

Victim Compensation Scheme Under POCSO: Hidden Apathy Towards Non-Female Victims

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ARTICLE INFO

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Keywords:

Equality,
Gender-neutral
legislation, Minor
Victims,
POCSO Act,
Procedural
impediments,
Sex Crimes,
Victim Compensation.

How to Cite:

Singh, G., Islamia, J.M.,
Aneesa Firdaus. (2021)
Victim Compensation
Scheme Under POCSO:
Hidden Apathy Towards
Non-Female Victims.
DME Journal of Law, 2(1),
32-42.
doi: 10.53361/DMEJL.
v2i01.0005

Abstract

With the crime rates increasing at a tremendous rate, new numbers are being added to the list of child victims of sex crimes each day. In 2012, POCSO Act was enacted to safeguard the rights of child victims of sexual abuse. Though POCSO Act is the first "gender-neutral legislation" in India for addressing crimes related to sexual abuse and assault, the disbursement of compensation under the said Act has not been free from gender bias. The pervasive perception of the society and institutions in India, that the victims of such abuse cannot be other than females, has crept into the Victim Compensation Scheme as well. This gender bias, and the procedural lacunae resulting from it, have led to a large section of the sexual abuse victims not receiving any compensation for their heinous injustice. Male victims of sexual abuse are further subjected to victimization due to the procedural impediments of the scheme while the transgender victims suffer intolerably more.

Crimes like rape, sexual abuse, sexual assault, and other sex crimes tarnish one's right to bodily integrity and personhood and scars one's soul for the rest of their life. In such cases, merely punishing the perpetrator of the crime does not contend as a pyrrhic victory in the dispensation of justice to the victim. It is also essential that adequate compensation is provided to the victim for support and rehabilitation.

This paper aims to critically analyze gender neutrality in the disbursement of interim and final victim compensation to the minor victims under POCSO Act, 2012, and highlight the pressing need to make the Victim Compensation Scheme effective beyond the gender barriers.

INTRODUCTION

India is homeland to a large population, 40% of whose constituents are children.¹ But it ranks among the top-most unsafe places for children in the world.² A study found that around half of the total population of children in India has

- 1 Population Enumeration Data (Final Population), available at: https://www.censusindia.gov.in/2011census/population_enumeration.html (last visited on September 9, 2021).
- 2 Child Sexual Abuse: Why India Has a Long Way To Go, available at: <https://inbreakthrough.org/child-sexual-abuse-india/> (last visited on September 9, 2021).

been a victim of some kind of sex crime, committed against them, at least once in their lifetime.³

It is pertinent to mention that the victims of rape, penetrative sexual assault and sexual harassment can be of any gender. Thus, it necessary to draft the criminal laws in ways that include all genders to ensure justice to the victims. However, under the Indian Penal Code, 1860, ("IPC") the definition of sexual violence and harassment is constrained to the confinements of gender binaries. In the code, sexual crimes have majorly been described under S.354 (Assault or criminal force to woman with intent to outrage her modesty), S.375 (Rape) and S.377 (Unnatural offence).

Due to the increasing cases of sexual offences against children and failure of the then existing legislative mechanism to redress the matter, the Protection of Children from Sexual Offences Act, 2012 (herein after referred as "POCSO") was brought into effect from 19th June 2012. It filled the void of a specific and gender-neutral legislation required for dealing with offences committed against children.

In addition to prescribing stringent punishment for the perpetrators of the offences, it also focused on the rehabilitation of minor victims by conferring power to the special courts to provide compensation to the victim to seek medical help,⁴ and lay down guidelines for the child to take assistance of experts.⁵

VICTIMISATION OF NON-FEMALES IN SEX CRIMES

According to Black's law dictionary "Sexual exploitation is the use of a person, especially a child, in prostitution, pornography, or other sexually manipulative activity that has caused or could cause serious emotional injury".⁶ "According to the US Centres for Disease Control and Prevention (CDC),

child sexual abuse is any completed or attempted (noncompleted) sexual act, sexual contact with, or exploitation (i.e., noncontact sexual interaction) of a child by a caregiver."⁷

Sex Crimes are genderless. They can be committed on persons of any age irrespective of their sex or gender. However, our society does not accept the idea of a non-female person being sexually harassed, assaulted, or raped. The prejudice remains that men cannot be raped and rape of trans-sexuals is inconceivable. This belief, however, is far from the truth. Figures show that a huge number of adult men are sexually harassed in their workplaces in India.⁸ In a survey, 38% of the men believed that males are just as vulnerable to sexual harassment as females.⁹ In England, a survey found that 1 in every 6 sexual assault victims was male.¹⁰ Similar numbers were seen in the US, where 16% of the sexual harassment victims were males.¹¹ If grown up men can be abused in such large numbers, it is absolutely certain that children are targeted even more.

