

Status of the Crime Victim in the Criminal Justice System in India: With Special Reference to Uttar Pradesh Victim Compensation Scheme 2014

2

Vijay Kr. Bhaskar*
Dr. Preeti Misra**

Introduction

The victim occupies an uncomfortable position in the criminal justice system. In one sense, the victim is the central agent in this process. Victim is the party most directly affected by the criminal act. The justification for a system of criminal liability, however, almost totally marginalises the role of the victim in the criminal justice system. On one view, the reason that the state conducts criminal proceedings is that criminal conduct is regarded as being so morally offensive and socially and economically damaging that it is injurious to the entire community. On this basis, the victim is effectively relegated to mere witness status.

From the advent of the judicial system it has been established that purpose it is to discover, exonerate and establish the truth before the courts of justice. The operative principle of judicial system is fair trial and justice to the accused and the victim of crime. Where an offence is committed, application of this principle involves a delicate judicial balancing of competing interests of the accused, the public and the victim. If an accused

**Research Scholar Law*

***Associate Prof. Dept. of Human Rights, School for Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow*

is found guilty, he is convicted and sentenced to bear punishment. Is there end of the purpose of criminal justice? What about the crime victims?

Traditionally, it may have been sufficient that the criminal is caught and punished. But, the unlike traditional approach according to which offender is caught and bring before the court, tried and punished, modern approach focus on the victims of crime too. Certain rights of victim is also recognised although Rights of accused is kept utmost on top the criminal justice system. A fair and just trial, humane treatment of prisoner , humane jail conditions and rehabilitation are some of them. But what about the crime victims? What is the status of crime Victims in the Criminal Justice system? While the accused is protected with all the resources available at the expenditure of the State, the victim is left to look after himself with little or no support from the State machinery.

Since last several years, some amendments have been introduced in criminal laws in India giving some rights to crime victims at different stages of criminal justice system. But in India, status of crime victims in criminal justice system in India is inadequate and requires legislative reform. Except in few matters, victim is not a necessary party in criminal revisions, appeals or writs filed by accused. Although crime victim has right to oppose the release of accused on bail but victim has no right or status to be informed. Victim's evidence is necessary for recording conviction of accused. Victim has no right to be informed for hearing on the point of sentence. Victim is entitled to get compensation but before determination of compensation and has no vested right to be heard. A victim has no status to participate in the trial. There are distinct status of judge, prosecutor, defence lawyer and accused but no place has been assigned to victim in a court room to watch or to be participation

in the progress of trial.

Definition of the word ‘victim’ inserted by *Criminal Laws (amendment act 2008) in Code of Criminal Procedure* which is read as:

Section 2(wa) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir;’.

is quite narrower than that of *the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (DBPJVCAP)* adopted by the United Nations General Assembly in its resolution no. 40/34 dated 29th November, 1985 which provides that –

1. “Victims” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

Identification of offender and his prosecution has been purposely avoided to be used in this definition in order to make it more wider and beneficial to victims.

In time immemorial, victim of crime was at centre point of the criminal administration. Victim's will was paramount. Historically, laws serves the purposes of private retribution, reflecting public opinion, deterring criminal acts, punishing offenders, and providing socioeconomic control. Of the several law codes surviving from the ancient Middle East, the most famous after the Hebrew Torah is the Code of Hammurabi, sixth king of the Amorite Dynasty of Old Babylon, describe how punishments are administered according to the social status of the attacker and the satisfaction of victim. During the period known as the *Pax Romana*, Roman law affected most of the civilized world, including England. These laws were derived from the Twelve Tables, which were written in about 450 B.C.E.¹ Toward the end of the middle ages, however the institution of compensation began to lose its force, due to the simultaneous growth of Royal and Ecclesiastical power which lead to a sharp distinction between tort and crime. The concept of compensation was closely related to that of punishment and it was merged to some extent in the penal law, but at the same time, a number of offences like robbery, murder and rape were no longer regarded as torts which could be settled by compensation, but were regarded as crime against society and were punishable as such. Gradually as the state monopolized the institution of punishment the rights of the injured were separated from the penal law and the obligation to pay compensation or damages become a part of the civil procedure. There were references in the *Manusmriti*² compensation being paid to victims of crime.

