardship incurred by the victim: As has already been pointed out, the communal solidarity on which the French legislation is based supports only the most deprived victims. The state accordingly compensates only those persons who, because they can not be compensated for their injury, loss, or damage, incur hardship as regards their material circumstances. It is the final help for those victims of criminal offences who have no other source of help to look to.

In other words, if the victim's financial position and resources after the offence are such that his or her needs can continue to be met normally, with those of any dependants, no compensation can be paid by the state. The position is assessed from the documents produced, especially the declarations of income, and from the results of expeditious inquiry.

The compensation awarded to the victims may not exceed a maximum (currently 150,000 francs).

(v) Behavior of the victim: All the condition listed above are concurrent and all have to be fulfilled if the Board is to be able to award compensation. Even if all of them are fulfilled, "compensation may be refused or reduced by reason of the injured party's behavior at the time of the offence or relations with the perpetrator of the offence".

This enables allowance to be made for any imprudence, for example, on the part of the victim. One might cite the case of someone becoming needlessly involved in a brawl and being injured in the process. The provision also prevents compensation being
awarded if it in practice benefits the perpetrator owing to his or her relationship with the victim (e.g., family relationship, cohabitation).

Assessing the victim's behavior and the relations with the offender may in some cases be possible only in the light of the outcome of public prosecution in a court of law, notably in the case of alleged provocation. It has, therefore, been stipulated that the Board may, if it envisages limiting or refusing compensation on such grounds, suspend its decision until the court concerned has given its final verdict. This stay of judgment has to be granted if the victim so requests.

Compensation Procedure

The procedure has been designed to make it as flexible and simple as possible. Applications for compensation will be considered by a Board set up within the jurisdiction of each Court of Appeal. These courts have the powers of civil courts and consist of three appeal judges. The victim may apply either to the Board in whose jurisdiction he or she is domiciled or to that in whose jurisdiction the criminal court dealing with the offence has its seat, if the victim does not live in France he or she may apply to the Board of the Paris Court of Appeal. The application to a Board is made by a petition submitted with a minimum of formality. The petition must contain certain information concerning the identity of the victim, the cause and the nature of the injury, loss, or damages, the victim's financial position, etc.

Once the petition has been entered, an inquiry is started by a member of the Board, who may get any necessary investigations carried out. During the course of the inquiry a provisional sum may be awarded to the applicant. When the judicial inquiry is completed, a date is set for the hearing. The views of each party may be stated. The state is represented before the Board by the, Treasury's legal adviser. The decision rendered by the Board can be challenged before the Court de Cassation.

The Act contains provisions relating to the subrogation of the state to the rights of the victim. It also provides that if the victim receives compensation from another source after compensation has been awarded by the Board, the state can ask for the refund of all or part of what it has paid.
4.2.3 FEDERAL REPUBLIC OF GERMANY

In May 1974, the federal government circulated a draft law on compensation for victims of crimes of violence and submitted it to the legislature. After thorough deliberation, both the houses of parliament adopted the draft practically unchanged. The act was promulgated in May 1976 (Bundesgesetzblatt, 1, p. 1181) and became operative on 16 May 1976.

The legislation stems from the view that the community has a special responsibility if the citizens cannot be protected from becoming victims of crimes of violence. The Act is designed to give adequate compensation to those who have become victims of such crimes and the dependants surviving those who have died as a result of the crime; the latter should be freed at least from the financial worries created by the loss of their breadwinner. Therefore, the Act provides that, upon application, the victim of a crime of violence and his survivors may be paid compensation for damage to his health or pecuniary damage suffered as a result of that crime according to the Federal War Victims Maintenance Act (BVG) which is applied mutatis mutandis. This means that the crime victims are treated like war victims and are entitled to the same benefits as war victims are. Thus, the victim's compensation has been integrated into the framework of the social security system.

The German legislation bears the stamp of Germany's historic circumstances. At the end of the Second World War, the Federal Republic of Germany had on her hands over one million war veterans who had been disabled and needed state assistance. To attend to their problems, the Disabled Veterans' Assistance Agency was set up. On completion of its work, the Agency and its infrastructure were switched on to the task' of operating the victims' compensation legislation. The benefit under the Victims' Compensation Legislation, read with the BVG, comprise, above all, medical and curative treatment as well as measures required for vocational rehabilitation. If the earning capacity has been reduced- not only temporarily - by 25 per cent or more, a basic pension is paid which is independent of other income and is determined by the degree of the damage to health. If the earning capacity has been reduced by 50 per cent or more, compensation for the impairment of career or vocation and a supplementary pension is paid. By the compensation for the impairment of career or vocation the loss of damage sustained is
made up: the supplementary pension serves to secure the livelihood, other income being taken into account. The helpless persons are granted a nursing allowance. If the victim has died as a result of the offence, the widow, the orphans, and, under certain conditions, the parents are entitled to survivors’ claims and free medical treatment. The widows and the orphans also receive the basic pension and, under certain conditions, a supplementary pension depending on their income. Finally, the widows may be granted compensation, the amount being dependent on the deceased’s position and income. The parents’ pension depends, inter alia, on the amount of their other income.

The Act finally enumerates the crimes which may give cause to a claim for benefits. The damage to health must be the result of willful, unlawful assault against a person (the victim or another person) or the result of the lawful defence against such an assault (for instance self-defence, defence of another or statutory necessity). Willful poisoning and crimes committed by means causing a common danger (for instance, arson, bomb attacks) are equated to assaults. The benefits are paid regardless of whether the offender is identified or convicted. The offences committed through negligence are excluded, and so are the offences which are not directed against the physical integrity of a person, e.g. offences against property. Besides, all traffic offences are excluded; any damage suffered as a result thereof is covered by the system of compulsory third party insurance.

The scheme provides for a subrogation in the victim’s claims to the extent to which he is compensated under the Act. The remaining claims for damages, such as for pain and suffering must be brought by the victim himself against the perpetrator. The Act applies to the offences committed on or after 16 May 1976 in the Federal Republic of Germany or on a German ship or aircraft. Foreign nationals are not entitled to the benefits under the Act unless a German national injured in their home country is entitled to similar benefits (reciprocity clause). This means that the vast majority of foreigners, including Indians, are not entitled to the provisions of this legislation if they become victims of criminal offences in the Federal Republic of Germany, since there is no such legislation benefiting Germans in most parts of the world.

The benefits under the Act are not granted if the victim caused the injury or the damage himself or if, for other reasons, especially those based on the claimant's own
conduct, it would appear inequitable to award compensation. Benefits may be refused if the victim does not contribute to elucidating the facts.

The claims for compensation are considered and decided by. The War Victims Benefits Agencies (there are fifty-one agencies). The claims are justifiable and are adjudicated by the social courts.

The cost of the 'implementation of the Act in its first year of operation had been estimated at about 10 million DM.

4.2.4 ITALY

In the Italian legal system, the basic provision governing compensation for damage arising from a criminal act is contained in Article 185 of the Penal Code, whereby "a criminal act causing damage of a patrimonial or non-patrimonial nature imposes an obligation to pay damages on the guilty person and those who, according to the civil law, must answer for what he has done".

On the basis of this provision, which has its parallel in civil law in Article 2043 of the Civil Code ("any fraudulent, malicious or negligent act that causes an unjustified injury to another obliges the person who has committed the act to pay damages) the person injured by the criminal act can take legal action to demand payment of damages, choosing between the two traditional ways of appearing as plaintiff in criminal proceedings or bringing an action before the civil court having jurisdiction.

In both cases, however, damages are ordered against the guilty person, or against the persons mentioned in Article 185 of the Penal Code, while under the present legislation on provision exists for damages to be paid out of public funds, applicable in general to all crimes.

Since Italy has earned notoriety for violent crimes, a provision for the state to be responsible for assisting the victims of criminal acts has been clearly felt. In fact, a clause included in a prison reform bill contemplates the establishments in the Ministry of Justice a "fund for helping and assisting victims of crime".

The funds available - coming from legacies; donations, and contributions and from the difference between the remunerations payable for the work performed by the various categories of prisoners and the amounts actually paid to them - are to be used to help and
assist those victims who, on account of crimes committed against them, "are in a proven state of need".

Furthermore as far as injuries caused by the circulation of motor vehicles and boats are concerned, Law No. 9 of 24 December 1969, dealing with compulsory insurance for civil liability established within the National Insurance Service (INA) a "fund of guarantee for road victims".

This fund receives payments from insurance companies equal to a percentage of the premium collected for each insurance contract and is designed to pay damages in cases where:

(a) The accident was caused by unidentified vehicle or boat;
(b) The vehicle or boat was not insured;
(c) The vehicle or boat was insured by an Italian insurance policy with a company which, at the time of the accident, was being compulsorily wound up and declared insolvent, or became such at a later date.

The Ministry of Justice has under its consideration legislation which will place responsibility on the state for the payment of damages arising from a crime. Irrespective of the ultimate civil or criminal liability of the author of the act.

This form of reparation should be restricted to those who have suffered bodily harm on account of crimes committed with violence or during police operations to prevent crimes or to arrest those responsible.

4.2.5 THE NETHERLANDS

The idea of establishing a compensation fund whereby compensation would be paid from government funds to victims of serious crimes of violence came up in the Netherlands around the year 1970. The British experiment was used as a model.

In 1972, a Bill incorporating provisional regulations for the establishment of such a fund was submitted to the States-General. The Bill was adopted in February 1975 by the second chamber and after its approval by the first chamber of the Dutch parliament became law on 1 January 1976.

Under the law, payment can be made from the Commission Fund to anyone, whether
of Dutch or of foreign nationality, who has sustained severe bodily injury as the result of a crime of violence committed in the Netherlands, and to the relatives when the victim has died as a result of the crime. Those regarded as relatives are the victim's surviving spouse, the children, and the parents if they were receiving financial support from the victim.

The term "crime of violence" is not defined in detail in the legislation. Acts committed without criminal intent, i.e., most traffic offences, are, however, excluded. The crime has to be committed in the Netherlands, and for a crime committed outside no compensation can be made. If the offence is committed abroad, but on board a Netherlands ship or aircraft, compensation is possible, provided the victim had Dutch nationality.

