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## RE-EVALUATING VICTIM COMPENSATION AND REHABILITATION STRUCTURE IN POCSO ACT, 2012

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Nirnesh Rajendra Rao Naidu, Assistant Professor of Law in Haveli Institute of Legal Studies and Research, Mumbai University - Affiliation

### ABSTRACT

Protection of Children from sexual offences Act, 2012 which was formulated primarily to protect children from sexual offences focuses on preventative scaling, awareness and the issues concerning sexual safety for the children. The second intrinsic nucleus of this act talks about the compensation provided to children who are sexually exploited and abused. Since the last few years, there has been an upsurge in sexual offences against children it has become a dire need to revisit the compensation and rehabilitation structure embodied in the POCSO Act. The important researchable question that can be co-joined for structuring the compensation scheme is whether providing only compensation or rehabilitation is enough to rejuvenate the trauma faced by children. The exact extent is to provide compensation for post-traumatic situations is undetermined and untraced. The poor, marginalized and depressed class had been more victimized and unaware of such schemes. The only limitation that can be highlighted is the lack of awareness of victims and non-efficient working of state mechanisms to draw out compensation and post-traumatic situations. The special court has the mandatory duty to not only to convict the accused but to also provide compensations to child victims with a proper report of monitoring the health and mental status of child connoting post traumatic conditions. From time to time on various occasions the Supreme Court of India and the legislature played a vital role in up-holding the various decisions pertaining to Victim Compensation scheme in relation with children who face a severe trauma post incidents. The initiatives taken by the state government had a concurrence relation with State/District Legal Service Authorities. The state government should take various steps to launch various awareness events, different schemes pertaining to Child Protection from Sexual Offences and to dispense compensation to the victims. Various effective and efficient tools and techniques must be adapted for the strong implementation of provisions of POCSO Act, 2012.

**Keywords:** POCSO Act, 2012, Victim Compensation, Post Traumatic Situation, Rehabilitation, District/State Legal Service Authorities, Special Court

## INTRODUCTION

Children are the biggest asset of a country. They play an important role in making and shaping a country. Every child is innocent, having a special characteristic, skill and a life to enjoy their childhood. When we witness a child being sexually abused and sexually exploited it depletes the society and nation consequently. Efforts were made to curb such child-related exploitation and to some extent we have achieved the effective slowing down of such sexually related crimes against children. POCSO Act which has played a life jacket to protect and curbing down the sexual offenses which offers two elements in protecting children in India, firstly it fulfills the criteria the Article 15(3) of Indian Constitution where it says state to make special provisions and arrangements in context of Women and Children and secondly the provisions of Convention on rights of child which India has ratified in the year 1992. The second most important as discussed earlier regarding the dispensing of compensation to such child victims to such an extent so that he or she gets mixed with the society without any trauma and fear. The broad purview can be invoked under Section 357-A of Code of Criminal Procedure which postulates Victim Compensation Scheme where State government and District Legal service authority come into play to decide for dispensing such momentary relief to victims.

Here the role of Special Courts becomes very crucial in outlining the provisions of 357-A CrPC and making recommendations to the Legal Service Authority to decide the amount of compensation for child victims and making aware to the guardians and children of such provisions at a very prior stage. The necessity of interim Compensation plays a crucial life saving jacket helping victims in medical aiding facilities and in other rehabilitation tools.

## STATUTORY PROVISIONS- BREAKING THE GENESIS

The important provisions which are profusely used for compensating the child victims are Clause 8 of Section 33 and Rule 9 (1),(2) & (3) (i) to (xii). Clause 8 of Section 33 under chapter VIII which reads down: "In Appropriate cases, the Special Court may, in addition to the punishment, direct payment of compensation to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child"<sup>1</sup>

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<sup>1</sup>Srinivas's Child Sexual Abuse Laws, An exclusive commentary on The Protection of Children from Sexual Offences Act, 2012 and Rules-, Page No. 408, Section 33(8), POCSO, Act 2012 ,(Premier Publishing Company, Second Edition,2023)

Now if we try to make a breakdown of the above mentioned section the wordings which are used in the second line that “direct payment of compensation to the **child**” here the child meaning as per POCSO Act is any person who is below the age of 18 years. The other term of child can be said that “child means a living child” now if suppose the child’s death occurs due to sexual assault during the course of trial under such circumstances the question rises that who is duty bound to receive the compensation and if yes then who may be entitled to receive such compensation. The definition of dead child is absent.

