

PAPER FOR WORKSHOP OF 18/09/2016

SUBJECT - Punishment : The Probation of Offenders Act, 1958
and Compensation under Sec.357(1) & (3) of the Code of Criminal Procedure.

GROUP – B

Topic- 1

Important Provisions related to Probation of Offenders Act, 1958

Introduction :-

The primary purpose of probation was to prevent contamination in the institution. Probation served a dual purpose of ensuring protection of the society and, at the same time, rehabilitating the offender back into the society as its useful member. It helped the Judge in socializing criminal justice and in individualizing treatment. In India, before 1936, no definite probation statute was in existence. The beginning of probation is found in old Section 562 of Criminal Procedure Code, 1923, and presently it is in form of Section 360 and 361 of Criminal Procedure Code.

Due to introduction of Central Act i.e., “Probation of Offenders Act, 1958”, Sec.360 of Criminal Procedure Code is inapplicable in Maharashtra State as held in “***Sanjay Garud Vs. State of Maharashtra***” (2008)(1) Bom.C.R.949. In exercise of powers conferred by section 17 of Probation of Offenders Act, 1958, the Government of Maharashtra has framed “Maharashtra Probation of Offenders Rules, 1966. Chapter XI of Criminal Manual also deals with provisions of Probation of Offenders Act, 1958.

2] **ADMONITION & PROBATION (POWER OF COURT)**

The Probation of Offenders Act lays down admonition and probation as methods of treatment for different classes of offenders. Provisions dealing with admonition and probation are provided u/s. 3 & 4 of the Act.

Under section 3 of the Act court is empowered to administer admonition for the offences punishable u/ss. 379, 380, 381, 404 & 420 of the Indian Penal code. In addition, the power to administer admonition can be exercised by the court in respect of any offence punishable with imprisonment for not more than two years or with fine or with both under Indian Penal Code. The power to administer admonition is exercised exclusively for first offender. The previous conviction will also include release of offender under Section 4 of the Act. While exercising jurisdiction to administer admonition u/s. 3 court shall consider three elements, i.e Nature of offence, Character of the offender and Circumstance of the case.

Section 4(1) provides for release of certain offenders on probation. It lays down that the offender should enter into a bond and he may also be required to give sureties. It would normally be advisable to take sureties in addition to personal bonds, as sureties are themselves a guarantee of some efforts towards reform and a safeguard against the offender removing himself outside the jurisdiction of the court and breaking the conditions of the bond entered into by him.

Section 4(2) provides for release of an offender under the supervision of a probation officer. This is the most constructive type of treatment. Experience has proved that offenders are far more likely to make good, when placed under the guidance of a probation officer. It is, therefore, advisable that even in the case of first offender, they should be

dealt with under Section 4(2) in preference to discharge after admonition u/s. 3.

Under section 4(3) the court has power, while making a supervision order, to direct additional conditions to be inserted in the bond to be entered into by the offender under section 4(1) and in doing so the Court must have regard to the particular circumstances of each individual case.

The terms & conditions of the supervision order shall be explained to the offenders & one copy of the supervision order shall be furnished forthwith to each of the offenders, the sureties, if any and the probation officer concerned.

In suitable cases, the offender may be directed under section 5 to pay compensation & costs of proceedings to the person to whom loss or injury has been caused.

As far as character of the offender is concerned court should take into consideration antecedents, educational qualifications, family background of the offender. To determine nature of offence and circumstances of the case following parameters can be considered.

- (a) Absence of bad intention
- (b) Provocation
- (c) Self-preservation
- (d) Preservation of some nearest friend
- (e) Transgression of the limit of self defence
- (f) Submission to menace
- (g) Submission to authority
- (h) Childhood.

There may be other considerations to excise powers of court in extending benefit u/s. 3 & 4 of the Act.

3] **DIFFERENCE**

There is a sharp distinction between release after due admonition under Section 3 and release, on bond, on probation of good conduct under Section 4. In case of release after due admonition, the sword does not remain hanging. In case of release on a bond on probation of good conduct the sentence is merely suspended and the sword remains hanging on the accused till the expiry of the bond. In the event of the accused failing to observe the conditions of the bond he is liable to be dealt with under Section 9, i.e. he may be sentenced for the original offence or a penalty may be imposed upon him.

