CHAPTER – 6
The concept of compensation is gaining popularity in many countries. Keeping in view the Indian legal system which is mainly influenced by the legal systems of England and USA, the legal systems of United Kingdom and United States of America have been chosen in this research with regard to compensation to victims of crime.

6.1 Compensation In United Kingdom

6.1.1 The United Kingdom Legal System

The United Kingdom of Great Britain and Northern Ireland consists of four countries forming three distinct jurisdictions each having its own court system and legal profession: England and Wales, Scotland, and Northern Ireland. The United Kingdom was established in 1801 with the union of Great Britain and Ireland, but only achieved its present form in 1922 with the partition of Ireland and the establishment of the independent Irish Free State (later the Republic of Ireland).¹ There is no written constitution. The Queen is the Head of State, although in practice the supreme authority of the Crown is carried by the government of the day. The legislature is a bicameral Parliament; the House of Commons and the House of Lords. The government is made up of the Prime Minister, formally appointed by the Queen and who is normally the leader of the majority party in the House of Commons and ministers with departmental responsibilities of whom the Ministers of State form the Cabinet. The ministerial posts are the choice of the Prime Minister.

The constitutional law of the United Kingdom is regarded as consisting of statute law on the one hand and case law on the other, whereby judicial precedent is applied in the courts by judges interpreting statute law. A third element consists of constitutional

¹ [www.llrx.com/features/uk.htm accessed on 12-06-2010]
conventions which do not have statutory authority but nevertheless have binding force. Much of the relationship between the Sovereign and Parliament is conventional rather than statutory.2

6.1.2 The Court System

6.1.2.1 Civil Courts

Civil cases at first instance are heard in the County Courts (for minor claims) or the High Court, which is divided into three divisions: Queen’s Bench, Family and Chancery. Cases may be appealed to the Court of Appeal (Civil Division). Cases may be appealed from the County Court to the High Court.

The Constitutional Reform Act 2005 provides for the establishment of a Supreme Court to replace the judicial function of the House of Lords with an independent appointments system, thereby making a constitutional separation between the legislature and the judiciary. In addition to the courts there are specialised Tribunals, which hear appeals on decisions, made by various public bodies and government departments, in areas such as employment, immigration, social security, tax and land. The Court Service also contains information on these.3

6.1.2.2 Criminal Courts

Criminal cases are heard at first instance in the Magistrates’ Courts, with more serious ones being heard in the Crown Court. Appeals are heard in the Court of Appeal Criminal Division. The Constitutional Reform Act 2005 provides for the establishment of a Supreme Court to replace the House of Lords as the Court of final appeal.4

6.1.3 Hierarchy Of Courts5

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2 Ibid
3 www.ilex.org.uk/about_legal_executives/the_uk_legal_system.aspx accessed on 12-06-2010
4 Ibid
5 www.helpwithlawexams.co.uk/courtstructure.html accessed on 12-06-2010
Compensation To Victims Of Crime Under Other Legal Systems

The Supreme Court
The final court of appeal for all United Kingdom civil cases, and criminal cases from England, Wales and Northern Ireland.

Court of Appeal

Criminal Division
Appeals from the Crown Court

Civil Division
Appeals from the High Court, tribunals and certain cases from county courts

High Court

Queen's Bench Division
Contract and tort, etc.
Commercial Court
Admiralty Court

Administrative Court
Supervisory and appellate jurisdiction overseeing the legality of decisions and actions of inferior courts, tribunals, local authorities, Ministers of the Crown and other public bodies and officials

Family Division

Divisional Court
Appeals from the magistrates' courts

Divisional Court
Appeals from the county courts on bankruptcy and land

Crown Court
Trials of indictable offences, appeals from magistrates' courts, cases for sentence

County Courts:
Majority of civil litigation subject to nature of the claim

Magistrates' Courts
Trials of summary offences, committals to the Crown Court, family proceedings, courts and youth courts

Tribunals
Hear appeals from decisions on immigration, social security, child support, pensions, tax and lands

* not administered by HMCS
6.1.4 Crime Victim Compensation Programme

The United Kingdom has a crime victim compensation programme to provide monetary compensation to victims of violent crime. New Zealand emerged as the first country to have established a programme of compensation to victim of crime. In 1964, a Criminal Injuries Compensation Board was established to manage the schemes of compensation to victims of crime. Within four months after this, the United Kingdom introduced a scheme of Criminal Injuries Compensation.6

A Criminal Injuries Compensation Board within the Department of Justice of the Home office started functioning from August 19647. In England, Wales and Scotland, state compensation was introduced in 1964 through the creation of Criminal Injuries Compensation Board (CICB). Its impetus came during 1950 from Margery Fry, a one-time secretary of the Howard League. She realized that depending upon offenders for compensation was full of difficulties especially when offender in unable to pay. She therefore campaigned for a scheme of state compensation. Though she was unsuccessful in her lifetime, but her ideas proved fruitful later in the form of CICB in 1964, which was formed not by an administrative force rather than a specific legislation. Under the scheme, applications could be made to the Board for an ex gratia payment of compensation where the applicant sustained personal injuries. In England, compensation to victims of crime may either be paid by the accused or by the state. The Criminal Justice Act, 1972 introduced the concept of payment of compensation by the offender. It gave power to the court to make an ancillary order for compensation in addition to the main penalty where injury or loss had resulted. The Criminal Justice Act, 1982 made compensation as the sole penalty for the offence. It further gave priority to compensation over fine where both compensation and fine orders were given together. The Criminal Justice Act, 1988 provided for considering the aspect of compensation by Courts in every case of death, injury or

Compensation To Victims Of Crime Under Other Legal Systems

loss. The Court was also required to give reasons for not doing so. The Criminal Justice Act of 1991 increased the maximum amount to be ordered by magistrate from £ 2000 to £ 5000 per offence. Criminal Injuries Compensation Scheme 1995 was put into statutory form by the Criminal Injuries Compensation Act, 1995.

In Britain, a victim has a legally enforceable right to compensation. Criminal Injuries Compensation Authority (CICA) is the government body responsible for administering the Criminal Injuries Compensation Scheme in England, Scotland and Wales. CICA is a part of ministry of justice and operates out of its office in the centre of Glasgow having staff of over 450 with a chief executive and Board of Directors. It offers a free service including processing applications and making awards that range from £ 1,000 to £ 500,000.

6.1.4.1 Eligibility:

A Victim Is Eligible To Apply If:

(a) He has been injured seriously enough to qualify for at least the minimum award (£ 1,000).

(b) He was injured in an act of violence in England, Scotland or Wales. An offender does not necessarily have been convicted of, or even charged with that crime.

(c) He has made his application within two years of the incident that caused him injury. But applications outside this limit can also be accepted if it wasn’t reasonable to submit the application form within two years of the incident.

If The Victim Is Injured In Other Countries

If the victim is a resident of United Kingdom and was injured because of a criminal injury in another European Union (EU) country on or after 1st July 2005 he can be helped in applying for compensation from that country by the CICA. The EU Compensation Assistance Team (EUCAT) based in Glasgow can help with the following:

(a) Access to information about the system of compensation in the country where the victim was injured

(b) Application forms

8 www.cica.gov.uk accessed on 31-07-2009
Compensation To Victims Of Crime Under Other Legal Systems

(c) Help with any other documents the victim might have to provide
(d) Sending his completed form to the right place
(e) Advice if he is asked for further information

If The Victim Is Injured In A Non-European Union Country:
If the victim was injured as a result of a crime of violence in a country outside the European Union he can apply directly to that country for compensation.

6.1.4.2 Ineligibility:
A Victim Is Not Eligible If:
(a) He was injured before 1st August 1964
(b) He has already applied for compensation for the same criminal injury, under the 2008 Scheme or under any earlier scheme operating in England, Scotland and Wales
(c) The injury happened before 1st October 1979 and victim and the person who injured the victim were living together at the time as members of the same family in the same household
(d) The injury and the act of violence took place outside England, Scotland or Wales

The Compensation May Also Be Refused Or Reduced Because Of The:
(a) Behaviour before, during or after the incident in which one was injured
(b) Criminal record
(c) Failure to co-operate with the police or with the CICA
(d) Delay in informing the police or other organisation or person of the incident

6.1.5 Applying For Compensation
The victim can apply for compensation in three ways:

(a) Through Online
   Application for compensation can be made online if the victim has all the relevant information with him.

(b) Through Victim Support
Compensation To Victims Of Crime Under Other Legal Systems

The victim can get free, confidential support from Victim Support (England and Wales)/Victim Support (Scotland)\(^9\), the national charity that helps people affected by crime. They can help to fill the forms and some offices can support throughout the claim by dealing with CICA on victim’s behalf.

(c) By Post

The victim can apply for compensation by post also.

6.1.6 Procedure

On receiving completed application form, a personal reference number is allotted to the victim which helps in quickly identifying the case when required. Police is contacted and as soon as the case is registered, the authority enquires by gathering information from the police or the doctor or the hospital that treated the victim. When the police report is received it is decided whether application can be taken further or not. It takes approximately a year or more to make a final decision. Complex cases take even longer. The victim can ask the authority to see the personal information which it has with it about the victim under the Data Protection Act, 1998.\(^{10}\) In the

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\(^9\) Victim Support is the only independent charity for victims and witnesses of crime in England and Wales. It was set up 35 years ago and has become the oldest and largest victims’ organisation in the world. Every year, it contacts over 1.5 million people after a crime to offer its help. It depends on thousands of specially-trained volunteers to deliver its services to victims and witnesses. It has Victim Support Offices across England and Wales managed by its National Centre in London and runs the Witness Service in every court. It also runs the national helpline Victim Support Line. It believes that all victims of crime have five basic rights:
1. To receive respect, recognition and support
2. To get information and an explanation about the progress of their case. Victims should also have the chance to explain the financial, physical and emotional effects of the crime and this information should be considered whenever decisions are made about their case
3. To be protected in any way necessary
4. To receive compensation
5. To be free of the burden of decisions relating to the offender. In other words, we believe that the state is responsible for dealing with the offender. It should not be the victim's responsibility.


