

# Reviewing The Adequacy Of Victim Compensation Under The POCSO Act, 2012 And Rules, 2020

Punam Ahmed<sup>1</sup>, Dr. Aparajita Baruah<sup>2</sup>

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## Abstract

*The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted to safeguard children from sexual crimes and ensure justice through legal, rehabilitative, and compensatory measures. However, the victim compensation framework under the Act faces numerous challenges, including procedural delays, legal ambiguities, and inconsistencies in awarding compensation. The lack of a dedicated Victim Compensation Scheme under the POCSO Act has led to reliance on state-level schemes under Section 357A of the Criminal Procedure Code, 1973, resulting in disparities in compensation amounts across different states. Additionally, confusion persists over whether the Special Courts or the District/State Legal Services Authorities (DLSA/SLSA) have the authority to determine compensation, further delaying relief to victims.*

*A significant concern is the gender bias in awarding compensation, with studies indicating that male and transgender child victims receive little to no financial support compared to female victims. The reliance on support persons or NGOs for claim processing further complicates access to compensation, presenting a significant challenge for many survivors. Despite judicial directives, such as those in Karnataka State Legal Services Authority v. State of Karnataka and Nipun Saxena v. Union of India, the compensation framework remains inefficient.*

*This paper highlights the existing gaps in the POCSO compensation system. It suggests key reforms, including the establishment of a uniform compensation scheme, time-bound disbursement of funds, and the removal of gender biases. Strengthening the compensation mechanism is crucial for ensuring justice, rehabilitation, and empowerment of child survivors of sexual abuse.*

**Keywords:** Children, Rehabilitation, Compensation, protection, Rights, Safety etc.

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## 1. INTRODUCTION

Victim compensation remains a global concern, as the plight of crime victims has long been overlooked. For a long time, traditional criminology neglected the well-being of victims. The primary goal of compensation is straightforward; it seeks to remedy the harm caused to individuals or their property, addressing what would otherwise be deemed unfair injuries. Child sexual abuse is a pervasive issue in India, affecting children across all genders. While legal provisions exist to address such offences, they have traditionally been framed within rigid gender binaries. The Indian Penal Code (IPC)<sup>3</sup>, which has now been replaced by the Bharatiya Nyaya Sanhita (BNS)<sup>4</sup>, previously offered some legal recourse for non-female victims under Section 377<sup>5</sup>. However, with the enactment of the BNS 2023, Chapter 5 (Offences Against Women and Children), primarily addresses crimes against women and children. Sections 63 to 92 specifically deal with offences against women, outlining various forms of sexual violence, harassment, and exploitation. Meanwhile, Sections 93 to 99 provide protections specifically concerning children, covering crimes such as child sexual abuse, exploitation, and trafficking. However, the law fails to provide explicit legal recognition and remedies for other gender identities. This shift highlights the need for a more inclusive legal framework that ensures equal protection and justice for all survivors of sexual violence. Justice V.R. Krishna Iyer underscored the persistent neglect within the criminal justice system, noting that it fails to address the suffering of crime victims and their dependents adequately. He pointed out a significant flaw in jurisprudence because victim reparation remains primarily overlooked, receiving minimal attention within the framework of criminal law.<sup>6</sup>

In the context of child sexual abuse, the Protection of Children from Sexual Offences (POCSO) Act, 2012, includes provisions for compensating victims. Under Section 33(8)<sup>7</sup> Special Courts are empowered to direct the government to compensate victims for medical expenses, rehabilitation, and other essential needs. Additionally, particularly Rule 9<sup>8</sup>, mandate compensation for victims to aid in their recovery and reintegration. These provisions ensure that survivors receive financial support to cope with the physical, emotional, and psychological impact of the crime. Along with enforcing strict penalties for offenders, the law emphasises the rehabilitation of minor victims. It grants Special Courts the authority to award compensation to victims for medical assistance, psychological support, and overall rehabilitation. Additionally, it lays down comprehensive guidelines to ensure that child survivors receive necessary assistance from experts, including medical professionals, counsellors, and legal aid providers. These provisions aim to create a holistic support system that prioritises the well-being and recovery of the child.