4] **COMMUNITY SERVICE**

Though community services are being ordered by some courts as a condition for release on probation of good conduct under the Act, there is no legislative sanction for grant of it as a punishment. Section 4 of the Act empowers Court to impose conditions while releasing offender on probation. A closer look at the provision shows that it envisages conditions “necessary for due supervision of the offender” by the Probation Officer and for preventing repetition of the same offence or commission of some other offences.

Neither in the Act nor in Indian Penal Code punishment in the form of community service is provided specifically. It can be awarded under the Juvenile Justice Act. When a particular statute does not provide for grant of punishment in the form of community services, the Court cannot stretch its discretion in awarding such type of punishment.

5] **MANDATORY FORM**

Section 6 deals with a person under twenty-one years of age and imposes a duty upon the Court not to impose a sentence of imprisonment for the offences mentioned in that section unless the Court

is satisfied having regard to the circumstances enumerated in the section that it would not be desirable to deal with the offender under Section 3 or Section 4 of the Act. In consonance with the object of section 6, it is incumbent upon the Court to call for a report of a Probation Officer for the purpose of satisfying itself whether it would not be desirable to deal with the offender under Section 3 or Section 4 of the Act.

While interpreting Section 6 of the Act, a 3-Judge Bench of Hon'ble Supreme Court in the case of ***Daulat Ram Vs. The State of Haryana 1972 Cri LJ 1517***, has laid down that Section 6 places restrictions on the court's power to sentence a person under 21 year of age for the commission of crimes mentioned therein unless the court is satisfied that it is not desirable to deal with the offender under Sections 3 and 4 of the Act. The court is also required to record reasons for passing sentence of imprisonment on such offender.

In ***State of Maharashtra Vs. Bondya Patil reported in 1978 Cri.L.J. 411*** Hon'ble Bombay High Court has observed that, “calling for a report from the probation officer under Sub-section (2) of Section 4 of the Act **though not mandatory is absolutely essential**”.

6] **AGE OF OFFENDER**

The reckoning date for determining the age of an accused for applying provisions of the Probation of Offenders Act is crucial. Whether the date on which the court held the accused guilty or the date of commission of offence is to be taken into consideration is the question. This position has been settled by Hon'ble Supreme Court in judgment ***Sudesh Kumar Vs. State of Uttarkhand AIR 2008 SC 1120*** by observing that, “the relevant date for determining applicability of the Act

is the date on which the accused is held guilty i.e. the date of judgment and not the date of commission of offence. In this respect provisions of the Act and the provisions of Juvenile Justice Act differ as the object of both the Acts are different. Under the Juvenile Justice Act the date of commission of offence is the relevant date whereas under the Probation of Offenders Act the date of judgment is relevant.”

7] **STAGE OF CALLING REPORT**

The Act does not lay down any specific stage at which report is to be called. It has to be on record before considering and passing the order of sentence. Though, it can be called at any stage of the trial the provisions in the Criminal Manual, Chapter XI, para 5 however lays down that as soon as the charge has been framed or is about to be framed the court if it considers that having regard to the nature of the offence & the part played by offender he is likely to be given the benefit, it should call for such report and obtain full information about him at the earlier stage as it will save the time of the court at the stage of the judgment.

In Sub-section (2) of Section 4 of the Act, the Legislature has not used the expression, “The Court shall call for a report from the probation officer”. All that the Sub-section says is that before making any order under Sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case. Therefore, the Legislature did not intend to make it incumbent on the Court to call for a report from a Probation Officer before an order contemplated by Section 4 (1) of the Act is passed.

8] **CONFIDENTIALITY**

U/s. 7 of the Act it is provided that the report of the Probation

Officer is confidential. However, the Court may communicate the substance thereof to the offender.