It was found in a study that 52.94% of the child sex abuse victims in India were males.¹² Another

3 Sexual Abuse of Boys in India: The Story in Numbers, available at: <https://aarambhindia.org/sexual-abuse-boys-india-story-numbers/> (last visited on September 9, 2021).

4 Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s.33(8).

5 Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s.39.

6 A. Garner, *Black's Law Dictionary* (West Group, Minnesota, 8th ed., 2004).

7 Leeb RT, Paulozzi L, Melanson C, et al., *Child maltreatment surveillance: uniform definitions for public health and recommended data elements, version 1.0.*, Centers for Disease Control and Prevention, National Centre for Injury Prevention and Control; Atlanta (GA): 2008, available at: http://www.cdc.gov/violenceprevention/pdf/cm_surveillance-a.pdf (last visited on September 21, 2021).

8 Even men aren't safe from sexual harassment at workplace: Survey, available at: <https://economictimes.indiatimes.com/special-report/even-men-arent-safe-from-sexual-harassment-at-workplace-survey/articleshow/6389438.cms> (last modified on August 22, 2010).

9 *Ibid.*

10 *Ibid.*

11 Men too are victims of sexual harassment, available at: <https://timesofindia.indiatimes.com/life-style/relationships/love-sex/men-too-are-victims-of-sexual-harassment/articleshow/16336627.cms#:~:text=During%202009%2C%2016%25%20of%20all,men%20filed%20complaints%20in%202008> (last modified on December 21, 2012).

12 Silence of male child sexual abuse in India: Qualitative analysis of barriers for seeking psychiatric help in a multidisciplinary unit in a general hospital, available



shocking revelation was that in 9 out of 13 states the number of male victims of sexual abuse were always higher than the number of female victims of sexual abuse. In 2018, out of the 21,605 child rapes that were recorded, 204 cases were such where the victims were boys.¹³ In spite of all the figures, our society still lives in the denial of male sex abuse.

The situation is worst for the transgender children who hardly find place in the debates, discussions, legislations or even research studies on sex crimes. However, their victimisation in sex crimes is beyond belief. A study revealed that 40% of all the transgender individuals faced sexual abuse before attaining the age of majority.¹⁴ In 44% cases, such sexual abuse is carried out in a violent form.¹⁵ The most vulnerable of all are children falling the age group of 11 to 15 years of age.¹⁶ There has not been much study and research into the issue of the transgender people which shows the lack of understanding of their problems in the first place.

IMPACT OF THE SEX CRIMES: SCARRED CHILDHOOD AND ITS LONG-TERM EFFECTS

Sexual Crimes leave a life-long impact on their victims, traumatizing their lives forever. It destroys the person's sense of safety. It damages not just the physical health of the victims but also leaves them mentally broken for an unusually long period of time.

It has worse effects on children, leaving them not only with a scarred childhood, but also paving the path for many abnormalities and psychological

issues in minor victims. Unable to comprehend the abuse and mental trauma, these minor victims need specially devised care and attention to cope with the anxiety, psychosomatic symptoms and depression. Sexual brutality, in early stages of life, brings about serious physical, mental and social impairment.¹⁷ A very small visible portion of the whole picture is reported to the authorities and the rest is kept buried because of fear of shame and disgrace.¹⁸

Effects of the violence is aggravated in case of minor boys as they are expected to cope up owing to their 'masculine' nature, whereas the transgender children rarely open up on their abuse due to lack of acceptance in the society. There is very less concrete data in public domain on the impact of sexual violence on non-female victims. Lack of informed awareness on the topic of sexual violence against the transgender children and lack of social acceptances for them creates a wide gap between them and the judicial relief. Justice never reaches these victims as they are returned from the gates of the police stations.¹⁹ For instance, in November 2020, a group of transgender people had approached the police to file a complaint against sexual assault of a minor trans-sexual boy. However, the police refused to record the statement of victim. When they tried contacting the child helpline number '1098', the helpline "did not know how to handle cases pertaining to non-binary children."²⁰ Thus, the existing framework of criminal justice system

at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5547862/> (last visited on September 9, 2021).