Internationally, the liability to compensate the crime victim is responsibility of state and hence the focus is about

identification of victim and the harm caused to him. Unlike in other countries in which liability to compensation and rehabilitation is prime responsibility is on state. In India, the offender has to compensate the crime victim and therefore successful prosecution is necessary.

Section 2(wa) of Cr.P.C provides that “victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir. Use of the word “for which the accused person has been charged” in this definition makes the legislative intention clear.

Specific provision for compensation to victim was inserted in Section 357 in on the recommendation of the Law Commission in its Forty-first Report (1969) in Cr.P.C. as

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

(2) Whenever 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, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

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

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or

his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”.

This provision states that “Court may award compensation to victims of crime at the time of passing of the judgment, if it considers it appropriate in a particular case, in the interest of justice”. A similar provision in the The Probation of Offenders Act, 1958 may be found though it is applicable only in cases where offenders are directed to be released on probation. However, awarding compensation under these provision depends on conviction of accused and we all are aware that rate of conviction in India is quite low due to various reasons and the convictions are subject to appeals and revisions which is a time taking process. Thus section 357 Cr.P.C or similar provision in Probation of Offenders Act are quite inadequate and the delay in making it available to the crime victim would itself defeat the purpose. The other statutes in India making provisions for compensation to victims are Workman Compensation Act, Fatal Accidents Act, Motor Vehicles Act and Domestic Violence Act, which provides that wrong doer or his master have to pay compensation to victims. Insertion of S. 357A in the Cr.P.C. by Amendment Act, 2008 and the Uttar Pradesh

Victim Compensation Scheme 2014³ are adorable. Which fix responsibility steps where the responsibility of state for compensation and rehabilitation of victim irrespective of identification and prosecution of accused have been acknowledged. The beneficial provisions of this scheme will be discussed in detail separately at later part of this article.

Rights & Status of Crime Victims

In the resolution of UN General Assembly in the year 1985 four rights of crime victims has been recognized, which are-

1. Access to justice and fair treatment,
2. Restitution,
3. Compensation and
4. Assistance.

However, the Indian law is mainly focused about payment of compensation to victims of crime as well as rehabilitation and giving some financial assistance to him. In the Criminal Procedure the status of crime victims about access to justice and fair treatment may be concluded in the four different stages of criminal justice system, i.e.-

1. Right to lodge FIR or complaint.
2. Right and status of victim during investigation
3. Right and status of victim during trial and
4. Right and status after judgment

1. Right to lodge FIR or complaint.

The crime victim is not distinguished from any person as a matter of right to set the criminal justice system in motion. However in respect of offences relating to marriage, dowry torture and defamation the victim as aggrieved party has been given exclusive right to file complaint. Some privileges have been given to victims of rape and cognate offences. If such victim

is physically or mentally handicap than her statement shall be recorded by lady police officer or lady officer at a place convenient to such victim. It has been further provided that statement of lady as informant or witness during investigation shall be recorded by lady police officer or lady officer. But all such provisions mainly relate to gender justice and protection of the dignity and privacy of ladies. The hardship of general public including crime victim in lodging FIR, *vis a vis*, harassing attitude of police officers in institution of a case, even after an order u/s-156(3) Cr.P.C. by a Magistrate came to consideration of Hon'ble Supreme Court in a case *Lalita Kumari Vs State of U.P.* ⁴ Three interim judgments have been reported so far, in relation to the said case. Due to conflicting opinion in several cases as to whether a police officer has option to do some preliminary inquiry before lodging an FIR, the matter has been referred to larger bench in Hon'ble Supreme Court and clear verdict in that respect is awaited.