9] **ROLE OF PROBATION OFFICER**

The probation officer is the bridge between the Court and the offender to whom benefit of the Act can be extended. As per Section 15 every Probation Officer is deemed to be a public servant within the meaning of Section 21 of the I.P.C. In ***State of Maharashtra Vs. Bondya Patil*** reported in ***1978 Cri. L.J.41*** Hon'ble Bombay High Court emphasized the importance of Probation Officer by observing that, "The Probation Officer is an important officer in the machinery for the implementation of the Act. The post is created to assist the courts in the matter of probation. There is, therefore, no reason why his services should not be availed of before the order for probation is passed. It is essential that his services should be utilized, for otherwise important material relevant to be considered will not be available to the Court at all. It is, therefore, very essential that the Courts should not, in order to hasten up the disposal of the cases, dispense with the calling for a report and give the benefit of Section 4 to the offenders without there being sufficient material on record before them."

A Probation Officer must bear in mind that his principal object is to elicit information as to the prisoner and his circumstances which may be of assistance to the court in deciding whether, on a finding of guilt, the prisoner should or should not be placed on probation. The Probation Officer must take the greatest care when discussing matters with the prisoner to avoid-

- (1) going into the merits of the case;
- (2) advising the prisoner as to the line that he should take in defending himself before the court;

- (3) in any way leading the prisoner to think that he is trying to get him to confess or make statements which can be used against him.

Probation Officers usually receives the fullest assistance from the police. In case any difficulty arises, a reference should be made to the Magistrate, so that complete understanding and sympathetic action may be maintained between the police and the Probation Officer.

10] **APPEAL & REVISION**

Any order made under this Act is subject to appeal and revision u/s. 11 of the Act to the Court in which the appeal ordinarily lies from the sentences of the former court. It may act either of its own motion or on application made to it by the convicted person or probation officer.

The plea of applicability of the provisions of the Act can be taken up for the first time in appeal or revision as held by Hon'ble Supreme Court in **Sudesh Kumar Vs. State of Uttarkhand AIR 2008 SC 1120** as the provisions are benevolent in nature, no technical objection should be raised that such plea was not taken before the courts below but to entertain such plea there must be credible and trustworthy evidence in support of it.

If the accused is held guilty for the first time in appeal/revision, while applying the provisions of the Act whether the date of the judgment of the trial court or the date of the judgment of appellate or revisional court is to be considered. This issue is settled by Hon'ble Supreme Court in **Ramji Misar Vs. State of Bihar AIR 1963 SC 1088** by holding that the date of the judgment of the trial

court is the crucial date for determining whether the provisions of the Act can be made applicable to the accused.

11] **FAILURE TO COMPLY WITH CONDITIONS OF BOND**

Section 8 as well as 9 provide elaborate provisions and specify the procedure for taking action on the offender's failure to observe the conditions of his release and power has been given to the Court to let him continue on probation instead of sentencing or penalizing him.

If a Magistrate is satisfied that the probationer has committed a breach of a condition of the probation order, he may deal with the matter-

- (1) by warning the probationer;
- (2) without prejudice to the continuance in force of the recognizance, by imposing fine upto Rs.50/- on the offender;
- (3) by amending the condition of the order;
- (4) by punishing the offender for the original offence.

It is undesirable to take serious notice of minor lapses of conduct and for such lapses warning by the Magistrate may be sufficient or where the law so provides, the Magistrate may impose fine without prejudice to the continuance of bond.

12] **NON-APPLICABILITY**

Section 18 provides that, nothing in this Act shall affect the provisions of section 31 of Reformatory School Act, 1897 (8 of 1897), or sub-section (2) of section 5 of Prevention of Corruption Act, 1947 (2 of 1947), or of any law in force in any State relating to juvenile offenders or Borstal Schools. The provisions of the Act are not applicable to the

offences punishable with death or imprisonment for life and to the offence punishable u/s. 5 (2), of The Prevention of Corruption Act.

In **State of Rajasthan Vs. Sri Chand, SC. Criminal Appeal No.561/2009**, the Hon'ble Apex Court decline to extend benefit of probation to the accused and it has held that with the recent trend where crime against women is taken seriously no undue leniency needs to be shown to a person accused of an offence against women. It is noteworthy that in 2013, the Parliament had also amended the criminal laws to lay down strict provisions for offences against women.

