



VICTIM COMPENSATION FOR MEDICAL TREATMENT OF RAPE SURVIVORS IN DELHI NEED FOR PREPARATION OF VICTIM IMPACT ASSESSMENT REPORTS

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ABSTRACT

Medical needs of rape survivors include both physical treatment and mental health counselling. The victims might not have the resources to avail proper medical treatment for injuries, abortion or any other sexually transmitted disease contracted because of the offence. Rape often leaves the victim in trauma and to overcome the same, timely mental health counselling is also necessary. For all such expenses, the victim must be reimbursed in the form of compensation. To properly compensate the victims, the first step is to analyze the impact of the offence and the preparation of victim impact assessment report as per the Delhi High Court judgement (3-judge bench) in the recent case titled *Karan v. State NCT of Delhi 277(2021) DLT 195* which shall act as a guide to decide the quantum of compensation needed by the victims. Thereafter, decision should be made whether the compensation is to be paid by the accused under Section 357 Code of Criminal Procedure, 1973 (CrPC) or by the State under Section 357-A of CrPC. The purpose of this study is to analyze the various existing provisions in law to grant compensation to rape survivors and to assess whether victim impact assessment reports are being prepared on a regular basis by the authority in-charge i.e District Legal Services Authority ("DLSA"). For the study of the later, empirical data has been collected from the DLSA offices. The study is



important to assess whether the current provisions of law are sufficient and are being justly and timely implemented.

Keywords: Compensation, District Legal Services Authority, Medical expenses, Victim impact assessment.

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INTRODUCTION

Rape victims are often dejected from the society and are blamed for the happening of the event. In such cases, it becomes difficult for the survivor to obtain medical treatment. However, after the 2013 amendment to the Code of Criminal Procedure, 1973, and the insertion of Section 357-C, it is now mandatory that both private and public hospitals to provide first aid or medical treatment to the victims free of cost. However, the medical expenses are not limited to the first aid expenses only and post the first aid as well, there are various medical expenses that the victim might have to incur.

It is unfair that the victim must bear the medical expenses on her own. Therefore, there exists a provision under Section 357 of the Code of Criminal Procedure, 1973 to direct the accused to pay compensation to the victim. In case, the accused does not have the paying capacity or is acquitted/discharged because of any reason, then the onus is on the State to compensation the victim under Section 357-A of Code of Criminal Procedure, 1973. Every time, a rape occurs it is the State failing in its duty to protect the citizen's right to life and dignity and therefore must make provisions for relief and rehabilitation of the victims.

METHODOLOGY

The research is based on both primary and secondary sources of data. Primary sources include Right to Information Applications filed before all the District Legal Services Authorities (DLSAs) in Delhi to get information whether Victim Impact Assessment reports were prepared between 2019-2021. Secondary sources include case laws on victim compensation, reports published by

government bodies and reputed non-government organisations or other reliable data sources.

The primary research shall be limited to Delhi. Delhi is chosen because of it being the Capital City and the offence is chosen because of the gravity of the offence and high need for rehabilitation for Rape survivors.

Rape is a grievous offence, 7.5% cases of crime against women under IPC were registered "Rape" (7.5%) in 2020 as per the last published data of NCRB (National Crime Records Bureau (NCRB), 2020). In 2020, 997 victims rape incidents were reported in the National Capital Territory of Delhi with 694 cases of rape being committed on children, both the figures are the highest number recorded in all metropolitan cities. (NCRB, 2020) The statistics have contributed to studying the compensation mechanism in the city with highest rape survivors.

RESEARCH QUESTIONS

1. Whether the laws available to compensate the victims are sufficient to rehabilitate the rape survivors for their medical needs?
2. Whether Victim Impact Assessment Reports were prepared by the DLSAs in Delhi between 2019-2020?

