THE LAW LEDGER

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"All Hospitals Must Provide Free Medical Care to Rape, Acid Attack, and POCSO Survivors"

– The High Court of Delhi



S.V. .....Appellant
Versus
STATE .....Respondent

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All Hospitals Must Provide Free Medical Care to Rape, Acid Attack, and POCSO Survivors : – The High Court of Delhi

S.V. .....Appellant
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CRL.A. 728/2024 & CRL.M.(BAIL) 1343/2024,
High Court of Delhi
Date of Judgement: 10/12/2024



Facts of the Case:

The present criminal appeal (CRL.A. 728/2024) was filed by the appellant S.V., challenging the judgment dated 30th January 2024 and the order on sentence dated 22nd March 2024. The appellant, who is the biological father of the survivor, was convicted under Sections 363/376(2)(i) and (n) of the IPC (Now 65 BNS) and Sections 6 and 12 of the POCSO Act, 2012 for repeatedly committing penetrative sexual assault upon his minor daughter.

The Court was informed that despite the Trial Court's direction for compensation, the disbursement was delayed. Further, issues emerged regarding the survivor's inability to access free medical treatment, which is a statutory right under BNSS and POCSO Rules. The Court took proactive steps, not only to ensure compliance with compensation disbursement but also to secure the survivor's rehabilitation, education, and medical support through the DSLSA.

Issues Advanced:

i. Lack of medical assistance and treatment in violation of Section 397 BNSS (earlier Section 357C CrPC) despite Court orders.

ii. Need for systemic compliance by hospitals (both public and private) with legal mandates for free medical care to victims of sexual offences.



Judgement:

During the proceedings, the Secretary, Litigation, DSLSA , brought to the Court's attention that even though the Court had directed free medical treatment for the survivor of the instant matter in its earlier order dated 2nd September 2024, she was not provided such treatment without persistent efforts and intervention by DSLSA.

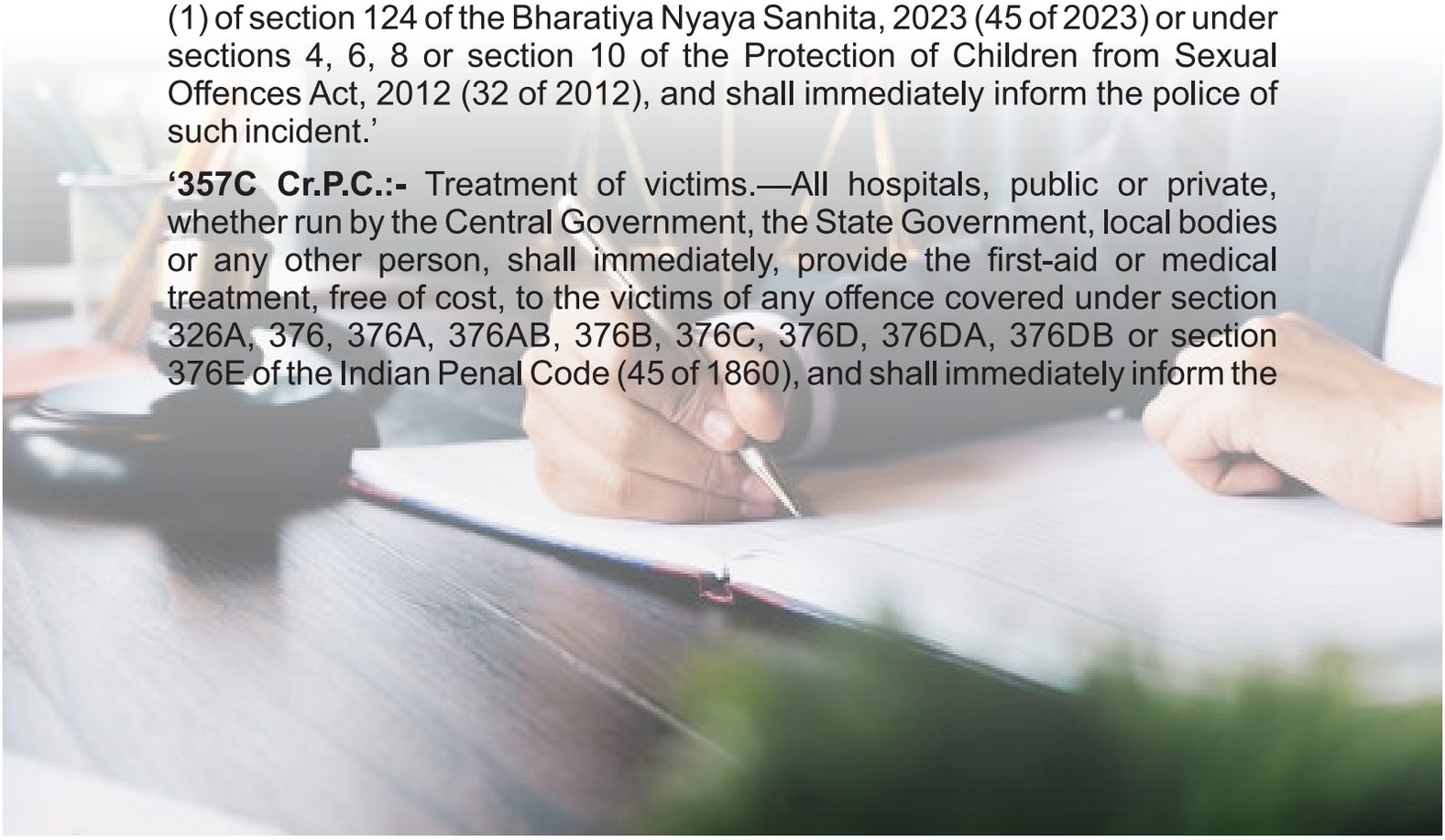
The concerned private hospital initially did not respond positively, despite being sent a formal letter and being contacted multiple times. The DSLSA had to repeatedly pursue the matter, and only on 11th September 2024 did the hospital acknowledge the Court's direction and agree to provide the treatment.

