CHAPTER - 7
VICTIM COMPENSATION FUND: PROPOSED PARADIGM

Money speaks sense in a language all nations understand.¹

-Aphra Behn

Without a substantial fund there cannot be any meaningful programme for victim compensation. The experience of countries operating victim compensation scheme suggest that not even one third of a victims of crimes seek compensation for criminal injuries suffered.² The scheme may help in deciding how much of compensation should be allowed in what type of injuries to what type of victims etc. Victims’ compensation seems to be a beggar weeping at the threshold of criminal justice. The criminal justice system is based upon the ideology that an offence is only against the society i.e. the State. An act of crime exposes the flaws and lacunas in the functioning of the State which fails to protect the life, liberty or property of the people. Why should an innocent suffer as a result of failure on the part of the State? It ought to be the duty of the State to restore the victim to his former position. Therefore punishment must not only meet the ends of the State but should evaluate the damage of the victim also. If punishment fulfils the public demand, victim’s compensation fulfils the private demand, the two being sides of the same coin. Considering the present status of crime victims in India, there is need to have a comprehensive victim-assistance policy recognising their basic rights and giving respect to them at the same time. The ‘Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power’ adopted by UN General Assembly provides:³

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³ UN Resolution No. 40/34 of 29th November, 1985
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(a) Offenders... should make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. It means restitution should be the part of sentencing in criminal cases.

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

- Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
- The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization. i.e. when compensation is not fully available from the offender or other sources, State should provide monetary compensation to victims.
- The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the offender is a national is not in a position to compensate the victim for the harm. i.e. a National Fund should be set up for victims who suffered serious physical or mental injury.

Section-250 of Criminal Procedure Code, 1973 authorises Magistrates to direct complainants or informants to pay compensation to people accused by them without reasonable cause.

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4 Principle-8
5 Principle-12
6 Principle-13
7 Section-250: Compensation for accusation without reasonable cause:
1. If in any case instituted upon complaint or upon information given to a police officer or to a Magistrate, one or more persons is or are accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that there was no reasonable ground for making the accusation against them or any of them, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one; or, if such person is not present, direct the issue of a summons to him to appear and show cause as aforesaid.
Section-358\(^8\) empowers the court to order a person to pay compensation to another person for causing a police officer to arrest such other person wrongfully. Section-357\(^9\) enables the court to grant compensation to the victim and to order the payment

2. The Magistrate shall record and consider any cause which such complainant or informant may show, and if he is satisfied that their was no reasonable ground for making the accusation, may for reasons to be recorded, make an order that compensation to such amount, not exceeding the amount of fine he is empowered to impose, as he may determine, be paid by such complainant or informant to the accused or to each or any of them.

3. The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall undergo simple imprisonment for a period not exceeding 30 days.

4. When any person is imprisoned under sub-section (3), the provisions of sec-68 and 69 of the Indian Penal Code shall, so far as may be, apply.

5. No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall, be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

6. A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second class to pay compensation exceeding one hundred rupees, may appeal from the order, as if such complainant or informant had been convicted on a trial held by such Magistrate.

7. When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (6), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided; and where such order is made in a case which is not so subject to appeal the compensation shall not be paid before the expiration of one month from the date of the order.

8. The provisions of this section apply to summons-cases as well as to warrant-cases.

1. Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding one thousand rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

2. In such cases, if more persons than one are arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one thousand rupees, as such Magistrate thinks fit.

3. All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding 30 days as the Magistrate directs, unless such sum is sooner paid.

Sec-357: Order to pay compensation:

1. When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgement, order the whole or any part of the fine recovered to be applied:

a. in defraying the expenses properly incurred in the prosecution;
b. in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court;
c. when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855, entitled to recover damages from the person sentenced for the loss resulting to them from such death;
of costs of the prosecution while imposing the sentence in a criminal proceeding. But this is at the discretion of the court and is to be paid out of fine recovered. Though Section-357 tries to follow the principles of the UN Basic Principles of Justice for Victims of Crime but lot more is to be done, as the scope of Section-357 is very limited. For example:

(a) It applies only when the accused is convicted.

(b) Compensation can be made out of the fine recovered from the accused when fine is part of the sentence.

(c) When fine is not imposed as part of the sentence, the court may order any amount to be paid by way of compensation for any loss or injury by reason of the act for which the accused has been sentenced.

(d) The Magistrate has to consider the capacity of the accused to pay while awarding compensation.

Not even one per cent of deserving victims get compensation through criminal courts today. Victim compensation law continues to be in an unsatisfactory condition. Without a substantial fund which will be constantly replenished, there cannot be any meaningful programme of victim compensation. For a country of India’s size and population, given the role of violent crimes, particularly against women, children and dalits, the Compensation Fund must at least be rupees 500 crores to begin with. It must grow one hundred per cent every year to make available ready money for

d. when any person is convicted of an offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bonafide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled there to.

2. If the fine imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

3. When a Court imposes a sentence, of which fine does not form a part, the Court may when passing judgement, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

4. An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

5. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.
payment to victims.\textsuperscript{10} There can be many ways in which the fund for victim compensation can be generated by the government. For example:

(a) Donations to the Fund and also their exemption from tax.

(b) Wages earned by prisoners.

(c) Grants by the State or Central governments.

(d) Accumulation of unclaimed amounts.

(e) Increased amount of fine if the accused is rich.

The compensation fund should be managed by the Compensation Board. The membership must include people from judiciary to ensure fairness and transparency in its administration. The Board should have a network with the police, prosecution, judicial departments and should also have support from social work, legal aid and medical agencies. Although all victims of crime should be entitled to compensation but to begin with, the task can be accomplished in a phased manner depending upon the resources of the State. More serious and heinous crimes can be included in the list for providing compensation. For example- Victims of death, sexual offences, child abuse etc.

