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Rights of Rape Victims in India

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ABSTRACT

The issue of rape is one of the most unfortunate issues that our country is still battling with. Whereas, there has been constant efforts made in terms of legislative policy towards bringing in stringent measures to punish the offenders, but our criminal justice system and legislative policy hardly shows any concerned efforts when it comes to rehabilitation of rape victims. True punishing the offender is important but it can only help in deterrence but what about the victims who has been mercilessly affected by such heinous crime. Even, though post Nirbhaya Case we can see some monetary compensations and funds for victims have been formed through Central Victim Compensation Fund. But, now the question arises, whether just by the monetary compensation the purpose of rehabilitation is completed? Considering the fact that we live in a society where especially rape victims undergo societal stigma and oppression. She is kind of being boycott from the society, she faces challenges to continue her studies, hard to get a job, hardships in getting married. All, this problems can't be compensated just through monetary relief of few lakhs. Adding to the societal, personal and professional hardships, the victim also undergoes mental trauma and depression. Thus, with all these major issues in hand this paper aims at exploring the research question, "Whether, the current rehabilitation policy for Rape Victims is efficient enough?", with the hypothesis that it is not and there is a need for change in order to have a holistic approach in redressing the hardships faced by the victims.

Keywords: *Victim, Compensation, Nirbhaya Fund, Rehabilitation, Criminal Law Reforms.*

I. INTRODUCTION

The criminal law of any country is the basis to punish the public wrongs done by an individual as well as to act as a deterrent for the society. The criminal law deals with various categories of crimes and their respective punishments/penalties. In India, one such category is the sexual offenses against women, of which the offense of rape is a part. Section 375 of the Indian Penal Code, 1970 defines rape and Section 376 deals with the punishment of rape³. Compensation

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³ Bhattacharyya, Rituparna. Understanding the spatialities of sexual assault against Indian women in India. *Gender, Place & Culture* 22, no. 9 (2015): 1340-1356.

to rape victims in an integral aspect of 'right to life' and in *Shri Bodhisattwa Gautam v Miss Subhra Chakraborty*,⁴ the Supreme Court made a remarkable observation that:

“Rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushed her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. Compensation to a victim of rape is undeniably important for her rehabilitation, especially in a society where the victim of rape is treated worse than the perpetrator. This not only helps the victim financially but also helps her in retaining a normal life in society”.

II. RELEVANT STATUTORY PROVISIONS

Section 357 of the Criminal Procedure Code aims at providing compensation to the victims of crime, yet, despite this, most of the trial courts failed to utilize their power to award compensation to the victim. The same was highlighted in the 41st report of the Law Commission. Section 357 was incomplete in itself as it is incapable of taking regard of all the victims of the crime. Under this section, compensation is only granted when the trial is concluded. Hence, the legislature intervened and came up with a subsection i.e. Section 357A. In 2008, an amendment was made to the Code of Criminal Procedure by which Section 357A was inserted in the code. This provision was inserted as a result of the recommendations of the 154th Report of Law Commission. Before this amendment, the main provision dealing with compensation to victims was Section 357, according to which the compensation was to be paid by the accused only on a successful conviction. Under Section 357 of the Code of Criminal Procedure, the State had no duty to compensate the victim which was a major flaw.⁵ However, Section 357A was a progressive step for improving the difficulties of the victims. This section imposed liability on the State to compensate the victim or his/her dependents who have suffered as a result of the crime. This Section addressed the lacuna in Section 357 with a focus on rehabilitating the victim even where the accused is not tried.⁶ Section 357A requires every State Government in coordination with the Central Government to prepare a Victim Compensation Scheme. Through this scheme, the victim of a crime or his/her dependents will

⁴ *Shri Bodhisattwa Gautam vs Ms. Subhra Chakraborty* 1996 AIR 922

⁵ Nambiar, Sridip S. Some Insights on Formulation of a Victim Compensation Scheme in India. *NUALS LJ* 5 (2011): 128.

⁶ Baladhikari, Surja Kanti. *Rape Survivor: A Victim Based Approach!*. (2019).

be able to claim compensation for their loss/injury. The State has to create and maintain a fund for providing the said compensation. A victim can get the benefit of the victim compensation through two ways. Firstly, the court which is hearing the victims' case can recommend his/her case to the District Legal Service Authority or the State Legal Service Authority for compensation. The authorities will then award compensation to the victim according to the scheme prevailing in their State. Secondly, Section 357(4) allows the victim to directly approach the District Legal Service Authority or the State Legal Service Authority for compensation by making an application to them. This is a very useful provision for victims of a crime where the offender is not traced or identified as it enables the victims to get compensation in cases where a trial has not taken place.⁷ This section also empowers the trial court to recommend for compensation under the scheme in cases where the compensation awarded to the victim under Section 357 is inadequate for rehabilitation or where the cases end in acquittal or discharge.

