

Final Report on a proposed law relating to payment of compensation and other reliefs to the crime victims

Introduction

The law relating to criminal justice system in our country has given a wide range of rights and privileges to the offenders of the commission of a criminal act. Article 35 (3) of our Constitution provides that an accused of a criminal offence shall have the right to get a speedy and public trial by an independent and impartial court or tribunal established by law. The principle of criminal trial is that the accused of a criminal case shall be presumed to be innocent unless and until his guilt is proved by the prosecution beyond all reasonable doubt. This is an age old principle of law that an accused shall have a right to defend himself and shall be entitled to get a fair and impartial trial. But no such right is recognized by any specific law for the crime victims who have suffered not only physically and mentally, but also have suffered financially and materially. A crime victim also not only needs to get a fair and quick justice for the injury or death caused to him by the offenders, but also has a right to get adequate monetary compensation to cover the economic loss sustained by him as a result of the crime committed on him. The victim's right to get justice, protection and compensation to cover the loss sustained by him is not less important than the right of the accused to defend him.

All the people of our society are very much aware of the tremendous physical, mental and financial sufferings of a victim of crime or even of the family of a deceased victim, caused as a result of the commission of a crime of grave and violent nature, but unfortunately much attention is not being given to redress their such sufferings. The victims being the worst sufferers,

physically, mentally and financially, much attention needs to be given to their sufferings with particular attention to their financial and material needs. They should be given adequate monetary compensation to cover the financial loss caused to them by the commission of a crime of violence on them.

A sentence of imprisonment for a certain period of time or even a death sentence to an accused person may only give some mental consolation to the victim or to the family of a deceased victim, but it will not compensate the actual financial loss sustained by the victim or members of a deceased victim. There has, therefore, been a widespread concern for the lack of right of the crime victim to get his actual relief, materially and financially. A victim shall be able to get such relief only when his right to get such relief is recognized by enacting a specific law in that direction. There is therefore, a great need for enacting a law recognizing and granting certain rights and benefits to the crime victims.

The right of a crime victim shall include the right to get a proper monetary compensation for the financial loss sustained by him as a result of the commission of crime of a grave nature on him. This right shall also include the return of property for the harm or loss of property suffered by any victim particularly, as a result of commission of the crime in any high way. Where public officials or other state agencies are involved in violating criminal laws or human rights, the victim should receive restitution of his property or other material, if lost during the occurrence, from the state. The investigating agency shall ensure that any property of a victim of crime that is seized and held for evidentiary purposes are maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

The primary responsibility of giving monetary compensation to a crime victim or to the family of a deceased victim lies to the offender. But

when such compensation is not fully available from the offender or other sources, the state in fulfilment of its responsibility to protect the life and property of the people, should come forward to provide financial assistance to the victims, at least in violent crimes which result in bodily injury or death of the victim and for that purpose a victims compensation fund may be established in each district. The victims should receive necessary materials, medical, psychological and social assistance through governmental, voluntary or community-based means. The state being a welfare state has the responsibility to undertake any efforts and incur any expenditure necessary for relieving the sufferings of the people, particularly of the crime victims who lost their present and future income due to injury or death. A specific law should, therefore, be made providing for payment of adequate monetary compensation to cover the economic loss and loss of property sustained by the victims. To meet the expenditure necessary for providing such compensation to the crime victims, a victims compensation fund needs to be established by the proposed law. This fund may be made up of contributions from the government, the criminal fines as may be realised from convicted offenders, amount of the forfeited bail bonds, penalties, deposit of gifts and donations as may be received from individuals or voluntary organizations.

Some examples of the sufferings of different categories of crime victims may be given hereunder with a view to justifying our recommendations for making a distinct law recognizing the rights of the crime victims to get monetary compensation and other necessary benefit for their survival.

The crime of acid burn in most cases causes disfiguration of the victim to such an extent that the victim some time becomes permanently crippled. Such kind of permanently crippled victims are unable to earn his/her livelihood because of the fact that he/she will not be engaged in any employment and in consequence his/her family is fallen into a great distress. If such a victim of acid burn is an unmarried girl, she may not be able to get

married, nobody will be willing to marry such a crippled girl. As a result, she will be a permanent burden on her parents and that her worst suffering will start after the death of her parent making her completely helpless. She will then have none to depend upon. Moreover, her long treatment will require a considerable amount of money. In such a condition, state or any humanitarian body or individual shall be the only agency who can give financial and material assistance to such a victim to keep her alive in the society. This can be done by way of giving her some monetary compensation or alternatively by making some arrangements so that she can do some work at her home enabling her to earn some money regularly for her livelihood.

