

FINANCIAL ASSISTANCE AND SUPPORT SERVICES TO VICTIMS OF RAPE: A SCHEME FOR RESTORATIVE JUSTICE

1. Introduction

The right to life, which includes the right to live with dignity, is guaranteed to every person under the Constitution of India. The inherent dignity of the human being and the right of protection from any form of violence against women also forms part of India's international obligations under instruments such as the Universal Declaration of Human Rights (UDHR) and the Convention on Elimination of All Forms of Discrimination against Women (CEDAW). Further, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 recognizes the need to respect the dignity of the victim and their entitlement to prompt redress for the harm suffered through access to the criminal justice system, reparation and support services to assist their recovery.

Rape is one of the most violent forms of crimes against women, which not only impacts her bodily integrity but in the long-run, impairs her capacity to develop meaningful personal and social relationships, and affects her life and livelihood. The victim of rape suffers mental and psychological trauma, which must be addressed so that she is able to lead a dignified and meaningful life.

While it is essential to provide punishment to the perpetrators of such heinous crimes, the victim must be restored to a position of dignity and self-confidence. It is this principle of restorative justice that must form the basis of efforts to address the trauma that the affected woman goes through and may entail compensation in the form of financial assistance as well as various support services such as counseling, shelter, medical and legal aid. In doing so, the pain, suffering and shock, as well as loss of earnings due to pregnancy occurring as a result of rape and allied expenses would need to be given due consideration.

The Hon'ble Supreme Court in *Delhi Domestic Working Women's Forum Vs. Union of India and others* writ petition (CRL) No.362/93 had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape". The Supreme Court observed that having regard to the Directive Principles contained in Article 38(1) of the Constitution, it was necessary to set up a Criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment.

The National Crime Records Bureau data shows that the incidence of rape in the country is increasing. A total of 21,467 cases of rape were reported in 2008 alone, which constituted an increase of 3.5% over the previous year.

Under Section 357 of the Criminal Procedure Code, 1973 (CrPC), courts can award compensation to victims of crimes, including rape. In 2009, a new Section 357A was introduced in the CrPC which casts a responsibility on the State Governments to formulate Schemes for compensation of victims of crime in coordination with the Central Government.

In this background, a Scheme for providing restorative justice to victims of rape through financial assistance as well as support services has been formulated. While no amount of financial assistance can adequately compensate for the injury, both physical and emotional, faced by a victim of rape, this Scheme is an attempt to provide a helping hand to enable her to cope with the trauma suffered and to tide over her immediate and long-term needs.

The process of formulation of the Scheme was initiated by the National Commission for Women in 1995. Thereafter, this issue was considered by the competent authority in the Government, which in 2005 provided detailed guidelines for preparing a Plan Scheme to disburse compensation to the victims of rape. It inter alia, recommended providing interim and final compensation to the victim, setting up of district level committees and a Criminal Injuries Compensation Board. Keeping in view these guidelines, the Scheme was re-drafted.

Wide ranging consultations with NGOs, lawyers and activists were organised to discuss the draft Scheme. After going through a process of intensive consultations with various stakeholders, , the draft Scheme was finally discussed at the 'National Consultation on Access to Justice, Relief and Rehabilitation of Rape Victims' organised by the Ministry of Women & Child Development on 7th March, 2010. This National Consultation was attended by members of the Judiciary, National and State Legal Services Authorities, police officials, NGOs and activists. At the Consultation, a consensus emerged on the need for such a scheme which provides support to the victim and attempts to restore her to a position of dignity. Several suggestions were also put forth, which have been incorporated in the Scheme.

This Scheme, however, does not prevent an affected woman from seeking relief from the Courts under Section 357, as well as applying under Section 357A of the CrPC.

2. Objectives of the Scheme

In furtherance of the goal of ensuring restorative justice to affected women, the Scheme aims to provide:

- a. Financial assistance to victims of rape; and
- b. Support services such as shelter, counselling, medical aid, legal assistance, education and vocational training depending upon the needs of the victim.

