

COMPENSATING VICTIMS OF CRIME IN SINGAPORE

THE concept of compensation or restitution to victims of crime for the injury or loss sustained by them is not a recent innovation. The legal codes of the ancient Babylonians, Hebrews, Greeks, Romans, Germans and English all provided indemnification for the victim,¹ starting with one of the simplest and earliest rules, the *lex talionis*, under which the wronged party was entitled to exact "an eye for an eye, and a tooth for a tooth."²

With the growth of centralised legal systems, however, crimes came to be regarded as acts against the State with the consequent result that compensation was gradually phased out. As the State became responsible for crime control it felt justified in gaining from any monetary penalties inflicted upon offenders such that the fine (payment to the State) replaced compensation (payment to the victim). As one writer puts it: —

In [the] evolutionary process, the central government became stronger. Familial groups were replaced by the sovereign as the central authority in matters of criminal law. During this process the interests of the State gradually overshadowed and supplanted those of the victim. The connection between restitution and punishment was severed. Restitution to the victim came to play an insignificant role in the administration of the criminal law. The victim's rights and the concept of compensation and restitution were separated from the criminal law and instead became incorporated into the civil law of the courts.³

There has since been a recent trend in western jurisdictions to refocus on victims of crime through the establishment of compensation schemes.⁴ This has been brought about by a number of reasons, among them, a change in socio-economic conditions prompting welfare programmes and an increase in crime rates which have made crime victims a group of considerable political reckoning.⁵

¹ See generally Schafer, *The Victim and His Criminal* (1968).

² Hobhouse, "Law and Justice" in Hudson and Galaway eds. *Considering the Victim* (1976), at p. 135.

³ Jacobs, "The Concept of Restitution: An Historical Overview" in Hudson and Galaway eds. *Restitution in Criminal Justice* (1977) at p. 47.

⁴ For instance, criminal injuries compensation schemes have been set up in New Zealand (1963); Britain (1964); New South Wales (1967); British Columbia (1972), and Hong Kong (1973). A similar scheme has likewise been proposed for Japan, see Research and Training Institute, Ministry of Justice, Japan, *Summary of the White Paper on Crime*, 1976 (1977) at p. 15.

⁵ See Chappell, "The Emergence of Australian Schemes to Compensate Victims of Crime" in Chappell and Wilson eds. *The Australian Criminal Justice System* (1972), at pp. 771-772.

A formalised scheme to indemnify victims of crime has been in existence in Singapore since the 19th century.⁶ Like its western counterparts, however, the State has been the primary beneficiary of monetary penalties imposed on offenders. The socio-economic progress of Singapore especially in the last two decades has made it one of the most developed nations in the region and consequently the climate is ripe for serious consideration of welfare programmes which will further enhance the standard of living and quality of life of our people. As in western countries, our crime rate is likewise on the rise,⁷ causing material hardship, pain and suffering to a greater number of persons. It is therefore felt necessary to evaluate our existing victim compensation scheme⁸ with a view to increasing its use for the benefit of victims of crime. The English compensation scheme will be studied by way of comparison and as a model for possible reform. A proposal will also be made for a State-funded compensation scheme to supplement our existing scheme. Under our current scheme, it is the offender who is made to pay for the damage he has caused to his victim while State-funded compensation involves such payment but from public funds. It would be appropriate at this juncture to ascertain with greater clarity the purpose for which such a scheme is intended to serve.

I. THE RATIONALE FOR COMPENSATING VICTIMS OF CRIME

To say that the purpose of a victim compensation scheme is to provide for monetary compensation to victims of criminal acts only describes what the scheme is designed to do. This response is unsatisfactory because it does not indicate the legislature's motive in implementing such a scheme. It is vital that the purpose of a scheme should be determined before it can be properly administered since ambiguous legislative provisions setting up the scheme can best be construed and applied only when the underlying rationale of those provisions is known. Furthermore, the purpose of a scheme should be determined before the scheme itself can be evaluated. There is, accordingly, a need at the outset to determine some of the major rationales canvassed for such a scheme.

(i) *proper recognition of the victim:* The victim of a crime should be regarded as a casualty of the social system who should, as far as possible, be restored to the position he enjoyed before the crime was committed. So long as huge amounts of money are being spent on the offender in relation to his detection, trial and disposition, equal expenditures should be incurred upon his victim in order to convince the public that justice is being done. This rationale was implicitly stated in the Second English White paper on *Compensation for Victims of Crimes of Violence*, quoting from an earlier report: —

⁶ Ss. 400, 402 and 404, Criminal Procedure Code, Cap. 113, Singapore Statutes, 1970 Rev. Ed; Reprint No. 2 of 1980 and their antecedents under the various criminal procedure ordinances governing the colony of Singapore. See *Mallal's Criminal Procedure* (4th ed. 1957), at pp. 2-3. The Criminal Procedure Code is hereinafter termed "the Code".

⁷ The Minister of Home Affairs, Mr. Chua Sian Chin, recently reported in parliament that Singapore's crime rate had reached 1,635 offences per 100,000 population in 1983, compared with 823 offences per 100,000 five years previously; see Parliamentary Debates, Vol. 43, No. 18, col. 1861.

⁸ The term "victim compensation scheme" is used in this article to describe schemes which have the sole objective of compensating victims of crime as opposed to victims of civil wrongs, for example, the Workmen's Compensation Scheme.

The increase in crime in recent years and the new measures taken to deal with offenders have focussed attention also on the victims of crime. As said in the [earlier report] — ‘The assumption that the claims of the victims are sufficiently satisfied if the offender is punished by society becomes less persuasive as society in its dealings with offenders increasingly emphasizes the reformatory aspects of punishment. Indeed in the public mind the interests of the offender may not infrequently seem to be placed before those of his victim.’⁹

There is currently no formalised role for the victim in criminal court proceedings beyond being a witness for the prosecution. No one has a duty to inform the victim of his or her rights generally, nor is anyone required to ascertain from the victim the exact amount of loss or damage suffered. Given this state of affairs, a compensation scheme will, at least partially, provide for some recognition to the victim thereby soothing the public’s outraged sense of justice.