7.1 The Compensation Board

Mahatma Gandhi once said: “Recall the face of the poorest and most helpless person whom you may have seen and ask yourself if the step you contemplate is of going to be of any use to him. Will he be able to gain anything by it? Will it restore him to control over his own life and destiny?” The same applies to the state also. Whatever steps are to be taken by the state for providing compensation to the victims, must ensure that they will be helpful to them. “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”\textsuperscript{11}

7.1.1 Delhi Domestic Working Women’s Forum Vs Union of India


\textsuperscript{11} Article-14 Convention Against Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment
In India, in *Delhi Domestic Working Women’s Forum Vs Union of India*, the Supreme Court laid down broad parameters in assisting the victims of rape. The Court inter alia observed:

(a) It is necessary, having regard to the Directive Principles contained under Article-38 (1) of the Constitution to set up Criminal Injuries Compensation Board.

(b) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shocks as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape. The scheme was suggested on the lines of British Criminal Injuries Compensation Scheme. The Court held, “On this aspect of the matter we can usefully refer to the following passage from The Oxford Handbook of Criminology as to the position in England:

‘Compensation’ payable by the offender was introduced in the Criminal Justice Act, 1972 which gave the Courts powers to make an ancillary order for compensation in addition to the main penalty in cases where ‘injury, loss or damage’ had resulted. The Criminal Justice Act, 1982 made it possible for the first time to make a compensation order as the sole penalty. It also required that in cases where fines and compensation orders were given together, the payment of compensation should take priority over the fine. These developments signified a major shift in penological thinking, reflecting the growing importance attached to restitution and reparation over the more narrowly retributive aims of conventional punishment. The Criminal Justice Act, 1988 furthered this shift. It required courts to consider the making of a compensation order in every case of death, injury, loss or damage and, where such an order was not given, impose a duty on the court to give reasons for not doing so. It also extended the range of injuries for compensation. ......

The 1991 Criminal Justice Act contains a number of

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12 (1995)1 SCC Mat 20
13 Ibid
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provisions which directly or indirectly encourage an even greater role for compensation.”

The National Commission for Women proposed a Criminal Injuries Compensation Board for the payment of compensation to victims of Rape on the directives issued by the Supreme Court of India in the above case of **Delhi Domestic Working Women’s Forum Vs Union of India and others** in which the court had directed the National Commission for Women to evolve a scheme so as to wipe out the tears of unfortunate victims of rape.

Salient features of the Revised Scheme For Relief And Rehabilitation Of Victims Of Rape as revised on 15th April 2010 is as follows:14

This scheme provides for granting compensation by the District Board to victims of rape irrespective of the conviction of the offender. Various authorities have been appointed to look into the matters relating to award of compensation along with their respective functions. The scheme also provides for interim compensation with the maximum ceiling of rupees twenty thousand and rupees fifty thousand for their rehabilitation. The final relief cannot exceed one lakh thirty thousand. Enhanced relief can also be made in special cases. Moreover principles have been laid down for the Board to consider while determining quantum of compensation for the victims.

**District Board For Criminal Injuries Relief And Rehabilitation**

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

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

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

i. Superintendent of Police or his/her nominee,

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14 www.ncw.nic.in/PDFFiles/Scheme_Rape_Victim.pdf accessed on 18-06-2010
See Appendix-VII for the text of Revised Scheme For Relief And Rehabilitation Of Victims Of Rape as revised on 15th April 2010

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

iii. District Health and Family Welfare Officer/District Medical and Health officer or his/her nominee;

iv. Deputy Director/Project Director/Gazetted District Officer of WCD of the concerned district, who shall also act as Secretary of the Board, maintain records and act as drawing and disbursing officer

v. Representative of Child Welfare Committee; (in each district or group of districts)

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

**Functions Of The District Board**

Upon the constitution of the Board, it shall:

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

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

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

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

(e) Provide counselling support to the victims;

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

(g) Periodically review the progress of investigation;

(h) Provide support to young victims for education, professional training or training for self-employment;

(i) Provide any other assistance for appropriate rehabilitation of the victims;
(j) Recommend change of investigating officers in appropriate cases on the request made by the victim;

(k) Arrange shelter for the victim, for such period as the circumstances warrant.

(l) Perform any other function as may be deemed expedient and necessary by the Board or as directed by the State/National Board, given the peculiar facts and circumstances of each case;

**Interim Relief And Rehabilitation**

(a) Upon receipt of the information from the police under clause 9 (a), the District Board, shall disburse a sum of rupees 20,000 in favour of the victim preferably within fifteen days and in any case not exceeding three weeks as interim relief;

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

(c) On receipt of the complaint and examination of the victim the Board shall on merits of each case examine/determine the nature of rehabilitation measures required to be provided to the victim and initiate appropriate action towards such measures and may incur a maximum expenditure upto rupees 50,000 towards rehabilitation of the victim

(d) Before awarding the interim and other reliefs under clause (b) and (c), the Board shall satisfy itself about the claim, make a preliminary assessment about the nature of the claim as well as take into account the medical report and other evidences;

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

**Final Relief**

(a) Within a period of one month from the date on which the prosecutrix gives her evidence in the criminal trial or within one year from the date of receipt of the application in cases where the recording of evidence has been unduly delayed for reasons beyond the control of prosecutrix, whichever is earlier, the Board shall
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direct disbursal of the balance amount of relief upto rupees 1.30 lakhs as final instalment;
(b) In cases where the final relief is awarded before the recording of the evidence of the prosecutrix, the Board shall give reasons in writing for doing so along with reason for delay in recording of evidence.
(c) The Board shall be guided by the special needs of the victim in deciding the amount of financial relief to be granted in each case;
(d) The financial relief that is awarded by the Board is in addition to rehabilitation measures that the Board may suggest/administer in each case.
(e) In cases where the victim is a minor, the amount shall be released to her guardian or whoever has filed the application on behalf of the victim, after the Board is satisfied about the proper utilization of funds in the best interest of and for and the welfare of the child victim. Wherever practicable the written consent of the victim may be taken.
(f) The Board shall keep the best interests of the victim in mind at all times.

