

[AS INTRODUCED IN THE SENATE]

A

BILL

to provide for remedy and payment of compensation to those who are convicted as a result of miscarriage of justice

WHEREAS it is expedient to provide for remedy and payment of compensation to those innocent persons who either lose their lives or who are sentenced to imprisonment and lose their considerable portion of life in prison due to conviction as a result of miscarriage of justice and for the matters connected therewith and ancillary thereto;

It is hereby enacted as follows:-

1. Short title, extent, application and commencement.- (1) This Act may be called the Miscarriage of Justice (Compensation) Act, 2017.

(2) It extends to the whole Pakistan and shall apply only to those convictions in which the Federal Government is representing the State.

(3) It shall come into force at once.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,—

(a) "Applicant" means a person who applies for compensation under this Act;

(b) "Compensation" means the amount payable to a person or his legal heirs who is the victim of miscarriage of Justice;

(c) "Government" means the Federal Government;

(d) "Miscarriage of justice" means the conviction of a person for an offence which he did not commit and includes a conviction based on non reading and misreading of evidence in a trial;

(e) "New or newly discovered fact" means such a fact in the presence of which the accused would have not been convicted if it was known during the trial;

(f) "Prescribed" means prescribed by rules;

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- (g) "Rules" means rules made under this Act; and
- (h) "Victim" means a person who suffered punishment as a result of miscarriage of justice.

3. Compensation for miscarriages of justice.- (1) Notwithstanding anything contained in any other law and subject to the provisions of sub-section (2) , when a person has been convicted of an offence and when subsequently his conviction has been set aside on the ground that the person was convicted as a result of miscarriage of justice, or newly discovered facts show beyond reasonable doubt that there has been a miscarriage of justice, the Government shall pay compensation for the miscarriage of justice to the person who has suffered punishment as a result of such conviction or, if he is dead, to his legal heirs, unless the non-disclosure of the newly discovered facts was wholly or partly attributable to the person convicted.

(2) No payment of compensation under this section shall be made unless an application for such compensation has been made to the Government in the prescribed manner before the end of two years period beginning with the date on which the conviction of the person is set aside:

Provided that the Government may entertain an application for compensation made after the end of two years period if the Government considers that there are exceptional circumstances which justify doing so.

(3) The Government shall, within a period of two months, after proper inquiry, determine the admissibility of the application made under sub-section (2), take necessary action and make order accordingly and shall inform the applicant.

4. Determination of the right to Compensation.- (1) The question whether there is a right to compensation under section 3 shall be determined by the Government.

(2) If the Government is of the opinion that no miscarriage of justice has occurred and that no useful purpose would be served by further inquiry, it shall inform the applicant accordingly and shall take no further action.

(3) If the Government is of the opinion that miscarriage of justice has occurred and there is a right to compensation, the Government shall pay compensation to the applicant.

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(4) The amount of the compensation under sub-section (3) shall be assessed by an assessor appointed by the Government:

Provided that the amount of compensation shall in no case be less than the minimum wage of labour in a month prescribed by the Government and the amount so fixed shall be calculated in aggregate for the entire period of months the applicant was in prison:

Provided further that in case of death as a result of miscarriage of justice, the amount of compensation shall be calculated in accordance with section 323 of the Pakistan Penal Code (Act XLV of 1860).

5. Appeal to the High Court.- Any applicant who is aggrieved with the order of the Government for not providing compensation to the him, or with the amount of compensation determined by the Government, may appeal to the High Court for setting aside the order of the Government or to determine the amount which the Government shall pay under section 4 and the order of the High Court shall be final.

6. Fund.- (1) The Government shall establish a Fund to be known as the Miscarriage of Justice (Compensation) Fund.

(2) The Fund shall consist of grants made by the Government, donations, gifts and endowments received by the Government for the Fund and income from any other source as may be prescribed.

(3) The Fund shall be utilized for the compensation of the victims and shall be regulated by the Government in such a manner as may be prescribed.

7. Removal of difficulties.- If any difficulty arises in giving effect to any provision of this Act, the Government may make such order not inconsistent with the provisions of this Act as may appear to it to be necessary for the purpose of removing such difficulty.

8. Rules.- The Government may, by notification in the official Gazette, make rules for giving effect to the provisions of this Act.

9. Overriding effect.- Notwithstanding anything to the contrary contained in any other law, the provisions of this Act shall have an overriding effect and the provisions of any such other law to the extent of inconsistency to this Act shall cease to have effect.

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STATEMENT OF OBJECTS AND REASONS

Administration of justice in a just and transparent manner is the Fundamental duty of every State. In performing this duty, sometimes due to multiple factors, innocent people become victims of miscarriage of justice. They are kept behind the bar for many years. Due to extremely slow process of justice in appeals, these innocent people are kept in prison for decades and after decades, the Superior Courts acquit the convicted persons. However those people who lost their lives or the considerable portion of their lives cannot get any compensation for their precious life they lost. Thus an innocent person who is imprisoned for decades, upon acquittal, is released from prison without having any source to live the remaining life. The present Bill has sought to cover this issue. The Bill seeks to provide compensation to those who are victims of the miscarriage of justice. Through this Bill, the innocent persons who have lost their lives in prison will have opportunity for proper compensation for their lives to survive the remaining life.

The Bill has been designed to achieve the aforesaid objectives.

SENATOR MOHAMMAD AZAM KHAN SWATI
Member-in-Charge