## **2. Justice Through Compensation: Understanding Its Genesis And Objectives**

India, home to a vast population, comprises approximately 40% of children. However, it is ranked among the most unsafe countries for children globally<sup>9</sup>. Research indicates that nearly half of India's child population has experienced some form of sexual abuse at least once in their lifetime. In the criminal justice system, restitution refers to the payment made by the offender to the victim as compensation for the harm caused by the offender's wrongful actions. It is a form of redress designed to help the victim recover or mitigate the losses from the crime.<sup>10</sup> Restitution has historically been used as a form of punishment. In ancient societies, there was no clear distinction between civil and criminal law; instead, offenders were obligated to compensate the victim or their family for any harm caused by their actions. However, the primary objective of such restitution was not to provide justice to the victim but rather to shield the offender from violent retaliation by the victim or the broader community<sup>11</sup>.

Over time, global awareness of individual human rights has significantly increased. Our Constitution places great importance on justice, equality, and fundamental rights, ensuring even convicts are granted extensive protections to uphold their dignity and right to life. However, for an extended period, the compensatory rights of crime victims remained neglected and failed to receive adequate attention.

Victim compensation is regarded as a key aspect of ensuring justice for victims. The United Nations Declaration of Basic Principles of Justice<sup>12</sup>, adopted by the General Assembly during its 96th Plenary Meeting on November 29, 1985, emphasises the significance of the right to compensation. According to this declaration, when compensation from the offender or other sources is not accessible, the State is obligated to provide financial support to victims<sup>13</sup>. The proclamation included four essential victim rights components<sup>14</sup>.

1. Access to justice and fair treatment;
2. Restitution;
3. Compensation;
4. Assistance

When a victim receives compensation for a crime they have endured, it holds significant value as it represents justice being served while also providing financial support<sup>15</sup>.

- In society, the awarding of compensation serves as recognition that an injustice has been committed against the victim.
- It acts as a crucial mechanism to aid the victim in coping with the trauma and losses they have suffered on a personal level.

- Furthermore, compensation is vital in facilitating the victim's recovery, helping them rebuild and transform their lives.
- Constitutional Mandates for Victim Compensation and Justice.

The Preamble of the POCSO Act, 2012, acknowledges the UN Convention on the Rights of the Child, 1989 (UNCRC), which mandates that States Parties implement effective measures to safeguard children from all forms of sexual exploitation and abuse<sup>16</sup>. It also highlights India's accession to the UNCRC and emphasises adherence to its prescribed standards to ensure the "best interests of the child."

### **3. Compensation Mechanisms in The Indian Legal System**

#### **3.1 Legal Structure under the Indian Constitution**

Although the Constitution of India does not explicitly provide for compensation to victims of sexual abuse, the obligation to ensure justice and rehabilitation for survivors is deeply rooted in the Fundamental Rights<sup>17</sup> and the Directive Principles of State Policy<sup>18</sup> (DPSP). Article 21<sup>19</sup>, which guarantees the right to life and personal liberty, has been expansively interpreted by the Supreme Court to include the right to dignity, protection, and compensation for victims of crime, including sexual abuse. Article 38<sup>20</sup> Directs the State to promote justice, social, economic, and political and minimise inequalities, reinforcing the need for victim-centric policies. Similarly, Article 41<sup>21</sup> mandates the State to secure public assistance in cases of disablement and undeserved want, which can be extended to the rehabilitation of survivors. Additionally, Article 51A(e)<sup>22</sup> imposes a fundamental duty on citizens to renounce practices derogatory to women's dignity, further strengthening the legal and moral obligation to support and compensate victims of sexual abuse. The Indian Constitution guarantees the right to life and personal liberty, which the Supreme Court has interpreted to encompass the right to live with dignity.<sup>23</sup> This interpretation provides a foundation for ensuring that child victims of sexual abuse receive adequate support and compensation to restore their dignity and aid in their recovery. The Court has established a mandatory duty on the State to compensate victims in appropriate cases where State authorities have violated fundamental rights. Additionally, while exercising its jurisdiction under Article 32, the Apex Court has awarded compensation and exemplary costs as a form of punitive damages<sup>24</sup>, reinforcing the principle of State accountability for constitutional violations.

In *Delhi Domestic Working Women's Forum v. Union of India*<sup>25</sup>, the Supreme Court emphasized the State's responsibility to compensate victims and set guidelines for assisting rape survivors. The Court directed the formation of a compensation board for victims of criminal injuries, stating that compensation should be provided regardless of the accused's conviction.