\(^{10}\) The 1998 Data Protection Act came into force early in 1999 and covers how information about living identifiable persons is used. It is much broader in scope than the earlier 1984 Act, but does contain some provision for a transitional period for compliance with the new requirements. The Data Protection Act contains 8 Principles. These state that all data must be:
1. Processed fairly and lawfully
2. Obtained and used only for specified and lawful purposes
3. Adequate, relevant and not excessive
4. Accurate, and where necessary, kept up to date
5. Kept for no longer than necessary

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final decision, compensation is awarded. If it is accepted, the victim has to sign the acceptance form within 90 days from the date of award. If it is not signed, the award is withdrawn. If the decision is not accepted, victim can ask for decision to be reviewed. Appeal can be made to the Tribunals established under the Tribunals, Courts and Enforcement Act, 2007. The person who made the first decision does not make the review decision. The Tribunal Judges are appointed by the Lord Chancellor and include people with legal and medical qualifications and divert backgrounds. Filing period of the case is two years. Exception may also be made.

6.1.6.1 Claimants:
(a) Victims of crime
(b) Close relatives or dependants of homicide victims
(c) Foreign nationals

Application form can be obtained from the Criminal Injuries Compensation Authority (CICA), Police Stations, local victim support programmes or local citizens’ advice bureaus.

6.1.6.2 Compensable Costs:
(a) Pain and suffering
(b) Lost wages for disabled victims
(c) Medical expenses
(d) Mental health expenses
(e) Funeral expenses
(f) Damage to property or equipment relied upon as a physical aid
(g) Travel expenses
(h) Adaptations to accommodation
(i) Rehabilitation for disabled victims
(j) Bereavement

6. Processed in accordance with the individuals rights
7. Kept secure
8. Transferred only to countries that offer adequate data protection

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(k) Lost financial support for dependants of homicide victims
(l) Loss of parental services for claimant under 18 years.

6.1.6.3 Emergency Awards:
Interim payments may be made when a final decision regarding appropriate award is uncertain. For example; if the victim’s medical prognosis is unclear.

The programme is funded by the government from taxpayers’ revenue. CICA works closely with organization such as Victim Support. CICA provides compensation under the Compensation Scheme irrespective of the fact whether the offender has been caught or not.

Besides, The Code of Practice for Victims of Crime was launched on 3rd April 2006 to set out what services a victim can expect to receive from each of the criminal justice agencies. Criminal justice agencies are required by the law to provide minimum standards of services to victims of crime such as:

(a) A right to information about the crime within specified time scales, including the right to be notified of any arrests and court cases
(b) A dedicated family liaison police officer to be assigned to bereaved relatives
(c) Clear information from Criminal Injuries Compensation Authority on eligibility for compensation under the scheme.
(d) All victims to be told about Victim Support and either referred to them or offered their service.
(e) An enhanced service in case of vulnerable victims.
(f) Flexibility with regard to opting in or out of receiving services to ensure victims receive the level of service they want.

The agencies bound by the Code of Practice are:
(a) All police forces for police areas in England and Wales, the British Transport Police and the Ministry of Defence Police
(b) The Crown Prosecution Service

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12 www.cjsonline.gov.uk/victim/compensation accessed on 31-07-2009
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(c) Her Majesty’s Court Service
(d) Joint police/Crown Prosecution Service Witness Care Units
(e) The Parole Board
(f) The Prison Service
(g) Local Probation Boards
(h) Youth Offending Teams
(i) The Criminal Compensation Authority
(j) The Criminal Injuries Compensation Appeals Panel
(k) The Criminal Cases Review Commission

The Criminal Justice Process Chart

If you have been a victim of a crime, you should report it to the police. They will keep you updated on progress.

If someone is charged and the case goes to court, the Witness Care Unit will keep you informed of progress and make sure you know when hearings are taking place, providing you with a single point of contact, practical help with getting to court and information about available support services.

Her Majesty's Courts Service are responsible for running all the Courts.

When someone is convicted of an offence and sent to prison, they pass into the care of the Prison Service.

Most adult offenders will have contact with the Probation Service. If the offender in your case was convicted of a sexual or violent offence and sentenced to a year or more in prison, including offenders being treated by mental health services, the Probation Service will keep you informed about key points in the offender's sentence.

The Parole Board decide when offenders can safely be released from prison into the community.

If your request for compensation has been turned down by CICA, you can appeal to CICAP.

The Criminal Cases Review Commission investigate suspected miscarriages of justice. You may hear from them if they are reviewing your case.

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6.1.7 Criminal Injuries Compensation Scheme 2008

CICA makes its decisions following a set of rules called the Criminal Injuries Compensation Scheme.14 This scheme guides about eligibility and the level of payment which can be made. The current scheme was introduced on 3rd November 2008 and applies to any applications made on or after then. The Criminal Injuries Compensation Scheme is a government funded scheme that allows victims of violent crime to get a financial award. Under the scheme, each type of injury is given a value. The values together form a list that is called as ‘the tariff’. The award can never fully compensate for all the injuries suffered, but is recognition of public sympathy for the blameless victim.15 The minimum tariff payment is £ 1,000 and the maximum tariff payment for a single injury is £ 250,000. In certain circumstances the victim may also be entitled to additional payments for loss of earnings and special expenses. The maximum overall award is £ 500,000. The scheme is for people injured in England, Wales and Scotland. Northern Ireland has its own scheme. The rules of the scheme and the value of the awards paid are set by Parliament. CICA administers these rules.16

6.1.7.1 Compensation For The Following Is Available

(a) Personal injury including a single incident of abuse
(b) Personal injury following a period of abuse.
(c) Fatal injuries, including financial dependency and loss of parental services.
(d) Loss of earnings and special expenses.

This scheme has been made by the Secretary of State under the Criminal Injuries Compensation Act, 1995. A victim is eligible to receive compensation who sustained a criminal injury on or after 1st August 1964.17

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16 Ibid
17 Para- 6
Injury includes physical and mental injury and disease. The maximum compensation is £ 500000. The standard amount of compensation is the amount shown in respect of the relevant description of Injury in the Tariff which sets out:

(a) A scale of fixed levels of compensation
(b) The level and corresponding amount of compensation for each description of injury and
(c) Qualifying notes

There is a Guide to the Criminal Injuries Compensation Scheme which explains more about applying for compensation, and the Criminal Injuries Compensation Scheme itself. This guide tells some of the main issues that are taken into account in deciding whether or not the victim can get an award.

Application Process Flowchart Under The Guide:
Compensation To Victims Of Crime Under Other Legal Systems

Complete your application forms and return them to CICA. Give all the relevant information first time.

Phone 0800 358 3601 for help with the form.

Application is not registered until all the information is complete. Delay while missing information gathered.

Is all the information required provided?

Yes

CICA gather information about your case and make a decision.

Don't agree with our decision?

Accept our decision?

Accept review decision?

Award paid if appropriate.

Don't agree with our review decision?

Appeal decision is final.

* The appeal decision is final, unless decided otherwise by Judicial Review.

Ask for a review.

Ask for an appeal.
6.1.7.2 The Victim May Get An Award If:

(a) He was physically or mentally injured (or both) as a result of a crime of violence in Scotland, England or Wales.

(b) He need not be a British citizen to apply. (In assessing an injury any relevant medical conditions which the victim had before he was injured can be considered)

(c) He is the dependant and/or a close relative of a person who died as the result of a violent crime. (A close relative normally means the husband, wife, civil partner (or a person who was living in the same household as the victim in a relationship like a husband, wife or civil partner), parent or child.)

(d) He was injured in the last two years. This time limit may be disregarded, but only in exceptional circumstances where:

(e) It was not reasonable to apply within the two-year time limit and it is still possible to investigate the claim.

(f) The injuries are serious enough to qualify for the lowest (minimum) award payable under the scheme. The minimum award is £1,000. If the injury is not serious enough to qualify for a £1,000 payment award cannot be made.

If The Victim Was Injured As A Result Of Someone Committing An Offence Of Trespass On A Railway: To Claim, The Victim Must:

(a) Be a railway employee who has witnessed or been present when someone was killed or seriously injured as a result of the crime, or involved in its immediate aftermath (the events that happened straight after the incident); and

(b) Have suffered a physical injury or a disabling mental injury which can be medically verified.

A claims officer may withhold or reduce an award where he or she considers that:23

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

(b) The applicant failed to co-operate with the police or other authority in attempting

23 Para- 13 (1)
to bring the assailant to justice; or

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

(d) The conduct of the applicant before, during or after the incident giving rise to the application makes it inappropriate that a full award or any award at all be made; or

(e) The applicant’s character as shown by his or her criminal convictions (excluding convictions spent under the Rehabilitation of Offenders Act 1974 at the date of application or death) or by evidence available to the claims officer makes it inappropriate that a full award or any award at all be made.

In considering the issue of reasonable assistance, a claims officer may withhold an award where the applicant has repeatedly and without reasonable excuse failed to respond to the Authority’s communications sent to his or her last known address. In considering the issue of conduct, a claims officer may withhold or reduce an award where he or she considers that excessive consumption of alcohol or use of illicit drugs by the applicant contributed to the circumstances which gave rise to the injury in such a way as to make it inappropriate that a full award, or any award at all, be made. In considering the issue of character, a claims officer must withhold or reduce an award to reflect unspent criminal convictions unless he or she considers that there are exceptional reasons not to do so.  

6.1.7.3 The Victim Can Not Get An Award If:

(a) He was injured before 1st August 1964;

(b) He has already applied for compensation for the same criminal injury, whether under this or any other Scheme; (if the victim deliberately applies for compensation for the same injury more than once, he may be prosecuted for attempted fraud.); and/or

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24 Para-14
25 Para-6 and 7
(c) The injury happened before 1st October 1979 and victim and the person who injured the victim were living together at the time as members of the same family. This is because the scheme changed at this time.

