



SAHELI RESPONSE TO SCHEME FOR COMPENSATION FOR RAPE



Saheli's response to a scheme for relief and rehabilitation of victims of rape



Newsletter Sep - Dec 2008

In a verdict in the year 1994 (Domestic Working Women's Forum Vs. Union of India and others writ petition (CRL) No.362/93), the Supreme Court of India directed the National Commission for Women (NCW) to evolve a 'scheme so as to wipe out the tears of unfortunate victims of rape within six months of the date of judgement (9.10.94) and forward it to the Union of India (Ministry of Home Affairs) for examination. It observed that it was necessary to set up Criminal Injuries Compensation Board (CICB), to take into account the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape. The parameters given by the Supreme Court state that compensation shall be awarded by the Court on conviction of the offender and by the CICB, whether or not a conviction has taken place.

The NCW drafted a scheme which was submitted to the Central Government in 1995. In response, the Committee of Secretaries guided that interim compensation be offered to the victim, provision for budgetary requirements be transferred to states as Grants-in-Aid, District Level Committees headed by a District Magistrate consider the claims, MHA issue directives for public prosecutors to plead for suitable compensation to victims, and that the CICB monitor the implementation of the scheme and attend to any complaints. In the light of these inputs, NCW redrafted the scheme, now called the "Scheme for Relief and Rehabilitation of Victims of Rape, 2005". Consequently, women's groups like Partners for Law in Development and others have also made their recommendations for its amendment and implementation.

While we appreciate that providing relief and rehabilitation to victims of rape is a positive initiative, we feel there are many concerns that need to be taken into consideration. The content, definitions and procedures in the proposed scheme raise many important questions about its need, efficacy, and problems of implementation. Our discussions in Saheli have led to no unanimous position on these various aspects.

However we thought it would be useful to discuss here the different positions, so that they may be part of a larger debate.

1. At the outset, we share with other women's groups the concern that even though the scheme is meant to cover all cases of rape, the term "rape" in the scheme will hold the same meaning as defined in Section 375 of the Indian Penal Code - in other words, only penile penetration - a definition of rape we have all been struggling to get changed in the law books for a very long time. But the proposed alternative that "the Act be extended to gender-based crimes, not just rape" is also tricky. Gender-based crimes is a vast area and though the term sounds good on

paper, it might end up diffusing the actual objective of the scheme. Another aspect to be considered is that the use of the term gender-based crimes implies that violence against men will also be taken into consideration under this scheme.

2. The terminology of 'compensation' for rape/sexual assault is also problematic in itself. No one can really be 'compensated' for rape or many other kinds of violence; they can just be awarded 'damages' to deal with the psychological, physical and emotional trauma that they have suffered. In the absence of a better term, paying 'damages' may be acceptable, though the question of how the injuries to be defined and categorised remains.

3. Who will pay for the damages, is another key issue. If it is the offender, how can he be compelled to pay before he is convicted of his crime? If the amount is to be paid from the government, i.e. taxpayers' money, is it not tantamount to asking the public to pay for a crime someone particular has committed? Any citizen can challenge the legal validity of such a scheme.

4. Furthermore, the introduction of such a scheme will lead to the creation of a parallel system of two separate authorities dealing with the same crime and determining injuries - one for the purpose of conviction and the other for damages. Both authorities may arrive at different assessments which would adversely impact each other. If for instance, the District board refuses to grant interim relief to a victim, will it not impact the criminal case in court?

The dual structure will also create additional burden on the woman, and we fear that she will be made to run from pillar to post in search of justice. Given the abysmal rate of reporting of the crime of rape itself and the trauma experienced by women who have gone to the courts we feel this is an extremely serious concern that must be addresses. Instead of introducing another law or even a separate scheme, possibilities within the existing law against rape to award damages must be explored.


Our collective experience with the workings of the Vishakha guidelines on sexual harassment at the workplace, and the Domestic Violence Act, wherein autonomous structures are to be set up

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or finding the right kind of - sensitive, autonomous and pro-women people, or even enough women's groups to be on such bodies, has been a challenge. Hence many members registered a note of caution against the suggestion of some women's groups that yet another 'autonomous structure' be set up to deal with injuries resulting from rape.

5. While the scheme is clear about the woman's need to pursue the criminal case, no mention is made of what happens to this interim relief granted if the woman decides to withdraw the case, or the case is quashed or the rapist is convicted.

6. We also discussed our reservations on the recommendation (in the draft scheme) that the District Board be comprised of one person with expertise in matters relating to criminal law, one in the field of empowerment of women, a medical doctor and a representative of Panchayati Raj Institution or municipality in the District, out of which at least three members would be women. Some members felt that this may not be viable. 

7. We also felt it is extremely important in this context to study the experience of the SC/ST Atrocities Prevention Act Section 3 (1) xi and understand whether it has aided the case of dalit women victims of rape, or provided them any relief and rehabilitation. Even in cases of statutory rape (when girls are under 16 and might have had sex with their consent) compensation to the victims has to be seen with all its complexities.

Though there is no doubt that women-oriented laws and mechanisms are necessary, we feel it is equally important to make the existing systems work instead of creating new and parallel mechanisms that would face the same problem of implementation. Thus, we would like to propose the same vis-a-vis this particular case.