To address the recurring challenge where survivors of sexual violence were denied free medical aid, the Court reproduced the key statutory provisions guaranteeing this right under the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** and the **Criminal Procedure Code (CrPC)**. These sections make it mandatory for both public and private medical establishments to offer immediate and free medical treatment to victims.

Para 16: Section 397 of BNSS, (Section 357C of CrPC) are reproduced here for ease of reference:

'397 BNSS:- Treatment of victims.—All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 64, section 65, section 66, section 67, section 68, section 70, section 71 or sub-section (1) of section 124 of the Bharatiya Nyaya Sanhita, 2023 (45 of 2023) or under sections 4, 6, 8 or section 10 of the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), and shall immediately inform the police of such incident.'

'357C Cr.P.C.:- Treatment of victims.—All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860), and shall immediately inform the



police of such incident.'"

The Court then highlighted Rule 6(4) of the POCSO Rules, 2020, which spells out the responsibility of medical professionals in addressing the physical, psychological, and reproductive health needs of child survivors.

Para 17: In addition Rule 6(4) of the POCSO Rules, 2020 is also relevant and the same reads as under:

'6. Medical aid and care.— […]

(4) The registered medical practitioner rendering medical care shall attend to the needs of the child, including:

(a) treatment for cuts, bruises, and other injuries including genital injuries, if any;

(b) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;

(c) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;

(d) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,

(e) wherever necessary, a referral or consultation for mental or psychological health needs, or other counseling, or drug de-addiction services and programmes should be made.

The Hon'ble Court also referred to the Ministry of Health & Family Welfare (MoHFW) guidelines -2014, (Guidelines for Medico-Legal Care for Survivors/Victims of Sexual Violence') which mandated that all services to survivors of sexual violence must be offered free of charge, including medicines and diagnostic tests.

The Court observed that as per the above provisions of law, it is incumbent upon all hospitals, nursing homes, clinics, medical centres to provide free medical care and treatment to rape victims/survivors, POCSO case



survivors and similar victims/ survivors of sexual attacks etc. However, despite the provisions under the BNSS or CrPC, as also the guidelines formulated by the MoHFW, the Court has been informed that survivors of sexual violence and acid attacks face difficulties in availing free medical treatment.

Recognizing the gap between law and implementation, the Court issued detailed mandatory directions for hospitals, police, DSLSA/DLSA, and Courts. The relevant paras of the judgement are reproduced as under: -

Para 21: Thus, all Central Government/State Government aided and unaided hospitals as also private hospitals, clinics, nursing homes would be required to comply with the above provisions in order to ensure that survivors/rape victims and survivors in POCSO cases etc., are not refused medical treatment, or any other services which may be required. The word "treatment" would include first aid, diagnosis, in-patient admission, continued out-patient assistance, diagnostic tests, lab tests, surgery if required, physical and mental counselling, psychological help, family counselling, etc.