Attention should also be given to the feelings of revenge in the victim. Making an offender pay compensation as a form of punishment injects an element of retribution to the victim’s satisfaction.

(ii) *inadequacy of civil law remedies*: Related to the preceding rationale is the one that recourse of victims to traditional remedies in tort to recover compensation from their assailants is limited. These remedies not only depend upon the offender being identified but also require that he be a person of financial substance. Both these requirements are seldom satisfied with the result that civil remedies remain ineffective means of obtaining restitution on the victim’s behalf. This is one of the strongest arguments for the view that the State should step in to compensate victims of crime, which leads us to the next rationale, namely, that the State has an obligation to recompense victims of crime for loss suffered by them.

(iii) *duty of the State to compensate*: The argument here is that, apart from offender restitution, the State should additionally be made to compensate victims of crime. The State owes a legal duty to do so because it is itself responsible for those social conditions that create criminals.¹⁰ Furthermore, the State has disabled the criminal, making it impossible for him to earn money with which to compensate his victim. Any money which he might already have will be exhausted in paying for his defence or in paying a fine to the State.¹¹ Besides this legal duty, there is a moral justification requiring the State to compensate victims of crime; such compensation does not have to be made but it should be made. As one authority had declared, “[t]he most satisfactory justification for [a victim compensation scheme] is a purely pragmatic one — that on humanitarian grounds the State should provide assistance to victims of crimes... just as it helps the victims of other forms of misfortune.”¹²

⁹ (1964) Cmnd. 2323, at para. 2.

¹⁰ See Wolfgang, “Social Responsibility for Violent Behaviour” (1970) South. Cal. L.R., 5.

¹¹ Brooks, “The Case for Creating Compensation Programmes to Aid Victims of Violent Crimes,” (1976) Tulsa L.J. 477, at p. 479.

¹² Chappell, “Compensating Australian Victims of Violent Crimes,” (1967-1968) A.L.J. 3, at p. 5.

(iv) *rehabilitating the offender*: This rationale moves the attention away from the victim and concentrates on the rehabilitation of the offender. Victim compensation is seen as a sanction and, particularly, as an alternative means of dealing with offenders rather than sending them to prison. The offender is provided with an opportunity to enhance his self-respect by allowing him to express his guilt and sense of atonement through the completion of specific requirements benefitting the victim of his crime.¹³ An order to pay compensation is therefore regarded as a less severe and more humane sanction for the offender.

(v) *community responsibility, trust and confidence*: Victim compensation by the State may also be regarded as an expression of community responsibility for the welfare of its members. Thus, it has been stated that the public feels "a sense of responsibility for and sympathy with the innocent victim and it is only right that this feeling should find practical expression in the provision of compensation on behalf of the community."¹⁴ More generally, a State-funded compensation scheme may be seen as a method of restoring public trust thereby benefitting the State itself. This was the primary justification accepted by the Law Reform Commission of Canada recommending a State-funded compensation scheme: —

[One] of the purposes of criminal law is to protect core values. At the basis of any society is a shared trust, an implicit understanding that certain values will be respected.... A violation of those values in some cases may not only be an injury to individual rights, but an injury as well to the feeling of trust in society generally. Thus, the law ought not only to show a concern for the victim's injury but also take concrete measures to restore the harm done to public trust and confidence.... Compensation [by the State]... is directed towards the victim and should not be lost sight of as another meaningful and visible demonstration of societal concern that criminal wrongs be righted.¹⁵

The abovestated rationales for victim compensation are all likely to be held by any particular scheme. It follows that the expected beneficiaries of such a scheme may be the victim, the offender and more generally, the criminal justice system and the community at large. The inevitable result, however, will be a conflict among these various goals. Hence, should the scheme be primarily meant to serve the offender, the thrust would be to ensure willing and able participation by him within the scheme, often at the expense of the victim.¹⁶ On the other hand, should the victim be considered as the primary bene-

¹³ For example, an English White Paper entitled *Penal Practice in a Changing Society* (1959) Cmnd. 645 stated at pp. 4-5 that "the redemptive value of punishment to the individual offender would be greater if it were made to include a realisation of the injury he had done to his victim as well as to the order of society, and the need to make personal reparation for that injury."

¹⁴ The second English White Paper on *Compensation for Victims of Crimes of Violence*, *supra*, note 9, para. 8.

¹⁵ Working Paper No. 5, *Restitution and Compensation* (1974), at p. 17.

¹⁶ This focus on the offender is reflected in s. 35(4) of the Powers of Criminal Courts Act (1973 C. 62) (U.K.) which states, in part, that "In determining whether to make a compensation order against any person... the court shall have regard to his means. . . ." In *R. v. Oddy* [1974] 1 W.L.R. 1212, at p. 1217, the English Court of Appeal was prepared to say that "one of the factors to be taken into consideration [by the courts] is the danger... of a compensation order becoming counterproductive."

ficiary, then a State-funded compensation scheme is likely to become more effective than offender restitution given the fact that many offenders escape apprehension and, if caught, are found to be men of straw. Accordingly, for any compensation scheme to be effective, its purpose must be clear as to who stands most to benefit from it.

II. EXISTING PROVISIONS FOR VICTIM COMPENSATION IN SINGAPORE

Victim Compensation Under S. 400, Criminal Procedure Code

The main provision allowing for compensation of victims of crime is to be found in s. 400 of the Criminal Procedure Code,¹⁷ sub-section (1) of which states, in part, that:—

The court before which a person is convicted of any crime or offence may, in its discretion make... (b) an order for the payment by him of a sum to be fixed by the court by way of compensation to any person or to the representatives of any person injured in respect of his person, character or property by the crime or offence for which the sentence is passed.