In *Bodhisattwa Gautam v. Miss Subhra Chakraborty*<sup>26</sup>, the Supreme Court ruled that a court trying rape cases has the power to order interim compensation as part of its broader jurisdiction. This power is grounded in the recognition that rape is a violation of fundamental human rights, specifically the right to life and personal liberty, as guaranteed under Article 21 of the Indian Constitution. The Court emphasised that providing interim relief in such cases is essential for upholding the dignity and well-being of the victim.

The POCSO Act, 2012, derives its constitutional validity from various provisions of the Constitution of India, which emphasize the protection, welfare, and dignity of children. The key constitutional articles that form the basis for addressing child sexual abuse cases and justify the enactment of the POCSO Act are:

**Right to Equality**<sup>27</sup> – Ensures equality before the law and equal protection, reinforcing the need for equal safeguards for all children, regardless of gender.

**Special Provisions for Children**<sup>28</sup> – Allows the State to make special provisions for women and children, justifying the enactment of POCSO to safeguard their dignity and protection.

**Right to Education**<sup>29</sup> – Mandates free and compulsory education for children aged 6-14 years, emphasising a safe and secure learning environment free from abuse.

**Protection from Exploitation**<sup>30</sup> -Ensures that children's health and strength are not abused, preventing them from engaging in work unsuitable for their age.

**Right to Development**<sup>31</sup> – Mandates children grow in a safe and dignified environment, free from exploitation and neglect.

**Equal Justice and Free Legal Aid**<sup>32</sup> – Directs the State to provide free legal aid to ensure justice is accessible to all, irrespective of economic barriers.

**Early Childhood Care and Education**<sup>33</sup> – Advocates for free and compulsory education up to six years, fostering awareness to prevent sexual exploitation.

### ***3.2 Historical Development of State Compensation for Crime Victims under Cr.P.C (now BNSS)***

Sex crimes are among the most grievous offences, and their victims require specialised care and attention to help them regain normalcy in their lives. They need medical, psychological, and emotional support. In cases of aggravated assault, immediate medical attention is crucial, followed by professional assistance to address mental trauma and feelings of self-guilt. Victims often endure profound emotional distress, and recovery is impossible without external help. Caregivers also need substantial financial resources for regular check-ups and treatments. However, since many child victims come from low-income families, their families are often unable to afford such necessary medical care.<sup>34</sup> As a result, 81% of child rape victims are left without the financial means to meet their healthcare needs and are solely dependent on the compensation provided to them<sup>35</sup>.

Based on the 154th Law Commission Report<sup>36</sup>, an amendment introduced Section 357A into the Code of Criminal Procedure, 1973, which has now been incorporated in Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>37</sup>. This amendment aimed to broaden the scope of compensation available to victims of crime, regardless of the outcome of the criminal prosecution against the accused<sup>38</sup>.

Before the amendment, compensation to victims was addressed under Section 357 of the Cr. P.C. (section 395 BNSS), as suggested by the Law Commission of India in its 41<sup>st</sup> Report<sup>39</sup>. This provision allowed courts to compensate victims for the fine imposed on the accused as part of their sentence.<sup>40</sup> Section 357A expanded upon this by enabling courts to award compensation even in cases where the accused is acquitted.

As per Section 357A<sup>41</sup>, each state, in coordination with the Central Government, must establish a VCS. This scheme ensures that victims receive compensation for any harm or loss caused by the offender. The states are tasked with creating and managing a dedicated fund for this purpose. In situations where

compensation from the accused is insufficient or unavailable, due to acquittal, discharge, or if the offender is unidentified or not apprehended, the VCS applies to provide compensation to the victim.<sup>42</sup> The District Legal Services Authority (DLSA) or State Legal Services Authority (SLSA) is responsible for determining the amount of compensation to be granted to victims under the scheme, subject to the maximum limit specified by the State. Besides compensation, Section 357A<sup>43</sup> also caters to the immediate needs of the victims, including first aid, medical assistance, and any other temporary relief that may be required.

In the case of *Ankush Shivaji Gaikwad vs. the State of Maharashtra*<sup>44</sup>, the Honourable Supreme Court examined international norms and comparative legal frameworks from various countries, underscoring the necessity of recognising a victim's right to compensation within the criminal justice system. The judgment stressed the importance of aligning Indian criminal law with global standards, ensuring that victims receive appropriate reparation and support as an essential aspect of delivering justice.