Principles Governing The Determination Of The Relief And Rehabilitation To The Victim

The Board shall while determining the compensation and other reliefs be guided by the following parameters:

(a) Where death results as a consequence of rape:
   i. If the victim happened to be a non-earning member of the family, the Board shall award upto rupees one lakh towards relief after the post mortem report establishes a prima facie case.
   ii. In case the victim was an earning member of the family, the Board shall award an amount of rupees two lakh to the benefit of minor children after satisfying itself that the victim was an earning member after the post mortem report establishes a prima facie case for the benefit of minor children.
(b) The Board shall take into account rehabilitation and other expenses if any, subject to a maximum of rupees 50,000 which may include:
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i. Type and severity of the bodily injury suffered by the victim and expenditure incurred or likely to be incurred on medical treatment and psychological counselling to the victim.

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

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

iv. Loss caused to the victim by cessation or interruption of gainful activity or employment on the basis of an assessment made by the Board;

v. Non pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience.

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

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

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

Enhancement Of Relief In Special Cases

(a) The State Board with prior consultation with the National Board shall have the power to provide for enhanced relief subject to a maximum of rupees three lakhs in cases where:

i. Offences against children below 13 years of age, which may involve specialized treatment and care.

ii. Offences against mentally challenged, handicapped women and children which may involve specialized treatment and care.
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iii. Victim becomes infected with Sexually Transmitted Diseases including affected by HIV/AIDS as a consequence of rape;

iv. Victim gets pregnant as a consequence of rape and due to circumstances beyond her control delivers the child;

v. Where severe medical problems is faced by the victim including both physical and mental.

vi. Any other ground as may be prescribed.

This scheme provides some solace to the victims and can be helpful to them if implemented sincerely.

7.1.2 Scheme For Relief And Rehabilitation Of Offences (By Acids) On Women and Children

The National Commission for Women in India revised the Scheme for Relief and Rehabilitation of Offences (by Acids) on Women and Children\(^\text{15}\) on 29th January 2009. Various provisions have been incorporated in this scheme to provide compensation to the victims. Most of the times it is almost impossible for the victim’s family to pay for the extensive surgeries needed to reconstruct the damaged face of the victim and thus many of the victims remain like a living corpse. Keeping in view the specific needs of the victims there is a need to arrange rehabilitation mechanisms/schemes. A Board has been constituted to help the victims.

Constitution Of National Criminal Injuries Relief And Rehabilitation Board

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

The National Board consists of:

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

(b) An officer not below the rank of Joint Secretary of the central government in the department of women and child development.

\(^\text{15}\)Accessed from www.ncw.nic.in/PDFFiles/Scheme_ACID_Attack.pdf on 15-06-2009
See Appendix-VIII for the text of the Revised Scheme for Relief and Rehabilitation of Offences (by Acids) on Women and Children revised on 29th January 2009
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(c) One woman member to be appointed from amongst persons having knowledge of or practical experience in matters relating to criminal law.

(d) Two women representatives of NGOs or women activists working in the field of empowerment of women.

Constitution Of District Criminal Injuries Relief And Rehabilitation Board

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

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

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

Functions Of The District Criminal Injuries Relief And Rehabilitation Board

(a) The Board shall consider the claims and award financial relief/rehabilitation as the case may be in all cases of acid attacks in accordance with the procedure prescribed under this scheme.

(b) The Board shall coordinate and monitor the activities of the District Monitoring Committee, as provided under the Scheme, and/or with the governmental and Non Government Organizations for rendering assistance to the victim, in the form of any legal, medical, psychological or any other form of aid/assistance.

(c) Implement any scheme for rehabilitation of acid attack victims framed by the State or National Criminal Injuries Relief and Rehabilitation Board.

If the Board is prima facie satisfied that a case of acid attack has been made out, the board has the power to order an interim financial relief of an amount upto rupees five lakh within a period of thirty days from the date of receipt of the application. A

16 Section-15 (f)
maximum limit of rupees 25 lakh has been set to meet the time to time costs.\textsuperscript{17} Moreover, the relief is not subject to convictions or acquittals or whether the identity of the persons committing the crime is known or otherwise.\textsuperscript{18} As to finance, the central government has to provide the budgetary requirements.\textsuperscript{19} On the similar pattern the Haryana government will set up a mission for empowering the women.\textsuperscript{20} The Chief Minister Mr. Bhupinder Singh Hooda has given the approval for the scheme entitled ‘Scheme for Relief and Rehabilitation of Women Victims of Acid Attacks’. Under the scheme rupees 25,000 would be given to the victim as interim relief. The entire cost incurred on their treatment would be borne by the Women and Child Welfare Department.\textsuperscript{21}

\textbf{7.1.3 The Law Commission Of India}

The Law Commission of India in its 152\textsuperscript{nd} Report had recommended the introduction of Section-357-A prescribing inter alia, that compensation be awarded to the victims of crime at the time of sentencing. Again in its 154\textsuperscript{th} Report, the Law Commission went one step further and recommended that it was necessary to incorporate a new Section 357-A to provide for a comprehensive scheme of payment of compensation for all victims fairly and adequately by the Courts.\textsuperscript{22}

\textbf{Incorporation Of Section-357-A, As Recommended By The Law Commission Is As Under:}

\begin{itemize}
\item[(a)] Every state government in co-ordination with the central government shall prepare a scheme for providing funds for the purpose of compensating the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.
\item[(b)] Under the scheme the District Legal Services Authority at the district level and the State Legal Services Authority at the State level shall decide the quantum of
\end{itemize}

\textsuperscript{17} Section-15(g)
\textsuperscript{18} Section-15(i)
\textsuperscript{19} Section-16(i)
\textsuperscript{20} The Tribune dated 03-11-2010
\textsuperscript{21} Ibid
\textsuperscript{22} Chandra Singh, Subhash, 'Justice For Victims Of Crime', Cri. L. J. 2008, J. 298
compensation to be awarded whenever the trial court to that effect makes a recommendation.

(c) If the trial court, at the conclusion of the trial, is satisfied that the compensation awarded under Section-357 (3) is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may recommend to the District Legal Services Authority if the compensation in its view is less than rupees 30,000 or to the State Legal Services Authority if the compensation is more than rupees 30,000.

(d) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place it is open to the victim or his dependants to make an application under sub-section(2) to the District Legal Services Authority at the district level and the State Legal Services Authority at the state level for award of compensation.