LITERATURE REVIEW

Justice (Retd.) Reddi (2012), a former judge of the Hon'ble Supreme Court of India, wrote an article on the "Role of Victim in the Criminal Justice System". He in detail writes upon the victim participation in criminal proceedings in the first part of his Article wherein he touches upon the role of victims in investigation and prosecution. In the second part, he writes of delivering effective justice to victims wherein he

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addresses victim compensation and other victim support services. As for victim compensation, Justice Reddy considers rendering monetary assistance to the victim/dependents to be the first step by the State while dealing with crimes of serious nature. Compensation cannot be delivered if there are no support services available to the victim and the Article stresses on the need for spreading awareness to the victims to enforce her rights. The article recommends effective aid and assistance to the victim, both monetary and psychological.

Mohan (2018), in her article on “*Revisiting Victim Compensation in India*” stresses on what justice is for various stakeholders. She emphasised that justice must be reformative for the offender and it must aim at proper rehabilitation for the victim. She addresses the development of current compensation mechanism and criticises the time before 357-A was introduced in the Code of Criminal Procedure, 1973, when the remedies were limited to that under writ jurisdiction of the courts. It focuses on various provisions under the law under which compensation can be granted to the victim but majority focus is on compensation obtained from the offender. It then discusses the 164th Law Commission Report and the Malimath Committee report which brought in the current 357-A of Code of Criminal Procedure, 1973 provision in 2008. It also discusses the role of the government in compensation. Most importantly, she address the issues in regard to implementation of the compensation schemes in India, which include uneven compensation scheme, lacuna for clarity on grounds of compensation, clarity to the stage of awarding compensation.

Vibhute (1999) in her article “*Victims of rape and their right to live with human dignity and to be compensated: Legislative and Judicial responses in India*” analyses the Law Commission report in detail and quoted the regret expressed by the Law Commission in regard to the courts not using the provision of

compensation freely and liberally. During the time of the Article, the compensation mechanism for rape victims was governed based on the judgements of the Supreme Court in *Delhi Domestic Working Women's Forum V. Union of India (1995) 1 SCC 14* and “*Bodhisattwa Gautam v. SubhraChakroborty (1996) 1 SCC 490*”. It elaborates on how the right of rape victims to compensation was introduced by the judiciary in India. With the Domestic Working Women's Forum, the Supreme Court had directed the National Commission for Women to frame a compensation scheme and the Article condemns the inaction by the National Commission for Women.

Ghosal (2009) in her article “*Socio-Political Dimensions of Rape*” studies the then published data of National Crime Records Bureau (NCRB, 2006) which states that in India, a rape happens every 30 minutes. The statistics itself speaks loudly of the importance of curbing and restorative justice to the victims. The author studies the socio-political dimensions of Rape. She studies its theoretical formulation and various theories like the radical feminist theory of rape, social learning theory and the evolutionary theory. She also puts rape into various categories like statutory rape, mass rape, marital rape and custodial rape. Lastly, she analysis the legal system and points out towards the low conviction rate in rape cases.

Centre for Child and the Law (CCL), National Law School of India University (2019) conducted a study on the working of Special Courts in Five States and thereafter published the book/report “*Implementation of the Protection of Children from Sexual Offences Act, 2012 by Special Courts: Challenges and Issues*”. The book addresses the compensation requirements of the victims and the role of the DLSA and the special courts in facilitating the same and addresses the gap in coordination between the DLSA and the Special Courts. Chapter 5 of the report written by Swagata Raha analysis the compensation under the Protection of Children



from Sexual Offences Act, 2012 (POCSO). The chapter first analysis the contrasting compensation under the POCSO Act and Code of Criminal Procedure, 1973 pointing towards the stark difference being that under Code of Criminal Procedure, 1973, the trial court can only recommend compensation whereas under the POCSO Act, 2012, the Special Court can direct payment. The quantum of Compensation in POCSO cases is decided by the Special Court whereas otherwise, Compensation is decided by the Legal Services Authority. The chapter later analysis on who should determine compensation- the Special Court or the DLSA. The study concluded that in Delhi, quantum was decided by Special Courts except in 1 case. In Assam, the Special Courts only recommended compensation and the quantum was decided by Legal Services Authority in 42.10% cases. Lastly, it elaborates on the challenges in determination of compensation by Legal Services Authority and therefore recommends compensation to be decided by the Special Court to ensure time bound and just compensation. The study argues that if the compensation is decided by Legal Services Authority, it will be under State Victim Compensation Scheme and therefore the amount will be limited to that under the Scheme and it will lead to exclusion of male child and the process will be delayed.