Justice Krishna Iyer emphasised the importance of compensatory jurisprudence by stating that, as important as it is to punish the wrongdoer, it is equally essential to provide relief to the victim by rehabilitating him or her through financial aid. A weakness of our jurisprudence is that the victims of crime often do not receive the attention of the law<sup>45</sup>. He further stated that the justice system must not only focus on punishing the offender but also recognise the victim's suffering. Providing financial aid for the victim's rehabilitation is a key part of restoring their dignity and ensuring that they can rebuild their lives after the trauma. Justice, in his view, involves addressing the victim's needs and not just imposing penalties on the perpetrator<sup>46</sup>.

As per Section 357-A (1), Victim Compensation Schemes (VCS) have been established by 29 States and seven Union Territories<sup>47</sup>. However, offences under the POCSO Act are not listed in the Schedule of Offences associated with the State VCS in any State or Union Territory except Rajasthan. Additionally, Rajasthan's VCS stipulates that the compensation limits outlined in the Schedule do not apply to compensation granted by the Special Court under the POCSO Act<sup>48</sup>. A victim under the POCSO Act, their parents, guardian, or a trusted individual, remains eligible to seek relief under other legal provisions or compensation schemes, regardless of any prior compensation received<sup>49</sup>. The Odisha VCS, 2012, initially included offences under the POCSO Act but was amended in 2017 to remove them from the Schedule<sup>50</sup>. However, Clause 9 (j) of the Odisha VCS specifies that compensation awarded by the Special Court under Section 33(8) of the POCSO Act must be disbursed from the Scheme's funds. Both the Rajasthan and Odisha Schemes acknowledge the Special Court's authority in determining compensation. It is important to note that rape, as defined under the Indian Penal Code, is not a gender-neutral offence, with only females recognised as victims. Consequently, boys subjected to penetrative sexual assault may not be entitled to the compensation amount designated for rape under a State VCS.

In 2018, the Minister for Women and Child Development formally urged the Chief Ministers of all States and Union Territories to take necessary steps to ensure the inclusion of male child victims of sexual abuse in the Victim Compensation Scheme Fund. This appeal was based on NCPCR data, which indicated that compensation disbursement had been inconsistent and inadequate<sup>51</sup>. Unfortunately, even after nearly three years, the government had not implemented any significant reforms to address this issue.

### ***3.3 Compensation under the Probation of Offenders Act, 1958: A Restorative Approach***

The Probation of Offenders Act of 1958 aims to rehabilitate offenders while also ensuring justice for victims through compensatory relief. Section 5(1) of the Act empowers the court to direct an offender, released under Section 3 or Section 4, to provide reasonable compensation to the victim for any loss or

injury suffered. This provision embodies a restorative justice approach, recognising the victim's right to financial redress even when the offender is granted probation. Additionally, the section allows courts to impose costs of proceedings on the accused, reinforcing the principle that crime should not leave victims uncompensated. Such measures bridge the gap between punitive justice and victim support, aligning with broader victim-centric legal frameworks in India.<sup>52</sup>

#### 4. Specific Provisions Under The POCSO Act and POCSO Rules 2020: Guidelines For Compensation

The POCSO Act, 2012, adopts a gender-neutral approach, ensuring compensation and rehabilitation for all child victims of sexual abuse, irrespective of gender. In contrast, other legal provisions, such as those under IPC and Cr. P.C., historically focused primarily on female victims, leaving male child victims unaddressed. Section 33(8) provides: "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."

The POCSO Act of 2012 adopts a gender-neutral approach to ensure compensation and rehabilitation for all child victims of sexual abuse, irrespective of gender. Section 33(8) of the POCSO Act empowers the Special Court to direct the payment of compensation to victims for their medical treatment, rehabilitation, and support. In contrast, Section 357A of the Cr. P.C., which provides for victim compensation, primarily focuses on female victims in sexual abuse cases, leaving male child victims unaddressed under the general legal framework. While Section 357A allows the trial court to "recommend" compensation, Section 33(8) grants the Special Court the authority to "direct" compensation, making it a more robust and child-centric provision<sup>53</sup>.

