



COMPENSATION FOR CHILD VICTIMS OF SEXUAL OFFENCES

COMPENSATION

- Compensation is something, typically money, awarded to someone in recognition of *loss, suffering, or injury*.
- 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:
 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.

RESTITUTION

restitution / ,rɛstɪ'tjuːʃ(ə)n /

the restoration of something lost or stolen to its proper owner.

recompense for injury or loss.

reparation

damages

indemnification

THE PREAMBLE OF THE POCSO ACT

- “An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.
- WHEREAS *clause (3) of article 15 of the Constitution*, inter alia, empowers the State to make special provisions for children; AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of 19 standards to be followed by all State parties in securing the best interests of the child; AND
- WHEREAS it is necessary for the proper development of the child that his or her right to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child; AND
- WHEREAS it is imperative that the law operates in a manner that the *best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child;*
- WHEREAS the State parties to the Convention on the Rights of the Child are required to *undertake all appropriate national, bilateral and multilateral measures* to prevent –
 - a. the inducement or coercion of a child to engage in any unlawful sexual activity;
 - b. the exploitative use of children in prostitution or other unlawful sexual practices;
 - c. the exploitative use of children in pornographic performances and materials;
- WHEREAS sexual exploitation and sexual abuse of children are heinous crimes and *need to be effectively addressed*”.

A DECLARATION OF BASIC PRINCIPLES OF JUSTICE OF VICTIMS OF CRIME AND ABUSE OF POWER

- U.N. defined the "Victims of Crime" as follows:
 1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws prescribing criminal abuse of power.
 2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.
- The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. Victims are several time suffering emotionally the most.

‘VICTIM’ – DEFINITION

- Section 2 (wa) of the Code of Criminal Procedure, 1973 defines the word ‘Victim’.
- It says as follows:- —“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;

DEFINITION OF DEPENDENT U/ NALSA SCHEME

2(b) 'Dependent' includes husband, father, mother, grandparents, unmarried daughter and minor children of the victim as determined by the State Legal Services Authority or District Legal Services Authority on the basis of the report of the Sub-Divisional Magistrate of the concerned area/Station House Officer/Investigating Officer or on the basis of material placed on record by the dependents by way of affidavit or on its own enquiry.

COMPENSATION TO VICTIMS- CONSTITUTIONAL RIGHTS

- The Indian Constitution, the supreme law of the land, enunciates no specific provision for victims. However, Part IV, Directive Principle of State Policy, Art 41 and Part V, Fundamental Duties, Art 51A lay down the duty of the state to secure “the right to public assistance in cases of disablement and in other cases of undeserved want” and to “have compassion for living creatures” and “to develop humanism” respectively.

- The right to compensation has also been interpreted as an integral part of right to life and liberty under Art. 21 of the Constitution. As early as in 1983, the Supreme Court recognized the petitioner's right to claim compensation for illegal detention and awarded a total sum of Rs. 35000 by way of compensation. In delivering the judgment, Chandrachud C.J. observed (*RudulSah v. State of Bihar*, 1983):
- Art 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of relief from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Art 21 secured is to mullet its violators in the payment of monetary compensation.

COMPENSATION PART OF ARTICLE 21

- In several cases thereafter, the apex court has repeated its order, making compensation an integral aspect of right to life
- (Bhim Singh v. State of Jammu & Kashmir, 1985;
- Dr. Jacob George v. State of Kerala, 1994;
- Manju Bhatia v. N.D.M.C. AIR 1998 SC 223, 1998;
- Paschim Bangal Khet Mazdoor Samity v. State of West Bengal & Ors., 1996;
- People's Union for Democratic Rights Thru. Its Secy. v. Police Commissioner, Delhi Police Headquarters, n.d.;
- People's Union for Democratic Rights v. State of Bihar, 1987).

IN RE; INDIAN WOMEN SAYS GANG RAPED ON ORDERS OF VILLAGE COURT PUBLISHED IN BUSINESS AND FINANCIAL NEWS DATED 23.01.2014

- No compensation can be adequate nor can it be of any respite for the victim but as the State has failed in protecting such serious violation of a victim's fundamental right, the *State is duty bound to provide compensation, which may help in the victim's rehabilitation.*
- *The humiliation or the reputation that is snuffed out cannot be recompensed but then monetary compensation will at least provide some solace.*

BIJOY @ GUDDU DAS VS THE STATE OF WEST BENGAL ON 2 MARCH, 2017

- The philosophy of awarding compensation by the State is in the nature of a reparation to the victim of crime on its *failure to discharge its sovereign duty to protect and preserve sanctity and safety of the individual from the ravages of such crime.*

SECTION 33(8) OF POCSO

- “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 PROTECTION OF CHILDREN FROM SEXUAL OFFENCES RULES, 2012


7. Compensation –

- (1) The Special Court may, in appropriate cases, on its own or on an 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.
- (2) The Special Court may, on its own or on an application filed 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*

3) Where the Special Court, under sub-section (8) of section 33 of the Act read with subsections (2) and (3) of section 357A of the Code of Criminal Procedure, 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 his medical treatment for physical and/or mental health;
- (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;
- (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 his need for rehabilitation;
- (xii) any other factor that the Special Court may consider to be relevant.

