

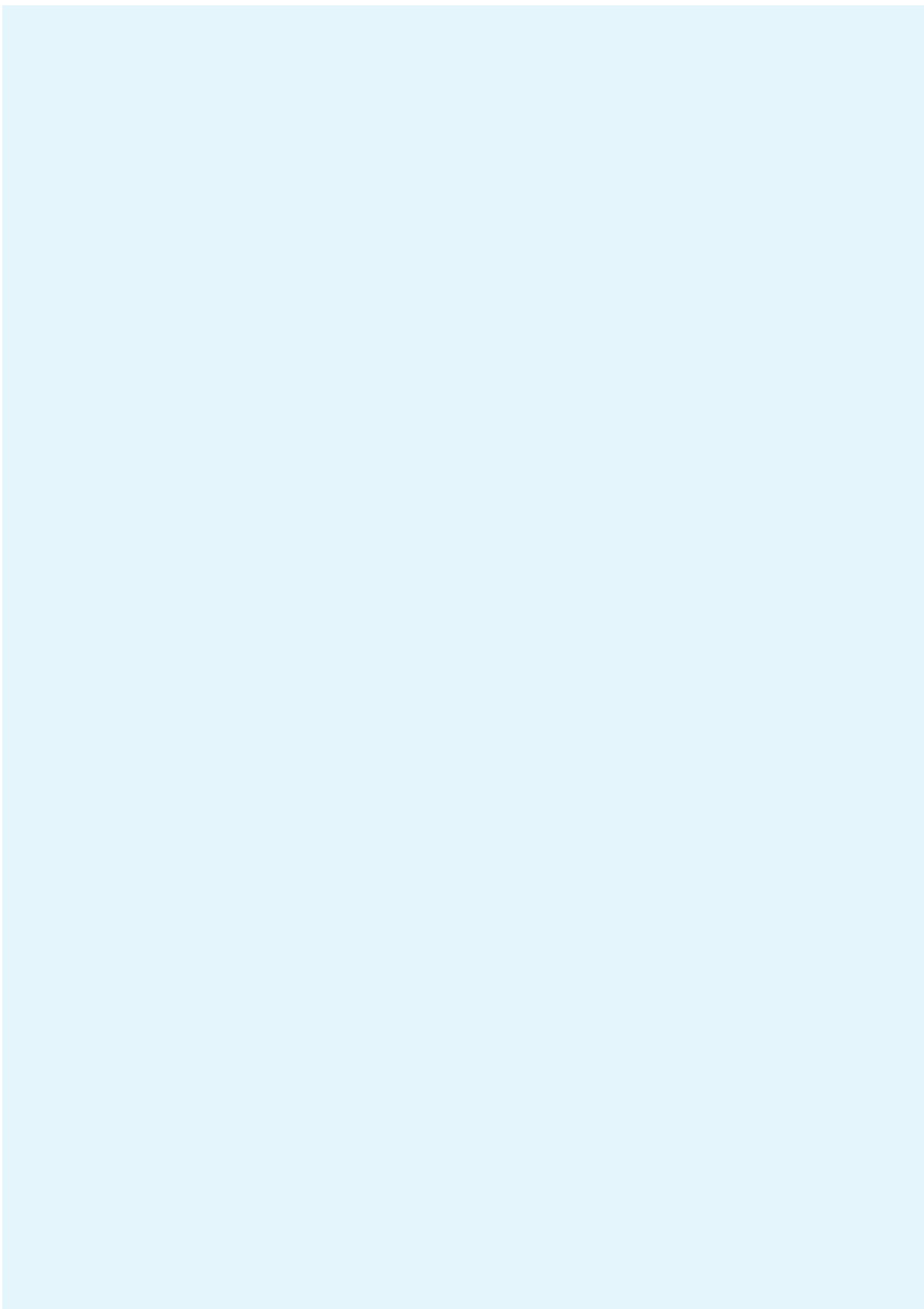
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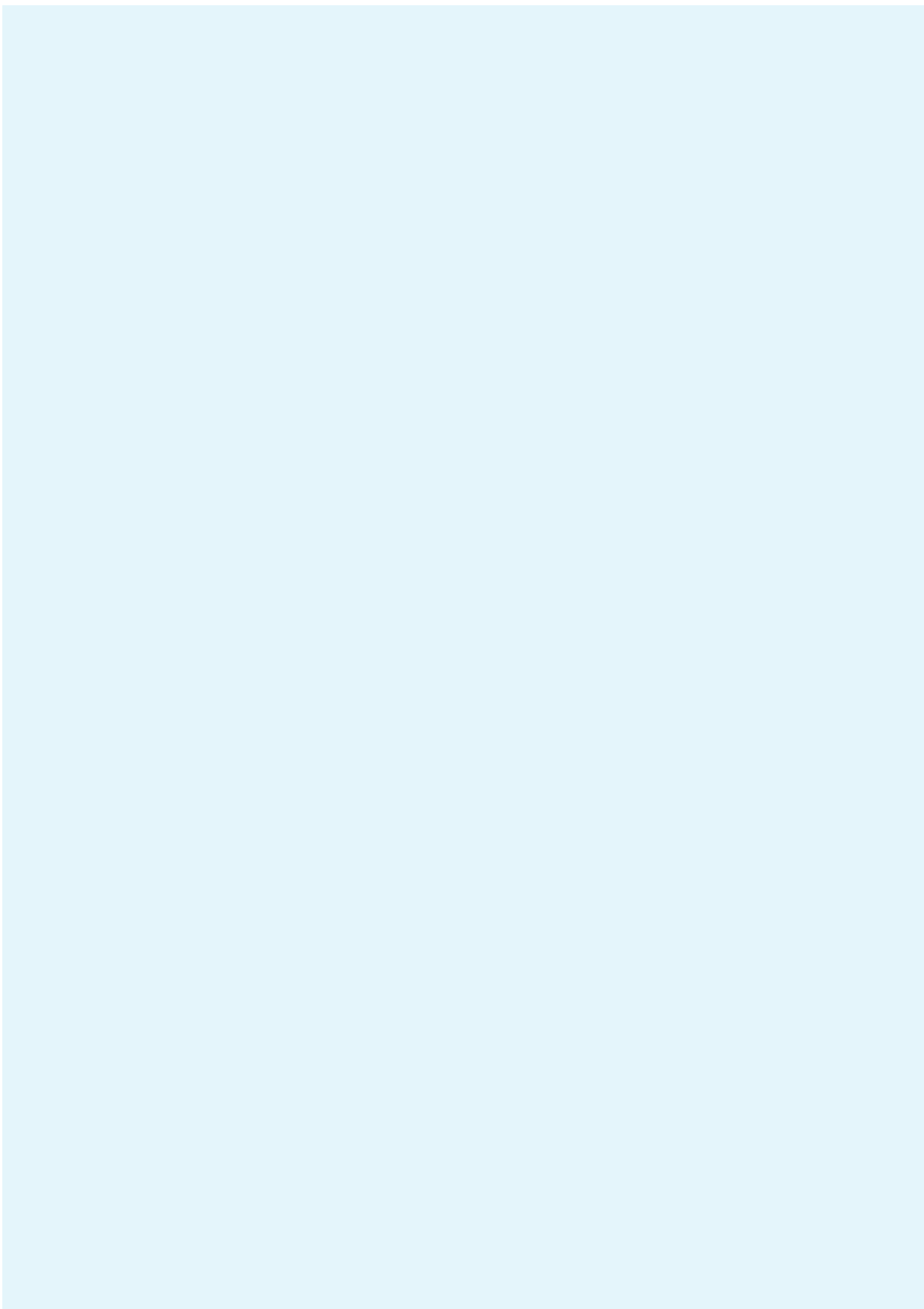
A NATIONAL REPORT ON STATUS OF
VICTIM COMPENSATION TO SURVIVORS
OF HUMAN TRAFFICKING IN INDIA



Tafteesh
In search of justice

SANJ5G





Acknowledgements

This study on the status of victim compensation for survivors of trafficking in India is a result of curiosity, inquiry and a diligent four year long study by a multidisciplinary team of lawyers, social workers, activists and researchers. The people work in different organisations, but the multi-organisational team worked seamlessly each playing different roles, that shows a high degree of trust, collaboration and the ability to manage differences with maturity. What is common between all the members and organisations in this initiative is that they are members of Taftteesh - a consortium programme on Access to Justice for Survivors of Human Trafficking (www.taftteesh.org).

Principal Research Team: Design, Data Collection, Analysis and Reporting Sanjog: Nisha Mehroon, Pompei Banerjee, Vipin Kumar and Krithika Balu. Names of the RTI applicants – Advocate Atul Barthwal, Subornadeep Bhattacharjee (Judicial Clerk), Advocate Vipin Kumar, Advocate Prachi Agarwal, Advocate Apoorva Jain.