Under Rule 7 of the POCSO Rules, 2012, the Special Court is empowered to direct the payment of compensation to the child not only at the conclusion of the trial but also on an interim basis, addressing the immediate needs for relief or rehabilitation at any stage following the registration of the First Information Report (FIR). This interim compensation may include funds for immediate medical care, addressing the child's urgent physical and mental health requirements. Rule 7(3) further outlines the criteria for determining the amount of compensation, taking into account factors such as the gravity of the physical or mental harm or injury suffered, the medical treatment costs incurred or anticipated for both physical and psychological recovery, and any disability the child may suffer as a result of the offence. These provisions ensure that the child receives timely financial assistance for treatment, thus facilitating their recovery from the trauma inflicted by the offence.<sup>54</sup>

Table 1: Comparison of Compensation Frameworks: POCSO Act vs Cr. P.C. (now BNSS)

Criteria	POCSO Act & Rules	Section 357-A, Cr.P.C (now Section -396 BNSS)	Section 357, Cr.P.C (now section-395 BNSS)
<b>Purpose of Compensation</b>	Physical or psychological distress	Harm or injury resulting from the crime	Damage or loss caused by the offence
<b>Immediate relief/reintegration</b>	Yes – includes interim relief, rehabilitation, and reintegration	Yes – interim relief and rehabilitation as per the State Victim Compensation Schemes	Primarily punitive; no provision for rehabilitation
<b>Authority to Grant Compensation</b>	Special Court	District or State Legal Services Authority (DLSA/SLSA) based on the recommendation of the Court or direct application	The Trial Court itself decides.
<b>Dependency on Conviction</b>	Not required, can be ordered even during the trial	Not required, payable irrespective of	Required, compensation only if a conviction and fine are imposed

		conviction/acquittal or if the offender is not traced	
<b>Relation to Victim's Cooperation</b>	No explicit requirement	Generally required under State Compensation Schemes.	No explicit requirement
<b>Funding source</b>	State Government	State Government	Offender/Convicted Person
<b>Assessment of Amount</b>	By the Special Court based on the seriousness, need, medical expenses etc.	By DLSA/SLSA based on State Scheme norms	By the Trial Court, based on the facts of the case
<b>Provision for Interim Relief</b>	Yes, for urgent assistance and rehabilitation	Yes, includes immediate medical aid upon certification by police or a Magistrate.	Not provided

Thus, while the POCSO Act ensures equal protection and compensation for all child victims, other laws have historically excluded male child victims, creating a gap in victim compensation mechanisms<sup>55</sup>.

The provision ensures that a prescribed amount of compensation is granted to the child victim. The POCSO Rules, 2020<sup>56</sup>, lay down clear guidelines for determining, assessing, and distributing both interim and final compensation. These rules establish the framework for ensuring timely and adequate financial support to victims of child sexual abuse.

The POCSO Rules 2020<sup>57</sup> reinforce the victim-centric approach of the legal framework by empowering the Special Court to grant interim compensation at any stage post-FIR registration. This provision ensures immediate financial assistance for the child's relief and rehabilitation, recognising the urgency of medical, psychological, and social support for survivors of sexual offences. By allowing courts to act Suo motu or upon an application, the rule underscores the proactive role of the judiciary in addressing the needs of vulnerable victims and facilitating their recovery.

Sub-rule 2 of Rule 9 extends the authority of the court to recommend compensation irrespective of the outcome of the trial, including cases where the accused is acquitted, remains untraced, or is unidentified. This provision underscores the victim-centric approach of the legal framework by ensuring that the grant of compensation is not solely dependent on the conviction of the offender. The guiding principle for awarding compensation under this rule is the court's assessment that the child has suffered harm or injury due to the offence, thereby emphasising the need for victim rehabilitation beyond the adjudication of criminal liability. The POCSO Rule 2020<sup>58</sup> further outlines the critical factors that the court must consider when determining the quantum of compensation to be awarded to a child victim. These considerations encompass the nature and severity of the abuse inflicted, the extent of physical and psychological harm suffered, and the anticipated expenses for medical and mental health treatment. Additionally, the court is required to assess the victim's financial condition, educational needs, and any employment-related losses resulting from the offence. Further, compensation may be influenced by the presence of lasting disabilities, pregnancy resulting from the crime, or the contraction of sexually transmitted diseases (STDs) or HIV. This comprehensive approach ensures a holistic evaluation of the victim's suffering and