While a crime victim is engaged in his treatment or is under shock and terror, some other person may get first opportunity to lodge FIR about an occurrence. In such a situation, the limited status of victim is further curtailed. Some times, the real culprit lodges FIR of the occurrence with concocted or different story and it causes hardship to poor victim in institution of FIR of cross case. If the police submit final report after investigation, notice is mostly issued to the informant of the case, and the crime victim, if not informant, remains unaware about the result of the investigation. In criminal revisions, appeals, and writ petitions filed by accused, the informant is mostly impleaded as opposite party. If the law is amended that after receiving any information of occurrence from any person other than crime victim, the officer-in-charge of the police station, shall enter such information in the station diary and

proceed to search & take statement of victim of crime also, which may be made the basis of FIR, it will naturally strengthen the status of crime victim in criminal justice system and his right of access to justice and fair treatment may be ensured to some extent.

2. Right & Status of Victim During Investigation

A crime victim has no right or status during investigation of a case. At the investigation stage criminal court has no right to interfere in the investigation proceeding. The victim cannot withdraw a case at investigation stage. Investigation officer cannot be compelled to record victim or other witnesses statement under section 164 Cr.P.C. Neither court can compel investigation process. In *Union of India vs. Prakash P. Hinduja and another*⁵, it has been observed by the Court that a Magistrate cannot interfere with the investigation by the police. However, court observed, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, victim can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though victim should not himself investigate).

However according to Section 36 Cr.P.C. if a person is aggrieved that a proper investigation has not been made by the officer-in-charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer-in-charge of the police station and such superior officer can do the investigation vide *CBI vs. State of Rajasthan and another*⁶. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence

registered at a police station

The investigation agencies have been given such a wide and unrestrained powers in investigation. But the experience show that criminal cases mostly fail due to delay, latches and improper investigation. Hon'ble Courts in various rulings has observed about such lapses in investigation which was proved to be fatal in criminal trial. If the prosecution fails due to faulty investigation, it is near impossible to the crime victim to get justice. If the police has been given such a wide and unfettered discretion in investigation, why not there be a clear provision fixing liability on state to compensate the crime victim if the prosecution fails due to latches in investigation. Moreover, liberty should be given to state to reimburse itself by realizing the amount of compensation from the erring IO. At this stage, the interpretation of Hon'ble Supreme Court in judgment delivered in *Sakiri Vasu Vs State of U.P.*⁷ may be quoted wherein the Apex Court observed that-

Section 156(3) Cr.P.C. which gives power to a magistrate to order for registration of a case and investigation, on a complaint filed by a crime victim, also gives him power, by necessary implication to monitor such investigation.

The interpretation given in the said ruling need detailed consideration by the Law Commission. Whether the powers of monitoring investigation are available only in respect of cases instituted under orders u/s 156(3) Cr.P.C. or it may be exercised in respect of other investigations also is a moot question for clear interpretation and legal provision. It is high time that Law Commission should carefully examine and recommend incorporation of a clear provision in this respect in Cr.P.C. The victim may oppose bail or release of any property seized during investigation, or oppose the prayer of accused in criminal

revision, appeal and writs filed, but victim has no status to be necessarily informed by court, when such an applications are filed by accused. In case of, the crime victim is not the informant in FIR, victim is not entitled to get information case proceeding and thus after institution of FIR, the victim has no alternative but to get by other methods.

3. Rights & Status of Victim During Trial

The status of crime victim in criminal trial is quite limited. Victim may compromise a compoundable case or withdraw petty cases instituted by him. Victim may apply for release of property seized in the case. Victim may appoint a lawyer to assist the prosecution. Victim is an important witness for successful prosecution. Victim has right to file criminal revision against an order passed in criminal trial and right to file appeal, in case of acquittal of an accused or inadequate sentence or compensation. However, a victim of crime has not been assigned any place in the court room to watch the trial even after his evidence is recorded in such trial. Even in complaint cases disclosing commission of offences exclusively triable by session court, the crime victim has no status in prosecution of the case before the session court and victim may only engage a lawyer to assist the prosecutor. Victim has no right to be informed at the time of hearing on the point of charge or imposition of sentence, after conviction of the accused nor Victim need to be informed at the time of quantifying the compensation to be paid, if any. If right of filing caveat to give opportunity of hearing at such stages bail etc be given to the crime victims, it may be acknowledgement of his right of fair treatment in criminal justice system. The crime victim has also been given right during trial to plea bargain with accused. However plea bargain is not so much encouraged due to various technicality. Under such circumstances, the accused persons

prefer to bargain with the crime victims outside the court and the courts remain unaware as to whether the crime victim has properly been compensated or not.