The amount of compensation to be given is determined according to what is just and fair. When awarding compensation, both material and immaterial damages are taken into account, provided they are the direct result of the injury inflicted or of the death of the victim. Damages not directly caused by the injury, for instance, in the case of theft with violence, the value of the object stolen, can not therefore be taken into consideration when awarding compensation. Moreover the maximum amounts of compensation are fixed: in the case of material damages a sum of Dfl 25,000, and for immaterial damages a sum not exceeding Dfl 10,000.

No compensation will be awarded in case where the victim's financial circumstances are such that he can bear the damages himself without excessive hardship.

No compensation is awarded in cases where the victim or the relative was partly responsible for the crime; in other words if the victim provoked the crime. Compensation is in principle possible in the Netherlands in cases where the offender and the victim are members, or were members, of the same household.

Compensation is of a supplementary nature; that is, it is only awarded in respect of damages which can not be claimed in any other way. No compensation is awarded in respect of:

(a) Damages that are or can be compensated by way of civil law (for instance, damages against which the victim is privately insured),
(b) damages for which compensation is or can be provided in some other way (e.g.,
damages which are covered by social security schemes).

In doubtful cases, or if civil proceedings would be time consuming, the
Compensation Fund is, nevertheless, empowered to award compensation.

If the damages amount to less than Dfl250, no compensation is payable.

When the Compensation Fund awards compensation, it assumes the victim's rights
against the offender, up to the amount of the compensation awarded.

The request for compensation from the Fund has to be submitted within six months
after the date on which the crime is committed or the victim has died. Any request
submitted after two years of the perpetration of the crime is not admissible. It is not
necessary for the crime to have been reported to the police.

The requests for compensation from the Fund are considered by an independent
committee of five members. The applicant may plead his case at the Court of Appeal in
The Hague if he wishes to appeal against the committee's decision, in cases where:
(a) Compensation was refused, or
(b) The amount awarded was so small that the committee had apparently not reached a
fair decision.

The (transferable) right to compensation from the Fund arises only when the
committee has approved the application for compensation.

The committee is to report each year to the States-General on its activities and the
sums paid out. A sum of one million guilders a year was set aside for the Fund in the
budget of the Ministry of Justice for the first year.

The legislation has retrospective effect to crimes of violence committed on or after 1

4.2.6 NORWAY

The regulations relating to compensation from public funds for personal injuries
caused by punishable acts are adopted by a Royal December of 12 March 1976. The
scope of the regulations is as discussed below.
Nature of Injuries

To the extent deemed reasonable, the state shall grant compensation in accordance with the regulations for personal injuries caused by willful assault or by other punishable acts characterized by violence or use of force. The same shall apply to personal injuries sustained in connection with the assistance rendered to the police in arresting the wanted offenders, in preventing or attempting to prevent the commission of a criminal offence, or in lawfully apprehending or attempting to apprehend an offender.

Compensation is also payable if the offence is committed in a state of insanity or unconsciousness (Section 44 of the Penal Code), or by a person under 14 years of age (Section 46 of the Penal Code), provided that the act, apart from this, would be punishable as stated above.

If the personal injury results in death, compensation may be granted for the loss of the bread-winner to the person or persons who, at the time of death, were wholly or partly maintained by the deceased or for whose support he was legally responsible.

In conjunction with personal injuries, compensation may be granted for damage to ordinary clothing, professional appliances, and other personal effects which the injured person (the deceased) carried on his person at the time the injury was inflicted.

Compensation from public funds may be granted when the injury is inflicted within the kingdom of Norway or on board a Norwegian vessel, a Norwegian drilling platform, a Norwegian aircraft, or a device or an installation for exploring and/or exploiting natural resources on the Norwegian part of the continental shelf.

In special cases compensation may be granted for injuries inflicted abroad if the injured person or the surviving dependant claiming compensation has his habitual residence in Norway.

Compensation in pursuance of these regulations is payable:

(a) To the offender's relatives in the directly ascending or descending line, to the spouse cohabiting with him or to another person living with him in some kind of matrimonial cohabitation, unless special circumstances should render this reasonable;
(b) For injuries arising from motor vehicle accidents, unless deliberate intention can be proved.

Normally compensation is payable only if the police are notified without undue delay of the punishable act together with a petition for punishment and provided that such a petition is not subsequently withdrawn. In addition, it is normally required that the injured person should request that his claim for damages against the offender be included in any criminal proceedings instituted against the latter. In special cases, compensation may be granted even though the conditions mentioned above are not fulfilled.

Assessment of Compensation Grant

Compensation for the injury shall be granted by an amount deemed reasonable in each case. Further to this, the usual rules for assessing damages with respect to personal injuries or loss of breadwinner shall apply, although subject to the following special rules:

1. Compensation shall not be granted if the loss for which compensation from public funds might have been claimed is less than NKr500;

2. Compensation shall be limited to a maximum of NKr100,000;

3. In assessing the amount of compensation full deduction shall be made not only for damages due from the offender himself (I.e., restitution ordered by a criminal court as part of criminal proceedings) as well as benefit due from social insurance and pension schemes, but also for other payments such as insurance coverage which the person applying for compensation has received or will receive as a result of the injury,

4. Injury of a non-economic nature shall not be compensated, unless there are special reasons for so doing.

Compensation may be reduced or even denied if the injured person (the deceased) or the surviving dependant claiming compensation has himself contributed to or caused the injury through negligence or by some other fault. The same applies if the injury in other that the granting of compensation from public funds, in whole or in part, must be considered unreasonable.
Procedure

The person claiming compensation is expected to submit a written statement to the effect that his claim against the offender passes to the state to the extent that the same disburses compensation by virtue of these regulations. The Ministry of Justice decides whether, and if so to what extent, the state's claim against the offender shall be pursued.

The claims for compensation from public funds shall be decided by a panel consisting of three members with personal deputies appointed by the King of Norway for a period of four years. The chairman and the deputy chairman should possess law degrees. The King decides who should be the chairman. The secretariat of the panel is provided by the Ministry of Justice.

The penal may empower the chairman to adopt decisions approving the claim of the person applying for compensation. The panel has to submit annual reports on its activities to the Ministry, which in turn submits reports to Storting, the Norwegian parliament. The Ministry shall issue specific rules on the organization and the duties of the panel.

Proceedings of the Panel

The injured person or his surviving dependants shall submit their claims for compensation to the panel through the secretariat in the Ministry of Justice. The ministry shall prepare an application for claims and shall prescribe the rules concerning such information as the panel may require to be submitted.

The offender is recognized as a party to the proceedings in the case.

Normally the panel renders its decision on the basis of the documents in the case. If the panel itself so decides, or one of the parties so requests, a hearing conducted orally, to which the parties shall be summoned, shall be held prior to the decision being rendered. The hearing is held in camera, prohibiting public gaze into the proceedings.

The final decision on the compensation claim may be postponed until the penal case against the offender has either been discontinued, or finally decided by a waiver of the prosecution or by an option of fine, or has become res judicata. If a civil action for damages has been instituted against the offender, the decision may likewise be postponed until the latter case has become res judicata.
The penal is expected to state the grounds for its decision on the claim for compensation.

Appeal: The Ex gratia Compensation Board functions as the appellate authority in respect of decisions rendered by the panel. If the panel deems it necessary, it may on its own initiative reverse a decision to the benefit of the applicant.

Disbursements, Advances, and Reimbursements

Compensation is paid when the panel has rendered its decision. If the application can not for the time being be decided for reasons not attributable to the person claiming compensations, the panel may grant an advance to the extent it deems reasonable.

The demand for reimbursement of compensation grants or advances already disbursed may be made if the applicant has given incorrect information or withheld information of importance to the disbursement. The same applies if his losses are subsequently covered.

Cost of Proceedings

The Treasury meets the cost of the activities of the panel and the Ex gratia Compensation Board.

In special cases the panel may decide that a party to the case shall wholly or partly be reimbursed for expenditure which has been necessary to insure a proper handling of the case before the panel.

Provided the panel deems it necessary, a counselor other authorized agents may be appointed on behalf of a party. In such a case the panel shall stipulate the agent's remuneration, which shall be paid by the Treasury.

If an appeal is lodged against the panel's decision and the decision is amended in favour of the applicant, he may be granted reimbursement in whole or in part of the essential costs which it has been necessary to incur in order to get the decision amended, provided there are no special reasons against granting such reimbursement.

These regulations became operative with effect from the year 1975.

4.2.7 SWEDEN

Social Insurance

All residents in Sweden, irrespective of nationality, are covered by sickness
insurance. The insurance reimburses most of the expenses incurred by the insured person for medical or dental care and provides sickness cash benefits.

When the medical care is performed by a medical officer, the insured thus pays a fee of SKr15 (SKr 100 corresponds to about £14 or EL 201) for each visit to the doctor's surgery. The insured is charged no extra cost for X-ray treatment and laboratory examination prescribed by the doctor. When treated by a private practitioner, the fee is SKr25-35.

The insurance also compensates dental care, as a rule, with 50 per cent of the fee, which is fixed in a dental care tariff, established by the government. For especially expensive treatments the insurance reimburses 75 per cent of the amount in the tariff that exceeds SKr1, 000.

Compensation is also made for hospital care, convalescent care, traveling expenses, and cost for medicine, but the insured himself must pay part of the expenses.

The sickness cash benefit is payable with an amount corresponding to 90 per cent of the insured person's income up to a yearly income corresponding to SKr80, 200.

In case of disability (when the insured person's working capacity is reduced by one-half or more), disability pension is paid with an amount at best corresponding to 60-90 per cent of the person's previous income. Pension also can be paid to the widows and to the children whose father or mother is deceased.

There is also legislation providing for compensation for persons injured at work or during military service.

*Voluntary Insurance*

In Sweden voluntary life insurance and accident insurance are quite common, particularly in the form of group insurance schemes for employees.

