

THE RIGHT TO JUSTICE FOR VICTIMS OF CRIMINAL INJURIES BILL

A BILL

to provide assistance to victims of criminal injuries and crime and for that purpose to constitute Criminal Victim Assistance Authorities and for matters connected therewith or incidental thereto.

WHEREAS the General Assembly of the United Nations by its Resolution No.40/34 dated 29th November, 1985, adopted a Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, which among other things, provided as Basic Principles that criminal offenders should make fair restitution to Victims or their families and the State should provide monetary compensation to victims who suffer serious mental or physical injury for which a State fund should be set up in cases where compensation is not fully available from the offenders.

And WHEREAS Article 41 of the Constitution of India, which is included in Part- IV— Directive Principles of State Policy, enjoins that the State shall make effective provision for securing, among other things, the right to public assistance in cases of undeserved want;

And WHEREAS the existing laws do not adequately provide for assistance to victims of crimes;

BE it enacted in the fifty ninth year of the Republic of India.

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called The Right to Justice for Victims of Criminal Injuries Act, —.

(2) It extends to the whole of the State.

(3) it shall come into force on such date as the State Government, may, by, notification, appoint.

2. Definitions and Interpretation.—(1) In this Act, unless the context otherwise requires—

(a) “Assistance” means the amount determined to be payable to a claimant by any of the Authorities under this Act, either in the form of financial

assistance or by way of legal or medical aid, or in any other manner;

(b) “Authority” means any authority constituted under this Act to receive any claims for assistance under this Act;

(c) “Claimant” means any crime victim or a dependent thereof who applies for assistance under this Act;

(d) “Crime victims” means persons who, individually or collectively, have suffered personal injury or death as a result of:—

(i) crimes of violence such as culpable homicide, grievous hurt, assault, rape, robbery, dacoity, rioting, wrongful confinement, kidnapping, arson, terrorist attacks, dowry related crimes including offences committed by public servants;

(ii) a good faith effort by the victim to prevent the commission of the crime; and

(iii) a good faith effort by the person to apprehend another, suspected of being engaged in committing a crime.

(e) “Dependent” means any individual who is, or had been, dependent, solely or otherwise on the crime victim for care, support and sustenance, and includes a spouse, the children or the parents of the crime victim; (f) “District Authority” means a District Crime Victim Assistance Authority designated under Section 6;

(g) “Notification” means a notification published in the Official Gazette;

(h) “Person” means and includes an individual, group of individuals whether incorporated or not any institution, or organisation, or any other entity by whatever name called;

(i) “Prescribed” means prescribed by rules made under this Act;

(j) “Regulation” means a regulation made under this Act;

(k) “Scheme” means any scheme framed by the State, or district Authority for the purpose of giving effect to the provisions of this Act;

(l) “State Authority” means a State Crime Victim Assistance Authority designated under Section 3;

(2) Any reference in this Act to any other enactment or any provision thereof in relation to an area in which such enactment or provision is not in force shall be constructed as a

reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

(3) Where any question arises as to the interpretation of any of the provisions of this Act, it shall be construed liberally and in favour of the crime victim or his dependent.

CHAPTER II STATE CRIME VICTIMS ASSISTANCE AUTHORITY

3. *Designation of State Legal Services Authority to be State Authorities.*— State Government shall designate the State Legal Services Authority constituted under the Kerala State Legal Service Authorities Act, 1987 in this State also to be the State Crime Victims Assistance Authority under this Act to exercise the powers and perform the functions conferred on a State Authority under this Act.

4. *Functions of the State Authority.*—The State Authority shall perform all or any of the following functions, namely –

- (a) give assistance to crime victims or their dependents who satisfy the criteria laid down under this Act;
- (b) frame scheme or schemes for the effective rendering of assistance under this Act;
- (c) conduct such research or other special studies as it may consider necessary in the field of victim assistance generally;
- (d) perform such other functions as the State Government may confer by notification or regulation to it from time to time.

5. *State Authority to act in coordination with other agencies and be subject to the directions given by the Government etc.*—In the discharge of its functions under this Act, the State Authority shall, wherever appropriate, act in coordination with other Governmental agencies, and non-Governmental voluntary social welfare institutions, agencies and other persons engaged in rendering assistance to crime victims and be guided by such directions as the State government may give to it in writing.

6. *Designation of District Authorities.*—State Government shall designate the District Legal Services Authority constituted under the 1987 Act for a District to be the District Crime Victim Assistance Authority for that District to exercise the powers and perform the functions conferred on a District Authority under this Act.

7. Functions of the District Authority.—(1) It shall be the duty of every District Authority to perform such of the functions of the State authority in the District as may be delegated to it from time to time by the State Authority.

