

- ⇒ Under Section 357 of the CrPC, compensation can be ordered by the court as fine as a part of the guilty verdict.
- ⇒ According to Section 357B of the CrPC, even if the survivor has received financial compensation via the Umbrella Scheme for protection and empowerment of women, compensation by the way of the fine to the guilty cannot be denied.
- ⇒ In case of the death of the victim/survivor of the crime, this compensation can be given to the next of kin.



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Basic Procedures to be Followed in Responding to Survivors of Sexual Violence: Towards Guidelines for Support Groups and Others



This note is meant for all those individuals who want to assist survivors of sexual violence in their quest for legal justice. Of utmost importance is provision of psychosocial support to survivors in order to overcome the trauma faced due to the violence and enable them to heal from abuse.

The focus of this document is to explain basic procedures of hospital, police and justice systems so that individuals providing support and care are aware of the rights of survivors vis-à-vis law enforcement agencies.

Hospital

- ⇒ As per Section 357C of the CrPC (Criminal Law Amendment Act 2013), hospitals (both public and private) are required to provide free treatment to survivors of sexual violence. This cannot be denied for the want of a police requisition or filing a First Information Report (FIR). Refusal to provide medico legal examination and treatment is punishable by imprisonment for upto 1 year as per Section 166B IPC (Indian Penal Code).

- ⇒ This examination can be performed by any registered medical practitioner (Section 164 (A) CrPC). Thus, this can take place in a private hospital as well.
- ⇒ The survivor may reach the hospital on her own for want of medical care and attention or could be brought to the hospital by the police for medical examination and treatment. It is thus important for all hospitals to recognize voluntary reporting by survivors to the hospital. Services cannot be denied to survivors for want of police requisition or filing an FIR (Sec 357C CrPC).
- ⇒ As caregivers / people interested in supporting survivors, it is important to understand the role of health professionals. The examining doctor for a survivor has a medico legal role as well as a therapeutic role.
- ⇒ Therapeutic role of a doctor entails provision of immediate medical aid and psychological first aid. Medical aid comprises of treating bruises, wounds, bleeding, provision of antibiotic to prevent infections, assessment for sexually transmitted diseases including HIV, providing emergency contraception, assessing pregnancy in case there is delayed reporting to health facility among others. Psychological first aid comprises of communicating to survivors basic messages that enable her to understand that sexual violence is not her fault and is an act done with an intention of abusing power. Such first aid must also comprise of encouraging her to reveal feelings about abuse and deal with them. Suicide prevention is also a critical aspect of psychological first aid. (Refer to Guidelines & Protocol for Medico-legal care for survivors/ victims of Sexual Violence published by Ministry of Health and Family Welfare, Government of India <http://www.mohfw.nic.in/showfile.php?=&=2737>).
- ⇒ The medico legal role includes seeking detailed history pertaining to the incident, conducting a thorough head to toe examination, collecting relevant evidence and interpreting the medical evidence.

72 hours the copy of the FIR, medical report and the preliminary investigation report by the IO to the District Board (5.1.15 of the Umbrella Scheme).

- ⇒ On receiving the application and after having been prima facie satisfied that a case of rape has been made out, the District Board shall disburse the interim financial relief of Rs.20, 000/- as far as possible within fifteen days and in any case not later than three weeks. On an assessment of the needs of the affected woman, the Board may also arrange for appropriate support services and incur a maximum expenditure upto Rs. 20,000/- in each case (5.1.16 of the Umbrella Scheme).
- ⇒ The final amount of Rs.1.00 lakh shall be directly disbursed by the District Board within a period of one month from the date on which the affected person gives her evidence in the criminal trial or within one year from the date of filing the FIR in cases where the recording of evidence has been unduly delayed for reasons beyond her control, whichever is earlier (5.1.17 of the Umbrella Scheme).
- ⇒ The total assistance, including both financial assistance and support services, available to an affected woman may be up to Rs. 1.40 lakh (5.1.17 of the Umbrella Scheme).
- ⇒ The total amount of assistance under the Scheme may be increased by the State Board, on a reference from and in consultation with the District Board, subject to a maximum of Rs. 2.00 lakh, in special cases involving minor girls or mentally challenged/ handicapped women who may need specialised treatment and care, or women who become infected with STDs, HIV/AIDS or get pregnant or on any other ground (5.1.18 of the Umbrella Scheme).

of survivors under the age of 18 years are tried at this court room, unless the accused is a juvenile in which case the case is tried in the Juvenile Court (as per 34 (1) of POCSO Act).

- ⇒ There is no such allocation of a special court for survivors over 18 years of age although there is an order for the provision of a female judge wherever possible. In addition, the government of Maharashtra has made provision for Special Courts for adult survivors of sexual violence. However it is yet to be implemented in all parts of the state.
- ⇒ This special court, as far as possible should complete the trial within 1 year of taking cognizance, i.e., from the first date of hearing (Section 35(2), POCSO Act, 2012).