In spite of right of privacy, recording of evidence in camera and non-publication of rape victim identity in any manner either by media or in judgment, a victim of rape is mostly threatened by the accused persons to be defamed in society. In most of the rape cases, the victims show reluctance in attending court for giving evidence due to social compulsion. Although there is provision of Section 228A prohibit the disclosure of name or identity or any matter of which may make the identity of the person against whom the rape is committed and in violation of this punishment of imprisonment for term which may extend to two year fine, identity of rape victim is subjected to disclosure to society indirectly.

4.Rights & Status of Victim after Judgment

Where the accused is convicted after trial, the victim need not be necessarily heard on the point of sentence though if victim is present, the court may hear him also. The historical position in India was much better where the victim was given right to opt the final punishment to be awarded to the accused.

There are two important rights of victim, after pronouncement of judgment. Victim may file a criminal appeal against the judgment of acquittal and also against inadequate sentence or compensation and victim has right to get compensation. The amount of compensation should be in proportion to the harm and sufferings of victim and must be paid by state immediately. Liberty may be given to state to reimburse itself from the estate of offender. Necessity in this respect, though quite late, was realized by parliament and by the code of criminal Procedure (Amendment) Act 2008, a very important and long awaited provision was inserted in Cr.P.C. as section 357A²² *Sec.*

357A. . The amendment in the section provides about creating victim compensation fund for the purpose of compensation to the victim or his dependents loss or injury as a result of the crime and who, require rehabilitation and District Legal Service Authority has been given responsibility to decide the quantum of compensation to be awarded. The section further provides about awarding compensation irrespective of acquittal or discharge of accused and even in such cases where the offender is not identified or traceable. In pursuance to it states of India incorporated the victim compensation scheme for compensation, assistance and rehabilitation with variable magnitude. There is lack of consistency with regard to the compensation amount and recognition of the offence.³

The Uttar Pradesh Victim Compensation Scheme 2014

The victim in the scheme is defined as in point 1 (d) as

*“Victim” means a person who himself has suffered loss or injury as a result of the crime and requires rehabilitation, and includes his dependent family members;*⁴⁴

A Victim Compensation Fund is established under the scheme for which State Government shall allot a separate budget for the purpose of the Scheme every year. Amount of compensation under this Scheme shall be paid to the victim or his dependents who have suffered loss or injury as result of the crime and who require rehabilitation. The Fund shall be operated by the Secretary, State Legal Services Authority.

A victim shall be eligible for the grant of compensation in case if the offender is not traced or identified, but the victim is identified and where no trial takes place; such victim may also apply for grant of compensation under sub section (4) of section 357-A of the Act.

The victim/claimant required to reports the crime to the officer-in-charge of the police station within 48 hours of the

occurrence or any senior police officer or Executive Magistrate or Judicial Magistrate of the area . The delay in reporting may condone for satisfying reason to the District Legal Services Authority. Cooperation of the victim/claimant is sought during the investigation and trial of the case with the police and the prosecution.

Procedure of claim for compensation

On a recommendation made by the Court or an application made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Services Authority (DLA), the DLA shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported offence and may call for any other relevant information necessary in order to determine genuineness of the claim.

Limitation

The DLA shall, after due enquiry, award compensation within two months from the date of receipt of the recommendation of the court of the receipt of application under sub-section (4) of section 357-A of the Act in accordance with the provisions of this Scheme.

