

Compensation of victim of crime in India

By **Anubhav Pandey** - March 9, 2017



Protecting the rights and interest of the individual is the primary purpose of law.
*In this article, Anubhav Kumar Pandey defines who is a **victim of crime** in India and the procedure to avail **compensation** as per the regulatory guidelines.*

Who is a victim of crime

- Any person, group, or entity who have suffered harm, injury or loss due to illegal activities of others. The harm may be economical, mental, or physical.
- Thus any person who has suffered harm because of violation of criminal law is a victim.
- A person will be considered as a victim even when the offender is not identified or prosecuted. Term victim also includes individuals who have suffered harm as a result of assisting victims in distress or to prevent victimization.
- Not only the person who suffered loss or injury are the victim, but in some cases, the near and dear of victims (family members) are also the victims.

Can a victim of crime get compensation in India

Yes. A victim of the offence can get compensation in India. But there is a procedure which needs to be followed. We will discuss the procedure at length in the later part of this article.

How can the compensation be sought

The compensation has to be ordered by the court. Compensation can be sought through the procedure established by the court. Compensation is awarded for material as well as non-material damages.

Material damages include medical expenses, loss of livelihood, etc. Non-material damages include pain, suffering, mental trauma, etc. In criminal cases, the victims can directly apply for the compensation, and it is the duty of the lawyer representing the victim to demand such compensation.

Laws governing compensation of victims of crime in India

- The provisions relating to compensation to victims of crime are contained in sections 357, 357(1), 357 (2), 357 (3), 357A, 358, 359 and 250 of the Code of Criminal Procedure, 1973.
- Constitution of India also provides for certain safeguards to the victim of crime. Article 14 and 21 of the Constitution supports the argument.

Victim compensation under The Code of Criminal Procedure, 1973

WHERE CONVICTION AND FINE IS PART OF THE SENTENCE

When an accused is proven guilty, and the court passes an order which contains a fine of any denomination, the court can order such fine or any part of it to be paid to the victim of crime. The fine imposed is utilised to compensate the victim of crime in the following ways.

#1 Compensating for the expenses incurred during litigation (357 1 a)

- This is the essential relief which a victim of a crime must get. Litigation costs in India are very arbitrary. The lawyer charges hefty amount. Getting justice at times adds to the burden of the victim itself. Instead of getting justice, the victim is trapped in the honeycomb of justice delivery system.
- The court knows this fact and thus, compensate victim by providing them the expenses incurred during litigation.

#2 Compensation for loss or injury to be recovered by the civil court

- If the court is of the view that, the compensation sought is beyond the jurisdiction of the court, the court itself orders the appropriate court to look into the matter.
- In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court.

#3 Compensation in case of death

- One might question the fact that, who is the victim where death has been caused? As the victim is already dead, who should be compensated for the crime?
- It is the family of the victim. Think of the mental trauma they might have gone through. Medical expenses incurred, expenses during last rites. What if the victim who died was the sole bread earner of the family?
- The Court is well aware of such situation. Therefore, the legislature and the judiciary tied their hands to do complete justice.
- Victims are entitled to recover damages from the person sentenced for the loss resulting to them from such death. When any person is convicted of any offence for having caused the lives of another person or of having abetted the commission of such a crime.

#4 Compensation of victim of crime in offences like theft, cheating, criminal breach of trust, etc

In cases of crime such as theft, cheating, criminal breach of trust, criminal misappropriation, the Court either tries for recovery of goods and in the case where recovery is not possible court orders for compensation for the price of such goods.

COMPENSATION WHERE FINE IS NOT A PART OF THE SENTENCE

The accused person in such case may be ordered by the court to pay a certain sum as compensation to the victim of crime who suffered loss or injury. Indian legal system is victim friendly. Victim's rights are kept at the top of the priority list.

When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

VICTIM COMPENSATION SCHEME

In 2009, the central government gave directions to every state to prepare a scheme which has to be in agreement with the center's scheme for victim compensation. The primary purpose of the scheme is to provide funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

Quantum of compensation under the scheme

It is the court which orders that the victim who suffered loss needs to get compensated. Under the scheme, whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, decides the quantum of compensation to be awarded.

Compensation in cases where the accused is not found guilty or the culprits are not traced

Where the cases end in acquittal or are discharged, and the victim has to be rehabilitated, the court may make a recommendation for compensation.