The Court accordingly deems it fit to issue directions which shall apply in respect of the victims/survivors of the following offences:

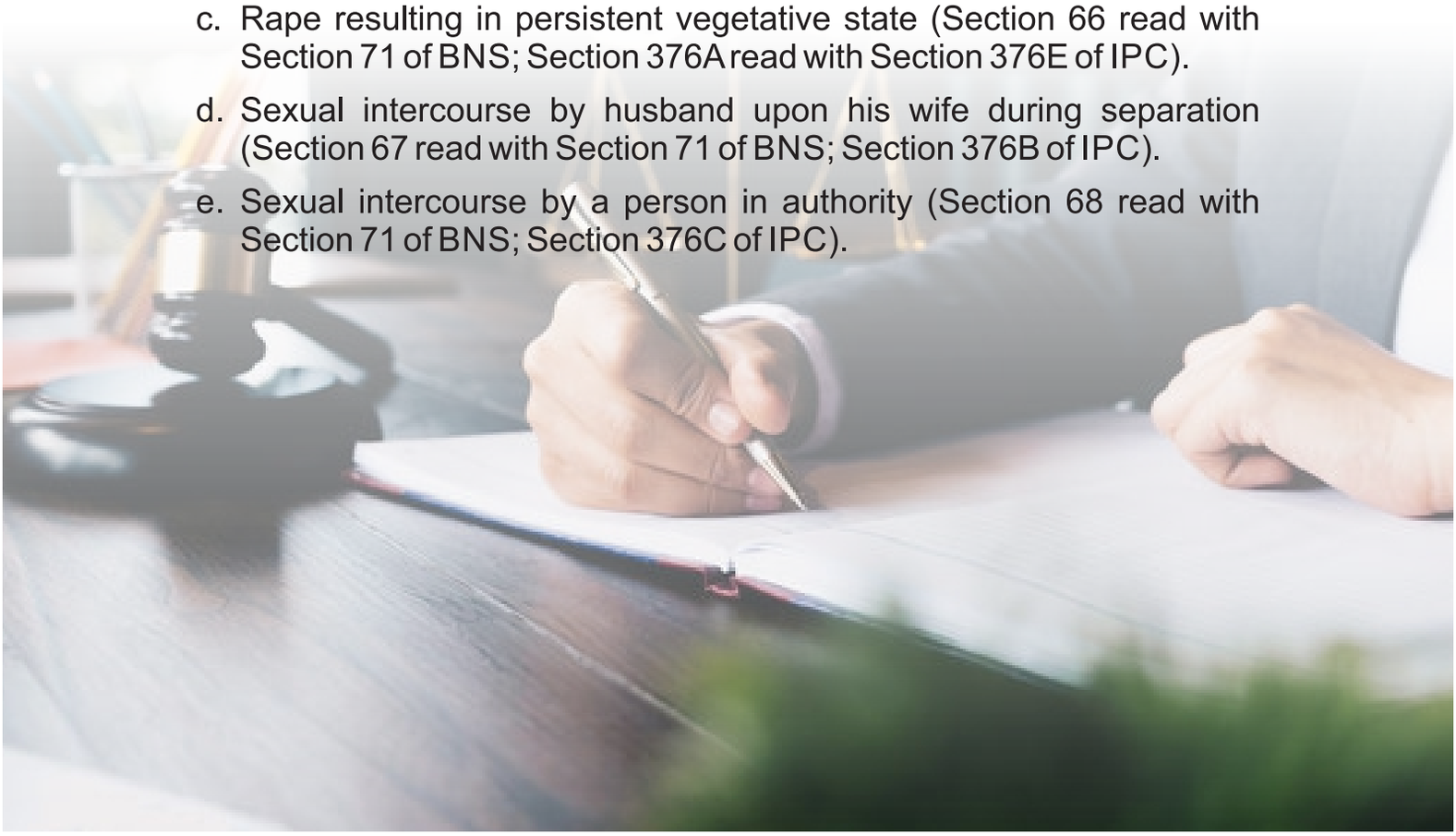
a. Rape (Section 64 read with Section 71 of Bharatiya Nyaya Sanhita, 2023 (BNS); Section 376 read with Section 376E of IPC).

b. Rape of woman under the age of sixteen or twelve years (Section 65 read with Section 71 of BNS; Section 376AB read with Section 376E of IPC).

c. Rape resulting in persistent vegetative state (Section 66 read with Section 71 of BNS; Section 376A read with Section 376E of IPC).

d. Sexual intercourse by husband upon his wife during separation (Section 67 read with Section 71 of BNS; Section 376B of IPC).

e. Sexual intercourse by a person in authority (Section 68 read with Section 71 of BNS; Section 376C of IPC).



f. Gang Rape (Section 70 read with Section 71 of BNS; Sections 376D, 376DA & 376DB read with Section 376E of IPC).

g. Voluntarily causing grievous hurt by use of acid, etc. (Section 124(1) of BNS; Section 326A of IPC).

h. Penetrative sexual assault (Section 4 of POCSO Act).

i. Aggravated penetrative sexual assault (Section 6 of POCSO Act).

j. Sexual assault (Section 8 of POCSO Act).

k. Aggravated sexual assault (Section 10 of POCSO Act).