An application for compensation is determined by a claims officer, and written notification of the decision is sent to the applicant or his representative. Written acceptance of an award must be received by the Authority within 90 days of the date the decision was issued. If such an acceptance is not received within that period, and no application for a review under paragraph 59 has been made, the Authority may withdraw the award. A claims officer may grant an extension to this time limit (whether or not it has already expired) and overturn any withdrawal, if:

(a) The applicant has made a written request for an extension; and
(b) The claims officer considers that there are exceptional circumstances which justify the granting of an extension.

The claims officer may make such directions and arrangements, including the imposition of conditions, in connection with the acceptance, settlement, or trust, payment, repayment and/or administration of an award as he or she considers appropriate in all the circumstances. An applicant who is dissatisfied with a decision taken on a review or with a determination, may appeal against the decision to the First-tier Tribunal in accordance with Tribunal Procedure Rules.

In general, the scheme does not allow any person who causes an injury to benefit from an award paid to the victim. No award is made if there is a continuing close link between the victim and the offender and it is likely that the offender would benefit from the victim’s award. Examples of attacks where the victim may be eligible to claim an award include:

(a) Assault (physical or sexual);
(b) Wounding;
(c) Where the victim was injured as a direct result of a crime of arson;
(d) Where there was a deliberate attempt to poison the victim;

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26 Para- 50
27 Para- 61
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(e) Where an animal was deliberately set on the victim with the intent of causing him injury;
(f) Where someone deliberately ran the victim down with a vehicle (this does not include where the victim was injured because of an accident).

The awards are paid through cheques. There can be special arrangements for payment of awards taking into account the circumstances of the victim or other relevant issues. For example, if the victim is a child the CICA will retain the award in an interest-bearing bank account until the child is 18 years old. Awards for adults legally incapable of handling their own affairs may be paid into trusts for the applicant’s benefit.²⁸

Hence in England, a proper legislation is there to award compensation. Besides, certain agencies also work to promote the concept of victim compensation. For example Victim Support²⁹ sets out the government’s plans for Criminal Injuries Compensation Board (CICB). It provides information to victims and helps them in filling out forms, handling the submitted claim. The service is provided free of charge.

6.1.8 Criminal Injuries Compensation Scheme (Review) Bill 2008-09:³⁰

This Bill was presented to Parliament on 14th July 2009. There was no debate in the First Reading stage. The Bill was on the Order Paper for a Second Reading on several Fridays before being dropped by its sponsor, Frank Field. The Bill is meant to establish a Commission to review the operation of the Criminal Injuries Compensation Scheme in the context of terrorist attacks. The Commission’s role would be to consider whether the Scheme’s current cap of £ 250,000 should be removed in respect of UK nationals who are victims of terrorism. The Bill would require:

³⁰ www.services.parliament.uk/bills/2008-09/criminalinjuriescompensationschemereview.html accessed on 14-12-2009

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(a) The Commission to review the scheme’s operation in respect of the payment of compensation to United Kingdom nationals who are the victims of terrorist acts (whether committed in the UK or overseas) and the financial costs incurred by them.

(b) The Commission to submit a report to the Secretary of State setting out its recommendations for any amendments to the scheme.

(c) The Secretary of State to lay the report before Parliament and to make a motion in the Commons relating to the report within three months of the date on which it was laid.

6.1.9 Compensation Act, 2006

Keeping in view the threats prevalent in the modern world the government of United Kingdom enacted Compensation Act 2006 to specify certain factors that may be taken into account by a court determining a claim in negligence or breach of statutory duty; to make provision about damages for mesothelioma, and to make provision for the regulation of claims management services. The Act received Royal Assent on 25th July 2006. The Compensation Act contains provisions in relation to the law on negligence and breach of statutory duty, damages for mesothelioma, and the regulation of claims management services. The Act is divided into 3 parts:

Part 1 contains provisions relating to the law of negligence, breach of statutory duty and damages for mesothelioma.

Part 2 contains provisions relating to the regulation of Claims Management Services.

Part 3 contains technical provisions including provisions about commencement and extent.

Part 1 of the Act contains provisions relating to the law on negligence, breach of statutory duty and damages for mesothelioma. As far as damages are concerned in the

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31 “A rare form of carcinoma of the mesothelium lining lungs or abdomen or heart; usually associated with exposure to asbestos dust” (The inhalation of asbestos fibres can cause serious illnesses, including malignant lung cancer, mesothelioma) Accessed from www.audioenglish.net/dictionary/mesothelioma.htm on 16-04-2010


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case of *Fairchild Vs Glenhaven Funeral Services Ltd and others*\(^{33}\) the House of Lords decided that a person who had contracted mesothelioma after wrongful exposure to asbestos at different times by more than one negligent person could sue any of them, notwithstanding that he could not prove which exposure had actually caused the disease because all had materially contributed to the risk of him contracting the disease. *Fairchild* did not resolve whether liability should be joint and several, although it was resumed by the parties that this would be the rule and this was the approach taken in practice. However, in *Barker Vs Corus UK Ltd (and conjoined cases)*\(^{34}\) the House of Lords decided that the damages were instead to be apportioned among those responsible for the wrongful exposure according to their relative degree of contribution to the chance of the person contracting the disease.

The Act reverses the effects of the *Barker* judgement to enable claimants, or their estate or dependants, to recover full compensation from any liable person. It will then be open to the person who has paid the compensation to seek a contribution from other negligent persons. The Act also confers a power on Her Majesty Treasury to make provisions that would facilitate the speeding up of payment of claims to mesothelioma victims. These provisions would enable responsible persons to claim money back from the Financial Services Compensation Scheme in specified circumstances, that is, circumstances in which previously only the claimant would have had such a right), when another responsible person and their insurer are both insolvent and thus unable to pay their own share of compensation payments. Section 3 contains provisions establishing joint and several liability in cases where a person has contracted mesothelioma as a result of being negligently exposed to asbestos. Subsection (1) sets out the conditions that must be satisfied before the substantive provisions of the section will apply. The conditions are that someone contracts mesothelioma from exposure to asbestos, that they were exposed to asbestos as a result of negligence by a person and that it is not possible to prove whose negligent


act caused them to become ill. Paragraph (d) indicates that the final condition is that the responsible person must be liable in tort.

Subsection (2) provides that where the conditions in subsection (1) are met, the responsible person is liable for all of the damage caused by the mesothelioma. The provision establishes that it makes no difference whether or not someone else also could have caused the disease; whether the person could have contracted the disease from environmental exposure; or whether the responsible person would not be liable in tort for some of the periods of exposure. Paragraph (b) indicates that, if there is more than one responsible person, the liability is joint and several. That means that the victim (or any dependants if the victim is dead) may proceed against any of the responsible persons and that any person proceeded against is responsible for paying the full amount of compensation, and for recovering contributions from the others. Subsection (3) confirms that contributions from other responsible persons may subsequently be sought by the responsible person who has paid the compensation (or by any who have jointly done so). The subsection also makes clear that if the victim is found to have negligently exposed himself to asbestos then the damages may be reduced accordingly under the principle of contributory negligence (as is currently the case). Subsection (4) provides that a court shall, when deciding the level of contributions, have regard to the relative lengths of exposure, unless the responsible persons agree to approach the apportionment differently or the court thinks another approach is more appropriate. This will assist parties in agreeing the basis on which contributions are to be made without going to court. Subsection (5) makes it clear that the provision covers failure to protect someone from exposure to asbestos. Subsection (6) makes provision in relation to the application of the section in Scotland. Subsections (7) to (11) confer power on Her Majesty’s Treasury to make regulations about the provision of compensation to a responsible person or an insurer of a responsible person in specified circumstances. These provisions would enable responsible persons to claim money back from the Financial Services Compensation Scheme when a liable employer and insurer are both insolvent. The power includes the ability to deal with situations arising prior to the establishment of the Financial
Services Compensation Scheme that were settled under the Policyholders Protection Act 1975. The provisions would only come into effect once Treasury has laid the necessary regulations and the FSA has made the relevant rules. However, the power provides that rules could permit the liable party to claim contributions in respect of claims dealt with from the date of Royal Assent.

Under Section-4 the term ‘claim’ has been defined as:

Claim means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made:

(a) By way of legal proceedings
(b) In accordance with a scheme of regulation whether voluntary or compulsory or
(c) In pursuance of a voluntary undertaking

Unlike India, United Kingdom has a good system which is functioning well in compensating the victims of crime. In India much is required to be done as there is no specific legislation dealing with compensation matters.

6.2 Compensation In United States Of America

6.2.1 The United States Legal System

The three branches of the federal government—legislative, executive and judicial—operate within a constitutional system known as “checks and balances.” This means that although each branch is formally separate from the other two, the Constitution often requires co-operation among the branches. Federal laws, for example, are passed by Congress and signed by the President. The judicial branch, in turn, has the authority to decide the constitutionality of federal laws and resolve other disputes over them, but judges depend upon the executive branch to enforce court decisions.35

The summary of US government is shown below:36

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36 www.theusgov.com/ accessed on 09-04-2009
### STRUCTURE OF THE UNITED STATES GOVERNMENT

#### THE CONSTITUTION

#### BILL OF RIGHTS

<table>
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<tr>
<th>LEGISLATIVE BRANCH</th>
<th>EXECUTIVE BRANCH</th>
<th>JUDICIAL BRANCH</th>
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6.2.2 Federal Courts And Congress
The Constitution gives Congress the power to create federal courts other than the Supreme Court and to determine their jurisdiction. It is Congress, not the judiciary that controls the type of cases that may be addressed in the federal courts. Congress has three other basic responsibilities that determine how the courts will operate. First, it decides how many judges there should be and where they will work. Second, through the confirmation process, Congress determines which of the President’s judicial nominees ultimately become federal judges. Third, Congress approves the federal courts’ budget and appropriates money for the judiciary to operate. The judiciary’s budget is a very small part, substantially less than one per cent of the entire federal budget.37

6.2.3 Federal Courts And the Executive Branch
Under the Constitution, the President appoints federal judges with the “advice and consent” of the Senate. The President usually consults senators or other elected officials concerning candidates for vacancies on the federal courts. The President’s power to appoint new federal judges is not the judiciary’s only interaction with the executive branch. The Department of Justice, which is responsible for prosecuting federal crimes and for representing the government in civil cases, is the most frequent litigator in the federal court system. Several other executive branch agencies affect the operations of the courts.38

6.2.4 Federal Courts’ Structure39

6.2.4.1 The Supreme Court Of The United States
The Supreme Court is the highest court in the federal Judiciary. Congress has established two levels of federal courts under the Supreme Court:
(a) The trial courts and

38 Ibid
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(b) The appellate courts

The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by Congress, the Supreme Court each year hears a limited number of the cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law.