13 109 children sexually abused every day in India in 2018: NCRB, *available at*: <https://www.indiatoday.in/india/story/109-children-sexually-abused-every-day-india-2018-1636160-2020-01-12> (last modified on January 16, 2020).

14 On Transgender Day of Remembrance, the Screams That India Ignored, *available at*: <https://www.thequint.com/neon/gender/transgender-day-of-remembrance-tracking-violence-against-lgbt-community-in-india#read-more> (Last Modified on November 20, 2018).

15 *Ibid.*

16 *Ibid.*

17 Sexual violence against children, *available at*: <https://www.unicef.org/protection/sexual-violence-against-children#:~:text=Sexual%20violence%20results%20in%20severe,social%20isolation%20and%20psychological%20trauma.&text=Most%20children%20who%20face%20sexual%20abuse%20experience%20other%20kinds%20of%20violence> (last visited on September 9, 2021).

18 Child Sexual Abuse, *available at*: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4413451/> (last visited on September 9, 2021).

19 Kathelene Antony, "Police refuse to file complaint of assault of minor by transgender group", *The Hindu*, November 27, 2020, *available at*: <https://www.thehindu.com/news/national/tamil-nadu/police-refuse-to-file-complaint-of-assault-of-minor-by-transgender-group/article33189066.ece> (last modified on November 27, 2020).

20 *Ibid.*

excludes the victims who do not adhere to the existing gender binaries of the society.

Since sex crimes are one of the most heinous forms of crime, the victims need special care and attention to restore normalcy in their lives. They need to be provided with medical, psychological and emotional support. In the case of aggravated assaults, immediate medical assistance is required followed by professional help to tackle excessive mental trauma and self-guilt. They suffer from deep trauma, coming out of which is impossible without assistance. External support is mandatorily required. In such situations, the care givers require huge amount of money for their timely check-ups and routine treatments. However, since most of the child victims are from low-income backgrounds, their families are hardly able to provide such medical care to them. Thus, 81% of the child-rape victims are left with no money for fulfilling their health needs except being dependent on the compensation amount.²¹

It leads to detachment of the victims from the society reducing participation in public places. This often results in their dropping out of school due to the stigma attached. A study conducted by the Delhi Commission for Protection of Child Rights ("DCPCR") revealed that child rapes resulted in 42% of the victims dropping out of school. The victims also need to keep up with their quest for institutional justice. Thus, legal and para-legal procedures to keep the court proceedings going on require effort, time and money.

COMPENSATORY JURISPRUDENCE: A DIVE INTO ITS ORIGIN AND OBJECTIVES IN THIS REGARD

Over the years, the world became more aware of human rights of individuals. Our Constitution gives so much emphasis to justice, equality and rights, and has provided even convicts with extensive rights to protect their human dignity and life. However, the compensatory rights of victims of the crime did not receive attention for a long time.

21 Govt. of NCT Delhi, Report: *Mapping of needs and priorities, A study of Child rape victims in Delhi* (Delhi Commission for protection of child Rights, 2019).

Gradually, as restorative form of justice started gaining firm ground, the development of compensatory jurisprudence began. The increasing awareness about victim rights led to creation of various opinions about the extent of role of the government when a crime is committed. If the state has the responsibility of preventing crimes to maximum level possible, then does its role comprise of merely investigating a crime, catching the offender and convicting him? Or does it have any responsibility towards rehabilitation and restitution of the victims as well? When a crime is committed, it indicates the failure of the state to prevent a crime from happening. Thus, the state is responsible to provide rehabilitative and restorative justice to the victim to ensure that they can lead their lives normally even after the commission of the crime. Their injuries cannot be undone but the state can provide them with financial support to repair the loss that has been caused due to those injuries.

"The Declaration of the Basic Principles of Justice for the Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly (UNGA) in 1985, directs the states to create a National Victim Compensation Fund and to provide the victims financial compensation for their adequate rehabilitation."²²

The 41st Report of the Law Commission of India made suggestions to include a provision for compensation under the Code of Criminal Procedure Code, 1973 ("Cr.P.C"), which was to be formulated later.²³ Thus, S. 357 in the Cr.P.C was inserted to provide the victims with compensation from the fine paid by the convict. However, the compensation was determined according to the financial capacity of the convicts, not according to the needs of the victims. Further, in many cases the victims never received their rightful compensation. For instance, in cases where the offender could not be found or the accused was acquitted, or the convict was not able to pay the fine and instead suffered imprisonment in default of fine.