(i) *nature of the compensation order*: An initial reading of s. 400(1)(b) of the Code suggests that a compensation order is to be made ancillary or in addition to a sentence. Such an order cannot be regarded as a sentence and *a fortiori* cannot itself comprise the sentence passed on an offender. This is due to the words “for which the sentence is passed” present at the end of the sub-section. However, it is submitted that the court may regard a compensation order as a form of sentence and need not impose any further punishment on the offender. There are a number of reasons for this submission. Firstly, the former sub-section under the Straits Settlements Criminal Procedure Code¹⁸ used to have the words “in addition to any other punishment” appearing at the end of it. This phrase was omitted by an amending Act in 1954¹⁹ because the legislature considered that “[t]here may be cases when the court may feel it appropriate to order... compensation to be paid without adding any punishment and [the amendment] would remove the obligation only to do it when another punishment is being imposed.”²⁰ Clearly then, the legislative intention was to permit compensation orders to serve as full sentences in cases where the court thought it unnecessary to impose any other form of punishment. Secondly, the imposition of fines is a well recognised form of sentence and the Code includes “compensation adjudged upon any conviction of any crime” in its definition of a fine.²¹ It would therefore be perfectly permissible for the court to impose a fine on an offender by way of sentence and to order that the fine be paid to the victim of his crime rather than to the State. Thirdly, the words “for which the sentence is passed” in s. 400(1)(b) could be regarded as serving the function of enabling the compensation order to be made in respect of *all* the crimes that the offender has committed. In other words, a compensation order may take into account the injury or loss sustained as a result of other crimes (against the particular victim) for which

¹⁷ *Supra*, note 6.

¹⁸ S. 452, Straits Settlements Criminal Procedure Code (Cap. 21. McElwaine Ed. 1936).

¹⁹ Federation Ordinance No. 8 of 1954.

²⁰ *Proceedings of the Federal Legislative Council* (6th session) paras. 1151-1152.

²¹ S. 2, Criminal Procedure Code, *supra*, note 6.

the offender has not been convicted but has admitted to for the purpose of sentencing.²² For these reasons, it is important that our courts should regard the imposition of a compensation order as a sentencing measure rather than as an order to be made ancillary to some other form of punishment.

(ii) *who raises the issue of compensation:* Under s. 400(1) of the Code, the court is empowered to consider the issue of compensation on its own initiative but the generality of the provision certainly enables the prosecution to raise it as well. Who then has the leading role in bringing the provision into play—the courts or the prosecution? It may be that public prosecutors regard it as the sole responsibility of the judge, as sentencer, to consider a compensation order as an appropriate form of punishment. Conversely, the courts may feel that it is the duty of the public prosecutor to recommend that a compensation order be made since he would be most likely to know when such a measure is worthwhile or effective. This vagueness as to who should raise the issue of compensation may be one of the reasons why the compensation provisions are hardly utilized.²³ It is submitted that both the courts and public prosecutors owe a duty to the proper administration of criminal justice to consider or recommend compensation orders in appropriate cases. The judge should regard compensation orders as an equally viable form of sentence comparable with the other more usual types of punishment such as imprisonment, fines or probation orders. The public prosecutor should, as an administrator of the criminal process, be as much concerned with the plight of the victim as the conviction of the offender and, accordingly, recommend the imposition of compensation where the ends of justice are best served by such a sentence.

(iii) *compensation dependent on conviction:* Section 400(1) of the Code clearly envisages compensation to be made by an offender and not by the State. Furthermore, conviction of the offender must precede an order requiring him to pay compensation. There are obvious reasons why this requirement of conviction will work unfavourably against the victim. Firstly, many offenders escape conviction either by avoiding apprehension altogether or by securing an acquittal of the charge against him. Secondly, there may be conduct which is criminal in nature but is considered by the law to be non-criminal conduct. Thus, infants, the insane and persons acting under necessity, mistake or self-defence are all excused from what would otherwise have been regarded as criminal conduct. Such persons cannot be convicted and are not regarded technically as offenders. Does the premise that there is no convicted offender necessitate the conclusion that there is no crime, less still that there is no victim? Hence, it may be said that the requirement in our Code for conviction as a prerequisite to compensation is irrelevant to the needs of the victims.

²² If this is the purpose of the phrase “for which the sentence is passed”, then the wording of s. 35(1) of the Powers of Criminal Courts Act 1973 (U.K.) *supra*, note 16 would have been more explicit. This sub-section permits the court to order the payment of compensation “for loss, injury or damage resulting from the offence or any other offence which is taken into consideration by the court in determining sentence.”

The Singapore Courts, in determining and passing sentence, are empowered to take into consideration any other outstanding offence or offences which the accused admits to have committed; see s. 177(1), Criminal Procedure Code, *ibid*.

²³ See *supra*, pp. 228-229.

(iv) *recipients of compensation*: Section 400(1) enables the court to order compensation in favour of victims of a broad variety of crimes, that is, crimes against the person, character or property. Anyone who is injured²⁴ by any of these crimes, including the personal representatives of such persons, may receive compensation from the offender. The wording of the sub-section is sufficiently wide to include, as a possible recipient, the *bona fide* purchaser of property which was the subject of theft, criminal misappropriation, criminal breach of trust, cheating or the offence of receiving stolen property, if such property had been restored to the possession of the person legally entitled to it.²⁵

The Code excludes the indirect or secondary victim of crime such as the immediate dependents of the victim from having any right to compensation. If the object of compensation is to restore the victim to his former position it must follow that, to the extent to which he is unable to fulfil his obligation to his immediate dependents as a result of the crime against him, such loss suffered by his dependents should be included in any compensation order. Thus, in Canada, compensation to a breadwinner's dependents will be provided for pecuniary loss, which is usually the loss of those monies which the deceased would otherwise have paid to his dependents, but including any funeral or burial expenses which they may have incurred. In cases where the injured party has not died, damages are recoverable by the husband, wife, or parent in respect of medical expenses incurred by them on behalf of the injured victim.²⁶

(v) *payment of compensation*: The court is required to fix the amount to be paid by way of compensation and specify the person to whom such an amount is to be paid.²⁷ However, the Code does not prescribe a ceiling by which the courts could gauge the amount of payment to be ordered in the individual case. The court is empowered to allow time for the payment of the said sum; to grant extension of the time so allowed; and for payment to be made by instalments.²⁸ This is a realistic approach since offenders are generally persons of poor financial standing who would be unable to make full and immediate payments.