The road accidents in our country are claiming more and more innocent lives everyday and crippling a large number of them due to rash and negligent driving of motor vehicles by the reckless drivers. Violation of traffic rules, rash and negligent driving by the reckless drivers make the roads unsafe. Although road accidents are taking place everyday in different parts of our country causing death of many innocent people and crippling many more, but still the reckless drivers are getting away from punishment in view of the fact that section 304B of the Penal Code has prescribed a maximum punishment of three years imprisonment or fine or both for an offence of causing death of any person by rash or negligent driving of any vehicle and that the offence is a bailable one. Absence of High Way patrol gives the drivers a free hand. The situation turns critical where minibuses and trucks move on the highways where traffic rules are seldom enforced. Minibuses in particular, have become a menace even in the city. In a previous report we have recommended for enhancement of punishment for such offence to an imprisonment of seven years with fine and to make the offence non-bailable.

Lack of formal training to drivers, tendency to ignore traffic laws, unauthorized overloaded vehicles, arrogance and recklessness of the drivers are the main causes of road accidents. In most cases, the drivers are found to be guilty for causing accidents resulting in the death and injury of a great number of people everyday leaving their dependants in a state of helplessness and miseries. As a whole, the drivers not only had little knowledge, but their behaviour also proved that they did not care about the traffic rules and regulations. The drivers' behaviour and their disregard for traffic rules are the main causes of all this disaster.

The crippled victims of such disaster shall not be able to do their normal jobs in their work place. They shall require a huge amount of money to continue their prolonged medical treatment and for maintenance of their family. Similarly, the members of the family of the deceased victims of such disaster shall also require money for maintenance of their family in the absence of the earning member of that family. We think that such victims and the family of the deceased victims should get monetary compensation to cover the economic loss sustained by them. The compensation to such victims of road accidents caused by negligence and recklessness of the drivers shall be paid from the proposed victims compensation fund and the money so paid shall subsequently be recovered by the Government from the owners of the vehicles by starting legal process.

When an only earning member of a family is killed by the criminal act of an offender, the whole family of the deceased victim becomes helpless because of the fact that the present and future income of the family is totally lost with the death of the victim. The deceased victim may leave behind his unmarried girl, school or collage going children and other siblings dependent on him. After his death there will be none to help them and the family will

be virtually ruined, if the family does not get any financial assistance from a voluntary humanitarian organization or from any state fund. There are many other victims of criminal acts like terrorism, hijacking, rape, sexual violence, kidnapping etc., many of whom are living in different parts of the country unnoticed and unattended by anybody. Attention should be given to their sufferings and needs to enable them to live in the society with honour, dignity and respect.

All this will require a big sum of money for which a victim compensation fund needs to be established in each district for payment of monetary compensation to the crime victims and to the family of deceased victim of the respective districts. There is, therefore, a great need for enacting a specific law establishing such victim compensation fund and a victim services committee in each district for dealing with all matters relating to crime victims compensation, assistance and other benefits. Compensation for losses due to injuries should be made available to the eligible victims of violent crimes through our proposed victim services committee. In case of the death of the victim, payment of compensation and other benefits may be ordered to be made to the dependants of the deceased victim. A nation-wide network for payment of compensation to the needy victims may be created.

Different western countries have already established their crime victims compensation programs. In U.S.A. the first crime victim compensation program was established in California in 1965. Subsequently, other states also gradually established their own respective crime victim compensation program and expanded victim services and increased recognition of victims right to get such assistance. In 1984, the Federal Government of U.S.A enacted its Victims of Crime Act establishing its crime victims fund made up of federal criminal fines, penalties and forfeited amount of bond money. This Act provides for a federal victims' compensation program and for supporting the state victim compensation and

local victim service program. Provisions for compensation to the crime victims are available in other countries also.

