



Awareness Programme
ON
Compensation To Victim
Under
Protection Of Children From Sexual Offences Act, 2012

By:
Juvenile Justice Secretariat



Meaning of compensation



© The State of Bihar - 2012

- ❑ The term 'Compensation' means amend for the loss sustained.
- ❑ Compensation is anything given to make things equivalent, a thing given to make amends for loss, recompense, remuneration or bay.
- ❑ It is counter balancing of the victim's sufferings and loss that result from victimization.

- ❖ **The rationale or basis for compensation may be the following three perspective:**
 1. As an additional type of social insurance.
 2. As an welfare measure another facet of the Government/Public assistance of the Unprivileged.
 3. A way of meeting an overlooked governmental obligation to all citizens.



Who is victim



SECTION 2 (wa) of Code of Criminal Procedure, 1973 r/w SECTION 2 (2) of the POCSO Act, 2012

“victim” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.



POCSO ACT, 2012



Section 33(8) states :

In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.



Categories of Compensation



© 2019, All Rights Reserved by PCCPBA

- ❑ **Immediate Compensation/Specific Relief.**
 - Under Rule 8 of the POCSO Rules, 2020.
- ❑ **Interim Compensation.**
 - Under Rule 9(1) of the POCSO Rules, 2020.
- ❑ **Final Compensation.**
 - under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974)



Immediate Compensation/Specific Relief



- PROVISION:** Under Rule 8 of the POCSO Rules, 2020.
- PURPOSE :**
 - For Contingencies such as food, clothes, transport and other essential needs.
- ASSESSMENT OF REQUIREMENT & RECOMMENDATION WILL BE MADE BY:**
 - Child Welfare Committee.
- WHO WILL PAY:**
 - District Legal Services Authority u/s 357A of Cr.P.C.; OR,
 - District Child Protection Unit out of such funds placed at their disposal by State.; OR,
 - Juvenile Justice Fund maintained u/s 105 of the J.J. Act, 2015.
- TIME LIMIT FOR SUCH IMMEDIATE PAYMENT:**
 - Within a week of receipt of recommendation from the CWC.



INTERIM COMPENSATION



- ❑ **PROVISION:** Under Rule 9(1) of the POCSO Rules, 2020.
- ❑ **PURPOSE:** To meet the needs of the child for relief or rehabilitation.
- ❑ **STAGE:** At any stage after registration of the First Information Report.
- ❑ **WHO WILL ORDER:** The Special Court.
- ❑ **MODE OF CLAIM:**
 - ❑ The Special Court on its OWN; OR,
 - ❑ on an application filed by or on behalf of the child.
- ❑ **FROM WHICH FUND:**
 - ❑ From the same fund as provided for payment of final compensation as the same has to be adjusted at the time of final compensation.
- ❑ **ADJUSTMENT:** Such interim compensation paid to the child shall be adjusted against the final compensation, if any.



FINAL COMPENSATION



© 2012. All rights reserved. POCSO 2012

- ❑ **PROVISION:** Under Rule 9(2) of the POCSO Rules, 2020.
- ❑ **PURPOSE:** To Compensate the Loss and Injury Suffered as a Result of that Offence as well as to Meet the Needs of the Child for Relief or Rehabilitation.
- ❑ **STAGE:** At the Time of Disposal of the Case.
- ❑ **RESULT OF THE JUDGMENT IS IMMATERIAL FOR GRANTING COMPENSATION:** Where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified.
- ❑ **WHO WILL ORDER:** The Special Court having Opinion that the child has suffered loss or injury as a result of that offence.
- ❑ **MODE OF CLAIM:**
 - ❑ The Special Court on its OWN; OR,
 - ❑ on an application filed by or on behalf of the child.