Related to the issue of payment is the question of the recovery of unpaid sums. The Code provides various remedies in such cases. The court may issue a warrant for the levy of the amount by distress and sale of any property belonging to the offender;²⁹ or it may direct that the offender be searched and money found on him be applied towards the payment of compensation.³⁰ Alternatively, the court may direct that, in default of payment or of sufficient distress to satisfy any such payment, the offender shall be imprisoned for a certain term

²⁴ The use of this term here is consistent with the definition of "injury" under s. 43 of the Penal Code, Cap. 103, Singapore Statutes, 1970 Rev. Ed. as denoting "any harm whatever illegally caused to any person in body, mind, reputation or property."

²⁵ This is expressly provided for under s. 357(1)(d) of the Code of Criminal Procedure 1973 (Act 2 of 1974) of India.

²⁶ See Burns, *Criminal Injuries Compensation* (1980), at pp. 166-168.

²⁷ Ss. 400(1)(b) and 400(2), Criminal Procedure Code, *supra*, note 6.

²⁸ S.402(1)(a) and (b).

²⁹ S.402(1)(c).

³⁰ S.402(1)(e).

following a prescribed scale.³¹ These enforcement measures might well prove unsatisfactory to the victim. The remedies of levy by distress and searching an offender for money are useful only where the offender is a man of financial substance, which is rarely the case, while imprisoning him effectively curtails any opportunity of payment through gainful employment.³² If the victim is to be given full and proper recognition, other remedies which ensure that payments are actually made should be explored.³³

(vi) *appeals against compensation orders*: An offender who is dissatisfied with the compensation order made against him may invoke the appeal provisions under the Code or the Supreme Court of Judicature Act.³⁴ For example, an offender who considers the amount of compensation to be excessive may appeal on the ground that there was an error in fact since the quantum of compensation is a question of fact.³⁵ Alternatively, if a compensation order can be regarded as form of sentence, the offender will be able to appeal on the ground that the sum imposed was manifestly excessive.³⁶ Recourse might also be made to the revisionary powers of the courts as provided for under the Code and the Supreme Court of Judicature Act.³⁷

A notice of appeal against a compensation order will not automatically operate as a stay of execution on such an order. The courts may, however, stay execution on the order pending appeal on such terms relating to security for payment, performance of an act or the suffering of punishment as the courts consider to be reasonable.³⁸

(vii) *compensation orders and civil liability*: Many crimes are also torts such that there are numerous cases in which the victim can bring a civil action against the offender. The civil liability of the offender may, however, be partially or fully discharged by the imposition of a compensation order against him. This is clearly prescribed for under s. 400(4) of the Code which reads as follows:—

...the order for payment [to the victim] shall not prejudice any right to a civil remedy for the recovery of any property or for

³¹ Ss. 402(1)(d) and 402(2).

³² Prisoners' wages are currently still nominal although there have been slight increases in recent years. The average weekly wage is \$19.80; see, Quek Shi Lei, "Prisons in Singapore: Changing Philosophies and Methods of Treatment" in *New Dawn*, Journal of the Prison Welfare Service (Singapore) {Special issue, 1984}, at p. 6.

³³ Two possibilities that will shortly be canvassed are for prisoners' wages to be made comparable with those existing under market conditions and for the State to compensate certain victims of crime.

³⁴ S. 246, Criminal Procedure Code; s. 44, Supreme Court of Judicature Act, Cap. 15, Singapore Statutes, 1970 Rev. Ed.

³⁵ S. 246, Criminal Procedure Code states, in part, that "any person dissatisfied with any ... order pronounced by any District Court or Magistrate's Court... may prefer an appeal to the High Court against that... order in respect of any error in law or in fact."

S. 44(4), Supreme Court of Judicature Act allows for an appeal against any decision made by a High Court trial judge concerning "any question of fact or a question of law or on a question of mixed fact and law."

³⁶ S. 246, Criminal Procedure Code allows for an appeal against sentence on the ground that the sentence imposed is manifestly excessive or inadequate.

³⁷ See s. 265, Criminal Procedure Code; and ss. 23 and 27, Supreme Court of Judicature Act.

³⁸ S. 250, Criminal Procedure Code.

the recovery of damages *beyond the amount of compensation paid under the order*.³⁹

Hence, the damages awarded by a civil court will be the full computation of damages less the amount ordered to be paid by the criminal court by way of compensation. What is the position if the civil damages prove to be less than those awarded by the compensation order—will this finding affect the amount required to be paid under the order? There may also be cases where property in respect of which compensation was ordered is subsequently recovered; should this affect the order? The Code appears to be silent on these issues. Apart from these problems, the stance taken by the Code in respect of civil liability affords a workable system since the courts need not determine whether any civil liability exists when deciding whether to make a compensation order.⁴⁰

Other Forms of Victim Compensation in Singapore

There is another but much more restricted form of victim compensation prescribed by the Code. Under s. 404, the President may order an appropriate sum of money to be given to the wife, husband, parent or child of a person who is killed while endeavouring to arrest or keep in lawful custody a person accused of having committed, attempted or abetted an offence punishable with death or imprisonment. In such cases, payment is made out of the Consolidated Fund.⁴¹ Hence, there does exist a form of State-funded compensation scheme for victims of crime although its scope is very limited.

The Probation of Offenders Act⁴² also enables the court to order that compensation be paid by certain offenders to their victims. Section 10(2) of the Act states that “[a] court, on making a probation order or an order for conditional discharge or on discharging an offender absolutely under this Act, may... order the offender to pay such damage for injury or compensation for loss as the court thinks reasonable.”

In respect of probation, an earlier provision disallows the compensation order to be regarded as a condition or requirement of probation.⁴³ Instead, a failure to pay such compensation is dealt with in the same manner as for non-payment of other compensation orders.⁴⁴ Although consistency of enforcement procedures is generally desirable, it is submitted that the better position would have been to make payment

³⁹ Emphasis added. Rather strangely, this provision empowers the court to make a compensation order even where there would be no civil liability. See Atiyah, “Compensation Orders and Civil Liability” [1979] Crim. L.R. 504.

⁴⁰ Cf. s. 357(1), of the Indian Code of Criminal Procedure, *supra* note 25, which requires the court to ascertain that civil liability exists before making a compensation order.