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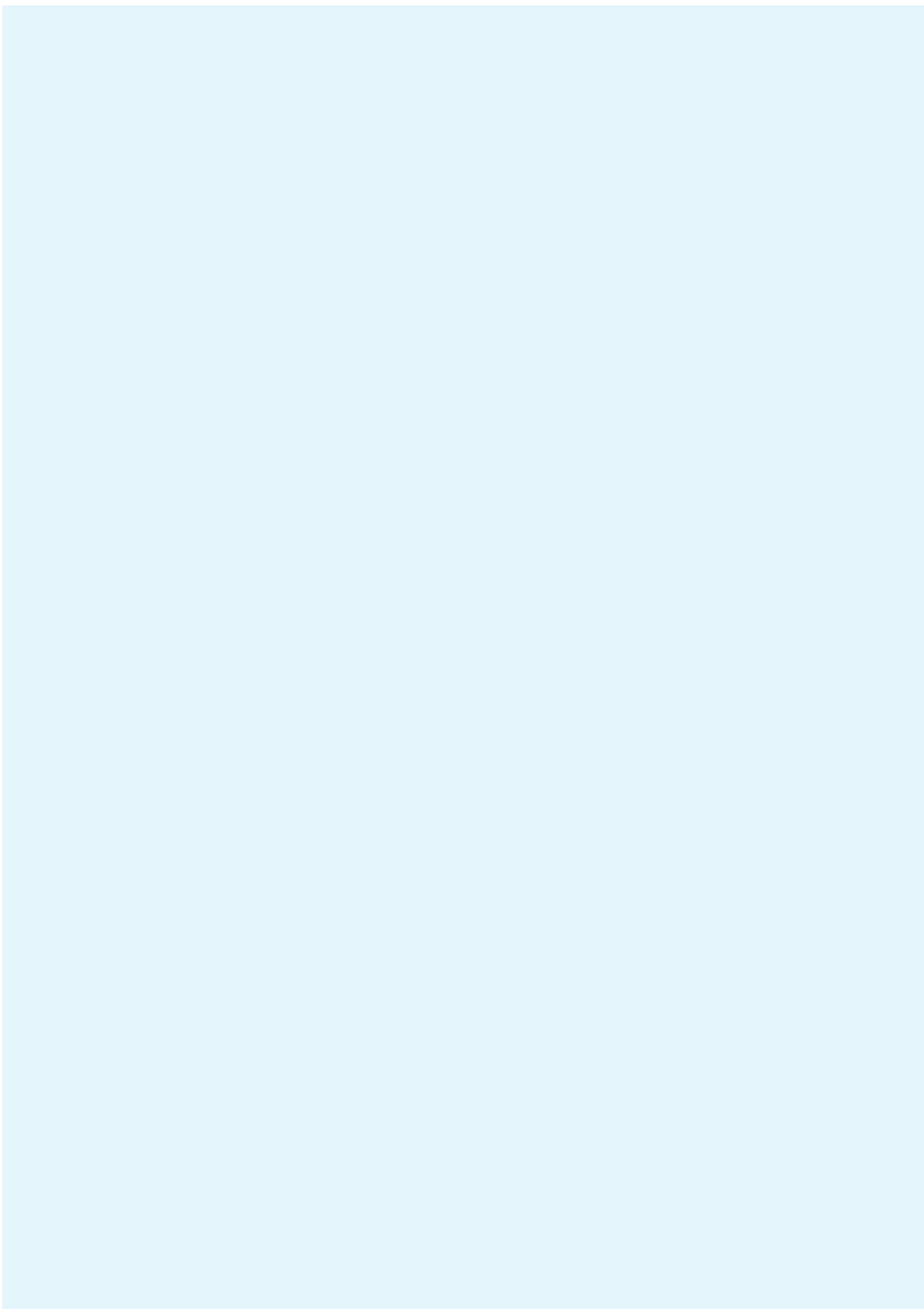
Grassroot human rights organisations in West Bengal: Partners for Anti Trafficking (PAT) in North 24 Praganas and Goranbose Gram Bikash Kendra (GGBK) in South 24 parganas- Case Management, Assistance to Survivors to apply for compensation, facilitation of access to Taftteesh Lawyers, Ensure meaningful participation of survivors and support their informed decision making in their legal aid and reparation journeys.

We acknowledge those survivor applicants who took the first steps in applying for victim compensation - knowing the long drawn and difficult process they'd be going through. All those 55 applicants who decided to demand their right of compensation for the system supported this initiative immensely. Without them, the action research could not have been possible. In many ways they completely disproved the assumption held by many persons and organizations that survivors of trafficking do not cooperate with the justice system, or, that they do not wish to go through the due process to access their rights. Their strength and resilience all throughout is exemplary.

Sanjog
March,2020

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Foreword

It's nearly a decade since India made policy and budgetary provisions to ensure that victims of physical, sexual and psychological torture – such as people who have suffered rape or acid burns or human trafficking are financially compensated by the State. This step is momentous because as a nation, it shows a face of the State that assumes responsibility in prevention of violence against children, against women, against the vulnerable. And takes responsibility for the failure of having been able to ensure protection. When Fatema, a young woman today who had been trafficked at 15 and prostituted for 3 years was asked, what the Government of India's promise of compensation means to her, she said – 'it shows that the Government cares, the Government feels sorry for my loss and hurt, and that makes me feel validated'.

Implementation of any policy in India, especially a welfare policy targeting the poor and the disenfranchised runs into multiple challenges. Law and policy makers must have predicted that for effective implementation of this policy, there will need to be efforts at all ends, to identify and remove bottlenecks and stop-corks. This research and this report offers information, evidence and data and analysis on what has resulted in the under-optimal implementation of the scheme. Hopefully, this report will trigger conversations and actions, agreements and disagreements, all of which will lead to actions for improvement in policy enforcement and accountability setting.

What notable that the scheme seems to have had a better claim from acid burn victims, or victims of rape than victims of trafficking. As this report will illustrate, victims of trafficking are perhaps amongst the most disenfranchised and hence

have even poorer access to a benefit that is non discriminatory. The violence of an acid burn victim is visible, the proof of a victim of rape is available but when it comes to victims of trafficking, the proof of victimhood itself is lost in the annals of bureaucracy and red tape.

This research, in its preliminary data sharing and consultation for analysis asked ILFAT - survivors of human trafficking, what impact this scheme could have if there comes a time that every person who has been trafficked for sexual exploitation or forced labour or any other forms of exploitation, were to be compensated for their loss and injury without prejudice. And this is what they had to say –

Every victim of trafficking who is also a victim of poverty Who is also a victim of stigma and a victim of mistrust A victim of threat by traffickers and sometimes by kith and kin Would start believing that at least, there is someone, there are people Who believe me, trust me, take responsibility for what I have been through instead of blaming me. When we

experience that compassion, we start believing in justice, In police stations, courts and trials, We feel like fighting traffickers and speak the truth And ensure that that offender cannot victimize another me, another us. So, trafficking will not be a crime of impunity, it will transform into a crime of heavy penalty.

Chapter I

Legal Overview of Victim Compensation



Section 357-A of the Code of Criminal Procedure, 1973, inserted in 2009, mandates that every State Government, in coordination with the Central Government, shall prepare a scheme to provide funds to compensate victims or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. The Code of Criminal Procedure further provides for an

indicative procedure to provide compensation, designating responsibilities to the jurisdictional District Legal Services Authority ('DLSA') or State Legal Services Authority ('SLSA') to decide the quantum of compensation payable in different cases. The provision also contemplates trial courts making recommendations for compensation in certain cases.

After the above-mentioned provision was introduced, many states notified schemes for victim compensation. The Supreme Court, in *Nipun Saxena v Union of India* W.P. (C) No. 565 of 2012 stated that "it would be appropriate if NALSA sets up a Committee of about 4 or 5 persons who can prepare Model Rules for Victim Compensation for sexual offences and acid attacks taking into account the submissions made by the learned Amicus. The learned Amicus as well as the learned Solicitor General have offered to assist the Committee as and when required. The Chairperson or the nominee of the Chairperson of the National Commission for Women should be associated with the Committee." Thereafter, the National Legal Services Authority ('NALSA') set up a committee and prepared a Model Scheme for women victims

The Supreme Court accepted the scheme in 2018 and directed all State Governments/UT ('Union Territory') Administrations to implement the same in their respective jurisdictions, with the option to add relevant provisions to already existing victim compensation schemes.

At this time, about 25 States and 7 UTs have implemented victim compensation schemes for various crimes, including rehabilitation for human trafficking, or for loss or injury caused due to human trafficking, depending upon the specific State/UTs language used in the respective scheme. Every scheme has a Schedule, containing particulars of compensation for various crimes, often prescribing maximum limits of compensation payable for different crimes.

At this time, about 25 States and 7 UTs have implemented victim compensation schemes for various crimes, including rehabilitation for human trafficking, or for loss or injury caused due to human trafficking, depending upon the specific State/UTs language used in the respective scheme

Chapter II

Study on Victim Compensation Schemes Aim and Methodology



In 2017, Sanjog had analyzed victim compensation schemes of 13 States and filed RTIs in 5 States to gather data on the status of implementation of VC schemes and budget utilisation details. Some of the observations made were that there was no uniformity in

compensation amounts between states, the number of VC applications filed and the number of victims who received compensation was very low, there was a lack of awareness about the schemes and the application process itself was not victim centric.

The enquiry was carried out with the following objectives

- 1 To determine whether State Governments have allocated sufficient funds to State Legal Services Authority (SLSA) and whether funds have been used and disbursed for victim compensation for survivors of trafficking
- 2 To determine where the problems in implementation of the scheme may lie (for example, whether it is located in allocation by State Government to SLSA, awarding by DLSA to applicants, disbursement by SLSA, etc.) and efficiency in use by SLSA or in applications themselves
- 3 To determine whether the use and enforcement of victim compensation schemes across states are similar or distinctive, and in what ways
- 4 To determine the number of applications made for compensation and number of applications received
- 5 To determine categories of offences which received higher numbers of applications for compensation and lower numbers of applications

At a national level, the enquiry provides a picture about different States'/UTs' participation in implementing schemes effectively

At a national level, the enquiry provides a picture about different States'/UTs' participation in implementing schemes effectively, providing a platform for comparison between states by analysing the highest and lowest number of applications, funds received from the State Government, funds utilized, etc.

The methodology employed for the study is through Right to Information ('RTI') applications sent to concerned authorities in different States/UTs. In most States, RTIs have been sent to SLSAs and/or DLSAs and in a few states where the Home Department is the concerned agency under the victim compensation scheme, RTIs have been sent there.

The RTIs include questions on the following topics

- 1 Quantum of funds sanctioned by the State Government / UT Administration to the SLSA / Home Department for victim compensation for specific financial years
- 2 Quantum of funds utilized by the SLSA / Home Department for providing victim compensation, out of total funds sanctioned by the State Government / UT Administration for specific financial years;
 - a Number of applicants who were victims of human trafficking
 - b Number of minor applicants who filed applications for compensation for human trafficking
- 3 Number of victims (other than victims of human trafficking) awarded compensation
- 4 Number of victims (other than victims of human trafficking) who received compensation
 - a Minimum time period for disbursing compensation
 - b Maximum time period for disbursing compensation
- 5 Number of victims of human trafficking awarded compensation
 - a Number of majors
 - b Number of minors
- 6 After awarding compensation, number of victims of human trafficking who have received compensation under the Victim Compensation Scheme
 - a Number of majors who received compensation
 - b Minimum time period for disbursing compensation to majors
- c Maximum time period for disbursing compensation to minors
- d Number of minors who received compensation
- e Minimum time period for disbursing compensation to minors
- f Maximum time period for disbursing compensation to minors
- 7 Number of cases where courts made recommendations under Section 357-A of CrPC for providing compensation to victims (other than victims of human trafficking)
- 8 Number of cases where courts made recommendations under Section 357-A of CrPC for providing compensation to victims of human trafficking
 - a Details of human trafficking cases where compensation was recommended
- 9 Category of offences that received the greatest number of applications for victim compensation
- 10 Category of offences where the greatest amount of compensation was awarded
- 11 Category of offences that received the least number of applications for victim compensation
- 12 Category of offences where the least amount of compensation was awarded

Sanjog had initiated an action research in 2016, to determine the efficiency of the West Bengal Victim Compensation Scheme in providing reparation to survivors of sex trafficking

Further, Sanjog had initiated an action research in 2016, to determine the efficiency of the West Bengal Victim Compensation Scheme in providing reparation to survivors of sex trafficking. Sanjog, along with other partner organizations, assisted over 55

survivors of sex trafficking in West Bengal to apply for victim compensation in the districts of South and North 24 Parganas, and has worked with Civil Society Organizations (CSOs) that provide rehabilitation to survivors.