6.2.4.2 District (Trial) Courts

The United States district courts are the trial courts of the federal court system. Within limits set by Congress and the Constitution, the district courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. Each district includes a United States bankruptcy court as a unit of the district court. Three territories of the United States—the Virgin Islands, Guam, and the Northern Mariana Islands have district courts that hear federal cases, including bankruptcy cases.

There are two special trial courts that have nationwide jurisdiction over certain types of cases. The Court of International Trade addresses cases involving international trade and customs issues. The United States Court of Federal Claims has jurisdiction over most claims for monetary damages against the United States, disputes over federal contracts, unlawful taking of private property by the federal government and various other claims against the United States.

6.2.4.3 Appellate Courts

The 94 judicial districts are organized into 12 regional circuits, each of which has a United States court of appeals. A court of appeals hears appeals from the district courts located within its circuit, as well as appeals from decisions of federal administrative agencies. In addition, the Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, such as those involving patent laws and cases decided by the Court of International Trade and the Court of

6.2.4.4 Federal Claims
The structure is summarised below:\(^40\)

### 6.2.4.5 The United States And Federal Courts

1. **Supreme Court**
   - United States Supreme Court

2. **Appellate Courts (U.S. Court of Appeals)**
   - 12 Regional Circuit Courts of Appeals
   - 01 U.S. Court of Appeals for the Federal Circuit

3. **Trial Courts**
   - **U.S. District Courts**
     - 94 judicial districts
     - U.S. Bankruptcy Court
   - **U.S. Court of International Trade**
   - **U.S. Court of Federal Claims**

4. **Federal Courts and Other Entities Outside The Judicial Branch**
   - Military Courts (trial and appellate)
   - Court of Veterans Appeals  U.S. Tax Court
   - Federal Administrative Agencies And Boards

In the United States of America compensation to victims of crime is dealt with separately by the Federal and State governments since they have their own set of criminal legislations. As a result each state has its own provision in respect of compensation to victims of crime. The Victims of Crime Act (VOCA), 1984 was an attempt by the Federal government to help the victims of criminal actions through means other than punishment of the criminal. It created a federal victims-compensation account funded by fines assessed in federal criminal convictions, and it established provisions to assist state programmes that compensated the victims of crimes.\(^41\)

The Victims of Crime Act of 1984 celebrated its 25\(^{th}\) anniversary in 2009. Funds are provided to States for victim assistance and compensation programmes to support


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victims of crime and those affected by violent crimes. The Act enables approximately 4,400 community-based public and private programmes to offer services to victims of crime, including crisis intervention, counselling, guidance, legal advocacy and transportation shelters. It also provides assistance and monetary support to over 4,000,000 victims of crime each year. The Crime Victims Fund established under the Victims of Crime Act of 1984 provides direct services to victims of sexual assault, domestic violence, child abuse, survivors of homicide victims, elderly victims of abuse or neglect, victims of drunk drivers, and other such crimes. In 2008, with financial support from the Victims of Crime Act of 1984, State crime victim compensation programmes paid a total of $ 432,000,000 to 151,643 victims of violent crime. Due to the establishment of the Crime Victims Fund in 1984, non-taxpayer offender-generated funds deposited into the Crime Victims Fund have been used to provide almost $ 7,500,000,000 to State crime victim assistance programmes and State crime victim compensation programmes. The Act also supports services to victims of federal crimes, by providing funds for victims and witness co-ordinators in United States Attorneys’ offices, Federal Bureau of Investigation Victim-Assistance Specialists, and the Federal Victim Notification System and also supports important improvements in the victim services field through grants for training and technical assistance and evidence-based demonstration projects.42

The Victims of Crime Act, codified at 42 US Code Chapter-112 Section 10601, was a direct result of a task force set up by the Justice Department under the auspices of President Ronald Reagan.43 VOCA established the Crime Victim’s Fund, which is supported by all fines that are collected from persons who have been convicted of offences against the United States, except for fines that are collected through certain environmental statutes and other fines that are specifically designated for certain accounts, such as the Postal Service Fund. The fund also includes special assessments collected for various federal crimes under 18 US Code Section 3613, the proceeds of forfeited appearance bonds, bail bonds, and collateral collected, any money ordered to

42 www.thomas.loc.gov/cgi-bin/query/z?c111:S.RES.391: accessed on 02-06-2009

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be paid into the fund under section 3671(c)(2) of Title 18; and any gift, bequest, or
donation to the fund from private entities or individuals. Every state administers a
crime victim compensation programme that provides financial assistance to victims of
both federal and state crimes. Although each state compensation programme is
administered independently, most programmes have similar eligibility requirements
and offer a comparable range of benefits. Maximum awards generally range from $10000 to $25000, although a few states have higher or lower maximums.
The typical compensation programme requires victims to report crimes to law
enforcement within three days of the offence and to file claims within a fixed period
of time (usually two years). Most states can extend these time limits for good cause. If
other financial resources such as private health and property insurance are available to
the victim, the programme pays only to the extent that those resources do not cover
the loss.44 All the states receive a base amount of $500000. The territories of the
Northern Mariana Islands, Guam and American Samoa each receive a base amount of
$200000. Additional funds are distributed to states and territories based on
population. Each of the 50 states in the US operates a Crime Victim Compensation
Programme to provide financial assistance to victims of violent or personal crime.
Each state administers its own programme in accordance with its state statute. The US
Department of Justice provides supplemental funding and technical support to the
states. Following information is generally applicable to all State Compensation
programmes.45

6.2.5 Eligibility Requirement:
   (a) Report to police:
       Usually within 72 hours; exceptions are made for good cause.
   (b) Filing Period:
       One year is typical; time limit vary from state to state

6.2.6 Claimants:
   (a) Victims of crime

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44 www.ojp.usdoj.gov/ove/publications/factshts/vocacvf/fs_000310.html accessed on 07-10-2009
Compensation To Victims Of Crime Under Other Legal Systems

(b) Dependents of homicide victims
(c) Relatives of victims of crime
(d) Foreign citizens

6.2.7 Procedure:
The claimant has to file an application with the compensation agency in the state in which the crime occurred. Based on information submitted by the victim, the agency determines if the claimant is eligible. If he is eligible, compensation is provided to him. He can appeal against the agency’s decision of refusal or reduction of award of compensation.

6.2.8 Award Limits:
Most states can pay a maximum of between $10000 and $25000. A few states have higher or lower maximums. All states cover the following:
(a) Medical expenses
(b) Mental health counseling
(c) Lost wages for disabled victims
(d) Lost support for dependents of homicide victims
(e) Funeral expenses

There are provisions for emergency awards also for victims faced with extraordinary financial or health crises. The victim of crime is compensated by the state as well as by the offender. VOCA allows states to use upto 5 per cent of crime victim compensation grant funds for administering the crime victim compensation grant programme.46 The Crime Victims Fund established under the Victims of Crime Act of 1984 is a major funding source for victim services throughout the Nation.47 In the words of US Senator Patrick Leahy:48

“...In every state and every community across the country, the Crime Victims Fund plays an essential role in helping crime victims and their families meet critical

46 www.ojp.usdoj.gov/ovc/publications/factshts/vocacvf/fs_000310.html accessed on 07-10-2009
expenses, recover from the horrific crimes they endured move forward with their lives." According to US Senator Tom Coburn:49

"VOCA-funds consist of fines and penalties collected from offenders not tax payer dollars. VOCA-funds are distributed to states to support two types of programmes:

(a) Crime victims compensation programme

(b) Victim assistance programme

Crime victims compensation programme pay many out-of-pocket expenses incurred by victims as a result of crime, including medical and counselling costs, funeral bills and less wages. VOCA-funded victim assistance programme such as rape crises centres and domestic violence shelters provide life saving services, support and guidance in the aftermath of crime."

Millions of dollars are deposited annually into the Fund from criminal fines, forfeited bail bonds, penalties, special assessments collected by US Attorneys' Offices, federal US courts and the federal Bureau of Prisons. The federal Crime Victims Fund is derived not from tax dollars but from fines and penalties paid by federal criminal offenders. A total amount of $530 million was contributed through this mechanism in 1996.50 The Fund is administered by the Office for Victims of Crime. Nearly 90 per cent of the money collected each year is distributed to states to assist in funding their victim assistance and compensation programmes, which are the lifeline services that help many victims to heal. Federal victim assistance funds help to support over 2,500 local victim service agencies, such as domestic violence shelters, children's advocacy centres and rape treatment programmes. Compensation funds provide reimbursement to victims for out-of-pocket expenses resulting from crime, including medical and mental health counselling costs, lost wages and funeral expenses.

VOCA also authorises Office of Victim Compensation51 (OVC) to use discretionary funds to improve and enhance the skills, knowledge and abilities of victim service

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49 Ibid
50 www.uncjin.org/Standards/9857854.pdf accessed on 12-05-2010
51 The OVC is a component of the Office of Justice Programmes which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice and the Office of Juvenile Justice and Delinquency Prevention.
providers and allied professionals who work with crime victims. Each year programme priorities are identified which further identify the training and technical assistance and demonstration initiatives that should be funded in the coming year with discretionary funds available from the Fund.

