

A NOTE ON COMPENSATION TO THE VICTIMS OF CRIME

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). This right of the victim forms the basis of Section 357 (1) & (2) and Section 359 of the **Cr.P.C., 1973**. ***Article 38 of our Constitution lays down that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which Justice—(Social, Economic and Political) shall inform all the institutions of national life.***

It may be pointed out that the issue of payment of compensation to the victim of crime is primarily a statutory matter as provided under **Section 357, 358 & 359** of the **Cr.P.C., 1973**. It essentially concerns the discretion of the courts which is in fact very seldom used by the courts while delivering their judgements. The need and concern of the victims have traditionally been overlooked in the administration of criminal justice which is mainly oriented towards the adjudication of charges against the accused filed by the prosecution.

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 long time 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 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

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, 1988**
Sections 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, 1989**

Section 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 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.

Unless the amount of compensation is voluntarily paid by the offender, the only recourse open under Sections 421, 422 or 423 of the Cr.P.C., 1973 which provide for realization of amount of compensation from the fine imposed by the court on the accused while sentencing him for conviction, which is invariably very meagre in amount.

Detailed provisions of **Cr.P.C.** referred to above are appended at **Annexure 'B'**.

Under the Probation of Offenders Act, 1958

According to **Section 5 of Probation of Offenders Act, 1958**, a court directing the release of an offender under **Section 3** or under **Section 4 of the Act** may, if it thinks fit, make, at the same time, a further order directing him to pay such **compensation** as the court thinks reasonable for the loss or injury caused to any person due to the commission of the offence by him.

It may also be seen that the issue of **compensation** under the provisions of the Cr.P.C., 1973 and the **Probation of Offenders Act** is directly linked with the conviction of the offender. Hence, it is the trial court, as a legal machinery, which has to look into this aspect while awarding sentence at the conclusion of the criminal trial. While imposing **fine**, it is necessary for the trial courts to ascertain the paying capacity and the property of the offender after entertaining evidence. Since, **compensation** can only come out of **fine**, it is always necessary to consider in the first instance whether the sentence of fine, is at all called for, particularly when the offender is sentenced to death or life imprisonment. If so, the fine should not be excessive having regard to all the circumstances of the case like motivation of the offence, the pecuniary gain likely to have been made by the offender by committing the offence and his means to pay the fine. In any case the percentage of conviction was hardly 40.1% in 2003 which leaves a large proportion out of the purview of this provision.

It is quite apparent from the reading of Section 357 (1) (a) & (b) and Section 357 (3) of Cr.P.C., the **compensation** awarded by the court is in the nature of defraying the expenses incurred in the prosecution and for the loss or

injury caused by the offence. The same is true in respect of Section 5 of the **Probation of Offenders Act, 1958**. The powers to fix the amount of fine is entirely within the discretion of the court, limited by the power of the court in imposing the sentence of fine. However, 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 meagre compensation provisions under **Sections 357, 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.

SHORTCOMINGS OF THE EXISTING PROVISIONS OF CR.P.C. FOR THE AWARD OF COMPENSATION TO THE VICTIM OF CRIME.

1. Section 357 (1) of Cr.P.C., 1973

Section 357(1) (b) empowers the trial court to award compensation for any loss or injury caused by the offence to the victim, subject to the conditions that compensation must be recoverable by the victim in a civil court. The use of word '**recoverable**' renders the provisions ambiguous, as clearly explained earlier.

This clearly links compensation with the paying capacity of the offender. After holding the accused guilty, the judge cannot proceed unless he has heard the accused on the question of sentence under Section 235 (2) unless he wants to proceed under Section 260. It is at this stage that he may be required to entertain evidence regarding the assets and paying capacity of the accused, which may entail cross-examination of some of the witnesses, recording the statement of the accused etc., which invariably leads to delay. This may possibly be the precise reason why the judges, magistrates and the police are generally unwilling to enter into

this question to press for the award of compensation to the victim of offence.

- (2) **Section 357 (1) (c)** -a criminal court can grant compensation only if the victims are entitled '**to recover**' damages from the offender under the **Fatal Accidents Act, 1955**. This condition obviously brings hardship to the victims.
- (3) **Section 357 (b)**-It is not clear whether the court can impose on the offender an **in-default sentence** of imprisonment if the offender fails to pay compensation as ordered.
- (4) **Section 358**-The maximum amount of compensation provided for by this section is only Rs. 100/-. The amount is very **meager** and hardly worth the botheration involved in getting it awarded. Therefore, it should be enhanced realistically.
- (5) **Section 359**—provides for punishment up to maximum 30 days of SI (Simple Imprisonment) in-default for the order for the payment of the cost to complainant which is grossly inadequate and not likely to be effective provision to compensate the complainant by way of cost.
- (6) The grant of compensation by criminal courts depends, to a great extent, on the prosecuting agencies insisting on payment of compensation and cost. It is generally seen that prosecuting agencies hardly press for this award of compensation and thus it remains generally unavailed of.

Legal Provisions for Compensation under the Police Act, 1861.

Section 15-A. Awarding Compensation to Sufferers from Misconduct of Inhabitants or Persons Interested in Land— (1) if, in any area in regard to which any proclamation notified under the last preceding section (Section 15 of the Act) is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area of any class or section of them it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make, within one month from the date of the injury or such shorter period as

may be prescribed, an **application for compensation** to the Magistrate of the district or of the sub-division of a district within which such area is situated..

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the State Government after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

- (a) *declare the persons to whom injury has been caused by or has ensued from such misconduct;*
- (b) *fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them; and*
- (c) *assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section:*

Provided that the Magistrate shall not make any declaration or assessment under this sub-section unless he is of opinion that such injury as aforesaid had arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.

(3) It shall be lawful for the State Government, by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision by the Commissioner of the Division or the State Government, but save as aforesaid shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

The Governments of Andhra Pradesh, Orissa, Tamil Nadu and Uttar Pradesh have made some amendments to this provision based on their ground situation.

In practice the above provision for fixation and payment of compensation under the Police Act, 1861 has hardly been used making it literally unavailable for the victims of crimes of the type mentioned in this Section.

Legal Provisions for Compensation under Motor Vehicle Act, 1988

While trying criminal cases under Sections 304 A, 279, 336, 337 and 338 of IPC for criminal rashness and negligence, the judges implemented the provisions of Section 357(i), Cr.P.C. under which small amounts were imposed as fine with the result that a still smaller amount was available to the victims, if the fine was paid or recovered. Hence to deal with disputes regarding compensation effectively and speedily under the Motor Vehicle Act, Sections 110 to 110 F of the Motor Vehicle Act (M.V. Act), 1939 were introduced in 1956, according to which, the State Governments may constitute one or more **Motor Accidents Claims Tribunals** for the purpose of adjudication in respect of claims arising out of accidents involving death of, or bodily injury.

The filling period limitation specified is six months from the date of accident and the claim has to be presented along with all documentary evidence, such as police panchanama report, doctor's report or post-mortem report, etc. The **Tribunal**, after the hearings, hold an enquiry and makes an **award**, determining the quantum of compensation, specifying the person/persons to whom it should be paid and the amount to be paid by the insurer, owner and driver, jointly or severally. There is provision of **appeal** to the **High Court** within 90 days from the date of **award** provided the claim exceeds Rs. 2000/-.

In case of default of payment of the amount so awarded, the **Claims Tribunal** may, on application from the person entitled to the money, issue a certificate for the amount to the Collector for recovery.

Section 92-A of the Act, 1939 which corresponds to Section 140 of the Act, 1988 is in the nature of a beneficial legislation enacted with a view to conferring the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the Courts is to adopt a construction which

advances the beneficial purpose underlying the enactment in preference to a construction which tends to defeat that purpose.

Section 92-A (New Section 140 under the Motor Vehicle Act, 1988) is intended to provide social justice by giving compensation without proof of fault or negligence by the driver or owner of the vehicle and as such, it is manifest that the question as to whether the cause of action arose prior to its coming into force or not becomes irrelevant for the material consideration for the purpose of awarding compensation under the said provision of law irrespective of whether the case giving rise to that liability is still pending.

The benefit of this section is to be extended to all cases arising out of the motor vehicle accidents which are pending disposal even if the cause of action, i.e., the accident occurred prior to the coming into force of the said provision of law.

Section 140 of the M.V. Act, 1988, makes a provision that where the **death** or **permanent disablement** of any person results out of an accident, the owner of the vehicle shall be liable to pay **compensation** in respect of such death or disablement.