Under this section, the District Legal Service Authority or the State Legal Service authority in addition to awarding compensation to the victim may also provide medical or first aid-benefits, or other interim relief, as may be required⁸. With the amendment of 2008, a modern approach towards victimology was taken, that a victim of crime has the right to be rehabilitated and compensated irrespective of the successful prosecution and identification of the offender⁹.

III. SCHEME DRAFTED BY THE NCW FOR RAPE VICTIMS

In India, pursuant to the Supreme Court directive in the Delhi Domestic Working Women's Forum case, the National Commission for Women drafted the Scheme for the Rehabilitation for Victims of Rape, 2005. The scheme provided for the setting up of Criminal Injuries and Rehabilitation Board at the District and State level and a National Criminal Injuries and Rehabilitation Board. The scheme gives details about the constitution, functions and the budgetary allocation of the Authorities constituted under it. It provides for compensating rape victims, irrespective of whether the perpetrator has been brought to justice. It provides for legal aid and other measures that will help such victims. However, there is nothing suggestive of any further thinking on these issues, or executive will to take the thought further.¹⁰

⁷ Mohan, Vibha. Revisiting Victim Compensation in India. *Indian JL & Pub. Pol'y* 4 (2017): 88.

⁸ Nath, G. V. Victim Compensation: Understanding the Law to Sensitize Stakeholders. *Available at SSRN* 3635598 (2020).

⁹ Ibid

¹⁰ Yadav, Mukesh, Pramendra Singh Thakur, and Pooja Rastogi. Compensation and Rehabilitation of Rape Survivors A Constitutional Right. *Journal of Indian Academy of Forensic Medicine* 36, no. 3 (2014): 284-291.

IV. A BRIEF ANALYSIS OF DIFFERENT VICTIM COMPENSATION SCHEMES

Almost all the states have come up with their own victim compensation schemes since the 2008 amendment. Most of the state schemes come with the purpose of compensation to the victims or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, which is in consonance with Section 357A. However, the victim compensation schemes for Odisha and Meghalaya, not only aim at providing financial assistance to the victim but also aim at providing support services such as shelter, counselling, medical aid, legal assistance, education and vocational training depending upon the needs of the victim. This is a significant step when it comes to rape victims whose lives may come to a halt after the tragic incident. These supportive services can help the victim to start her life again by way of the education and training provided by the state.¹¹

Victim compensation schemes of other states should include a similar purpose in their schemes in order to expand the ambit of protection provided under the schemes. If we look at the definition clause for the term ‘victim’ in the Assam Victim Compensation Scheme, 2012, it defines victim as:¹²

“Victim means a person who has suffered any loss or injury caused by the reason of the act or omission for which the accused person has been charged”.

Here the words has been charged connote that the accused has been identified, investigated and the court has charged him under the Criminal Procedure Code. This definition is not in consonance with Section 357A of the Criminal Procedure Code, which allows even a victim whose offender has not been identified to claim compensation under the compensation scheme. This definition in the Himachal Pradesh and Assam victim schemes seems to defy the very purpose for which these victim compensation schemes are set for. Another problem with most of these victim compensation schemes is that there is no authority or body to monitor them. States can take reference from the Madhya Pradesh Victim Compensation Scheme on this point. Under the Madhya Pradesh Victim Compensation Scheme, a specific provision has been made for monitoring the scheme. The scheme mandates “the formation of two committees at the State and District level for monitoring the Victim Compensation Scheme in each State. A proper authority for monitoring the Victim Compensation Scheme is necessary to keep in check the impact and results of the executed schemes. It ensures that the government and policy implementers are held accountable in case of inefficacy in attaining the desired purpose of the

¹¹ Dube, Dipa. Victim Compensation Schemes in India: An Analysis. *International Journal of Criminal Justice Sciences* 13, no. 2 (2018): 339-355.

¹² Assam Victim Compensation Scheme, 2012, cl. 2(f)

scheme”¹³. Most of these victim compensation schemes do not lay out grounds for rejection of application for an award of compensation. Nor do most of these schemes mandate the State or District Legal Services Authority to give reasons for not awarding the compensation to the applicant/victim.¹⁴ However, “the Delhi Victim Compensation Scheme, 2015 mandates the authority to give a reasoned order by laying down the grounds of rejection in writing while declining compensation. Some of the states like Himachal Pradesh, Madhya Pradesh, Goa and Karnataka also mention grounds for rejection, withholding or reduction of compensation in their victim compensation schemes. Some of the common grounds include”¹⁵:

1. Furnishing false evidence
2. Failure to report the crime
3. Failure to co-operate with police/authority
4. Failure to give reasonable assistance to DLSA/SLSA
5. Facts and Circumstances of the victim make his/her ineligible for compensation, etc.

Most of the above grounds for rejection seem justified but rejecting the application on failure of the victim to give reasonable assistance to the authority isn't fair especially for victims of grave crimes such as rape. A victim of rape may not be able to fully cooperate because she may still be suffering from the psychological trauma and distress. There is no uniform criterion followed by these State Victim Compensation Schemes. Every State has its own set of eligibility criteria and restrictive clauses. For instance, in the Mizoram Victims of Crime Compensation Scheme, only families below the poverty line (BPL) can apply for compensation under this scheme.¹⁶ Initially, the amount of compensation decided by the states under the Victim Compensation Schemes indicated a lot of discrepancies.