rehabilitation needs. The POCSO Rule 2020<sup>59</sup> explicitly mandates that the state government must disburse the compensation awarded to child victims through the Victim Compensation Fund or any equivalent scheme established under Section 357A of the Cr.P.C. In the absence of such a fund or scheme, the financial responsibility falls directly on the state government to ensure payment. Furthermore, the POCSO Rule 2020<sup>60</sup> stipulates that the state government must disburse the compensation amount within 30 days from receiving the court's order, reinforcing the urgency and necessity of timely financial assistance for the victim's rehabilitation. Rule 9(6) allows the victim or their immediate family members to seek additional compensation or assistance through other laws or government initiatives. This provision distinguishes from the VCS, where a victim who has already received support or relief from the State Government or any other source may be ineligible to claim further compensation under the scheme. This rule ensures that victims have access to a broader range of support options, although it also limits the duplication of financial assistance under the VCS.

### **5. Unfairness in Compensation Grants: Myth or Reality**

The victim compensation system is already burdened with procedural gaps and inefficiencies, further exacerbated by gender bias. A study by the Delhi Commission for Protection of Child Rights (DCPCR), Mapping of Needs and Priorities: A Study of Child Rape Victims in Delhi, revealed that all compensation recipients under the POCSO Act were girls, with no male victims receiving support<sup>61</sup>. Additionally, transgender victims were entirely overlooked, highlighting the failure of the scheme to address the needs of all child victims.

Compensation awarded under the POCSO Act remains significantly low across various states. In Delhi, only 36 out of 667 cases (5.39%) received compensation, while in Andhra Pradesh, it was granted in just 17 out of 509 cases (3.3%). Assam saw compensation in 38 out of 172 cases (22.09%), whereas Maharashtra recorded 125 out of 1,330 cases (9.39%). In Karnataka's Bangalore and Belagavi districts, compensation was awarded in only 4 out of 110 cases (3.63%), reflecting the inadequacy of implementing victim support mechanisms<sup>62</sup>.

### **6. Difficulties in Compensation Mechanisms under the POCSO Act, 2012, and Rules 2020**

Despite repeated assurances, a distinct VCS under the POCSO Act, 2012, has yet to be established by the Ministry of Women and Child Development. Tamil Nadu is the first and only state to have developed the Tamil Nadu Child Victim Compensation Fund in 2020, specifically for compensating victims under the POCSO Act<sup>63</sup>. Without a dedicated compensation fund under the POCSO Act, victims are compensated through the VCS provided by various state governments under Section 357A of the Cr.P.C. This section requires state governments to establish compensation schemes to support the rehabilitation of crime victims. The DLSA and SLSA are vested with the authority to determine the amount of compensation for each case, as recommended by the court. Additionally, the DLSA/SLSA are authorised to issue orders for interim compensation or immediate relief, such as first-aid or medical benefits, when presented with a certificate from a police officer or magistrate. This lack of a dedicated fund under the POCSO Act, alongside reliance on existing state victim compensation schemes, presents significant challenges to the efficient delivery of compensation and rehabilitation for child victims of sexual offences. A significant issue regarding victim compensation under the POCSO Act pertains to determining the compensation amount. Section 33 of the Act grants Special Courts the authority to direct compensation payments. However, the POCSO Rules 2020 state that the court can only recommend compensation, with the amount to be decided based on factors outlined in the rules. Rule 9(4) further establishes that the state government is responsible for paying compensation from the VCS or any similar scheme created under Section 357A of the Cr.P.C. Section 357A of the Cr.P.C. vests the power to decide the compensation amount with DLSA or SLSA. This has raised concerns about the division of responsibility and its potential impact on the timeliness and effectiveness of compensation delivery to victims under the POCSO Act. The Standard Operating Procedure outlined by the Delhi State Legal Services Authority



provides further clarity on this issue. It states that, in most cases, courts can only recommend compensation, with the DLSA/SLSA being the entities authorised to determine the amount. However, it explicitly grants Special Courts under the POCSO Act 2012 the power, through Section 33(8), to decide the quantum of compensation themselves. This creates a dual authority scenario, where both Special Courts and the DLSA/SLSA have overlapping roles in determining the compensation amount for victims.<sup>64</sup>