In the above section referring to the last line the word “immediate rehabilitation” is outlined, the word like “**counseling**” can be added with rehabilitation to make the provision more comprehensive.

Even the post traumatic rehabilitation and counseling can be considered to draw attention for the extent of usage of this above section.

**1) Rule 9(1) of POCSO Rules, 2020 reads:**

*“The special court may, in appropriate cases, on its own or on application filed by or on behalf of the child, pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report. Such interim compensation paid to the child shall be adjusted against the final compensation, if any”.<sup>2</sup>*

Here the provision clearly specifies of providing the interim compensation to child to fulfill the immediate need, relief and rehabilitation at any time of stage but after the registration of First Information Report. Providing Interim Compensation at an early stage is an attempt made to negate the misfortune faced by the child. Here court should also consider the gravity of interim compensation by determining the magnitude of the offences and should draw a conclusion of deciding the interim compensation by keeping psychological and physicality factors in mind. Again the term “Child” used in this rule doesn’t specifically specify about the “Dead Child”

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<sup>2</sup> Srinivas’s Child Sexual Abuse Laws, An exclusive commentary on The Protection of Children from Sexual Offences Act, 2012 and Rules-,Page No. 431, Rule 9 (1) POCSO Rules, 2020, (Premier Publishing Company, Second Edition,2023)

**2) Rule 9(2) of POCSO Rules, 2020 Reads:**

*“The special court may, on its own or on application filled by or on behalf of the **victim**, recommend the award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence”.*<sup>3</sup>

Here the rule says that Special Court have exclusive power to recommend the award, whether the accused is convicted or acquitted or discharged or even when the accused is not traced, to receive such compensation by the child on loss or injury.

Now, in the above mentioned rule in the second line the expression “**Victim**” is used instead of “**Child**” now the question arises that whether the word have the same effect as it is mentioned in the clause (x) of Section 2 of The Bharatiya Nagarik Suraksha Sanhita (previously Section 2 (wa) of Code of Criminal Procedure, 1973)

**3) Rule 9 (3) from (i) to (xii)** which says that various relevant factors that has to be considered while granting the award for compensation to the victim like:

- (i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;<sup>4</sup>
- (ii) the expenditure incurred or likely to be incurred on child’s medical treatment for physical or mental health or on both;<sup>5</sup>
- (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;<sup>6</sup>
- (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

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<sup>3</sup> Srinivas’s Child Sexual Abuse Laws, An exclusive commentary on The Protection of Children from Sexual Offences Act, 2012 and Rules-,Page No. 431, Rule 9 (2) POCSO Rules, 2020, (Premier Publishing Company, Second Edition,2023)

<sup>4</sup> Ibid, Rule 9(3)(i)

<sup>5</sup> Id, Rule (9)(3) (ii)

<sup>6</sup> Id, Rule 9(3) (iii)

- and trial of the offence, or any other reason;<sup>7</sup>
- (v) the relationship of the child to the offender, if any;<sup>8</sup>
  - (vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;<sup>9</sup>
  - (vii) whether the child became pregnant as a result of the offence;<sup>10</sup>
  - (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;<sup>11</sup>
  - (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;<sup>12</sup>
  - (x) any disability suffered by the child as a result of the offence;<sup>13</sup>
  - (xi) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;<sup>14</sup>
  - (xii) any other factor that the Special Court may consider to be relevant.<sup>15</sup>