The Supreme Court even took note of this discrepancy, in *Tekan Alias Tekram v. the State of M.P.*¹⁷, wherein it was observed that “there was a huge degree of discrepancy in the amount of compensation in case of rape decided by the States under their Victim Compensation Schemes. The honorable Court went ahead and compared the amount of compensation provided by different states to a victim of rape. The Court highlighted this discrepancy by observing how the victim compensation scheme in Jharkhand provided a maximum of Rs. 20,000 as

¹³ Chakraborty, Samraggi. The Growth of Victim Compensation in India. *International Journal of Research in Social Sciences* 9, no. 3 (2019): 446-453.

¹⁴ Ibid

¹⁵ Delhi Victim Compensation Scheme 2015, s 9

¹⁶ The Mizoram Victims of Crime Compensation (Second Amendment) Scheme 2013, s 5(f)

¹⁷ *Tekan Alias Tekram v. the State of M.P.* 2016 SCC OnLine SC 131

compensation to victims in cases of rape, while the victim compensation scheme for Goa had put a maximum cap of Rs. 10 lakhs for compensation to rape victims. Taking note of this discrepancy in compensation, the Centre in 2015 came up with the Central Victim Compensation Fund Scheme Guidelines. An amount of Rs. 200 crores was allocated to this scheme from the Nirbhaya Fund. Under this Central scheme, a uniform compensation of minimum Rs. 3 lakhs for rape was fixed for all State Victim Compensation Schemes. Despite the guidelines in 2015, many States have failed to amend their victim compensation schemes accordingly”.

V. UNIQUE FEATURES OF VCS STATE WISE¹⁸

- Karnataka and Andhra Pradesh in their VCS says that it shall not allow any participation or representation by a legal practitioner or any other person or institution or Non-Governmental Organization on behalf of the victim/ claimant.
- Kerala in its VCS provides that in case of compensation to victims of rape/victim under trauma, the matter shall be informed to the probation officer in the district concerned for effective rehabilitation and continuous evaluation.
- Maharashtra, Karnataka, Andhra Pradesh, Telangana in their VCS provides that if a victim or his dependents have obtained an order sanctioning compensation based on false, vexatious or fabricated complaint which is so held by the trial court, the compensation awarded shall be recovered with 15% interest per annum (Maharashtra, Karnataka) and 12% interest per annum (Andhra Pradesh, Telanagana).
- Delhi in its VCS has a provision wherein if after the disbursement of compensation, at any stage it comes to the notice of the Legal.Service Authority that any relevant fact shared with it during the inquiry for compensation was false, the Authority can initiate proceedings for recovery of part/ full compensation after affording an opportunity of being heard to the beneficiary.
- Tripura, Mizoram and Meghalaya in their VCS mentions in cases where employment is provided to any family member of a victim of crime, no assistance will be given to the dependents under the scheme. In case such employment is given after release of compensation under the scheme, the assistance will not be withdrawn or amount realized, if paid already.

¹⁸ *Supra* f.n. 14

- Uttar Pradesh in its VCS has made provision for giving additional assistance of Rs25,000/- subject to maximum of Rs. 1,00,000/- in cases where :
 - (a) the affected person is a minor girl requiring specialized treatment and care,
 - (b) the person is mentally challenged requiring specialized treatment and care,
 - (c) any other case as may be deemed fit by the legal services authority.

Delhi in its VCS has categorically laid down various factors relating to the loss or injury suffered by the victim which the Legal Service Authority may take into consideration while deciding a matter. These factors are like gravity of the offence and severity of mental or physical harm or injury suffered by victim; loss of educational opportunity as a consequence of the offence, including absence from school/ college due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason; loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason; whether the victim became pregnant as a result of the offence; whether the victim contracted a sexually transmitted disease (STD) as a result of the offence; whether the victim contracted human immunodeficiency virus (HIV) as a result of the offence etc.¹⁹

- Telangana and Andhra Pradesh in their VCS with regard to Victim of Commercial Sexual Exploitation & trafficking (VOCSET) provided that the State/DLSA shall while granting compensation take into consideration the trauma undergone by them and consider the aspects of rehabilitation, reintegration and restoration of them. Andhra Pradesh also extended this provision regarding victims of acid attack and bonded labour/child labour.
- Andhra Pradesh in its VCS has a provision for constituting Emergency Fund (out of the VCS fund) for providing quick and immediate medical assistance to the victims of serious injuries. Such fund shall be operated by the concerned Commissioner of Police/ District Superintendent of Police/ Superintendent of Railway Police.²⁰
- Madhya Pradesh categorically lays down that if a crime occurs beyond the territory of the State and the victim is found within the limit of the State, the victim shall be eligible

¹⁹ Comparative Study of Compensation & Support Services In Various States In India As Well As In US,UK & Germany, Chapter 6 Sodhganga,

(Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/190615/15/15_chapter%206.pdf, last accessed on 7th June 2021

²⁰ Sanjeev, Implementation of Victim Compensation Scheme leaves a lot to be desired, Factly, 14TH April,2018 Available at: <https://factly.in/implementation-victim-compensation-scheme-leaves-lot-desired/>, last accessed on 7th June 2021

to get an interim relief under section 357A of CrPC. States like Goa, Himachal Pradesh categorically lays down situations where an application may be rejected.