⁴¹ The Consolidated Fund owes its existence to s. 143, Constitution of the Republic of Singapore, Reprint No. 1 of 1980, which states that:

“There shall be in and for Singapore a Consolidated Fund into which, subject to the provisions of any law for the time being in force in Singapore, shall be paid all revenues of Singapore not allocated to specified purposes.”

⁴² Cap. 117, Singapore Statutes, 1970 Rev. Ed.

⁴³ See proviso to s. 5(2), *ibid.*

⁴⁴ S. 10(3), *ibid.*, which states that “[a]n order for the payment of damages or compensation [as mentioned in s. 10(2)] may be enforced in like manner as an order for the payment of costs by the offender.” The enforcement procedures for payment of costs is exactly the same as for compensation; see s. 402, Criminal Procedure Code.

of compensation a condition of probation.⁴⁵ Requiring an offender, as a condition of his probation, to pay compensation to the victim of his crime would clearly work towards his rehabilitation. The offender would also be more effectively compelled to compensate his victim since a failure to do so would usually result in the imposition of a severer sentence⁴⁶ than the short terms of imprisonment prescribed for defaulters of compensation orders.⁴⁷

The Use of the Victim Compensation Provisions in Practice

A survey was conducted in July 1984 to gauge the use of the existing provisions on victim compensation by our District Judges and magistrates. Fourteen judges and magistrates, having a cumulative total of about 113 years of judicial service, participated in the survey. Altogether, they made only three compensation orders under s. 400(1)(b) of the Code and two such orders under s. 10(2) of the Probation of Offenders Act. The reasons given by these judges and magistrates for the poor utilisation of the provisions are spelt out in Table 1.⁴⁸

Table 1. Reasons why Compensation Orders are not made by the Subordinate Courts of Singapore

Reasons	Number of judges/magistrates subscribing to each reason
(1) Oversight of the provisions by judges/magistrates	1
(2) Unnecessary prolonging of court hearings	2
(3) Lack of guidelines in computing sums to be paid	7
(4) Lack of judicial precedent in making compensation orders	6
(5) No application for compensation made by the prosecution	5
(6) The victim has resort to civil remedies	4
(7) The offender has already made restitution	2
(8) The offender is generally unable to pay	1

⁴⁵ Payment of compensation is made a condition of probation in many other jurisdictions; see Jacobs, "The Concept of Restitution: An Historical Overview" in *Restitution in Criminal Justice*, *supra*, note 3, at p. 50.

⁴⁶ Ss. 7(2)(a) and 7(3)(b) of the Probation of Offenders Act state that, upon a probationer's failure to comply with the conditions of the probation order, the court may deal with him "in any manner in which the [court] would deal with him if it had just convicted him of the offence."

⁴⁷ See s. 402(2) of the Criminal Procedure Code which prescribes a maximum period of six months imprisonment in default of payment of compensation.

⁴⁸ The first four reasons were proposed in the survey questionnaire as possible explanations for the poor use of the provisions. The other four reasons were suggested by the judges and magistrates themselves.

The Table shows that it has generally not been through ignorance or oversight of the existing provisions that the courts have failed to utilize them. The primary reason given for not invoking the provisions is the lack of guidelines for computing the sum to be paid by way of compensation. This reason is closely connected with the other major reason of a lack of judicial precedent in the making of compensation orders. Case precedent is the mode by which judicial guidelines are formulated. These guidelines may be expressly stated in the decisions or drawn from the facts and circumstances of preceding cases. A lack of judicial precedent formulating guidelines on the making of compensation orders has caused the provisions to fall into disuse. There is, accordingly, an urgent need for clear guidelines to be given to the courts concerning when compensation orders should be made and how the amounts are to be computed. These guidelines would also indicate the underlying rationale for victim compensation and, in particular, who is to be regarded as the primary beneficiary of the scheme under s. 400 of the Code.

It would also appear that some judges and magistrates will not consider making a compensation order unless the prosecution so recommends. While there may be a duty on the part of the prosecution to make such recommendations in appropriate cases, there is equally a duty on the judge or magistrate, as sentencer, to consider the making of such an order on their own initiative. Then there are those judges and magistrates who justify not making compensation orders by referring to the civil remedies that are available to the victim. However, these remedies are not very effective since the victim often cannot afford the expense, in terms of money and time, of bringing a tort action against the offender.

The final point that needs to be noted is that none of the judges and magistrates considered that "victim compensation is a luxury in the context of our criminal justice system and is more consistent with state welfarism."⁴⁹ Hence, it may be stated that the concept of compensating victims of crime forms an integral part of our criminal justice system as far as our courts are concerned.

The above survey and the preceding description of the existing victim compensation provisions indicate that there is considerable lack of clarity concerning the purpose of compensation. Who is the main beneficiary of our compensation provisions—the victim, offender, the criminal justice system or the community at large? What is clear, however, is that the victim is *not* the primary beneficiary. He will not receive any compensation unless all of the following conditions are met: his assailant is convicted; the court exercises its discretion to make a compensation order; and the offender is both able and willing to make the payment.

It would be instructive now to briefly consider compensation for victims of crime in England with a view to possible reform of our existing scheme.

⁴⁹ This was one of the reasons suggested in the questionnaire as to why the provisions were hardly utilized.

III. LEARNING FROM THE ENGLISH VICTIM COMPENSATION SCHEME

In England, two schemes work alongside each other to compensate victims of crime. The first appears under the Powers of Criminal Courts Act 1973⁵⁰ which empowers the courts to make orders requiring a convicted offender to compensate his victim. The second scheme, maintained by the Criminal Injuries Compensation Board, has no statutory authority but was brought into being in 1964 by an address in both Houses of Parliament.⁵¹ This is a State-funded project geared at compensating victims of violent crimes. The first scheme will be dealt with under this Part as it accords most with our own existing scheme. The second scheme will be considered in Part IV which will recommend the implementation of a State-funded compensation programme in Singapore.

The main compensation provision in the Powers of Criminal Courts Act is s. 35(1) which reads, in part, as follows:—

... a court before which a person is convicted of an offence in addition to dealing with him in any other way, may, on application or otherwise, make an order ... requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence.