The ambiguity in the legal provisions concerning the authority to determine the amount of compensation under the POCSO Act has led to considerable confusion, even among the special courts tasked with handling such cases. A study conducted in Delhi revealed the challenges these courts face in understanding the extent of their powers to award compensation to victims. Special courts sometimes directed the DLSA to disburse compensation based on their own assessment of the amount. In other cases, the courts referred the matter to the DLSA, instructing them to determine the quantum of compensation to be paid. This division of responsibility has resulted in an inconsistent approach, further complicating the process for victims seeking justice. The delays in determining and awarding compensation create unnecessary barriers to the victims' recovery and rehabilitation, undermining the objective of the POCSO Act to provide timely and effective relief to child sexual abuse survivors. This procedural inconsistency not only hampers the victims' access to justice but also calls for greater clarity and uniformity in the implementation of compensation mechanisms under the Act.<sup>65</sup>

In the case of *Karnataka State Legal Services Authority v. State of Karnataka*<sup>66</sup>, the High Court held that the Special Court under the POCSO Act should not directly determine the quantum of compensation to be awarded to the victim. The Court ruled that such a decision would violate the provisions of the Cr.P.C. In this case, the trial court determined a specific compensation amount and directed the SLSA to disburse it to the victim. However, the High Court found this to be an error, clarifying that under the POCSO Act, the Special Court's role is limited to recommending compensation, not determining its amount. This judgment underscores the need for a clear delineation of responsibilities between the Special Courts and the DLSA/SLSA in the compensation process<sup>67</sup>.

The Court, referencing *Nipun Saxena v. Union of India*<sup>68</sup> and *Abhishek K.A. v. State of Kerala*<sup>69</sup> the POCSO Act. Despite previous rulings emphasising the need for such a framework, the State had yet to formulate one. The Court reaffirmed the State's obligation to establish a comprehensive VCS for child victims of sexual offences. Until such a scheme is implemented or existing provisions are amended, it is directed that the NALSA Scheme, 2018, should serve as a guiding framework for awarding compensation under the POCSO Act. In 2015, the Central Government established the Central Victim Compensation Fund (CVCF) to enhance the implementation of existing victim compensation schemes across various States and Union Territories. The initiative aimed to strengthen support for victims of sexual offences, particularly children, and to address disparities in compensation amounts across different jurisdictions. By supplementing state-level schemes, the CVCF sought to ensure uniformity and effectiveness in providing financial relief to victims<sup>70</sup>.

The issue lies not in the shortage of funds but in the inefficiency and indifference of authorities, leading to delays in compensation for victims. The ambiguity in determining the authority responsible for quantifying compensation forces victims to navigate between Special Courts and DLSA/SLSA, creating unnecessary hurdles. Additionally, since awarding compensation is left to judicial discretion, courts sometimes deny it on weak grounds, further disadvantaging victims. Another concern is the reliance on support persons<sup>71</sup> or NGOs to secure compensation, making victims dependent on intermediaries to access their rightful financial relief.

## 7. Conclusion and Suggestions

The implementation of the victim compensation mechanism under the POCSO Act 2012 remains inadequate due to legal ambiguities, procedural delays, and inconsistencies in awarding compensation. The absence of a uniform compensation scheme, the discretionary nature of compensation awards, and the systemic bias against male and transgender victims further weaken the framework intended to support child survivors of sexual crimes. Additionally, reliance on intermediaries often makes access to compensation more challenging for victims.

To enhance the effectiveness of the compensation mechanism, the following steps are recommended:

- **Formulation of a Uniform Compensation Scheme:** The government should establish a dedicated compensation fund under the POCSO Act to ensure timely and standardised financial relief for victims.
- **Clarification of Authority:** Clear guidelines must be issued to resolve the ambiguity regarding the authority responsible for determining compensation, ensuring smooth coordination between special courts and legal services authorities.
- **Eliminating Gender Bias:** The compensation scheme must be inclusive of all child victims, including boys and transgender individuals, ensuring equitable access to justice.
- **Time-Bound Disbursement:** A strict timeline for processing and disbursing compensation should be enforced to prevent undue delays.
- **Awareness and Accessibility:** Victims and their families should be educated about their rights to compensation, and legal aid should be made more accessible to facilitate claims.

A reformed and efficient compensation system will provide financial relief to victims and reinforce the principles of justice and child protection.

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