Discretionary funds are used for two types of activities:\(^{52}\)

(a) National scope training and technical assistance which includes:

i. Performing programme evaluations
ii. Funding and evaluating demonstration programmes
iii. Conducting special workshops
iv. Supporting victims’ rights compliance efforts
v. Developing training curricula
vi. Establishing fellowships and clinical internships
vii. Supporting efforts to raise national awareness of victims’ rights and needs
viii. Training professionals who work in victim services and allied fields
ix. Delivering technical assistance

(b) Services and support for federal crime victims to include the following:

i. Developing materials that inform federal crime victims of their rights and the services available to them.
ii. Supporting programmes that establish new and expand existing services for federal crime victims, including programmes that address the needs of American Indian crime victims.
iii. Training federal, criminal and tribal system personnel on victims’ issues.

In the 1st Session of the 111th Congress\(^{53}\) in the House of Representatives held on 13th January 2009 a Bill was introduced to safeguard the Crime Victims Fund. The title of the Bill is ‘Victims of Crime Act Preservation Fund Act of 2009’. Under Section-2 the Crime Victim Fund has been excluded from all the budgets.\(^{54}\)

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\(^{52}\) www.ojp.usdoj.gov/ovc/publications/factshts/vocacvf/fs_000310.html accessed on 07-10-2009


\(^{54}\) Sectin-2: Exclusion of Crime Victims Fund from all Budgets: Notwithstanding any other provision of law, the receipts and disbursements of the Crime Victims Fund (established under section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601)) shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of:
6.2.9 Crime Victims Rights Act (CVRA) 2004

The US Crime Victims Rights Act (CVRA) of 2004 grants victims of federal crimes a range of rights in federal criminal proceedings. Victim is defined as “a person directly and proximately harmed as a result of the commission of a federal offence.” It provides victims with substantial rights to observe and participate in portions of the trials of those accused of victimizing them. Victims also have the right to confer with the prosecutor, to be protected from the accused and to receive compensation for their injuries. The CVRA sets forth the rights of victims in newly enacted 18 United States Code Section- 3771 which also placed on the federal courts a duty to ensure that victims are afforded those rights. Section 3771 effectively replaces 42 United States Code Section- 10606 (Victims’ Rights), (repealed by the CVRA), which included a list of victims’ rights but did not provide any means of enforcement. The CVRA gives victims the right to be present at public court proceedings involving the crime, section 3771(a)(2) and (3), and the right to be “reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding,” section 3771(a)(4).

Rights Of Crime Victims Under The Act:

(a) The right to be reasonably protected from the accused.
(b) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
(c) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
(d) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

(e) The reasonable right to confer with the attorney for the Government in the case.

(f) The right to full and timely restitution as provided in law.

(g) The right to proceedings free from unreasonable delay.

(h) The right to be treated with fairness and with respect for the victim’s dignity and privacy.

In any court proceeding involving an offence against a crime victim, the court shall ensure that the crime victim is afforded. Up to now, victims have had a right to be heard only in limited circumstances. The Act talks about the right to full and timely restitution as provided in law. 57 When a victim makes a ‘motion for relief’ under section 3771(d) (3), the district court is to decide any motion asserting a victim’s rights. The statute does not further specify any time limit or a procedure for deciding the motion. Under section 3771(d) (1) each crime victim ‘may assert the rights described in subsection (a),’ but can a victim file a motion claiming that restitution is not full or timely? Can a victim claim that the court did not adequately follow section 3572(b), which directs it to impose a fine ‘only to the extent that such fine . . . will not impair the ability of the defendant to make restitution’? Does a victim’s right to restitution remain in force until the amount of restitution ordered is fully paid as section 3771 only imposes a time limit on motions to re-open a plea or sentence? If payment of restitution is a condition of probation or supervised release, can a victim’s complaint that restitution is not being paid be used to begin revocation proceedings? Will the victim then have the right to be present and possibly be heard at any revocation hearings? When a victim has the right to be heard at a proceeding, how much weight is to be given by the court to the victim’s statement? If a victim waives any of the rights granted by the CVRA intentionally or simply by a failure to respond to notice, would it be prudent to make a record of the waiver? Can a victim rescind an initial waiver and seek to enforce his or her rights later in the proceedings?

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These are the few gaps which need to be bridged for more clarity.

**Historical Overview Of Crime Victims’ Rights In The United States**

- **1965**  
  - First Crime victim compensation programme established in California (Maryland’s programme created in 1972).

- **1974**  
  - The federal law Enforcement Assistance Administration (LEAA) funded the first victim/witness programmes in Brooklyn and Milwaukee District Attorney’s offices.

- **1975**  
  - First Victims’ Rights Week organized by the Philadelphia District Attorney.
  - National Organization for Victim Assistance (NOVA) founded to expand victims’ rights and services.

- **1976**  
  - First Victim impact statement created in California.

- **1977**  
  - The National Association of Crime Victim Compensation Boards is established.

- **1978**  
  - The National Coalition against Domestic Violence is formed and initiates the introduction of the Family Violence Prevention and Services Act in US Congress.

- **1979**  
  - Crime Victims’ Legal Advocacy Institute founded by Frank Carrington- later renamed the Victims’ Assistance Legal Organization (VALOR) to promote victims’ rights in the civil and criminal justice systems.

58 www.mdcrimevictims.org/_pages/e_legislation_policy/e2_legis_federal.htm accessed on 08-08-2009
1980
- Mothers against Drunk Driving (MADD) founded.
- Parental Kidnapping Prevention Act passed by US Congress.
- First Crime Victims’ Bill of Rights passed in Wisconsin.

1981
- President Ronald Reagan proclaims the First “Crime Victims’ Rights Week” in April.

1982
- President Reagan appoints the Task Force on Victims of Crime- Final Report offers 68 recommendations to improve the treatment of crime victims, including an amendment to the 6th Amendment of the US Constitution to guarantee victims’ rights to be present and heard at critical stages of judicial proceedings.
- The Federal Victim and Witness Protection Act is passed.
- California’s Proposition 8 is passed to guarantee restitution and other statutory reforms for crime victims.
- The Missing Children’s Act is passed by Congress to help find missing children through FBI National Crime Information Center (NCIC) computer system.

1983
- The Office for Victims of Crime (OVC) was created by US Department of Justice to implement recommendations from the President’s task Force.
- The US Attorney General established a Task Force on Family Violence
- President Reagan honours crime victims in First White House Rose Garden ceremony.
- First National Conference of the Judiciary on Victims of Crime held at National Judicial College in Reno.
- Wisconsin passes First Child Victim And Witness Bill of Rights.
Compensation To Victims Of Crime Under Other Legal Systems

- International Association of Chiefs of Police adopts Crime Victims’ Bill of Rights.

1984

- The Victims of Crime Act (VOCA) is passed and establishes the Crime Victims Fund from federal criminal fines and penalties to support state victim compensation and service programmes.
- President Reagon signs Justice Assistance Act which establishes financial and support assistance to state and local governments.
- The National Minimum Drinking Age Act is enacted.
- The National Center for Missing and Exploited Children is created.
- The Spiritual Dimension in Victim Services is founded to involve faith communities in victim services.
- US Congress passes the Family Violence Prevention and Services Act to fund domestic violence programmes.
- The ad hoc committee on the constitutional amendment formalizes plans to secure passage of state amendments.
- Concerns of Police Survivors (COPS) are organized for survivors of officers killed in the line of duty.
- First National Symposium on Sexual Assault is co-sponsored by OVC and FBI to create awareness on federal level for needs of rape and sexual assault victims.
- A victim/witness notification system is established within the Federal Bureau of Prisons.
- Victim/witness co-ordinator positions are established in the US Attorney’s offices.
- First Victim Services Certification Programme is established at California State University.
- OVC establishes the Office for Victims of Crime Resource Centre.

1985
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- The National Center for Victims of Crime is founded (originally named to honour Sunny von Bulow) to promote the rights and needs of crime victims.
- The United Nations General Assembly passes the International Declaration on the Rights of Victims of Crime and the Abuse of Power.
- The Federal Crime Victims Fund deposits total $68 million.

1986

- NOVA convenes a forum to refine a national plan to secure state constitutional amendments for crime victims.
- Rhode Island passes a constitutional amendment granting victims' rights to restitution, victim impact statements and to be treated with dignity and respect.
- Victim compensation programmes have been established in 35 states.

1987

- The National Victims' Constitutional Amendment Network (NVCAN) and Steering Committee are formed.
- The Federal Crime Victims Fund deposits total $77 million.
- Security on Campus, Inc. is established to raise awareness about crime and victimization on our nation’s campuses.
- The American Correctional Association establishes a Task Force on Victims of Crime.
- National Domestic Violence Awareness Month is designated to commemorate battered women.
- U.S. Supreme Court rules in 5-4 decision in Booth v Maryland that victim impact statements are unconstitutional and in violation of the 8th Amendment.
- Florida advocates conduct successful petition campaign to get constitutional amendment on the 1988 ballot.
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1988

- Constitutional Amendments are introduced in Arizona, California, Connecticut, Delaware, Michigan, South Carolina and Washington; Florida and Michigan amendments are passed.
- VOCA amendments legislatively establish the Office for Victims of Crime, induce state compensation programmes to cover victims of domestic violence, homicide and drunk driving and new priority category for funding victim assistance to include previously underserved victims of violent crime.
- The Federal Crime Victims Fund deposits total $93 million.
- The National Aging Resource Cenet in Elder Abuse is established.
- OVC sets aside funds for the Victim Assistance in Indian Country grant programme.
- The Federal Drunk Driving Prevention Act is passed raising the minimum drinking age to 21.
- OVC establishes a Federal Emergency Fund for victims in the federal criminal justice system.

1989

- Texas and Washington pass state constitutional amendments
- The Federal Crime Victims Fund deposits total $133 million.
- The US Supreme Court reaffirms in South Carolina Vs Gathers that victim impact statements violate the 8th amendment when applied to the penalty phase in capital cases.