The Malimath Committee report (2003) suggested more inclusion of the victims in the criminal process. The recommendation on victim compensation was that a separate legislation is to be prepared. *“Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victimology provides a tentative framework for consideration”* The separate legislation inter alia should provide for the scale of compensation in different offences, and the conditions under which it may be awarded or

withdrawn. Till date, the recommendation has not been implemented. There exists various legislations and not a single legislation to address all issues in regard to victim compensation which is the need of the hour.

BACKGROUND OF VICTIM COMPENSATION

A crime is considered as a wrong against the society and not just an individual and therefore the victims of crime play the role of only a witness in the criminal proceedings. However, despite them not being an active party to the trial, it is important for them to be compensated for the wrong committed against them. (*In Re: Indian Woman says gangraped on orders of Village Court published in Business & Financial News, (2014) 4 SCC 786*)

Courts have now recognized the importance of victim compensation and have actively been taking steps to progress in the field. Victim Compensation forms a part of right to remedy for the victims and has been recognized internationally. It is the duty of the welfare state to protect its citizens against any wrongs. When the State fails to fulfil its duty, it is only just that that the State compensates the victim. It is also necessary to ensure proper rehabilitation of the victims. The victims must not only be compensated but should be adequately and justly compensated for the wrong committed against them. With the insertion of Section 357-A of Code of Criminal Procedure, it is now the statutory duty of the State to compensate the victims.

The Hon'ble Apex Court in the case titled *Ankush Shivaji Gaikwad v State of Maharashtra (2013) 6 SCC 770* observed the following regarding victim compensation *“While the award or refusal of compensation under Section 357 of Code of Criminal Procedure, in a particular case may be within the court's discretion, there exists a mandatory duty on the court to apply its mind to the question in every criminal case. Application of mind to the*

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question is best disclosed by recording reasons for awarding/refusing compensation."

History of Victim Compensation in India

Victim compensation has been a part of criminal jurisprudence since the ancient times. Post-independence, the Constitution of India via Article 14 and 21 protects the victims of crimes. The Code of Criminal Procedure, 1973 had certain provisions for victim compensation since the beginning. However, the major changes came after 1985 following the "*United Nations Declaration of Basic Principles of Crime and Abuse of Power*" which recognised the importance of victims in criminal jurisprudence.

The Supreme Court in the case titled *Delhi Domestic Working Women Forum v. Union of India* laid down guidelines to assist the rape victims and directed "*setting up of Criminal Injuries Compensation Board to compensate the rape victim*" irrespective of the status of conviction. In 2008, Section 357-A of the was added on the recommendation of the 154th Report of the Law Commission which introduced the victim compensation scheme.

A special legislation for protecting child victims of sexual abuse i.e POC SO Act was passed in 2012. The said act also has a special provision for victim compensation to be granted by the special courts. The model guidelines under Section 39 of POC SO Act, 2012 developed by Ministry of Women and Child Development in chapter 2 under "*General Principles for use of Professionals and Experts Assisting the Child at Pre-trial and Trial Stages*" in clause "1" recognises the right to compensation and states "*The child victim may be awarded compensation for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of trial, as well as at the conclusion of the trial.....Victims may be repaid for material losses and damages incurred, receive medical and/or psychosocial support and obtain reparation for ongoing suffering.*"

Laws Governing Victim Compensation for Medical Needs to Rape Survivors

1. Section 357A of Code of Criminal Procedure, 1973. ("CrPC")
2. Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016 (SC/ST POA Rules)(Applicable in cases where the victim belongs to the SC/ST community)
3. NALSA Compensation Scheme for women Victims/Survivors of Sexual Assault/other Crimes -2018
4. Section 33 (8) and Rule 9 of Prevention of Children from Sexual Offences, 2012 ("POCSO") (Applicable in case the victim is a minor i.e. less than 18 years of age)

Who is liable to pay the compensation?