3. Target Group/ Beneficiaries

- (i) The scheme shall cover women/ minor girls who are victims of rape, hereinafter referred to as "affected woman".
- (ii) For the purpose of this Scheme, "Rape" shall mean:

Sexual intercourse with a woman under circumstances falling under any of the following descriptions: -

First:- Against her will.

Secondly: -without her consent.

Thirdly: - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly: -With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly: - With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Explanation: - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

- (iii) The “applicant” includes the affected woman or her legal heir (in case of consequential death of the affected woman), as well as persons filing on behalf of a minor girl or a mentally ill/ retarded woman, as outlined in para 6 (i) (b) of the Scheme.
- (iv) ‘State Board’, where ever mentioned, includes such Boards in the Union Territories.

4. Assistance under the Scheme

Under the Scheme, an affected woman shall be entitled to financial assistance and restorative support/ services, adding upto a maximum amount of Rs 2 lakhs, as outlined in para 8 of the Scheme.

Assistance under the Scheme shall be available in respect of cases where the FIR is registered on or after the date from which the Scheme comes into effect.

5. Authorities Responsible for Implementation of the Scheme

(A) District Criminal Injuries Relief and Rehabilitation Board:

A District Criminal Injuries Relief and Rehabilitation Board (hereinafter the '**District Board**') shall be established in every district with the exclusive jurisdiction to deal with applications for assistance received under the scheme in that district.

i) Composition:

The District Magistrate/ Deputy Commissioner/District Collector shall be the Chairperson of the Board.

The Board shall comprise five other members as under:

1. The Superintendent of Police;
2. The Civil Surgeon/District Medical/Health Officer or by whatever name he/she is called;
3. A representative of the District Legal Services Authority , who should preferably be a woman;
4. An eminent woman expert with experience of working on issues relating to women and children in the district, to be nominated by the Chairperson of the Board;
5. The District Women & Child Development/Social Welfare Officer, who shall be the Member Secretary of the Board.

The Board shall co-opt a representative of the Child Welfare Committee appointed for the district or for a group of districts, as the case may be, where the person affected is a minor.

The term of the nominated member shall be for a period of three years with the provision of extension for one more term.

ii) Powers of the District Board:

- (a) The Board shall decide the claims made under the Scheme and provide financial assistance as well as order such other support services as may be essential for recovery from physical harm, emotional trauma and protection of the affected person.
- (b) The Board shall have the powers of summoning and recording of evidence for carrying out its functions.

iii) Functions of the District Board:

The District Board shall perform the following functions:

- a) Consider the claims and provide financial assistance and support services, as the case may be, in accordance with the procedure prescribed under this scheme;
- b) Arrange for psychological, medical and legal assistance to the affected woman;
- c) Arrange for counselling support to the affected woman, including counseling of the spouse in case the affected woman is married;
- d) Arrange shelter for the affected woman for such period as may be required;
- e) Arrange for education or vocational/ professional training, as the case may be, for the affected woman under the ongoing schemes/programmes should she require such a support for rehabilitation;
- f) Review the progress of investigation on a periodic basis;
- g) Recommend change of investigating officers in cases where a request is made by the affected woman;
- h) Issue directions to the appropriate authorities to provide protection to the affected woman, wherever deemed necessary;
- i) Ensure, as far as possible, that the identity of the affected woman is protected from public disclosure during the course of referral to and accessing support services, education and vocational/professional training, as the case may be;
- j) Review and monitor the progress made on its decisions;
- k) Perform such other function as may be considered necessary by the Board or as directed by the State/National Board.

(B) State Criminal Injuries Relief and Rehabilitation Board

A State Criminal Injuries Relief and Rehabilitation Board (hereinafter the '**State Board**') shall be constituted in every State/UT, which shall have the primary responsibility of coordinating and monitoring the functions of the District Boards in the respective State.