(e) On receipt of such recommendations or on the application under sub-section (4), as the case may be, the District Legal Services Authority or the State Legal Services Authority, as the case may be, shall after due enquiry award adequate compensation by completing the enquiry within two months.

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

The Law Commission in 156th Report exhibited its sincere concern for victims of crime and justifying the need to ‘redesign and restructure’ the victim-compensatory legislative paradigm in India, observed:

“Increasingly the attention of criminologists, penologists and reformers of criminal justice system has been directing to victimology, control of victimisation and protection of victims of crime. Crimes often entail substantive harm to people and not merely symbolic harm to the social order.” Consequently, the needs and rights of
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Victims of crime should receive priority attention in the total response to crime. One recognised method of protection of victim is compensation to victims of crime. The Commission further asserted that the principles of compensation to victims of crime need to be reviewed and expanded to cover all cases. Compensation should not be limited only to fines, penalties and forfeitures realised but the State should also render its assistance to victims of crimes out of its own funds in all cases regardless of the fact whether an accused is acquitted or the perpetrator is not traced but the victim is identified or when the offence is proved. The State’s responsibility to make reparation to crime victims can be justified on humanitarian, compassionate and legal grounds. The State is also under a sort of legal obligation to compensate victims of crime, who suffered because of failure on the part of the State to maintain law and order, ensure peace, harmony and tranquillity in society, protect people and their property and use its authority to suppress crime and punish offenders. Compensation from the State can also be justified on the ground that the state system, namely its political, economic and social institutions, generates crime by poverty, discrimination, unemployment and insecurity. A victim of such a system, therefore, deserves compensation from the State. A patchy approach is insufficient. The urgent need of the hour is to enact a suitable legislation to provide for compensation to the victims. It should provide for a detailed, specific and a convenient criterion to seek compensation from the offender or State along with mode of assessing compensation, composition, powers and duties of the compensatory authorities.

In the State of Tamil Nadu, with the assistance of state government, ‘Victim Assistance Fund’ has been created to provide financial assistance to the victims of murder, serious injuries and rape. The fund is placed at the disposal of the Director-General of Police, Chennai for further allocation of the required amount to the Commissioners of Police of Chennai, Madurai and Coimbatore and Superintendents of Police of other districts. It also provides for setting up of “District Victims’

24 Ibid at 385
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Assistance Committee” in each district. The amount paid is fixed at rupees 10000 for victims of murder and rupees 5000 for victims of serious injury and rape.

The State of Haryana decided to give monetary assistance of rupees 20000 to the rape victims and rupees 10000 in case of offence against a child. A Division Bench of the Punjab and Haryana High Court, comprising Justice A.K. Goel and Justice Daya Chaudhary observed: ‘On behalf of the State of Haryana, an affidavit has been filed by an Under Secretary, Home Affairs mentioning the decision to grant relief to the victims of crime in cases of rape and offences against the children. On recommendation of the Committee, the assistance will be rupees 20000 in case of rape and rupees 10000 in case of offence against a child.’ The State has also considered a draft victim compensation policy prepared by the Director-General of Police, Haryana.25 It seems to appear that States have started realising their responsibilities towards the victims as a result of which different steps are being taken up to work for the welfare of the victims of crime. On the similar term, Chandigarh Administration has also implemented a central government scheme called ‘Central Scheme for Assistance to Victims of Terrorist and Communal Violence 2008’. The broad aim of the scheme is to assist the victims of terrorist violence (including militancy and insurgency) and communal violence.27 The financial assistance would be given to the members of the family in the event of death or permanent incapacitation of the victim in terrorist or communal violence.28 In case of employment given to any family member of the victim, the family will not be entitled to assistance under the scheme.29 Free medical treatment facility has also been provided.30 Limitation period of filing the claim is three years from the date of occurrence of the incident which can be relaxed by the District Collector on the recommendation of the central government.31 An amount of rupees three lakh would

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25 The Tribune dated 31-07-2009
27 Guideline-2
28 Guideline- 4(ii)
29 Guideline- 4(v)
30 Guideline- 4(vi)
31 Guideline- 4(x)

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be given to the affected family irrespective of the number of deaths in the family in a particular incident of terrorist violence.\textsuperscript{32} The composition of the District Level Committee is the District Magistrate as its Chairman, the District Superintendent of Police, District Medical Officer, District Social Welfare Officer, District Child and Women Development Officer and an officer nominated by the state government as its members whose task is to identify the beneficiaries and verify their eligibility for assistance under the scheme.\textsuperscript{33} The compensation is provided by the Ministry of Home Affairs in the form of a cheque. In case of any difficulty in implementation of the scheme, suitable clarifications can be issued by the Internal Security Division of the Ministry of Home Affairs.\textsuperscript{34}

7.1.4 Victim Compensation Scheme, 2010
As per the amendment new section 357A\textsuperscript{35} was inserted after section 357 of the Code of Criminal Procedure which is as follows:
Victim Compensation Scheme - 357A (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.
(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

\textsuperscript{32} Guideline- 5(i)
\textsuperscript{33} Guideline- 6(i)
\textsuperscript{34} Guideline- 9
\textsuperscript{35} The Code of Criminal Procedure (Amendment) Act 2008 (5 of 2009) accessed from www.india code.nic.in on 03-05-2010
(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependants may make an application to the State or the District Legal Services Authority for award of compensation.

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

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

Keeping in view this provision Victim Compensation Scheme 2010 has been drafted by the Union Territory of Chandigarh, State of Haryana and Punjab. The Scheme is yet to be finalised.

A division bench of the Punjab and Haryana High Court comprising Chief Justice Mukul Mudgal and Justice Ranjan Gogoi issued notice of motion for January 11, 2011 to the states of Punjab, Haryana and Chandigarh on a petition seeking directions to the respondents for expeditiously finalising the ‘Victims Compensation Scheme’.