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

Who is to provide compensation in the above case

- The State or the District Legal Services Authority shall, after due enquiry-award adequate compensation by completing the inquiry within two months.
- Also, it is the duty of the State or the district legal service authority to provide an immediate first-aid facility or medical benefits to the victim free of cost on the certificate of the police.

Treatment of victim of crime

All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under the following of the Indian Penal Code,

- 376 (Rape)
- 376A (intercourse by a man with his wife during separation)
- 376 B (intercourse by a public servant with a woman in his custody), 376 C (Intercourse by superintendent of jail or a remand home), 376 D (intercourse by any member of the staff of a hospital with any woman in that hospital) of the Indian Penal Code.
- 376 C (Intercourse by superintendent of jail or a remand home),
- 376 D (intercourse by any member of the staff of a hospital with any woman in that hospital) of the Indian Penal Code

What to do in case of inadequate compensation

If the trial Court, at the conclusion of the hearing, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make a recommendation for compensation.

When is the compensation to be provided

- Along with the duty of the offender, it is the duty of the state too, to compensate the victim. Compensation to the victim of crime can be provided:
- At the conclusion of the trial. That is on the orders of the court.
- When inadequate compensation is granted by the lower court to the victim of crime, the Appellate Court might increase the compensation.
- Where accused is not traceable, it becomes the duty of the state to compensate the victim of the crime.

CENTRAL VICTIM COMPENSATION FUND SCHEME

The Central government in 2015 formulated the CVCF scheme to compensate the determined. Every state has their own guidelines which decide the procedure.

An attempt has been made by iPleaders to bring forth the procedure by examining different scheme of the different states. This is a standard procedure which one might follow. To know the exact step by step procedure, please see your state's guidelines on Victim compensation fund.

Step 1 Making an application before the District/State Legal Service Authority

- An application can be made for temporary or final compensation. It can be filed by the Victims or their dependents or the SHO of the area.
- The application must be submitted along with a copy of the First Information Report (FIR), medical report, death certificate, if available, copy of judgment/ recommendation of court if the trial is over, to the State or District Legal Services Authority

Step 2 The scrutiny stage.

District Legal Service Authority of every state first verify the content of the claim. Specific loss, injury, rehabilitation is taken into consideration.

Step 3 Deciding the quantum of compensation to be given to victim of crime

The quantum of compensation to be granted is decided on the following factors,

- The gravity of the offence and the loss suffered by the victim.
- Medical expenditure incurred during treatment.
- Loss of livelihood as a result of injury or trauma.
- Whether the crime was a single isolated event (Example Theft) or whether it took place over an extended period of time (Example multiple times, Rape with a woman who has been locked in a house)
- Whether the victim became pregnant as a result of such offence.
- In the case of death, the age of deceased, his monthly income, the number of dependents, life expectancy, future promotional/growth prospects etc.
- Or any other factor which the Legal Service Authority might deem fit.

Step 4 Method of disbursement of compensation

- The amount of compensation so awarded shall be disbursed by the respective Legal Service Authority by depositing the same in a Nationalized Bank in the joint or single name of the victim/dependent(s).
- Out of the amount so deposited, 75% (seventy-five percent) of the same shall be put in a fixed deposit for a minimum period of three years.
- The remaining 25% (twenty-five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.
- In the case of a minor, 80% of the amount of compensation so awarded, shall be deposited in the fixed deposit account and shall be drawn only on attainment of the age of majority, but not before three years of the deposit

HERE IS A LIST OF MINIMUM COMPENSATION TO BE PROVIDED TO VICTIM OF A CRIME. THIS LIST IS AS PER THE NOTIFICATION BY THE CENTRAL GOVERNMENT ON CVCF SCHEME.

The amount of compensation will increase by 50% if the victim is below 14 years of age

Where to complain when the compensation is released by the authority, but the same has not reached in the hands of the victim

- This is an unforeseen situation which can further worsen the condition of the victim.
- Where the funds are released, but the allotted fund has not reached to the victim, it is preferred to go in person to the District/Legal Service Authority and complain the same. The Legal Service Authority might ask you to inquiry the same with the bank authorities. Do as advised by the Legal Service Authority.
- District/Legal Service Authority is designed to help the people, and they are performing their duty well. But if the issue is not redressed yet, there is no other option left than to fight another legal battle.
- It is advised to file a writ petition in the High Court under Article 226 of the Indian Constitution.

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https://t.me/joinchat/J_0YrBa4IBSHdpuTfQO_sA

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