The above mentioned are the factors that a special court decides while awarding the compensation to child against sexual offences. One can raise a question here that to consider such above mentioned factors there might be some responsible person who may submit such a report to Special Court to analyze and to ascertain such factors. During the point of inception with a child there might be a possibility that the child is not openly addressed to court therefore such person of a medical background must assist to court for the better understanding of the factors and act as a mediator between a child and Court openly and freely. The role of "Expert" "Special Educator", "Person Familiar with the manner of communication of the child" and

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<sup>7</sup> Id, Rule 9(3) (iv)

<sup>8</sup> Id, Rule 9(3) (v)

<sup>9</sup> Id, Rule 9(3) (vi)

<sup>10</sup> Id, Rule 9(3) (vii)

<sup>11</sup> Id, Rule 9(3) (viii)

<sup>12</sup> Id, Rule 9(3) (ix) page no. 432

<sup>13</sup> Id, Rule 9(3) (x) page no. 432

<sup>14</sup> Id, Rule 9(3) (xi) page no. 432

<sup>15</sup> Id, Rule 9(3)(xii) page no. 432

“Support Person” defined under Rule 2 (c) to (f) of POCSO Rules, 2020 respectively becomes crucial in such reports monitoring.

## **JUDICIAL APPROACH TOWARDS AWARDING COMPENSATION IN POCSO CASES**

For the better implementation of provisions, judiciary plays an important part in correcting and equating justice through various judicial procedures and tools.

The reference of **Bijoy vs State of West Bengal**<sup>16</sup> was invoked by Honorable Supreme Court of India in **Nipun Saxena vs U.O.I**<sup>17</sup> where it was opined in the former case referring to the point (9) Annexure-1 (Directions issued by the Calcutta High Court in the former case) it says that:

“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 favor 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. 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 (sic) 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

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<sup>16</sup> 2017 Cri.L.J.3893

<sup>17</sup> W.P ( C ) No. 565 of 2012, Author: Honorable Justice Deepak Gupta, <https://indiankanoon.org/doc/143288964/> accessed on 28/12/2023

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”<sup>18</sup>

In the above mentioned case the outlined part speaks clearly that awarding compensation to child victim with that of interim relief is an obligatory function and therefore it cannot be hindered by any cost. The wordings which are used in above mentioned paragraph can be connoted with section 33(8) of POCSO Act and the Rules which have been discussed earlier.

In **RE: Alarming Rise in The Number of Reported Child Rape Incidents**<sup>19</sup>, Referring to the Order, the report was submitted by the Registrar of The Supreme Court of India emanating the relevant figures citing paragraph as below:-

**“7.8 Percentage of cases in which interim compensation/final compensation provided:<sup>20</sup>**

Interim Compensation NOT provided - 99%

Interim Compensation provided - 1%

Final Compensation NOT provided - 99%

Final Compensation provided - 1%”

In the above mentioned case if we statistically draw conclusion to the main areas of not providing Interim Compensation is standing at 99% and dispensing of such Compensation is standing at 1% and even the same ratio goes with Final Compensation not awarding to Child is 99% and 1% in dispensing such award.

The figures show some despicable situations in awarding the Interim and Final compensation to Child Victims. Looking to such paraphernalia, the Honorable Supreme Court of India was in a complete shock that this figure shows the working mechanism of States and Courts have failed to comply with the POCSO Act and failed to deliver the actual crux of the Act. The Honorable Supreme Court was in a view to revamp the mechanism of delivering the justice

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<sup>18</sup> W.P ( C ) No. 565 of 2012, Author: Honorable Justice Deepak Gupta  
,<https://indiankanoon.org/doc/143288964/> accessed on 28/12/2023

<sup>19</sup> Suo Moto Writ (Criminal) No. 1/2019  
[https://main.sci.gov.in/supremecourt/2019/24308/24308\\_2019\\_1\\_305\\_18187\\_Order\\_13-Nov-2019.pdf](https://main.sci.gov.in/supremecourt/2019/24308/24308_2019_1_305_18187_Order_13-Nov-2019.pdf),  
accessed on 29/12/2023

<sup>20</sup> Ibid

and various and to fulfill the main object of this Act and hoped that central Government will play a pivotal role in rejuvenating the situation.