Notice was also issued to the central ministry of home affairs on the petition filed in the public interest by advocate H.C. Arora. Quoting the rules, the advocate said: “Every state government in co-ordination with the central government shall prepare a scheme for providing funds for the purpose of compensation to the victims or their dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.” The petitioner contended, while the UT administration had sent the scheme to the home ministry for approval and for making budgetary provisions, the Punjab and Haryana governments had failed to finalise their schemes so far. This was despite a lapse of over 11 months from the date the new statutory provisions came into force.36 Titled ‘Victim Compensation Scheme, 2010’, the draft policy has been cleared by UT Administrator Shivraj Patil and awaits the central government’s
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approval for notification and effective implementation. The policy was prepared after a single Bench of the High Court had taken suo motu notice of the non-implementation of the provision under the Code of Criminal Procedure under which it is mandatory for each state to award compensation to victims of crime. The Administration has prepared seven categories of crime incidents under which compensation will be paid to victims. In case of loss of life, the minimum compensation to be awarded is rupees 3 lakh and the maximum being rupees 5 lakh. The minimum and maximum amount of compensation to be awarded to a rape victim is rupees 2 lakh and rupees 3 lakh respectively. In case of loss of any limb or part of body resulting in permanent disability, rupees 2 lakh as minimum and rupees 3 lakh will be the maximum compensation awarded to the victim or next of kin. In case of loss of any limb or part of body resulting in permanent disability above 20 per cent and below 40 per cent, rupees 60,000 will be the minimum and rupees 1 lakh the maximum compensation. However, in cases of loss of any limb or part of body resulting in permanent disability below 20 per cent, rupees 50,000 will be the minimum and maximum compensation payable to a victim. The last category is mental agony/trauma to women and child victims in cases where there is no physical loss or injury (such as human trafficking). For execution of the policy, a ‘Victim Compensation Fund’ will be set up, which will be operated by the Deputy Commissioner, Chandigarh. But the policy also states that the victim or his/her dependants should not have been compensated for the loss of injury under any other scheme of the central/state government of this nature.

The framing of such Victim Compensation Schemes will take a lot of time to become effective as the procedure prescribed is lengthy and requires consultation with the central government. Moreover, no time limit has been set within which the scheme is to be effectuated by the state governments. Since the compensatory law will be state-wise there is every possibility of unevenness in the quantum of compensation fixed by the respective states. Journey has begun but at a snail’s pace.

37 www.indianexpress.com/news/crime-victims-to-be-compensated-now/714194/1 accessed on 03-12-2010
38 www.news.in.msn.com/national/article.aspx?cp-documentid=4606570 accessed on 03-12-2010
7.1.5 Scheme Of Compensation To The Victims Of Communal Violence
The National Foundation for Communal Harmony, an autonomous organisation with the Ministry of Home Affairs, Government of India, New Delhi, provides assistance for the physical and psychological rehabilitation of child victims of communal, castes, ethnic or terrorist violence in respect of their care, education and training besides promoting communal harmony, fraternity and national integration. An amount of thirteen crores has been provided by the Government of India for this which constitutes the corpus of the foundation.

7.1.5.1 Group Personal Accident Insurance Being Run For Child Victims Of Communal And Terrorist Violence For Their Rehabilitation
Following benefits are covered under the scheme:39

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Circumstances</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>i</td>
<td>Death</td>
<td>Rupees 25000</td>
</tr>
<tr>
<td>ii</td>
<td>Loss of two limbs or one limb and one eye</td>
<td>Rupees 25000</td>
</tr>
<tr>
<td>iii</td>
<td>One hundred per cent permanent disablement other than those mentioned above</td>
<td>Rupees 25000</td>
</tr>
<tr>
<td>iv</td>
<td>Loss of one limb or one eye</td>
<td>Rupees 12500</td>
</tr>
<tr>
<td>v</td>
<td>Reimbursement of medical expenses incurred by a child for treatment in a hospital or nursing home and as an indoor patient for an injury sustained in an accident (based upon medical certificate from the consulting doctor)</td>
<td>Rupees 500</td>
</tr>
</tbody>
</table>

Policy cover is effective for 24 hours.

7.1.6 Scheme Of Compensation To The Victims Of Violence By LEFT Wing Extremists

Ministry of Home Affairs has evolved a special scheme namely Security Related Expenditure {SRE} to Naxal affected States. The scheme covers paying of ex-gratia amount to the victims of crime at the hands of Left Wing Naxalism. The scheme is as below:

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Circumstances</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>i</td>
<td>To the family of a civilian killed</td>
<td>100% with a maximum ceiling of rupees 1 lakh.</td>
</tr>
<tr>
<td>ii</td>
<td>To the family of a security personnel</td>
<td>100% with a maximum ceiling of rupees 3 lakhs.</td>
</tr>
</tbody>
</table>

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40 www.bprd.gov.in/writereaddata/mainlinkFile/File904.pdf accessed on 04-01-2010
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A total of 76 Districts in the States of Andhra Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Maharashtra, Orissa, Uttar Pradesh and West Bengal affected by Left Wing Extremism are covered by this scheme.

The National Law School of India University, Bangalore (NLSUI) prepared a Draft Bill ‘the Victim (Criminal Injuries) Right to Assistance Bill’, 1996. The same was sent to the Government of India to make it as a law but it is still pending. This Bill provides for National, State and District level organisation to create funds and provide compensation and assistance to crime victims and their families. Also, it explains the eligibility for claiming compensation and assistance, quantum of compensation, co-ordination between governmental and non-governmental organisations and methods of dispensing justice to the victims.