Our discussions with the Registrars for **Claims Tribunals** in the centres covered indicate that it takes about 2 ½ to 3 years for the cases to be disposed of, because of practical problems like non-availability of the owner's name and address, the owner not being traced, the name of the insurance company not known, etc. Even after the claim has been disposed of by the **Tribunal** and compensation awarded, the claimant does not get the amount immediately. This is because the insurance companies normally deposit the amount with the Tribunal immediately, but the owners/drivers do not do it promptly. In such cases the recovery is through the District Collector, who in turn, entrusts it to the concerned tehsildars/circle Inspectors. As the Collector has to attend to whole lot recoveries cases with respect to Income Tax, Sales Tax, etc., there is always an element of delay. It was reported that **only in Andhra Pradesh the Tribunal is entrusted with the powers of recovery.**

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 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.

SOLATIUUM FOR HIT AND RUN CASES UNDER THE MOTOR VEHICLE ACT

As per Sections 109-A to 109-C introduced in the 1982 amendment, to the Motor Vehicle Act special provisions have been made for **victims of hit and run cases** which have occurred on and after 1st October 1982, where the offender cannot be traced. It is estimated that about 60,672 deaths taken place due to negligence in the country in the year 2003 (Crime in India, 2003). The scheme has been formulated by the Government of India to give effect to the recommendations of the Law Commission and the assurance given to the Parliament.

A special fund known as the **Solatium Fund** has been provided for, to give solatium to such victims. The District Magistrates of the area in which the accident has occurred has been given powers to process the claims and disburse the claim amount. He will seek reimbursement through the State. The term "**Grievous Hurt**" has been taken to mean the same as defined in Section 320 of the IPC.

The **Solatium Fund** is constituted from out of:-

- (a) contributions from insurance companies, the quantum to be decided by the Government of India from time to time,
- (b) such sums as the Central Government may provide from time to time,
- (c) such sums as the State Governments may contribute from time to time,
- (d) such other sums as may be received, such as refund, gift, donation, etc.

The compensation is payable, subject to availability of funds and is recoverable from any compensation the victim or the dependents as the case may be, get from other claims.

SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

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:-

Sl. No.	Name of the Crime	Minimum Amount of Relief
1.	Section 3(1) (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 neighbourhood;	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 'begar' 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/-.

9.	Section 3(1) (ix) gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;	Rs. 25,000/-.
10.	Section 3(1) (x) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;	Rs. 25,000/-.
11.	Section 3(1) (xi) assaults or uses force to any woman belong to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;	Rs. 50,000/-.
12.	Section 3(1) (xii) being in a position to dominate the will of a woman belong to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;	Rs. 50,000/-.
13.	Section 3(1) (xiii) corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Caste or a Scheduled Tribe so as to render it less fit for the purpose for which it is ordinarily used;	Rs. 1,00,000/-.
14.	Section 3(1) (xiv) denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstruct such member so as to prevent him from using having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;	Rs. 1,00,000/-.
15.	Section 3(1) (xv) forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence,	Rs. 25,000/-.
16.	Section 3(2) (i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of	Rs. 1,00,000/-.

	such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;	
17.	Section 3(2) (ii) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a terms which shall not be less than six months but which may extend to seven years or upwards and with fine;	Rs. 1,00,000/-.
18.	Section 3(2) (v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;	Rs. 50,000/-.
19.	Section 3(2) (vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.	
20.	Compensation to Physical as well as mental Handicapped persons	
(a)	On 100% handicapped	
i	Non-earning member of the family	Rs.1,00,000/-
ii	Earning member of the family	Rs.2,00,000/-
(b)	Less than 100% handicapped	
i	Non-earning member of the family	Rs.15,000/-
ii	Earning member of the family	Rs.30,000/-
21.	Murder /Death	
i	Non-earning member of the family	Rs.1,00,000/-
ii	Earning member of the family	Rs.2,00,000/-

22.	Permanent disability due to Murder/Death/ Mass killing/Rape/Gang Rape/Dacoity.	
<i>i</i>	<i>To the Widow or any dependent</i>	(i) Rs.1000/- Per Month or employment for one member of the aggrieved family or agricultural land or a house, if needed within 3 months of the incidence.. (ii) Maintenance and education of the children of victims of crime (iii) Arrangements of utensils, rice, wheat, pulses etc. within 3 months of the incidence.
<i>ii</i>	<i>Earning member of the family</i>	Rs.2,00,000/-
23.	Destruction and arsoning of house	Arrangements for the construction of new house on Government Expenses

Stages of Payment

The above referred schedule indicated that the **monetary relief** proposed to be given to the victims of crime in one or two installments depending upon the nature of offence. Generally 25% of the monetary relief is provided at the time of submission of charge sheet and 75% at the time of conviction by the lower courts but in case of heinous crimes like, murder, the victims are provided 75% monetary relief after the post-mortem and 25% at the time of conviction by the lower court. In case of assault on the woman with intention to dishonour or outrage her modesty and exploit her sexually, 50% of the monetary relief is given at the time of medical examination and the remaining 50% of the relief is given at the end of trial irrespective of the outcome thereof.

SCHEME OF COMPENSATION TO THE VICTIMS OF VIOLENCE BY LEFT WING EXTREMISTS

Ministry of Home Affairs has evolved a special scheme namely **Security Related Expenditure (SRE)** to Naxal Affected States. To pay ex-gratia in the form of ex-gratia to the victim of crime at the hands of Left wing Naxalism as per the revised scale laid down vide MHA's Letter No.II-18015/4/03-IS.III dated 11th

February, 2005 read with letter No II-18015/4/03-IS.III dated 3rd March, 2005.

The scale of ex-gratia payment provided therein is given below:-

- (i) To the family of a civilian killed - 100% with a maximum ceiling of Rs. 1 lakh
- (ii) To the family of a security personnel killed - 100% with a maximum ceiling of Rs. 3 lakhs

It may be pertinent to mention here that a total of **76 Districts** in the states of Andhra Pradesh, Bihar, Jharkhand, Madhya Pradesh, Chhattisgarh, Maharashtra, Orissa, Uttar Pradesh and West Bengal affected by Left Wing Extremism are covered by this scheme.

PAYMENT OF COMPENSATION RECOMMENDED BY THE HON'BLE SUPREME COURT IN RESPECT TO CONVICTS IN THE PRISONS

It is a recent trend in the sentencing policy to look at the plight of the victims of crime. Rehabilitation of the prisoners need not be done by overlooking the suffering of both direct and indirect victims. It is a constructive thinking for the State to make appropriate law for diverting some portion of the wages earned by the prisoner from the vocational trades in prisons to be paid to deserving victims. In the absence of any law to this effect, the court is restrained from issuing a direction to set apart any portion of the prisoner's earned wages for payment to the victims. Hence, it is suggested that the State concerned may bring about a legislation for that purpose.

The apex court, while revising the wage structure to be paid to the prisoners involved in vocational trade in prisons, has recommended that the State concerned should make a law for setting apart a portion of wages earned by the prisoners to be paid as compensation to deserving victims of crime.

SCHEME OF COMPENSATION TO THE VICTIMS OF COMMUNAL VIOLENCE

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:-

Sl. No.	Event	Compensation Amount
(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.

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.

SCHEME FOR PAYMENT OF COMPENSATION TO THE VICTIMS OF CRIME PREVAILING IN DIFFERENT COUNTRIES

An attempt has been made to ascertain the nature and extent of compensation available to the victims of crime in different countries. Towards this, information has been collected from the website of 29 countries. It is found that the compensation to the victims of crime is being given by the State itself in **Australia, Bermuda, Canada, Denmark, Finland, France, Hong Kong, Israel, Italy, Japan, Luxembourg, Netherland, Norway, Philippines, Poland, Sweden, United Arab Emirates and United States** while in **Austria and Belgium** the compensation is being realized from the accused. In 8 countries, namely, **Colombia, Cyprus, Czech Republic, Germany, Portugal, Republic of Ireland, Spain and Switzerland** it is not specified whether the compensation is being given by the state or the offender. It would not be out of place to mention here that in United States the victim of crime is being compensated by the State as well as by the offender.

Brief details of the compensation payment provisions to the victims of crime in foreign countries

Some Salient features of this compensation schemes applicable to the victims of crime prevailing in different countries are given in the succeeding paras.

A. Countries where the Compensation to the Victims of Crime is being given by the State

1. Australia

Australian Crime Victim Compensation Programs (by State)

Crime victim compensation schemes that provide financial assistance to victims of violent crime are state-based in Australia. Each state administers its own program in accordance with its state statute.

Eligibility Requirements

Report to Police : Yes; some exceptions may be made for cause.
Filing Period : 1 year is typical; time limits vary from state to state.

Claimants

- Victims of crime
- Dependents of homicide victims
- Relatives of victims of crime; eligible in some states
- Foreign citizens; eligible in most states

Procedures

The claimant must file an application with the compensation agency or court in the state where the crime occurred. Victims of crimes occurring in **Tasmania** must obtain clearance from the Director of Public Prosecutions to apply for compensation.