FINAL COMPENSATION



- ❖ **BY WHOM THE INTERIM & FINAL COMPENSATION WILL BE PAID**
 - ❖ **Under Rule 9(4) of the POCSO Rules, 2020**
 - ❖ **By the State Government**
 - ❖ **FROM WHICH FUND**
 - ❖ **from the Victims Compensation Fund or**
 - ❖ **other scheme or**
 - ❖ **fund established by it for the purposes of compensating and rehabilitating victims under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force, or,**
 - ❖ **where such fund or scheme does not exist, by the State Government.**
- ❖ **TIME LIMIT FOR PAYMENT : Under Rule 9(5) of the POCSO Rules, 2020**
 - ❖ **The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.**



Relevant Factors To Be Considered While Granting Compensation



Rule 9(3) of the POCSO Rules, 2020 – Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974) makes a direction for the award of compensation to the victim, it shall take into account all relevant factors relating to the loss or injury caused to the victim, including the following:-

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;
- (ii) the expenditure incurred or likely to be incurred on child's medical treatment for physical or mental health or on both;
- (iii) loss of educational opportunity as a consequence of the offence, including absence from school due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;



Relevant Factors To Be Considered While Granting Compensation



© The State of Bihar 2012

- (iv) loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason;
- (v) the relationship of the child to the offender, if any;
- (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;
- (vii) whether the child became pregnant as a result of the offence;
- (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;
- (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;
- (x) any disability suffered by the child as a result of the offence;
- (xi) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;
- (xii) any other factor that the Special Court may consider to be relevant.



Entitlement of victim for relief under any other rules or scheme



❖ Rule 9(6) of the POCSO Rules, 2020 provides that –

- ❑ Nothing in these rules shall prevent a child or child’s parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government.



FINE WHICH IS TO BE PAID TO VICTIM



10. Procedure for imposition of fine and payment thereof.—

- (1) The CWC shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act which is to be paid to the victim, is in fact paid to the child.
- (2) The CWC will also facilitate any procedure for opening a bank account, arranging for identity proofs, etc., with the assistance of DCPU and support person.



JUDICIAL MANDATES



Nipun Saxena v. Union of India, (2019) 13 SCC 715 : (2019) 4 SCC (Cri) 592 : 2018 SCC OnLine SC 2010.(order dated 05.09.2018).

- ❑ Hon'ble Supreme Court had considered the issue as to lack of guidelines or a scheme framed for awarding compensation to victims of sexual abuse under the provisions of POCSO Act.
- ❑ The Hon'ble Court Considered the NALSA Compensation Scheme, 2018 and had noted that a Scheme of such nature had not been framed with regards to victims of sexual abuse under the POCSO Act and directed that till such compensation scheme is framed, the NALSA Compensation Scheme would function as a guideline for the Special Court to award Compensation to minor victims of sexual abuse, under Rule 7 of the POCSO Rules, 2012. (Now POCSO Rules, 2020)



JUDICIAL MANDATES



***Nipun Saxena v. Union of India*, (2019) 2 SCC 703 : (2019) 1 SCC (Cri) 772 : 2018 SCC OnLine SC 2772 at page 722.(Order dated 11.12.2018)**

- ❑ Adopted the direction given by the Hon'ble Calcutta High Court in **Bijoy case [Bijoy v. State of W.B., 2017 SCC OnLine Cal 417 : 2017 Cri LJ 3893]** and made it Annexure –I of the Judgment.



JUDICIAL MANDATES



The Direction relating to the compensation under the POCSO Act, 2012 issued by the Calcutta High Court in the case of **Bijoy v. State of West Bengal (2017 Cri.L.J.3893)** are:

- ❖ The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall ***on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation*** and upon giving an opportunity of hearing to the State and other affected parties including the victim ***pass appropriate order for interim compensation and/or rehabilitation of the child.***
- ❖ In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, ***the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim.***
- ❖ The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund.



JUDICIAL MANDATES



The Direction relating to the compensation under the POCSO Act, 2012 issued by the Calcutta High Court in the case of **Bijoy v. State of West Bengal (2017 Cri.L.J.3893)** are:

- ❖ The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357A of the Code of Criminal Procedure, 1973 or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted.
- ❖ If the **Court declines to pass interim or final compensation** in the instant case ***it shall record its reasons for not doing so***. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act.