Code of Criminal Procedure, 1973 makes provision for payment of compensation by the accused under Section 357 of CrPC, and in case the same does not suffice then the compensation is to be paid from the State victim compensation fund under Section 357-A of Code of Criminal Procedure, 1973. To ensure that there is parity of compensation across States, the Central government (Ministry of Home Affairs) in 2016 has created the Central Victim Compensation Fund (Central Victim Compensation Scheme Guidelines, 2015). Out of the "Nirbhaya Fund" created for tackling crimes/violence against women, one-time budgetary grant of Rs. 200.00 Cr was sanctioned for the Central Victim Compensation Fund.

How is the quantum of compensation decided?

Before the National Legal Services Authority ("NALSA") "Compensation Scheme for women Victims/Survivors of Sexual Assault/other Crimes (2018) (hereinafter referred as the NALSA compensation scheme), compensation was decided as per the quantum provided for in the State Victim Compensation Scheme. However, after 2018 i.e post NALSA compensation scheme which was framed as per directions of the Hon'ble Supreme Court in



NipunSaxenav. Union of India (2019) 13 SCC 715 (2019), compensation is decided as per the bracket of NALSA scheme. However, the NALSA scheme is not applicable to minor victims and the Hon'ble Supreme Court in the aforementioned judgment noted no scheme has been framed for survivors under the Protection of Children from Sexual Offences Act, 2012 and thereafter directed that NALSA scheme is to act as a guideline Rule 7 until the Rules are finalized by the Central Government. The said order was passed on September 05, 2018 and it has been more than 3 years and 10 months that no such amendment to provide for victim compensation in POCSO cases has been formulated. In the absence of which, the Special Court is only obliged to consider the NALSA Scheme as a guideline. However, the Special Court is not bound by the limits of compensation under the scheme and in deserving cases, can exceed it (The Minor through Guardian Zareen v. State (Government of NCT Delhi), W.P. (CrI) 798/2015)

In accordance with NALSA Compensation scheme and the compensation payable to victims of rape is minimum Rs 4,00,000 (four lakh only) and maximum Rs 7,00,000 (seven lakh only), adult victims must be paid at least 25% of it at the interim level and the rest at the final stage. In deserving cases, the upper limit can be exceeded by recording reasons for the same.

The compensation requirements of the children are higher and therefore the NALSA Compensation scheme, and the Delhi victim compensation scheme (2018) mentions that in case of children the amount is to be 50% more.

Who can apply for compensation?

Clause 5 of the NALSA scheme provides for the procedure to be used by the victim or her dependents to claim compensation before the DLSA. It also specifically mentions that "*the SLSA/DLSA can, in deserving cases, may suo-moto initiate preliminary verification of facts for the purpose of grant of interim compensation.*".

Victim compensation applications can be moved by Station House Officer ("SHO") as well under the clause.

Who can grant compensation?

Both the DLSA/SLSA and the Courts have the power to award compensation. In case of adult victims, the Court can only recommend compensation whereas in child rape, the Special Court under the POCSO Act, 2012 (The Protection of Children from Sexual Offences Act, 2012, S. 28, No. 32 Acts of Parliament, 2012 (India)) can quantify the compensation amount as well.

IMPORTANCE TO MEDICAL TREATMENT UNDER COMPENSATION SCHEMES

The victim compensation schemes understand the importance of medical treatment and therefore specifically provides that the quantum of compensation is to be decided based on the medical needs of the victims.

Clause 8 of NALSA compensation scheme provides for factors to be considered while awarding compensation. Sub-clause 1 provides for severity of mental and physical harm to be considered. Sub-clause 2 specially mandates that expenditure incurred or likely to be incurred for medical treatment (both physical and mental health counselling) is to be considered while deciding the compensation. If there has been a loss of educational opportunity/employment because of the medical treatment, then the same must also be taken into consideration while deciding on the quantum of compensation. If the victim suffers any disability because of the offence, adequate compensation for the same must also be awarded.