- Chattisgarh in its VCS provides that the victims of acid attack shall be provided with medical treatment, specialized plastic surgery for short and long term in specialized hospitals and psychological and corrective treatment. The State Government shall bear 100% expenditure incurred on such treatment of victims of acid attack.
- Punjab in its VCS provides that victims of acid attack will get 100% medical reimbursement of all treatment including Plastic Surgery.

VI. CENTRAL VICTIM COMPENSATION FUND SCHEME

In the year 2012, in the case of Nipun Saxena Vs. Union of India²¹ the Honorable Supreme Court had asked NALSA to constitute a committee to frame the Model Rules for Victim Compensation for sexual offenses and acid attacks. NALSA accordingly finalized the 'Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crime' which received the Supreme Court's approval in 2018. This was a remarkable move since it laid the foundation for an addendum to an already existing state compensation scheme which is specially designed for victims of sexual assault and acid attacks. This scheme provides for both the minimum and maximum quantum of compensation for the offenses listed in the scheme.

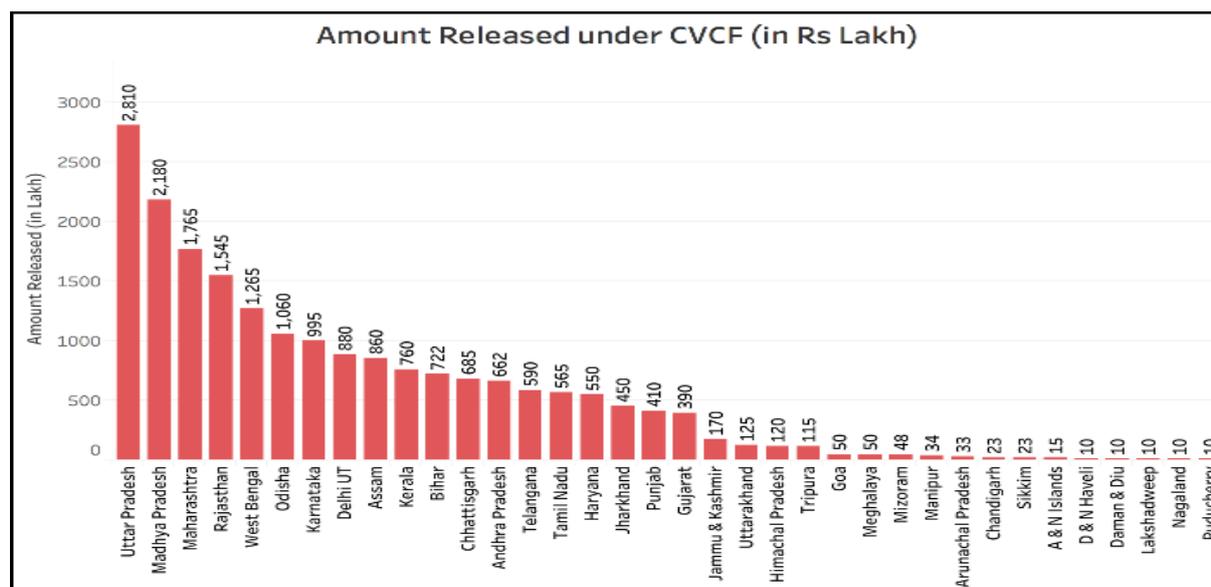
It mandates the police to report the offenses covered under this scheme by sharing the hard and soft copy of the FIR with the SLSA/DSLTA. It also allows SLSA/DSLTA to *suo moto* initiate preliminary verification of facts for grant of an interim compensation to the victims. It also provides provisions for instant compensation in deserving cases which may range between Rs. 5,000-10,000. It has further increased the minimum compensation quantum for rape cases as decided by the Central Victim Compensation Fund Scheme Guidelines. The minimum compensation in rape cases is Rs. 4 lakhs while for gang rape it is Rs. 5 lakhs. The scheme is a significant milestone for the development and rehabilitation of female victims in society. However, the scheme has only recently come into force, and we are yet to assess its impact.²²

After the Nirbhaya incident in 2012, Government of India established Nirbhaya Fund in 2013, with an initial corpus of Rs. 1000 crore. There have been widespread reports of the non-utilization of the fund. Government data also shows that a lot of projects are yet to take off. The Central government in 2015 formulated the CVCF scheme to compensate the determined.