The New South Wales compensation scheme provides monetary compensation according to a schedule of injuries which specifies the amount of compensation payable for a particular injury.

Benefits & Award Limits

Most states can pay a maximum combined award of between **\$AUS15,000** and **\$AUS60,000**.

Compensable Costs (varies by state)

- Medical expenses
- Mental health counseling
- Lost wages
- Funeral
- Travel expenses
- Loss of enjoyment of life
- Incidental

Emergency Awards

Some states in Australia provide emergency awards or expedite processing for victims faced with an extraordinary financial hardship.

Funding Sources

Compensation schemes in Australia are funded from consolidated revenue of the State.

2. Bermuda

Bermuda has a **crime victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes, as soon as possible.
Filing Period : Within 1 year. Exceptions may be made.

Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens

Procedures

Claimant must obtain an application form from and file it with the **Criminal Injuries Compensation Board**. The claimant will receive notification of the program's decision between **2 weeks** and **6 months**. Compensation is received between **1 day** and **3 weeks**. This decision can be **appealed** to an independent committee of three persons, appointed by the government, which is the final decision maker.

Benefits & Award Limits

The maximum award in **\$B is 200.000.**

Compensable Costs

- Medical expenses
- Mental health
- Lost wages for disabled victims
- Lost support for dependents of deceased victims
- Funerals
- Travel
- Rehabilitation for disabled victims
- Services to replace work in the home previously performed by the victim

Emergency Awards

The program may give a prepayment if the award decision is delayed due to no fault of the claimant, and it would be reasonable to do so.

Funding Sources

The program is funded through tax revenue.

3. Canada

Canada has **crime victim compensation programs** to provide financial compensation to **victims of violent or personal crimes**. The programs are administered by the Canadian provinces, according to their own rules and standards..

Eligibility Requirements

Report to Police : Generally within **1 year**, (**2 years** for some provinces)and many exceptions are made.

Filing Period : Generally within **1 year**, (**2 years** for some provinces) and many exceptions are made.

Claimants

- Victims of Crime
- Dependents of homicide victims
- Foreign citizens

Procedures

A claimant may obtain an application by contacting the program within the province in which the crime occurred. The application should be sent directly to the program office. Decisions are generally made between **1 and 5 years** after an application is made. Compensation will be paid to the claimant in approximately **4 weeks**.

Benefits & Award Limits

The maximum award benefits range between \$5,000 and \$25,000 Canadian Dollars.

Compensable Costs and Limits

- Medical expenses
- Mental health expenses
- Lost wages for incapacitated or disabled victims
- Lost support for dependents of victims
- Funeral expenses
- Rehabilitation for disabled victims
- Services to replace work in the home previously performed by the victim

Emergency Awards

Expedited compensation is offered for aged or terminally ill victims.

Funding Sources

Each of the provincial programs are funded through either consolidated revenue of the province, surcharge revenue, general tax revenue, or a combination of these.

4. Denmark

Denmark has a **crime victim compensation program** to provide financial compensation to victims who suffer **serious injuries** as a consequence of crime.

Eligibility Requirements

Report to Police : Within 24 hours.
Filing Period : Within 2 years; exceptions are made.

Claimants

- Victims of crime

- Dependents of homicide victims
- Foreign citizens
- Danish citizens victimized in a foreign country

Procedures

The victim must report the crime to the police. The claimant must then file an application for compensation with the police or send it to the concerned authority called as **Naevnet vedrorende erstatning til ofre for forbrydesler** at the specified address. The length of time it takes for the claimant to be notified of the program's decision depends on the case, but the earliest is **4 weeks**. After a decision is made, it will take **14 days** for a claimant to receive compensation.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

- Medical expenses
- Mental health
- Lost wages for disabled or incapacitated victims
- Lost support for dependents of victims
- Funeral expenses
- Travel expenses
- Rehabilitation for disabled victims
- Clothing worn or personal effects carried by the victim at the time of the crime — up to 1,000 Danish Kroner

Emergency Awards

The program does not provide emergency compensation awards.

Funding Sources

The program is funded by State appropriations.

5. Finland

Finland has a **crime victim compensation program** to provide financial compensation to victims of **violent or personal crime**.

Eligibility Requirements

Report to Police	:	No time limit.
Filing Period	:	10 years; exceptions are made.

Claimants

- Victims of crime
- Dependents of victims of crime
- Foreign citizens
- Citizens of Finland victimized in a foreign country

Procedures

A crime victim may obtain an application from the State Treasury, the police, or local offices of the Social Insurance Institution. Abroad, applications are normally available at Embassies and Consulates of Finland. The application should be sent either directly to the State Treasury or to any local office of the Social Insurance Institution. It will take **6 months**, on an average, for a victim to receive notification of the program's decision. Compensation is paid immediately after the decision is made.

Benefits & Award Limits

The maximum awards in Finnish Marks are:

Personal injury	: 270.000
Property damage	: 135.000
Loss of income	: Finnish Marks 660 a day

Compensable Costs

- Medical expenses
- Mental health
- Lost wages for disabled victims
- Lost support for dependents of homicide victims
- Funerals
- Any clothing, articles for daily use, spectacles, and dental plates damaged by the crime
- Litigation expenses to recover compensation from the offender

Emergency Awards

The program does not offer emergency compensation. However, the Act obliges the State Treasury to pay advance compensation where the applicant's right to compensation is evident and the decision is delayed.

Funding Sources

The program is funded by the State.

6. France

France has a **crime victim compensation program** to provide financial compensation to victims of **violent or personal crimes**.

Eligibility Requirements

Report to Police : Yes.
Filing Period : Within 3 years after the crime, or 1 year after the last decision of justice. Within 10 years for terrorist acts.

Victims of Terrorist Acts

Full compensation is payable in respect to personal injury or death caused by an act of terrorism which occurred either on French soil or, in the case solely of French nationals, outside France.

Claimants

- Victims of crime
- Dependents of victims
- Foreign citizens
- Victims of terrorism
- French nationals who are victimized in a foreign country

Procedures

The victim must report the crime to the police. The claimant must file an application with the **Fonds de Garantie (compensation fund)**, with the **National Insurance**, and with the **Department of Civil War Veterans**. S.O.S. Attentats help claimants complete application forms.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

- Medical and mental health expenses
- Lost wages
- Loss of support
- Funeral expenses
- Pain and suffering
- Disfigurement
- Any clothing, spectacles, and dental damages
- Physical therapy

- Vocational rehabilitation
- Rehabilitation for disabled victims
- Services to replace work in home previously performed by the victim

Emergency Awards

The victim receives an advance in a minimum of 2 days and a maximum of 1 month.

Funding Sources

The program is funded by tax revenue.

7. Hong Kong

Hong Kong has a **crime victim compensation program** to provide financial compensation to victims of **violent or personal crime**.

Eligibility Requirements

Report to Police : Yes; no time limit.
Filing Period : Within 2 years from the date of the crime.

Claimants

- Victims of crime who suffer serious injuries
- Dependents of deceased victims

Procedures

The victim must report the crime to the police, and the police must confirm the victimization. A claimant can obtain an application from the Board's office or police station. The claimant should sign the application and send it to the **Criminal and Law Enforcement Injuries Compensation Boards** at the above address. The time necessary to process an application depends upon how promptly the needed information can be supplied by relevant sources. Decisions are rendered by the Compensation Board, and applicants will be notified in writing.

Benefits and Award Limits

Compensation will be based on the same rates of compensation as are paid under the **Emergency Relief Fund**. The **maximum awards** are as follows:

Burial Grant	:	HK\$10,700
Death grant	:	From HK \$84,000 to HK\$119,000
Disability Grant	:	Up to HK\$100,800

Injury Grant : From HK\$504 up to HK\$41,770
Interim Maintenance Grant : Up to HK\$7,000 per month for 6 months.

Compensable Costs

None. The program provides the above lump sum grants.

Emergency Awards

In the event of homicide, payment may be ordered for funeral expenses to be made expeditiously in case of need and urgency.

Funding Sources

The program is funded by the National Expenditure.

8. Israel

Israel operates a program to provide **financial compensation to victims of terrorism**. Foreign national victims are eligible for compensation under the scheme. Israel does not currently have a program for compensating victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes; within 1 year.
Filing Period : Within 1 year after the terrorist act.

Claimants

- Victims of crime
- Dependents of victims
- Foreign citizens

Procedures

The victim must file an application with the **National Insurance, Department for Victims of Violence**. Applications may be obtained from any branch of the National Insurance and may be sent to any branch for processing.

Benefits & Award Limits

The maximum award for funeral expenses is NIJ 4400 unless the victim is a foreign citizen and is buried abroad in which case the maximum is U.S. \$1,300. Other compensation is case specific.