Compensation

- ⇒ Compensation is a right of the survivor.
- ⇒ Under the Umbrella Scheme on protection and empowerment of women, compensation can be in the form of financial assistance as well as various support services such as counselling, shelter, medical and legal aid, training and education.
- ⇒ An application for financial assistance and support services under this component may be filed in the prescribed proforma within 60 days from the date of recording of the FIR, by the affected woman or her legal heir or in the case of a minor or mentally unsound person, on her behalf by Protection Officers, appointed under the Protection of Women from Domestic Violence Act, 2005 who will actively help in filing applications on behalf of the applicant (5.1.14 of the Umbrella Scheme).
- ⇒ As soon as an incident of rape is reported and registered, the Station Home Officer (SHO) of the concerned police station shall forward within

- ⇒ The doctors should not mention details about old tears of the hymen, laxity/size of the introitus, irrelevant obstetric history (such as past abortions, past contraceptive practices) and habituation to sexual intercourse, in the medical examination report (Section 146, Indian Evidence Act).
- ⇒ The document submitted by the doctor as expert witness in the court should contain the narrative of the incident in the survivor's words, details of any evidence taken, details of injuries and health consequences suffered, time lapse between violence and examination and interpretation of findings (As per Section 164A CrPC).
- ⇒ Interpretation of medical findings by the examining doctor must take into account the activities undertaken by the survivor that could have led to the loss of evidence (e.g. bathing, urination, changing clothes, douching), threats given to her, restraints used, intoxication, and also nature of sexual violence in itself.
- ⇒ Rape (Section 375, IPC) and sexual assault (POCSO Act, 2012) are legal terms and hence, are the mandate of courts. Therefore, it is not for the examining doctor to decide.
- ⇒ A copy of the medical report must be given to the survivor by the hospital, free of cost. The hospital will not be able to give it to the accused for two reasons – it is the report of the survivor and even under Section 8 of the RTI Act, it will qualify as exempted information or document. If the accused requires the medical report, it can be obtained from the police after the chargesheet is filed.

Police

FIR

- ⇒ FIR stands for First Information Report. It is the documentation of the complaint given to the police which contains information regarding the

commission of offence. It is a formal complaint based on which the police begins investigation.

- ⇒ The FIR need not be filed by the survivor herself/ himself. Any person acting on behalf of the survivor, e.g., parent, relative, friend, guardian can also be the informant.
- ⇒ According to Section 154, Criminal Procedure Code (CrPC), any information given to the police orally or in writing, pertaining to a cognizable offence¹ has to be converted into an FIR.
- ⇒ The information to the police can be given orally or in writing. When given orally, it is the responsibility of the police to convert it into a written complaint with the statement of the informant written verbatim. Once written, it needs to be read out to the informant and explained in a language that is understood and the informant's signature is to be taken (Section 154 (1) CrPC).
- ⇒ It is the right of the informant to get a copy of the FIR (Section 154 (2) CrPC).
- ⇒ An FIR in case of sexual violence must be filed by a Senior Police Inspector or senior officer.
- ⇒ If the survivor is a woman and provides the information herself, then the FIR shall be registered by a woman police officer or any woman officer (Section 154 (1) CrPC Proviso). However, in the absence of a woman police officer, a male police officer can record an FIR in the presence of a woman police constable.

¹A cognizable offence is defined as any crime in which the police does not need the court's orders to begin investigation and can arrest the accused without a warrant.

- ⇒ Generally, the complainant (or informant of the FIR) is the first witness, followed by the survivor (if different from complainant), those associated with the survivor, the panchs, the examining doctor, the Investigating Officer who give their statement on behalf of the prosecution. Finally the accused and witnesses from his side give a statement if they want to.
- ⇒ The examination of the survivor will happen in camera – which means that there will be no general public present there. The only people present will be the judge, the Public Prosecutor, the accused, the defense lawyer and the staff of the court (Amendment of Section 327 CrPC by the Code Of Criminal Procedure (Amendment) Act, 2008).
- ⇒ During the trial, witnesses can be called by both the State and the accused (defense).
- ⇒ A court statement consists of an examination-in-chief and a cross examination.
- ⇒ The examination of a witness, by the party who calls him, shall be called his examination-in-chief whereas the examination of a witness by the opposite party is called cross examination. Thus, in case of a survivor, the examination in chief is done by the public prosecutor and the cross examination by the defense lawyer.
- ⇒ During any examination (examination-in-chief &/or cross examination), questions or comments regarding the survivor's general immoral behavior or past sexual experience are not permitted (Amendment to Section 146 of Indian Evidence Act by Criminal Amendment Act of 2013).
- ⇒ There is one court room specially designated for crimes under Protection of Children from Sexual Offences (POCSO) Act of 2012, to ensure speedy trial in a child-friendly environment (as per 28 (1) of POCSO Act). All cases

- ⇒ On completion of these 15 days, the accused is presented in front of the magistrate once again and if the investigation is not completed, then judicial remand can be ordered.
- ⇒ Judicial remand cannot be longer than 60 days when the punishment for the crime the person is accused of is less than 10 years, and not more than 90 days when the punishment is more than 10 years.
- ⇒ The accused can apply for bail at any point during the investigation.
- ⇒ When the individual is accused of a crime that has a punishment of 7 years or more, the bail application will be denied by the Magistrate court and the accused will be asked to apply to the Sessions Court.
- ⇒ A survivor has the right to contest the bail. One can do so by submitting an application to the Public Prosecutor² (the lawyer appointed by the State) or the Investigating Officer.
- ⇒ It is the survivor's right to appoint a 'watching advocate' who can keep the survivor informed of when the accused applies for bail, when chargesheet is filed, when the first hearing is to be held and so on, by going to the court regularly on her behalf.