(2) Without prejudice to the generality of the functions referred to in subsection (1), the District Authority may perform all or any of the following functions, namely,

(a) Co-ordinate the activities of crime victim assistance in the District;

(b) Implement the scheme or schemes framed by the State Authority under this Act;

(c) Perform such other functions as the State Authority may in consultation with the State Government, fix by regulations.

8. District Authority to act in coordination with other agencies and be subject to directions given by the State Authority.—In the discharge of its functions under this Act, a District Authority, shall wherever appropriate, act in coordination with other Governmental and non-governmental institutions, Universities and others engaged in the work of rendering assistance to crime victims and shall also be guided by such directions as the State Authority may give to it in writing.

CHAPTER III

QUALIFICATIONS FOR ASSISTANCE

9. Eligibility for Assistance.—(1) Every crime victim or his dependent shall be qualified to receive such assistance, either in the form of financial assistance or by way of legal or medical aid or both, or in any other manner as may be determined by the Authority, after satisfying itself that the death occurred or injury suffered by a crime victim is a direct consequence of crime irrespective of whether a conviction has been recorded by a court, in accordance with the principles specified in the schedule and after taking into account the matters specified in sub-section (2).

(2) The Authority shall, while determining the assistance to be paid under this Act, take into account the following matters, namely:—

(a) the financial status of the crime victim or the dependent;

(b) any compensation received or receivable under any other law in respect of the same offence;

(c) the age of the crime victim or the dependent;

(d) the assistance rendered by the crime victim or the dependent in the filing of a complaint to the police or the investigation or trial of any proceedings in relation to the crime;

(e) any other act which, in the opinion of the Authority, makes it fair or unfair to order any assistance.

(3) Nothing in the foregoing provisions of this section shall prevent any Authority from exercising its inherent power to render any assistance in a fit case or order any interim assistance if it considers it necessary or expedient to do so.

10. *Details of application.*—(1) An application for getting assistance under this Act to the concerned Authority shall be made by the crime victim or dependent or any police investigating the case or any agency interested or doing voluntary service in rendering assistance to criminal victims in the prescribed form along with an affidavit made by him indicating such particulars as may be prescribed.

(2) The Authority shall in the determination of assistance take into account the matters specified in the affidavit unless it has reason to believe such affidavit.

(3) Where an Authority decides to render assistance under this Act, it shall also decide the source which may also include the offender from which such assistance is to be given.

CHAPTER IV

FINANCE ACCOUNTS AND AUDIT

11. *State Fund for Crime Victim Assistance.*—(1) The State Authority shall establish a fund to be called the State Fund for Crime Victim Assistance and there shall be credited thereto:

(a) any grants or donations that may be made to the State Authority by the State Government or by any person for the purpose of this Act;

(b) any other amount received by the State Authority under the orders of any court or from any other source.

(2) The State Fund for Crime Victim Assistance shall be applied for meeting—

(a) the assistance payable under the provisions of this Act;

(b) any other expenses which are required to be met by the State Authority.

12. *District Fund for Crime Victim Assistance.*—(1) Every District Authority shall establish a fund to be called a District Fund for Crime Victim Assistance and there shall be credited thereto –

- (a) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;
 - (b) any grants or donations that may be made to the District Authority by any person for the purposes of this Act;
 - (c) any other amount received by the District Authority under the orders of any court or from any other source.
- (2) The District Fund for Crime Victim Assistance shall be applied for meeting—
- (a) the assistance payable under this Act;
 - (b) any other expense which is required to be made by the District Authority.

13. *Accounts and Audit.*—(1) The State Authority or the District Authority, as the case may be, shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance sheet in such form and in such manner as may be prescribed by the State Government in consultation with the Accountant General of the State.

(2) The accounts of the Authorities shall be audited by the Accountant General of State at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority concerned to the Accountant General of State.

(3) The Accountant General of State and any other person appointed by him in connection with the auditing of the accounts of an authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Auditor General of State has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authorities under this Act.

(4) The accounts of the authorities, as certified by the Accountant General of State or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually by the Authorities to the State Government.

CHAPTER V

MISCELLANEOUS

14. *Members and Staff of Authorities to be public servant.*—The Members of the State Authorities and the District Authorities, and officers and other employees provided to

such Authorities shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

15. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against the State Government or against the Chairman or any other member of any State or District Authority or any other person authorized by such Chairman or other member for anything which is in good faith done or intended to be done under the provisions of this Act or any rule, regulation or order made thereunder.

16. *Act to have overriding effect.*—Subject to the provisions of Section 17, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

17. *Act not to affect right conferred under other acts.*—Nothing in this Act shall be construed to preclude the right of the crime victim to apply for assistance under any law for the time being in force.