Compensable Costs

- Medical expenses
- Rehabilitation
- Pension for disabled victims
- Lost wages or support
- Rest and recreation allowances
- Funeral expenses
- Replacement services

Emergency Awards

Emergency or expedited claims are handled on a case-by-case basis.

Funding Sources

The program is funded by general appropriations.

9. Italy

Italy operates a program to provide **financial compensation to victims of terrorism or organized crime**. Foreign national victims are eligible for compensation under the scheme. Italy does not currently have a general scheme for compensating victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes.
Filing Period : Within 3 years after the crime; 1 year after the last decision of justice; within 10 years for terrorist acts.

Victims of Terrorist Acts

Full compensation is payable with respect to personal injury or death caused by an act of terrorism which occurred either on Italian soil or, in the case solely of Italian nationals, outside Italy.

Claimants

- Victims of crime
- Dependents of victims
- Foreign citizens

Procedures

The victim must report the crime to the police and provide details of the date, place, and resulting injuries and losses of the crime. The claimant then must "apply" for compensation, although application forms do not exist. Victim Support Schemes help to explain the procedures and conditions of presenting a demand and obtaining compensation. The prosecutor may decide to try a **Penal Mediation**. In the case of injuries or property crimes with small prejudices, Penal mediation may help the victim to obtain compensation from the offender without a trial.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

- Criminal injuries
- Entire compensation for all prejudices **supported** by victims and their family
- Property crimes (condition of resources)

Emergency Awards

The program does not provide for emergency compensation awards.

Funding Sources

The program is funded by State appropriations.

10. Japan

Japan has a **crime victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police	:	Yes; no time limit.
Filing Period	:	Within 2 years from the day the applicant recognizes the crime, and within 7 years from the day the crime is committed.

Claimants

- Victims of crime who suffer serious injuries
- Dependents of deceased victims if they legally reside in Japan

- Foreign citizens if the victim was a legal resident of Japan when the crime occurred

Procedures

The victim must report the crime to the police, and the police must recognize the victimization. A claimant can obtain an application from any police station or Prefectural Police Department. The claimant should send the application to the **Prefectural Public Safety Commission** through the police station or the Prefectural Police Department that has jurisdiction over the address of the claimant. It takes approximately **5 months** for the applicant to be notified of the decision, and it takes approximately **2 more weeks** for the applicant to receive the benefit.

Benefits and Award Limits

The maximum awards in Yen:

- | | | | |
|-----|--------------------------------|---|-------------|
| (a) | Bereaved Family Benefit | : | 10,790,000; |
| (b) | Incapacity Benefit | : | 12.730.000 |

Compensable Costs

None. The program provides the above lump sum awards.

Emergency Awards

If the program cannot quickly render the judgment because the offender is unknown or the degree of disability is unclear, the program offers the **provisional benefit** to the applicant.

Funding Sources

The program is funded by the National Expenditure. For bereaved children, scholarships are available through the **Crime Victims' Relief Fund**.

11. Luxembourg

Luxembourg has a **crime victim compensation program** to provide financial compensation to victims for losses resulting from **personal crime**. Compensation will only be granted when adequate financial compensation cannot be obtained from other sources such as the social security system, personal insurance, or the perpetrator.

Eligibility Requirements

Report to Police : As soon as possible, but within 1 year.
Filing Period : Within 1 year; exceptions are made.

Claimants

- Citizens of Luxembourg who are victims of crime
- Dependents of homicide victims
- Luxembourg citizens victimized in a foreign country

Procedures

The victim must report the crime to the police. The victim must send or present a letter requesting compensation with the Ministry of Justice of Luxembourg or may first contact the concerned authority called as **Service D'Accueil et D' Information Juridique**. The Ministry forwards the letter to a commission, who will contact the victim for additional information. The commission makes recommendations to the Minister of Justice who makes the final decision on granting compensation and the amount of the award. The length of the process is indeterminate.

Benefits & Award Limits

The maximum award limit Luxfrs 2,000,000 (U.S. \$ 7,000).

Compensable Costs

- Medical expenses
- Mental health
- Lost wages for disabled or incapacitated victims
- Funeral expenses
- Family home aid for disabled victims

Emergency Awards

The program may grant **partial compensation** awards prior to a final judgment if the victim can prove urgent financial need.

Funding Sources

The program is funded by general appropriations.

12. Netherlands

The Netherlands has a **crime victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : Within 3 years; exceptions are made.
Filing Period : No time limit.

Claimants

- Victims of crime who suffer serious injuries
- Dependents of homicide victims
- Foreign citizens

Procedures

A claimant can obtain a compensation application, by phone or mail, from the concerned authority called as **Schadefonds Geweldsmisdrijven**. The duly filled application should be sent there as well. It takes approximately **17 months** for a claimant to receive notification of the program's decision. Compensation will be received **4 weeks** after notification.

Benefits & Award Limits

The maximum awards in Guilders:

- (a) **Material damage** : 50.000
(b) **Immaterial damage (not for dependents of deceased victims):** 20.000

Compensable Costs

- Medical expenses
- Mental health
- Lost wages for disabled victims
- Lost support for dependents of homicide victims
- Funerals
- Travel
- Rehabilitation for disabled victims
- Services to replace work in the home previously performed by the victim
- Removal expenses
- Legal aid
- Any other expense reasonably related to the injury

Emergency Awards

The program makes emergency awards when the request meets all of the eligibility conditions (except the exact extent of the damage), and when a good reason for expedition exists.

Funding Sources

The program is funded by the national government and the Department of Justice.

13. Norway

Norway has a crime victim compensation program to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : As soon as possible; exceptions are made.
Filing Period : No time limit.

Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens
- Citizens of Norway victimized in a foreign country

Procedures

A claimant can obtain an application form from the Police Station, the Chief Administrative Officer of the county, or the Ministry of Justice. The duly filled-up application should be sent to the Chief Administrative Officer of the County. The claimant will receive notification of the program's decision between **2 weeks** and **6 months**, dependent on whether a complaint is forwarded. Compensation is received between **1 day** and **3 weeks**. This decision can be **appealed** to an **independent committee** of three persons, appointed by the government, which is the final decision maker.

Benefits & Award Limits

The maximum award in Kroner is 200.000.

Compensable Costs

- Medical expenses
- Mental health
- Lost wages for disabled victims
- Lost support for dependents of deceased victims
- Funerals
- Travel
- Rehabilitation for disabled victims
- Services to replace work in the home previously performed by the victim

Emergency Awards

The program may give a prepayment if the award decision is delayed due to no fault of the claimant, and it would be reasonable to do so.

Funding Sources

The program is funded through tax revenue

14. Philippines

The Philippines has a **victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes; no time limit.
Filing Period : Within 6 months of the crime.

Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens

Procedures

A claimant can obtain an application from the **Board of Claims** through the Justice Department. U.S. citizens in Philippines may obtain applications from the U.S. Embassy in Manila. The Board of Claims is required to render a decision within **30 days**. Victims should request copies of all medical records from treating hospitals and physicians.

Benefits & Award Limits

The maximum award in Pesos is 10,000 (U.S. \$400).

Compensable Costs

- Medical expenses
- Mental health
- Lost wages
- Lost support for dependents of homicide victims

Emergency Awards

The program does not offer emergency compensation awards.

Funding Sources

The program is funded by the government of the Philippines.

15. Poland

Poland has a **crime victim compensation program** to provide financial compensation to victims of violent crime.

Eligibility Requirements

Report to Police : Yes.
Filing Period : Within 2 years from the date of the crime.

Claimants

- Victims of crime
- Dependents of victims of crime
- Foreign citizens

Procedures

A crime victim must apply to the **Foundation Office**. There is no special application form required. Applicants may submit a letter describing their situation along with a court sentence or a document stating that the investigation has been discontinued by the prosecutor.

A police report is not required and is not honored.

Decisions to award or deny an application are issued **within a month** from receipt of the application.

Benefits & Award Limits

The amount of assistance depends on the economic status of the victim and their range of losses.

Compensable Costs

- Medical expenses
- Mental health expenses
- Lost wages

- Loss of support

Emergency Awards

No formal emergency program exists. But expedited compensation is paid to children of victims to cover their medical expenses while investigations are underway.

Funding Sources

The program is not run or financed by the Polish Government. Since 1991, it has been operated solely on donations from individuals and institutions.

16. Sweden

Sweden has a **crime victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes; no time limit.

Filing Period : 2 years; exceptions are made.
Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens
- Citizens of Sweden victimized in a foreign country

Procedures

Application forms are available at the local Police Stations, District Courts, the local enforcement service offices, and insurance companies. Applications can also be ordered from the **Criminal Victim Compensation and Support Authority**. The application must be sent to the Criminal Victim Compensation and Support Authority which is a central agency covering criminal injuries throughout the country. The claimant is notified of the program's decision within a few days. It then takes another week or two to receive the award.