22 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, *available at*: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx> (last visited on September 9, 2021).

23 Law Commission of India, 41st "Report on the Code of Criminal Procedure, 1898."



Thus, S.357A was inserted in the Cr. P.C in 2009, which *inter alia*, put an obligation on the government to provide compensation through the District Legal Service Authority (“DLSA”) or the State Legal Service Authority (“SLSA”) in the cases of acquittal of accused or where the offender could not be traced.²⁴ “It was also beneficial in cases where the compensation under S. 357 was insufficient and inadequate.”²⁵

On several occasions, the judiciary has also reiterated the need for providing compensation to the victims of crime.²⁶ “The judiciary has recognised that it is the duty of the court to mandatorily look into the question of compensation in all the cases where a crime has been committed.”²⁷ Justice Krishna lyer had addressed the need for compensatory jurisprudence by saying that, “it is a weakness of our jurisprudence that the victims of the crime do not attract the attention of law”²⁸ According to him, as important as it is to punish the wrong doer, it is equally important to provide relief to the victim by rehabilitating her/him through financial aid.²⁹

PROVISION FOR COMPENSATION UNDER POCSO, 2012: A BRIEF DESCRIPTION

The provision for compensation under POCSO has been given under S.33(8) which lays down the Procedure and Powers of the Special Court, as follows:

“S. 33(8)- 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.”³⁰

24 *In Re: Indian Woman says gang-raped on orders of Village Court published in Business & Financial News dated 23.01.2014*, (2014) 4 SCC 786.

25 *Suresh & Anr. v. State of Haryana* (Crl.) No. 420 of 2012.

26 *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770.

27 *Ankush Shivaji Gaikwad v. State of Maharashtra* (2013) 6 SCC 770.

28 *Rattan Singh v. State of Punjab* (1979) 4 SCC 719.

29 *Maru Ram v. Union of India* (1981) 1 SCC 107.

30 Protection of Children from Sexual Offences Act, 2012

Thus, the Special Courts are empowered “to direct the payment of compensation to the child for the physical and mental trauma that was caused to him/her along with provisions for his rehabilitation.”

The section mentions that the *prescribed* amount of compensation shall be paid to the child. The rules regarding the *prescription* of amount for compensation have been laid down in the POCSO Rules 2020 wherein Rule 9 specifies guidelines regarding the quantification and disbursement of the interim and final compensation to the victims under the POCSO Act.

“The Sub-rule 1 of Rule 9 provides that the Special Court is empowered to *pass an order* for interim compensation either on its own or on application filed by or on behalf of the child. It mentions that such an order can be passed *at any stage* after registration of the FIR and that such interim compensation is to be provided for *relief or rehabilitation* of the child.”

The Sub-rule 2 empowers the court to *recommend* the award for compensation in all cases whether the accused is convicted or acquitted, or not traced or not even identified. However, such compensation will only be in cases where the Court holds the opinion that the *child* has suffered a loss or injury due to the offence that victimized him/her,

The Sub-rule 3 lays down the factors that should be considered by the court while directing the award of compensation to the victim. The factors include the type of abuse committed on the child, the severity of harm suffered, the expenditure which would be required for mental and physical health treatment, financial condition, educational needs, employment losses, disability as a result of the offence, whether the offence resulted in child’s pregnancy and whether it led to the child contracting an STD or HIV.

The Sub-rule 4 of Rule 9 clearly specifies that this compensation is to be *paid* by the state government from the Victim Compensation Fund or any other similar fund or scheme established under S. 357A of Cr.P.C. In case, such a fund or scheme does not exist, the state government shall make the payment from its own funds.

(Act 32 of 2012), s.33(8).

Further, the Sub-rule 5 lays down that the payment of the compensation amount ordered by the Court should be made by the state government within 30 days of the receipts of the order.