Compensation under this Scheme shall be under the condition that if the trial court, while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation or the amount ordered to be paid under the said sub-section (3) whichever is less.

Compensation and Restitution

The District Legal Services Authority shall decide the quantum of compensation consist medical expenses incurred on treatment, sustenance amount required for rehabilitation

including such incidental charges as funeral expenses etc. Details of compensation amount are as follows in Schedule I in particular cases:-

Particulars of loss or injury	Maximum limit of compensation
1 Rape	Rs. 2,00,000/-
2 Loss or injury causing severe mental agony to the victim of the crime	Rs. 1,00,000/-
3 Victim of corrosive substance i.e. Acid attack etc.	Rs: 3,00,000/-
4 Death (Non-earning member)	Rs. 1,50,000/-
5 Death (Earning member)	Rs. 2,00,000/-
6 Victim of Human Trafficking	Rs. 2,00,000/-

Keeping in view the particular vulnerabilities and special needs of the affected person in certain cases, the District Legal Services Authority or the State Legal Services Authority, as the case may be, will have the power to provide additional assistance of Rs. 25,000/- subject to maximum of Rs. 1,00,000/-, in the cases where:

- (a) The affected person is a minor girl requiring specialized treatment and care;
- (b) The person is mentally challenged requiring specialized treatment and care;
- (c) Any other case as may be deemed fit by the Legal Services Authority concerned.

Compensation covered under the Motor Vehicles Act, 1983 is excluded from this scheme.

Conclusion

A simple amendment in Criminal Procedure Code giving right to crime victims to right to participation and right to be heard is not adequately incorporated. There is need to hear victim

at every step of criminal justice along with the accused. Right of victim should also be added in the constitutional law.

Hence, it could be concluded that although some rights have been granted to victims in Indian criminal justice system but still more is required, to give such crime victims a fair and respectable status. Compensation amount is not sufficient in the Uttar Pradesh Victim Compensation Scheme 2014 and it should reassessed according to need.

References

¹ <http://ualr.edu/avaa/uploads/2010/07/History%20of%20Crime.pdf> accessed on 02/02/2015

² Girja Prasad Dvivedi, "Manusmriti", Nawal Kishore Press, 1st Ed., 1917

³ wide notification No.-653/VI-P-9-2014-31(90)/2010. Lucknow, Dated 09 April 2014

⁴ U.P. 2012(2) SCC (Cri) 1

⁵ 2003 (6) SCC 195 (vide para 13)

⁶ 2001 (3) SCC 333 (vide para 11)

⁷ Appeal (crl.) 1685 of 2007

⁸ Indian Penal Code section 228A. Disclosure of identity of the victim of certain offences etc.—

(1) Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under section 376, section 376A, section 376B, section 376C or section 376D is alleged or found to have been committed (hereafter in this section referred to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of the victim if such printing or publication is—

(a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or

(b) by, or with the authorisation in writing of, the victim; or

(c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim:

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or organisation.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceeding before a court with respect to an offence referred to in sub-section (1) without the previous permission of such Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation.—The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

⁹ Sec. 357A. [Inserted by Code of Criminal Procedure Amendment Act, 2008]

Victim compensation scheme. –

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

(2) Whenever 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, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and

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

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

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.”]

¹⁰ <http://mha1.nic.in/par2013/AnnexLSQNo203For220714.PDF> (all notification of victim compensation schemes applicable in states of India.) accessed on 28/01/2015

¹¹ **THE UTTAR PRADESH VICTIM COMPENSATION SCHEME 2014**

1 In this Scheme, unless the context otherwise requires,

(a) “Act” means the Code of Criminal Procedure, 1973 (Act No.-2 of 1974);

(b). “Schedule” means the Schedule appended to this Scheme;

(c) “State” means the State of Uttar Pradesh;

(d) “Victim” means a person who himself has suffered loss or injury as a result of the crime and requires rehabilitation, and includes his dependent family members;

(e) “District Legal Services Authority” means the District Authority constituted under Section 9 of the Legal Services Authorities Act, 1987.