(i) Composition:

The Principal Secretary/ Secretary, Department of Women and Child Development or Social Welfare Department shall be the Chairperson of the State/UT Board.

The State/UT Board shall comprise of seven other members as under:

1. A representative of the Department of Home;
2. A representative of the Department of Health or an eminent medical practitioner from the Government Medical College, having experience in dealing with rape cases, to be nominated by the Department of Health;
3. A representative of the Department of Law;
4. A representative of the State Legal Services Authority, who should preferably be a woman;
5. Two eminent women with experience of working on issues relating to women and children in the State, to be nominated by the Chairperson of the Board;
6. Director, Department of Women and Child Development or Social Welfare Department, who shall be the Member Secretary of the Board

The term of the nominated members shall be for a period of three years with the provision of extension for one more term.

(ii) Functions of the State Board:

The State Board shall undertake the following functions:

- a) Coordinate and monitor the functioning of the District Boards in the State;
- b) Inquire *suo moto*, or on a petition filed by an affected woman or any person on her behalf, into any complaint alleging rape, and refer the matter to the District Board.

- c) Inquire into complaints regarding any issue connected with the scheme or its implementation;
- d) Entertain appeals against the decision of the District Board with regard to:
- Rejection of an application filed under the Scheme
 - Delay in granting interim or final assistance
 - Adequacy or otherwise of quantum of assistance provided in the form of support services
 - Any other issue pertaining to the application filed by the affected woman, as may be deemed fit for consideration, by the State Board
- e) Enhance the compensation amount up to 1 lakh, subject to a maximum limit of Rs 3 lakhs of total assistance, in special cases as outlined in para 11 of the Scheme, on receiving a reference from the District Board;
- f) Disburse to the District Boards, the funds transferred by the Ministry of Women & Child Development as grant-in-aid to the State Government as well as any other amount supplemented by the State.

(C) Constitution of National Criminal Injuries Relief and Rehabilitation Board

The National Criminal Injuries Relief and Rehabilitation Board (hereinafter the '**National Board**') shall be constituted with the overall responsibility of administering the Scheme.

(i) Composition:

The Secretary/Additional Secretary, Ministry of Women & Child Development shall be the Chairperson of the Board;

The National Board shall comprise seven other members as under: -

1. The Director-General, Central Government Health Services or his/her representative;
2. An officer not below the rank of Joint Secretary to the Government of India, in the Department of Legal Affairs;
3. A representative of the National Legal Services Authority, who should preferably be a woman;
4. A representative of the National Commission for Women;

5. Two eminent women with experience of working on issues relating to women and children, to be nominated by Chairperson of the Board; and
6. Joint Secretary (Women Welfare) in the Ministry of Women and Child Development, who shall be the Member Secretary of the National Board.

The term of the nominated members of the National Board shall be for a period of three years with a provision of extension for one more term.

(ii) Functions of the National Board:

The National Board shall administer the Scheme and to that effect:

- a) Co-ordinate and monitor the functioning of the State Boards constituted under the Scheme;
- b) Inquire *suo moto* or on a petition filed by an affected woman or anyone on her behalf, into any complaint alleging rape and refer the matter to the appropriate District or State Board;
- c) Inquire into complaints regarding any issue connected with the scheme or its implementation;
- d) Recommend to the Ministry of Women & Child Development to issue appropriate advisories/ guidelines to State Governments/UTs/any other agency, on any matter connected with the Scheme or its implementation;
- e) Review, from time to time, and advise the Central Government on the quantum payable and other support services being provided under the Scheme;
- f) Estimate the requirement of funds/budget for administering the Scheme.
- g) Review the issue of reparation to the affected women, and recommend further measures necessary for restoring their self-esteem and dignity;

6. Procedure for Making Claims before the District Board

(A) Who May Apply and By When:

- (i) An application for financial assistance and support services under the Scheme may be filed **within 60 days** from the date of recording of the FIR, by the

- a) Affected woman or by any person/ organisation/ department/ commission on her behalf, with the application duly signed by her;
 - b) Where the affected woman is:
 - A minor, by her parent/guardian;
 - Mentally ill within the meaning of the Mental Health Act or is mentally retarded, by the person with whom she normally resides or a duly authorized medical officer of the institution;
 - c) On the death of the affected woman, by her legal heir(s)
- (ii) Where the application is filed after 60 days, the Board may condone such delay where it is satisfied with the reasons for the same.