The action research was carried out with the following objectives

- 1 How efficient is the West Bengal system in providing compensation to survivors of sex trafficking, and consequently, how efficient is the system in implementing the West Bengal Compensation Scheme?
- 2 What are the challenges that survivors of sex trafficking encounter in claiming victim compensation?
- 3 What are the factors underlying challenges faced by survivors? How can these challenges be overcome?

Findings and Analysis

The results of the RTI inquiry provided an overall picture of how victim compensation schemes are being implemented, and for clarity, the findings are divided to reflect the process, from funds sanctioned to final receipt of compensation by victims. We have used overall state-wise/UT-wise data and for more detailed, district-specific data within states, reference may be made to the state-wise/UT-wise reports that we have prepared. At this stage, data from 30 states/UTs has been compiled for the purpose of this report and 2 states/UTs did not respond to our RTI applications.

The ongoing action research was initiated with the assumption that the West Bengal Victim Compensation Scheme is operational in the state, and the required structure for its implementation was already in

place at the time of initiation. The action research was further initiated with the hypothesis that all survivors of sex trafficking would be able to access and benefit from the said scheme. The action research has served to provide a microanalysis of the systemic challenges in survivors applying for and receiving victim compensation, through case studies and lived experiences. Victim compensation is a part of the overall programme design that Sanjog and its partners developed, and it became an important component of the rehabilitation process of the survivors. Through this action research, Sanjog was able to assess service delivery by different actors in the system and was able to understand systemic responses towards the overall rehabilitation process.

At this stage, data from 30 states/ UTs has been compiled for the purpose of this report and 2 states/UTs did not respond to our RTI applications

Chapter III

*Funds Sanctioned
and Funds Utilized*



The first set of questions posed to state and UT authorities was in respect of the quantum of funds that were allocated by state/UT governments for victim compensation schemes, as well as the quantum of funds that were actually utilized by the respective States/UTs for victim compensation.

The researchers sought for this data in order to

obtain an overall picture on how much funding victim compensation schemes had in different parts of the country, as well as the proportion of funds that were actually being utilized by state/UT authorities for the purpose of victim compensation, which would be a measure of implementation of the victim compensation schemes in respective states/UTs.

Findings

From the RTIs filed, it became clear that there is significant under-utilization of funds sanctioned (if any) by the relevant authorities in most states/UTs from which data was obtained. In order to analyze the proportion of utilization, we have totaled the funds sanctioned as well as the funds utilized from the year when each state notified a victim compensation scheme till 2019. Most states and UTs provided data up till the conclusion of the 2018-2019 financial year i.e. till March 2019, whereas Arunachal Pradesh, Assam, Meghalaya and Nagaland provided data for the financial year 2019-20. For those four states that provided data for 2019-20, it can be presumed that the data was provided up till the date of response to the RTIs. Further, for easier analysis,

we have calculated the percentage of utilization in a consolidated manner, for the time period starting when the scheme was instituted in the respective state/UT, till date. Some states did not provide data, and other states provided clearly false or discrepant data, and the same are flagged.

The data provided in the table below indicates the overall funds sanctioned and utilized for victim compensation schemes in the States/UTs, as no specific data breakdown was provided for funds only sanctioned for human trafficking. The data provided is from the year of institution of the victim compensation scheme till date

(table-following page)

From the RTIs filed, it became clear that there is significant under utilisation of funds sanctioned

Table I**Funds sanctioned and Funds Utilized**

State/ UT		Funds sanctioned/ Funds utilised	Percentage of Utilisation
Andhra Pradesh 2015		16,62,00,000 Crores 2,21,00,000 Crores	13.29%
Arunachal Pradesh 2019		Not provided Not provided	---
Assam 2012		9,40,00,000 Crores 5,92,19,423 Crores	63%
Bihar 2011		20,86,50,000 Crores 18,75,97,960 Crores	89.91%
Chandigarh 2012		15,90,20,000 Crores 1,64,00,000 Crores	10.31%
Chhattisgarh 2011		Not provided Not provided	---
Daman & Diu 2012		Not provided Not provided	---
Dadra & Nagar Haveli 2012		Not provided Not provided	---
Delhi NCR 2011		Not provided Not provided	---
Gujarat 2016		75,03,79,359 Crores 62,15,63,889 Crores	82.74%
Goa 2012		Not provided Not provided	13%
Haryana 2013		19,70,00,000 Crores 18,77,57,393 Crores	95.27%
Himachal Pradesh 2012		Not provided Not provided	---
Jharkhand 2012		Not provided Not provided	---
Karnataka 2011		17,75,00,000 Crores 17,75,00,000 Crores	100 (false)
Kerala 2014		5,38,56,000 Crores 5,13,05,614 Crores	95.26%
Madhya Pradesh 2015		Not provided Not provided	---
Maharashtra 2014		Not provided Not provided	---
Manipur 2011		No funds allocated No funds utilised	---
Meghalaya 2014		1,00,00,000 (in 2014-15 and 2018-19) 84,12,346 Lakhs	84.12

State/ UT		Funds sanctioned/ Funds utilised	Percentage of Utilisation
Mizoram 2011		6,18,82,000 Crores Nil	---
Nagaland 2012		Not provided 95,60,000 Lakhs	---
Odisha 2012		3,70,00,000 Crores 3,85,67,563 Crores	104.2%
Punjab 2017		5,50,00,000 Crores 3,76,72,837 Crores	68.49%
Rajasthan 2011		1,10,11,315 Crores 58,43,065 Lakhs	53.06%
Sikkim 2011		1,05,35,000 Crores 91,45,000/ Lakhs	86.8
Tamil Nadu 2013		57,22,78,052 Crores 27,27,05,672/ Crores	47.65%
Telangana 2015		1,25,00,000 Crores 29,50,000 Lakhs	23.6%
Tripura 2012		No response No response	---
Uttar Pradesh 2014		335,24,37,264 Crores 2,80,32,300 Crores	0.8%
Uttarakhand 2013		6,00,20,703 CORORES 4,02,34,399 Crores	67.03%
West Bengal 2012		9,11,00,000 Crores 5,53,00,000 Crores	60.7%

● Funds sanctioned (from year of scheme till date) ● Funds utilised (from year of scheme till 2019)

We can say the following upon perusal of the data

- 1 Out of 32 states/UTs, 11 states/UTs did not provide any information regarding funds allocation and utilization.
- 2 Mizoram's data showed that funds were sanctioned for victim compensation, but there was zero utilization.
- 3 Nagaland claimed that it did not have a separate fund for victim compensation, so the same could not be specified, but provided utilization data.

- 4 Manipur clearly stated that no funds were allocated for victim compensation, showing clear non-compliance with Section 357-A of the Criminal Procedure Code as well as Nipun Saxena.
- 5 Out of the remaining 17 States/UTs, Karnataka and Gujarat both claimed 100% (in the case of Karnataka) and 99% utilization of funds. Information received from Karnataka, in terms of funds allocation to DLSA Bidar, clearly disproves this claim. In Karnataka's district of Bidar, data from the DLSA shows that the Karnataka SLSA sanctioned a total of Rs. 1.68 Crores for victim compensation, out of which only Rs. 80 lakh was spent, which is less than 50%.
- 6 Odisha shows 104.2% funds utilization with an excess amount of Rs. 15,67,563/- being utilized that had not even been sanctioned.
- 7 Delhi, Bihar, Haryana, Kerala and Meghalaya also show high utilization of funds between 82% and 95%.
- 8 Chhattisgarh's SLSA in Bilaspur provided completely irrelevant and unrelated data of funds sanctioned under certain unnamed heads, designated as '29-2235 (G/OBC)', '41-2235 (ST)' and '64-2235 (SC)' that seem to bear no relation to victim compensation schemes.
- 9 Andhra Pradesh and Uttar Pradesh's data showed extremely low utilization, with data being suspect from Uttar Pradesh, as it claims that the State Government has allocated Rs. 335 Crores for the victim compensation fund.
- 10 Uttarakhand's data is incomplete, since only 3 District Legal Services Authorities ('DLSAs') provided details of funds allocated, out of a total of 13 DLSAs in the UT.
- 11 The three states/UTs with top utilization are Odisha (104.2%), Karnataka (100%) and Gujarat (99.33%). All of these figures are suspect and possibly false.

Delhi, Bihar, Haryana, Kerala and Meghalaya also show high utilization of funds between 82% and 95%

The three states/UTs with lowest utilization are Uttar Pradesh (0.8%), Chandigarh (10.31%), and Andhra Pradesh (13.29%)

Observations

When considering funds allocation and utilization, it is seen that overall, apart from very few states/UTs, there is severe under-utilization of sanctioned funds for victim compensation.

- 1 Funds allocation itself has not been carried out properly in several states, with either no funds being provided (Manipur) or funds being provided under 'cash doles' (Nagaland) or data not being provided for unknown reasons (Jharkhand, Himachal Pradesh and Arunachal Pradesh).
- 2 Further, even when funds are allocated for the specific purpose of victim compensation, they seem to be false in some cases (Uttar Pradesh). In Mizoram, there is actually

3 zero utilization of funds since the institution of the scheme.

4 Karnataka has actually claimed 100% utilization, which is blatantly false, given district-level data from the DLSA at Bidar.