(f) "State Legal Services Authority" means the State Authority constituted under section 6 of the Legal Services Authorities Act, 1987.

3. (1) There shall be established a fund namely Victim Compensation Fund from which amount of compensation under this Scheme shall be paid to the victim or his dependents who have suffered loss or injury as result of the crime and who require rehabilitation.

(2) The State Government shall allot a separate budget for the purpose of the Scheme every year.

(3) The Fund shall be operated by the Secretary, State Legal Services Authority.

4. A victim shall be eligible for the grant of compensation if :

(a) the offender is not traced or identified, but the victim is identified and where no trial takes place; such victim may also apply for grant of compensation under sub section (4) of section 357-A of the Act;

(b) the victim/claimant reports the crime to the officer-in-charge of the police station within 48 hours of the occurrence or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the victim/claimant cooperates with the police and the prosecution during the investigation and trial of the case.

5. (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After verifying the claim, the District Legal Services Authority shall, after due enquiry, award compensation within

two months from the date of receipt of the recommendation of the court of the receipt of application under sub-section (4) of section 357-A of the Act in accordance with the provisions of this Scheme.

(2) Compensation under this Scheme shall be paid subject to the condition. that if the trial court, while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation or the amount ordered to be paid under the said sub-section (3) whichever is less. An undertaking to this effect shall be given by the victim/ claimant before the distribution of the compensation amount.

(3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on the facts of each case.

(4) Keeping in view the particular vulnerabilities and special needs of the affected person in certain cases, the District Legal Services Authority or the State Legal Services Authority, as the case may be, will have the power to provide additional assistance of Rs. 25,000/- subject to maximum of Rs. 1,00,000/-, in the cases where:

(a) The affected person is a minor girl requiring specialized treatment and care;

(b) The person is mentally challenged requiring specialized treatment and care;

(c) Any other case as may be deemed fit by the Legal Services Authority concerned.

(5) The quantum of compensation to be awarded to the victim or his dependents shall not exceed the limit as per Schedule-I.

(6) The amount of compensation decided under the Scheme shall be disbursed to the -victim or his dependents, as the case may be, from the Fund. The interim or final financial assistance, as the case may be, shall be remitted to the bank account of the applicant preferably within a week. In cases where the person affected is a minor, the amount shall be remitted to the bank account of his parent or guardian after

the Authority concerned is satisfied about the proper utilization of the amount of compensation.

(7) Compensation received by the -victim from the State in relation to the crime in question, namely, insurance, ex gratia and/or payment received under any other Act or State-run Scheme, shall be considered as part of the compensation amount under this Scheme and if the due compensation amount exceeds the payments -received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the fund.

(8) The-cases covered under the Motor Vehicles Act, 1988 (Act no.- 59 of 1988) compensation is to be awarded by the Motor ,Accident Claims Tribunal, shall not be covered under this Scheme.

(9)-The District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer-in-charge of the police station or the Magistrate of the area concerned. The district Legal Services may order for any other interim relief as it may deem fit.

6. While determining the compensation and rehabilitation services to be provided on the basis of the restorative needs of the affected person, the Authority shall be guided by the following factors

(a) Type and severity of the '6- odily • injury suffered by the affected person and expenditure incurred or likely to be incurred on victim's medical treatment and psychological counselling.

(b) Age and financial condition of the affected person so as to determine the need for this education or professional or vocational training, as the case may be.

(c) Non-pecuniary loss entailing suffering, mental or emotional trauma or humiliation faced.

(d) Expenses incurred in connection with provision of any alternate accommodation in cases where the affected person resides in a place other than where the offence was committed and the FIR has been recorded and/or criminal trial initiated.

7. Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial court .to enable the court to pass order of compensation under sub-section (3) of section 35'7 of die Act.

8. No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of six months of the crime: Provided that the District Legal State Service Authority, if satisfied for toe reasons to be recorded m writing, may condone the delay in filing any claim.

9. Any victim aggrieved of the denial of compensation by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days Provided that the State Legal Services. Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the appeal.