Benefits & Award Limits

The maximum awards in Kroners:-

(a) Personal Injuries : limited to twenty times the basic amount or SEK 704 000.

(b) Property Damage : half of the above sum.

Compensable Costs

- Medical expenses
- Mental health
- Lost wages for disabled victims
- Lost support for dependents of deceased victims
- Funerals
- Travel
- Rehabilitation for disabled victims
- Services to replace work in the home previously performed by the victim
- Pain and suffering
- Violation of personal integrity
- Inconveniences resulting from the injury

Emergency Awards

When the victim is in urgent need of medical care, therapy, or has been infected by HIV, an emergency award can be made.

Funding Sources

The program is funded by tax revenue.

17. United Arab Emirates

The United Arab Emirates court system provides financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes; within 3 years.
Filing Period : No time limit; exceptions are made.

Claimants

- Victims of all violent personal offenses
- Foreign citizens

Procedures

The victim must report the crime to the police within 3 years of its occurrence. The claimant can obtain an application for compensation from the police. The police will then send the case to the G.P. within 48 hours after which it will be sent to the court of hearing. The claimant will receive notification of the court's decision within 1 week. Compensation will be paid within 1 month of the court's decision.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

Information regarding compensable costs is not currently available.

Emergency Awards

The program does not offer emergency or expedited compensation awards.

Funding Sources

The compensation program is funded by the federal government.

18. United Kingdom

The United Kingdom (which includes England, Scotland, Wales, and Northern Ireland) has a **crime victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : As soon as possible; exceptions are made.
Filing Period : Within 2 years; exceptions are made.

Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens

Procedures

A claimant can obtain an application from police stations, hospitals, CICA, local Victim Support Schemes, Crown Court Witness Service, or local Citizens Advice Bureaus. The completed application should be sent to the CICA. The program's initial decision should be made **within 12 months**, while reviews and hearings take several months longer. Compensation will be paid as soon as CICA receives notification that the claimant accepts the decision.

Benefits & Award Limits

The maximum award in Pounds is 500,000.

Compensable Costs

- Medical expenses
- Mental health expenses
- Lost wages for disabled victims
- Lost support for dependents of homicide victims
- Funerals
- Travel
- Rehabilitation for disabled victims
- Pain and suffering
- Bereavement
- Loss of parental services

Emergency Awards

Interim payments may be made where a final decision as to the appropriate award is uncertain, for example, when the victim's medical prognosis is unclear.

Funding Sources

The program is funded by the Government/Taxpayers' revenue.

B. Countries where the Compensation to the Victims of Crime is being given by the Offender

1. Austria

Austria has a **crime victim compensation program** to provide financial compensation to victims of severe crime who have suffered **physical/mental injuries**.

Eligibility Requirements

Report to police	:	Yes.
Filing period	:	6 months from the month in which the crime occurred for current costs; 2 years for the cost of medical help.

Claimants

- Victims of crime who suffer serious injuries
- Family of homicide victims
- Citizens of EEC countries unless victim is eligible to receive similar compensation in his/her own country

Procedures

The applicant files a claim at any one of the six places called as "**Bundessozialamt**" located in Austria.

It is required that the applicant provide details of the date and place that the crime occurred, as well as a full list of injuries and losses incurred.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs (in Austrian Schillings)

- Medical expenses
- Mental health expenses
- Burial - up to 27,500
- Lost wages
- Lost support
- Assistance for family of victim
- General social aid to foreign citizens
- Travel expenses (summons-related)
- Rehabilitation
- Disabilities

Emergency Awards

The program does not provide emergency compensation awards but can be advanced or made available prior to an offender's conviction.

Funding Sources

The program is funded through **finances** imposed on convicted offenders and other sources.

2. Belgium

Belgium has a **crime victim compensation program** to provide financial compensation to victims who suffer serious criminal injuries.

Eligibility Requirements

Report to Police : Yes.

Filing Period : 1 year after the sentence or 1 year after conclusion of the instructing magistrate if the offender is unknown.

Claimants

- Victims who suffer serious criminal injuries except when the result of manslaughter, property crimes, and traffic offenses
- Foreign citizens

Procedures

Victims must report the date, place, and details of the crime to the police. They must also provide the program with a full list of injuries and losses incurred.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

- Medical expenses
- Lost wages
- Serious disability

Emergency Awards

The program does not provide emergency compensation awards.

Funding Sources

The program is funded through fines imposed on convicted offenders and other sources.

C. Countries where the Compensation to the Victims of Crime is being given both by the State and the Offender

1. United States

Each of the 50 States in the U.S., plus the District of Columbia and the U.S. Virgin Islands operate a crime victim compensation program to provide financial assistance to victims of violent or personal crime. Each State administers its own program in accordance with its State statute. The U.S. Department of Justice provides supplemental funding and technical support to the States. The following information is generally applicable to all State compensation programs. For specific information regarding individual programs, a list of State programs is provided on the next page.

Eligibility Requirements

Report to Police: Usually within 72 hours; exceptions are made for good cause.

Filing Period: One year is typical; time limits vary from State to State.

Victims of Terrorist Acts

Compensation is payable for residents and nonresidents who are injured by crimes involving terrorism occurring within the State or, in the case of U.S. citizens, outside of the U.S.

Claimants

- Victims of crime
- Dependents of homicide victims
- Relatives of victims of crime
- Foreign citizens; eligible in most States

Procedures

The claimant must file an application with the compensation agency in the State in which the crime occurred.

Based on information submitted by the victim, the agency determines if the claimant is eligible and has suffered a financial loss. In most States, the victim can appeal the agency's decision to deny or reduce the award of compensation.

Benefits & Award Limits

Most States can pay a maximum of between \$15,000 and \$25,000. A few States have higher or lower maximums.

Compensable Costs

All States will cover the following:

- Medical expenses
- Mental health counseling
- Lost wages for disabled victims
- Lost support for dependents of homicide victims
- Funeral

In addition, many States cover the following:

- Travel for medical treatment
- Services to replace work previously performed by the victim
- Cleaning of homicide scene if a residence
- Essential personal property
- Rehabilitation

Emergency Awards

Some States provide emergency awards or expedite processing for victims faced with an extraordinary financial or health crisis.

Funding Sources

Most States obtain their funding from fees or charges assessed against offenders. Some States receive appropriations from general revenue. OVC provides supplemental funds from Federal criminal fines.

D. Countries where the Compensation to the Victims of Crime is being given by the State or Offender (specific Information Not Available).

1. Colombia

Colombia operates a **compensation program** for civilian Colombian citizens who, as a result of any terrorist act, guerrilla attack, combat, or massacre, are personally injured or suffer economic or property losses. Colombia does not currently have a compensation program for victims of other violent or personal crime.

Eligibility Requirement

Report to police : Yes, within 1 year of the incident.

Filing period : Within 1 year of the incident.

Foreign citizen eligibility: Citizens of foreign countries are not eligible to apply for compensation.

Claimants

- Victims of a terrorist act, guerrilla attack, combat, or massacre
- Dependents of victims of a terrorist act, guerrilla attack, combat, or massacre

Procedures

To receive compensation, the victim must obtain a certification from a competent authority stating the reason the applicant believes she or he is a victim of terrorist violence. Application forms and assistance in applying are available from the nearest Territorial Unit of the Social Solidarity Network (Red de Solidaridad Social).

Benefits and Award Limits

Compensation is awarded on a case-specific basis.

Compensable costs

- Medical expenses
- Rehabilitation and transportation expenses
- Replacement or repair of lost or damaged property
- Funeral expenses
- Family housing allowance

Emergency awards.

Emergency or expedited claims are handled on a case-by-case basis.

Funding sources.

Information not available.

2. Cyprus

Cyprus has a crime victim compensation program to provide financial compensation to victims of violent crime.

Eligibility Requirements

Report to Police : Within 5 days after the crime.
Filing Period : As soon as possible; within 2 years.

Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens

Procedures

The claimant must file an application with the **Director of Social Insurance**.

The claimant will receive notification of the program's decision as soon as it is reasonably possible for the Director of Social Insurance to establish eligibility in accordance with the provisions of the law and upon the review of police and medical reports. Temporary disability allowances are paid for a period of 6 months.

Benefits & Award Limits

Compensation is awarded on a case specific basis.

Compensable Costs

- Medical expenses
- Hospitalization expenses in Public Institutions
- Lost wages
- Disability and Dependents Pension
- Funeral expenses

Emergency Awards

Information not available.

Funding Sources

Information not available.

3. Czech Republic

The Czech Republic has a crime victim compensation program to provide financial compensation to victims of violent crime.

Eligibility Requirements

Report to police : Yes.
Filing period : No later than 1 year following the date of commission of the criminal act.