²¹ Nipun Saxena v Union of India 2018 SCC OnLine SC 2772

²² Chakraborty, Samraggi. The Growth of Victim Compensation in India. *International Journal of Research in Social Sciences* 9, no. 3 (2019): 446-453.

Every state has their own guidelines which decide the procedure.²³In 2015, to ward off the criticism over non utilization of the Nirbhaya Fund, the Government of India (GoI) setup the Central Victim Compensation Fund (CVCF). The CVCF was also setup to streamline the compensation amount in various states for different categories of crime. GoI issues guidelines for the CVCF in 2015 and allocated Rs 200 crore from the Nirbhaya Fund to this scheme. The CVCF was aimed at harmonizing the state schemes with a minimum fixed amount of compensation for victims of various crimes.



MINIMUM AMOUNT OF COMPENSATION FOR CERTAIN INJURIES AND LOSSES AS PROVIDED IN THE GUIDELINES²⁴

Sl. No.	Description of Injuries /Loss	Minimum Amount of Compensation(INR)
1	Acid Attack	3 Lakhs
2	Rape	3 Lakhs
3	Physical Abuse of Minor	2 Lakhs
4	Rehabilitation Victim of Human Trafficking	1 Lakhs

²³ Law Relating To Victim Compensation In India, Indian Law Watch (Available at: <http://indianlawwatch.com/practice/law-relating-to-victim-compensation/>, last accessed on 9th June 2021

²⁴ Ministry of Home Affairs Data, Government of India (Available at <https://data.gov.in/node/3954001/download>, last accessed on 10.11.2018 at 11:23pm)

5	Sexual Assault (Excluding Rape)	50,000
6	Death	2 Lakhs
7	Permanent Disability (80% or more)	2 Lakhs
8	Partial Disability (40% to 80%)	1 Lakhs
9	Burns affecting greater than 25% of the body (Excluding Acid Attack Victims)	2 Lakhs
10	Loss of Foetus	50,000
11	Loss of Fertility	1.5 Lakhs

The highest amount of Rs 28.1 crore was released to Uttar Pradesh followed by Rs 21.8 crore to Madhya Pradesh. Odisha, Rajasthan, West Bengal & Maharashtra are the only other states to have received more than Rs 10 crore. There does not seem to be any rationale in the amount of funds disbursed to various states under the CVCF. If one were to go by the population or even female population, Madhya Pradesh is in the 6th place where as the state received the most funds after Uttar Pradesh. Nagaland received an amount of Rs 10 lakh, same as what was released to Lakshadweep. Nagaland's population is more than 30 times that of Lakshadweep.²⁵ In fact, Nagaland received less than that of Andaman & Nicobar Islands, though the population is 5 times more. Even if one were to go by crimes against women, the most crimes against women (per every one lakh population) were reported from Delhi & Assam from 2014 to 2016. Hence it looks as though the release of funds under CVCF had no rationale. The major problem in implementation of victim compensation schemes is the serious lack of awareness. The lack of awareness shows in the number of victims making use of the scheme.²⁶

For instance, in Telangana, only 9 victims availed compensation under this scheme in 2016-17 and 2017-18 (till November 2017). Most of these 9 victims were from only one district. The victims availing compensation under the scheme is nowhere close to the incidents of rape being

²⁵ *Ibid.*

²⁶ *Ibid*

reported every year. As per government data, close to 39000 case of rape were reported across the country in 2016.²⁷ Even if we were to go with the conviction rate of around 25%, we are talking about thousands of victims each year. And if compensation of Rs 3 lakh in each case was extended to these victims, the total compensation for rape victims alone would be more than Rs 100 crore. The allocation under CVCF has to be increased match the number of victims. Victim compensation has to become a right of the victim and her family.

VII. POCSO ACT & REHABILITATION OF RAPE VICTIMS

It is no secret that a number of POCSO cases end in acquittals. “While a more uninformed opinion is that the cases themselves might not have been genuine, the grim reality is that there is a gross failure to support and rehabilitate the victim and her family. As a result of this, either the victims turn hostile or the family turns hostile, or they simple lose hope and stop cooperating. Thus, timely payment of compensation and due rehabilitation of the victim are key to ensure a proper trial that actually brings out the truth. Let’s examine what the statute says about these two aspects.”²⁸

Section 33(8) of POCSO provides that in appropriate cases, in addition to punishment, the Special Court may direct payment of compensation to the child for any physical/mental trauma caused to the child or for immediate rehabilitation. Pursuant to the parent Act, the POCSO Rules of 2012 dedicated

Rule 7 to the procedure and parameters of providing such compensation. Rule 7(3) enlisted the various parameters/factors to be considered by the Special Court in deciding such compensation, such as-gravity of the offence, expenditure incurred/likely to be incurred on medical treatment, loss of educational opportunity, financial conditions, etc.

Rule 7(4) and (5) state that after the amount is decided/granted by the Special Court, it is to be disbursed from the Victims Compensation Fund or such other scheme by the legal services authority within 30 days of receipt of such order.

