

SUMMARY / GIST OF
PAPERS

Workshop Paper

(Date:- 24/10/2015)

Subject

**"Victim compensation scheme under
Section 357, 357(a) of Cr. P. Code
And under various Acts".**

Paper Prepared by

Shri S.V. Kulkarni,

District Judge-1 and

Additional Sessions Judge,

Islampur

Dist. Sangli.

Mr. S.V. Kulkarni,
District Judge-1 & Addl. Sessions
Judge, Islampur, District Sangli.

SUMMARY / GIST OF PAPERS
(Workshop dated 24/10/2015)

On the Subject : Victim Compensation under Section 357, 357(a) of Cr. P. Code and under Various Acts. :

At the beginning in criminal justice system in India focus was on punishment for the crime. Attention was not given to the victim. Facilities to prisoners are given. However, victims of crimes were neglected. Lateron, change has taken place and various provisions are made for providing compensation to victims.

The term "VICTIM" is defined under Section 2 (wa) of the Code of Criminal Procedure, 1973 as, "**A person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression victim includes his or her guardian or legal heir**".

In **National Human Rights Commission Vs. State of Gujrat, (2009) 6 Supreme Court Cases Page 342**, Hon'ble Apex Court has observed that, the role of victim in criminal trial can never be lost sight of. Protection is necessary for victim.

All victims have a right to seek help and protection from the State as their fundamental right included in Article 21 of the Constitution, which guarantees every person protection of life and personal liberty. Article 39(A) provides for free legal aid for seeking justice.

Sub section (1) and (3) of Section 357 of Cr. P. Code gives power to the trial Court to award compensation to the victims of the crime. Sub section (4) of Section 357 of Cr. P. Code confirms similar powers to Appellate and Revisional Court.

Sub section (1) of Section 357 of Cr. P.

Code Compensation order to be paid under Section 357(1) may be for costs, damage or injury suffered or loss caused due to death, or monetary loss, incurred due to theft or destruction of property etc.

Sub section (3):- empowers Court in its discretion to order the accused to pay compensation to victim of his crime, even though no fine has been imposed on him. Under Section 357 an order of compensation can be passed by the trial Court, appellate Court or by High Court or Court of Sessions in revision, at the time of passing judgment, out of fine imposed, in four cases:-

(a) to the complainant, for meeting expenses properly incurred in the prosecution.

(b) to any person, who has suffered loss or injury by the offence, when he can recover compensation in Civil Court.

(c) to a person entitled to recover damages under the Fatal Accidents Act, when there is a conviction for causing death or Abetment thereof.

(d) to a bona fide purchaser of property, which has become the subject of theft, criminal misappropriation, criminal breach of trust, cheating, or receiving or retaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.

Court cannot award compensation beyond amount of fine imposed in accordance with Section 357 (1).

Sub section (3), however, enables the Court to order payment of compensation even in cases where substantive sentence of imprisonment only is awarded. The quantum of compensation depends upon facts, circumstances of the case, nature of crime, justness of the claim of victim and capacity of accused to pay. **(Sebastian Vs. State of Kerala, 1992 Criminal L.J. 3642 (Kerala))**

In a case reported in A.I.R.1988 Supreme Court 1927 Hari Kisan V/s State of Hariyana V/s Sukhabir Singh, Hon'ble Superme Court has recommended to all Courts to exercise the power of awarding compensation to victims of offences, conform by under section 357 of Cr.P.C., liberaly so as to meet the ends of Justice in a better way.

Courts are empowered to impose sentence in default of payment of compensation, awarded under Section 357 (3) of Cr. P. Code. Amount of compensation can be recovered as per the provisions of Section 421 of Criminal Procedure Code.

In a case reported in 2013 Cri. L.J. 1864 (Gohatti High Court) Jayanta Kalai Vs. State of Tripura, offence of Gang rape proved to have been committed on victim. In this matter High Court directed State Government to consider for providing compensation to victim in terms of Section 357 of Cr. P. Code within a period of two months. Specific direction was given to determine reasonable compensation on human consideration.

