

## **A Note on Compensation to the Victims of Crime**

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### **Abstract**

The article basically deals with the provisions laid down under different enactments and legal framework in India. Among them the most widely available and used for compensation and restitution of victims of crime is provided under the Code of Criminal Procedure, 1973; Probation of Offenders Act, 1958; Indian penal code of 1860 and the constitution of India, etc.

### **Introduction**

An ideal administration of criminal justice provides compensation to the victims of crime along with punishing the offender. Compensation denotes reparation, restitution and damages, with slightly different shades of meaning to denote indemnification of a victim against loss. The term 'Victim' entitled to receive compensation for their injuries is described as 'Any Person' under Section 357 of the Cr. P. C., 1973 and Section 5 of the Probation of Offenders Act, 1958. The word 'Person' as defined under Section 11 of the Indian Penal Code or the General Clauses Act is sufficiently wide to include associations, companies and the Government. The term 'Injuries' denotes any harm whatever, illegally caused to any person in body, mind, reputation or property, as is given under Section 44 of the IPC. The Constitution of India confers equal attention on the offenders as well as the victims of crime and it ensures equal protection of law to both of them (Article 14).

### **Research Methodology**

Depending on the nature of the topic more stress was given on secondary data rather than Primary data. Various books were referred along with the data available on the internet.

### **Compensation to the Victims of Crime**

The impact of injury on the victim of crime does not result only from the offence but also from the society's rather indifferent response to the victim besides the stigma attached to it which amounts to further victimization of the victim for a longtime in his life. Restitution is one of the forms of compensation for the losses / injuries suffered by the victim. It is defined as restoration of anything unlawfully taken from another. Restitution is a legal obligation as laid down under Section 451, 452 & 456 of the Cr.P.C., of putting the victims back into possession of his property that he was unlawfully deprived of. In recent years, the plight of victims has attracted adequate attention with the result that new dimensions have been added to the criminological thoughts not only at the national but also at the international level with following rationale:-(i)It would be the responsibility of the State to protect its citizens failing which it shall compensate the victims of crime to prevent individual retaliatory behaviour and to reinforce law abiding conduct.(ii) In principle, offender must accept the responsibility for the consequences of his wrong doings in conformity with social justice.(iii) Awarding compensation to the victims by the offender is a part of the punishment that may also have an educational value for the offenders

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which is therapeutically more beneficial to them.(iv) The provision of compensation has a practical value in the treatment and rehabilitation process of the offender which facilitate the process of correction in our system of dispensing justice. This kind of punishment can make compensation to the victims as integral part of probation and parole conditions for the offenders. This might be considered as another direction of a necessary offender-victim relationship.(v) It is the responsibility of the State to help the needy and the distressed persons in a Welfare State and in pursuance to that the State should come to their help at the time of their criminal victimization at the hands of perpetrators of crime.

Statutory Mechanism for Award of Compensation to the Victims of Crimes in India is provided under the Criminal Procedure Code, 1973 (2 Of 1974) There are certain provisions for the payment of compensation to the victims of crime under Criminal Procedure Code and other Legislations which are given as under:-(i)Section 357 of Cr.P.C., 1973(ii)Section 358 of Cr.P.C., 1973(iii)Section 359 of Cr.P.C., 1973 Under Different Acts (iv)Section 5 of Probation of Offenders Act, 1958.(v)Section 15-A of Police Act, 1861.(vi)Under the Motor Vehicle Act, 1988Sections 140, 141, 161, 163, 165, 166, 167, 168, 171, 172 deal with the compensation to the victim of crime relating to road accidents.(vii) The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities)Act, 1989Section 16, Section 21 (2) of the Act and Rules framed there under by the Government of India in exercise of powers conferred by Section 23(1) of this Act which were notified on 31st March, 1995 (Rule 12(4). Legal framework under code of Criminal Procedure, 1973 .1. Section 357 (1) concerns itself with the grant of compensation out of the fine imposed on the offender at the time of sentencing the convict. Sub Clause 1(a) of Section 357 empowers a criminal court to indemnify the prosecuting agency against expenses incurred in the prosecution by way of fine imposed on the convict. Sub Clause 1(b) of Section 357 entitles the court to award compensation for any loss or injury caused by the offence to the victim but this is subject to the condition that compensation must be recoverable by the victim in a Civil Court. This condition i.e. the word “recoverable” may be construed in two ways :(i)That the victim is entitled to sue the offender for damages in a civil court and that the offender is liable to pay, (ii) that the offender has the capacity to pay the compensation. This renders the provision ambiguous. In many cases it happens that the offender prepares himself to pay a greater amount as fine, on pain of in-default-sentence of imprisonment, although a decree for damages or compensation passed by a civil court against an offender may prove to be fruitless in execution, besides the inordinate delay involved in obtaining and executing a decree by the victim. (2)Section 357 (1) (b) deals with the offence for having caused the death of another person or having abetted the commission of such an offence, and in such cases, a criminal court can grant compensation only if the victims are entitled to recover damages from the offender under the Fatal Accidents Act, 1855.(3)Sub Clause 3 of Section 357 empowers a criminal court to pass an order against the offender directing him to pay compensation to the victim of the crime, without passing an order of fine. The compensation under this section is in the nature of reparation to the