While the law clearly provides for compensation, in reality, POCSO victims are facing colossal problems in this respect. It is seen that grant of compensation by Special Courts under POCSO is both sporadic and erratic. There is utter confusion as to whether Delhi Legal Services Committee or the Special Court is to decide the amount, though a thorough reading of the Act

²⁷ Ibid

²⁸ Chandra, Rakesh. The Heinous Crime Of Child Rape: Whether Death Penalty Is The Answer?. *International Journal of Legal Developments and Allied* 4 (2018): 425-36.

made it quite apparent that the latter was the disbursing authority.²⁹

There is also confusion as to who is to apply for compensation on behalf of the victim, with many victims under the impression that the investigating officer would apply for compensation on their behalf. To top it off, even in cases where the compensation was granted by the Special Court, the amounts were rather inconsistent and arbitrary, some being as meagre as Rs. 10,000. This, “despite the fact that when many of these cases reached the Delhi High Court in appeal, more often than not, the compensation amounts were increased manifold. Contrast this paltry amount to the compensation granted in cases of rape as per the Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 issued by National Legal Services Authority, where a minimum amount of Rs. 4 lakh and a maximum amount of Rs. 7 lakh is provided for”.³⁰

In a sample study conducted by the Delhi Commission for Protection of Child Rights (a statutory body constituted under Section 17 of The Commissions for Protection of Child Rights Act, 2005) titled *Mapping of Needs and Priorities: A Study of Child Rape Victims in Delhi*, startling revelations were made.³¹ The study highlighted the challenges child rape victims and their families face, and aspects that have a definite bearing on their rehabilitation and social reintegration. An analysis of the study revealed the following:

1. 42% of the child victims dropped out of school.
2. 50% of the children suffered from different types of physical illnesses that were linked to rape. About 81% of parents stated that they were unable to fulfil the health needs of their children who were victims of child rape.
3. With regard to compensation, the study revealed that only 1 child had got compensation of more than Rs. 50,000, whereas 99% of the children had not got compensation *as per* the prevalent scheme.
4. Only 15% of the victims had received any compensation and 85% had not received compensation.
5. 38% of the victims had not received any legal aid.

This study was instrumental for two reasons - firstly, it was conducted by a statutory body

²⁹ Mohanty, Hitabhilash, and Devpriya Banerjee. An Analysis of Protection of Children from Sexual Offences Act, 2012 (POCSO ACT). Available at SSRN 3768096 (2021).

³⁰ Ibid

³¹ Mapping of Needs and Priorities: A Study of Child Rape Victims in Delhi, Available at <http://dcpcr.delhi.gov.in/wps/wcm/connect/45ba63004fb377ec8c7cbca50c073453/Mappin+of+Needs.pdf?MOD=AJPERES&lmod=2066290363&CACHEID=45ba63004fb377ec8c7cbca50c073453&Mapping%20and%20Needs%20and%20Priority,last accessed on 10th June 2021>

ordained by law with the task of monitoring the implementation of the Act ; and secondly, the study threw light on the dismal state of implementation of the Act, seven years into its passing. The message was loud and clear - for those who wanted to hear it - we are failing to protect and provide succour to our children. These issues were raised and argued at length in a PIL filed in the Delhi High Court back in 2016. The PIL highlighted that as per the National Crime Records Bureau Report (2014), the pendency rate of trials under POCSO in Delhi was a staggering 95%. Moreover, an abysmally low 1% of the trials were leading to convictions. The primary prayer was that unless *exclusive* as opposed to *assigned* courts are made under POCSO, trials cannot get completed within the stipulated period of one year under Section 35 of the Act and other special provisions of the Act will not get the specialized attention they deserve ³². If this data sounds astonishing, consider this. When the NCRB data of 2017 was released, its analysis revealed that at the current rate of completion of trials, it would take approximately 24 years to complete the trial of existing POCSO cases in India, even if no new cases are sent to trial during that time. In other words, we were essentially telling our children to fend for themselves and not expect justice, at least not unless they are willing to relentlessly fight their case of child abuse till much after they have their own children. ³³ While the matter was still being heard in the High Court in the captioned PIL, the Supreme Court passed a significant direction on the aspect of compensation under POCSO in *Nipun Saxena & Anr v. Union of India & Ors.* It was directed that “the Special Court, upon receipt of information as to commission of any offence under the Act by registration of FIR, *shall* on his own or on the application of the victim make an enquiry as to the immediate needs of the child for relief or rehabilitation and pass appropriate order for interim compensation. It was further held that if the court declines to grant interim or final compensation it shall record its reasons for not doing so. Finally, the Apex Court made it abundantly clear that the Special Court must mandatorily take up and consider each POCSO case for the aspect of compensation. This does not mean that compensation must be granted in every case, but the adjudication on compensation must be there in every case.”