The power to award compensation under Section 357 (3) of Cr. P. Code is not ancillary to other sentences, but it is in addition thereto (Balraj Vs. State of U. P. AIR 1995 SC 1935 : 1995 Cri. L.J. 3219).

In **Bhimsing Vs. State of Jammu & Kashmir, AIR 1986 SC 498**, a member of Jammu & Kashmir legislative Assembly was arrested by police, while he was on his way to attend Assembly Session. He was deliberately arrested to prevent him from attending Assembly Session. In this matter, State Government was directed to pay compensation of Rs. 50,000/- to the petitioner for violation of his legal and constitutional right.

Interim Compensation :- As per amended Section 357(A)(6) the power is vested with State or District Services Legal Authority to provide immediate first aid facility or medical benefits free of costs on certificate of police station officer or of a Magistrate.

In a case of **Bodhisatva Gautam Vs. Subhra Chakraborty's AIR 1996 SC 922** Apex Court has noted that :

"Rape is a crime not only against the person of a woman, it is crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is, therefore, a most dreaded crime. It is violative of the victim's most cherished right, namely right to life, which includes right to live with human dignity as contained in Article 21 of the Constitution". The accused are directed to

pay an interim compensation of Rs.1000/-per month to victim, during the entire period of trial. It is also ruled that compensation to victim under such conditions will be justified even the accused was not convicted.

Section 357 (A) of Cr. P. Code :- This new section has been inserted by Cr. P. C. (Amendment) Act, **2008** (5 of 2009) with effect from December 31, 2009, which envisages '**Victim Compensation Scheme**'. The section reads as under :

"357-A Victim Compensation Scheme :-

(1) Every State Government in coordination with the Central Government, shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever recommendation is made by the Court for compensation, the District Legal Services Authority or the State Legal 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 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

7
has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendation 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 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 officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority may deem fit.

As per this provision amount of payment of compensation to the victim will be decided by the District Legal Services Authority or State Legal Services Authority after making inquiry. State Government has framed scheme for the purpose of compensation to the victims and to their dependents.

State Government of Maharashtra has framed scheme as per notification dated 11th April 2014 for providing funds for the purpose of compensation to the victims or their dependents who have suffered loss or injury as a result of a crime and who requires rehabilitation.

As per this scheme compensation can be granted as follows :

Sr.No.	Particulars of loss or injury	Maximum limit of compensation
1.	Loss of life	Rs.2.00 lacs
2.	Permanent Disability	Rs.0.50 lacs
3.	Acid Attack	Rs.3.00 lacs
4.	Funeral expenses	Rs.2,000/-
5.	Medical expenses Actual expenses incurred before death or on account of permanent disability by bills or vouchers but not exceeding.	Rs.15,000/-

Compensation under various Acts:-

Compensation under Constitution Article 226 and Article 32. Compensation in various cases is granted where persons fundamental right to life and personal liberty was infringed by police and other State Agencies (**Rudal Shah Vs. State of Bihar, AIR 1983 S.C. 1086**). (**B.K.Basu Vs. State of West Bengal, AIR 1997 S.C. 610**).

Compensation under Special Laws :-

(1) The victims of terrorism (provision of compensation and welfare measures) Bill, 2012.

Section 3 of the bill provides the compensation to victims of terror attack. Central Government has to pay compensation under this provision for loss of life not less than Rs.5.00 lacs, medical treatment for injuries sustained in terror attack. Compensation upto Rs.3.00 lacs can be paid to the injured.

(2) Probation of Offenders Act, 1958

As per provisions of Section 5 of this Act Court may direct the released offenders to pay compensation and costs to the injured person.

In revision application No.80/2012 decision dated 7th May, 2012 John Abraham, (Actor) Vs. State of Maharashtra, Hon'ble High Court, Bombay (Hon'ble Justice Shri R.C.Chavan) has directed accused to pay compensation of Rs.10,000/- to injured persons under Section 5 of Probation of Offender's Act by setting aside order of Metropolitan Magistrate sentencing accused to suffer S.I. for 15 days for offence punishable under Section 279, 337 of I.P.C.

(3) The Motor Vehicles Act, 1988.