Other important aspects provided under the scheme include pregnancy- need for Medical Termination of Pregnancy or rehabilitation needs in case the victim gives birth to the child. In certain cases, where pregnancy cannot be terminated because of risk to the life of the

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victim, the Hon'ble Supreme Court in the case of Z vs. The State of Bihar and Ors, (MANU/SC/1011/2017) has directed the State to give proper treatment/medical aid and nutrition to the child to be born.

The compensatory authority is also duty bound to consider if the victim contracted a sexually transmitted disease (STD) OR Human Immunodeficiency Virus (HIV) because of the offence. If such are the results of the offence, the compensation needs of the victim are higher and she must be adequately compensated for the loss suffered as provided under the scheme.

The same factors must be considered by the Special Court while granting compensation to child victims of Sexual abuse as per Rule 9(3) of the POCSO Rules, 2020 r/w Section 33(8) of the POCSO Act, 2012 As per Rule 4 (14) of the POCSO Rules 2020, a preliminary assessment report as per the prescribed form (Form B) shall be prepared by the SJPU (Special Juvenile Police Unit) or the local police within 24 hours of registration of the FIR and the same must be submitted to the CWC. The format of preliminary assessment report takes into consideration of the above-mentioned medical factors.

Therefore, it is clear from the above provisions that due importance is given to the medical needs of the survivors.

Medical needs of the victims ignored under the SC/ST POA Rules, 2016

The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016 ("SC/ST POA Rules, 2016") provides for compensation to the victims of rape which shall be applicable to victims of rape who belong to the SC/ST community. The Act provides for a fixed payment of Rs. 5,00,000 to the victim to be paid as follows:

"(i) 50 per cent. after medical examination and confirmatory medical report.

(ii) 25 per cent. when the charge sheet is sent to the court.

(iii) 25 per cent. on conclusion of trial by the lower court."

Under the SC/ST POA rules, it is the duty of the District Magistrate to compensate the victims. The SC/ST compensation is applicable to adults and children alike. In cases, where the victim belongs to the SC/ST community, the victim is entitled to compensation under the SC/ST Act as well. The amount of Rs 5,00,000 was set by an amendment in the year 2016. The relief is available only to SC/ST victims of Rape irrespective of their age and not to other rape survivors. The non-SC/ST rape survivors must claim benefit under the State compensation scheme wherein the amount specified is different for different States. The situation changed after 2018, wherein the NALSA Compensation scheme was introduced. The rape survivors, irrespective of their jurisdiction could claim under the scheme. Under Rule 12(4) of the SC/ST POA rules, it the executive magistrate who is responsible for providing compensation under the Act. In case a claim is made under the State victim compensation scheme or the NALSA compensation scheme, the adjudicating authority is the DLSA/SLSA (District Legal Services Authority/State Legal Services Authority)

However, after NALSA, the amount under the NALSA scheme is higher than the ones provided under the SC ST POA rules. The provision has now become obsolete. It should either be revised or special provision in the DVC scheme/NALSA for SC/ST victims should be introduced.

INTERIM COMPENSATION FOR IMMEDIATE MEDICAL NEEDS

Section 357-A (6) of the Code of Criminal Procedure, 1973 provides for immediate first-aid facility or medical benefits for the victims free of cost on the certificate of the SHO/Magistrate or any other interim relief.



NALSA makes provision for the same and mandated Immediate compensation of Rs 5000/-- Rs 10,000/- once the complaint is received by the DLSA and an interim relief of at least 25% of the maximum compensation awardable for the offence. Clause 9(1) of the POCSO Act also provides for payment of interim compensation to the child victims of sexual abuse to meet the relief and rehabilitation needs of the child.

The said interim relief can be beneficial for rehabilitation of the victims. Final compensation often takes a lot of time and comes at the end of the trial which lasts long. In such cases, it is unjust to expect the victim to wait for years to receive compensation. Medical needs are urgent and even mental health counselling needs to be provided immediately after the offence and therefore compensation is required at the initial stage only.