Nipun Saxena's case was preceded by another pertinent judgment passed under POCSO by the Supreme Court in *Alakh Alok Srivastava v. UOI*³⁴, wherein the Apex Court directed for “each High Court to constitute a three-judge committee to regulate and monitor the progress of trials under POCSO. In addition, each state was directed to constitute a Special Task Force to ensure

³² Sinha, Roshni. *Pendency of cases in the judiciary*. No. id: 12884. 2018.

³³ *Ibid*

³⁴ *Alakh Alok Srivastava v. UOI* (2018) 2 SCC (CRI) 815

that investigation is properly conducted under POCSO”. In Delhi, a Special Task Force has been constituted vide order dated May 17, 2018, headed by Special CP, Crime. Yet, on the ground, the position has not substantially improved.

It was the *Unnao Rape* case and the Supreme Court’s *suo motu* cognizance “of it that truly brought many of these issues to the fore. The Supreme Court noted that timelines of the Act are not being followed at all. Besides granting interim compensation of Rs. 25 lakh to the victim, the Supreme Court directed that in each district in the country (if there are more than 100 POCSO cases) an *exclusive* Special Court will be set up, which will try no offence except those under POCSO Act. Though the Court had granted 60 days for the same, the process of setting up and functioning of these courts all over the country is still underway”.³⁵

On March 9, 2020, the POCSO Rules, 2020 came into effect. These Rules are notable for certain pertinent additions such as:³⁶

1. Rule 3 mandates “both the Central and state governments to carry out appropriate awareness generation and capacity building under the Act, dissemination of information at airports, railways stations and other public places, etc. Moreover, it provides for the formulation of a ‘Child Protection Policy’. This provision will be instrumental in terms of ‘prevention’, as well as ‘cure’”.
2. Rule 8 provides for “Special Relief” or immediate financial assistance, in the case of any contingency or essential needs, to be sanctioned and provided by the concerned Child Welfare Committee.”
3. Rule 4 provides that “the support person appointed for the benefit of the child must submit monthly reports with respect to the child victim to the Child Welfare Committee.”
4. Form A and Rule 4 (14) ensure that “each victim/family is made aware of his/her rights under the Act, at the nascent stage itself, when they first come in contact with the Police”.
5. Form B and Rule (14) is a Preliminary Assessment Form to assess the immediate financial needs of the child victim and has been incorporated to ensure that he/she gets the financial help where needed, without delay.

The emergence of new POCSO rules in 2020 and the Supreme Court's instructions in 2018-

³⁵ Suo Motu WP (CrI.) 1/2019

³⁶ Acharya, Prachi, and Babita Acharya. An Analysis of Protection of Children From Sexual Offences Act, 2012. Available at SSRN 3733263 (2020).

2019 give POCSO victims a little hope. Like all laws, local law enforcement is a whole new game. It is to be seen, if these new developments will provide the care and rehabilitation that POCSO victims need and deserve. Nevertheless, a glimmer of hope is better than a glimmer of doubt.

VIII. MINISTRY OF HEALTH AND FAMILY WELFARE GUIDELINES FOR MEDICO-LEGAL CARE FOR SURVIVORS OF SEXUAL VIOLENCE

In 2014, the Ministry of Health and Family Welfare issued guidelines for medico-legal care for survivors of sexual violence to standardize healthcare professionals' examination and treatment of sexual assault survivors. The guidelines "integrate processes geared to respect women's and children's rights to privacy, dignity, creating a non-threatening environment, and informed consent. The guidelines also provide scientific medical information and processes that aid in correcting pervasive myths and degrading practices around rape that have been reinforced by common medico-legal practices. It eliminates what is known as the two-finger test by limiting internal vaginal examinations to those medically indicated and rejects the use of medical findings for unscientific and degrading characterizations about whether the victim was habituated to sex".³⁷ Under India's federal structure, health care is a state matter, so state governments are not legally bound to adopt the 2014 guidelines.

So far, only nine states have adopted the guidelines, including Uttar Pradesh, Madhya Pradesh, and Maharashtra where Human Rights Watch interviewed survivors and doctors. But Human Rights Watch found that medical professionals, even in states that have adopted the guidelines, do not always follow them. In Uttar Pradesh and Madhya Pradesh, Human Rights Watch found that "doctors examining sexual assault survivors failed to give them adequate information about the tests and lacked sensitivity in dealing with them. In six cases from these states, the doctors allowed female police personnel to be present during the examination, even as they sometimes refused to allow a family member"³⁸.

IX. ANALYSIS OF MAHARASTRA'S MANODHAIRYA SCHEME FOR RAPE VICTIMS, CHILDREN WHO ARE VICTIMS OF SEXUAL OFFENCES

In India, the air of compensating the V.O.C. was coined up by the Maharashtra NGO by the yojana known as Manodhairya yojana in which the NGO was used to give amounts of money to

³⁷ Bhullar, D. S., and M. Kaur. Medico-Legal Care For Female Victims Of Sexual Violence. *Journal of Punjab Academy of Forensic Medicine & Toxicology* 15, no. 2 (2015).