The insurance companies offer, as a complement to the householder's comprehensive insurance, an "assault insurance". This scheme entitles the insured, his wife, and his children to compensation from the insurance company for personal injuries arising from any intentional crime of violence. The injuries related to the insured person's profession or trade or to military service are excluded. It is estimated that about
90 per cent of the inhabitants in Sweden are protected by this insurance scheme. The number of injuries which annually come within the scope of the scheme is approximately 409-450. The total amount paid by the insurance companies, in the year 1973, was estimated at SKr1.8 million.

In accordance with a government decree a system for compensation ex gratia from public funds for victims of crime came into operation in 1971. The system has been modified in some respects with effect from 1974.

Compensation is granted by the government and the applications are to be made to the Ministry of Justice. No appeal is possible against the decision of the government.

Compensation is granted for personal injuries caused by crime (intentional crimes as well as cases of criminal negligence) committed in Sweden or committed elsewhere against any person permanently resident in Sweden. Thus, one does not have to be a Swedish national for the purpose.

The victim of the crime may receive compensation even if the offender is not known or can not be prosecuted (for example, because of youth or insanity or absence).

If the offence has not been reported to the police, compensation will not be paid unless the applicant presents valid reasons for not having done so.

Compensation is restricted to distressing cases and is paid according to the need of the applicant. The amount of compensation will not exceed the damages in civil proceedings. Consideration is given to compensation which could be paid by the author of the crime, the social security benefits, and to insurances. For this reason no person who is "assault insured" will receive compensation from public funds. This also applies to injuries caused by motor traffic.

Compensation can - in addition to compensation for loss of earnings, for medical and dental expenses - be granted for pain and suffering as well as impediment or other permanent damage. In practice, the amount of compensation for personal injuries has included damage to, for example, clothes. Where the victim has died in consequence of the injury his dependants may be compensated for loss of maintenance.

If the victim has in some way contributed to the damage done, the amount of
compensation can be reduced or the application rejected. From the compensation an excess of SKr200 (about £25, F2OD) is always deducted.

The victim has to transfer his claim against the offender to the state inasmuch as he receives compensation from public funds. This is meant to avoid double payment. The right of recourse is not used in practice.

The yearly costs of the Swedish system were at first estimated at SKr1,000,000. The actual cost has been as follows:

<table>
<thead>
<tr>
<th>Financial year</th>
<th>Applications considered</th>
<th>Actual costs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Received</td>
<td>Awards</td>
</tr>
<tr>
<td>1971/72</td>
<td>92</td>
<td>15</td>
</tr>
<tr>
<td>1972/73</td>
<td>231</td>
<td>45</td>
</tr>
<tr>
<td>1973/74</td>
<td>252</td>
<td>98</td>
</tr>
<tr>
<td>1974/75</td>
<td>269</td>
<td>138</td>
</tr>
<tr>
<td>1975/76</td>
<td>268</td>
<td>149</td>
</tr>
</tbody>
</table>

**Damage Caused by Fugitives**

Since 1948, compensation is paid by the state for personal injury, loss, and damage caused by the persons escaped or on temporary leave from a borstal institution, a prison or a public institution for alcoholics.

Compensation is granted ex gratia. It is not necessary that the injury or damage is caused by a crime. Compensation is paid without regard to the need of the applicant, \$1\$ the amount is reduced with respect to insurance. Reduction is also made if the applicant has been careless about his property, e.g., by not using the steering-wheel lock on a car. The most frequent crimes are vehicle theft and burglary. Compensation as a principle is not paid for the loss caused by such crimes as fraud and embezzlement.

The grant of compensation is made by the Board of the borstal institution, by the Central Social Welfare Board, or by the government according to the amount of compensation. Awards are made in about 2,000 cases year. The costs of this scheme have risen to about SKr 1,000,000 per annum.
Damage and injuries caused by the persons escaped or on temporary leave from mental hospitals is in a similar way provided ex gratia by most of the country councils.

Compensation from public funds is (since 1935) paid for personal injury and damage to property attributable to the giving of help to any police officer who is engaged in arresting or attempting to arrest an offender or a suspected offender. Compensation is equivalent to damages in civil proceedings. The system is administered by the country government boards.

Legislative Activities

The whole question of compensation for victims of crimes in Sweden has been considered by a Royal Commission appointed in September 1974. The Commission's principal task was to consider whether compensation should be paid not ex gratia but of right, how the system for compensation for personal injuries could be improved, and if compensation should be paid for damage to property.

The principal recommendations of the commission cover the following:

Personal injuries will be compensated without regard to the need of the applicant. Compensation will correspond to the amount of damages in civil proceedings, reduced by any other compensation that is due to the applicant because of the crime (e.g., insurance). A (variable) maximum level is set at (for the present) SKr214, OOO. Periodic payments which are protected against inflation can be awarded to a disabled person with at most SKr32, OOO per annum.

The rules for compensation for crimes committed by fugitives are maintained in substance. Compensation will be paid for other damages caused by a crime to a person in cases when the loss or damages is related to property necessary for his maintenance. Crime such as fraud and embezzlement will, as a principle, not be covered.

The maximum level of compensation in cases other than personal injuries is set at SKr107, OOO.

The afore-mentioned compensation scheme is administered by a special administrative board.

4.3 The North American Scenario

In the United States, California was the first federating State to legislate on victim
compensation, in the year 1965. Since then 28 States followed suit as indicated below:

<table>
<thead>
<tr>
<th>State</th>
<th>Year</th>
<th>State</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>1972</td>
<td>Montana</td>
<td>1977</td>
</tr>
<tr>
<td>California</td>
<td>1965</td>
<td>Nevada</td>
<td>1969</td>
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<tr>
<td>Connecticut</td>
<td>1978</td>
<td>New Jersey</td>
<td>1971</td>
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<tr>
<td>Delaware</td>
<td>1975</td>
<td>New York</td>
<td>1967</td>
</tr>
<tr>
<td>Florida</td>
<td>1978</td>
<td>North Dakota</td>
<td>1975</td>
</tr>
<tr>
<td>Georgia</td>
<td>1967</td>
<td>Ohio</td>
<td>1975</td>
</tr>
<tr>
<td>Hawaii</td>
<td>1967</td>
<td>Oregon</td>
<td>1977</td>
</tr>
<tr>
<td>Illinois</td>
<td>1971</td>
<td>Pennsylvania</td>
<td>1976</td>
</tr>
<tr>
<td>Indiana</td>
<td>1978</td>
<td>Rhode Island</td>
<td>1976</td>
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<tr>
<td>Kansas</td>
<td>1978</td>
<td>Tennessee</td>
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<tr>
<td>Kentucky</td>
<td>1976</td>
<td>Texas</td>
<td>1979</td>
</tr>
<tr>
<td>Maryland</td>
<td>1968</td>
<td>Virginia</td>
<td>1976</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>1968</td>
<td>Washington</td>
<td>1974</td>
</tr>
<tr>
<td>Michigan</td>
<td>1976</td>
<td>Wisconsin</td>
<td>1976</td>
</tr>
<tr>
<td>Minnesota</td>
<td>1974</td>
<td></td>
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</tbody>
</table>

The thinking on the subject of victimological research surveys and crime victim compensation programs received a fillip in the United States when the victim compensation legislation became a fait accompli in New Zealand in 1963 and in the U.K in 1964. The main planks on which the American victim compensation schemes rest are:

(a) Public support as revealed by the public opinion,

(b) Appreciation of the fact that traditionally the criminal justice system has been insensitive to the victims and the witnesses, and

(c) As means to reduce the fear of involvement on the part of the citizen in playing his role in the social task of crime prevention.

The interplay of three variables and their suffusion determines the efficacy of the schemes in the States. The variables are the availability of public or private funds, the extent of financial need brought about by criminal victimization in individual cases, and the availability of political support for public compensation to crime victims. The remedies to persons involved in criminal cases as victims include civil remedies, private insurance, public assistance, and restitution.

**4.3.1 Civil Remedies**

Under the Anglo-American system of law, the state gradually assumed many of the
"function" of the victim in legal proceedings. In criminal matters this resulted in the "gradual elimination of the victim from the criminal law proceeding, while the state assumed responsibility for action against the offender and relegated the victim's interest to common-law procedures".1 Thus, the state assumed the obligation to discover, apprehend, try, and punish the offender for criminal offences; as a result, the victim yielded his right to seek additional satisfaction for the criminal offence, but retained the right to sue the offender in civil court for any wrongs that he might have committed against the victim. While in principle this theory is sound, it has proved to be most impractical as a means of attaining financial assistance or reparation for the victim of crime. The most obvious drawback of such a system is the relatively low percentage of offenders apprehended; the latest published crime figures indicate that only 21 per cent of all index crimes are detected by the arrest of the offender in u.S.A.2 It is obviously not possible for an aggrieved victim to institute legal action against an offender who remains unapprehended.

Even if the offender is apprehended, there, however, remain major impediments in the path of winning a civil action against him. The offender generally has few, if any; reserves of funds, and most of these would be expended in the process of his defence against the criminal charges. If sentenced to prison, the offender has little chance of earning an income which would serve as the basis for a civil award. Finally, the civil court process itself is extremely time-consuming for the victim's own funds. Richard J. Gross, Administrator of the North Dakota victim compensation program, cites a study by the National Commission on the Causes and Prevention of Violence in which it was reported that "only 1.8 per cent of the victims of crime ever collect damages from the perpetrator."3 It would thus seem that the avenue of civil remedies has been effectively blocked for the victims of crime in the United States.

Leroy Lamborn has noted the emergence of a new use of the civil courts for the interest of victims: obtaining reparations from third parties who "could have prevented the commission of a crime through the exercise of the due care. Such liability [however] extends only to those having a duty to have interfered with the offender or on behalf of the victim."4 By requiring the third parties to pay reparations, Lamborn notes that
negligence which may allow the commission of a crime may be reduced. Such remedies are, however, employed infrequently; in addition, suits against governments would often require a waiver of sovereign immunity. While this approach may hold promise for some, it is unlikely to answer the needs of the vast majority of crime victims.