VICTIM IMPACT ASSESSMENT REPORTS

To determine the quantum of compensation, it is important the impact of crime on the victim is studied. Therefore, it is essential to prepare a victim impact report. The Hon'ble Delhi High Court in the recent case (2020) titled Karan v. State NCT of Delhi has laid down principles for assessing the compensation. The Court directed the Delhi State Legal Services Authority ("DLSA") to conduct a summary enquiry and to prepare a victim impact report to be submitted before the court along with its recommendations in every criminal case after conviction. The court also prepared the format of the Victim Impact Report ("VIR") which shall disclose the impact of the crime on the victim.

The accused in all such cases shall file an affidavit of his assets and income which shall be reviewed by the DLSA and the court, to decide if the accused has the capacity to compensate the victim. If the accused does not have the capacity, then the same will be paid to the victim by the State under Section 357A of Code of Criminal Procedure, 1973. The Delhi High

Court went further and recommended that the formats be made part of the legislation and directed all lower courts to file monthly compliance reports.

The format of VIR developed by the High Court considers the nature of injury/loss suffered by the victim including physical and mental harm, emotional harm. It further in detail takes into account the pecuniary expenses like the medical expenses and non-pecuniary losses like loss of love and affection, emotional harm/trauma, mental and physical shock, Post-traumatic stress disorder (anxiety, depression, hostility, insomnia, self-destructive behaviour, nightmares, agitation, social isolation, etc.) panic disorder or phobia(a) which got triggered by the offence.

In cases of injuries, the report calls for details of the injury, including the medical treatment, surgeries undergone, disability, reimbursement of medical expenses. It also reflects the loss of reputation and of marriage prospects. The VIR is not specifically developed for rape cases only but is a general format for all injuries. If implemented the same can be very beneficial to all victims and specially to the victims of rape.

Before granting any compensation, it is necessary to quantify the harm suffered and therefore a victim impact report/victim impact assessment is required. The Hon'ble Supreme Court in a recent judgement of Mallikarjun Kodaqali (Dead) v. The State Of Karnataka, MANU/SC/1165/2018, suggested preparation of victim impact assessment reports in order to quantify the punishment to the accused and took into account the need for psycho-social support and counselling for the victims. Law Commission of India has also suggested submission of victim impact assessment reports by the prosecutor during bail proceedings.



However, no central legislation makes it mandatory to prepare the victim impact assessment reports.

RESULTS OF THE STUDY OF PREPARATION OF VICTIM IMPACT ASSESSMENT REPORTS IN DELHI

The present study also analysis the preparation of victim impact assessments reports by the DLSAs of Delhi. For this purpose, Right to information applications under the Right to Information Act, 2005 were filed before all District Legal Services Authority in Delhi. The data collected is present below.