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- (4) The compensation awarded by the Special Court is to be paid by the State Government 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 or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.
 - (5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

357A. VICTIM COMPENSATION SCHEME **[INSERTED BY ACT 5, CODE OF CRIMINAL** **PROCEDURE AMENDMENT ACT, 2008]**

- (1)** Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
- (2)** Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).
- (3)** If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

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- (4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
 - (5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
 - (6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

QUANTUM OF COMPENSATION NATIONAL LEGAL SERVICES AUTHORITY - COMPENSATION SCHEME FOR WOMEN

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SCHEDULE APPLICABLE TO WOMEN VICTIM OF CRIMES

S. No.	Particulars of loss or injury	Minimum Limit of Compensation	Upper Limit of compensation
1	Loss of Life	Rs. 5 Lakh	Rs. 10 Lakh
2	Gang Rape	Rs. 5 Lakh	Rs. 10 Lakh
3	Rape	Rs. 4 Lakh	Rs. 7 Lakh
4	Unnatural Sexual Assault	Rs. 4 Lakh	Rs. 7 Lakh
5	Loss of any Limb or part of body resulting in 80% permanent disability or above	Rs. 2 Lakh	Rs. 5 Lakh
6	Loss of any Limb or part of body resulting in 40% and below 80% permanent disability	Rs. 2 Lakh	Rs. 4 Lakh
7	Loss of any limb or part of body resulting in above 20% and below 40% permanent disability	Rs. 1 Lakh	Rs. 3 Lakh
8	Loss of any limb or part of body resulting in below 20% permanent disability	Rs. 1 Lakh	Rs. 2 Lakh
9	Grievous physical injury or any mental injury requiring rehabilitation	Rs. 1 Lakh	Rs. 2 Lakh
10	Loss of Foetus i.e. Miscarriage as a result of Assault or loss of fertility.	Rs. 2 Lakh	Rs. 3 Lakh
11	In case of pregnancy on account of rape.	Rs.3 Lakh	Rs.4 Lakh
12	Victims of Burning:		
a.	In case of disfigurement of case	Rs. 7 Lakh	Rs. 8 Lakh
b.	In case of more than 50%	Rs. 5 Lakh	Rs. 8 Lakh
c.	In case of injury less than 50%	Rs. 3 Lakh	Rs. 7 Lakh
d.	In case of less than 20%	Rs. 2 Lakh	Rs. 3 Lakh
13	Victims of Acid Attack-		
a.	In case of disfigurement of face.	Rs. 7 Lakh	Rs. 8 Lakh

NALSA's "Compensation Scheme for women Victims/Survivors of Sexual Assault/other Crimes -2018"


b.	In case of injury more than 50%.	Rs. 5 Lakh	Rs. 8 Lakh
c.	In case of injury less than 50%.	Rs. 3 Lakh	Rs. 5 Lakh
d.	In case of injury less than 20%	Rs. 3 Lakh	Rs. 4 Lakh

Note: If a woman victim of sexual assault/acid attack is covered under one or more category of the schedule, she shall be entitled to be considered for combined value of the compensation.



SECTION 357 ORDER TO PAY COMPENSATION

- (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-
- (a) in defraying the expenses properly incurred in the prosecution;
 - (b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;
 - (c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;
 - (d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

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- (2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.
 - (3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.
 - (4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.
 - (5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

ANKUSH SHIVAJI GAIKWAD V. STATE OF MAHARASHTRA, (2013) 6 SCC 770

- Award of compensation to victim(s) of crime or their dependants under S. 357 CrPC - Mandatory duty of criminal court to apply its mind to question of awarding compensation in every case - **Power is not ancillary to other sentences but in addition.**
- Use of word may in S. 357, held, does not mean that court need not consider applicability of S. 357 in every criminal case
- S. 357 CrPC confers **power coupled with duty on court to mandatorily apply its mind to question of awarding compensation in every criminal case**
- Court must also disclose that it has applied its mind to such question by recording reasons for awarding/refusing grant of compensation
- Power given to courts under S. 357 is intended to reassure **victim that he/she is not forgotten in criminal justice system**

- Very object of S. 357 would be defeated if courts choose to ignore S. 357 and do not apply their mind to question of compensation - Hence, S. 357 is to be read as imposing a **mandatory duty on court to apply its mind to question of awarding compensation in every case**
- Courts directed to remain careful in future as to their mandatory duty under S. 357 CrPC
- Copy of order directed to be forwarded to Registrars General of all High Courts for its circulation amongst Judges handling criminal trials and hearing criminal appeals.

ORDER FOR INTERIM

COMPENSATION – PART OF ITS

Shri Bodhisattwa Gautam vs Ms. Subhra Chakraborty, 1996 AIR 922

OVERALL JURISDICTION

“The Rape Laws Do Not, Unfortunately, Take Care Of The Social Aspect Of The Matter And Are Inept In Many Respects.”

If the Court trying an offence of rape has jurisdiction to award the compensation at the final stage, there is no reason to deny to the Court the right to award interim compensation which should also be provided in the Scheme. On the basis of principles set out in the aforesaid decision in Delhi Domestic Working Women's Forum, the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offences of rape which, as pointed out above is an offence against basic human rights as also the Fundamental Right of Personal Liberty and Life.

STATE OF MP V. MEHTAAB, (2015) 5

SCC 197

On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.

NIPUN SAXENA AND ANR V. UOI 2018 SCC ONLINE SC 2772

- NALSA' Compensation Scheme should function as a *guideline* to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government.