4.3.2 Private Insurance

In many cases, private insurance offers the best protection against serious financial loss as a result of crime. Certainly, it is the best protection against property loss, as the victim compensation programs generally do not offer systematic reparation for lost property. The popularity and effectiveness of insurance are cited as reasons why property offences are not covered by the victim compensation legislation in the U.K. However, reliance on private insurance as the sole means of victim reparation raises a number of troubling issues. The first of these is, of course, equity. Should the person unable to afford comprehensive medical insurance or the person temporarily without insurance due to a change in employment status be penalized? Should society allow the lower income classes to bear the brunt of their victimization because they are not able to obtain insurance? According to a 1979 study of the health care coverage, an estimated 11 to 18 million people were without health care coverage in 1978, representing some 5 to 8 per cent of the total U.S. population. The majority of them were young, lower-income, and unemployed individuals. It is precisely these people who are most likely to be victimized. Finally, the insurance companies themselves may pose significant barriers for certain classes of individuals. Health insurance may be difficult to obtain or extremely costly for the chronically ill, the elderly, or the poor. Even those individuals who maintain some form of health care insurance may find that their coverage is inadequate for catastrophic expenses of the type which may be incurred by very seriously injured crime victims. It has been estimated that 15 per cent of those covered may not have this type of protection through private insurance. In addition, they are likely to be substantial numbers of persons "with insufficient protection against out-of-pocket health expenditures that are high relative to income". Thus, it seems that private insurance would provide an uneven and somewhat biased form of reparation for losses resulting from crime.

4.3.3 Public Assistance

Welfare, social security, Medicaid, Medicare, and other forms of public assistance
may provide some measure of financial relief to the crime victims. Because the administrative structures for these programs are already established in every community, these forms of assistance may be among the most readily available for many victims. Unfortunately, public assistance also presents several drawbacks for the crime victims. Most of the programs limit the availability of benefits to individuals meeting certain levels of financial need, age, or disability, and these limitations could bar substantial members of the victims from public assistance benefits. In addition, the level of benefits provided may not fully compensate the victims for the true amount of loss they experienced as a result to the crime.

4.3.4 Restitution

The concept of offender restitution is appealing to many, and is often linked with victim compensation. For example, a number of State victim compensation statutes specifically require that the State be empowered to exact restitution payments from the offenders as a means of offsetting the financial burden of victim compensation. The Victims of Crime Act of 1978, which narrowly missed passage in the House of Representatives and the Senate in the closing hours of the 1978 congressional session, also required that the States should provide for offender restitution in order to gain eligibility for federal support for their compensation programs.

The proponents of restitution often cite as advantages the possible rehabilitative function of restitution, the inherent justice of letting the punishment fit the crime, and the fact that restitution would return the victim's right to exact punishment from the offender himself. The Law Enforcement Assistance Administration has sponsored a number of pilot restitution programs. For example, in Georgia some offenders may be diverted to the restitution programs instead of being placed in prison. The offenders are allowed to work in the community during the day, and return to the Restitution Centre in the evening. Their paychecks are forwarded to the Restitution Centre, where appropriate sums are deducted for the restitution payment. While the program appears to be successful to date, not enough is yet known about its cost-effectiveness or suitability for other jurisdictions.

The barriers to restitution are many. First, and perhaps the most limiting, is the fact that restitution would be available only in those cases in which the offender is
apprehended and convicted. As noted above, this number represents a relatively low percentage of all victimizations. Even if the offender is apprehended, the chances for a meaningful restitution program are minimal in most of the cases." As Alan Harland has noted, "The victim's claim to restitution must assume its place among the hierarchy of traditional (criminal justice) system goals of deterrence, deserts, rehabilitation, and incapacitation. If these goals are in conflict with restitution, victim will usually drop out of the picture. Additionally, Lamborn has noted that restitution may be ordered infrequently because of the extra time and effort such an order would require from the criminal justice system.

The financial condition of most of the offenders may also prevent restitution. The offender will most likely spend what little funds he has available on his criminal defence. If sentenced to prison he will most likely participate in a prison industries program where the wages are so inadequate as to preclude restitution payments. If the offender is sentenced to probation or released on parole, the judges and the probation officers may be reluctant to enforce the restitution orders, fearing that the imposition of this extra burden may prejudice the offender's chance of successful readjustment. Finally, the offender may indeed experience considerable difficulty in making the restitution payment. Most of the offenders for any major crime are under 18 years of age. Even the adult offenders may have income levels which effectively preclude restitution payments.

### 4.3.5 Public Crime Victim Compensation

Although victim compensation also offers several drawbacks as the principal form of financial aid for the victims of crime, it is felt by many to be the most equitable and consistent method of "making the victim whole". Unlike restitution payments, it is available even when the offender is not apprehended. The victim's ability to receive reparation does not rely on the offender's ability to make the payment. In addition the program does not carry the strong bias against the indigent, sick, or high-crime area resident that may be found under an insurance scheme for victim reparation.

The major drawbacks of victim compensation are the costs of the program and the legislators' fears concerning the possible expense of the program if eligibility for
compensation is not restricted to certain limited situations and individuals. These concerns for cost have resulted in several major restrictions on the program such as financial need requirements, minimum claims, maximum award limits, and restrictions on the types of loss compensated. This latter area contains the almost universal restriction against payment for property loss found in existing compensation programs. The effect that these restrictions may have on the availability of victim compensation is dramatic. Harland notes that on a national scale 90 per cent of all victims are excluded from compensation by the property loss restrictions alone. He also notes that the current restrictions on eligibility would allow compensation for only 8 per cent of those qualifying as injured victims of violent crimes. The use of eligibility criteria and restrictions is discussed in greater detail in the next section.

The estimates of financial losses incurred as a result of criminal victimization. Vary widely, and as yet no truly reliable indicator has been developed. However, some attempts to ascertain the losses have been made, and they may be used to provide a general picture of the need for crime victim compensation. As noted above, virtually every victim compensation program prohibits payments for property loss or damage resulting from crime victimization. Instead, the programs focus on payments for medical expenses and loss of income resulting from crime.

In a major study of crime victim compensation cost, James Garofalo and Paul Sutton have developed the estimates of the value of time lost from work and the cost of medical attention for crime victims. Based on data obtained in the 1974 National Crime Survey, the study points out a number of findings which may have some bearing on the need for crime victim compensation. For example, the study has found that the economic resources of the crime victims are often very limited:
- Nearly one-third of the victims of personal crimes were not employed at the time of commission of the crime.
- "It is the lowest income group which suffers both the greatest incidence and risk of total Personal victimization..."

Political support for victim compensation legislation has been easily forthcoming in
many States in the U.S.A. It is one of the programs which readily fetch votes. Whatever opposition exists, it is on the ground of expense.

Virtually every compensation program allows payments for expenses incurred as a direct result of injury or death from criminal victimization. These include medical expenses and loss of wages. Some States offer payments for such costs as non-medical care or occupational therapy necessitated by the injury. For the dependants, eligible compensable losses include loss of support, funeral expenses, cost of replacing services, pain and suffering, mental and nervous shock (especially in sexual offences). Property loss is compensated only in very special cases. The potentiality for fraud and the ready availability of private insurance are cited as reasons for the exclusion of property losses. Motor vehicle offences are invariably excluded in all the State legislation, the exception being when the vehicle is intentionally used to inflict injury. The programs generally place a maximum ceiling on the awards to be paid ranging from $10,000 to $50,000. Most of the compensation programs are done by special agencies created for the purpose. They insure flexibility, informality, accountability, and specialization. It promotes development and administrative expertise, welfare concern, and proper attention to details. Some States have chosen to operate the programs through the workmen's compensation agencies and some other through courts of law. The courts administering these programs experience difficulty in obtaining adequate staff for the victim compensation effort. It is said that many victims in the United States are not aware of the programs in existence. This may be partly due to the unwillingness on the part of the policy-makers to publicize the programs for fear of being flooded with a large number of claims for compensation and thereby having to stretch their financial resources. Yet, many States have implemented some form of public awareness component by the distribution of printed material, public announcements, advertisements through newspapers and instructions to the police and hospitals to enlighten the victims on the availability of compensation and scrutiny of policy reports identify the potentially eligible victims.

The compensation claims have to be made through prescribed forms. An initial screening of the application is done before further processing and then handed over to an investigator. Investigation and verification form the most time-consuming aspect of the
claim's process. The investigation seeks information on the crime, the injuries received, and the victim's behavior during and after the crime, the extent of net loss, and in relevant cases the resources of the victim. Some States allow for an appeal on the original decision in respect of claims. Others do not provide for such procedure. The administrative costs of the schemes in the United States come to 30 per cent of the total budget whereas in the U.K. they are only 11 percent.

The compensable losses include medical expenses, rehabilitation costs, physical disability, loss of the services of a family member, loss of support for dependants, funeral costs, loss of future earnings, mental impairment, and property loss and damage.

A notable feature of the definition of compensable offences in most of the States is that the statutes contain a provision that an act will be considered to be criminal for purposes of compensation, even if the offender lacks the legal capacity to commit a crime tJY reason of insanity, intoxication, very young age, and the like. This provision is based on the premise that legal capacity is irrelevant to the question of eligibility for compensation. In other words, it is enough if a person has suffered by another person's act for him to become eligible to claim compensation.

4.3.6 Eligibility Criteria

Policies concerning eligibility are generally formulated with a view to specifying the intended beneficiaries, to minimize the possibility of spurious claims, to promote the victim cooperation with the criminal justice system, and to contain the potential costs of providing compensation. Apart from the persons who are injured or killed as a result of crime, those acting to prevent a crime or to apprehend a criminal or to help a victim or going to the aid of a law-enforcement officer, become automatically eligible for compensation. In fact, the persons who intervene, as mentioned in the four categories above, are afforded greater scope for compensation since their action is a significant factor in crime prevention and control.

The issue of residential requirements with regard to eligibility for compensation has provoked considerable debate in the U.S.A. Some States extend compensation to the victims irrespective of the States in which they reside; some others confine it to their residents; still others have reciprocal arrangements with the other States. Much of the concern over residential requirements is expected to be remedied by federal legislation on
victim compensation towards which the public opinion is slowly but perceptibly veering round.