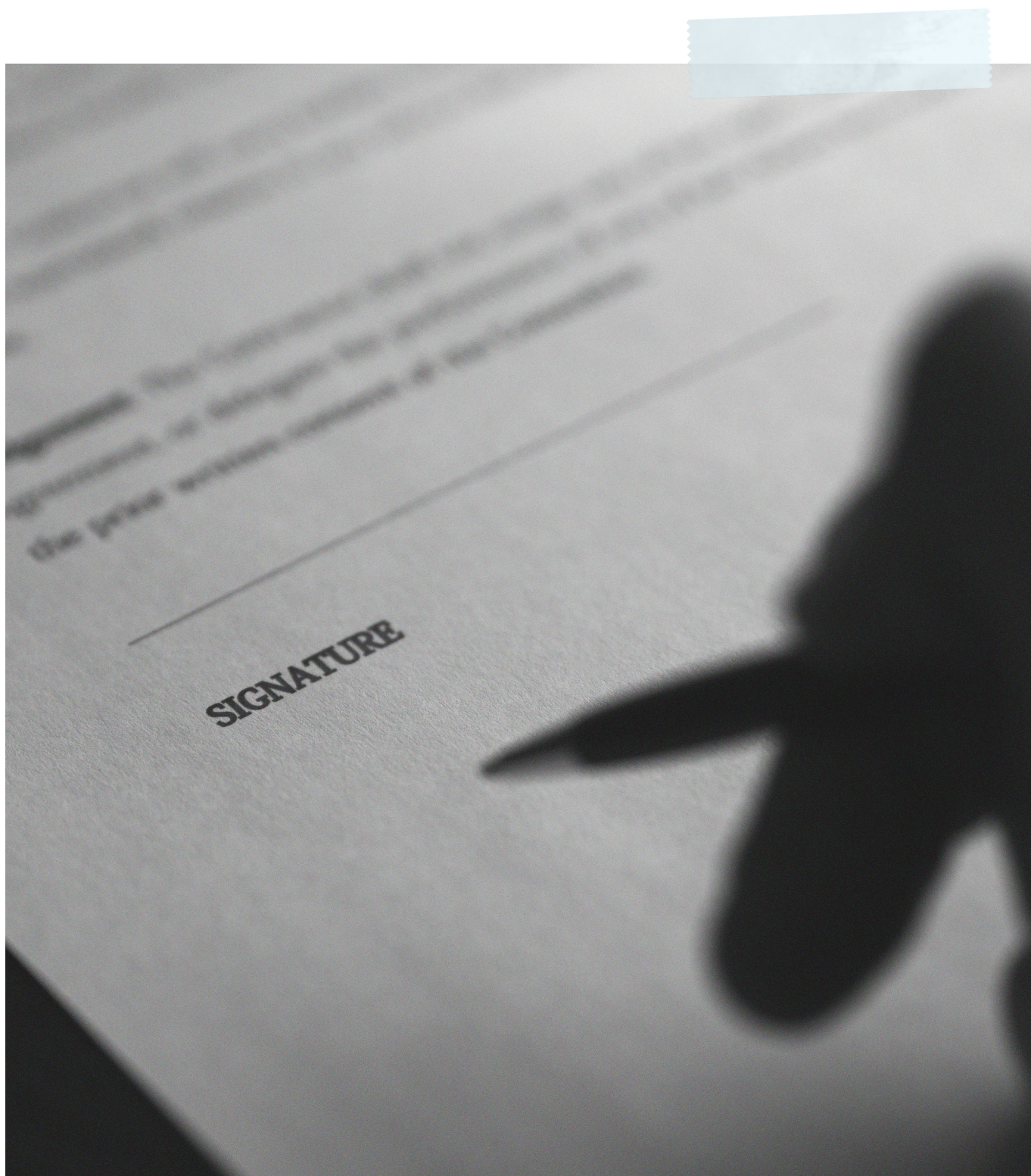
5 Falsification of data seems to be a big problem, which significantly impacts findings and analyses on subsequent victim compensation processes.

It is seen that overall, apart from very few states/UTs, there is severe under-utilization of sanctioned funds for victim compensation

Falsification of data seems to be a big problem, which significantly impacts findings and analyses on subsequent victim compensation processes.

Chapter IV

Court Recommendations and Applications for Victim Compensation



Victim compensation can take place through court recommendations or applications for compensation made by victims of scheduled crimes or their dependents. In order to analyse the number of applications as well as court recommendations for victims of human trafficking, we have

totaled these numbers in the different states/UTs, from the year when the schemes were instituted in the respective states.

The data is only for **human trafficking applications/recommendations** from the year of institution of the scheme, till March 2019 for most of the states/UTs, except Arunachal Pradesh and Meghalaya which provided 2019-20 data as well, and reads as follows:

(table-following page)

Victim compensation can take place through court recommendations or applications for compensation made by victims of scheduled crimes or their dependents

Table II**Applications and Court Recommendations for Victim Compensation for Human Trafficking**

State/ UT	Applications for victim compensation Court recommendation for victim compensation
Andhra Pradesh 2015	2 (minor victims) - unclear whether application or recommendation 2 (minor victims) - unclear whether application or recommendation
Arunachal Pradesh 2019	NIL (from year of scheme till FY 2019-20) NIL (from year of scheme till FY 2019-20)
Assam 2012	14 8
Bihar 2011	Not provided as information was not available 2
Chandigarh 2012	Not provided NIL
Chhattisgarh 2011	Not provided Not provided
Dadra & Nagar Haveli 2012	Not provided Not provided
Daman & Diu 2012	Not provided Not provided
Delhi NCR 2011	3(adults) and 4 (minors) 7
Goa 2012	Not provided Not provided
Gujarat 2016	Not provided Not provided
Haryana 2013	2 (1 minor victim) 23
Himachal Pradesh 2012	NIL NIL
Jharkhand 2012	26 (24 minor victims) NIL
Karnataka 2011	2 (adults) and 24 (minors) 56
Kerala 2014	570 applications; no separate data for human trafficking
Madhya Pradesh 2015	NIL NIL
Maharashtra 2014	Not provided Not provided
Manipur 2011	NIL NIL
Meghalaya 2014	2 2 (kidnapping of major victims)

State/ UT	Applications for victim compensation	Court recommendation for victim compensation
Mizoram 2011	NIL	'Not received human trafficking case'
Nagaland 2012	'Human trafficking cases may be treated as NIL'	'No cases of human trafficking'
Odisha 2012	NIL	NIL
Punjab 2017	NIL	NIL
Rajasthan 2011	4,531 applications; no separate data for human trafficking	
Sikkim 2011	NIL	NIL
Tamil Nadu 2013	Not provided	Not provided
Telangana 2015	NIL	NIL
Tripura 2012	Not provided	Not provided
Uttar Pradesh 2014	Data not available, since 'under the scheme concerned Victim Compensation Board makes recommendation to UPSLSA'	No available data
Uttarakhand 2013	NIL	NIL
West Bengal 2012	24 (adults) and 4 (minors)	2

● Applications for victim compensation

● Court recommendation for victim compensation

From the data, we can state as follows:

- 1 Out of 32 states/UTs, 11 states/UT recorded zero applications for victim compensation as well as zero court recommendations for granting victim compensation to victims of human trafficking.
- 2 Out of the remaining 21 states/UTs, 12 states/UTs responded with no data on the number of applications filed by trafficking victims nor court recommendations or did not respond to the question at all.
- 3 Out of the remaining states/UTs, data from Jharkhand showed that victims made applications, but there were no court recommendations for victim compensation and data from Bihar showed the opposite, i.e.

there were court recommendations for victim compensation, but no independent applications made.

4 Karnataka and Jharkhand had the highest number of court recommendations for victim compensation and West Bengal had the highest number of applications for victim compensation for human trafficking.

5 Karnataka's data is significantly higher than many of the other States/UTs but given the false data provided in terms of funds utilization, the entire set of data provided by Karnataka has questionable credibility.

6 West Bengal, with 28 applications for victim compensation, and 2 court recommendations for victim compensation, shows proportionally high number of victims seeking recourse and courts providing avenues for monetary recourse, as compared to other States/UTs.

7 Rajasthan and Kerala only provided overall numbers of applications, without specifying the individual heads of crimes under which compensation was granted.

8 Andhra Pradesh stated that 2 minors either made applications, or were subjects of court recommendations for compensation, without specifying which was applicable.

9 Mizoram and Nagaland categorically stated that there were no cases of human trafficking in their states, resulting in no applications for victim compensation, nor court recommendations.

10 Uttar Pradesh stated that no data was available, citing the Victim Compensation Board as responsible.

Karnataka's data is significantly higher than many of the other States/UTs but given the false data provided in terms of funds utilization, the entire set of data provided by Karnataka has questionable credibility

Uttar Pradesh stated that no data was available, citing the Victim Compensation Board as responsible

Observations

Data shows shockingly low numbers of applications for victim compensation, as well as low numbers of court recommendations.

1 It cannot be presumed that there is no human trafficking at all in the 8 states that have zero applications as well as court recommendations, so it could be that victims and judges are unaware that provisions for victim compensation exist, to which victims and their dependents are entitled, even before conclusion of trial.

2 In Meghalaya, it is seen that court recommendations were made in respect of 2 adult victims of 'kidnapping'. Since this data was provided in the context of human trafficking, it could be that trafficking cases are being mischaracterized as kidnapping cases, resulting in victims who were actually trafficking not being considered eligible by courts for compensation.

3 Data-keeping seems to be done improperly, since 2 states cited unavailability of data as the reason for not providing answers to numbers of applications/recommendations for victim compensation. Further, Kerala and Rajasthan clearly keep no records whatsoever on human trafficking, as they only provided overall numbers of applications.

4 Arunachal Pradesh, Himachal Pradesh, Jharkhand and Manipur did not provide any data on funds allocation and utilisation for victim compensation (Table I). Further, Mizoram data showed zero utilization of funds allocated for victim compensation. It is, therefore, unsurprising that Arunachal Pradesh, Himachal Pradesh and Manipur show zero applications and recommendations being made, and Jharkhand recording only 2 applications from the institution of the scheme.

Mizoram data showed zero utilization of funds allocated for victim compensation

Further, Kerala and Rajasthan clearly keep no records whatsoever on human trafficking, as they only provided overall numbers of applications

Chapter V

Award and Receipt of Victim Compensation



Upon victims or their dependents making applications for victim compensation, or upon court recommendations for compensation being made, the appropriate authority (in some states/UTs, it is the District Legal Services Authority and in other states/UTs, it is the

Home Department or Victim Compensation Board) evaluates each individual application/recommendation to determine eligibility and quantum of compensation.

Once a victim/dependent has been declared eligible for compensation, the appropriate amount is 'awarded' by the said authority. Thereafter, the authority makes a recommendation to the disbursing authority, which in many states/UTs is the State Legal Services Authority, and in others is the Secretary, Relief and Rehabilitation in Home Department (Arunachal Pradesh and Nagaland)/the DLSA itself (Uttarakhand) which is mandated to disburse the compensation to the victim/dependent within a period of 2 months.

The RTI enquiry contained separate questions regarding the number of victims of human trafficking who were awarded compensation and the number of victims of human trafficking who received compensation, to analyze whether there were any bottlenecks at that stage of the process. Further, the RTI enquiry contained questions regarding the minimum and maximum time periods for disbursement of compensation, to see whether there were any delays over and above the time period provided for in the scheme. The data collected is as follows:

(table-following page)

the appropriate amount is 'awarded' by the said authority.