## **CONCLUSION AND SUGGESTIONS**

Talking about the suggestions to this very sensitive topic which appears to be a mere subjective rather than practical but in reality there are lot of feelings, emotions, mortality and psychological factors attached to this subject and needed to be monitored to every minuscule aspects.

Suggestions would only be effective when such references are meted out in a very efficient manner only through perfect implementation. There is an Administration and various other organizations working and collaborating with each other to achieve the desired object of POCSO Act.

As discussed earlier the object of making this above Act is to protect the children from various sexual offences and also to monitor the victims who faced such serious traumatic situations which have vandalized their childhood.

The compensation scheme which was incorporated in the provisions of POCSO Act and the POCSO Rules of 2020, looking to the future prospectus of a child they are entitled to receive such award or compensation to secure their future against such traumatic scenario. It has also to be noted that giving award or compensation is completely relied on civil nature but still due to the role of legislature and the pivotal role of judiciary made such arrangements in a criminal nature realm.

### **In RE: Alarming Rise in The Number of Reported Child Rape Incidents<sup>21</sup>**

The interim compensation and final compensation which was awarded is only 1% and not provided with the compensation in both the categories stands to 99%. There is a huge gap in dispensing compensation and not granting such award which is quite disturbing and tells a story of failure of mechanism in every aspect.

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<sup>21</sup> Suo Moto Writ (Criminal) No. 1/2019, [https://main.sci.gov.in/supremecourt/2019/24308/24308\\_2019\\_1\\_305\\_18187\\_Order\\_13-Nov-2019.pdf](https://main.sci.gov.in/supremecourt/2019/24308/24308_2019_1_305_18187_Order_13-Nov-2019.pdf), accessed on 29/12/2023

**Solutions:**

- 1) **Role of Police Administration/ Special Juvenile Unit (SJPU):** There is a huge responsibility on the side of police department because they are the people who are coming in contact with the children and with their parents and guardians on a very first impression. The investigation officer has the responsibility to report and to make such awareness to the people to make use of such Schemes which are benefited to the victims and their families. The officers should also coordinate with District Child Protection Unit (DCPU) to dispense such schemes to the children
- 2) **Role of Judiciary/ District legal Service Authority:** The very first step of Special Courts is to scrutinize the injury/harm that have occurred to child and after making complete analysis, the process of interim compensation shall be initiated. Role of Public prosecutor may also come in to play for making recommendations to various investigation agencies and various other units. Rule 7 (1) and (2) of POCSO Rules, 2020 should be proactively exercised by the DLSA for aid an assistance purpose and to make such report which is to be forwarded to Special Court for monitoring purpose.
- 3) **Role of Para Legal Volunteers:** In the case of **Bachpan Bachao Andolan v. U.O.I and Ors.**<sup>22</sup> The Supreme Court of India directed to use of Para Legal Volunteers in Police Station for the Complaints and safeguarding purpose. Hence we can say that Para Legal Volunteers may act as a catalyst for processing the Compensation purpose in co-ordination with DLSA.
- 4) **Role of Non Governmental Organization:** The role NGO are quite big they truly put their best efforts for saving child rights and working for improvising the situations of children and various other factors affecting to their rights. The role of NGOs becomes larger during Post Traumatic problems because they are the one who help child with their Re-development and various other rehabilitation tools and Techniques.
- 5) **Role of Government/ State Government:** The state government having a bigger responsibility in monitoring the various organizations which is working in coordination with the government. State Government should analyze the mechanisms which are

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<sup>22</sup> WP ( C ) No. 427/2022, <https://www.livelaw.in/top-stories/supreme-court-child-protection-legislations-implementation-plv-empanelment-208169>, accessed on 29/12/2023

working towards child rights and protection. The funds which are allocated should be profusely used in protecting children and for compensation purpose.

At last and not the least such solutions can only be implemented through proper monitoring and effective implementations.