The similarities between this provision and s. 400(1)(b) of our Code are that the courts are given a discretionary power to make compensation orders; these orders can only be made as against a convicted person; and the types of offences which may attract such orders are manifold, namely, those causing personal injury, loss or damage. While there remains some ambiguity in our provision,⁵² the English provision makes it clear that a compensation order is to be made *in addition to* some other form of punishment. It is submitted that this is unnecessarily restrictive as there may be cases where a compensation order alone could constitute sufficient punishment.

As a guideline to the amount of compensation to be awarded, the English Act specifies a ceiling of £1000 for any offence of which there has been a conviction.⁵³ The Home Office has also experimented with the use by magistrates of "compensation guidelines" for personal injury cases⁵⁴ and the Magistrates' Association has compiled a list of starting points for the assessment of compensation in such cases.⁵⁵ By contrast, our provisions do not in any way assist the court in computing the amount of compensation to be paid nor has any non-statutory guidelines been formulated to fill in this gap. It has been noted earlier how the

⁵⁰ *Supra*, note 16, hereinafter termed "the English Act."

⁵¹ See Home Office and Scottish Home and Health Department, *Compensation for Victims of Crimes of Violence*, (1964) Cmnd. 2325.

⁵² See *supra*, pp. 223-224.

⁵³ S. 35(5), Powers of Criminal Courts Act, *supra*, note 16. Cf. s. 400(1), Criminal Procedure Code which does not prescribe a ceiling on the amount of compensation.

⁵⁴ See Vennard, "Magistrates' Assessments of Compensation for Injury," [1979] Crim. L.R. 510. To enable magistrates to put a figure on the injury, certain broad types of injury were identified, ranging from a blow without a bruise to a fracture, and for each, a suitable figure or range of amounts was suggested.

⁵⁵ (1978) *The Magistrate* 137, at pp. 137-138. These guidelines are similar to those devised by the Home Office; see Vennard, *ibid*.

lack of such guidelines primarily explains the poor use of the compensation provisions by our courts.

Another attractive feature of the English scheme, not expressly a part of our own, is that a compensation order will not be made unless there is a fair chance of compliance by the offender. Thus, the English Act requires the court to have regard to the offender's means in determining whether to make a compensation order against him, and in determining the amount to be paid by him.⁵⁶ There is, in addition, a growing sentencing practice not to combine a compensation order with a custodial sentence unless the offender has a strong chance of complying with the order despite being in prison.⁵⁷ Having regard to whether an offender can pay compensation is a realistic measure which not only serves to avoid the subsequent use of cumbersome enforcement procedures but reduces the number of cases of victims being given false hopes of compensation.

In relation to appeals, the English Act requires that a compensation order be suspended in every case until the expiration of the period prescribed for giving of notice of appeal against a decision of the court, or where such a notice of appeal is given, until the determination of the appeal.⁵⁸ This requirement of suspension ensures that no payments are made until the final determination of the case and in this respect it is preferable to our system where a stay of execution of payment is left to the court's discretion. The English scheme also avoids unnecessary resort to appeal procedures by providing powers of review to the court having jurisdiction over the enforcement of the order. Such a court may discharge, on application, the order or reduce the amount if a civil court has held the injury, loss or damage to be less than it was taken to be for the purposes of the order. The court may do likewise in a case where the property for which the order was made has been recovered.⁵⁹ It is submitted that our trial courts should be given similar powers of review over compensation orders.

Turning now to the effect of compensation orders on civil liability the English Act provides that if civil proceedings are brought in respect of the same injury, loss or damage for which a compensation order has been made, the court must firstly assess any damages without regard to the order.⁶⁰ Should damages so assessed exceed the compensation already paid, then judgment must only be given in respect of the excess.⁶¹ If any part of the amount ordered as compensation remains unpaid, the judgment is only enforceable as to that amount with leave of the court.⁶² This is basically the same position taken by our Code. What is important to note here is that compensation orders are seen by both jurisdictions as providing a quick alternative to the expense and possible delays of civil proceedings but without prejudicing any claims under civil law.

⁵⁶ S. 35(4), Powers of Criminal Courts Act, *supra*, note 16.

⁵⁷ *R. v. Wylie* [1975] R.T.R. 94 (C.A.); *R. v. Whenman* [1977] Crim. L.R. 430. See also Tarling and Softley, "Compensation Orders in the Crown Court," [1976] Crim. L.R. 422.

⁵⁸ S. 36(2), Powers of Criminal Courts Act, *supra*, note 16.

⁵⁹ S. 37, *ibid.*

⁶⁰ S. 38(2).

⁶¹ *Id.*

⁶² S. 38(3).

While our existing compensation scheme may be significantly improved by adopting certain features of the English scheme, there are other measures not covered by that scheme which merit serious consideration. One such measure relates to the form of compensation; both the Singapore and English schemes currently provide only for monetary payment by the offender. The offender could alternatively be required to perform a useful service for the victim of his crime.⁶³ This form of compensation has the obvious advantage of being more readily fulfilled by the offender as opposed to monetary payments. Another matter for consideration is for prison industries to become more effective and diversified than they currently are with the aim of making prisoners' wages commensurate with those prevailing in the outside world.⁶⁴ The offender's earnings while in prison could then be utilized to make restitution. It might also be possible to set an offender's prison sentence in terms of money owed instead of in terms of time as under our present sentencing system. The sentence could then be reduced as payments are made so that an offender's efforts at prison work are directly recognised.⁶⁵ Finally, the collection mechanism under the Singapore and English schemes leaves much to be desired. Allowing direct payment from the offender to the victim puts an unfair burden on the victim. It would be preferable to have monies paid to the court or some agency and disbursed by them. In this way, payments could be independently monitored and timely measures could then be taken in the event of default.