According to Professor Madhava Menon, the Compensation Scheme is only one step in the direction of recognising a range of victim’s rights in criminal justice. The system has given more importance to the accused than the victim. The system has ignored the plight of victims of caste conflict, communal violence, terrorism, insurgency, sexual harassment of women and children, crime against women and aged, child abuse, political victimization. They are making legitimate demands and the Criminal Justice System can ill-afford to ignore them lest the rule of law should be endangered and human rights devalued. India is a land of victimization by corrupt politicians, bureaucrats and criminals. This Bill if passed and effectively enforced, the problem of crime victimisation will be reduced and the rights of the victims will be protected and sustained to some extent.41

Under the Bill, the authority, which is empowered to determine the quantum of assistance, has to compute the financial assistance by following the guidelines enumerated in the schedule appended to it. The amount is computed on the basis of the ‘percentage points of disability’ caused by the crime. Every percentage point of disability warrants financial assistance of rupees 1000. Table A of the Schedule lists eight types of injuries deemed to result in ‘permanent total disability’ and fifty-seven

41 Thilagraj, R., 'Human Rights And Criminal Justice Administration', (2002) APH Publishing Corporation, 5, Ansari Road, Darya Ganj, New Delhi, at 203

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deemed to result in ‘permanent partial disability’ indicating the percentage of disability against each one of the enumerated injuries.42

The Malimath Committee strongly feels that compensating victims of crime is a State obligation, whether the offender is apprehended or not, convicted or acquitted. It proposed for a ‘victim-compensation law’ providing for:
(a) The creation of a ‘Victim Compensation Fund’ to be administered by the Legal Services Authorities created under the Legal Services Authority Act, 1987.
(b) The scale of compensation in different offences for the guidance of the Court.
(c) The categories of offences in which compensation cannot be granted as well as the conditions under which it can be awarded or withdrawn.

The Victim Compensation Fund, according to the Committee should be generated by pulling together ‘fines’ recovered, ‘funds’ generated by the criminal justice system and solicited ‘public contributions’. Even if part of the assets confiscated and forfeited in organised crime and financial frauds is made part of the fund and if it is managed efficiently, there will be no paucity of resources for compensating victims of crime. In any case, dispensing justice to victims of crime, cannot any longer be ignored on grounds of scarcity of resources.44

7.1.7 Draft National Policy On Criminal Justice 2007 45

The Malimath Committee had recommended that government should come out with a clear and coherent policy statement on all major issues of criminal justice. The Ministry of Home Affairs, government of India, accordingly appointed a Committee in May 2006 for drafting a Policy Paper on the subject under the chairmanship of Professor N.R. Madhava Menon, former Director of National Law University at Bangalore and Kolkata and Director of National Judicial Academy, Bhopal. The

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43 www.manupatra.com accessed on 15-12-2009
44 Ministry of Home Affairs: Report Of The Committee On Reforms Of Criminal Justice System (Government of India, 2003) at 271
45 www.manupatra.com accessed on 15-12-2009
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Committee was to draft a National Policy on Criminal Justice\(^{46}\), keeping in mind the prevalent criminal laws, orders and judgements of various courts, contemporary socio-cultural values. The Committee suggested key elements of a national policy on Criminal Justice which inter alia includes the relative neglect of victims in the criminal justice system.\(^{47}\) The Committee is of the opinion that there is justifiable criticism that the present criminal justice system is totally centred around the accused, ignoring the victims for whom the system purportedly exists and is supposedly operating. The State should also ensure rehabilitation of hapless victims of crime and violence. The case, for a nation-wide victim-compensation scheme and compensation fund has been acknowledged for a long time. It is clearly an obligation of the State both under international and national laws.....Much more is required to be done to compensate the victims of crime promptly and satisfactorily, particularly in respect of victims of rape, communal violence, terrorism and other heinous crimes. The policy needs to be pursued and expanded with the intervention and support of the Union Government.\(^{48}\) The Committee suggested compensation to victims in a phased manner. As per Para 5.2.3 of the Policy:

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

\(^{46}\) Para- 3.1(e) of Draft National Policy on Criminal Justice, 2007
\(^{47}\) Para- 5.2.1 of Draft National Policy on Criminal Justice, 2007
\(^{48}\) Para- 5.2.2 of Draft National Policy on Criminal Justice, 2007
legitimately diverted to the Victim Compensation Fund as the nature of services is similar in both schemes.”

7.1.8 The Communal Violence (Prevention, Control And Rehabilitation of Victims) Bill, 2005

This Bill aims at empowering the Central and State governments to take measures to provide for the prevention and control of communal violence and rehabilitation of victims of such violence. Under Section-1(k) relief and rehabilitation includes shelter, medical care, food, clothing, education, vocational training and counselling or such other measures of relief as may be considered necessary by the Central or District Council to the victim of communal violence. Chapter IXth of the Bill is devoted to funds for relief and rehabilitation. It talks about State funds to be established by State government and is to be applied for the purposes of grants for relief and rehabilitation, for meeting the expenses for exercising functions of State Council etc. Under Section-50 the State government is to make a scheme for providing funds for granting immediate compensation to victim or their dependants in case of loss of life, property or livelihood. On the similar terms District Fund is also to be established. Section-53 lays down the modalities for payment of compensation to victims of communal violence through the District Council. Such amount of compensation is to be awarded to the victim as is determined by the Special Court. The compensation may be directed to be paid:

(a) To any person who has incurred expenses in prosecution or defraying any other expenses properly incurred;
(b) To any person for loss, damage or injury caused by the offence, when the compensation in the opinion of the Special Court is recoverable in Civil Court.

Section-54 provides for payment of immediate compensation to the victim or his dependants within one month from the date of claim before District Council. The compensation is to be given after adjusting any amount of assistance which he might

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50 www.manupatra.com accessed on 15-12-2009
51 Section-49
www.manupatra.com accessed on 15-12-2009
52 www.manupatra.com accessed on 15-12-2009
have received under any other scheme. The amendment in the revised Bill, 2009 has eliminated the clause in the original Bill providing for ex-gratia or compensation at double the prevailing rate for any officer killed or seriously injured while dealing with communal violence.53

7.1.9 Protection Of Women Against Sexual Harassment At Workplace Bill, 2010

Government approved this Bill on 4th November 2010 for introduction in the Parliament.54 The Bill ensures a safe environment for women at work place, both in the public and private sectors, in the organised and unorganised sectors. The aim of the Bill is to give protection to the women who are victims of sexual harassment. Under the proposed Bill employers who fail to comply with the provisions of Bill will be punishable with a fine which may extend upto rupees fifty thousand. The preamble of the Act confers upon women the right of protection against sexual harassment and towards that end for the prevention and redressal of sexual harassment of women. A complaint may be made to the Committee or the Local Committee or to the Commission. Complaint may be made by the legal heirs if the victim is not able to make a complaint due to her physical or mental incapacity or death or otherwise. It provides protection not only to women who are employed but also to any woman who enters the workplace as a client, customer, apprentice, daily wageworker, or in ad hoc capacity. Students, research scholars in colleges/universities and patients in hospitals have also been covered. The Bill provides for an effective complaints and redressal mechanism. Every employer is required to constitute an Internal Complaints Committee and has the primary duty to implement the provisions of law within his establishment while the State and Central governments have been made responsible to oversee and to ensure overall implementation of the law. The proposed Bill tries to create a system of reporting and checks and balances, which will result in effective implementation of the law.