It may be mentioned here that section 545 (1) of the Code of Criminal Procedure, 1898 provides that a criminal court while passing a sentence of fine, or a sentence of which fine forms a part, may order the whole or any part of the fine recovered to be applied for meeting the (a) expenses properly incurred in the prosecution and (b) in the payment of compensation to any person for any loss or injury caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such person in a civil court.

The above provision of the Code of Criminal Procedure is neither mandatory nor effective. Moreover, the victim is required to go to civil court for substantial compensation which requires payment of court fee and other expenses which is not possible for a victim to pay. Therefore, provision of section 545 (1) of the Code of Criminal Procedure, 1898 is no help to the victims of crime. This provision of the Code of Criminal Procedure, 1898 is mentioned here only with a view to show that the legislators had in their mind the need for payment of compensation to the crime victims as back as in 1923 when the original clause (b) of this section was substituted by this new clause (b) by an amendment. There is therefore a great need for making mandatory provisions for payment of compensation and other reliefs to the victims of grave offences by enacting a specific law for that purpose. Only the eligible crime victims as enumerated in section 3 of our enclosed draft bill shall be entitled to get monetary compensation and other necessary assistance for their survival in the society with honour, dignity and respect.

In view of the discussions as we have made above, we are of the opinion that there is an urgent need for making a new law providing for the rights and benefits of the crime victims and for payment of monetary

compensation to them for their survival in the society with honour, dignity and prestige.

For the purpose of recommending for enactment of a new law relating to monetary compensation for the crime victims, we have considered some victims compensation programme established in some states of the United States of America obtained from internets. We have particularly considered our own experience about the nature and extent of the commission of crimes in our country and the sufferings of the crime victims resulting from those crimes.

Recommendation

In view of the discussions above, we recommend that a new law providing for the payment of monetary compensation for the crime victims be enacted.

For convenience and ready reference, we are enclosing herewith a Draft Bill as Annexure “A”.

(Dr. M. Enamul Hoque)
Member-2

(Justice Md. Sirajul Islam)
Member-1

(Justice Mustafa Kamal)
Chairman

A Draft Bill for making a new law providing for compensation to the victims of different crimes of grave nature and of rash and negligent act

Whereas the victims of crimes of specific grave nature like murder, grievous injury, kidnapping, rape, acid burn etc. are immensely suffering from financial difficulties, want of medical treatment and means of livelihood and also from social stigma in case of victims of rape and acid burn; AND

Whereas the dependants of the deceased and crippled victims of such crimes and terrorism are similarly suffering from financial problems resulting from the death or disability of only bread earning member of that family and inability to carry out prolong medical treatment of the crippled victims for want of money; AND

Whereas the victims of accidents of motor vehicles on public roads resulting from rash and negligent driving of reckless drivers deserve financial support and medical facilities by way of compensation for loss caused to them by negligent acts of drivers; AND

Whereas it is now needed to make a law providing for payment of compensation to the victims and the dependants of the deceased and crippled victims of crimes by way of giving them some material relief in addition to the punishment of the offender under the Penal laws.

Now, therefore, it is hereby enacted as follows: -

1. Short title, extent and commencement. –(1) This Act may be called the “Crime Victims Compensation Act”, 200...

(2) It shall extend to the whole of Bangladesh.

(3) It shall come into force with effect from a date as the Government may, by notification in the Official Gazette, appoint.

2. Interpretation. - In this Act, unless the context otherwise requires:

- (a) “claimant” means the victim or if he has been killed, his dependants, excluding that dependant, if he himself or herself is a party to that offence;
- (b) “Committee” means the Victim Services Committee set up under section 6 of this Act;
- (c) “code” means the Code of Criminal Procedure, 1898 (V of 1898);
- (d) “compensation” means the money-compensation payable to every crime-victim or if he has been killed, his dependants as provided for in this Act;
- (e) “court” means Appellate Division and High Court Division of the Supreme court, a court of sessions and any court of magistrate where a crime of grave nature is pending for inquiry or trial or for appeal or revision or is instituted;
- (f) “crime victim” for the purposes of this Act, means a person or persons who individually or collectively have suffered personal, financial or psychological injury or is killed as a direct result of the commission of any of the criminal offences as described in the

schedule to this Act and includes the immediate dependants or any member of the family of the direct victims and also includes a person;-