Under this Act owner of vehicle is obliged to pay specific sum of compensation, if his negligent act has culminated in the death or permanent disablement

of a person. Provisions of Section 163, 163A, 166 and 140 are material and important provisions of this Act. Section 163 guarantees a speedy recovery of compensation. Section 163A provides for compensation on structured formula basis as indicated in Tabular Form in Second Schedule forming the part of the Act. Compensation under Section 140 is made payable if prima facie evidence is available to show that :

- (1) Accident by the offending vehicle;
- (2) Offending vehicle being insured;
- (3) Death or grievous injuries have been caused.

(4) **The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989.**

The sole object of this Act is to prevent the commission of offences of atrocities against the members of S.C. and S.T. and for the relief and rehabilitation of victims of such offences. Provision of Section 21 and 23 deals with economical aid to the victims. State Government has passed S.C. and S.T. (Prevention of Atrocities) Rules 1995. Rule 12(4) is about various reliefs which can be granted to the victims.

(5) **Protection of Human Rights Act, 1963.**

National Human Rights Commission enjoys

11
powers of Civil Courts while inquiring into the complaints under the Act. N.H.R.C. has recommended monetary relief in various cases and disciplinary actions against public officials for their administrative wrongs, while doing their duty.

(6) **The Workmen Compensation Act, 1923**

This Act gives protection to workman through employer's liability from hardship arising from accident during employment. Commissioner for workman's compensation is appointed under this Act. All powers of Civil Courts are vested with commissioner. Section 3 envisages employer's liability for payment of compensation, if any personal injury is caused to a workman by the accident arising out of or in the course of his employment.

(7) **Protection of Women against Domestic Violence Act, 2005.**

The Act provides for more effective protection of the rights of women, who are victims of violence of any kind occurring within the family. Under Section 22 of this Act a Magistrate can grant compensation and damages for the injuries to aggrieved woman in addition to other reliefs as may be granted under this Act. Exparte orders can be passed in case of emergency.

(8) **Railways Act, 1989**

Section 124-A provides compensation on

account of untowards incidents. Passengers and railway servants are entitled for compensation from Railway Authority under this provision, for any wrongful act, neglect or default on the part of Railway Administration.

(9) **Fatal Accidents Act, 1855:-**

It is the first legislation in the Indian statute book which accords legal right to the dependents of a person if his death is caused by wrongful act, neglect or default of another person under circumstances which amount to crime in law. In 2011, the Hon'ble Supreme Court in **Suba Singh Vs. Davinder Kaur (2011) 13 SCC 296** highlighted the anachronistic nature of the Fatal Accidents Act 1855 while upholding the award of compensation to victim's widow granted by the Civil Court and maintained by the Hon'ble High Court.

**COMPENSATION NOT AWARDED IN
FOLLOWING ACTS.**

(1) **Dowry Prohibition Act, 1961:-**

Dowry Prohibition Act had been enacted in 1961 with a view to curb social evil of dowry. In Dowry Prohibition Act, no provision is made to divert any of the fine amount as compensation to the victim woman. Victim has to fall back upon civil remedies, pertaining to damages and compensation.

(2) **Prevention of Food Adulteration Act,
1954:-**


In this Act there is no provision for claiming compensation directly from the offender. Victims of Food Adulteration have either to rely upon Code of Criminal Procedure or General civil laws to claim compensation for the loss of injury by them. This means additional burden on the victims.

(3) **Protection of Civil Rights Act, 1955**

This Act also fails to provide for any scheme of compensation to the victims of offenders.

Thus, it can be said that at the beginning law in India was inadequate to compensate victim of crime. Subsequently Code of Criminal Procedure is amended by Criminal Amendment Act 2008. Provision Section 357 (A) is very much useful for the victims. Real and natural justice guarantee the rehabilitation and ultimate removal of hardship of aggrieved, which can be achieved through compensation and by introducing victim compensation scheme. Compensation can be given from the accused or with the help of District / State Legal Services Authority.

Date :- 29-09-2015.


(**S.V. Kulkarni**)
District Judge-1 and
Additional Sessions Judge, Islampur