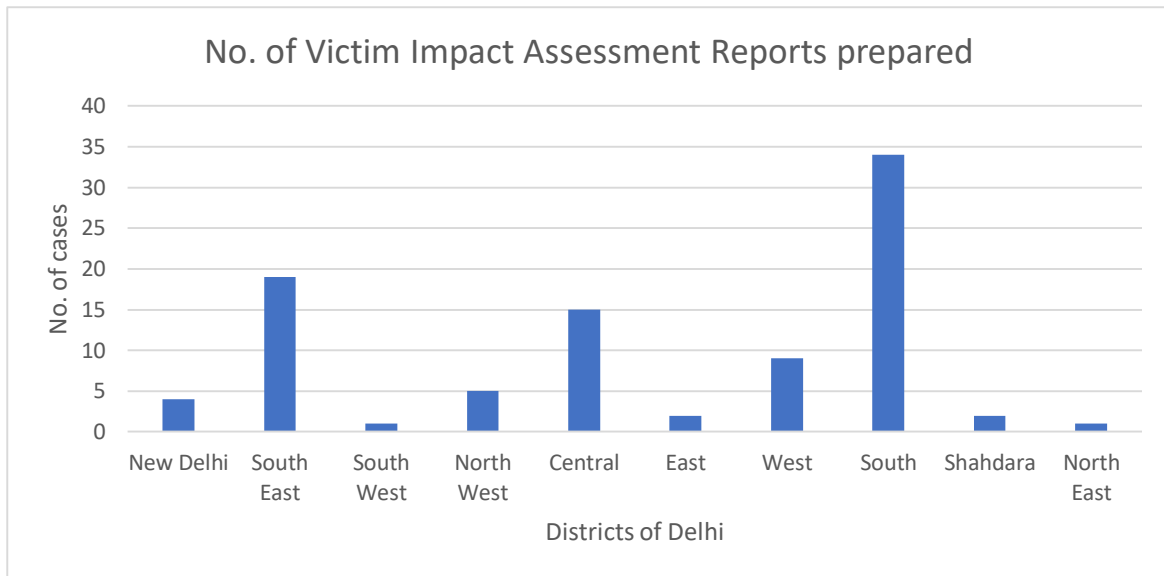


Figure 1. No. of Victim Impact Assessment Reports prepared.

The tabular version of the above table with year-wise details is presented below.

Table 1

DISTRICT	2019	2020	2021	Total
New Delhi	0	0	4	4
South East	0	0	19	19
South West	NOT AVAILABLE	NOT AVAILABLE	NOT AVAILABLE	1
North West	0	0	5	5
Central	NOT AVAILABLE	NOT AVAILABLE	NOT AVAILABLE	15 (1 (A) + 14 (C))
East	0	0	2	2
West	0	0	9	9
South	0	0	34	34
Shahdara	0	0	2	2
North East	0	0	1	1

There are 10 DLSAs in Delhi. From 2018-2021, they have in total prepared only 92 victim

impact assessment reports which is not even 1% of the total rape crimes reported in 2020



alone (NCRB,2020). The highest no. of Victim Impact Assessment reports has been prepared by South District of Delhi which is also a low figure of only 34 reports prepared in 2021 with no reports were prepared in 2019 and 2020. Districts like South-West and North-East have only prepared a single VIR in 3 years. The figures are extremely disappointing. Without the preparation of the reports, a calculated decision as to the amount of compensation required cannot be reached and thus any other decision reached would be arbitrary.

Impact of Covid-19 on the preparation of VIRs

During the first outbreak of COVID-19, i.e 2020, no victim impact assessment reports were prepared in 8/10 districts of Delhi. The year-wise data for the other 2 is not available. However, in majority of the DLSAs the VIRs were not prepared. COVID-19 was followed by a lock-down in the country which must have made it difficult for the DLSA staff to gather information for the preparation of reports. Also, during the first wave, the courts were also not fully functional, all of which impacted the compensation mechanism for rape survivors.

INTERNATIONAL PERSPECTIVE

India is a signatory to multiple international human rights instruments like Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on Eliminating all forms of Discrimination against women and children which casts upon it the duty of providing an effective and efficient criminal justice system for its people. An effective criminal justice system includes compensation rights of the victims.

The United Kingdom is made up of four countries. England, Scotland, Wales (referred as Great Britain) and Northern Ireland. The victim compensation scheme is the same for England, Scotland, and Wales whereas Northern Ireland has a separate compensation mechanism.

For this research, we shall only be comparing the victim compensation scheme of Great Britain and India.

In line with its international obligations and its commitment to rehabilitate victims of crime, Great Britain has passed Criminal Injuries Compensation Scheme under the Criminal Injuries Compensation Act 1995. The Act casts a duty on the Secretary of the State to make arrangements to compensate victims who have suffered a criminal injury. The Act and the scheme is administered by the Ministry of Justice. Currently, the scheme applicable is the 2012 scheme which was recently amended in 2019. Most importantly, the Act provides for a Criminal Injuries Compensation Authority (CICA). The scheme in detail mentions on the eligibility for compensation, grounds for withholding or reducing an award, types of payments, process of application and determination.

In Great Britain, there does not exist a separate scheme for rape victims and the Criminal Injuries Compensation Scheme is applicable to the rape victims as well. There is a central authority for the 3 countries wherein compensation is filed and decided. In India, there exists a special scheme for compensation women survivors of sexual assault i.e NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018. However, in Great Britain, there exists a common scheme which is used to compensate all victims of serious crimes. In India, each state has its own victim compensation scheme which mostly includes compensation for rape survivors as well. However, in 2018 there seemed a need for a special scheme and thereafter the NALSA compensation scheme was passed. The central scheme in Great Britain avoids confusion and keeps the process streamlined.

