

Uncompensate Victims

Status of Access to State Victim Compensation Schemes
by Survivors of Trafficking in India 2022 Report

Executive Summary



Context Setting

The primary question in the Compensate Victims, 2022 study is - has there been a qualitative shift in trafficking survivors' access to justice between 2019 - 2022? The Compensate Victims 2019 study had shown less than 1% of the survivors rescued from trafficking over 10 years (2009 to 2019) were compensated. This study expands that exploration to understand the status of access to the State Victim Compensation Schemes in India by victims of human trafficking, and identify the systemic barriers to access to compensation.

The findings of the study will inform stakeholders in the Anti - Human Trafficking ecosystem in designing programs to strengthen systems of justice and aid collaborative solution building in order to develop an accessible, intersectional and survivor centric system of justice in India.

The findings suggest an urgent need for strengthening the systems of victim compensation for increasing access to survivors of all forms of trafficking. An essential factor that enables survivors to work in congruence with the justice system involves harm reparation and compensation that is provided to the survivors in question. Currently, via the state victim compensation schemes established under CrPC Section 357A, survivors of human trafficking can apply for compensation to the DLSA or trial court, or the trial court can recommend DLSA to disburse compensation to the survivor. According to CrPC 357A, the appropriate authorities are supposed to complete the entire proceedings of inquiry and decision to award compensation within 2 months of such an application. In certain cases, the compensation amount provides adequate impetus to a survivor to kick - start their own micro - entrepreneurial initiatives, allowing them to instill and reclaim a sense of financial independence and thereby exercise their agency.

Each time a survivor receives compensation from the State, at the core of this act lays a tacit acknowledgement that the survivor indeed was victimized. Compensating the survivor serves as key anti - stigma intervention, and holds the state accountable to prevent trafficking from taking place.

Strengthening the victim compensation system can also ensure victims are compensated on time, and adequately, thus building trust on the criminal justice system, and empowering the survivor to aid in investigation and prosecution.

Findings and Analyses

During the course of 2019 - 2022, the following data emerged from the RTI replies received from 22 states:

1. INR **265.77 crores** have been allocated by state and central governments in 8 states towards victim compensation. Of this **83.7%** of the funds were utilized by the states, on average.
2. There were **0** applications for victim compensation in **10 states** and **UTs**. Additionally, **14 states** and **UTs** reported **0** court recommendations for victim compensation.
3. **67** survivors of trafficking applied for victim compensation in **4 states** and **UTs** over 3 years. Of this, a total of **40** survivors of trafficking received compensation in **3 states**.
4. Annually, on average there has been an increase in survivors of trafficking (including survivors of labor trafficking) applying for victim compensation. This can be attributed to an increase in survivors' awareness, in addition to CSOs and government bodies prioritizing access to Victim Compensation.
5. Survivors have articulated that they've had to tackle a number of challenges in the process of accessing the victim compensation amount. Survivors have faced challenges in getting the Investigation Officer of local police stations and DLSAs to recognize cases of labor trafficking as trafficking. Survivors do not apply for victim compensation as they're unaware of the schemes. In certain cases, the survivors do not receive funds as the district collector refuses to sign the rescue certificate as they do not wish to accept that trafficking has occurred. Further, certain CSOs have articulated that gathering documentation for survivors poses as a significant challenge, as the process is paper work heavy. Survivors have also articulated that they generally experience a lot of difficulty in accessing the funds after they've received the first installment.
6. CSOs have experienced significant hurdles in obtaining victim compensation for trafficking victims, particularly for victims of labor trafficking or bonded labor.
7. Initially in 2019, DLSA lawyers expressed resistance towards survivors' demands to file applications for victim compensation. However there has been a significant improvement in the quality of engagement between DLSA and human rights workers as well as between survivors and DLSA lawyers. Additionally, survivors believe that they can rely on the engagement of DLSA lawyers and do not need to depend on private lawyers that charge hefty fees.

Systemic Barriers to Receiving Compensation

Different DLSAs have cited shortage of funds leading to inability to disburse compensation to applicants. However it is crucial to note that there has been an acceleration of compensation towards survivors of various forms of violence, leading to the increased funds utilization between the years 2019 – 2022 as compared to 2009 – 2018. This is also corroborated by experiences of survivors of trafficking, and CSOs working in survivor support programmes.

It has been ascertained that a higher number of survivors of rape, POCSO, acid attack and family members of murder victims are receiving compensation under victim compensation schemes, however survivors of trafficking have the least access to compensation on account of a number of systemic barriers which include:

1. Lack of SoP or guidelines on how to identify cases of trafficking and further link them to compensations: There is unaddressed confusion amongst members from CSOs, the law enforcement and the judiciary with respect to the manner in which courts and the DSLAs are to be linked with survivors of trafficking, in addition to the manner in which applications ought to be investigated and processed by the DSLA.
2. Absence of a dedicated fund for survivors of trafficking at a national and state level.
3. Barrier to identifying survivors of trafficking: Registration of trafficking cases is on the decline as per NCRB data. In community consultations on the findings, survivors and CSOs uniformly experienced difficulty in getting FIRs registered under trafficking related sections and laws.
4. Burden of proof and documentation lies on survivors. As individuals who have experienced acute trauma, providing documentation is extremely difficult for survivors.
5. Lack of implementation of witness protection measures hinders survivors' access to compensation.
6. Survivors are able to disclose detailed accounts of their experience with respect to assault and abuse that they've survived in the presence of a safe environment aided by trusted, supportive and sensitive personnel. Presently, such supportive environments are yet to be developed.
7. Finally, there is an absence of efficient data management systems that can support and strengthen inter – departmental communication and coordination in order to reduce gaps in the implementation of victim compensation schemes for trafficked survivors as envisioned in the CrPC section 357A.

Conclusion

Certain programmatic strategies that can enable survivors' access to victim compensation:

1. Survivors of trafficking and members of CSOs are in agreement that having a comprehensive definition of trafficking is extremely crucial to accurately identify survivors of trafficking and further link them with appropriate schemes and policies.
2. It is very crucial for members of the eco – system to acknowledge and internalize that persons of any gender can be trafficked for different forms of exploitation.
3. There is a pressing need to streamline the schemes and procedures across different states and union territories, especially considering they vastly differ from each other presently.

4. It is crucial that each state and/or UT has a dedicated provision of funds/amenities for compensating survivors of trafficking at which ever point they come into contact with a survivor.
5. There is a need to establish a transparent chain of accountability. For instance, the compensation granting committee should be provided with certain schemes and policies which must be adhered to while passing or declining an application for compensation.
6. In the vein of ensuring accountability, it has been observed that states that have adopted an online application method for compensation witness pendency at different stages of the application, in addition to lack of availability of appropriate documents with the concerned officers in charge of uploading the key documents.
7. CSOs have sought for greater convergence and evidence sharing between the various government bodies involved in a survivor's legal cases and rehabilitation journey.
8. There is a dire need to build survivors' leadership. One of the key factors for the increase in applications by survivors in certain states can be linked to survivors' collectivization.