Table III**Award and Disbursal of Victim Compensation**

State/ UT	Number of victims of human trafficking who were awarded compensation Funds utilised	Number of victims of human trafficking who received compensation	Minimum and maximum time period for receipt of compensation
Andhra Pradesh	2 (minors)	2 (minors)	Not provided
Arunachal Pradesh	Nil as no applications/recommendations made		
Assam	8	8	Not provided
Bihar	No data, as the same is not maintained with Bihar SLISA		
Chandigarh	Nil as no applications/recommendations made		
Chhattisgarh	Not provided		
Dadra & Nagar Haveli	Not provided		
Daman & Diu	Not provided		
Delhi	8	47	Not provided
Goa	Not provided		
Gujarat	None of these questions were answered		
Haryana	1	1	Not provided
Himachal Pradesh	Nil as no applications/recommendations made		
Jharkhand	17 (3 adults and 14 minors)	12 (3 adults and 9 minors)	Simdega District: 2016-17 Min: 9 months Max: 35 months 2017-18 Min: 2 months Max: 13 months
Karnataka	Answer not provided		
Kerala	2 (minors)	Specific time period not provided	
Madhya Pradesh	Nil as no applications/recommendations made		
Maharashtra	Not provided		
Manipur	Nil as no funds sanctioned by State Government and no applications/recommendations made		
Meghalaya	2	2	1 week

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State/ UT

Number of victims of human trafficking who were awarded compensation Funds utilised
 Number of victims of human trafficking who received compensation
 Minimum and maximum time period for receipt of compensation

State/ UT	Number of victims of human trafficking who were awarded compensation Funds utilised	Number of victims of human trafficking who received compensation	Minimum and maximum time period for receipt of compensation
Mizoram	Nil as no applications/recommendations made		
Nagaland	Nil as no applications/recommendations made		
Odisha	Nil as no applications/recommendations made		
Punjab	Nil as no applications/recommendations made		
Rajasthan	Data not available for human trafficking		
Sikkim	Nil as no applications/recommendations made		
Tamil Nadu	Nil as no applications/recommendations made		
Telangana	Nil as no applications/recommendations made		
Tripura	Not provided		
Uttar Pradesh	Not provided as UPSLSA is an appellate authority and does not award compensation at the first stage		
Uttarakhand	Refer to Rule 5 of Victim Compensation Scheme, 2014		
West Bengal	Nil	3	Not provided

● Number of victims of human trafficking who were awarded compensation Funds utilised

● Number of victims of human trafficking who received compensation

● Minimum and maximum time period for receipt of compensation

From the data, we can say the following:

- 1 Out of 32 states/UTs, 11 states/UTs did not provide any data on the award and receipt of compensation for human trafficking.
- 2 Out of the remaining 21 states/UTs, 14 states/UTs could not provide any data, as there were no applications made, nor recommendations made, so the question of awarding and disbursing compensation did not even arise.
- 3 Only 6 states/UTs have provided data on the number of cases where compensation was awarded to victims of human trafficking.
- 4 Only 7 states/UTs have provided data on the number of cases where compensation was disbursed to victims of human trafficking.
- 5 The highest number of victims of human trafficking provided

with compensation was in Delhi, which itself only awarded and disbursed compensation to 47 victims of human trafficking, right from the institution of the scheme in 2015.

- 6 The data in Delhi is discrepant, with more survivors receiving compensation than those awarded compensation.
- 7 None of the states/UTs provided data regarding time periods for disbursement of victim compensation, except Jharkhand, which clearly showed that timely disbursement of victim compensation does not take place in accordance with the two-month time limit in the victim compensation scheme.
- 8 Manipur's 2019 victim compensation scheme does not even have an entry in the Schedule corresponding to human trafficking and the State Government has not sanctioned funds for victim compensation, so the question of awarding and disbursing
- 9 compensation did not arise there, either. Gujarat and Chhattisgarh did not provide any data, apart from funds sanctioned and utilised.
- 10 Daman & Diu, Dadra & Nagar Haveli, Maharashtra, Tripura and Goa did not provide any data at all.
- 11 Uttar Pradesh did not provide any data, stating that the UP SLSA was only the appellate authority and did not award compensation at the first stage. The SLSA did not provide data regarding time period for disbursing compensation, seeking that we refer to 'Rule 5' of the Victim Compensation Scheme, 2014, which outlines the prescribed time period.
- 12 In West Bengal, none of the DLSAs awarded compensation to a single victim of human trafficking, but the SLSA still somehow disbursed compensation to 3 victims of human trafficking.

The data in Delhi is discrepant, with more survivors receiving compensation than those awarded compensation

Observations

Data on awarding compensation and disbursement of the same to victims or their dependents shows the dismal levels of implementation of victim compensation schemes across the country. Some observations, both state-specific and nationally, are as follows:

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The ultimate problem with respect to this entire process is the severe lack of utilisation of victim compensation schemes throughout India

1 Inaccurate data:

This has been seen in several states. For example, in Bihar, a massive discrepancy seen in award of compensation was that in 2015-16, survivors of acid attacks were awarded Rs. 1,43,94,000/- as compensation in total. However, the SLSA has claimed that for the same year, sanctioned funds amounted to Rs. 1,39,50,000/- and utilised funds amounted to Rs. 1,15,09,000/-, which are both less than the awarded amount to acid attack survivors. These figures indicate that either data is inaccurate, or amounts were awarded to victims but never disbursed.

2 Mismatch between award and disbursement of compensation:

This is seen in a few states, like Jharkhand, where in Gumla district, only one application for victim compensation was received in 2016-17, but somehow 5 persons were awarded and received compensation in 2017-18. The origin of these recipients of compensation is unknown. Further, in West Bengal, none of the DLSAs awarded compensation to a single victim of human trafficking in the entire research period, but the WBSLSA still somehow disbursed victim compensation to 3 victims of human trafficking. It can be presumed that none of the applications made by victims/dependents for compensation were successful before the DLSAs, but that both the Court recommendations in Kolkata district (1 in 2017-18 and 1 in 2018-19) were successful and the victims received compensation (accounting for 2 out of 3 victims who received compensation from the WBSLSA).

3 Lack of data:

This was seen in several states that did not provide any data, stating that the same was 'not available'. For example, in Uttar Pradesh, it is clear that the SLSA does not keep any records of overall amounts awarded in the state, which is problematic in nature. Further, none of the states/UTs, apart from Meghalaya, provided data on time period for disbursement of victim compensation.

4 Severe lack of utilisation:

The ultimate problem with respect to this entire process is the severe lack of utilisation of victim compensation schemes throughout India.

None of the states/UTs, apart from Meghalaya, provided data on time period for disbursement of victim compensation

In West Bengal, none of the DLSAs awarded compensation to a single victim of human trafficking in the entire research period, but the WBSLSA still somehow disbursed victim compensation to 3 victims of human trafficking

Chapter VI

Systems Analysis And Recommendations



After carrying out individual RTI enquiries in 32 states/UTs across India, it was found that not a single state/UT has been properly utilising the victim compensation scheme in its jurisdiction for survivors of human trafficking.

Notwithstanding the low numbers of applications made independently by victims, 13 states/UTs cannot show even a

single court recommendation, showing that the judiciary remains woefully unaware about grant of victim compensation. Further, discrepancies and missing data are also indicative of the lack of rigour in state and district-level agencies in maintaining records relating to victim compensation.

Apart from the RTI inquiry, Sanjog carried out a systems analysis to study the entire procedure surrounding the grant of victim compensation to survivors of human trafficking. The RTI analysis brought up a number of questions, including possible reasons for low applications by survivors for compensation, assessing levels of preparedness of VCS implementing agencies and identifying challenges and bottlenecks in the process. The systems analysis was also carried out to understand the assistance

survivors require in order to claim compensation, to identify challenges and resistances they may face and ways to overcome the same. Finally, systemic analysis was also done to better understand the roles of NGOs who work with survivors of human trafficking, who provide them with rehabilitation and protection services.

Sanjog carried out a systems analysis to study the entire procedure surrounding the grant of victim compensation to survivors of human trafficking

Action Research

Partners and Stakeholders

Sanjog partnered with 10 organisations across 2 different districts of West Bengal. The said partners were chosen for their ability to access survivors of sex trafficking as well as their rehabilitation mandate.

Along with social workers and NGOs, victim compensation applications and cases were handled by a lawyers group called the 'Taftteesh lawyers', based in Kolkata. The Taftteesh lawyers represent the survivors of human trafficking through an access to justice programme called 'Taftteesh', which is from where they get their name. They are a group of about 6 lawyers, dealing mainly in criminal cases at the trial and High Court levels, who have been representing survivors of human trafficking before the different legal services authorities (DLSAs and SLSAs) as well as before courts.

The survivors include girls and women largely between the ages of 16-25 years. Most of them were trafficked as minors and rescued from Maharashtra Budwarpath, Goa and Delhi. They were rescued and returned to West Bengal as majors. At the time of commencement of the action research, none of the survivors had received victim compensation. Stakeholders within the action research included the organisations, the survivors, of course, as well as district lawyers from the two districts, the State Legal Services Authority of West Bengal and Taftteesh lawyers, working to represent the interests of the survivors within the system.

The Taftteesh lawyers represent the survivors of human trafficking through an access to justice programme called 'Taftteesh'

The Process

The process included the following steps:

- 1 Maximising the preparedness of social workers
- 2 Informing survivors about victim compensation to analyse their interest in applying for the same
- 3 Ensuring ongoing legal assistance to survivors by district-based private lawyers and Taftteesh lawyers
- 4 Assisting survivors in framing and filing applications for victim compensation
- 5 Following up with jurisdictional District Legal Services Authorities, tracking cases to which survivors were parties and providing assistance with the trial process
- 6 If inter-state coordination was required (due to FIRs potentially being lodged in another state), providing assistance to the DLSA
- 7 Appealing to the SLSA and filing writ petitions in High Courts.

Outputs

Between 2016 and 2019, Sanjog, its 10 partner organisations and the other stakeholders assisted survivors in obtaining victim compensation.

Partner organisations selected cases using the following criteria

- 1 Cases where FIRs were lodged, and documents were available with social workers
- 2 Cases where survivors of human trafficking had their identity proof available, which was required for VC applications
- 3 Cases where copies of survivors' rehabilitation applications were readily available
- 4 Cases where the accused was/were absconding or unknown

Although 55 cases were selected, there were 30 more survivors who were interested in claiming compensation, but could not be assisted for the following reasons:

- 1 Their case documents were not readily available
- 2 Some survivors had rescued themselves or escaped from being trafficked and no FIRs were lodged by them or on their behalf for human trafficking
- 3 Survivors' identity proof, bank details and medical reports were unavailable.

Further, there were about 20 survivors who the partner organisations approached, but who did not wish to claim compensation for the following reasons:

- 1 Some survivors were unable to attend and participate in their legal case hearings, as some were married and their parents in law did not know about their history of trafficking
- 2 Some survivors were unable to attend and participate in their legal case hearings as they were working (mostly in the domestic unorganised sector) and if they filed applications, they would not be able to manage both work and court
- 3 Some survivors had returned to their home cities of Mumbai/Pune and were uninterested in receiving any further services from the NGOs.

Out of a total of 55 cases, compensation was granted in 20 cases to survivors, and in 10 cases, the DLSA rejected compensation for the following reasons:

- 1 Along with the applications for victim compensation, the police reports were submitted to the DLSA containing the survivors' statements to the magistrate under Section 164 of the Code of Criminal Procedure, 1973. In the Section 164 statements, the survivors had not mentioned anything about being trafficked or exploited.
- 2 Final investigation reports submitted by the police opined that after investigation of the case and taking the survivors' statements, the same was not a case of trafficking.
- 3 None of the FIRs or legal documents submitted provided evidence that the survivor experienced any commercial sexual exploitation.
- 4 In some cases, the long gap between rescue of the survivor and application for victim compensation was the cause for rejection.