Claimants

- Victims of crime who suffer physical injury
- Survivors of victims
- Citizens of the Czech Republic, or to stateless persons authorized to reside permanently or for an extended period in the territory of the Czech Republic
- Foreign nationals to the extent provided by a valid international agreement to which the Czech Republic is party

Procedures

The victim must submit an application to the **Ministry of Justice**.

The Ministry of Justice shall dispense aid **within 3 months** following submission of the application and appropriate documentation.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

- Medical expenses
- Burial
- Lost support

Emergency Awards

Information not available.

Funding Sources

Information not available.

4. Germany

Germany has a **crime victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes.
Filing Period : Within 1 year; exceptions are made.

Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens; if the crime was committed after June 30, 1990 and the victim has stayed in Germany for more than 3 years
- EU country citizens from reciprocal states
- Foreign citizens of the victim are from a country (or state) which has a reciprocal agreement covering German citizens

Procedures

The victim must report the crime to the police and provide details of the date, place, and resulting injuries and losses of the crime.

A claimant can obtain an application from **Versorgungsamt (war pension office)** in almost every large town. Weisser Ring also helps claimants complete

the compensation forms. Notification can take approximately 6 months but compensation follows almost immediately.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

- Medical expenses
- Psychological care
- Vocational rehabilitation
- Pensions for disabled victims if victim's earning capacity is reduced by at least 25 percent for 6 months or more.
- Benefits for dependents of homicide victims
- Physical therapy
- Funeral expenses
- Lost support for dependents
- Services to replace work in the home previously performed by the victim

Emergency Awards

The program does not provide emergency compensation awards.

Funding Sources

Information not available.

5. Portugal

Portugal has an official program available for compensation and assistance to victims of crime. It is managed by a committee, namely, **comissao De Proteccao as Victims De Crime Violento**, coordinated by the Portuguese Ministry of Justice.

Eligibility Requirements

Report to Police : Yes; no specific time limit.
Filing Period : 1 year after the crime.

Claimants

- Victims of crime
- Dependents of victims of crime
- Foreign citizens
- Portuguese citizens victimized in a foreign country if compensation was not available.

Procedures

There is no specific application form required. A claim may be filed by sending a letter that explains the facts surrounding the crime and the victimization. A statement reflecting the amount of compensation requested should be included with the letter. The letter should be directed to the Portuguese Ministry of Justice at the above address.

The committee must conclude their investigation and forward a recommendation to the Ministry for a final decision.

Benefits & Award Limits

The maximum awards in Portuguese Escudos is 4,000,000.00 (U.S. \$23,500)

Compensable Costs

- Medical expenses
- Lost wages
- Lost support for dependents of victims
- Funerals
- Rehabilitation for disabled victims

Emergency Awards

The program offers expedited or emergency compensation on a case-by-case basis.

Funding Sources

Information regarding funding for the Portuguese compensation programs was not available.

6. Republic of Ireland

The Republic of Ireland has a **crime victim compensation program** to provide financial compensation to victims of violent or personal crime.

Eligibility Requirements

Report to Police : Yes; exceptions may be made.

Filing Period : Within 3 months of the crime; exceptions may be made.

Claimants

- Victims of crime
- Foreign citizens

Procedures

The victim must report the crime to the police and provide details of the date and place that it occurred as well as a full list of injuries and losses suffered.

A claimant can obtain an application from the Criminal Injuries Compensation Tribunal.

Benefits & Award Limits

There is no maximum award limit.

Compensable Costs

- Medical expenses
- Loss of earnings
- Travel expenses
- Lost support (for dependents of victims)
- Funeral expenses
- Rehabilitation for disabled victims
- Services to replace work in the home previously performed by the victim

Emergency Awards

The program does not provide emergency awards.

Funding Sources

Information not available.

7. Spain

On December 11, 1995, Spain passed a law initiating a victims' compensation and assistance program to provide financial compensation to victims of violent crimes that are committed in Spain and which cause serious bodily or mental injuries. The law provides for the establishment of a **National Commission on Aid and Assistance to Victims of Violent Crimes and Crimes Against Sexual Freedom**.

Eligibility Requirements

Report to Police : As soon as possible; exceptions are made.
Filing Period : Within 2 years; exceptions are made.

Victims of Terrorist Acts

Compensation is payable for physical and psychological injuries that are the result of crimes committed by an armed gang or terrorist organization.

Claimants

- Victims of crime
- Dependents of homicide victims and persons who have been living permanently with the deceased for 2 or more years.
- Foreign citizens (only when the country of nationality provides similar assistance to Spanish nationals)

Procedures

Petitions for assistance will be filed with the **Ministry of Economy and Finance** as soon as the compensation program is fully established. Decisions to award compensation shall be made after a hearing and after considering the report by the Legal Services of the State, which shall participate in the processing of these cases.

Benefits & Award Limits

There is no maximum award. The amount of assistance shall in no event exceed the compensation determined in the court judgment.

Compensable Costs

- Medical expenses
- Mental health expenses
- Lost wages for disabled victims
- Lost support for dependents of homicide victims
- Funerals

Emergency Awards

Provisional assistance may be granted before a final court decision provided the precarious situation of the victim or his beneficiaries has been substantiated.

Funding Sources

Information regarding funding is not currently available.

8. Switzerland

In October 1991, the Swiss Government enacted the **Federal Law on Crime Victims Assistance** to be implemented at the Cantonal (State) level. The federal law sets forth general guidelines for crime victims assistance and calls for the establishment of local **Counseling Centers**. Crime victims must seek compensation and assistance through the **Counseling Center** in the state where the crime was committed. Each state establishes its own guidelines as to the amount and kind of compensation to be awarded.

Eligibility Requirements

Report to Police : Yes
Filing Period : Within 2 years.

Claimants

- Victims of crime
- Dependents of homicide victims
- Foreign citizens
- Swiss citizens victimized in a foreign country that does not have a compensation program.

Procedures

Applications must be filed with the Counseling Center in the canton (state) where the crime occurred.

The federal law provides for income limits unless the crime is particularly severe. If a victim's income is under the amount for social security and disability, the victim receives full compensation. If it is more than the amount, the victim's award is reduced.

Benefits & Award Limits

The amount of compensation available varies from state to state.

Compensable Costs

- Medical expenses
- Psychological care
- Lost wages
- Funerals

Emergency Awards

Crime victims can receive an advance if the victim needs immediate assistance.

Funding Sources

Information regarding funding for the Swiss compensation programs was not available at the time this directory was published.

The aforesaid provisions for the payment of compensation to the victims of the crime have been tabulated and the same is appended at **Annexure-A**.

The salient features of these schemes prevailing in foreign countries are given below:-

- (i) In most of the crime victims compensation programme of different countries cover the victims of violent crimes, personal crime, who suffer serious physical/mental injuries for their compensation. In addition to it, compensation programme of some countries like **Italy** and **Colombia** provide compensation to the victims of terrorist and guerrilla attacks, combat or massacre.
- (ii) The claimants under crime victim compensation programme of different countries are not only the victims of crime but also their dependents relatives. Foreign citizen could also become the claimants for compensation.
- (iii) The compensation is provided for medical expenses, mental health counseling, lost of wages, funeral, travel expenses, loss of enjoyment of life, rehabilitation for disabled victims and loss of support for dependents of deceased victims.
- (iv) The limit of compensation to the victims of crime varies from country to country depending upon the nature of crimes and extent of victimization under different types of crimes.
- (v) In most of the countries funds for compensation to the victims of crime are provided by the state themselves. In **Poland**, the funding is being provided for compensation to the victims by donations from individuals and Institutions. While in **Austria and Belgium**, the compensation is being realized from the fine imposed on convicted offenders and other sources.

- (vi) In most of the countries the time limits for filling petition for compensation is one year. While in ***Denmark, Hong Kong, Japan, Poland, Sweden, U.K., Spain and Switzerland***, the time limit is two years.
- (vii) Most of the countries also provide emergency compensation to victims of crime except **Italy, Denmark, Finland, United Arab Emirates (UAE), Austria, Belgium and Republic of Ireland**.

Crime-victim compensation programme shows that out of about 200 countries in the world there are 29 countries in which the victim compensation scheme are prevalent, as culled out from the details posted on the websites of different countries. The amount of compensation varies from a very modest sum to unlimited amount depending upon the injuries sustained by the victim. All these countries where the victim compensation scheme are prevalent are not the most populous countries of the world like, China, USSR, Pakistan, Bangladesh, Egypt etc.

INTRODUCTION OF VICTIM OF CRIME COMPENSATION SCHEME IN INDIA

As a welfare state, it is an essential obligation of the state to provide safety and security of all its citizen and their property. Crimes under various penal statutes are treated as crime against society in India. Therefore, prosecution of the accused persons is the responsibility of the state under the prevailing Criminal Justice System. It is unlike the civil wrongs which are pursued by the citizens themselves under the law of Tort wherein damages for the actionable civil wrongs are claimed and adjudicated upon by the court under the civil jurisdiction.