7.2 Computation Of Compensation

Compensation may be calculated on two broad heads:

53 The Indian Express dated 07-12-2009
54 www.thehindu.com/news/national/article868580.ece accessed on 06-11-2010
(a) Pecuniary loss i.e. the loss which can be calculated in terms of money. For example; expenses for medical treatment etc.
(b) Non-Pecuniary loss i.e. the loss which cannot be calculated in terms of money in an objective manner. For example; pain, suffering and the trauma which the victim had undergone at the time of commission of offence.

Hence the scheme of compensation should be so formed so as to provide monetary assistance plus giving respect, honour and dignity to the victim so that he/she can start his/her life afresh with a positive outlook. A legislation is required to prescribe a standard amount for certain specific injuries. Minimum and maximum levels of compensation can be set depending upon the nature of injury. Motor Accident Tribunals adopt various methods for computing the loss of future earnings, loss of dependency. The method recommended\textsuperscript{55} under the Motor Vehicles Act, 1988 is simple multiplication of annual loss of earnings by the remaining years of the victim’s work-life expectancy. In case of death, personal expenses of the deceased are deducted from the amount of annual loss of earnings before multiplication is done to determine the value for dependency loss. It is a matter for the State to decide as to how much compensation is to be paid and to what kind of victims. It can be said that victim’s right to compensation is a qualified right and the State may decide on priority basis as to quantum of compensation to various types of victims.

Today, there is a dire need for victim compensation legislation. Eligibility criteria may be specified for victims. Compensation may be refused or reduced on the ground that victim himself aggravated the event or having a criminal record or financially sound. The object is to alleviate the financial burden of the victim and to enable him to maintain his dignity at a critical period. Collateral benefits to victims can be taken into account while awarding compensation so that double compensation is avoided.

For example; victim may get compensation under insurance, workmen’s compensation etc. So, parallel benefits should be avoided.

A legislation on compensation dealing with comprehensive compensation scheme can better serve the course of justice to victims. It is the responsibility of the Welfare

\textsuperscript{55} Second Schedule
State to protect its subjects failing which the State shall compensate the victims to prevent individual retaliatory behaviour and to reinforce law abiding conduct. The compensation scheme is just the one step in recognizing the rights of victims. Taking into consideration the Directive Principles of State Policy under the Constitution of India, human rights obligations under the international law, central and the state governments must legislate on the subject without any further delay. In the meantime, a detailed scheme can be formulated keeping in view the plight of women, abused children, exploited dalits, victims of terrorist violence etc.

7.3 Conclusion:
The goal of a victim fund should be to assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation and coping with problems associated with the victimization. The objectives of the Fund should be:

(a) To increase the commitment of government and organisations to do everything possible to assist the victims;

(b) To increase the range and availability of services for victims from the time of the victimisation and throughout the aftermath;

(c) To expand the victim’s opportunity to participate at all critical stages of the criminal justice process and to ensure consideration of the impact of the victimisation upon the victim in the criminal justice system;

(d) To increase co-ordination and networking of all appropriate agencies, organisations, groups and families, and kinship and community support systems providing services to victims in order to develop an integrated system of victim assistance;

(e) To improve the quality of outreach to victims in need and their treatment;

(f) Developing an annual programme;

(g) To enhance the status of the victims;

(h) Establishing a system for the management of cases;

(i) Providing guidelines to the victims;

(j) Hiring, recruiting and selecting staff;
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(k) Training the staff;
(l) Establishing regular and long-distance telephone services or alternative communication systems where appropriate;
(m) Identifying transportation methods or a plan to improve the physical access of victims to the services;
(n) Providing or upgrading office equipment;
(o) Identifying emergency and follow-up services;
(p) To develop a strategy to alert the public to the availability of victim services, the nature of those services and how to contact them;
(q) Developing a public relations policy.

The first step in accomplishing these goals and objectives is often for appropriate government and community agencies to establish victim funds dedicated to provide services to victims and helping them cope with the traumatic effects of the victimising act and its aftermath. Funds should be well organised, having clearly defined goals and be appropriately staffed. It should have the capability of providing a comprehensive system of services to victims. While initiating a victim assistance fund an assessment should be made of the existing needs and available resources in the jurisdiction. This assessment should be updated as per the needs. The assessment should be made:
(a) To determine the rate of victimization;
(b) To determine the types of victimization;
(c) To obtain a general understanding of the needs of victims;
(d) To assess the existing resources available to meet these needs;
(e) To determine what problems obstruct victim participation in the criminal justice system;
(f) To determine what assistance is needed;
(g) To identify what policies, procedures or laws need to be changed or introduced.