In **Dalbir Singh Vs. State of Haryana AIR 2000 SC 1677** it is observed by Hon'ble Supreme Court that “Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts can not treat the nature of the offence u/s. 304-A I.P.C. as attracting the benevolent provisions of S. 4 of Probation of Offenders Act”.

In **Vajja Srinivasu alias Srinu Vs. State of A. P. ((2002) 9 SCC 620)** the Hon'ble Supreme Court has held that “the provisions of Probation of Offenders Act are inapplicable to the offences under the Narcotic Drugs & Psychotropic Substances Act”.

In **Kamroonissa Vs. The state of Maharashtra (AIR 1974 SC 2117)** the Hon'ble Supreme Court observed that, if the accused is a habitual offender it is not desirable to extend him benefit of Probation of Offenders Act.

In **Superintendent Central Excise Bangalore Vs. Bahubali AIR 1979 SC 1271** Hon'ble Supreme Court held that, “the

provisions of the Act can not be invoked in the cases under an enactment prescribing minimum sentence of imprisonment where it was enacted after the enforcement of the Act of 1958 but there is no such bar to extend the benefit of the probation in the cases covered under the earlier enactments.”

13] **EFFECT**

U/s. 12 of the Act it is provided that if any person is found guilty of offence and dealt with under the provisions of Section 3 or Section 4, there will be no stigma or disqualification attaching to the conviction.

Probation is an antidote for the evils of imprisonment and a stimulant to the delinquent to lead an honest life of social usefulness. The average individual who comes to the court is a fit subject for the application of the doctrine of 'second chance'. Thus, probation would be effective only when there is a sincere attempt made to implement it. It would be a grate benefit for a country like India. where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person. Probation is an affirmation of the human inside every being and it must be given importance.

Topic - 2

Compensation under Sec.357(1) & (3) of the Code of Criminal Procedure

Introduction :-

Initially, the criminal justice system in India was focused on punishment as part of the crime without much attention to the suffering of victims of crime. The rights of prisoners were protected even after

their conviction whereas little concern was shown for the rights of victims of crime.

Expressing concern for the plight of victims of crime Hon'ble Justice V.R. Krishna Iyer commented "the criminal law in India is not victim oriented and the sufferings of victim, often immeasurable are entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals, yet it overlooks the by-product of crime i.e. the victim."

In India the criminal law provides for grant of compensation to the victims and their dependents only in a limited manner. Section 357 of the Code of Criminal Procedure (hereinafter referred as Cr.P.C.) incorporates this concept to an extent and empowers the Criminal Courts to grant compensation to the victims.

Scope and Application of section 357 of Cr. P.C.

2] Under this section an order of compensation to be paid out of fine amount can be passed by the Trial Court, appellate Court or by the High Court or Court of Session in revision, at the time of passing Judgment, in following 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 a 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 regaining or disposing of stolen property, and which is ordered to be restored to its rightful owner.

Power to award compensation u.s. 357 of Cr.P.C. is not ancillary to power to award other sentences, but in addition thereto. It is recommended that, all the courts exercise this power liberally so as to meet the ends of justice in a better way.

3] **CONSIDERATIONS FOR GRANT OF COMPENSATION U/S 357 OF Cr.P.C.**

Thus, while granting compensation it is necessary to take into account, **(a)** the nature of the crime, **(b)** the injury suffered, **(c)** the justness of the claim for compensation & **(d)** capacity of the accused.

In awarding compensation it is necessary for the court to decide whether the case is fit one in which the compensation has to be awarded. It shall be provided for any economically assessable damage resulting from violations of human rights or international humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance, medicines and medical services.

If it is found that compensation should be paid, the capacity of the accused to pay compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation for, imposing a default sentence for non-payment of fine would not achieve the object. If the accused is in

a position to pay the compensation to the injured or his dependents, there could be no reason for the court not directing payment of such compensation.