³⁸ Bandewar, Sunita Vs, Amita Pitre, and Lakshmi Lingam. Five years post Nirbhaya: Critical insights into the status of response to sexual assault. *Indian journal of medical ethics* 3, no. 3 (2018): 215-221.

overcome of the misfortune or the damages they face in their life. Further this Manodhairya yojana was accepted by the Maharashtra Government and they launched the 'Manodhairya' scheme for the victims of crime. Under this scheme state was supposed to provide compensation between Rs 2 and 3 lakhs to the subsisted. The subsisted will not only receive the medical treatment but also a certain amount to overcome the misfortune in his/her life.³⁹

In Maharashtra, the *Manodhairya Scheme* provides “for immediate financial aid to victims of rape under Sections 375-376 IPC, victims of acid attacks under Sections 326A and 326, IPC and victims of penetrative and aggravated penetrative sexual assault under Section 3, 4, 5, and 6 of the POCSO Act”. The Scheme underwent major revisions in 2017 that were challenged before the Bombay High Court in *Forum against Oppression of Women v. Union of India*⁴⁰. A Committee comprising two judges was constituted to consider the grievances against the Scheme and the petition was disposed after the parties including the State arrived at agreement on the provisions of the Scheme.

X. CONCLUSION

Judicial and Administrative mechanism is not strengthened enough to ensure expeditious, fair, equitable, inexpensive and accessible mode of seeking compensation in the existing procedural system. The victim is usually unaware of their right in seeking redress through such mechanism. From the above research it can be argued that, the hypothesis with respect to the current Criminal Justice System when it comes to Victim compensation is still not efficient enough. Our criminal justice system is “tilted in favour of the accused and the real victims of crime have by and large remained out of the focus of the welfare agencies, the government and the judicial system”. Unlike in Western countries, “in India the victims of crime, especially sexual crimes, remain neglected at every stage, be it trial, investigation or, most important, rehabilitation. The victims end up becoming mere pieces of evidence in the conviction process, with the system failing to provide them any succour to alleviate their pathetic living conditions, The criminal justice system is far from satisfactory in its task of protecting the rights of the rape victims and the society, who merely fails to accommodate and support the victim of rape. The study explored many problems associated with almost every aspect of the service and legal systems responses to the victims of rape and has discussed how these problems result in disservice to victims. However it is admitted that it is easy to be cynical and find fault with the system; what is difficult is to come out with radical and workable

³⁹ Kottapalle, Aparna N. MANODHAIRYA SCHEME. *Journal of Dharma* 41, no. 2 (2016): 157-180.

⁴⁰ Forum against Oppression of Women v. Union of India, Criminal Public Interest Litigation No. 35 of 2013, Bombay High Court

solutions.”⁴¹ The very basic purpose for the court system is to award justice to the victims of crimes. The Constitution of India imposes heavy duty on the judicial system for providing legal mechanism to deal with problem relating to imparting justice. The setting up an independent judicial system, inclusion of fundamental rights and directive principles of state polices further shows the commitment of our constitution makers in making the judicial system an effective organ of state machinery on which people can rely with trust and hope of justice”. There is also more that can be done to improve victim care from first response onwards. The first contact between a victim and police is important. Further, the time it takes to get a NGOs worker and legal officer to a victim needs to be reduced. The transportation of victims that should be better and the environment where a victim finds herself is not always the most comfortable. As a minimum, changes of clothing should be available and urine kits and mouth swabs used early to minimize the stress that victims suffer during the investigation”.

In fact, there is no institutional mechanism to provide psychological counselling for rape survivors in India. Most of the Indian laws like IPC, POCSO Act, Protection of Women from Domestic Violence Act, The Sexual Harassment of Women at Workplace Act, etc., have provisions only for awarding monetary compensation to the victims of criminal offence. After the 2012 Nirbhaya gang rape, the IPC was amended to the effect that all hospitals, public or private, whether run by the Union government, the state government, local bodies or any other person, are now required to provide first aid or medical treatment free of cost to rape and acid attack victims”.

“It is now 25 years that India needs to emulate again a much desired counselling program on the lines of British Columbia’s Crime Victim Assistance Program Counselling Guidelines 2018. It is quite a comprehensive programme that includes establishment of counselling services (to respond to the psychological, or counselling needs) or expenses as a benefit that may be available not only to victims but also to their immediate family members and some witnesses. It provides for maximum number of hours of counselling up to 48 hours for victims, 36 hours for immediate family members and 12 hours for witnesses. However, if the claimant is a minor, the maximum limit of hours of counselling may exceed on approval. In most cases, the provision is to make payment of fees for counselling directly to the service provider and the fee rate payment is determined on the basis of counsellor’s work experience, academic and professional accreditation. Further, the choice of counsellor is entirely that of the claimant but

⁴¹ Kim, Deborah. "Marital rape immunity in India: historical anomaly or cultural defence?." *Crime, Law and Social Change* 69, no. 1 (2018): 91-107.

the hourly maximum fee rate is fixed under the programme”.