(B) How to Apply:

- (iii) As soon as an incident of rape occurs, an FIR must be registered. Medical examination of the affected woman must also be completed as soon as possible;
- (iv) The SHO of the concerned police station, through the SP/DCP, shall forward within 72 hours the copy of the FIR, the medical report and the preliminary Investigation Report by the IO to the District Board;
- (v) The reports/documents forwarded by the SHO of the concerned police station shall be kept as record of the incident till such time as the affected woman approaches the District Board in accordance with clause (i) and (vi);
- (vi) The application shall be filed in accordance with clause (i), in the prescribed proforma as provided in **Annex – I**. In case of death of the affected woman, her legal heir shall file the application along with the Death Certificate;
- (vii) Where the application is filed after 60 days of the recording of the FIR, the affected person or her legal heir, as the case may be, shall submit the application in the prescribed proforma at **Annex – II**, along with copies of the following documents:
 - FIR registered with the police;
 - Medical report;

- Death Certificate wherever applicable;

(viii) The District Board may call for the relevant documents from the appropriate authorities where the documents in the case(s) have not been received from the police as required under clause (iv), or in case the woman is not able to produce any or all of such documents at the time of filing the application as required under clause (vii), or for any other reason beyond her control;

7. Procedure to be Followed by the District Board

Since the objective of the Scheme is to meet the needs of restorative justice, the procedures to be followed in providing financial assistance and support services shall have to be simple, speedy and efficacious. This shall be the guiding principle for the District Board at all times, when considering applications under the Scheme.

- a) Ordinarily, on receipt of application under para 6, and on being satisfied that a prima facie case is made out, the Board shall pass an order for **interim financial assistance and other support services**. However, in cases where the Board is of the considered view that examination of the applicant/affected woman and other parties is necessary, it may proceed to hear the case, record the evidence and pass a speaking order on admissibility or otherwise of the application, for grant of interim financial assistance and other support services.
- b) No application shall be rejected without giving the applicant/affected woman an opportunity of being heard and without assigning the reason(s) in writing.
- c) The applicant shall be notified in advance of the time and place of hearings before the Board;
- d) The Board shall have the power to call for any records/documents and examine any person before coming to a final conclusion about the application;
- e) The Board shall reach its decision on the basis of evidence made available to it;

- f) The proceedings of the Board shall be *in camera* and the anonymity of the affected woman shall be maintained at all times and under all circumstances;
- g) Not less than half of the members shall remain present to complete the quorum at any sitting.
- h) The proceedings of the Board shall not be printed, published, telecast or posted in any public forum.

8. Assistance under the Scheme

(A) Interim Assistance

- (a) After satisfying as per the procedure outlined in para 7 above that a prima facie case is made out, the District Board shall order interim financial assistance of **Rs.20, 000/-** to the affected woman, as far as possible within fifteen (15) days, and in any case, not later than three (3) weeks from the date of receipt of the application;
- (b) On assessment of needs of the affected woman and after giving due consideration to the physical injury and emotional trauma faced by her, the Board shall issue appropriate directions for providing necessary support services as detailed in para 5(A)(iii) of the Scheme, to the affected woman. In doing so, the facilities available under existing schemes of Central or State Government, may be utilized as far as possible.
- (c) The Board may incur a maximum expenditure up to **Rs.50,000/-** towards provision of such support services.