If there are more than one accused, quantum of compensation may be divided equally unless there is considerable variation in their paying capacity. The payment may also vary depending upon the acts of each accused. Reasonable period for payment for compensation, if necessary, by installments, may also be given. The Court may enforce the order by imposing sentence in default, as laid down by the Hon'ble Apex court in the case of ***Hari Singh and State of Haryana Vs. Sukhbir Singh, AIR 1988 SC 2127.***

4] **B) Limitations/conditions where no compensation can be awarded u/s.357 of Cr.P.C. :-**

There are certain limitations for granting compensation which can be noted from the followings points.

a) The Court has very limited discretion u/s.357(1), it can give compensation only out of the fine if imposed on the offender. It limits the amount of compensation as the outer limit of imposing fine has been prescribed.

b) However the Court has much more discretion u/s.357(3) of the Act when the fine does not form a part of sentence. Then the limit prescribed u/s.29 of the Act will not be applicable. A Magistrate can order payment of a higher compensation than the amount of fine he can impose.

c) The Court is required to take into account any sum paid or recovered as compensation u/s.357 of Cr.P.C. at the time of awarding compensation in any subsequent civil suit relating to the said matter.

d) If the fine is 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.

5] **No interim compensation**

Section 357, Cr. P.C. does not provide for interim compensation. The compensation can be awarded only on conclusion of the trial and finding the accused guilty of the offence and where fine is also leviable under the law and not otherwise. This observation is made by the Hon'ble Apex Court in the case of **S. Kannan Vs. D.V. Padmaja 1997 CrLJ 3994(AP)**. However, the provision of interim compensation is available under section 357-A of Cr.P.C.

6] **DIFFERENCE BETWEEN GRANT OF COMPENSATION UNDER SECTIONS 357(1) AND SEC.357(3) OF CR.P.C.**

Sub section (1) empowers the courts to appropriate the whole or any portion of fine recovered for the purpose mentioned in the clauses to the sub section, under which Clause (b) is most important and of our use.

Sub section (3) empowers the court, in its discretion, to order the accused to pay compensation even though fine does not form part of compensation and hence it has added new positive dimension to Indian philosophy of compensation.

Hon'ble Apex Court in case of **Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Anr.** reported in **MANU/SC/1803/2007 : 2007 CriLJ 2417**, has held that, while considering the difference between the provisions of Section 357(1)(b) and Section 357(3) Cr.P.C., i.e., the difference between "fine" and "compensation" the distinction between Sub-sections (1) and (3) of

Section 357 is apparent as Sub-section (1) provides for application of an amount of fine towards the purposes indicated while imposing a sentence of which fine forms a part, whereas Sub-section (3) is applicable in a situation where the Court imposes a sentence of which fine does not form a part of the sentence. The Court went on to observe that when fine is not imposed, compensation can be directed to be paid for loss or injury caused to the complainant by reason of commission of offence and while Sub-section (1) of Section 357 provides for application of the amount of fine, Sub-section (3) of Section 357 seeks to achieve the same purpose.

7] **Compensation under Special Acts :-**

A. **Protection of Children from Sexual Offences Act, 2012 (POCSO Act) :-** It provides for the special court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation. It may be awarded at interim stage, during the pendency of trial, as well as at the conclusion of the trial. Procedure for obtaining and enforcing reparation should be readily accessible and child-sensitive.

B. **Acid attack cases :-**

The Hon'ble Supreme Court in the case of **Laxmi Vs. Union of India and other** reported in **2014 Supreme Court cases 427** has held that victim of acid attack is entitled to compensation. Section 357(B) Cr.P.C. specifically provides for payment of compensation to victim of acid attack. This amount is to be determined by the court. It is further directed that the victim of acid attack shall be paid compensation of at least Rs.3 lakhs by the State Government/Union Territory concerned as the after-care and rehabilitation cost. Of this amount, a sum of Rs.1 lakh shall be paid within 15 days of occurrence of such

incident to facilitate immediate medical attention and the balance sum of Rs.2 lakhs shall be paid expeditiously i.e. within 2 months thereafter.

C. Compensation under article 21 of the Indian Constitution for offence of rape which involves violation fundamental rights :-

Compensation for the offence of rape which involves the violation of fundamental rights under article 21 is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of a public law duty. This is apart from and in addition to compensation granted for the loss for injury under the law of torts.