Out of the 10 cases where the DLSAs rejected grant of victim compensation, Taftesh lawyers advised survivors to appeal to the SLSA in 8 cases. Out of those 8 cases, only 5 survivors agreed to appeal before the SLSA. The remaining survivors did not wish to appeal against the DLSA order, for the following reasons:

- 1 One (1) survivor was married and her parents-in-law were unaware of her history of trafficking.
- 2 One (1) survivor could not trace her case records.
- 3 One (1) survivor had gotten married and migrated to a different state.
- 4 One (1) survivor had run away from home and could not be contacted.
- 5 One (1) survivor's statement before the Magistrate (under Section 164 of the CrPC) stated that she had done sex work voluntarily, which she did not wish to challenge further.

In some cases, the long gap between rescue of the survivor and application for victim compensation was the cause for rejection

Therefore, out of the five (5) survivors who wished to appeal against the DLSA orders, two (2) appeals have been filed, discussions for three (3) more appeals are ongoing between survivors and lawyers. In the 18 cases where the DLSA awarded low compensation amounts to survivors, 6 appeals have been filed before the SLSA. Therefore, at this time, 8 appeals have been filed before the SLSA. Further, 10 appeals are going to be filed with drafts currently being prepared, before the SLSA against orders of the DLSA prescribing inadequate compensation.

The SLSA rejected 2 appeals, which were then

taken before the High Court at Calcutta, as writ petitions. The High Court overruled the SLSA and DLSA's decisions in both the writ petitions, finding in favour of the survivors. Further, the SLSA in 2 cases had ordered that compensation amounts be placed in Fixed Deposits. As this would prevent survivors from freely accessing the amounts, the survivors and lawyers approached the High Court at Calcutta to set these orders aside. They are pending before the High Court. There are also 6-8 additional writ petitions to be filed before the High Court in respect of the fixed deposit issue raised by the SLSA.

It has been seen that uniformly, compensation amounts awarded by DLSA have been dismally low

Timelines and Awards

The timeline for survivors to actually receive victim compensation far exceeds that which is prescribed in the scheme, as on average, it takes between 5 and 12 months from the time of application to obtain an order from the DLSA. After the order of award of compensation, the SLSA takes between 3 to 6 months for actual disbursement to the survivors. Where there has been delay, survivors, assisted by social workers and lawyers, have sent letters to the SLSA, followed by reminder letters. This has yielded positive results, as upon receipt of letters, the West Bengal SLSA has either transferred the relevant compensation amount immediately or has requested a specific time

period by which compensation will be transferred to the survivor.

It has been seen that uniformly, compensation amounts awarded by DLSA have been dismally low. Out of 20 cases where DLSAs have granted victim compensation, amounts have matched that which was applied for **only in two cases**.

Out of 20 cases where DLSAs have granted victim compensation, amounts have matched that which was applied for only in two cases

The DLSAs provided different reasons for offering lower compensation amounts than those claimed by survivors, as follows:

- 1 The documentation provided by the survivors did not meet the standards of 'evidence' required by the DLSA to grant adequate compensation. For example, if survivors had incurred high medical costs due to their experiences of exploitation in brothels and claimed reimbursement of the same as part of victim compensation, the DLSA would refuse to grant the medical costs as survivors were unable to provide medical reports evidencing high expenditure.
- 2 The FIRs and charge sheets did not contain all the relevant provisions of law, resulting in lower compensation being awarded. When survivors were victims of multiple crimes, like both rape and trafficking, the DLSA would only award compensation for one of the crimes, stating that the required legal provisions were absent from the FIR and charge sheet, making the survivors ineligible for compensation under both heads.

The **minimum difference** between the survivor's claim and the DLSA award was Rs. 50,000/- (Indian Rupees Fifty Thousand only), where the claim was for Rs. 4,50,000/- (Indian Rupees Four Lakhs Fifty Thousand only) and the award was for Rs. 4,00,000/- (Indian Rupees Four Lakhs only). The **maximum difference** between survivor's claim and the DLSA award was Rs. 14,50,000/- (Indian Rupees Fourteen Lakhs Fifty Thousand only), where the survivor claimed Rs. 18,50,000/- (Indian Rupees Eighteen Lakhs Fifty Thousand only) but the DLSA only awarded Rs. 4,00,000/- (Indian Rupees Four Lakhs only).

It was seen that the Taftesh lawyers and DLSAs used different methods to compute compensation amounts, with Taftesh lawyers relying on the different crimes that survivors had experienced, such as rape, rehabilitation of trafficked victim and physical abuse of minor, amongst others. DLSAs, on the other hand, would not focus on the crimes but would look at the survivors' documentation and focus mainly on amounts payable for rehabilitation of the trafficked victim. In light of the DLSA rejecting victim compensation in many cases and

providing very low compensation amounts in many others, a total of 21 appeals were or will be filed before the SLSA. 8 appeals have already been filed, as stated above, 10 appeals are in the process of being filed and 3 more appeals against orders of rejection

Therefore, apart from the 8 existing appeals before the SLSA, 10 more appeals are in the process of being filed against insufficient compensation amounts awarded by DLSAs. Successful appeals before the SLSA have resulted in the SLSA increasing the amount of compensation awarded, by a minimum amount of INR 2,00,000/- (Indian Rupees Two Lakhs only) to a maximum amount of INR 4,00,000/- (Indian Rupees Four Lakhs only).

The minimum difference between the survivor's claim and the DLSA award was Rs. 50,000/-

The maximum difference between survivor's claim and the DLSA award was Rs. 14,50,000/-

Significant rulings by the High Court at Calcutta

As stated in the previous section, two (2) cases were escalated to the High Court wherein the High Court overruled the decisions of the SLSA and DLSA, finding in favour of the survivor. In *Serina Mondal v State of West Bengal*, the primary contention of the petitioner was that she had been trafficked as a minor from South 24 Parganas and sold in a brothel in Pune for the purpose of commercial sexual exploitation. After she was rescued, she applied for victim compensation of an amount of Rs. 5,20,000/- (Indian Rupees Five Lakhs Twenty Thousand only), given that she had been raped as a minor, had experienced severe mental agony as a child victim of human trafficking, had experienced loss or injury as a child victim, had experienced sexual assault and physical abuse as a minor and required rehabilitation as a victim of trafficking.

The DLSA rejected Serina's application on 23 March 2017 after which she preferred an appeal before the SLSA on 26 April 2017. The SLSA rejected her appeal on 28 August 2017, affirming the order of the DLSA. The main contention was that the victim could only apply for compensation if the offender was not traced or identified but the victim is identified and where no trial had taken place, as per Clause 4(c) of the West Bengal Victim Compensation Scheme, 2017. Both 'no identification of the accused' and 'no trial' were required for the survivor to be eligible for compensation.

The petitioner's lawyers argued that the DLSA and SLSA had failed to interpret the provision mentioned above for the benefit of the victim and weaker sections of society. They stated that the DLSA and SLSA had failed to appreciate that if two interpretations are possible, then the interpretation benefiting the victim should be adopted in case of a socially beneficial legisla-

tion, as the state has failed to uphold her fundamental right under Article 21 of the Constitution. The petitioner's lawyers contested that in many judgments of the Supreme Court, the words 'and' and 'or' in certain laws could be read vice versa to give effect to the intention of the Legislature in formulating the law, as disclosed from the context. They stated that if the word 'and' in Clause 4(c) of the West Bengal Victim Compensation Scheme, 2017 was read 'conjunctively', it would read to more hardship for the victim, which was not the intention of the legislature. In respect of her case, they argued that both conditions where (i) the accused is untraceable/unidentifiable; and (ii) the trial has not commenced, do not have to be fulfilled for a survivor to be entitled to claim compensation before the DLSA.

The High Court at Calcutta passed an order dated 25 June 2018 stating that the purpose of the West Bengal Victim Compensation Scheme was to give the victim of a serious crime, especially a woman, urgent and immediate attention, as well as physical and mental rehabilitation. The Court stated that such rehabilitation would not be dependent on the pace of the investigation or the trial, and denial of compensation would continue to deny the victim her fundamental right under Article 21 of the Constitution. The Court stated further, that denial of compensation would perpetrate gross inhumanity on the victim, which is not in consonance with the object of Section 357A of the CrPC and the VCS. The Court finally held that both requirements of the accused not being identified or traced and trial having not commenced need not be satisfied for entitlement of compensation under the West Bengal Victim Compensation Scheme, 2017.

In another case, *Achhiya Bibi v State of West Bengal and Others*, the petitioner had been trafficked

The purpose of the West Bengal Victim Compensation Scheme was to give the victim of a serious crime, especially a woman, urgent and immediate attention, as well as physical and mental rehabilitation

Serina Mondal v State of West Bengal 2018 SCC OnLine Cal 4238

from West Bengal at the age of 20, to Maharashtra. Upon her rescue and repatriation to West Bengal, she had applied for victim compensation to the DLSA to the tune of Rs. 4,00,000/- (Indian Rupees Four Lakhs only) for loss or injury causing severe mental agony to women victims in cases of human trafficking, as well as for rehabilitation. The DLSA rejected her application as being non-maintainable on 10 April 2017 and thereafter, the SLSA rejected her appeal against the DLSA's order on 24 September 2018.

She approached the High Court at Calcutta through a writ petition, where her lawyers argued the same question of interpretation as in *Serina Mondal* and also canvassed the point that just because the West Bengal Victim Compensation Scheme, 2017 granted the power to courts to recommend compensation, the same would not take away the right of the victim to claim compensation from the legal service authorities. The lawyers argued that

rehabilitation as per the West Bengal Victim Compensation Scheme, 2017 would not be dependent on either the investigation, nor the trial.

The Court went on to say that Section 357A was introduced to compensate and rehabilitate victims, and it recognises the right of a victim to receive compensation and rehabilitation notwithstanding the result of any criminal proceeding. The Court found in favour of the survivor to state that rehabilitation and compensation cannot be denied to her on the ground that a criminal proceeding has not reached its conclusion or that the court has not yet made a recommendation for her to receive compensation – and held that Clause 4 of the West Bengal Victim Compensation Scheme, 2017 cannot be construed to mean that the legal services authority tasked with awarding and granting compensation must await a decision of a court to do so.

The High Court passed an order stating that in a case where there is a crime and the offender may not be traced or identified, in such cases the victim would not lose the right to receive compensation

A vital reference in both these cases made was to that of *Piyali Dutta v State of West Bengal and Others*, which referred to victim compensation of an acid attack survivor. This was used to argue that if one interpretation of Section 357A(4) of the Code of Criminal Procedure, 1973 facilitates payment of compensation and the other interpretation denies it, the former ought to be the

correct interpretation to be affirmed by the Court.