The victims related to the offenders (such as parents, children, brother, sisters, wives) are excluded from the eligibility criteria. The over-riding concern prompting this exclusion is that the offender should not unjustly benefit from the award to the victim. If a victim has partially or fully contributed to his own victimization, the law provides for the reduction or a complete denial of compensation. This is one of the functions performed by the investigation or the verification agencies.

Every victim compensation program requires a precondition for eligibility that the crime should be reported to the police within a certain period of time. Although the most obvious goal of the criminal injuries compensation program is to assist the victims of crime, a second objective is to promote popular cooperation with the criminal justice system as part of a program of community crime prevention. The reporting requirement has four advantages:

(a) It improves the chances of locating or identifying the offender and detecting the case.
(b) It makes for better statistics and presenting an overall picture of the crime situation.
(c) It encourages people to do their duty as citizens.
(d) Above all, it curbs fraudulent claims for compensation.

The cooperation of the law-enforcement agencies is a must for most of the compensation programs. Some financial need criteria are adopted by most of the States in awarding compensation. They are governed by the number of dependants, the usual living expenses of the claimant and his family, the claimant's income and potential earning capacity, and his resources. Many administrators of the compensation programs oppose the financial hardship tests on several grounds. First, the tests are difficult to administer. In their attempts to reach a fair determination of the claimants' need, the compensation boards must conduct painstaking investigations of the claimants' financial status. Second, they are costly to administer. The increased administrative costs brought about by these requirements would at least partially offset the savings in awards affected by the tests. Gilbert Geis and Herbert Edelhertz state that the overall program costs may even be reduced, if the hardship requirement is eliminated. Third, the need based tests
may not have as great an impact in controlling the program costs as previously thought. The chief investigator for the New York board has estimated that the compensation program would only be about $150,000 more costly per year, an increase of about ten per cent, if the serious financial hardship test of that State were abandoned. IS In addition, in New York only 2.7 per cent of all claims denied were disallowed on the basis of no serious financial hardship.16 Edelhertz and Geis state that "there were only a very small handful of claims paid in New Jersey [which has no needs test] that might not have been payable in New York or Maryland." The Program administrators are also disturbed by the inequities flowing from the hardship test. Although the administrative rules tend to have a liberalizing effect, the boards must still operate within the bounds set by the statute. Of necessity, then, the boards reach determinations in cases which appear manifestly inequitable when the facts of the cases are compared. The New York board, which considers the serious financial hardship question its most difficult problem, provides an archetypal example involving elderly claimants: "frugal individuals who have saved their money are discriminated against in favour of others who have earned more money but squandered it."

A ceiling is fixed in all the States on compensation claims and there are time-limits within which claims have to be preferred. The process for applying for victim compensation, attending hearings, and even appealing against the original compensation decision varies from State to State. There is a provision for lawyers engaged by the victims of the next-of-kin to be paid fees in addition to the awards made. Here there is a distinct difference between the English practice and the American. In the U.K., the victim compensation boards prefer the victims or their next-of-kin to appear before them in person without the help of any advocate and, if such advocates are employed, the state does not take responsibility to pay them any fees. Yet victims prefer to engage advocates.

All the compensation programs stipulate that the compensation awards should be reduced by the other available payments to the victim from such sources as workmen's compensation, insurance, welfare, medical care, social security, and so on.

4.3.7 Administration of the Programs
The administration of the victim compensation programs is done in one of three ways:
(a) Through a new administrative agency created specifically for the purpose;
(b) Through an existing administrative agency such as the workmen's compensation board whose original jurisdiction is expanded to include victim compensation; or
(c) Through the courts.

In general, the machinery of the courts for administering victim compensation programs is viewed with less enthusiasm than the other two agencies.

There is considerable difference of opinion on the use of volunteers for the administration of victim compensation programs in the United States. Those who are in favour of their utilization point out the increase in the volume of work and the finances available if it is to be administered entirely by regular paid staff. Those who are opposed to it point out that accountability and motivation which are so essential for performing sensitive duties of the victim compensation programs are not conspicuous among the volunteers. But volunteers' services have been proving themselves of great use in the support schemes. There is considerable thinking in the administrative and academic circles on the necessity for liaison and cooperation between the various agencies which are part of the administrative machinery, namely, the police, the medical authorities, the courts and the victims themselves. The opening of a window to the fresh thinking on the subject is afforded by regular lectures on victim compensation to the recruits of police academies and medical schools.

There is general realization in America that the effectiveness of the compensation schemes be judged not merely by the way they handle claims, treat the victims of crime, and disburse the compensation, but also by their ability to reach tile man in the street. The proof of the pudding is in the eating of it. This proof will be profoundly affected by the general awareness on the part of the public of the programs in existence. Apparently, it has not been possible for the education on the subject to penetrate the layers of society to which it is mainly intended. After all, the concept itself is new and many people are not conscious of the victim compensation as a standard government service. The fact that some States have yet to take legislative action strengthens this need in States where the programs has become a fait accompli.

Verification or investigation of the compensation claims is a fairly laborious process.
It includes the following:

(a) Scanning the police reports to ascertain the details of actual occurrence, the victim's contribution in the crime, the identity of the offender, and possible victim-offender relation-ship.

(b) Scrutiny of the hospital records with a view to determining seriousness of injury, the extent of disability, and the estimated duration of disability.

(c) Perusal of the insurance documents with a view to ascertaining the details of payments to the victim for medical treatment or loss of earnings.

(d) Examination of the financial assistance program records with a view to ascertaining the payments that are to be made or have been made from other funds such as workmen's compensation, insurance, and so on.

(e) Ascertaining the information regarding the employment of the victim.

(f) Scrutiny of the personal finances of the victim.

(g) Perusal of the court records to determine the course of criminal case on the particular offence and the outcome of the prosecution, if any.

Every attempt is made to insure that the investigation or the verification process eschews delay and its handmaid, viz., corruption and the resultant hardship to the victims. How far such attempts are effective, it is perhaps too early to say.

The process of investigation and verification has brought in many complaints of delay. Therefore, simplified procedures such as brief verification, dispensing with investigation altogether, and paying compensation on the basis of an application and the police report alone are being tried in some States. The procedures and the tone of hearings by the compensation agencies have come in for considerable comment in the United States. They are set by the decisions concerning the degree to which the burden of proof is to be placed on the claimant, the degree of formality maintained during the hearing, and the public or the private nature of the proceeding. Many claimants do not view the hearings as an opportunity to present all information in favour of the claim; instead, they feel that it is a test of their truthfulness and honesty. This in turn has negative implications as far as the public support for the scheme is concerned. Most
programs provide that their operations, including the hearing itself are a matter of public record and the hearings are open to the public. Realizing that this could be a cause for concern for the victims of sexual offences and, therefore, may be a disincentive to claims, some States have given the option for the administrative agencies to keep their proceedings confidential and thereby bar persons not directly concerned with it from being present at the hearings.

Most victim compensation programs offer some sort of a provision for appeal. The court-administered programs, however, have no appeal provision.

In addition to the administrative review procedures. Many States provide that decisions on victim compensation claims may be judicially reviewed by competent courts.

4.3.8 Mode of Payment

Payment is of two kinds. One is the lump sum payment and the other is payment on installment basis. The latter is generally employed in death or disability cases. It is reckoned that the installment payments entail higher cost of administration than the lump sum payments. There is a provision for a periodic review of these payments with a view to determining if the claimant is still eligible and whether the amount is appropriate. Protracted payments can be modified, reduced, or discontinued if the victim is finally able to return to work or if the dependency status of the claimant changes or if the victim dies of causes unrelated to the injury. Naturally enough, this sort of an option is not available when lump sum payment is made.

4.3.9 Cost of the Programs

Cost has been an inhibiting factor in the victim compensation programs. At least one State has repealed the compensation program enactment in the statute book for two years and the argument is that the federal government has not offered any help from the national exchequer.

The expenditure on victim compensation programs consists of administrative costs and benefit payments. The administrative costs include facilities, staff salaries, materials and supplies, travel and maintenance expenditure of the staff. Some States such as California and Maryland are able to keep their administrative costs as low as 9 per cent of the total compensation budget whereas other States such as Oregon and Pennsylvania
spend as much as 30 per cent on administration, and Florida 79 per cent. No thorough investigation into the causes of this variation from State to State has been made. Benefit payments include compensation for losses of support and earnings, medical expenses, and funeral expenses in cases involving death.

The compensation programs depend on the general tax revenue of the State and the special surcharges imposed on the convicted offenders for their funding. It is said that dependence on the general revenues alone has some disadvantages. If insufficient amounts are allocated from the general revenues, the applicants whose claims are admitted may have to wait for additional appropriations or even till the next financial year. It depends on priorities. Therefore, many States have developed a wide variety of surcharge mechanisms. Convictions are deliberately followed by heavy fines and this money is placed at the disposal of the compensation boards for making payments. It is said that at least three States are able to support their entire victim compensation effort from the funds generated by these methods. Some States complain of difficulty in gaining the requisite cooperation from the courts to collect additional funds. A special source of program fund is the "son-of-sam" provision passed by the New York State in 1977. This law is intended to prevent the criminals from profiting from their crimes by selling the rights of their story to the media or the press. The law requires that any funds which would be provided to the offender on the basis of such a transaction should be deposited in a special account and that the victim injured by the individual in question may receive payments from that account. The offender may also draw from the account for his legal defence purposes. It is admitted that this law has not resulted in substantial payments to the victims. The other sources of funding the programs include proceeds, sales of unclaimed property disposed of by the police, and money earned by the convicted criminals while they are employed in prison industries programs. But these are only of marginal help as far as funding is concerned.

4.3.10 United States Latest Developments

Victim of Crime Act became part of Federal Law in the United States in 1984. In chapter 232, provision has been made for special forfeiture of collateral profits of Crime".
Other Progressive steps taken in the United States include the following:

The U.S. Department of Justice in its Report to the Nation on Crime and Justice includes inter alia (a) an examination of the relationship between fear of Crime and actual risk of criminal victimization (b) the effect of crime on its victims (c) enquiry into the groups of people who are likely and least likely to be victimized or victim-prone (d) examination of the risks of becoming a victim of rape, robbery, murder etc., (e) assertion that victims of murder are more men than women, more young than elderly, more among lower income groups, more than among higher ones, more city dwellers than rural groups, more unemployed than employed people (f) Crime prediction method adopted by the citizens. The Report goes in detail over the reasons for the fact that only one third of the total number-of offences in the United States are reported to the Police—they include unwillingness to report when the offender is known and when minor thefts and are considered too insignificant to be reported. The economic impact of violent crime like cost of medical attention, loss of work pay are sought to be assessed.