1990

- Congress passes the Hate Crime Statistics Act requiring collection of data for crimes motivated by racial, religious, ethnic or sexual orientation prejudice.
- The Student Right to Know and Campus Security Act is passed requiring institutions of higher learning to disclose crime information.
**Compensation To Victims Of Crime Under Other Legal Systems**

- The Federal Crime Victims Fund deposits total $146 million.
- The Arizona constitutional amendment is placed on the ballot and is ratified.
- The National Child Search Assistance Act requires law enforcement to enter missing children reports in NCIC computer.
- The Victims’ Rights and Restitution Act incorporates a Bill of Rights for federal crime victims and codifies services that should be available to them.
- Congress passes legislation proposed by MADD to prevent drunk drivers and other offenders from filing bankruptcy to avoid paying restitution or civil fines.
- The Victims of Child Abuse Act of 1980 is passed and requires reforms to make the federal system less traumatic for child victims and witnesses.

**1991**

- The US Supreme Court in Payne Vs Tennessee reverses its earlier decisions and rules that testimony and prosecutorial arguments on the victim’s good character and victim impact statements do not violate the defendant’s constitutional rights.
- US Representative Ilena Ros-Lehtinen files the First Congressional Joint Resolution to place victims’ rights in the constitution.
- The Federal Crime Victims Fund deposits total $128 million.
- The US Attorney general issues comprehensive guidelines for the treatment of federal crime victims.
- The American Probation and Parole Association establishes a Victim issues Committee addressing concerns related to community corrections.
- The International Parental Child Kidnapping Act makes the unlawful removing of a child outside the US a federal felony.
• The New Jersey constitutional amendment is passed and ratified by voters Colorado introduces and passes a constitutional amendment in 15 days.
• OVC provides funding for the National Victim Center for Civil Legal Remedies for crime victims.
• The US Supreme Court rules in Simon and Schuster Vs New York Crime Victims Board that New York’s notoriety-for-profit statute was overly broad and unconstitutional.

1992
• The Federal Crime Victims Fund deposits total $221 million.
• Five states: Colorado, Kansas, Illinois, Missouri and New Mexico ratify constitutional amendments for victims’ rights.
• The Battered Women’s Testimony Act, which urges states to accept expert testimony in cases involving battered women, is passed.
• Massachusetts approves a bill creating a statewide computerized domestic violence registry.
• 28 states pass anti-stalking legislation.
• The US Congress re-authorizes the Higher Education Bill which includes the campus Sexual Assault Victims Bill of Rights.
• The Association of Paroling Authorities, International establishes a Victim issues Committee.
• The US Supreme Court in R.A.V.Vs City of St. Paul strikes down a local hate crime ordinance in Minnesota.

1993
• President Clinton signs the “Brady Bill” requiring a waiting period for handgun purchases.
• Congress passes the Child Sexual Abuse Registry Act, establishing a national repository for information about child sex offenders.
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- Wisconsin ratifies its constitutional amendment for victims’ rights bringing the total to 14 states with amendments.
- 22 states pass anti-stalking statutes bringing the total number to 50 plus the District of Columbia.
- The Federal Crime Victims Fund deposits total $144 million.

1994

- Six states pass constitutional amendments for victims’ rights (largest number in one year): Alabama, Alaska, Idaho, Maryland, Ohio and Utah.
- Kentucky becomes the first state to institute automated telephone voice notification to crime victims of their offender’s release status.
- President Clinton signs a comprehensive package of federal victims’ rights legislation as part of the Violent Crime Control and Law Enforcement Act that includes:
  - Violence Against Women Act
  - Enhanced VOCA funding
  - Enhanced sentences for drunk drivers with child passengers
  - Establishment of a National Child Sex Offender Registry
- The American Correctional Association Victims Committee publishes Report and Recommendations on Victims of Juvenile Crime.
- The Federal Crime Victim Fund deposits total $185 million.
- OVC establishes the Community Crisis Response Programme to improve services to communities experiencing multiple victimizations.

1995

- The US Department of Justice issues Attorney General Guidelines for victim and witness assistance.
- The National Victims’ Constitutional Amendment Network proposes the first draft of language for a federal constitutional amendment for victims’ rights.
• The first class graduates from the National Victim Assistance Academy in Washington, D.C.
• The Federal Crime Victims Fund deposits total $233 million.

1996

• Federal Victims’ Rights Constitutional Amendments are introduced in both houses of Congress with bipartisan support.
• Eight states ratify passage of constitutional amendments raising the total number to 29.
• The Community Notification Act, “Megan’s Law”, provides notification to communities of the location of convicted sex offenders by amendment to the National Child Sexual Abuse Registry Law.
• President Clinton signs the Antiterrorism and Effective Death Penalty Act, providing strengthened antiterrorism efforts, making restitution mandatory in violent crime cases, and expanding compensation and assistance to victims of terrorism at home and abroad.
• The National Domestic Violence Hotline is established to provide crisis intervention.
• The Federal Crime Victims Fund deposits total $525 million.
• The VOCA definition of “crime victim” is expanded to include victims of financial crime, allowing for counselling, advocacy and support services.
• The Church Arson Prevention Act is signed into law.
• The Office of Juvenile Justice and Delinquency Prevention issues the Juvenile Justice Action Plan for rights and services to victims of juvenile offenders.
• The Drug-induced Rape Prevention Act is enacted to address the issue of drug facilitated rape and sexual assault.

1997
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- A federal victims’ rights constitutional amendment is re-introduced in the 105th Congress with strong bipartisan support.
- In June, President Clinton reaffirms support of the victims’ rights amendment in a Rose Garden Ceremony.
- A federal anti-stalking law is enacted by Congress.
- Congress passes the Victims’ Rights Clarification Act to clarify existing federal law allowing victims to attend and provide victim impact during sentencing in both capital and non-capital cases, specifically to address the needs of the Oklahoma City bombing.
- The Federal Crime Victim Fund reaches its 2nd highest year in funding collections with total deposits of $363 million.

1998

- A new bipartisan version of the federal Victims’ Rights Amendment (SJ Res 44) is introduced with passage in the Senate Judiciary Committee, but no House action.
- Four new states pass state victims’ rights constitutional amendments: Louisiana, Mississippi, Montana and Tennessee.
- The Higher Education Amendments of 1998 is passed to address binge drinking and illegal alcohol consumption on college campuses.
- The Child Protection and Sexual Predator Punishment Act is enacted, providing sentencing enhancements and addressing sex crimes against children.
- The Crime Victims with Disabilities Act is passed to gather information about the extent of individuals with developmental disabilities.
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- The Identity Theft and Deterrence Act is passed outlaws identity theft and directs the Sentencing Commission to consider factors in determining penalties, to acknowledge reports and to provide victims with information.
- The Federal Crime Victim funds deposits total $324 million.

1999
- SJR 3, the Federal Victims’ Rights Constitutional Amendment is introduced before the 106th Congress.
- The Victim Restitution Enforcement Act is introduced requiring mandatory restitution.
- Violence against Women Act II is introduced before Congress.
- OVC issues first grants to create State Victim Assistance Academies.
- The National Crime Victim Bar association is formed by the National Centre for Victims of Crime.
- The Federal Crime Victims Fund deposits total $985 million.

2000
- The Violence against Women Act of 2000 is signed into law by President Clinton.
- The Internet Fraud Complaint Centre website, is created by the US Department of Justice, FBI, and the National White Collar Crime Centre
- The Federal Victims’ Rights Constitutional Amendment is addressed in the full Senate, but later withdrawn because of insufficient votes for approval.
- The US Congress passes a new national drunk driving limit if 0.08.
- The Victims of Trafficking and Violence Protection Act (for immigrant victims) is passed.
- The Federal Crime Victims Fund deposits total $777 million.

2001
Compensation To Victims Of Crime Under Other Legal Systems

- Congress responds to the 9/11 terrorist acts with new laws providing tax relief, compensation, funding for new services and civil claims as part of the Air and Transportation Safety and System Stabilization Act and the USA Patriot Act of 2001.
- The reauthorization of the Violence against Women Act of 1994 is passed with some expanded funding and services.
- The Child Abuse prevention and Enforcement Act and Jennifer’s Law allows use of Byrne grant funds for prevention and costs of entering victims in FBI’s NCIC database.
- The Federal Crime Victims Fund deposits total $544 million.

2002

- All 50 states, District of Columbia, US Virgin Islands, Puerto Rico, and Guam have established crime victim compensation programmes.
- The National Association of VOCA Assistance Administrators is created and OVC sponsors.
- The National Public Awareness and Education Campaign to promote the scope and availability of victims’ rights and services nationwide, offers the first “Helping Outreach Programmes to Expand” grants to grassroots, non-profit, community-based victim organizations to improve services and sponsors regional roundtables for victims.
- The Federal Crime Victims Fund deposits total $519 million.

2003

- The Office for Victims of Crime celebrates its 20th anniversary of service.
- The Senate Judiciary Committee passes the Federal Victims’ Rights Constitutional Amendment: “But The House Fails to Take Action”.
- Congress makes the Office on Violence against Women a permanent independent office.
Compensation To Victims Of Crime Under Other Legal Systems

• The Protect Act of 2003 (Amber Alert) creates a national network of AMBER (America’s Missing: Broadcast Emergency Response) to facilitate rapid law enforcement and community response to kidnapped or abducted children.

• Congress passes the Prison Rape Elimination Act to address the issue of rape in correctional institutions.

2004

• US Congress passed the strongest federal crime victims’ legislation in nation’s history after failure to approve a Federal Constitutional Amendment; H.R. 5107, The Justice For All Act of 2004, strengthens the rights of victims of federal crimes and provides enforcement and remedies when there is failure to comply; Title 1 is named in honour of five victims: Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis and Nila Lynn; H.R. 5107 also includes provisions for DNA analysis backlog.