These orders are significant as they ensure that identification of the accused, commencement of trial and recommendations for compensation by courts are not prerequisites for victims of violence, especially trafficking survivors, to apply for compensation and start their process of

rehabilitation. In a system where investigations and trials can take years to commence, this can provide great relief to vulnerable survivors, who always run the risk of being re-trafficked. The arguments made in these cases have shaped jurisprudence around victim compensation and entitlements of survivors all across the country.

Observations drawn from action research

The systemic analysis performed through the RTI exercise as well as the action research has been used to arrive at speculations and inferences as to why victim

compensation may be low across the country. These are as follows:

1 Lack of Information Provided to Survivors

No single agency, institution or stakeholder has taken official responsibility to inform survivors about their entitlements under the law nor other policies/schemes that may have been formulated by the state/central government. The lack of information could be one reason for the dismally low number of applications for victim compensation by survivors and their dependents.

It is seen that in many cases, Non-Governmental Organisations (NGOs) assume the role of 'custodian' of survivors. However, in spite of the fact that they take on the roles and identities of human rights defenders, they have neither played the role of facilitator (in helping survivors successfully obtain victim compensation) nor of the accountability organisation.

2 Patterns and Loopholes that Preclude Grant of Compensation

Process analyses of claims for compensation have showed that District Legal Services Authorities (DLSAs) in certain jurisdictions have exhibited high anxiety levels that persons who have not been trafficked will inadvertently be awarded compensation, as a result of which they tend to be demanding and rigorous about survivors producing evidence that they have been trafficked.

especially the third one, DLSAs and SLSAs have trouble processing applications or outright refuse to grant compensation and lawyers are reluctant to assist survivors. This issue of 'evidence' therefore needs resolution.

Often, First Information Reports (FIRs) that act as evidence of human trafficking may not have been filed in the jurisdiction of the DLSA. In some cases, FIRs are filed in the source areas, in some cases, they are filed in the destination area and in some cases where survivors escape brothels by means other than 'rescue', there will be no FIRs. In all these situations,

No single agency, institution or stakeholder has taken official responsibility to inform survivors about their entitlements under the law nor other policies/schemes that may have been formulated by the state/central government

3 Lack of Initiative by DLSAs

In the North 24 Parganas district of West Bengal in 2017, 11 VCS applications were submitted to the DLSA after the DLSA Secretary – North requested (through Sanjog’s partner organisations) that the DLSA do an ad-hoc application process. The DLSA Secretary – North made the request with the intention to speed up the process using a simplified application process. The VCS applications were, therefore, made by victims directly without legal assistance. It was seen, time and again, that the

jurisdictional DLSAs rejected these applications (six[6] applications were rejected out of eleven [11]) due to negative police investigation reports and lack of evidence of trafficking from the trafficked survivors. The remaining VCS applications were approved by the DLSA, but the survivors received very low compensation, due to no mentioning of claimed amounts in the VCS applications.

4 Delays causing ‘Lack of Money’ Claims by the SLSA

From the action research, it has been seen that DLSAs award victim compensation to survivors and forward applications to the SLSA. At that stage, the SLSA has not granted compensation or delayed the same, on account of lack of funds. For example, Amina, a survivor of sex trafficking, had been awarded amounts by the SLSA in September 2018 but they did not credit the same into her bank account until mid-January 2020. When Amina did not receive the amount granted by the SLSA within six (6) months of the award, she wrote a letter to the SLSA regarding the delay. When the amount was still not transferred to Amina by mid-2019, she wrote to the SLSA again reminding them of the due amount and additionally claimed interest should be paid by the SLSA to account for the delay. Incidentally, when the amount was credited to her account, she did not receive any interest amount on her compensation.

This data shows that on one hand, RTI data from SLSAs shows certain amounts being sanctioned for victim compensation by the Government, but when it comes to actual disbursement, SLSAs provide seemingly contrary information that they do not have enough money to disburse compensation.

The reason for this conundrum is the time lag between allocation of money by the Government and actual disbursement of compensation. If there is low demand for compensation from DLSAs, then if allocated amounts are disbursed to the SLSA late, it is not a problem. However, when there is actual demand, that is when the time lag becomes prohibitive for survivors. There has to be a groundswell through a bottom-up demand to activate the system.

The SLSA responded to her letter stating that there was a ‘deficit fund’ with the SLSA and stating that her amount would be transferred to her bank account in the following financial year.

5 Low investment in Legal Aid

When looking at the system as a whole, it has been seen that 'prosecution' and 'legal aid' show the lowest amount of investment by external stakeholders, whether monetarily or in terms of infrastructure.

Further, prosecution is considered to be a state responsibility, given that public prosecutors are appointed by, and on behalf of the state for trafficking cases. Even if NGOs engage lawyers, they only engage them to assist state prosecutors and not to represent victims. There is a misconception that state prosecutors argue cases on behalf of victims, but this is untrue. State prosecutors represent the interests of the state, and no part of prosecution in the current legal system is victim-centric in nature.

Attempts by NGOs to link up survivors with DLSA lawyers have also proved to be fruitless thus far, given the first observation regarding lack of responsibility. DLSAs, like all other stakeholders, have failed to take responsibility for providing information to survivors regarding their entitlements and cannot be relied upon to provide victim-centric legal aid to them.

NGOs rarely have legal aid programmes as such programmes do not fall within the silos of 'prevention – protection – rehabilitation' that most of them function within.

5 Mistrust of Survivors by Disbursing Authorities

Apart from the aforementioned observations, discrepancies in disbursing compensation can also be seen in various cases. For example, recently there was a case where the DLSA awarded compensation of Rs. 10 lakhs to a survivor of human trafficking. When it came to disbursement, the DLSA prescribed that the amount was to be placed in a Fixed Deposit rather than in the survivors' bank account, thereby rendering the amount virtually inaccessible. This is clearly attributable to mistrust of survivors, which can be sometimes justified, especially when survivors have been restored to their predominantly male-dominated families.

In order to counter this mistrust, social workers and

NGOs must foster a system where they are connected to survivors but do not overtly control them and withhold their compensation money.

Inferences

From the data and observations made, we can come to the following inferences in response to the following questions:

- 1 Why are applications low?
- 2 What is the level of preparedness of the DLSAs and SLSA?
- 3 What are the challenges that survivors of human trafficking face while claiming compensation?
- 4 Where do CSOs need to play a role in facilitating access to claims of VCS?

Appointing custodians for survivors to ensure information on VCS is provided

Custodians could be agencies or persons who take responsibility for, or who help survivors obtain victim compensation, rehabilitation or restoration to their families. It is the responsibility of the custodian to inform survivors about their entitlements (including victim compensation) under law as well as the processes to obtain such entitlements. In the event that survivors are being handed over directly by courts to their families, the judge passing the restoration order in question should take responsibility to provide such

information to the survivor at the time of handover.

On a policy level, NGOs should be made the custodial agencies of the survivors. NGOs will therefore be responsible for providing complete information to survivors about their entitlements and can be held accountable for any deviation therefrom.

Outreach programmes for survivor collectives to Increase Applications

Survivor collectives must be supported with outreach programmes to reach more survivors through campaigning efforts. In West Bengal, it has been seen that the first applications are always very few in number and people's faith in the system is very weak. However, when survivors and their dependents actually receive

compensation within months, that can motivate others to apply. Using survivors' collectives and getting them on board for outreach related to victim compensation can be very helpful to encourage applications.

Competent legal representation and coordinated efforts

For survivors to obtain adequate amounts of victim compensation, lawyers who are competent and involved in the process are required. It has been seen that without competent lawyers facilitating the process, survivors have been unable to overcome the challenges and resistances faced before the DLSA, even at a preliminary stage. It is proposed that lawyers and social workers collaborate with each

other, as well as with the survivor, to cut through the bureaucracy of the DLSAs in a coordinated effort. Efforts in West Bengal to follow this model have yielded promising results; survivors were earlier awarded a few thousand rupees as compensation and are now being awarded amounts in lakhs.

Monitoring by a High Court Committee to determine hierarchy of accountability

High Court committees have been set up to monitor implementation of the Juvenile Justice Act, so the same thing can be done with respect to the victim compensation system. There is no other monitoring agency for this system

and the High Court committee reports directly to the Supreme Court, minimizing unnecessary layers of bureaucracy

Roles of DLSA and SLSA to be clarified to ensure preparedness of agencies

A clarification of the roles, responsibilities and actions to be taken by SLSAs and DLSAs should be carried out by the High Court monitoring committee.

High Court monitoring committees or other appropriate state agencies should come up with detailed

guidelines for DLSAs and SLSAs, including minimum infrastructure required by these agencies, as well as an easy to follow accountability structure for DLSAs and SLSAs.

Align Victim Compensation Schemes with NALSA Scheme for uniformity

In order to ensure conformity as well as capability-building, the state schemes should be aligned with the NALSA Scheme. Further, upon such alignment, an MIS should be created on a central level, with a publicly available dashboard showing victim compensation applications, acceptances,

rejections, amounts awarded, disbursed, etc. Any scheme dies out because of low demand and/or low monitoring, and this scheme is a classic example of the same across India.

Chapter VII

National Consultation On Status Of Victim Compensation For Survivors Of Trafficking In India



The findings of the research study carried out by Sanjog culminated in a National Consultation on the Status of Victim Compensation for Survivors of Trafficking in India, held in Kolkata on the 17th and 18th of January 2020.

The participants included survivor leaders, NGOs, INGOs, lawyers, case workers, activists, researchers and psychologists,

The key purpose of the consultation was discussion of the possibility of a campaign on victim compensation, focusing on the following points:

- 1 Ways to strengthen victim compensation schemes and access of survivors to victim compensation
- 2 Ways to increase pressure and accountability of state-level policy holders
- 3 Ways to increase media coverage on the issue of victim compensation
- 4 Ways to mobilise NGOs for issue-based advocacy on victim compensation.

Through the 2-day consultation, participants identified areas of gaps, barriers throughout the victim compensation system that affected access of survivors to compensation, failures in accountability of different actors and possible solutions to address the identified problems. At all points, survivor leaders were at the forefront in describing their lived experiences, systemic problems that they had faced, barriers to access victim compensation and solutions that encompassed legal action as well as various advocacy initiatives in their regions.

Sanjog presented the findings of the RTI research to the participants of the consultation. After the presentation, the participants carried out an analysis of why, according to their experiences and opinions, implementation of victim compensation schemes in the states were so low. Some of the reasons included:

who came together and discussed the findings of the study, to see what the data actually meant at the grassroots level.

1 Low Awareness

Nobody informs survivors about their rights and the lack of 'marketing' of Victim Compensation Schemes by Central and State-level authorities leads to lack of knowledge among stakeholders regarding its significance. Further, there are no standard operating procedures (SOPs) or guidelines in place to make the procedures for applying and granting victim compensation clear.