D. Protection of Woman From Domestic Violence Act :-

Section 22 of the Act lays down that in addition to other reliefs which may be granted under this Act, the magistrate may, on an application, order to pay compensation or damages or both to the aggrieved person for mental torture.

E. Fatal Accident Act, 1855 :-

Under section 1A of this Act the family of the deceased is entitled to compensation for loss occasioned to it by his death by actionable wrong.

F. Motor Vehicles Act, 1988 :-

Sec. 163 provides for a scheme of payment of compensation in case of hit and run motor accidents which shall contain the form, manner, and the time within which applications for compensation may be made, to whom it may be made, and the procedures to be followed by administrative authorities constituted under the Act. The compensation awardable under sec.163-A of the Motor Vehicles Act is quite substantial compared to compensation under sec.140 which is limited to Rs 50,000 in case of death and Rs 25,000 in case of permanent disablement. Sec. 166 provides for the payment of compensation on fault basis.

G. **Food Safety and standards Act, 2006 :-**

Compensation can be granted in accordance with section 65 of this Act.

H. **The Victims Of Terrorism (Provision Of Compensation And Welfare Measures) Bill, 2012**

Sec. 3 of the Bill provides for grant of compensation to victims of terror attack. The duty is cast on the Central Government to pay compensation for the loss of life, in terms of money and jobs. Secondly, in case of injury the actual expenses incurred on medical treatment. The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

I. **Compensation under Probation of Offenders Act :-**

As per Section 5 of Probation of Offenders Act, court may pass order of compensation for loss or injury caused to any person by commission of offence.

As per Section 5(2) of Probation of Offenders Act, amount ordered to be paid under Sub-section (1) may be recovered as a fine in accordance with provision of Sections 386 and 387 of Cr.P.C.

8] **Victim Compensation Scheme :-**

Section 357-A of the Code of Criminal Procedure, 1973 has been incorporated in the Cr.P.C. vide Criminal Procedure Code (Amendment) Act, 2008 w.e.f 31-12-2009. The provision was incorporated on the recommendation of 154th Report of Law Commission. Under this provision victims of rape, assault, child sexual abuse, drunk driving, and domestic violence, as well as the families of homicide victims, are all eligible to apply for financial help.

It is significant that the Legal Services Authority, comprising technical experts, has been entrusted with the task of determining the

quantum of compensation, since they are better equipped to calculate/quantify the loss suffered by a victim as per Sec.357-A(2) of Cr.P.C. However, the provision loses its teeth because the discretion remains with the judge to refer the case to the Legal Services Authority.

In sub-section (3) the trial court has been empowered to make recommendations for compensation in cases where -

Either the quantum of compensation fixed by the Legal Services Authority is found to be inadequate ; or

Where the case ends in acquittal or discharge of the accused and the victim has to be rehabilitated.

However, there is scope to further extend compensation to victims in these cases that end in acquittal or discharge.

Sub-section (4) of Section 357-A states that even where no trial takes place and the offender is not traced or identified ; but the victim is known, the victim or his dependents can apply to the State or the District Legal Services Authority for award of compensation.

Sub-section (5) says that on receipt of the application under sub-section (4), the State or District Legal Services Authority shall, after due inquiry award adequate compensation by completing the enquiry within two months. It is pertinent that a time frame has been provided within which the Legal Services Authority should conduct its enquiry and award compensation.

Further, sub-section (6), states that, in order to alleviate the suffering of the victim, the State or District Legal Services Authority may order immediate first-aid facility or medical benefits to be made available free of cost or any other interim relief as the appropriate authority deems fit. The statutory recognition of the right to interim relief is an important step and an urgent need of the hour.

In the case of **Suresh and anothers Vs. State of Haryana, 2015 (1) ABR (Cri) 850** Hon'ble Supreme Court has observed that, The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District Legal Services Authorities. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much.

In **Laxmi Vs. Union of India and others, 2015 (3) ABR (Cri) 470**, the issue of setting up of a Criminal Injuries Compensation Board is discussed. It is suggested that in case of any compensation claim made by any acid attack victim, the matter will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.”