- (i) who has suffered injury or is killed in preventing the commission of a crime or in assisting or attempting to assist a person against whom a crime is being attempted;
 - (ii) who has suffered injury or is killed in apprehending a person engaging in commission of any crime, or assisting a law enforcement officer to do so;
 - (iii) who has suffered injury or is killed as a result of rash or negligent driving of any motor vehicle by any driver on any public road; and
 - (iv) who has suffered injury or is killed as a result of police torture in custody, or out of custody.
- (g) “dependant” means the spouse, parent, grand-parent and children of the victim including a child of the victim born after his death and incapacitated brother or unmarried sister who were wholly dependant upon the victim's income at the time of his injury or death;
- (h) “economic loss” means and includes medical and hospital expenses, loss of earning, loss of future earnings, resulting from the injury or death of the victim and loss of support to the dependants of the victims;
- (i) “Fund” means "crime victims compensation fund" set up under section 12 of this Act;

- (j) “medical expense” means and includes the cost of all medical services and mental health counseling and care;
- (k) “personal injury” means actual bodily injury or actual mental harm;
- (l) “prescribed ” means prescribed by rules made under this Act.

3. Eligibility for compensation. –(1) The victim or the dependant of a deceased victim shall be eligible to get compensation under this Act, if:

- (a) the victim suffers personal injury or is killed as a result of the commission of any of the offences under the schedule to this Act;
- (b) the injury to or death of the victim was not attributable to his own wrongful act or omission;
- (c) the appropriate law enforcement authority was duly informed of the commission of the crime allegedly causing the injury to or death of the victim as soon as practical after the commission of the crime.

(2) The condition of clause (c) of sub-section (1) shall not be applicable in the case of victims of the categories as defined in clauses (iii) and (iv) of section 2(f).

(3) It shall be the duty of the officer-in-charge of the concerned police station to inform the occurrence of any road accident taking place within the jurisdiction of his police station resulting in the death or injury of the passengers or passersby and also of the death or injury of persons in police custody to the concerned Victim Services Committee.

4. Application for compensation.– The claimant of compensation under this Act shall file an application for compensation addressed to the Chairman of the concerned Victim Services Committee within six months

after the date of sending the case-record to the Court of Sessions for trial of the case, if any, or within twelve months from the date of occurrence or within any extended time as the committee may allow for good cause shown.

5. Contents of the Application.—(1) Application for compensation shall be on a form as prescribed and furnished by the Committee, setting forth:

- (a) the victim's name and address;
- (b) if the victim is deceased, the claimant's name and address and his/her relationship to the victim, the names and addresses of the victim's dependants and the extent to which each is dependent;
- (c) the date and nature of the criminal act on which claim for compensation is based;
- (d) the date and place where the occurrence has taken place;
- (e) the law enforcement authority to whom information of the commission of the criminal act was given;
- (f) the nature and extent of the injuries the victim sustained and the names and addresses of doctors giving medical or hospitalization treatment of the victim, if any;
- (g) the economic loss to the applicant and to all other persons as specified in clause "b" of this section resulting from the injury or death of the victim;
- (h) any other information as the committee may reasonably prescribe.

(2) The contents of clause (e) of sub-section (1) shall not be necessary to be given in application of the victims of road accident by rash and negligent driving and the victims of police torture.

(3) An applicant may file an amended application or additional substantiating materials to correct the inadvertent errors or omissions, if any, at any time before the disposal of the original application. In either case, the filing of additional information or of the amended application shall be considered to have been filed at the same time as the original application.

6. The Victim Services Committee.- (1) After the coming into force of this Act, the Government shall by order published in official gazette establish a committee to be known as the Victim Services Committee in each District within the office of the District and Sessions Judge under the control, supervision and management of the Ministry of Law, Justice and Parliamentary Affairs for carrying out the purposes of this Act.