The evolution of the scheme for the compensation to the victims of the crime in India will be a concrete measure for the translation into reality of the essential obligation of the Indian state to provide safety and security for the life and property of the citizen. To start with, this scheme can be considered for the

victims of crime and their dependents/legal representatives in the following cases:-

- (i) Loss of life.
- (ii) Permanent disability in the capacity to earn livelihood.
- (iii) Temporary disability to prevent the person from attending to his normal routine to earn a livelihood and lead a normal life
- (iv) Suffering of a stigma and mental agony as a consequence of crime.
- (v) Loss of property including house and household goods and means of earning livelihood.

The introduction of victim compensation programme in India has also to be seen in the light of its total population and number of citizens who suffer injuries due to the crime against their body and property. As against 1068.20 millions estimated mid-year population for the year 2003 in India, crime figures as published by the National Crime Records Bureau shows following salient facts:-

General Crime Statistics

INCIDENCE		RATE <i>(Per lakh of Population)</i>	
<u>IPC</u>	<u>SLL</u>	<u>IPC</u>	<u>SLL</u>
2002: 17,80,330	2002: 37,46,198	2002: 169.5	2002: 356.6
2003: 17,16,120	2003: 37,78,694	2003: 160.7	2003: 353.7

- 54,94,814 cognizable crimes comprising 17,16,120 Indian Penal Code (IPC) crimes and 37,78,694 Special & Local Laws (SLL) crimes were reported, showing a marginal decline (0.6%) over 2002 (55,26,528).
- IPC crime rate in 2003 was 160.7 per lakh of population as compared to 169.5 in 2002 recording 5.2 percent decrease in 2003 over 2002.
- SLL crime rate in 2003 was 353.7 as compared to 356.6 in 2002 recording 0.8 percent decrease in 2003 over 2002.

- On an average, 3 IPC crimes and 7 SLL crimes were reported every 1 minute in the country.
- 166 cases of deaths due to negligence, 139 cases of cruelty by husband & relatives, 90 cases of murder and 55 cases of kidnapping and abduction reported everyday in the country.
- 25,10,892 persons were arrested under IPC crimes and 43,78,275 persons were arrested under SLL crimes. Thus overall 68,89,167 persons were arrested under IPC and SLL crimes. On an average, 1.5 arrests per IPC case and 1.1 arrests per SLL cases were reported in the country.

Violent Crimes

INCIDENCE	RATE <i>(Per lakh of Population)</i>
2002: 2,21,810	2002: 21.1
2003: 1,96,550	2003: 18.4

Crime Against Women

INCIDENCE	RATE
2002: 1,43,034	2002: 13.6
2003: 1,40,601	2003: 13.2

Crime Against Children

INCIDENCE	RATE
2002: 10,469	2002: 1.0
2003: 11,633	2003: 1.1

- 10 percent increase in incidents of crime against children over 2002. More than 7 times increase in selling of girls for prostitution (5 in 2002 to 36 in 2003) cases.

Crime Against Scheduled Castes/Scheduled Tribes

INCIDENCE		RATE	
<u>SC</u>	<u>ST</u>	<u>SC</u>	<u>ST</u>
2002: 33,507	2002: 6,774	2002: 3.2	2002: 0.6
2003: 26,252	2003: 5,889	2003: 2.5	2003: 0.6

Property Crimes

INCIDENCE	RATE
2002: 3,70,629	2002: 35.3
2003: 3,63,181	2003: 34.0

- Property crimes accounted for 21.2 percent of total IPC crimes. Such crimes reported a decline of 2.0 percent over 2002.

Disposal of Cases during the year 2003

- Trials were completed in 9,59,567 IPC crime cases out of 65,77,778 cases sent for trials. 54,51,727 cases remained pending for trial in courts at the end of December 31, 2003.
- Conviction rate for IPC crimes decreased from 40.8 in 2001 to 40.6 in 2002 and 40.1 in 2003.
- 78 percent (16,91,945 out of 21,69,268) of all IPC cases registered were disposed off by police, 80.0 percent true cases (12,71,504 out of 15,86,562) were charge sheeted.
- 29.6 percent of trials were completed in less than 1 year (2,83,921 out of 9,59,567), 31.9 percent of trials (3,06,107) were completed within 1 to 3 years, 23.1 percent (2,21,537) were completed between 3 to 5 years, 12 percent of trials were completed between 5 to 10 years (1,15,596) and 3.4 percent (32,406) cases took more than 10 years.

Custodial Crimes during the year 2003

- A total of 40 cases of custodial crimes were registered. 94 custodial deaths reported, 27 policemen charge sheeted and none convicted in the country. While 33 custodial deaths reported in police remand during the year 2003.

Out of the above mentioned total figures of crimes in India, we can consider introducing a scheme for payment of ex-gratia relief or compensation to the victims of crime falling in the category of **violent crime, crime against women, abduction/kidnapping, robbery, dacoity and arson**. The figures for the above type of crime for the year 2002-2003 as published in "Crime in India" brought out by the National Crime Records Bureau are given below:-

Sl. No.	Type of Crime	Year	
		2002	2003
1.	Murder	35290	32716
2.	Attempt to Murder	30380	25942
3.	C.H. Not amounting to Murder	3624	4029
4.	Rape	16373	15847
5.	Kidnapping/Abduction	21850	19992
6.	Dacoity	6101	5303
7.	Robbery	18764	17512
8.	Arson	11820	9365
9.	Hurt	265025	261444
10.	Dowry Death	6822	6208
11.	Sexual Harassment	10155	12325
12.	Molestation	33943	32939
13.	Cruelty by Husband and Relatives	49237	50703
14.	Custodial Deaths	31	33

The scale of compensation can also be adopted as the one as made applicable to the victims of crime falling under the Scheduled Castes and Scheduled Tribes category. Financial implications for making payment to the victims in the aforesaid category roughly works out as below:-

Sl. No.	Type of Crime	Year	Scale of Compensation per unit	Total Amount Required for Compensation
		2003		
1.	Murder	32716	Rs. 1,00,000/-	Rs. 3271600000/-
2.	Attempt to Murder	25942	Rs. 50,000/-	Rs. 1297100000/-
3.	C.H. Not amounting to Murder	4029	Rs. 1,00,000/-	Rs. 402900000/-
4.	Rape	15847	Rs. 50,000/-	Rs. 792350000/-
5.	Kidnapping/Abduction	19992	Rs. 50,000/-	Rs. 999600000/-
6.	Dacoity	5303	Rs. 50,000/-*	Rs. 265150000/-
7.	Robbery	17512	Rs. 50,000/-*	Rs. 875600000/-
8.	Arson	9365	Rs. 50,000/-*	Rs. 468250000/-

9.	Hurt	261444	Rs. 25,000/-*	Rs. 6536100000/-
10.	Dowry Death	6208	Rs. 1,00,000/-	Rs. 620800000/-
11.	Sexual Harassment	12325	Rs. 10,000/-	Rs. 123250000/-
12.	Molestation	32939	Rs. 10,000/-	Rs. 329390000/-
13.	Cruelty by Husband and Relatives	50703	Rs. 25,000/-	Rs. 1267575000/-
14.	Custodial Deaths	33	Rs. 1,00,000/-	Rs. 3300000/-
	Total			Rs. 17,25,29,65,000/-

- Subject to the actual loss.

The aforesaid calculation is made presuming that there is only one victim for each crime.

It shows that if we start with scheme involving victim of crime subjected to aforesaid types of crime, roughly a minimum Rs. 17,25,29,65,000/- amount will be required to be paid every year.

Modalities will have to be worked out as to the contribution which may be made by the State Governments and the Central Government to finance the scheme.

Alternatively, penal provisions relating to the aforesaid provisions can be so amended as to provide for compensation as per the scale mentioned above by the trial courts itself. This will, however, leave out a large number of victims whose cases do not result in filing of the **charge sheet** or if **chargesheeted**, does not lead to conviction. The scheme shall have to provide for at least those cases in which the acquittal is based on benefit of doubts or inadequacy of evidence to establish the guilt of the accused person or in cases where the offences remains untraced.

Another alternative for funding the scheme could be through introduction of **Group Personal Accident Insurance Scheme** to provide monetary relief to the victims of crime on the basis of nature and extent of their losses suffered by the victim. The detailed modalities of such scheme can be got worked out from any of the Insurance Corporation dealing with similar risks against assurance.