9] **The Maharashtra Victim Compensation Scheme, 2014**

In exercise of the powers conferred by section 357A of the Cr.P.C., the Governor of Maharashtra in co-ordination with the Central

Government has framed the scheme 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 require rehabilitation, called “the Maharashtra victim compensation Scheme, 2014”.

10] **Compensation to accused groundlessly arrested (Sec. 358 & Sec. 250 of Cr. P, C.)**

Human Rights under criminal laws may be classified under the following three categories.

1. Human Rights of accused persons.
2. Human Rights of convicts.
3. Human Rights of prisoners.

Article 9 of the Universal Declaration of Human Rights, 1948 states that “No one shall be subjected to arbitrary arrest, detention or exile.”

Article 9.5 of the International Covenant on Civil and Political Rights provides that anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation. In consonance with this provision section 358 of the Cr.P.C. provides for compensation to persons groundlessly arrested whereas section 250 provides for compensation for accusation without reasonable cause.

Procedure and prerequisites of Sec.358 of Cr.P.C. :

The term “person causing police officer to arrest any other person” means and includes causation of arrest by either informant in the state sponsored case or by a complainant in a complaint case. In either of these two cases, the causation of arrest must be at the instance of informant or complainant at the behest of police officer.

Section 358 of Cr. P. C. gives discretion to the Magistrate.

Upon hearing the case, the Magistrate must arrive at a probable and proximate view that there was no sufficient ground for causing arrest.

Before awarding compensation, the Magistrate has to adopt the principles of natural justice and give proper opportunity to the complainant or informant as the case may be. To be precise the Magistrate shall issue show-cause notice to the complainant or informant to ascertain the genuineness of the matter. The Magistrate must arrive at the conclusion that there was no sufficient ground for causing such arrest.

It may happen that the person so arrested was not actually taken into physical custody, but, the arrest may also include confinement of a person to a certain limit. It is not necessary for the Magistrate to arrive at a particular conclusion regarding the fault of police machinery in causing arrest as per the mandate. The satisfaction of Magistrate must depend on the premise of “groundless arrest”. It must be evident from the facts and circumstances of the case that the person so arrested was not actually required to be arrested for answering the charges. The Magistrate has a bounden duty under Section 358 of Cr. P. C. to pass necessary order regarding groundless arrest. After summary enquiry, he has to pass necessary order.

Procedure and prerequisites of Sec.250 of Cr.P.C. :

The scheme of Section 250 of Cr. P. C. is a self-contained procedure in itself. The provisions of Section 250 of Cr. P. C. apply to summons as well as warrant cases. Before awarding compensation, the Magistrate must arrive at a conclusion upon hearing of the case that the entire accusation against accused is unreasonable. This section lays down detailed procedure of show-cause notice, reply, application of mind to the

reply by the Magistrate, passing of order by Magistrate with reasons, award of compensation. In addition to the provisions contained under Section 250 (1) to (4) of Cr. P. C. the sub-section (5) provides that the person who has been directed to pay compensation is not exempted by reason of the order from civil or criminal liability in respect of the complaint or information given by him. The proviso provides that, the amount so received as compensation by the accused may be adjusted in the subsequent civil suit between the same parties.

The difference between Section 358 and Section 250 of Cr. P. C. is that the later requires assessment and appreciation of the fact of accusation without reasonable cause, whereas, the former requires appreciation of the fact of groundless arrest.

Hence, this paper is submitted with respect.

(Smt.K.B.Agrawal)
District Judge-1 & Addl. Sessions
Judge, Jalgaon.

(Shri.S.K.Kulkarni)
District Judge-7 & Addl. Sessions
Judge, Jalgaon.

(Smt. J.P. Darekar)
District Judge -5 & Asst. Sessions Judge,
Jalgaon.

(Smt.S.S.Pakhale)
4th Jt. Civil Judge Sr.Dn. &
Addl. Chief Judicial Magistrate
Jalgaon.

(Shri.K.H.Thombare)
6th Jt. Civil Judge Sr.Dn. &
Addl. Chief Judicial Magistrate
Jalgaon.