(B) Final Assistance

- (a) Within a period of one month from the date on which the affected woman gives her evidence in the criminal trial or within one year from the date of receipt of the application in cases where the recording of evidence has been unduly delayed for reasons beyond her

control, whichever is earlier, the Board shall direct disbursal of the balance amount of Rs.1.30 lakhs as the final installment.

(b) In cases where the final assistance is awarded before the recording of the evidence of the affected woman in the criminal trial, the Board shall record the reasons in writing for doing so;

(c) The financial assistance and other support services provided/ enabled by the Board shall together not exceed Rs 2 lakhs except for cases specified under Clause 11 in which the relief has been enhanced, subject to a maximum of Rs.3 lakhs.

(C) Assistance in case of Death of Affected Woman

Where death results as a consequence of rape, the Board after satisfying itself that the claim is made in good faith, shall, for the benefit of her legal heirs, including her minor children order assistance of:

(a) Rs 1 lakh if the affected woman was a non-earning member of the family,

(b) Rs 2 lakhs, in case the affected woman was an earning member of the family

9. Manner of Payment of the Amount of Assistance

On the order of the Board, the interim or final financial assistance shall be immediately remitted into the bank account provided in the application. As far as practicable, the amount may be transferred electronically, so as to provide efficacious and immediate assistance to the affected woman;

In cases where the person affected is a minor girl, the amount shall be remitted to the bank account of her parent or guardian after the Board is satisfied about the proper utilisation of funds, in the best interest of and for the welfare of the minor girl.

10. Principles Governing the Determination of Assistance to the Affected Woman

(i) While determining the financial assistance and support services to be provided based on the restorative needs of the affected woman, the District Board shall be guided by the following factors:

(a) Type and severity of the bodily injury suffered by the affected woman and expenditure incurred or likely to be incurred on her medical treatment and psychological counselling.

(b) Expenditure consequential on pregnancy, if resulting from rape including expenses connected with abortion, if resorted to.

(c) Age and financial condition of the affected woman so as to determine her need for education or professional or vocational training, as the case may be.

(d) Non pecuniary loss entailing suffering, mental or emotional trauma or humiliation faced.

(e) Expenses incurred in connection with provision of any alternate accommodation in cases where the affected woman resides in a place other than where the offence was committed and the FIR has been recorded/ criminal trial initiated.

(ii) The Board shall have due regard to the fact that the affected woman is a minor or is mentally challenged, and in such cases, may consider higher financial assistance and special support services in accordance with para 10 of the Scheme;

(iii) The Board shall as far as possible make use of the schemes and facilities provided by the State or Central Government, as well as seek the assistance of organizations funded fully or partly by the Government for providing the restorative measures under this Scheme.

11. Enhancement of Assistance in Special Cases

Keeping in view the particular vulnerabilities and special needs of affected women in certain cases and on a reference from the District Board, the State Board shall, in consultation with the District Board, have the power to provide for an additional assistance of up to Rs 1 lakh, subject to a maximum of **Rupees 3 lakhs** where:

- (a) The affected woman is a minor girl requiring specialized treatment and care
- (b) The affected woman is mentally challenged or differently abled, requiring specialized treatment and care
- (c) The affected woman is infected with STD, including HIV/AIDS as a consequence of rape;
- (d) The affected woman gets pregnant as a consequence of rape;
- (e) Where severe medical problems are faced by the affected woman including both physical and mental.
- (f) Any other ground as may be deemed fit by the Board

12. Rejection of the claim made under the Scheme

(A) The Board may reject any application where it is of the considered opinion that:-

- (i) The applicant failed to take, without delay, all reasonable steps to inform about the incident, to the police, or any other agency or person considered to be an appropriate authority for this purpose.
- (ii) The applicant has failed to give all reasonable assistance to the Board in connection with the application;
- (iii) Where the complaint regarding the incident/the FIR is made so late that it is difficult to verify the facts of the case;
- (iv) Where the applicant, after having filed the criminal complaint, turns hostile during the trial and does not support the case of the prosecution;
- (v) The case appears to be collusive in nature and is not based on verifiable facts;
- (vi) The bonafides of the applicant are suspect, such as in a case involving solicitation, and not based on verifiable facts;

(vii) Where the case is of elopement of girls above 16 years of age and a case of rape is not made out. The Board shall not reject the application forthright, but may await outcome of trial, before disbursing any assistance;

(B) Rejection of the application on any of the grounds prescribed above shall not prevent an affected woman from seeking assistance from the Court(s) under Sections 357 and 357A of the CrPC.