Directions:

i. Whenever any victim/survivor of any of the said offences approaches a medical facility, diagnostic facility, diagnostic lab, nursing home, hospital, health clinic etc., whether private and public/Government, such victim/survivor shall not be turned away without providing FREE medical treatment, including first aid, diagnostic tests, lab tests, surgery and any other required medical intervention;

ii. Such victim/survivor shall be immediately examined and if required, be given treatment even for sexually transmitted diseases such as HIV etc.;

iii. Such victim/survivor shall be provided physical and mental counselling as may be required;

iv. Such victim/survivor shall be checked for pregnancy, and provided with contraception, if required;

v. Further, if any tests are required to be conducted including ultrasound, etc., the same shall also be conducted. Proper medical advice shall be given to such victim/survivor by the concerned gynaecologist who shall also counsel the victim/ survivor and her family members;

vi. If the victim/ survivor has been brought in an emergent situation, the concerned medical establishment that is approached by or on behalf of such victim/survivor, shall not insist on ID proofs in order to admit the said victim/survivor and administer immediate treatment to the same;

vii. If such a victim/survivor requires in-patient medical treatment, no



payment shall be demanded and admission shall be provided to the said victim/survivor;

viii. Every medical facility shall put up a board in the following terms:

"Free out-patient and in-patient medical treatment is available for victims/ survivors of sexual assault, rape, gang rape, acid attacks, etc.".

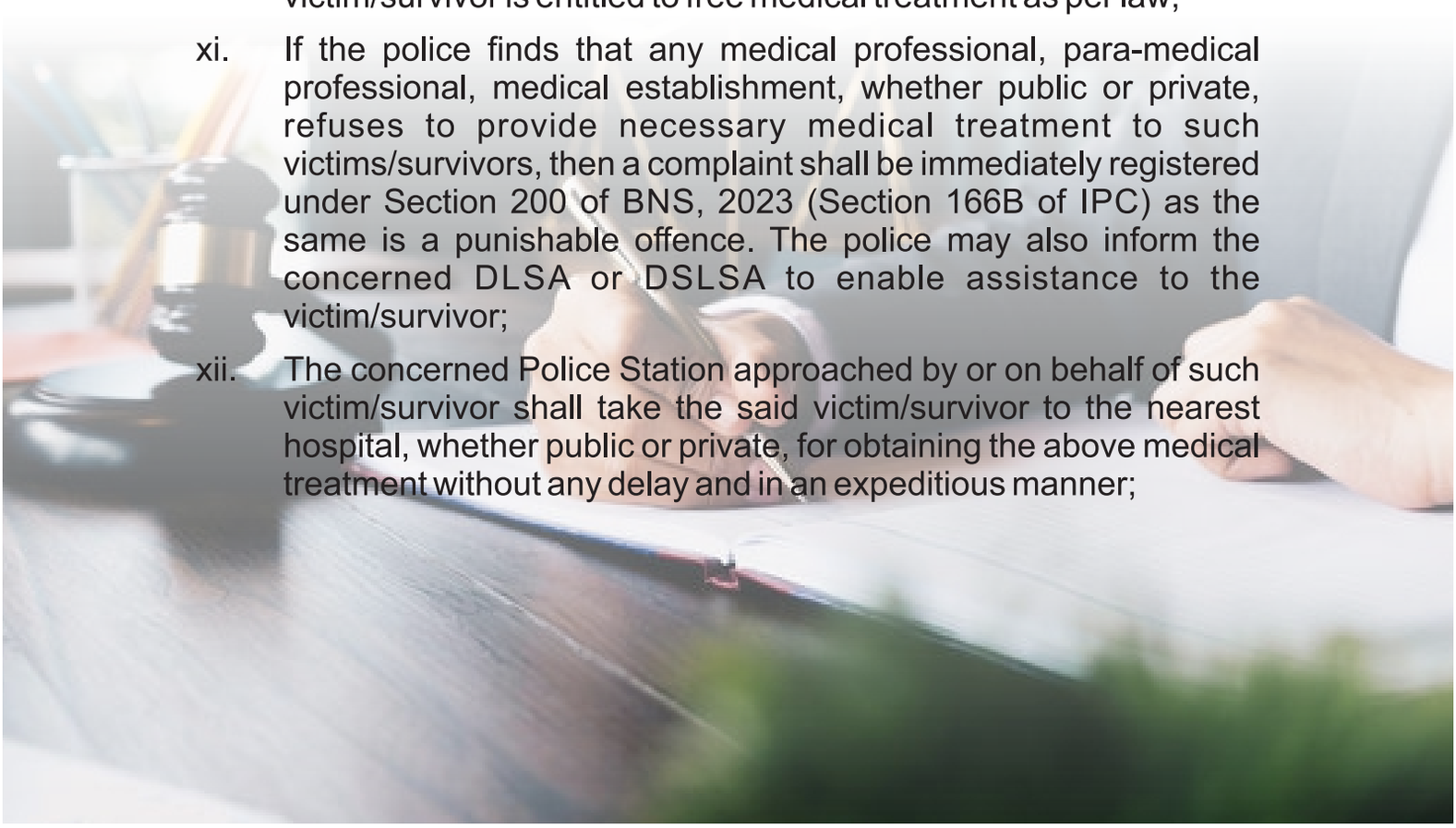
The above board shall be put up at the- entrance, the reception, counters and all prominent places with in the medical establishment, in both English and vernacular language;