18. *Power of the State Government to make rules.*—A State Government may, by notification, make rules to provide for any matter, not being matter specified in Section 17, in respect of which rules are required to be made by the Central Government under this Act.

19. *Power to make regulations.*—The State Authority may, by notification, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters in respect of which regulations are required to be made by the State Authority under this Act.

20. *Power to make schemes.*—The State Authority may make one or more schemes in respect of matters for subsidy if schemes are required to be made under this Act and the rules made thereunder, to provide for all matters in respect of which regulations are required to be made by the State Authority under this Act.

21. *Laying of rules and regulations.*—(1) Every rule made under this Act by a State Government and every regulation made by a State Authority thereunder shall be laid as soon as may be after it is made, before the State Legislature.

22. *Power to conduct independent investigation.*—Nothing in this Act shall prevent any authority to make an independent investigation or enquiry by the members of the Authority or by any outside person to ascertain or verify the truth of any particular allegation in an application by a claimant.

23. *Consequential amendment to Act 2 of 1974.*—In Section 357 of the Code of Criminal Procedure, 1973:

(a) In sub-section (1)—

(i) In clause (b), for the words “recoverable by such person in a Civil Court”, the words “required to be paid to such person” shall be substituted;

(ii) in clause (c), for the words and figures “who are, under the Fatal Accidents Act, 1855, entitled to recover damages”, the words “who are, in the opinion of the Court, required to be paid compensation” shall be substituted;

(b) for sub-section (3), the following sub-sections shall be substituted, namely :—

“(3) 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 any person, if it is of the opinion that such person has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. (3A) Where an order for compensation has been made under this Section, the Court may direct the whole or any part of the compensation to be paid to any Crime Victim Assistance Authority established under the Right to Justice for Victims of Criminal Injuries Act, 2008.

THE SCHEDULE

[See Section 9 (1)]

1. Where a simple lump sum amount is payable to the eligible claimants as financial assistance; this amount is computed as per the following guidelines:

2. In cases of injury, the following guidelines are applicable:

(i) In Table A below, various injuries are listed out showing the percentage of disability caused by each injury. There are some injuries (Sl. Nos. 1 to 8 in the table), which are deemed to result in permanent total disability, that is 100% disability. There are many other injuries (Sl. Nos. 9 to 65), which are deemed to result only in permanent partial disability for which different disability percentages are indicated.

(ii) The amount of compensation payable towards financial assistance payable to any person for each percentage point of disability is Rs. 5,000 (Five thousand rupees). In other words, the compensation payable under this head for 100% disability would be Rs. 5,00,000.

(iii) The maximum amount of financial assistance payable to an injured victim towards non-pecuniary losses shall be Rs. 5,00,000.

(iv) If a person suffers more than one listed injury in the same crime, then the disability percentages for all such injuries shall be aggregated for arriving at the total disability percentage, subject to a ceiling of 100%.

(v) The amount of financial assistance payable for an injury not specified in Table A, but which, in the opinion of the Authority, is such as to deprive a person of all capacity to do any work, shall be the maximum amount of Rs. 5,00,000 (Five lakhs rupees).

(vi) The amount of financial assistance in respect of any injury not specified in Table A, but which, in the opinion of the Authority, has resulted in any physical disability or pain and suffering or loss of amenities shall be such as the Authority may, after taking into consideration medical evidence and other circumstances of the case, determine to be just and reasonable.

(vii) If subsequent to the date of the award, the condition of the victim aggravates and he suffers new disabilities arising out of the original injuries, then he is entitled to claim the difference in financial assistance, subject to the condition that the total amount shall not exceed the maximum amount payable.

(viii) Complete and permanent loss of the use of any limb or member referred to in Table A shall be deemed to the equivalent of the loss of that limb or member.

3. Death is deemed to be an injury that has caused 100% disability to the victim. So, in cases of death, a flat sum of Rs. 5,00,000 (Five lakhs rupees) is payable towards all injuries together as financial assistance.