It is noteworthy that now 44 of the Federating States have victim compensation laws of their own (as against 29 in 1984). Federal legislation protects victims and witnesses from intimidation (physical and verbal), uses fines imposed by courts to finance assistances to victim. Legislation in several States requires that victims should be notified (a) at key decision points in the trial and sentencing (b) when victim impact statements" (which include description of trauma, fear and emotional impact) are to the included as part of investigation report. A comprehensive Victim Bill of Rights is included in some State laws. Some have an Ombudsman to protect the rights of victims and witnesses during the trial period.

4.4 The Canadian Scenario

Two philosophical reasons are offered in Canada for government to undertake the responsibility to compensate victims of crime. The first argument centers round the social contract concept. Citizens remit taxes to the state and delegate authority to the state. The state, in return assumes an implicit contractual obligation to provide for the safety and well-being of its citizens. Since criminal victimization represents a lapse in the social contract, the state should make amends to the injured citizen.

The second justification for state sponsorship of victim compensation stems from
the welfare function. Government's device welfare assistance programs to insure a basic standard of living for disabled or deprived citizens. Any citizen who becomes a crime victim, excluding victim-precipitated incidents, is a deprived citizen. Consequently, it is incumbent upon the state to extend a helping hand in the form of victim compensation in order to satisfy its welfare function.

All Canadian provinces limit compensable acts to violent crimes and exclude property crimes. Ontario, New Brunswick and the Yukon specify that compensable acts are those violent crimes listed in the Criminal Code of Canada. Other provinces formulate their own lists of compensable acts. A comparison of compensable acts reveals a high degree of similarity among the provinces. All provinces cover victims of rape, child abandonment, assault, murder, manslaughter, poisoning, setting traps with harmful intent, kidnapping, robbery, and intimidation with violence. All provinces, except Saskatchewan, designate victims of rioting, dangerous mischief, sexual relations with a minor, arson, negligence with fire, and sending a false fire alarm as eligible for compensation. High jacking, endangering air-craft safety, and boarding a civilian aircraft with weapons or explosive are mentioned as compensable acts in all provinces except Saskatchewan and Quebec. The common element for all these offenses is that the victim must be injured or killed as a direct result of a deliberate or negligent act that is contrary to the provincial criminal code.

4.4.1 Eligibility

All provinces grant compensation to the victim, his guardian or caretaker, or in the case of death, dependents, including illegitimate children. Statutes usually require location of the crime within the province rather than a victim residency clause. "Good Samaritans," persons who are injured while attempting to prevent a criminal offence and anyone injured while assisting a law enforcement officer, may receive compensation.

All victim compensation laws have certain eligibility restrictions. Provinces generally require filing a claim within one year of the crime, but do allow an extension period where deemed appropriate. A majority of the provinces (Ontario, Saskatchewan, New Brunswick, Alberta, Manitoba and Newfoundland) require reporting the crime to the police within a reasonable time if the applicant is to be eligible for victim
compensation. In addition, the provinces require complete victim cooperation with the police and other law enforcement agencies. All provinces weight victim precipitation when determining if an award should be made. If the victim had provoked or has contributed to the criminal incident, the provinces will discount the award because of shared culpability. None of the provinces deny compensation because the victim is a relative or associate of the offender. An offender who is incapable of forming criminal intent is assumed to have intended the act that caused injury or death. Neither offender apprehension nor conviction is a prerequisite to award, although all provinces accept conviction as proof of the offense.

4.4.2 Payments

All Canadian provinces compensate victims for the direct cost of physical injury, funeral expenses, and wages lost due to disability or the victim's death. Except for Quebec and British Columbia, the provinces provide pain-and-suffering payments and have a general category for other incidental expenses. Saskatchewan, Ontario, and the Yukon consider the financial need of the applicant when making an award determination. All compensation boards can distribute payments as a lump sum or in series payments. The majority of provinces set minimum and maximum limits on claims, although these thresholds differ somewhat. For example, British Columbia has set a $100 minimum claim and a maximum claim of $100,000 for a lump sum payment and maximum of $350,000 for series payments. Some provinces (Ontario, Quebec, British Columbia, Alberta, and the Northwest Territories) grant emergency. Awards in dire circumstances and repayment are necessary if the board subsequently does not grant an award. Most provinces also compensate victims for loss of personal property at the time of the crime.

All provinces consider other sources of compensation (insurance of the offender, etc) when determining the size of the award and that sum is subtracted from the compensation award. This procedure limits remuneration to the actual amount needed to remedy harm and prevents any attempt by the applicant to gain a profit. If an individual gets additional aid after receiving a victim compensation award, repayment of the award or the new sum of money, whichever is smaller, is in order. Additionally, civil litigation will reimburse provincial coffers if the offender's identity is known. If the victim opts for a compensation award, the board subrogates his rights to pursue civil litigation.
Should the applicant choose to pursue civil litigation? He will receive the monetary difference between the amount of compensation and the civil award. Most provinces (Saskatchewan, New Brunswick, Newfoundland, Manitoba, Alberta, and the Yukon) require repayment of all or part of the award if the applicant makes a fraudulent claim and can impose an additional fine.

4.4.3 Bureaucratic Organization

The compensating agency in the provinces is either a separately established board (Ontario, Saskatchewan, Newfoundland, and Alberta), part of the already existing Workman’s compensation apparatus (Quebec, Manitoba, and British Columbia), or a provincial judge (New Brunswick, Northwest Territories, and the Yukon). All board hearings are public unless special circumstances exist. The board holds private hearings if a public hearing is prejudicial to the offender’s trial or if the offender is not prosecuted or convicted. A hearing in camera also may be held if a public hearing is not in the best interests of the victim, his dependents, or the public. Only two provinces (the Yukon and the Northwest Territories) allow appeals in cases other than on points of law.

This brief review of victim compensation laws indicates there is a high degree of uniformity among Canadian jurisdictions. Compensable acts, eligibility requirements, claim filing and processing, and conditions of payments are substantially the same across jurisdictions. Where differences exist, they are minor and do not influence the intent, scope or direction of the compensation programs. All the provinces in Canada did not adopt compensation legislation simultaneously. There is the realization that innocent victims of crime compose a unique clientele group for whom short-term outlays produce long-term benefits for social tranquility.

4.5 The Australian Scenario

Legislation has been enacted in New Zealand and in five of the six Australian States (the exception being Tasmania) to provide for payment by way of compensation to the victims of certain crimes. The New Zealand Criminal Injury Compensation Act, 1963, subsequently amended in 1966, 1969, and 1971, was the first piece of legislation anywhere in the world to translate into reality the victimological perceptions of compensation for crimes. All of them have a common characteristic, namely, paying limited compensation from state funds in respect of certain criminal injuries or death.
caused by a crime. New Zealand pays compensation to the victims of criminal homicide, assault, rape, abduction (of women), and kidnapping. Even when the offender is free from criminal responsibility, owing to proven insanity, reason of young age, or being under the influence of alcohol, or otherwise, it makes no difference to the eligibility for compensation of the victim. And the award of a compensation claim does not bar the victim from bringing civil proceedings against the offender.

New South Wales was the first State in Australia to enact legislation in this respect. Actually, a provision for restitution (amount not exceeding A £1,000) to be paid to the victim from the property of the offender by way of compensation for injury was extant in New South Wales as early as the year 1900. Apart from the criminal injury, it covered felony and misdemeanor. In 1967, fresh legislation was brought by the government of New South Wales to compensate the victims of bodily harm including pregnancy, mental shock, and nervous shock, and also to make provision that the acquittal of the offender in a connected criminal case would not stand in the way for the payment of compensation to the victim. The New South Wales regulation makes no provision at all for the victim of an offender who is not sent to court. If the offender is not identified, if he is not arrested, or if he dies before the case is charge-sheeted in a court of law, or if he is too young to be tried, the victim suffers by default. This disability is said to be overcome by a provision for the payment of ex gratia awards by the government of New South Wales when an attacker has not been or cannot be tried.

Queensland, South Australia, and Western Australia introduced legislation in 1968, 1969, and 1970 respectively and the State of Victoria in 1972. The Victorian enactment is must more comprehensive than that of the other States. It is operated by a special tribunal of three members. It does not limit compensation to the victim of specific crimes as in the other States. Property offences such as theft, burglary and arson are also compensable in Victoria. The only requirement is that the offence should be punishable by imprisonment. If an offence is punishable only by fine, no compensation shall be claimed by its victim. It is only in the State of Victoria that a separate tribunal exists for compensation payments. All the other States are confining arrangements within the general framework of the prosecution of the offender. The awards made by the tribunal in Victoria are not subject to governmental or administrative scrutiny. The compensation is not an ex gratia
payment nor is it a discretionary grant; it is a legal right enjoyed by the citizens of the State. The Victorian scheme avoids delay which is a necessary concomitant of the schemes in the other States caused by the time taken for the apprehension of the criminal, the pretrial procedures, the trial and conviction or acquittal, and so on. It is laid down in the Victorian statute that a claim for compensation should be made within one year after the injury or the death in respect of which compensation is claimed. Another distinction between the Victorian legislation and that of other States is that in the former, the injury inflicted by domestic violence by the husband or the wife or a member of the household is not compensable. The other Australian States have made an elastic provision which expects the authorities concerned to take into account the relationship between the offender and the victim just as they are required to consider the victim's contribution to the crime also. If it is a sexual offence and the woman gets impregnated, the maintenance of the baby is not taken into account in ordering compensation.