It is also important to include consideration of special aspects such as information about age, race, religion, marital status, economic circumstances, education and culture of the victim. Advisory groups can be very helpful to establish an informal or
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formal group of advisors to oversee the needs of victims. The advisory group may include representatives from police, prosecution, health professionals, academicians and volunteers. Such a broad base provides a better picture of the needs and resources and also facilitates information-gathering and data collection. The advisory group should include both males and females of varying ages and representatives of the different races, religions, cultures, geographical areas and economic groups. The broader the scope of the assessment, the more useful it will be in defining the needs and identifying available resources for all victims in need. The first requirement in assessing the shortfall in assisting victims is to establish the need by obtaining accurate data on prevalence of victimization. Data for the assessment can be obtained from the following sources:

(a) Police reports;
(b) Community surveys of individual citizens or community groups;
(c) Survey conducted by NGOs;
(d) Survey by government departments;
(e) Interviews with victims;
(f) Media reports;
(g) Witness reports;
(h) Medical reports;

Due care should be taken to maintain the confidentiality of victim. Victimization surveys are the best way to determine incidence and prevalence of crime but they are unable to fully capture certain crimes such as spouse assault and child abuse which are the crimes that often go unreported. It is pertinent to conduct victimization surveys of these special groups so that the victim assistance response is appropriate. These surveys may also overlook the effect of mass violence, such as terrorist attacks, massacres or hijackings. After having obtained the estimates of victimization, the next step will be to determine accurately the financial, medical, psychological and other costs of victimization to the victims. Developed countries have various data systems that help in determining levels of victimization. However these data systems capture only a fraction of the full costs of crime to its victims. Therefore, any estimates of
shortfall are likely to underestimate the level of victim needs in comparison to the assistance available, unless the costs to victims are fully taken into account. For example, a study by the Bureau of Justice Statistics at the United States Department of Justice found that in 1992, American crime victims lost $17.6 billion in direct costs, which included losses from property theft or damage, cash losses, medical expenses and pay lost as a result of injury or activities related to the crime.\(^56\) The provision of assistance to individual victims will usually include formal victim services and compensation from both governmental and non-governmental sources. In the case of homicide and certain other crimes, assistance may be provided to the “co-victim”, such as the families of the victims themselves. Informal sources of assistance can be the family, neighbours, friends and others. Employers sometimes offer assistance. Certain private insurance plans may be made available to assist with medical and psychiatric needs, as well as property losses and to provide counsel through legal procedures. Such plans should therefore be included if they meet the needs of victims. The completed assessment should be used to determine what services are lacking and what the service priorities are. Updated assessments should be carried out in connection with periodic evaluations of the quality of service delivery. Victim services should ideally be prepared to assist all victims. Needs of the victims should be on the priority in which a systematic approach should be used to take into account the severity of the victimizing event and its impact on the victim. Special programmes should be developed for victims who require increased attention. Support services should be daily available during working hours. Such services should be provided by telephone, home visits or walk-in services. Service providers must be conscious enough to serve all those in need irrespective of the inconvenience. The programme should encourage police personnel, medical professionals, teachers, political leaders and social service agencies to make victims realise that the programme exists. Whatever method is used, victims should be contacted as soon as possible to be informed of the availability of services.

Use Of Information

\(^{56}\)www.uncjin.org/Standards/9857854.pdf accessed on 10-05-2010
The funding programme should ensure that the following are maintained:

(a) The goals of information gathering are clearly established;
(b) Only necessary questions are asked from victims;
(c) Only necessary information is collected;
(d) Professionals should know what information is necessary;
(e) Victims are informed about how information will be used;
(f) Confidentiality of information should be maintained;
(g) The information should be used only for the purpose for which it was collected.

Types Of Services

The funding programme should at least ensure the provision of the following services:

(a) Counselling;
(b) Advocacy;
(c) Support during investigation of crime;
(d) Support during criminal prosecution and trial;
(e) Support after disposition of the case;
(f) Violence prevention and other prevention services;
(g) Public education on victim issues

The goal of services to be provided is to promote standards for implementing programmes and for individuals who work with victims in order to better assist victims in dealing with emotional trauma, participating in the criminal justice process, obtaining reparation, and coping with associated problems caused by the impact of victimisation. Victim support programmes should seek to provide at least the following services:

(a) Emotional support in response to trauma, personal support through hearings, interviews and trial;
(b) Counselling on physical and mental health services;
(c) Direct assistance such as medical care, shelter, food, clothing, dependent care, property repair, minimising the number of appearances, providing or reimbursing transportation, safe places for victims separate from the accused and defence
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witnesses when they are attending hearings or interviews, arrangements for child care, enforcement of restitution orders;
(d) Information about emergency financial assistance, victim rights, progress of the prosecution and trial;
(e) Assistance in making applications for victim compensation or insurance, victim’s housing or employment;
(f) Identify all other professional groups working directly with victims and to design and implement preparatory educational programmes on victim issues for students of those professions, as well as training and education for active professionals. Such groups may include judges, representatives of the media, school and university teachers and counsellors, medical and hospital personnel, mental health providers, members of human rights commissions.
(g) Victim support programmes should seek to work with the media to promote widespread public awareness of victim issues. They should also develop a code of ethics to protect victims from sensationalism and publicity and should also try to prevent re-victimization. Data gathered from victims should be used to mitigate crime more appropriately.

Uniformity of standards is particularly important when providing services in international settings where persons and organisations from different countries come together as a single team co-operating within the same code of ethics. With regard to funding sources and mechanisms, compensation schemes receive funding from a variety of sources. There are two primary sources: 57
(a) Funding from fees or charges that offenders pay and
(b) Funding from general-revenue appropriations from legislatures
For example, in the United States, at the federal level, fines and penalties are levied against federal criminal offenders. This money is deposited into the “Crime Victims Fund”, which is used to help states support their victim compensation programmes. In addition, more than 40 of the 50 states in the United States gain most of their own income from offenders. A recent trend in funding victim compensation programmes

57 www.uncjin.org/Standards/9857854.pdf accessed on 10-05-2010

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has been for states to fund their compensation programmes entirely from fines and penalty assessments. A related funding trend facing compensation programmes recovers restitution from convicted offenders in order to help offset the cost of providing compensation benefits to their victims. This is often described as “fund recovery measures” and involves holding offenders liable for injury to victims and making them pay for the consequences of their crimes. The second model of funding, from general-revenue appropriations, is more common worldwide. Such a model has the advantage of not being dependent on the ability of offenders to pay fees, charges or fines. Hence it can be said that first there is a need to see the various needs of the victims of various kinds and then to formulate an effective scheme for providing compensation to them. Lot much is required to be done for the betterment of the victims by the so called welfare state. Not only the enactment of law but its implementation is also equally important as without implementation development and betterment of victims will remain on papers only. Hence law is to be enacted in true spirit with the genuine objective of providing adequate compensation to the victims of crime and not to further victimize them.