• The Senate Judiciary Committee passes the Federal Victims’ Rights Constitutional Amendment: “But The House Fails to Take Action”.

6.2.10 Victim Compensation in California

In USA, California was the first state to introduce laws to compensate victims of violent crimes in 1965 and, as of now, 45 of the 50 states have such programmes. The law passed by California does not use the term compensation or restitution but a so-called ‘aid’ to be paid to the family of any person killed and to the victim and family, if any, of any person incapacitated as the result of a crime of violence, but only if there is need of such aid. For the first fiscal year 1965-66, a maximum of $100000 was reserved for this victim compensation scheme. The Victim Compensation Programme (VCP) can help in paying unreimbursed expenses that result when a violent crime occurs. Victims of crime who have been

60 Schafer Stefen, ‘Restitution To Victims Of Crime’, (1960) Stevens and Sons Ltd, 11 New Felter Lane, London, at 134

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injured or have been threatened with injury may be eligible for help from the Victim Compensation Programme. The Victim Compensation Programme may assist with the cost of medical and dental treatment, mental health services, funeral and burial expenses, home security, residential crime scene cleanup and emergency relocation. If a person is disabled as a result of crime, Victim Compensation Programme also assists with wage loss, dependent support loss, job retraining and home or vehicle modifications. The Victim Compensation Programme can help in paying moving expenses-such as first and last month’s rent, deposits and temporary lodging-if a victim needs to relocate for their own safety or emotional well-being. Victims can request an emergency award in certain situations. Emergency awards are based on substantial hardship and the immediate need for payment. Emergency awards are mostly obtained to cover funeral or burial expenses. Victims residing in California, who have been injured outside the State are also eligible to obtain compensation. The concerned applications are referred to Victim Compensation and Government Claims Board.

**Eligibility:**

To be eligible for compensation a person must be a victim of:

(a) A qualifying crime involving
(b) Physical injury or
(c) Threat of physical injury or
(d) Death

For certain crimes, emotional injury alone is all that needs to be shown. The Victim Compensation Programme can help victims and the members of their family in certain cases such as:

(a) Domestic violence
(b) Child abuse
(c) Assault
(d) Sexual assault
(e) Molestation

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61 www.boc.ca.gov accessed on 20-05-2009
Compensation To Victims Of Crime Under Other Legal Systems

(f) Homicide
(g) Robbery
(h) Drunken driving
(i) Vehicular manslaughter

Minors who suffer emotional injuries from witnessing a violent crime may be eligible for compensation up to $5000 in mental health counseling through the Victim Compensation Programme.\textsuperscript{62} To qualify, the minor witness must have been in close proximity to the crime. The Victim Compensation Programme helps in paying for expenses related to a crime such as:

(a) Medical and dental treatment
(b) Mental health services
(c) Income loss
(d) Funeral and burial expenses
(e) Loss of support when victim is killed or disabled because of crime
(f) Job retraining
(g) Home or vehicle modifications
(h) Home security
(i) Relocation
(j) Insurance co-payments
(k) Crime scene cleanup
(l) Necessary medical equipment such as a wheelchair
(m) Childcare services, when a caregiver is killed or disabled because of crime

Following expenses are not covered by Victim Compensation Programme:

(a) Expenses not related to the crime
(b) Any expenses paid by insurance or another source of reimbursement or coverage
(c) Damages for pain and suffering
(d) Expenses for lost, stolen or damaged property (except medically necessary items due to a qualifying crime)

\textsuperscript{62} www.boc.ca.goc accessed on 20-05-2009
Compensation To Victims Of Crime Under Other Legal Systems

There are 59 Victim Witness Assistance Centres one in each county and one in Los Angeles that work directly with the Victim Compensation and Government Claims Board (VCGCB) in assisting victims. Victim can contact the customer service section for assistance which provides information to the victims throughout the processing of claims. For example: eligibility, status of bills, appeal options, etc. Victims who need more comprehensive assistance with their claims, the Customer Service Sections team up with the Victim Compensation Programme staff. Besides, an ombudsman is also available to work directly with victims who need further assistance. These service providers help the victims in recovering from the physical and mental trauma of violent crimes. The State Restitution Fund is the main funding source for paying compensation to the victims. It gets its revenue from restitution fines, restitution orders and penalties paid by criminal offenders. It also receives federal grant money from Victims of Crime Act (VOCA) funds. The VOCA funds come from penalties paid by offenders convicted of federal crimes.

California law gives the Victim Compensation Programme the authority to request and receive patient’s medical information. The disclosure rules of the Health Insurance Portability and Accountability (HIPAA) of 1996 that prohibit providers from disclosing patient’s information do not apply to Victim Compensation Programme. The VCP uses patient’s medical information to determine compensation. Compensation can be delayed due to lack of complete patient’s information. All Victim Compensation Programme claims and related documents including medical information are highly confidential. Except as required by California law, the Victim Compensation Programme only discloses a victim’s information with his/her written permission.63

6.2.11 Victim Compensation In New York

New York became the second victim compensating state of the United States of America with the setting up of a Crime Victims Compensation Board composed of three members appointed by the governor in 1966. Indemnification was restricted to physical injury or death and crime had to be reported to the police in forty-eight

63 www.boc.ca.goc accessed on 20-05-2009
hours. The Board now comprises of five members who are appointed by the Governor with the advice and consent of the Senate and serve for seven years. The Board also has a staff to aid in the fulfillment of its mission. The Board has a three-tier mission to:

(a) Provide compensation to innocent victims of crime in a timely, efficient and compassionate manner;
(b) Fund direct services to crime victims via a network of community-based programmes and
(c) Advocate for the rights and benefits of all innocent victims of crime.

Eligibility For Compensation

(a) The victim must be an innocent victim of crime
(b) Victims of crime who were physically injured as a result of crime
(c) Victims of crime who are under 18, 60 and over, or disabled, who were not physically injured
(d) Certain relatives and dependents, including surviving spouse, child, parent, brother, sister, stepbrother, stepsister, stepparent or person primarily dependent on the victim for support
(e) Those who paid for or incurred burial costs for an innocent crime victim
(f) Child victims, a child who witnesses a crime, and the child’s parent, stepparent, grandparent, guardian, brother, sister, stepbrother or stepsister
(g) Certain victims of unlawful imprisonment or kidnapping
(h) Certain stalking victims
(i) Victims of terrorist acts outside the United States who are the residents of New York state
(j) Victims of frivolous lawsuits brought by a person who committed a crime against the victim

Compensation May Be Awarded If:

(a) The victim was an innocent victim of crime
Compensation To Victims Of Crime Under Other Legal Systems

(b) The crime was reported to a criminal justice agency within one week. Delay can be exempted if the reason is justified.

Compensation includes:\(^{66}\)

(a) Expenses for medical or other related services not covered by other insurance or benefit programmes

(b) Loss of earnings or support upto $ 600 per week and upto a maximum of $ 30000

(c) Burial expenses up to $ 2000 ($ 6000 for crimes committed on or after November 1\(^{st}\), 1966)

(d) Occupational rehabilitation expenses

(e) Counselling services to the victims and to certain family members are paid in accordance to the Crime Victims Board fee schedule. The fee schedule is based on reasonable fee rates depending upon the credentials of the treating counsellor.

(f) The cost of repair or replacement of essential personal property lost, damaged or destroyed as the direct result of a crime upto $ 500 ($ 100 cash)

(g) Transportation expenses for necessary court appearances in connection with the prosecution of the crime or transportation for medical appointments necessary as a result of the crime

(h) The cost of residing at or utilizing the services of a domestic violence shelter

(i) Crime scene cleanup expenses and/or securing a crime scene upto $ 2500

(j) Attorney fees for representation before the Board, to a maximum of $ 1000

Emergency award upto maximum of $ 2500 is also available to the potentially eligible victims. In the fiscal year 2007-08, $ 7500000 in state funds were appropriated and $ 18421000 in federal Victims of Crime Act funds were received by the Board for grant making purposes in victim assistance. The claims are being made smoothly and it is always the effort of the Board to do justice to the victims of crime by adequately compensating them.

6.2.12 Victim Compensation In Texas

\(^{66}\) Ibid

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In 1979 the Texas legislature passed the Crime Victims’ Compensation Act, creating the Compensation to Victims of Crime Fund and the Crime Victims’ Compensation Programme (CVC). The primary purpose of the fund is to encourage greater victim participation in apprehending and prosecuting criminals and reimbursing innocent victims for certain expenses incurred as a result of violent crime. The CVC programme is supported through legislative appropriation from the Compensation to Victims of Crime Fund. Crime Victims’ Compensation is a financial assistance programme that helps eligible victims of crime with certain expenses. Money for this programme comes from court costs paid by criminals and deposited by each Texas county into the Crime Victims’ Compensation Fund.

**The Fund Receives Revenue From The Following Sources:**

- (a) State Court Costs:
  
  Local governmental submit consolidated court costs to the comptroller for felony and misdemeanor convictions.

- (b) Parolee Supervision Fees:
  
  Offenders on parole pay $8 per month to the Fund

- (c) Donations:
  
  Jurors are provided information about the fund and are offered the option of donating their daily reimbursements to the fund.

- (d) Subrogation:
  
  The Attorney General asks the victim to reimburse the fund for the amount paid on behalf of the victim up to the amount of the civil award, when a crime victim is awarded money in a civil suit.

- (e) Federal VOCA Grant:
  
  The VOCA allows the collection of fines, fees and forfeitures for federal convictions.

- (f) Restitution:
  
  Offenders may be ordered to reimburse the fund for compensation payments made on behalf of those they have victimized.

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67 [www.oag.state.tx.us/victims/about_comp.shtml](http://www.oag.state.tx.us/victims/about_comp.shtml) accessed on 17-08-2009
The Crime Victims’ Compensation Programme is administered by the office of the Attorney General and is dedicated to ensuring that victims of violent crime are provided financial assistance for crime related expenses that cannot be reimbursed by insurance or other sources. State law requires that reimbursement first be sought from other sources, such as health insurance, medical aid, auto insurance, Texas Workers Compensation. Claims may be approved for benefits up to a total of $ 50000. Victims who suffer total and permanent disability as a result of the crime may get an additional $ 75000.