The introduction of **Victim of Crime Compensation Scheme** shall need consultation with the States before drawing up the final contours as regards the various modalities as indeed the desirability/feasibility itself of the scheme. This

will include criteria for eligibility, extent and scale of compensation to be paid, compensation determining and paying machinery, funding of the scheme through the consolidated funding from States and Union or Group Insurance Schemes and related matters. A public debate can also be initiated through the States to elicit views of informed members of the public and various organizations including NGOs of national repute with regard to the different elements of the scheme.

The proposed scheme shall have important implication for the criminal justice system. Therefore, views of Ministry of Law & Justice and other ministries of the Government of India shall also be taken into account.

RECOMMENDATIONS

The following measures be considered for compensating the victims more effectively.

- (i) Payment of compensation should be a matter of right. It should not be linked with whether the offender is apprehended or whether he has been found guilty or whether he has the ability to pay a fine or the discretion of the judges. In other words, payment of compensation should be independent of all these restrictions. The factors that should be taken into consideration while deciding these cases are, the needs of the victim and the justness of the claim for compensation. The paying capacity of the offender would be of significance only while determining the quantum of fine to be imposed as punishment.
- (ii) Under the present criminal justice system, victim compensation carries a number of ambiguities and the award of compensation is at the discretion of the judges. As there is no separate compensation fund even when it is awarded unless the fine is voluntarily litigation which can be long drawn out, and involve a lot of expenditure. It is little wonder that the victims either do not move the courts or prefer out of court settlements. It is clear

that the provisions relating to victim compensation require a close look. Hence, we feel that the subject should be thrown open for a public debate at various levels, so that the existing lacunae are discussed specific terms of reference could be appointed to go into this and draft amendments where necessary.

- (iii) There is need to establish an independent tribunal with financial jurisdiction specified. The functions of the Tribunal would be:
 - (a) To investigate into all aspects of the crime and the needs of the victims as soon as it is reported and award a suitable compensation.
 - (b) To administer the fund created for this purpose.
 - (c) To ensure that the fine imposed is recovered and the compensation amount is collected by the victims.
 - (d) To maintain a comprehensive register of the fines imposed, compensation awarded and that collected. This is very essential so that the impact of the scheme may be evaluated periodically and monitored to suit the needs of the time.

The staffing pattern of the Tribunal can be decided upon after a study of the likely work load and type of assistance required by the Tribunal. People from various relevant walks of life, like judges, advocates and social workers should be involved in the activities of the Tribunal.

The needs of the victims arises as soon as the incident occurs. As in the case of victims of hit and run cases, for serious crime, awarding a solatium could be considered. A filing limitation of six months could be specified and the type of supporting documents to be presented could be specified. This solatium could be considered as an interim measure to help the

victims tide over the immediate problems until the special tribunal or the court of law, after due consideration of all the aspects of the case, awards compensation. The amount paid as solatium could be made recoverable from the compensation awarded or insurance amount received by the victim in due course.

For awarding compensation, to expedite matters, a schedule of losses for which compensation could be awarded should be drawn out taking care to see that the judges have sufficient flexibility to consider other aspects like mental agony, tensions etc., which cannot be quantified within the framework of the schedule. As in the model under operation in the State of Maryland, USA time limitations can be imposed for reporting of crime and application for compensation.

A preliminary enquiry would be helpful in determining whether the claim should be accepted for investigation or not. A suitable procedure can be adopted for investigation, hearing, review and appeal.

For victims of crime against property, the first attempt should be to recover the stolen property. Depending on the circumstances in which the victim is place and the seriousness of loss, compensation could be considered if the property is not recovered within a specified time, after taking into account any insurance amount the victim has been able to get.

- (iv) Compensation awarded can be of three types:
 - (a) Lump sum amount
 - (b) Periodic Payment
 - (c) Non-monetary, like institutional care, rehabilitation, counseling, alternative employment etc. Towards this, the Tribunal should establish close working relationships with Government Departments, hospital boards, the medical and dental professions, and other relevant bodies and organizations so as to make the

maximum utilization of all public and private facilities available and provide for further facilities where necessary.

- (v) Two separate funds could be constituted for making payments viz. Accidents Compensation Fund and Crimes Compensation Fund, to be administered by the Tribunal. The point of adequacy of these funds can be ascertained through a sample study of accident and crime victims over a period. As has been suggested by some respondents, income tax facilities could be provided for voluntary contributions to this fund, and the possibility of organizing a weekly lottery for raising funds should be looked into.
- (vi) In the case of serious crimes like murder and rape the adequacy of the amount hitherto paid should be enquired into through further case studies.
- (vii) In many cases of traffic offences, the insurance companies disclaim any liability for payment if it is found that the driver, at the time of the offence, did not have a valid driving license. This is as per the insurance contract. This puts the victims to a lot of difficulty, like verifying whether the driver had a license or not, especially when the victims are from poor socio-economic background. In one case, the victim had to engage in a legal battle for four years before it was revealed that the driver had, at that time, a valid license. Under these circumstances, the owners of the vehicles should be held responsible for the crime.
- (viii) Victims/survivors of victims who were illiterates or had very low level of education found it very difficult to understand court proceedings, and required assistance. This also indicates that obviously if they are given monetary compensation, they would require assistance to ensure that the money is properly utilized/invested. Here again, organized effort by banks/insurance companies and welfare agencies would be essential to

guide them properly, and give the necessary introduction to banks / post office, etc.

- (ix) An awareness of the needs of the victims should be created among the police force through periodic re-orientation programmes, so that a positive and sympathetic approach is taken by them. This will encourage the victims to come forward and register their complaints promptly as also seek their help when required.
- (x) The public, in general, should be made aware of the traffic rules and regulations the modus-operandi of the criminals, especially in case of cheating, extortion, etc. as well as the legal remedies available to them, so that they become more vigilant. This can be achieved with the help of the media of mass communication and through the efforts of various voluntary organizations. The tribunal mentioned above can form a Safety Division. This division can provide safety education and training and co-ordinate the activities of organizations already functioning in this area.
- (xi) In pursuance of Article 39 of the Constitution of India, State should constitute State Legal Aid and Advice Boards to take steps to provide legal aid to the weaker sections of the community in the State of Maharashtra similar establishments have been set up in other States as well.

The activities of these Boards and the Committees established there under should be given adequate publicity so that the weaker sections for whom the scheme has been instituted get the maximum benefit. Separate studies could be undertaken to assess the impact of this scheme.

- (xii) The role of voluntary organizations in helping the victims of crime should not be under estimated, as the victims are not organized and there is no

single non-political organization to represent their interests. In this context, what is being done in Australia is very instructive. In report No. 15 of the Australian Law Reform Commission published recently, the following observations have been made:

“That the interests of victims of crime in Australia are of significant dimension, can be realized from the fact that at least one million Australians each year are victims in some way or the other of criminal conditions against their will. A measure of the frustration felt by the public about the state of crime in general has been seen in the responses obtained to the public opinion survey. This frustration gave rise to new voluntary organizations designed to promote the welfare of crime victims, especially of violent offences. In South Australia, a new “Samaritan Institute” has been established as a victim of crime service having the following aims:

- (a) Actively representing the interests of all victims of crime.*
- (b) Providing informed and independent comment on the strengths and weaknesses of the police and the justice system in protecting citizens.*
- (c) Researching the effects of crime on its victims.*
- (d) Monitoring the ways in which fear of crime influences the behaviour patterns and restricts the freedom of a large number of citizens.*

In the U.S.A. also such associations have received widespread support from the public. The work they do include establishing victim and witness assistance units in police and prosecutor agencies.

In India also, voluntary agencies like the Good Samaritan Society, Legal Aid Society, are rendering valuable service to the victims of crime. These

societies should be encouraged and strengthened by giving sufficient publicity and support.

- (xiii) Time and again it was pointed out during the survey that there is constant erosion in the social and ethical values, which gets reflected in different types of crimes. Under these circumstances alongside a scheme to compensate victims of crime, there is need to create better law and order situation, bring about speedy disposal of cases, award deterrent punishment to crime doers, provide counseling to criminals so as to understand the motivation for crime and guide them properly, study the ill effects of violence on the screen and create public opinion in this respect, take up concentered efforts to root out poverty and to improve the overall quality of life, etc. These are many of the long term measures that can reduce the incidence of crime and keep victim compensation within manageable limits. The Government, the police, voluntary organizations, professionals and the general public has their roles to play in this.
- (xiv) It would be appropriate to evolve the **Group Personal Accident Insurance Scheme** for the victims of crime as one of the social security measures which is the obligatory on the part of the State. Under this scheme monetary relief is proposed to be provided to the victims of crime on the basis of the nature and extent of their losses to be evaluated by the trial court while awarding compensation to the victims of crime, as is being done in case of Motor Vehicle Act and is also being run by the National Foundation for Communal Harmony for child victims.
- (xv) The Ministry of Law and Justice, Government of India, New Delhi may also be consulted for their considerate views on this subject before formulating a concrete view in this matter.