Delay in the administration of criminal justice is a matter of concern in Australia. It worsens the position of a victim who needs compensation immediately. The veto power given to the judges and the magistrates (except in Victoria) on the admissibility of compensation claims erodes the concept of society's responsibility to the problems of crime. The Victorian tribunal solved these problems by awards of advance payment in cases of special need.

Surprisingly, the number of claims received by the Australian authorities for compensation by the victims of crime is small. It is attributed to the lack of effective publicity for the compensation arrangements.

In 1972, New Zealand brought into force the Accident Compensation Act which introduced a far-reaching reform providing compensation from public funds for death or personal injury suffered in accidents. It came into effect in April 1974. South Australia has enhanced the upper limit of compensation from A£1, 000 to A£2, 000.

There is a provision under the existing regulations for the offender to appeal against the order of compensation to be paid by him to the victim. It has been held that the existing legislation does not authorize reduction of compensation if a victim's conduct contributes to the offence but it provides for a complete rejection of compensation provision. There is a rethinking in Australia on the subject so that the authority
determining the compensation may be empowered to reduce an award on grounds of
ccontributory conduct instead of being mandated by the existing provision for its
complete bar.

4.6 Present Position of the Victim in the International Perspective
Activities of UNO

Until a few years ago, research and practice concentrated mainly on the accused.
Only in recent years, the United Nations Organization has dealt with the question in
which way the situation of crime victims might be improved. Thus, the seventh United
Nations Congress on the Prevention of Crime and Treatment of Offences, which took
place in Milan from 26 August to 6 September 1985, recommended to the United Nations
General Assembly, for the ratification of "Basic Principles of Justice for Victims of
Crime and Abuse of Power."

On November 29, 1985, the General Assembly of the United Nations adopted the
declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (vide
resolution No.40/34). This declaration, the first specifically concerned with societal
responses to the needs of victims, establishes standards that take into account the variety
in prevailing legal systems, social structures, and stages of economic development of the
Member States. The declaration, concerning victims of crime, establishes standard for
access to justice and fair treatment, restitution from the offender, compensation from the
State, and assistance towards recovery (specifies in Section A (paragraphs 1-17)).

This declaration calls upon States to take the necessary steps to give effect to the
provisions in the declaration and to curtail victimization. In particular, the declaration
specifies certain ways in which victims should have access to judicial and administrative
procedures and how they should be treated fairly.

The declaration says that victims should be treated with compassion and respect for
their dignity and entitled to prompt redress. The victims should be informed of their
rights in seeking redress through formal or informal procedures that the expeditious, fair
and inexpensive and accessible.6

The responsiveness of judicial and administrative process should be geared to serve
the needs of the victim. The victims should be informed of their role and scope, timing
and progress of the proceeding, and disposition of their case.7 Offenders or third parties
responsible for the crime should make fair restitution to victims, their families or dependants. Such restitution should include the payment for harm or loss suffered, reimbursement of expenses incurred as a result of victimization. And also the governments should help to adopt practice, regulations and laws to consider restitution as an available sentencing option in criminal cases.

When the compensation is not fully available from the offender or other sources, the State should endeavor to provide financial compensation to victims who have sustained bodily injury or impairment of physical or mental health as a result of crimes. And also the family, in particular the dependants of the deceased or persons who have become incapacitated as a result of victimization should be provided with compensation by the State.

Victims should be provided with necessary material, medical, psychological and social assistance through governmental and voluntary organization. Police, Justice, Health, and other personnel should be sensitized to the needs of the victim.

However, the process of balancing the position of offender and victim in criminal procedure is a very active and dynamic one and by no means crystallized or completed in the Western European countries, in the United States of America, Australia and New Zealand.

4.7 Activities of the Council of Europe for the Improvement of Victim Protection

In March 1981, the European Committee on crime Problems of Council of Europe decided in its 30th meeting to establish a Select Committee of experts on the victim and the criminal and social policy, with a view to recommend measures for the improvement of the condition of crime victims. The committee drew up recommendations for the improvement of the victim's position in criminal law and procedure. The committee formulated proposals for an extension of existing victim assistance and treatment programs in the respective member States. The Council of Ministers of the Council of Europe on June 28, 1985 approved the recommendation of the committee. The resolution calls upon the member States to provide for the following regulations:

1. A victim of crime who addresses the grievance to the police should be treated in such a way as to avoid additional emotional damage (Secondary victimization).
He should be informed of the possibilities of receiving material, medical, or psychological help from public or private organizations. Furthermore, the victim should be informed about restitution claims he can file against the offender and if appropriate, against the State.

2. The public prosecutor shall consider the question whether the offender has made restitution to the victim or whether in his opinion proceedings should be launched against the offender.

3. At all levels of the criminal procedure, the victim is to be questioned more carefully and with due consideration. His rights and honor must not be adversely affected. Children and physically or mentally disabled person must be interrogated only in the presence of their parents or guardians. This recommendation aims at avoiding secondary victimization, that is, the infliction of additional damage on victim in the criminal procedure.

Penal sanction inflicted upon the offender should be guided by the needs of the victim too. The restitution of victim’s damage caused by the crime ought to have priority. Not only shall the victim be provided with an executory title, the offender who is prepared to make restitution the victim’s damage shall be given opportunity to earn the resources necessary to compensate the victim, thus gaining the opportunity to resocialize himself (creative restitution). If a perpetrator sentenced to imprisonment is placed on probation, the probation shall primarily depend upon the convict’s performing the services for restitution. Furthermore, the compensation of the victim shall have priority over all other financial obligations imposed upon the perpetrator.

The criminal courts shall be given inherent power to impose a restitution order on the offender as a separate sanction. In addition to this the victim shall be informed in due time that he can file compensatory claims against the offender.

In order to ensure the actual compensation for the victim of damage, the financial obligations of which were imposed upon the offender shall be executed in the same way as fines.

The Council also recommended informal settlement of disputes between the victim and offender without courting a formal criminal procedure. The advantage derived out of this system is that this will avoid a stigmatization of victim and offender and also thereby
relieve the burden of the criminal justice system to that extent

The committee also suggested that the generally realized existing limitations, restrictions or technical impediments preventing possibilities of a compensation order by criminal court be abolished.

The guidelines exhibit the current thinking at international level in the area of crime victim's rights and assistance; therefore, have potential persuasive value for non-member States also.

4.8 Recommendation of the International Conference

The First International Symposium on Victimology, in 1973 in Jerusalem, dealt extensively with the question of compensating victims of crime. In its conclusion and recommendation, the symposium recommended that all nations should "as a matter of urgency" give consideration to the establishment of a state system of compensation to the victim of crime, and that the nations should seek to achieve maximum efficacy in the application of these schemes. It was also recommended that information about the operation of such system should be widely disseminated not only to experts, but to general public. It was further recommended that all compensation schemes be evaluated with a view to improve their application.12

4.9 U.S.A.

In 1982, the Federal Victims and Witnesses Protection Act were enacted in the U.S.A. on 12 October, 1982, largely improving victim's legal position in the criminal procedure. It rests for the most part on the recommendation of the President's Task Force on Victims of Crime. An important improvement introduced by the Act is that the report on the result of the investigation to be submitted by the public prosecutor to the Federal courts must contain a "Victim Impact Statement", in which the crime and its consequences are described from the victim's point of view. The compulsory introduction of the Victim Impact Statement is designed to render it impossible that a court can try on offender without even having seen or heard the victim, as was not infrequently the case until then. The statement shall devote particular attention to the financial, social, physical and emotional damage the victim has suffered as a result of the crime.

On the basis of a legal authority under the Act, the US Secretary of State has issued
directives in July 1983 to the law agencies to avoid or at least diminish the danger of secondary victimization. These directives are on the information, counseling and other to the victim of crime. The information and counseling service includes information to the victim on medical help, compensation claim and other helps available from social and voluntary organization. Te counseling service also extend to information to the victim how to protect himself and his family from intimidation attempts by the offenders, when the sentence against the convicted offender will be pronounced, and what penal sanctions have been inflicted upon him. Furthermore, the law authorities must give the victims the opportunity to comment certain questions from his own point of view. Among other thing he shall have the right to give his opinion about the release of the defendant during the trial. The other services include for example safe custody of items in the ownership of the victim, the provision of special waiting room in court house etc.

Another most important improvement introduced by the Act is that, it attempts to bring restitution ideologically and practically to force in the Federal Criminal Process by extending its authority. Now the court can inflict restitution of damage caused to the victim as an independent penal sanction. Earlier a court could order restitution only as a condition of probation and "only to aggrieved party for actual damages or loss caused by the offence by which conviction was had". The present Act expands the power by abolishing the condition of probation. Federal courts now may order restitution in addition to or in lieu of any other penalty authorized by law.¹³

It is now guaranteed that the needs of the victim will be in all cases being tended adequately and that criminal procedure is more adopted to restoration of peace between offender and victim and not only between offender and the State. The court restitution order is executed either by the State or by the victim himself in analogy to the execution of a civil court decision. Now, according to the Act friends and relatives of the victim can equally file damages claim against the offender during the criminal trial, if they have supported the victim financially.

The use of criminal sanction under the Act has two policy objectives. First, it aims restitution as a means of reparation to victims rather than as a technique-for rehabilitating offenders. This changes the standard by which restitution should be measured, that is reparative restitution is measured strictly by the extent of victims injury. To be just, the
amount of restitution must compensate the victim exactly for his loss or injury. Secondly, the policy clearly articulated in the Act is that restitution should be a priority item of the criminal justice system. Thus, the Act not only frees restitution from the confines of probation but also elevates restitution to a status equal to or above that held by the traditional punitive sanction of imprisonment and fine.\(^\text{14}\)

Apart from restitution to victim of crime there are also schemes to compensate the victim of crime in more than half of the jurisdiction in the United States. The first State to legislate on victim compensation was California in 1965. Since then other States have followed the suit. Most of these programs are run by independent boards, with the remainders function under a variety of State agencies. In Montana, for example, crime victim compensation is administered as part of workmen compensation. Four states-Illinois, Massachusetts, Chio and Tennessee - place the responsibility for approving crime victim’s claims on the court.\(^\text{15}\) these agencies ensure flexibility, informality, accountability and specialization.