VICTIM COMPENSATION SCHEMES IN BIHAR



- ❖ The First Victim Compensation Scheme in Bihar was framed in the Year 2011 under section 357A of the Cr.P.C. in the light of direction of the Supreme Court in the Case of Laxmi(minor), known as "**Bihar Victim Compensation Scheme,2011**".
- ❖ Subsequently, in the light of Observations of the Hon'ble Supreme Court afresh Scheme was framed by the State of Bihar, known as "**Bihar Victim Compensation Scheme,2014**".
- ❖ Pursuant to the Central Victim Compensation Fund(C.V.C.F.) Guidelines 2016 of Home Ministry, Govt. of India the "**Bihar Victim Compensation Scheme,2014**" was amended in July 2018.
- ❖ In Compliance of directions given by the Hon'ble Supreme Court in *Nipun Saxena & Others vs. Union of India & Others*, Civil Writ No. 565/2012, dated 10.05.2018, the "**Bihar Victim Compensation Scheme,2014**" was again amended in July 2019 and a separate Chapter as Part II has been added as "**The Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2019.**"
- ❖ The 'Explanation' attached to Rule 18 of this newly added Chapter specifically provides that "**It is clarified that this chapter does not apply to minor victim under POCSO Act, 2012 and Rules(7) of the POCSO Rules, 2012.**"[Now Rule 9 of the POCSO Rules, 2020]



VICTIM COMPENSATION SCHEMES IN BIHAR



© 2012-2013, June - 2013, 10/1/13

Who Will Fix the Quantum of Compensation?

- ❖ **SPECIAL COURT OR DLSA**
- ❖ Hon'ble Karnataka High Court in Criminal Revision Petition No. 306 of 2018, dated 02nd January 2020 [**Karnataka State Legal Services Authority vs. State of Karnataka and Others**] held that "*Trial Court has no power to fix the quantum of Compensation under the POCSO Act or Under Section 357-A of Cr.P.C. and the Karnataka Victim Compensation Scheme, 2011.*"
- ❖ Hon'ble Delhi High Court in Writ Petition (Crl.) 3244/2019, dated 15th June 2020 [**Mother Minor Victim No. 1 & 2 vs State and Othrs.**] held that "It is well settled that every statutory power is also coupled with the duty to exercise it. In view of the express provisions of Section 33(8) of the POCSO Act and Rule 7 of the said Rules (Rule 9 of the Protection of Children from Sexual Offences Rules, 2020 as is currently in force), the duty to award compensation in appropriate cases has been conferred on the Special Court and therefore, it is incumbent on the Special Court to pass necessary orders for compensation/interim compensation in appropriate cases. It is not open for the Special Court to delegate the said power and direct the concerned Legal Services Authority to examine any claim for compensation payable to a minor victim of an offence punishable under the POCSO Act."
- ❖ The Hon'ble Delhi High Court also upheld the quantum of Interim Compensation to the Tune of Rs. 50,000/- as fixed by the Special POCSO Court, Delhi.



VICTIM COMPENSATION



Who Will Fix the Quantum of Compensation?

Bijoy v. State of West Bengal (2017 Cri.L.J.3893):

- ❖ The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall ***on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation*** and upon giving an opportunity of hearing to the State and other affected parties including the victim ***pass appropriate order for interim compensation and/or rehabilitation of the child.***
- ❖ In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, ***the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim.***
- ❖ **The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund.**



VICTIM COMPENSATION



Whether Multiple Applications for Interim Compensation can be made?

- ❖ Hon'ble Delhi High Court in Writ Petition (Crl.) 3244/2019, dated 15th June 2020 [**Mother Minor Victim No. 1 & 2 vs State and Others.**] held that:
 - ❖ Although Sub Rule (1) of Rule 7 of the said Rules (and in Sub-rule (1) of Rule 9 of the Protection of Children from Sexual Offences Rules, 2020) does not indicate that multiple applications for interim compensation can be made; nonetheless, since the said provision for compensation is a beneficial provision, the same must be considered liberally.
 - ❖ since there is no express bar which restricts the Special Courts to grant interim compensation only once, an application for further interim compensation can be considered by the Learned. ASJ, provided there are sufficient grounds for seeking further interim compensation. Needless to state that any further interim compensation awarded would also be liable to be adjusted with the compensation as awarded at the final stage as postulated in Sub-rule (1) of Rule 7 of the said Rules (and in Sub-rule (1) of Rule 9 of the Protection of Children from Sexual Offences Rules, 2020)



Compensation To Victim Under POCSO Act, 2012



© 2012-2013, www.pocso.org

THANK YOU

**Submit Your Attendance and Feedback through
'Google Form' circulated to each Judgeship.**