Court

- ⇒ Once the police have filed a Chargesheet in court, a date will be given by the court for the trial to begin.
- ⇒ This date along with details of the court and court room number where the trial will be held will be informed to the survivor (and the witnesses) via summons.

²Every crime is a crime against the state and not an individual person and hence, the case is fought by the State on behalf of the survivor. Public Prosecutor is the lawyer who represents the State and hence, the survivor in court.

- ⇒ If the police refuse to file an FIR, the survivor has the right to approach the Magistrate Court which can order the police to file the FIR (as per Section 156(3) CrPC).
- ⇒ The FIR can be filed in any police station, not just one under whose jurisdiction the incident occurred. It is the responsibility of the police station where the FIR is filed to transfer the case to the police station where the incident occurred. These are called ZERO number FIRs (Mumbai Police Rulebook Part 3 Rule no. 119-A).
- ⇒ Once the information of commission of offence of sexual violence is given to the police, it is the responsibility of the police to take the statement of the survivor in any place that she is comfortable in. This may be her home, the hospital or any other place. The survivor can request the presence of any person who she is comfortable with or request that a person not be present, if uncomfortable while giving her statement (Amendment to Section 157 CrPC by The Code Of Criminal Procedure (Amendment) Act, 2008).
- ⇒ After filing of the FIR, statements of various people associated with the incident will be taken. The statement is an account of what the individual has narrated.
- ⇒ The FIR will form a part of the Chargesheet that is filed in the court by the police on completion of the investigation.

In case of threat or intimidation to the survivor and her family after filing of the FIR -

- ⇒ It is possible that after filing an FIR, the accused will try to intimidate the survivor or the family through threats or use of other tactics. In such cases, the survivor can file a non-cognizable complaint with the police near the place of incident, which will form a part of the Chargesheet eventually. The police is also required to take action against these threats.

- ⇒ The survivor can write an application to the police requesting police protection, citing a threat to life of the survivor or her family.

Panchnama

- ⇒ The panchnama is a statement of persons present at the time of arrest, search and seizure.
- ⇒ The presence of at least 2 panchas is mandated by Section 100 CrPC. These panchas or witnesses must be independent and respectable people.
- ⇒ The Panchnama of the place where the incident is said to have occurred is termed as a 'Spot Panchnama'.
- ⇒ Seizure Panchnama – generally done when the clothes are seized for proof to ascertain that the clothes taken as evidence are the same that were worn by the accused.
- ⇒ Arrest Panchnama – generally done when the accused is arrested.

Statement under 164 CrPC

- ⇒ The survivor or any witness can record their statement in front of the Magistrate court while the police investigation is on or before the charge sheet is filed or before trial begins. Such a statement has evidentiary value in the court of law. A request for recording such a statement must be made to the police.
- ⇒ The statement is to be recorded during the process of investigation and hence, before a Chargesheet is filed in court.
- ⇒ It is advisable (especially if the survivor is a child) to do this as the case might come up for trial after a considerable amount of time has passed after the incident and the survivor may not remember all details at the trial stage.

Chargesheet

- ⇒ A chargesheet is the final report filed by the police in the court.
- ⇒ This report is intimation to the magistrate that upon investigation into a cognizable offence, the Investigation Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court (K.Veeraswami Vs Union Of India (1991) 3 SCC 655).
- ⇒ According to Section 173 CrPC, this typically contains – the name of the persons (accused), type of information, names of the people who are aware of the circumstances of the case (witnesses who will be called in court to testify), offence (details of the charges levied against the accused), whether the police believes that the offence has been committed and if yes, then by whom.
- ⇒ A chargesheet does not establish guilt of the accused.
- ⇒ A Chargesheet is typically filed in court within 90 to 120 days after filing the FIR. However, this might be extended under special conditions such as if the accused is absconding or is unknown.

Police remand, Judicial remand and Bail

- ⇒ As soon as an accused is arrested, he is taken to the lock up after which the police must produce him in front of the magistrate within 24 hours.
- ⇒ When the investigation cannot be completed in these 24 hours, he is produced before the magistrate and if the accusation against him is well-founded, the magistrate can order police remand of up to 15 days.
- ⇒ These 15 days are used to conduct investigation and collect evidence without the interference or fear of tampering by the accused.