ix. All doctors, nurses, paramedical personnel, administrative staff of a medical establishment shall be sensitized about the relevant provisions being Section 397 BNSS (Section 357C of CrPC), Section 200 of BNS (Section 166B of IPC) and Rule 6(4) of POCSO Rules, 2020. Specific circulars shall be issued by the management of the medical establishments informing that anyone violating the above provisions would be liable to be punished with imprisonment for a period of one year or with fine or with both. Thus, non-providing such victim/survivor with required medical treatment is a criminal offence and all doctors, administration, officers, nurses, paramedical personnel etc., shall be informed of the same;

x. If any victim/survivor is required to be transferred from one hospital establishment or medical establishment to another, the transition shall also be made smooth and hassle free by providing ambulance, if required, along with certificate to the effect that the victim/survivor is entitled to free medical treatment as per law;

xi. If the police finds that any medical professional, para-medical professional, medical establishment, whether public or private, refuses to provide necessary medical treatment to such victims/survivors, then a complaint shall be immediately registered under Section 200 of BNS, 2023 (Section 166B of IPC) as the same is a punishable offence. The police may also inform the concerned DLSA or DSLSA to enable assistance to the victim/survivor;

xii. The concerned Police Station approached by or on behalf of such victim/survivor shall take the said victim/survivor to the nearest hospital, whether public or private, for obtaining the above medical treatment without any delay and in an expeditious manner;



xiii. Such victim/ survivor shall also be referred by the Police to the Delhi State Legal Services Authority (DSLSA) /District Legal Services Authority (DLSA) for providing legal assistance including appointment of a lawyer for the complaint to be filed in respect of the offence committed upon the said victim/survivor;

xiv. In the city of Delhi, if such victims/survivors approach the DSLSA/DLSA for seeking assistance for availing free medical treatment, then the Delhi Victims Compensation Scheme (DVCS), requires the DSLSA/DLSA to forward cases of such victims/survivors to Government of NCT of Delhi, to ensure free of cost treatment from any Government hospital, if the need so arises. However, the DSLSA/DLSA is also free to refer such cases to private hospitals, nursing home, laboratories, etc.;

xv. It is clarified that availing of free medical treatment by such victims/survivors from either Government/Public or Private hospitals is not dependent upon a referral by the DSLSA/DLSA under the DVCS, as the same is a statutory right of such victims/survivors under Section 357C of CrPC, Section 397 of BNSS and Rule 6 (4) of POCSO Rules, 2020.

xvi. The DSLSA upon receiving information on its “Sampark” email-id i.e., sampark.dslsa@gov.in regarding registration of an FIR in respect of any offence mentioned hereinabove, shall take necessary action and follow-up with the concerned victim/survivor in respect of receiving free medical aid. Further, the DSLSA shall take urgent steps to process such FIRs and communicate/circulate the same to the concerned DLSAs for taking appropriate steps in terms of the directions herein;

To ensure institutional compliance, the Court ordered that this judgment be circulated among all relevant stakeholders – Courts, hospitals, police stations, and legal aid authorities – for strict adherence to victims' rights under law.