TABLE A

PART I—Injuries Deemed to Result in Permanent Total Disability

- 1 Loss of both hands or amputation at higher sites 100
- 2 Loss of a hand and a foot 100
- 3 Double amputation through leg or thigh, or amputation through leg or thigh on one side and loss of other foot 100
- 4 Loss of sight to such an extent as to render the victim unable to perform any work for which eye sight is essential 100
- 5 Very severe facial disfigurement 100
- 6 Absolute deafness 100
- 7 Rape 100
- 8 Child Abuse 100

PART II – Injuries Deemed to Result in Permanent Partial Disability AMPUTATION – UPPER LIMBS (Either Arm)

- 9 Amputation through shoulder joint 90
- 10 Amputation below shoulder with stump less than 20·32 cm. from tip of acromion 80
- 11 Amputation from 20·32 cm. from tip of acromion to less than 11·43 cm. below tip of olecranon 70
- 12 Loss of a hand or of the thumb and four fingers of one hand or amputation from 11·43 cm. below tip of the olecranon 60
- Sl. Description of Injury Percentage of No. disability
- 13 Loss of thumb 30
- 14 Loss of thumb and its metacarpal bone 40
- 15 Loss of four fingers of one hand 50
- 16 Loss of three fingers of one hand 30
- 17 Loss of two fingers of one hand 20
- Sl. Description of Injury Percentage of No. disability

FRACTURES

- 18 Amputation of both feet resulting in end-bearing stumps 90
- 19 Amputation through both feet proximal to the metatarsophalangeal joint 80
- 20 Loss of all toes of both feet through the metatarsophalangeal joint 40
- 21 Loss of all toes of both feet proximal to the proximal interphalangeal joint 30
- 22 Loss of all toes of both feet distal to the proximal interphalangeal joint 20
- 23 Amputation at hip 90
- 24 Amputation below hip with stump not exceeding 12·70 cm in length measured from tip of great trochanter 80
- 25 Amputation below hip with stump exceeding 12·70 cm. in length measured from tip of great trochanter but not middle thigh 80
- 26 Amputation below middle thigh to 8·89 cm. below knee 60
- 27 Amputation below knee with stump exceeding 12·70 cm. but not exceeding 12·70 cm. 50
- 28 Amputation below knee with stump exceeding 12·70 cm. 50
- 29 Amputation of one foot resulting in end-bearing 50
- 30 Amputation through one foot proximal to the metatarsophalangeal joint 50

LOSS OF TOES EITHER FOOT OTHER INJURIES

- 40 Loss of one eye, without complications, the other being normal 40
- 41 Loss of vision of one eye without complications or disfigurement of eye-ball, the other being normal 30

LOSS OF FINGERS OF EITHER HAND

36	Fracture of major bone-femur / tibia (both limbs)	20
37	Fracture of major bone-femur / tibia (one limb)	10
38	Fracture of major bone-humerus/radius / ulna (both limbs)	15
39	Fracture of major bone-humerus / radius / ulna (one limb)	8
31	Loss of all toes of one foot through the metatarsophalangeal joint	20
32	Fracture of spine with paraplegia	50
33	Fracture of spine without paraplegia	30
34	Fracture of hip-joint	20
35	Fracture of pelvis not involving joint	10
Sl. Description of Injury Percentage of No. disability		
42	Thumb-Loss of terminal phalanx	20
43	Thumb-Guillotine amputation of the tip of the thumb without loss of bone	10
44	Index Finger - whole	14
45	Index Finger – Two phalanges	11
46	Index Finger – One Phalanx	9
47	Index Finger – Guillotine amputation of tip without loss of bone	4
48	Middle Finger—whole	12
49	Middle Finger – Two phalanges	9
50	Middle Finger – One phalanx	7
51	Middle Finger – Guillotine amputation of tip without loss of bone	4
52	Ring or little finger—Whole	7
53	Ring or little finger—Two phalanx	6
54	Ring or little finger—One phalanx	5
55	Ring or little finger—Guillotine amputation of tip without loss of bone	2
56	Great toe-through metatarso-phalangeal joint	14
57	Great toe – part, with some loss of bone	3
58	Any other toe – through metatarso-phalangeal joint	3
59	Any other toe – Part, with some loss of bone	1
60	Any other two toes – through metatarso-phalangeal Joint	5
61	Any other two toes – Part, with some loss of bone	2
62	Any other three toes – through metatarso-phalangeal joint	6
63	Any other three toes – Part, with some loss of bone	3
64	Other four toes—through metatarso-phalangeal joint	9
65	Other four toes – Part, with some loss of bone	3
Sl. Description of Injury Percentage of No. disability		

Statement of Objects and Reasons

Article 41 of the Constitution of India enjoins that the State shall make effective provision for learning, among other things, the right to public assistance in cases of underserved want. The existing laws do not adequately provide for assistance to victims of crimes. The innocent are made to suffer due to the Commission of a crime that

deprives their means of livelihood once for all. Of course, the offenders may get punished but the sufferings of the victims continue. It is to meet such extraordinary situations brought about due to no fault of the victims that the above Bill is proposed. The U.N. General Assembly has adopted a resolution to make offenders liable to restitution to the victims who suffer mental or physical injury and to compel the State to make effective provisions in this regard. Hence the Bill.