2 Stigma and Trauma of Survivors

Survivors want to avoid stigma, and therefore do not wish to file VC applications or go to court. Their traumatic experiences result in no 'inner strength' to go through the long process of obtaining victim compensation.

3 Broken frame of DLSA

The DLSAs are not playing their roles and their lawyers have not been given any trainings. At present, most of the assistance victims receive to file claims are NGO driven.

4 Lack of expert legal assistance

Applying for victim compensation requires legal expertise, which NGOs do not usually have. Survivors need legal counsel, which they cannot afford and high court lawyers, who are capable of providing such assistance are expensive.

5 Missing/incorrect legal sections in FIRs

If a case has not been registered under trafficking provisions of the Indian Penal Code, survivors will not be granted compensation. This happens because sometimes victims do not want to disclose having been trafficked due to threat from traffickers, fear of stigma, or other reasons.

6 Lack of Cross-learning

Stakeholders, e.g., NGOs, DLSAs etc do not share success stories/best practices that work in different contexts. Therefore, replicating these best practices or success stories cannot be done to improve the number of applications or enhance compensation granted to survivors.

7 Corruption

Many survivors found that public prosecutors would take bribes from traffickers and fail to prosecute cases of trafficking successfully, acting as a deterrent from filing victim compensation applications.

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The participants engaged in vibrant discussions, outlining the challenges that they faced, reasons for survivor-led programmes being so few in number and analysing failures of accountability of duty-bearers within the system.

- 1 RTI applications should be used as a legal tool to obtain data and hold the State accountable for the same. RTIs should be filed in every state to DLSAs and SLSAs asking what steps they have taken to inform survivors about budgetary allocations for victim compensation.
- 2 RTIs must be sent to NALSA, which is the responsible authority for the Central Victim Compensation Fund, asking specific questions about the CVCF, NALSA's obligations regarding victim compensation and status of fulfilment of such obligations.
- 3 Public Interest Litigations can be filed before respective High Courts or the Supreme Court, bringing forth discrepant data, or data from states which shows that state governments have not complied with their obligations under the victim compensation scheme. This will force states to be accountable to a higher judicial

Thereafter, the participants, along with a panel of lawyers, looked at strategies and solutions. Some of the proposed strategies to improve implementation of the victim compensation schemes are as follows:

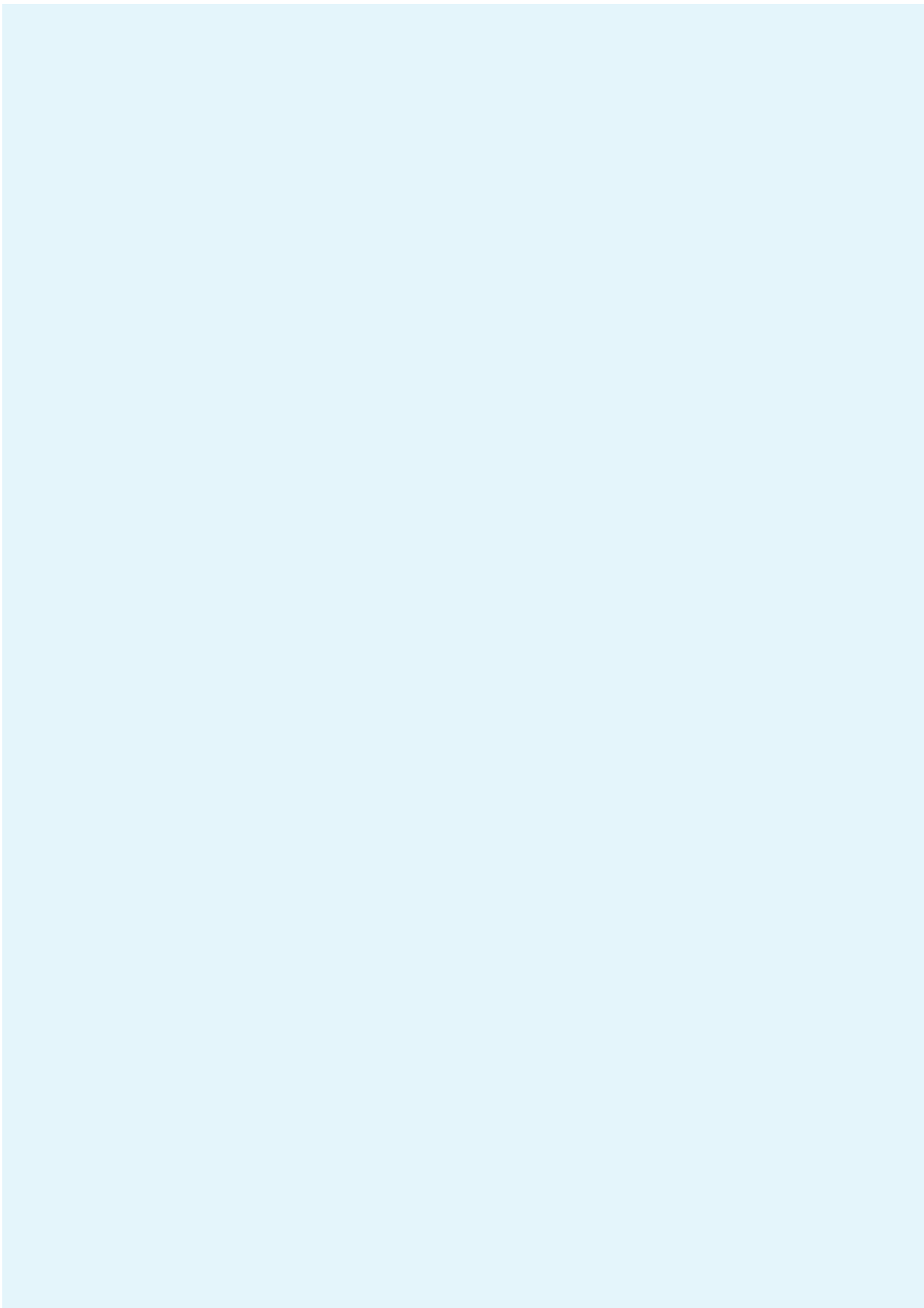
- authority. Case studies and survivor affidavits must be a part of all High Court and Supreme Court actions.
- 4 RTI responses that look to be false, incomplete or inconsistent should be proceeded against under the RTI Act, which provides for a penalty to be imposed on public servants who furnish such information. This will act as a deterrent against false or incomplete information.
- 5 First and second appeals have to be filed in states whose authorities have not responded to RTIs. If there is no response to the appeals, the High Court of the respective state can be approached. Past experience in the High Court at Calcutta in these types of case shows that judges will take violation of people's right to information seriously.

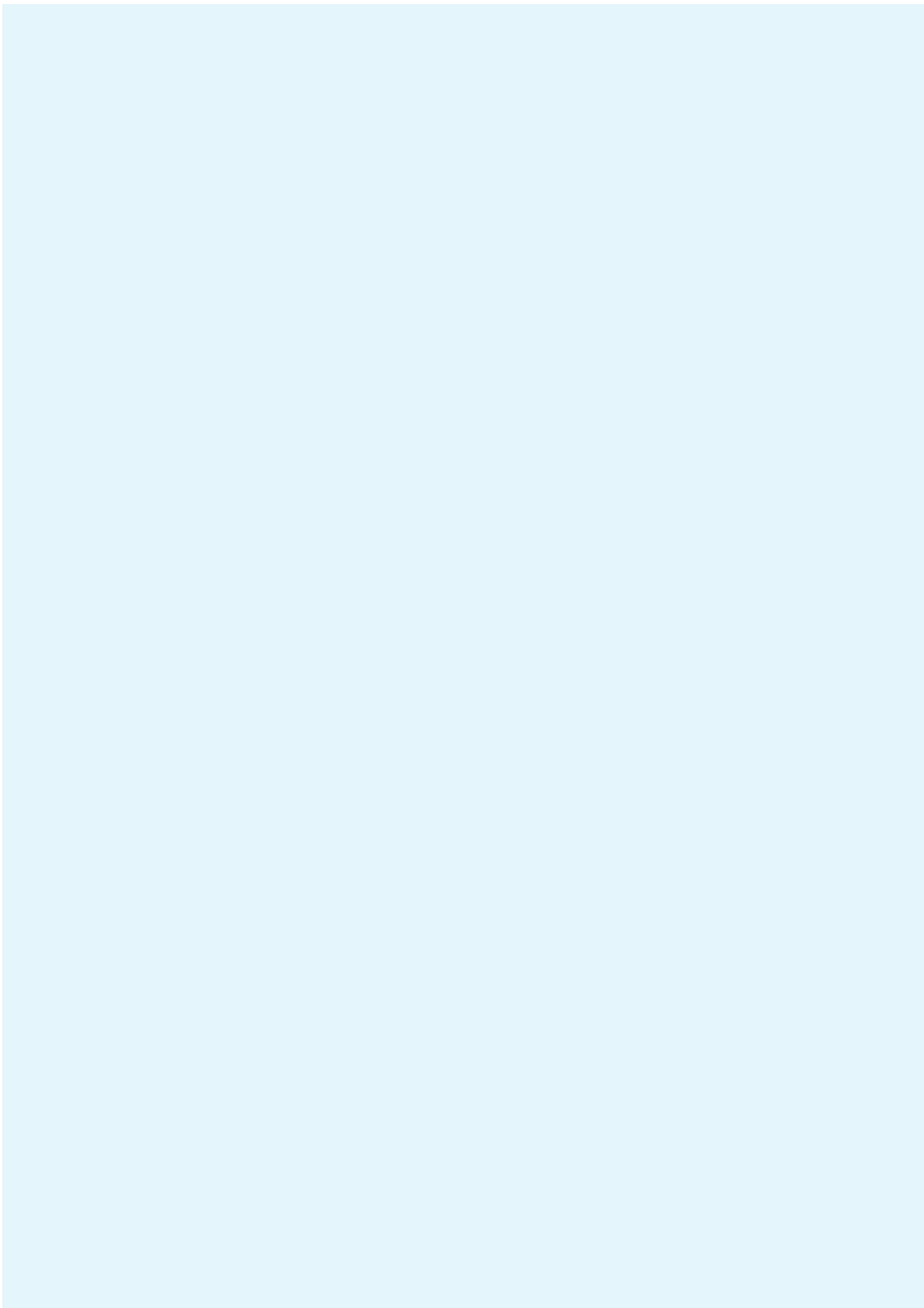
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The panellists pointed out that often, the state is treated as a 'parent figure' by its constituents. It was pointed out, however, that when it comes to the fundamental rights of people, they must not 'plead' or 'request' the state for assistance. Rather, fundamental rights must be demanded and if the state does not comply, it must be challenged before a court of law.

The survivor collectives and NGOs together came up with state-level strategies to overcome identified problems and improve implementation of VC schemes across the country.

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