The scheme in India provides a range for compensation. It is the discretion of the



authority to decide the quantum of compensation. In appropriate/deserving cases, the compensation limit can also be exceeded. However, in Great Britain, the scheme provides an exact amount for various injuries and based on the injury incurred, the exact amount of compensation is granted. There is little discretion available to the claims officer. If he believes that the claim is correct, the amount is to be calculated as per the annexures.

Therefore, each medical need of the survivors is already quantified unlike in India, where the quantum for the injuries is the discretion of the compensatory authority. The need of the hour is to have compensation guidelines providing for range of compensation for various medical injuries as well. It is important to leave scope of discretion as each case is different. However, guidelines are important to ensure that biased or arbitrary decisions are not taken, and the decisions are guided by some uniform law.

The scheme in Great Britain provides an option for review in case the victim is not satisfied with the amount/condition of compensation. However, no such provision for review is there in India. As for appeal, Both the jurisdictions have provisions for appeal. In Great Britain, the appeal lies with a specialized tribunal empowered to only adjudicate compensation matters. Whereas under NALSA, the appeal lies with the secretary of the DLSA which essentially is the same body that decides the compensation in the first place. Of course, there are provisions to challenge the same before the higher judiciary under Article 226/32 of the Indian Constitution, but there needs to be a better appellate mechanism to address the issue.

CONCLUSION

It is important that the rape survivor receives timely and quality medical health care including mental health counselling. The same should ideally be provided to the victim free of cost. However, if the victim pays for the expenses,

the same must be reimbursed in the form of compensation. To decide appropriate amount of compensation, it is necessary to prepare the victim impact assessment report. The report should ideally be prepared by the DLSA/SLSA as they are a specialized agency for the purpose of determining victim compensation.

As can be seen from the data presented in this Article, in very few cases actual victim impact assessment is being prepared. Without the said assessment, it is difficult to quantify the actual needs of the victims. The amount so decided in the chapter on amount of compensation is being decided on the discretion of the authorities and the said decision is not based on any systematic foundations. The compensation awarded must not be arbitrary and should be based on reasons to be recorded in writing.

If the victim must be rehabilitated, the first step is to understand the rehabilitation needs and to quantify it. Thereafter, a proper report is to be submitted before the concerned authority to decide on the quantum of compensation. If the previous step is skipped, the decision shall be considered arbitrary.

Compensation is a beneficial legislation and thus the court should strive to provide maximum benefit to the victim. In Hari Krishan and State of Haryana v. Sikhbir Singh, AIR 1998 SC 2127 referring to provisions for compensation, the Hon'ble Supreme Court observed "*This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system..... We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.*"

RECOMMENDATIONS

- Victim impact assessment reports should to be prepared by the DLSA to assess the rehabilitation needs of the victims before deciding on the interim compensation.

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- A detailed VIR should be prepared at the stage of final compensation.
- The format or VIR prepared by the Delhi HC in *Karan v. State NCT of Delhi* should be used across the country and be made part of the legislation as suggested by the court.
- In every criminal case, the Courts must record reasons for awarding or denying compensation to the victims.
- Interim compensation must be provided in a timely manner to meet the immediate medical and counselling needs of the victim.
- Mental health counselling for rape survivors should be adequately promoted.
- An effective and efficient automatic procedure to compensate the victim once an FIR is filed. The FIR must be forwarded to the DLSA to award compensation where necessary and in case compensation is not provided, reasons for non-awarding to be recorded.

A single authority to address all compensation claims. The victim must not be required to approach multiple authorities or run from pillar to post to get his compensation. The DLSA should take responsibility for compensation in all cases where an FIR has been registered.

- Proper coordination between the courts and DLSA for better implementation of the compensation schemes.
- Spreading awareness regarding rights of victims to compensation under various laws/schemes.

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