13. Redressal of Grievances

In the case of any grievance with regard to accessing support services provided under the Scheme, the affected woman may approach the District Board.

Where the grievance is in relation to the conduct of the District or the State Board in dealing with the application for assistance under the Scheme, the affected woman or her legal heir may approach the State or the National Board, as the case may be.

14 Devolution of Funds/Grant-in-Aid

(i) The Ministry of Women & Child Development shall provide the budgetary assistance as Grant-in-Aid for implementation of the Scheme to the State Government, on the recommendation of the National Board;

(ii) The State Government will further disburse the funds to the District Boards, through the State Criminal Relief and Rehabilitation Boards, depending upon their requirements;

(iii) The Budgetary allocation shall be used for meeting:-

a) the cost of assistance provided under this Scheme;

b) expenses towards sitting fees and TA/DA to non-Government members of the National, State & District Criminal Injuries Relief and Rehabilitation Boards;

15. Monitoring and Evaluation

Quarterly reports on implementation of the Scheme along with expenditure statement shall be sent by the District Boards to the State Boards. The State Boards shall send a consolidated quarterly report to the National Board.

The Ministry of Women and Child Development may undertake periodic impact assessment of the scheme through appropriate institutions/organizations affiliated to it or through reputed private organizations with expertise in monitoring and evaluation of social sector schemes. Due regard shall be paid to the need to ensure the anonymity of any affected woman who has sought assistance under the Scheme in the course of conducting such periodic assessment.

15. Accounts and Audit

The Central, State and the District Boards shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the income and expenditure account and the balance-sheet. These Accounts will be audited by the C&AG of India.

PROFORMA [UNDER PARA 6(i), Clauses (a) &(b)]

[Where the Application is filed within 60 Days]

(Before filling the proforma, the provisions under the Scheme, particularly under paras 6 and 8 must be carefully read)

1. Name of the affected woman:
2. Age of the affected woman:
3. Name of the parents: (a) Father:
(b) Mother:
4. Address:
5. Date and time of the incident:
6. Place of the incident:
7. Name and details of the Applicant:
(if the application is made on behalf or on death of the affected woman)
8. Relationship with the Affected woman (Legal Heir or Any Other, Specify):
9. Whether FIR has been lodged? :
If 'No' give reasons thereof.
10. Whether medical examination has been done? :
11. Enclose death certificate (where application is being filed by legal heir):
12. Details of Bank Account:

Date

Signature of the applicant

PROFORMA [UNDER PARA 6(i), Clauses (c)]

[Where the Application is filed after 60 Days]

(Before filling the proforma, the provisions under the Scheme, particularly under paras 6 and 8 must be carefully read)

1. Name of the affected woman:
2. Age of the affected woman:
3. Name of the parents: (a) Father:
(b) Mother:
4. Address:
5. Date and time of the incident:
6. Place of the incident:
7. Name and details of the Applicant:
(if the application is made on behalf of or on death of the affected woman)
8. Relationship with the Affected woman (Legal Heir or Any other, Specify):
9. Whether FIR has been lodged? :
If 'Yes', enclose a copy of the FIR.

If 'No' give reasons thereof.
10. Whether medical examination has been done? : If yes, enclose medical report
11. Enclose death certificate (where application is being filed by legal heir).
12. Reasons for delay in filing application under the Scheme:
13. Details of Bank Account:

Date

Signature of the applicant