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victim. It is not clear from Section 357(3) whether the court can impose on the offender an in-default-sentence of imprisonment if the offender fails to pay compensation as ordered. If the offender does not pay compensation though ordered by the court under Section 357 (3), the machinery for recovering the said amount by the court for the benefit of the victim is provided in Section 421 read with Section 431 Cr.P.C. (4)Section 358 Cr.P.C. provides for payment of compensation up to Rs.100/- to persons groundlessly arrested, by the person causing the arrest of the accused or in default, rendering that person to undergo a simple imprisonment not exceeding 30 days. Section 358(3) specifically provides that the amount of compensation awarded under 358(1) has to be regarded as fine.(5)Sub Clause 1 of Section 359 empowers a court to award costs in non-cognizable cases to the complainant who is generally a victim of the crime, from the offender, providing further that if the offender did not pay costs as ordered, he shall suffer simple imprisonment up to 30 days.(6) The other provisions regarding payment of compensation are to be found in Sub Clause (4) to (8) of Section 237 and Section 250 Cr.P.C. when an accused person becomes the victim of a false complaint of an offence filed under Section 199(2) of the Cr.P.C. The amount of compensation to be paid by the false complainant or informant is left to be determined by the court. (7) For restitution and restoration of property involved in crime to the victim, the following provisions are available: Section 451 enables a court to sell such property as is subject to speedy and natural decay, involved in crime, during the pendency of the case. The sale-proceeds of such property can be paid by courts after the conclusion of the trial to the victim as ordered by the court. Under Section 452 the court is empowered to return the property to the possession of the person entitled to it after the conclusion of the trial, and Section 456 empowers the court to put the complainant or the victim back into possession of immovable property of which he has been wrongfully dispossessed, after the conclusion of the trial.

The amount of compensation is not related to the amount of fine, in case the compensation is either awarded under Section 357 (3) of Cr.P.C., 1973 or Section 5 of the Probation of Offenders Act,1958, where the question of imposing the fine does not arise. Compare to the very meager compensation provisions under Sections357, 358 and 359 of the Cr.P.C. as discussed above, it is seen that the provisions of payment of compensation to the victims of false accusation of crime, as provided in Section 237 and 250 of the Cr.P.C. are not regulated by any specified amount of fine

Liability for Payment of Compensation without fault in certain cases under the Motor Vehicle Act As per Chapter VII-A introduced through the M.V. (Amendment) Act, 1982, where the death or permanent disablement has been caused due to a motor accident, the owner of the vehicle is liable to pay compensation, the amount being Rs. 15,000/- in case of death and Rs. 7500/- for permanent disablement. The claimant is not required to plead or establish wrongful act, neglect or default on the part of the owner of the vehicle. The claim has to be made on the police enquiry report, hospital report, etc. This does not set aside the claimant's right to claim compensation under other provisions of the M.V. Act or any other law in force. The amended Act provides for expeditious disposal of these cases. These provisions have been introduced as a

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social welfare measure. Here again, our discussions indicate that the evidence is, at times, manipulated. Undue delay may also be involved because of disputes regarding identity of the legal heirs of the deceased or the extent of disfiguration of face or head. In such cases of dispute the amount is deposited with the Claims Tribunal pending settlement.

Section 23 (1) of the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act, 1989 empowered the Central Government to make rules by notification in the official Gazette for carrying out the purpose of this Act. In exercise of powers conferred by the Section 23 (1) of this Act, the Government of India has framed the SC & ST (Prevention of Atrocities) Rules,1995 which were notified on 31st March, 1995.(i)Rule 12 (4) of these notified rules provides scales for the monetary relief to the victims of crime in a Schedule appended to these rules. Details of the norms as indicated in the Schedule for providing relief to the victims of crimes are given as under:- (i)forces a member of Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance; Rs. 25,000/-2. Section 3(1) (ii) acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighborhood; Rs. 25,000/-3. Section 3(1) (iii) forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity; Rs. 25,000/-4. Section 3(1) (iv) wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred; Rs. 25,000/-5. Section 3(1) (v) wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water; Rs. 25,000/-6. Section 3(1) (vi) compels' or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'beggar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government; Rs. 25,000/-7. Section 3(1) (vii) forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law; Rs. 20,000/-8. Section 3(1) (viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of Scheduled Caste or a Scheduled Tribe; Rs. 25,000/-.

The National Foundation for Communal Harmony, an autonomous organization 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 terrorists violence in respect of their care, education and training besides promoting communal harmony, fraternity and national integration. Towards this, an amount of Rs. 13 crores has been provided by the Government of India which constitutes the corpus of the foundation. A Group Personal Accident Insurance is being run for child victims of communal and terrorist violence for their rehabilitation. This scheme covers with following benefits for child victims:- (i) Death Rs. 25,000/-(ii) Loss of 2 limbs or one limb and one eye Rs. 25,000/-(iii) One hundred percent permanent disablement other than those mentioned above Rs. 25,000/-(iv) Loss of one limb or one eye Rs. 12,500/-(v) 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)Rs. 500/-Policy cover is effective for 24

hours. In addition to it, the National Foundation for Communal Harmony also provide financial assistance to the orphan or destitute children up to the age of 18 years (extendable up to 21 years in certain cases) whose parents or their bread earner is killed or permanently incapacitated due to communal, caste, ethnic or terrorists violence. The scale of assistance is given as under: - • General education: in class A & B cities Rs. 650/- per month per child in other places Rs. 600/- per month per child • Professional/vocational education: Rs. 150/- per month per child in addition to assistance for general education.

### **Conclusion**

Critical evaluation of the various statutory provisions prevailing in India for payment of compensation or ex-gratia or relief amount to the victims of crime are very limited in scope except the provisions falling under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the scheme introduced by National Foundation for Communal Harmony for the Child Victim of communal, castes, ethnic or terrorists violence. The procedure for the award and receipt of compensation under the Cr.P.C. is quite cumbersome and is either generally not availed of or is limited to very a small amount for the fine, which can be imposed under Penal provisions. Therefore, we may conclude that the payment of Compensation to the victim of crime in India is conspicuous by its absence for all practical purposes.

### **References;**

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5. INDIAN PENAL CODE OF 1860