IV, THE CASE FOR A STATE-FUNDED VICTIM COMPENSATION SCHEME

It has been observed how our existing provisions make offenders the primary source of payments by way of compensation. The only instance where compensation is given by the State is when someone is killed while attempting to arrest persons accused of serious crimes.⁶⁶ While the government's efforts at crime prevention are highly commendable, the fact remains that the occurrence of crime cannot be absolutely eradicated and a sizable increase in crime rates and consequently, victims of crime, is predicted.⁶⁷ The proposal here is for State participation in compensating such victims rather than leaving them solely at the mercy of the offender's financial standing. While the responsibility to make restitution will still lie upon the offender, payment by the State is advocated to supplement or replace restitution by the offender where he is unknown; his guilt cannot be proven; where he

⁶³ For example, see the Citizen Disputes Settlement Programmes of the American Arbitration Association and the Night Prosecutor Programme in Ohio as discussed by Galaway, "Toward the Rational Development of Restitution" in *Restitution in Criminal Justice*, *supra*, note 3, at p. 81.

⁶⁴ In this connection, the Day Release Scheme could be expanded and prisoners given the full wages paid by the firms which employ them. The scheme, introduced in 1979, enables certain prisoners to work in a factory, firm or other place of work under normal working conditions, returning to the Day Release Scheme camps at night. See Annual Reports of the Singapore Prisons Department (1979 and 1980), paras. 22-25.

The work of the Singapore Corporation of Rehabilitation Enterprises (SCORE), set up in 1976, has also considerably improved prison industries and vocational training for prisoners; see Boey Lian Peck, "Employing the Discharged Prisoner" in *New Dawn*, *supra* note 32, at p. 14.

⁶⁵ See Smith, *A Cure for Crime* (1965), at p. 13.

⁶⁶ S. 404, Criminal Procedure Code.

⁶⁷ See *supra*, note 7.

is unwilling or unable to pay it in whole or in part; or where he escapes liability on the basis of insanity or infancy.⁶⁸

The British and New South Wales compensation schemes have been selected for examination among the numerous State-funded victim compensation schemes presently available in other jurisdictions. The British scheme was established with the setting up of the Criminal Injuries Compensation Board in 1964.⁶⁹ The scheme applies to offences committed in England, Scotland, Northern Ireland and on board British ships and aircraft. The nationality of victims or offenders has no relevance to the claims made. It is, however, confined to claims for personal injury or death directly attributable to a crime of violence. The claimants include persons injured and the estates of those killed by such crimes.

The Board comprises a chairman and seven other members, all of whom are legally trained. The Board's procedure is relatively simple. The claimant completes an application form setting out details of reporting to the police and subsequent criminal proceedings against the offender as well as details of doctors and hospitals dealing with the injuries. A case working officer scrutinizes the form and determines if the claim is within the scope of the scheme and whether there is sufficient information on the injuries and losses to enable compensation to be assessed. The officer then prepares a file which includes a brief case summary, the application form, reports and relevant correspondence. The file is sent to a single Board member who decides whether a claim is sustainable. The file is then returned to the case working officer who informs the claimant of the decision. In the event that the claimant is dissatisfied with the single Board member's decision, the file and all relevant information is sent to three other Board members for further deliberation. The hearings of the Board are not held in public so as to maintain the feature of informality of the scheme.⁷⁰ The Board is empowered to reduce the amount of compensation or reject the application altogether if it considers it appropriate to do so "having regard to the conduct of the victim, including his conduct before and after the events giving rise to the claim, and to his character and way of life."⁷¹ This restriction serves to discourage fraudulent or extravagant claims. The scheme has worked well on the whole and has become the main source of compensation for victims of violent crimes apart from social security.⁷²

⁶⁸ These are the main reasons why offender-funded victim compensation has been found to be inadequate in other jurisdictions. For example, see Chappell, "The Emergence of Australian Schemes to Compensate Victims of Crime" in *The Australian Criminal Justice System*, *supra*, note 5, at p. 774; and the Law Commission of India (41st report), at p. 356.

⁶⁹ A similar scheme has been in existence in Hong Kong since 1973. Victims of any crime of violence may apply to the Criminal Injuries Compensation Board for payments from public funds.

⁷⁰ The fact that hearings do not take place in public may also be to the advantage of claimants who might shun any publicity, having already suffered as a result of an act of violence.

⁷¹ Para. 17 of the scheme, discussed in Williams, "Compensating Victims of Crimes of Violence: Another Look at the Scheme," (1973) *The Solicitor's Journal* 658, at p. 659.

⁷² See Royal Commission on Civil Liability and Compensation for Personal Injury, *Report* Vol. II, Chapter 12. For suggested improvements of the scheme, see Williams, *ibid*.

The Criminal Injuries Compensation Act 1967⁷³ of New South Wales introduced a State-funded compensation scheme for victims of violent crimes. The criminal courts in that State, however, have had power since 1900⁷⁴ to direct that a sum not exceeding a prescribed limit should be paid out of a convicted offender's property to anyone suffering injury or loss through the offence in question. The 1967 Act gives the injured person the right to obtain such payment, if not otherwise forthcoming, from general State funds. A victim may apply for compensation from such funds only if a court directs payment of compensation by a convicted offender or, in the case of acquittal or dismissal of an information, when the court grants a certificate stating the amount which would have been awarded as compensation had conviction resulted. Application is made to the Under-Secretary who, upon receipt of such application, furnishes a report to the Treasurer stating (i) the amount applied for and (ii) any amounts which, in his opinion, the applicant "has received or is entitled to receive, independently of this Act by reason of the injury to which the application relates."⁷⁵ If the Treasurer determines that an award is justified, he may then pay to the applicant an amount equal to the difference between figures (i) and (ii) of the Under-Secretary's report.

It may be observed from this brief description of the New South Wales scheme that the decision as to eligibility for compensation and the amount of the award rests upon the criminal courts, subject to the Treasurer's overriding discretion to make or withhold payment. Furthermore, the only victims who could receive compensation would be those injured in a crime in which the offender was apprehended and brought before a criminal court. To avoid what would otherwise be a serious weakness in the scheme, the Attorney-General announced in parliament, soon after the passing of the 1967 Act, that *ex gratia* payments of compensation would be made to victims of unsolved crimes.⁷⁶

A scheme similar to the British scheme, rather than the one operating in New South Wales, should be introduced in Singapore. The latter scheme is both cumbersome and unwieldy due to its administration being shared jointly by the criminal courts and the executive arm of government. Besides, participation by the courts invariably causes long delays in payment since trials often take place many months after the commission of an offence. The preferred solution would be to relegate the decision whether to provide State-compensation to an administrative board, leaving the courts out of the scheme altogether.