Virtually every compensation program allows payments for expenses incurred as a direct result of injury or death, that is, victimization. These include medical expenses and loss of wages. Some States offer payments in such cases towards costs and non-medical care or occupational therapy necessitated by the injury. Forth dependants, eligible compensable losses include loss of support, funeral expenses, cost of replacing services, pain and suffering, mental and nervous shock (especially in sexual offences). Property loss is compensated only in very special cases. Motor vehicle offences are invariably excluded in State legislations, the exception being when the vehicle is intentionally used to inflict injury.

The compensation claims have to be made through prescribed forms. All initial screening of the application is done before processing and then handed over to an investigator. The investigator investigates the crime, the injury received, the victim’s behavior during the crime, the extent of net loss, and in relevant cases the resources of the victim. Some States allow for an appeal on the original decision in respect of such claims.

A notable feature of the definition of compensable offence in most of the States is that the statute contains a provision that an act will be considered to be criminal for the
purpose of compensation, even if the offender lacks the legal capacity to commit a crime by reason of insanity, intoxication, very young age and the like. This provision is based on the premise that legal capacity is irrelevant to the question of eligibility for compensation. In other words it is enough if a person has suffered by another person's act to become eligible to claim compensation.

All States set with maximum amounts that may be awarded, with usual ceiling about ten thousand dollars. Compensation usually denied to family members of the offenders (such as parents, children, brothers, sisters and wife) in order to prevent "unjust enrichment" of criminal. The overriding concern prompting this exclusion is that the offender should not unjustly benefited from the State? If a victim has partially or fully contributed to his own victimization, the law provides for the reduction or complete denial of compensation. This is one of the functions performed by the investigation or verification agency. Every victim compensation program requires a precondition for eligibility that the crime was reported to the police within a specific time and there after cooperate with police investigation.

Only few States provide compensation to the crime victims for nonresidents. In case of California court held that all victims are eligible for compensation, even if they are illegal alien. Pennsylvania provides assistance to non-residential victims if states in which they live treat Pennsylvania citizens similarly.

Some financial need criteria are adopted by most of the States in awarding compensation. They are governed by the number of dependants, the usual living expenses of the claimant, his family, the claimant’s income and potential earning capacity and his resources. Many Administrators of the compensation programs oppose the financial hardship tests on the several grounds. First the tests are difficult to administer. Second, they are costly to administer. The increased administrative costs brought about by these requirements would at least partially offset the saving in awards affected by the tests. Gilber Geis and Herbert Edelhertz state that the overall program cost may even be reduced, if the hardship requirement is eliminated. Third, the need-based tests may not have as great an influence in controlling the program costs as previously thought. The chief investigator for the New York Board has estimated that the compensation program costs would only be about $ 150,000 more costly per year, an increase of about ten per
cent, if the serious hardship test of that state were abandoned.\textsuperscript{18}

All the compensation programs stipulate that the compensation award should be reduced by the other available payments to the victims from such sources as workmen's compensation, insurance, welfare, medical care, social security, and so on. Verification or investigation of the compensation claims is a fairly laborious process. It includes the following: \textsuperscript{19}

(a) Scanning the police reports to ascertain the details of actual occurrence, the victim's contribution in the crime, the identity of the offender, and possible victim-offender relationship.

(b) Scrutiny of the hospital records with a view to determining seriousness of injury, the extent of disability and the estimated duration of disability.

(c) Perusal of the insurance documents with a view to ascertaining the details of payments to the victim for medical treatment or loss of earnings.

(d) Examination of the financial assistance program records with a view to ascertaining the payments that are to be made or have been made from, other funds such as workmen's compensation, insurance, and so on.

(e) Ascertaining the information regarding the employment of the victim.

(f) Scrutiny of the personal finances of the victim.

(g) Perusal of the court records to determine the course of criminal case on the particular offence and the outcome of the prosecution, if any.

Most victim compensation program offer some sort of provision for appeal. The court-administered programs, however, have no appeal provision. In addition to the administrative review procedures, many States provides that decision on victim compensation claims may be judicially reviewed by competent courts.\textsuperscript{20}

The compensation programs depend on the general tax revenue of the State and the special surcharges imposed on the convicted offenders for their funding. If in sufficient amounts are allocated from the general revenues, the applicants whose claims are admitted may have to wait for additional appropriations or even till the next financial year. It depends on priorities. Therefore, many States have developed a wide variety of surcharge mechanisms. Convictions are deliberately followed by heavy fines and this
money is placed at the disposal of the compensation boards for making payments. Some States complain of difficulty in gaining the requisite cooperation from the courts to collect additional funds. A special source of program fund is the "son-of-sam" provision passed by the New York State in 1977. This law is intended to prevent the criminals from profiting from their crimes by selling the rights of their story to the media or the press. The law requires that any fund which would be provided to the offender on the basis of such a transaction should be deposited in a special account and that the victim injured by the individual in question may receive payments from that account. The offender may also draw from the account for his legal defence purposes. It is admitted that this law has not resulted in substantial payments to the victims. The other sources of funding the program include proceeds, sales of unclaimed property disposed of by the police, and money earned by the convicted criminal while they are employed in prison industries programs. But these are only of marginal help as far as funding is concerned.\textsuperscript{132}

The objectives of victim compensation programs in the United States are:\textsuperscript{133}

- To demonstrate the State's concern for the plight of the crime victim,
- To reduce or eliminate the financial suffering caused by the criminal injury on the innocent victims of crime and their dependants, - to improve community crime prevention and better support for the criminal justice system through increased public cooperation, and
- To contain and limit the expenditure on this account.

\textbf{4.10 U.S.S.R.}

The Fundamentals of Criminal Court Procedure\textsuperscript{1} for USSR and the Union Republic, 1958, defines victim as a person who has suffered moral, physical or material injury as the result of a crime. A citizen who has been declared as a victim of crime or his representative has the right to give testimony; adduce evidence; submit petition, acquaint himself with the material of the case from the moment the preliminary interrogation is terminated; participate in the investigation of evidence adduced at the trial; appeal against the sentence or decision of the court and the ruling of the people's judge.\textsuperscript{21}

The victim of crime has the right to initiate, at the trial, a civil action against the accused, which action will be examined by the court simultaneously with the criminal
trial.\textsuperscript{22}

So also in Russia, one of the punishments prescribed in the criminal code is "imposition of the duty to make amends for the harm caused and this has been provided as one of the supplementary punishment,\textsuperscript{23} which may be imposed either as only punishment or as an additional punishment. For certain classes of offences. In Article 32,\textsuperscript{24} of the code the nature of punishment has been fully described as follows:

Execution of the duty to make amends for the harm caused consist in: (i) direct elimination by ones own resources, of the harm caused, or (ii) compensation with one's own means, for material loss, or (iii) public apology before the victim or before members of the collective in a form prescribed by the court. Punishment in the first form may be assigned when the court considers that the, offender is capable of making amends in the indicated manner. Punishment in the second form may be assigned if the loss caused does not exceed one hundred rubles.

It will be noticed that the main advantage of this type of punishment is that it provides for the direct reparation to be paid by the offender to the injured victim by compensation either in money, labor or in kind, for the harm caused.

Laws of some American States like Russia, have embodied a provision for restitution requiring the offender "to amend" his victim by passing a sum of money or "by service", with to make the offender more responsible to the victim of the crime.\textsuperscript{25}

\textbf{4.11 NEW ZEALAND}

New Zealand is the first country in the world to establish a modern program to compensate victims of crime. The Criminal Injury Compensation Act of 1963, which came into force on 1st January, 1964 was subsequently amended in the year 1966, 1969 and 1971. The philosophy behind the law was "rather the community's duty towards those who suffer misfortune than the liability of the State for failing to prevent crime".\textsuperscript{25}

The Act provides for compensations to the person injured by certain criminals acts and also to the dependants of the person killed by such act. "Injury" qualifying for compensation has been defined as to include actual bodily harm, pregnancy and mental or bodily shock. Under the Criminal Injury Compensation Act a claimant must have been injured as a direct result of one, or more of twenty-seven crimes listed in the statute such
as completed or attempted murder or manslaughter, aggravated assault, wounding or injury, rape or attempted rape, common assault, kidnapping, abduction etc. Compensation is limited to persons directly injured and their dependents - bystanders are not covered. Compensation may be awarded even though the offender is not apprehended, or, if apprehended not prosecuted or found not criminally responsible.26

Crime Compensation Tribunals are constituted under the Act to hear and decide claims. The tribunal is composed of three members appointed by the government. The procedure for application and consideration of claims is similar to British plan. But the New Zealand plan is more comprehensive than the British scheme in its scope of coverage in that it expressly provides for pain and suffering. Even New Zealand's provision allowing compensation to victims even if the offender is member of the victims family.27 The power of the Tribunal to award compensation is left entirely to the discretionary not only as to the amount of compensation but also making of an order to compensation. The Tribunal can award compensation for expenses, pecuniary loss, and also for the pain and suffering of the victim.

In determining the claim, the Tribunal concern itself with all matter relevant in a particular case, such as the behavior of the victim and also his contribution to the injury or death. The question of provocation is also considered by the tribunal.

Various other countries such as Italy, Belgium, Netherlands, Norway, Sweden, Canada, Denmark, Japan, Poland, Philippines, Singapore, Hong Kong, Turkey and Thailand also provided various schemes of compensation to the victim of crime.28
REFERENCES

1. General Appeal No. 71 of 1989: Judgment dated March 1993 of the High Court of Kerala, the Hon'ble Mr. Justice Chettur Sankaran Nair presiding.

2. Report of the Royal Commission on Civil Liability and Compensation for Personal Injury, Cmd. 7054, HMSO.

3. In practice this function will be exercised, as appropriate, by the Home Secretary or the Secretary of State for Scotland.


5. Preamble, Para-4.


8. Ibid., A Para 8.


14. Lawrence P. Fletcher, supra, page 266, f.n.1.


19. Y.N. Rajan, Victimology in India, supra, p.122, f.n.1, p.64.

20. Ibid. p. 65


22. Article 25.


27. Ibid.

28. For detail discussion see V.N.Rajan, supra, p.122, f.n.