**Upon Approval, Benefits May Be Awarded For:**

(a) Medical, hospital, physical therapy or nursing care
(b) Psychiatric care or counselling
(c) One time relocation assistance for victims of family violence or a victim of sexual assault who is assaulted in the victim’s place of residence.
(d) Loss of earnings or support
(e) Loss of wages and travel reimbursement due to participation in the investigation prosecutorial and judicial processes
(f) Care of a child or dependent
(g) Funeral and burial expenses
(h) Crime scene cleanup
(i) Replacement costs for clothing, bedding or other property seized as evidence or rendered unusable as the result of the investigation
(j) Attorney fees for assistance in filing the Crime Victims’ Compensation application and in obtaining benefits, if the claim is approved
(k) Loss of wages and travel to seek medical treatment or counselling

**Additional Benefits Include:**

(a) Making a home or car accessible
(b) Job training and vocational rehabilitation
(c) Training in the use of special appliances
(d) Home health care

68 www.oag.state.tx.us accessed on 17-08-2009
Compensation To Victims Of Crime Under Other Legal Systems

(e) Reimbursement of lost wages
(f) Rehabilitation technology, long term medical expenses and durable medical equipment

Reimbursement for property damage or theft is not an eligible expense. Similarly Sexual Assault Prevention and Crisis Services (SAPCS) is a programme of the Crime Victim Services Division of the office of the Attorney General which offers the following services:
(a) Funding and technical assistance to sexual assault programmes and some special projects throughout the state;
(b) Establishing Sexual Assault Response Teams (SARTs) in communities;
(c) Certifying Sexual Assault Nurse Examiners (SANEs)
(d) Certifying sexual assault volunteer training programmes

If the Crime Victims’ Compensation Programme (CVC) makes a decision with which the victim disagrees, he may ask for reconsideration of the decision. He has to notify Crime Victims’ Compensation in writing within 60 days requesting for a final ruling hearing from the Crime Victims’ Compensation Programme. If he is still not satisfied with the outcome of the hearing, the victim may appeal before the district court within 40 days of the final ruling. The CVC Programme is “the payer of last resort” after primary sources of payment such as health insurance, Medicaid, medicare, auto insurance or Texas Workers’ Compensation have been exhausted. If the court orders the accused to pay compensation to the victim that has already been paid by the CVC, the victim may be required to reimburse the Fund.

Eligibility:
The victim must:

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69 SART is a multi-disciplinary collaboration of local sexual assault programmes, law enforcement agencies, District/County Attorneys and medical facilities
70 SANE programme supports community efforts to address the crime of sexual assault by establishing a process for accurate evidence collection and support for sexual assault survivors. A SANE is a registered nurse who is trained to provide comprehensive care to victims of sexual assault, to demonstrate competency in conducting a forensic exam to include evaluation for evidence collection.
71 www.oag.state.tx.us accessed on 17-08-2009
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(a) Be a US resident with the crime occurring in Texas or a Texas resident who becomes a victim in a State or country without a compensation programme. US citizenship is not required.
(b) Report the crime to a law enforcement agency within a reasonable period of time but not so late as to interfere with or hamper the investigation and prosecution of the crime.
(c) File the application within three years of the date of crime.

Benefits May Be Reduced Or Denied If The Victim:
(a) Participated in the crime.
(b) Engaged in illegal activity.
(c) Contributed to the crime.
(d) Knowingly submitted false or forged information to the CVC Programme.
(e) Did not cooperate with the appropriate law enforcement agencies.

Following Can Claim Compensation:
(a) An innocent victim of crime who suffers substantial threat of physical or emotional harm or death. These may include sexual assault, kidnapping, robbery, assault, homicide and other violent crimes.
(b) A dependant of a victim.
(c) An authorized individual acting on behalf of a victim.
(d) An intervener who goes to the aid of a victim or peace officer.
(e) A person who legally assumes the obligations or voluntarily pays certain expenses related to the crime on behalf of the victim.
(f) Immediate family or household members related by blood or marriage who require counseling as a result of the crime.
(g) A peace officer, fire fighter or individual who has a duty to protect the public and who is injured in a crime.

The working of the whole process can be summarized in the following chart.\(^2\)

\(^2\) www.oag.state.tx.us accessed on 17-08-2009

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Summary Chart

Workshops And Conferences
Conferences:
The office of the Attorney General provides training to advocates, liaisons and victim co-ordinators to ensure that victims receive effective assistance in accessing the CVC Programme. This agency also sponsors a biennial conference for victim service community.

Workshops:
(a) Presumptive Eligibility Process
CVC Programme uses the Presumptive Eligibility (PE) process by allowing advocates, to work directly with victims to gather necessary documentation in order to submit a complete application. This workshop helps in better serving the victims of crime and their family members. For example, at San Antonio, Texas workshop will be held. The Training Dates for Presumptive Eligibility Process are:

2nd October 2009
4th December 2009
2nd April 2010
4th June 2010
6th August 2010

(b) Address Confidentiality Programme (ACP)

This workshop consists of an overview as to how the programme works and instructions for advocates on how to properly fill the ACP application. By statute, victims must contact local advocates to apply for the Programme.

(c) Crime Victims’ Compensation Advanced Track (CVCAT)

This training is an overview of the Compensation Programme with an emphasis on the awards process. It is an advanced course best suited to provide detailed follow-up with victims on payments as well as to better understand billing requirements. It will be held on 14th August 2009, 16th October 2009, 11th December 2009, 16th April 2010, 18th June 2010 and 13th August 2010.

Incidence Of Compensation Claims Received By Crime Category (%)\(^{73}\)

<table>
<thead>
<tr>
<th>Particulars</th>
<th>California</th>
<th>New York</th>
<th>Texas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder/Homicide</td>
<td>14.6</td>
<td>10.6</td>
<td>9.2</td>
</tr>
<tr>
<td>Robbery</td>
<td>6.3</td>
<td>n/a</td>
<td>7.0</td>
</tr>
<tr>
<td>Assault</td>
<td>24.1</td>
<td>84.1</td>
<td>49.0</td>
</tr>
<tr>
<td>Rape/Sexual</td>
<td>7.0</td>
<td>4.9</td>
<td>8.0</td>
</tr>
</tbody>
</table>

\(^{73}\) Surana, Abhinav, ‘Compensation In Criminal Matters In The United States And United Kingdom’ Cri.L.J. Vol 3 2004, J.276 at 279
### Compensation To Victims Of Crime Under Other Legal Systems

<table>
<thead>
<tr>
<th>Assault</th>
<th>2009 Crime Victims Fund Compensation And Assistance Allocations74</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child molestation/Abuse</td>
<td>31.8 3.7 14.7</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>n/a n/a 4</td>
</tr>
<tr>
<td>Hit and run</td>
<td>3.3 3.1 n/a</td>
</tr>
<tr>
<td>Other</td>
<td>9.5 8.83 16.9</td>
</tr>
</tbody>
</table>

#### 2009 Crime Victims Fund Compensation And Assistance Allocations

<table>
<thead>
<tr>
<th>STATE</th>
<th>FY 2007 CERTIFIED PAYOUT</th>
<th>FY 2009 ALLOCATION</th>
<th>POPULATION (July 1, 2008)</th>
<th>ASSISTANCE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>NUMBER</td>
<td>PERCENT</td>
<td>ALLOCATION</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>$51,779,475.00</td>
<td>31,068,000</td>
<td>36,756,666</td>
<td>0.11917</td>
<td>$40,622,608</td>
</tr>
<tr>
<td>New York</td>
<td>$18,064,042.00</td>
<td>10,838,000</td>
<td>19,490,297</td>
<td>0.06319</td>
<td>$21,775,095</td>
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<tr>
<td>Texas</td>
<td>$49,617,841.60</td>
<td>29,771,000</td>
<td>24,326,974</td>
<td>0.07887</td>
<td>$27,054,684</td>
</tr>
</tbody>
</table>

Hence it can be said that in USA, all the States are following the same concept of compensating the victims of crime under different circumstances with variation in the amount of compensation and eligibility criteria depending upon the law of that state. But overall, the general view is that victims are being compensated well unlike India where lot many things are to be done. A law is yet to be made to specifically deal with compensation. Besides, other than NGOs, there is hardly any govt. agency specifically dealing with compensation to victims of crime whereas in USA, such agencies are not only existing on papers but also working efficiently. For example in

the fiscal year 2007-08 CVB accepted 13602 claims while disbursing $ 27427450 in compensation to help crime victims in New York.  

6.3 Conclusion:
To sum up it can be said that in UK as well as USA, the compensation scheme is working smoothly as compared to India. In UK and USA, time limit has been prescribed in the legislation within which the compensation has to be paid. In India there is no such time limit unless ordered by the judiciary. In UK and USA, the various compensation schemes are promoted and victims are assisted in getting due justice. Funds are allocated to the states, donations are made and offenders as well as states contribute in the revenue of the fund. In India the quantum of compensation depends upon the paying capacity of the accused. That is to say, in India providing of compensation is not the duty of the state but of the victim to recover in court proceedings, the failure to do which would deprive the victim of compensation whereas in UK and USA it is the duty of the state as well as the offender to provide compensation to victims of crime.

Unlike Indian situation, UK and US not only provide for compensation to the victims of crime, but also, they have well defined parameters for quantifying that compensation. Lot is required to be done in India which is still a developing country. The foremost requirement is that of a statute by making it mandatory for the state to pay compensation. Then comes the lateral matters of its implementation. Unless there is some legislation, law will depend only upon judiciary and doubts and ambiguities will remain there due to non-existence of defined parameters to award compensation.

75 www.cvb.state.ny.us/AboutCVB/AboutCVB.aspx accessed on 17-08-2009