(2) The committee shall consist of the following members:-

- (a) The District and Sessions Judge who will be the Chairman of the committee;
- (b) The Metropolitan Sessions Judge, if any;
- (c) The Additional District and Sessions Judge who has tried or has been trying the case, if any, arising out of the criminal act on which the claim for compensation is based;
- (d) The District Magistrate;
- (e) The Joint District and Asstt. Sessions Judge (1) who will act as the member-secretary of the committee;

7. The powers and functions of the committee.- (1) The committee shall:

- (a) Hear and determine all matters relating to claims for compensation;
- (b) Send an annual report to the Ministry of Law, Justice and Parliamentary Affairs within March 1 of every year showing all its transactions for the preceding year stating therein its upto date financial condition;
- (c) Keep a true and accurate record of all its proceedings;
- (d) make payment of all compensation or other benefits, if any, to the victim as per award made on the application of the claimant;
- (e) keep a true and accurate account of the victims compensation fund.
- (f) Perform any other functions that may be necessary to carry out the purposes of this Act.

(2) The committee shall bear all administrative and other costs as may be incurred, from the Fund under the rules and regulations as may be made by the Government.

(3) The District Judges stenographer may be engaged in doing all the secretarial job of the committee if and when necessary.

8. Meeting of the committee.- (1) Subject to the provisions of this section, the committee shall decide the procedure of its meeting.

(2) The meeting of the committee shall be held in the place and time as the Chairman of the committee may decide, provided that the committee shall hold its meeting at least once in a month.

(3) The chairman of the committee shall preside over all the meetings and decision will be made by the vote of the majority members of the

committee. In case of equality of the votes, the chairman shall have a casting vote.

(4) Three members of the committee shall make the quorum of a meeting of the committee.

(5) The vacancy of any member of the committee or any defect in the formation of the committee shall not invalidate any decision or the working procedure of the committee nor can it be questioned in any court of law.

9. Hearing, finding and order. - (1) The committee in its meeting shall hear the application for compensation and after hearing, the committee shall come to a conclusion as to whether or not the applicant is entitled to get compensation under this Act.

(2) The committee in coming to its conclusion to the entitlement of compensation of the applicant or of the dependants of the deceased victim, shall determine the total amount of the compensation payable to the applicant or to the dependants and the share of each dependant in the total amount of compensation awarded to which each is entitled.

(3) A record shall be kept of the proceedings of hearings of application for compensation held before the committee and shall include therein the committee's findings of facts and the conclusions of the total amount of compensation, if any, to which the applicant and the persons dependent on deceased victim are entitled.

(4) At the conclusion of the hearing, the committee shall enter an order stating therein;

- (i) Its findings of facts;
- (ii) Its decision as to whether or not compensation is due under this Act and the amount of compensation due, if any;

- (iii) Whether disbursement of the compensation as awarded is to be made in a lump sum or in periodic payments; and
- (iv) The person or persons to whom the compensation should be paid. In case of a minor or incapacitated or incompetent person, the committee may order for payment of those amount to his family member or guardian, as the case may be.

(5) Notwithstanding sub-section (1) of this section, the committee may make any order for an expedited claims process and hearing of the applications in which eligibility is clear and all information has been verified.

10. Committee's power to call for records and evidence.- (1) During hearing of the application for compensation, the committee shall have the power to request access to any reports of investigations, medical records or other data necessary to assist the Committee in making a correct decision of eligibility for compensation under this Act. The law enforcement officials, state agencies and local government units shall provide all assistance or information as may be requested by the committee.

(2) The committee may summon witnesses, compel their attendance, require the production of records and evidence, administer oaths or affirmation, conduct hearings and receive any other relevant evidence.

11. Interim payment authorized.- (1) If, upon receipt of an application, the committee is of the opinion that the applicant will probably be entitled to get the compensation under this Act and that the applicant is in an immediate need of money for emergency medical treatment or for funeral and burial expenses, it may make an in-terim order to make payment of a limited sum of money to the applicant for meeting his immediate medical or funeral costs, as the case may be; if the committee later concludes that the

application should not be granted, the amounts as paid under this sub-section shall not be recoverable.

(2) The in-terim payment as made under sub-section (1) of this section shall, however, be deducted from the final compensation, if awarded in favour of the applicant.

12. Compensation award. – (1) In determining the total amount of compensation award to an injured victim and/or to the dependents of a deceased victim in accordance with the provisions of this Act, the committee shall take into consideration the following factors:

- (a) expenses actually and reasonably incurred as a result of the personal injury or death of the victim, by the victim or his dependants;
- (b) loss of earning power as a result of the victim's total or partial incapacity;
- (c) economic loss to the deceased victim's dependants;
- (d) lost wages or loss of support resulting from the personal injury or death of the victim which the committee finds to be reasonable.
- (e) Medical, funeral and burial costs;
- (f) the need for financial aid; and
- (g) any other relevant matters.