The manner in which compensation is to be assessed under a State-funded scheme should also be considered. It would seem most natural for awards to be similar to those made under tort law given that the right to apply for compensation under a criminal injuries compensation scheme is seen as replacing that hollow right to bring a tort action. This is, however, not realistic in view of the limited budget that can be sought from the government to finance the scheme.

⁷³ No. 14 of 1967 (N.S.W.).

⁷⁴ See ss. 437 and 554, Crimes Act, No. 40 of 1900 (N.S.W.).

⁷⁵ S. 5(1)(b), Criminal Injuries Compensation Act 1967, *supra*, note 73.

⁷⁶ Parliamentary Debates No. 53, at p. 3219 (1967) (N.S.W.).

A possible solution may be to devise a system of benefits along the lines of the Workmen's Compensation Act 1975.⁷⁷ The Act provides limited benefits below the full common law damages to which a person is entitled in a legal action. These benefits are earnings related and are based upon prescribed scales fixed according to age and extent of disability. There are maximum ceilings but no minimum or floor limits to compensation. The benefits partially cover the item of loss earnings in common law damages. The other items of common law damages, namely, additional expenses due to injury, non-economic loss relating to pain and suffering, loss or impairment of function and loss of amenity are not included. Another feature of the Act is that an injured workman can either claim compensation under the Act from his employer or bring a civil action against his employer. He is disallowed from having both remedies. Likewise, a victim of a crime should be required to choose either to be compensated by the criminal injuries compensation scheme or to institute an action for damages against the offender.

The proposed Singapore State compensation scheme could derive its financial resources from the Consolidated Fund.⁷⁸ Monies from the Fund, it has been previously noted, may be used to pay the family members of a person who is killed while attempting to arrest someone accused of a serious offence. It is therefore quite permissible to extend the use of the Fund to compensate victims of a greater variety of criminal conduct.⁷⁹ The scheme may derive further financial support by directing to it a portion of all monies collected through fines and forfeitures.⁸⁰ However, this is at best a secondary source in view of the economic status of most offenders and their consequent inability to pay the fines imposed upon them.

The proposed scheme should, initially at least, be only available to compensate victims of violent crimes.⁸¹ Property offences are excluded because of the need to begin cautiously both in terms of expense as well as the demands on time and resources of the victim compensation board. There is, in addition, a greater possibility of fraudulent claims in respect of property offences. It is therefore proposed that victims of property offences should be left to rely on their own civil remedies and insurance policies for reparation.

Unlike the existing victim compensation scheme prescribed in our Code, the proposed State-funded scheme will have the victim as its primary beneficiary. Table 2 bears out this point by highlighting some of the main differences between these two types of schemes.

⁷⁷ No. 25 of 1975.

⁷⁸ See *supra*, note 41.

⁷⁹ The cost of financing the proposed scheme need not be phenomenal. For example, the Hong Kong scheme, *supra*, note 71, despite covering a population twice that of Singapore's cost the government only approximately HK\$2,600,000 in 1983. See Criminal and Law Enforcement Injuries Compensation Boards 10th Annual Report (1983), para. 33.

⁸⁰ Fines and forfeitures secured from criminal summonses amounted to approximately \$17,900,000 in 1983. See the *Budget for Financial Year 1983/84* Cmd. 2 of 1983, at p. 443.

⁸¹ It has been seen how the British, New South Wales and Hong Kong State-funded compensation schemes have likewise confined their scope to victims of violent crimes.

Table 2. A Comparison of Offender-Funded and State-Funded Victim Compensation Schemes on Selected Variables

Limiting Variable	Offender-Funded	State-Funded
(1) requirement of offender's apprehension	necessary	not necessary
(2) determination of offender's financial ability	important	not important
(3) concern for offender's rehabilitation	relevant	irrelevant
(4) victim eligibility requirement	generally no limitation by type of crime	generally only victims of violent crimes

The last variable in the above table indicates that more victims of crime are served by the offender-funded compensation scheme as opposed to a State-funded one. However, State-funded schemes are normally confined to victims of violent crimes only because of the limited financial resources that a State can be expected to assign to such a programme.

Conclusion

This article began by tracing how the concept of compensation gradually lost prominence with the growth of centralised legal systems. A major consequence of this development was an increased attention on the offender and a corresponding disregard for the victim of crime. The thrust of this article has been that the victim of crime should regain the recognition properly owed to him not merely for his own benefit but for that of the community and criminal justice system as well. A compensation scheme with the chief purpose of benefitting such victims could be achieved by improving on our existing compensation provisions coupled with the establishment of a State-funded compensation scheme.

The existing provisions for victim compensation have been shown to be ill-utilized by our courts primarily because of a lack of clear guidelines as to their use. Either the legislature or the courts themselves should formulate these much needed guidelines to ensure that more compensation orders are made by the sentencing courts. The results of such a step are two-fold: victims will have an opportunity to regain that which they have lost through the commission of criminal acts and there would be increased use of compensation orders as an alternative mechanism for dealing with offenders.

A State-funded scheme has been proposed to supplement our existing provisions on victim compensation. This proposal is justifiable on the ground that the State owes a duty to assist victims of crime and that, in fulfilling that duty, the State restores the damage to public trust and confidence caused by a perception of unchecked criminality.

Many problems will be encountered in revamping our existing compensation provisions and in setting up a State-funded scheme. The task, however, is made somewhat simpler by drawing on the experience of other jurisdictions, notably, England. It also seems clear that the results will be well worth the effort for, as one writer has said:

A renewed concern for a victim orientation in criminal theory does not mean a retreat from interest in the criminal; rather, the hope is that a substantial interest in the perspective of the victim will supplement the traditional criminal orientation and that the two together will increase the success of efforts to prevent crime, treat the criminal, and compensate the victim.⁸²

STANLEY YEO MENG HEONG *

⁸² Lamborn, "Toward a Victim Orientation in Criminal Theory" (1968) Rutgers L.R. 733, at p. 735.

* LL.B. (Sing.), LL.M. (Wellington), LL.M. (Sydney). Senior Lecturer, Faculty of Law, National University of Singapore.