(2) In awarding compensation, the committee shall not consider whether the alleged assailant has been apprehended, prosecuted or convicted, nor the result of the criminal proceedings against him.

(3) The award of compensation to the applicant is not a substitution of, but in addition to the conviction and sentence, if any, as may be passed by the court against the offender. The award of compensation shall not also be a price for any compromise between the parties, if any.

13. Establishment of a fund. –(1) The Government shall establish a fund to be known as the “crime-victims compensation fund” in each District which shall be placed under the control and management of the Victim Services Committee set up under section 6 of the Act for payment of compensation or other benefits to crime victims and for purposes of implementing this Act.

(2) The fund shall consist of :-

- (a) all monies as the Government shall contribute to the fund;
- (b) all monies as the committee may collect from any other source;
- (c) any voluntary contribution, donations, grants or gifts from any individual or non-government voluntary organization as may be given to the committee for the benefits of the victims of crime;
- (d) all criminal fines, amount of forfeited bail bonds and penalties that may be realized from the persons convicted of any of the offences under the schedule to this Act, shall subsequently be paid to the committee for deposit in this fund account.

(3) All monies of the fund as may be received from the sources as mentioned above shall be deposited in a Nationalized scheduled Bank by opening an account therein in the name of the committee and money can be withdrawn from the fund account by joint signature of the Chairman and member-secretary of the committee for payment of compensation and others benefits to the victims as per award of the committee.

(4) The committee shall bear all administrative and other costs as may be incurred by the committee under rules and regulations as may be made by the government.

14. Audit and Account.- The committee shall maintain a cash book of its income and expenditure according to existing financial rules .

(2) The comptroller and auditor general of Bangladesh shall audit the accounts of the committee every year and submit a copy of the audit report to the Government.

15. Publication of existence of victims compensation benefit.- Each law enforcement and prosecuting agency shall exercise all reasonable care to ensure that the victims of crimes are informed of the existence of the state sponsored compensation benefit for death or injuries sustained by the victims of crimes under the schedule to this Act and the procedure for applying for compensation under this Act. The committee shall also publish for general information of the public about the existence of the compensation benefit for the crime-victims through Radio, Television and local and national daily news papers as widely as possible.

16. Payment of compensation.- The total amount of compensation or other benefits that are determined by the committee shall be paid from the crime victim's compensation fund.

17. Fees not chargeable.- No fee shall be charged to the applicant in any proceeding under this Act, except as prescribed. If the applicant is represented by a lawyer in making the application under this Act, or in any further proceedings for the matter of compensation under this Act, the lawyer shall not receive any payment for his services except an amount as the committee may determine to be reasonable considering the distress condition of the victim.

18. Recoverable compensation.- The compensation as may be paid from the victims compensation fund as per award made by the committee in favour of the crime victim as defined in clause (iii) of section 2 (f) of this Act, shall be recoverable from the owner of the motor vehicle involved in the offence, by Public Demand Recovery Act, 1913.

19. Assistant of the committee.- A Senior Assistant of the office of the District Judge's Court may be specifically deputed to deal with the matters relating to victims compensation such as, to receive application for compensation, to start a file for each application, to process the application, to place the application with all relevant papers before the committee-meeting and to help the member-secretary to maintain the records and registers and other matters, if any.

20. Power to make rules. –The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Schedule

Offences in respect of which a victim may be given compensation under this Act:-

1. Murder;
2. Culpable homicide not amounting to murder;
3. Causing death by rash or negligent driving or riding on a public road;
4. Attempt to murder;
5. Voluntarily causing grievous hurt;
6. Causing death or grievous hurt by means of corrosive substance;
7. Kidnapping;
8. Abduction;
9. Rape;
10. Extortion;
11. Robbery;
12. Dacoity;
13. Dacoity with murder Offences under women and children Anti-oppression Act [VIII of 2000];
14. Offences under explosion substance Act;
15. Offences under women and children Anti-oppression Act [VIII of 2000].