CONTROVERSY SURROUNDING WHO SHOULD DECIDE THE QUANTUM: DLSA/SLSA V. SPECIAL COURTS

A separate Victim Compensation Scheme has not been formulated by the Ministry of Women and Child Developments under the POCSO Act, 2012, in spite of its repeated promises regarding the same. Tamil Nadu is the first and the only state to have devised a *Tamil Nadu Child Victim Compensation Fund* in 2020 to award compensation to victims under the POCSO Act, 2012.³¹ Since there is no separate fund for compensation under the POCSO Act, the compensation has to be provided under the Victim Compensation Scheme enacted by various state governments under S. 357A of Cr.P.C. It directs the state governments to prepare such Victim Compensation Scheme to provide compensation to the crime victims for their rehabilitation. It also authorizes the DLSA/SLSA to decide the quantum of compensation to be awarded under the Scheme for each case where the court has recommended for compensation. It also authorizes the DLSA/SLSA to make an order to provide interim compensation or interim relief in the form of first-aid facility or medical benefits free of cost when the certificate of police officer or magistrate is presented before them.³²

By far, one of the major controversies regarding the victim compensation under the POCSO Act is regarding who is authorized to decide the quantum of compensation. S. 33 empowers the special courts to *direct* the payment of the *prescribed amount* of compensation. However, under POCSO Rules 2020, the court can only *recommend* the payment

of compensation taking into considerations the various factors mentioned under the rules. Further, Rule 9(4) specifies that the amount of compensation is to be paid by the state government from the Victim Compensation Fund or any other similar scheme/fund created under S.357A Cr.P.C. It is to be noted that S.357A of the Cr.P.C. gives the DLSA or the SLSA the power to determine the amount of compensation to be paid to any victim.

Thus, the POCSO Act has left an ambiguity over who has been authorized to *decide the amount* of compensation. A bare reading of the provision under POCSO Act, 2012 shows that the Special Court has been empowered to decide the amount of compensation. However, the payment has to be made from the Victim Compensation Fund under S.357A of the Cr.P.C. And subsection (2) of this section empowers the DLSA or the SLSA to decide the quantum of compensation if any court recommends to award compensation. Thus, they assert their power to quantify the compensation amount.

The Standard Operating Procedure provided by the Delhi State Legal Services Authority clarifies that while in all other cases the courts can only *recommend* the DLSA/SLSA to grant the compensation and the DLSA/SLSA are authorized to quantify the amount of compensation; Special Courts established under the POCSO act are authorized under S. 33(8) of the POCSO Act, 2012 to *decide* the quantum of compensation.³³

The ambiguity in law about the authorization of power to quantify the amount of compensation is such that even the special courts have been confused by the same. A study in Delhi showed how the special courts had failed to understand the extent of their authority in awarding compensation to the victim under the POCSO Act. In half of the cases, they directed the DLSA to pay the amount of compensation as quantified by them. In the other half, they asked the DLSA to determine the amount to be paid and make payment.³⁴ The delegation of

31 TN government creates fund for compensation under POCSO Act", *The Hindu*, October 13, 2020, available at: <https://www.thehindu.com/news/national/tamil-nadu/tn-government-creates-fund-for-compensation-under-pocso-act/article32841039>. ece (Last modified on October 13, 2020).

32 Indian Penal Code, (Act 45 of 1860), s.357A (6).

33 Standard Operating procedure (With respect to operation of DELHI VICTIM COMPENSATION SCHEME 2018), available at: <https://drive.google.com/file/d/1YoMnXB-qVVGWxYWK3zA0B49K-fhCv5bw/view> (last visited on September 9, 2021).

34 Bharti Ali, Maharukh Adenwalia, Sangeeta Puneekar, "Implementation of the POCSO Act, Goals, Gaps

the task creates more hurdles to the victim as it further delays the whole process of granting the compensation.³⁵

In January 2020, the Karnataka High Court, in *Karnataka State Legal Services Authority v. State of Karnataka*³⁶ held that the special court under the POCSO Act, 2012 should only recommend the DLSA/SLSA to award the compensation but *should not decide the quantum of compensation itself* as doing the same would be a violation of the Cr.P.C.³⁷

In this case, the trial court had awarded a sum of compensation and had directed the SLSA by an order to pay the amount to the victim. Thus, the High Court held the order to be an *error* on the part of the special court.

In the same year, in June 2020, the Delhi High Court, in *Mother minor victim No. 1 and 2 v. State and others*³⁸, held that it is the Special Court which is authorized to decide the quantum of compensation and not the DLSA or the SLSA.³⁹ Additionally, the Victim Compensation Scheme formulated by NALSA will not be applicable to cases under POCSO and it will only serve as a guideline to the Special Court while awarding the compensation.⁴⁰

In all this chaos, it is the victims who face huge damage due to the delay in the receipt of

and challenges", available at: <http://haqrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf> (last visited on September 9, 2021).

35 Rehabilitation and Victim Compensation for Child Victims of Sexual Abuse, available at: http://www.nja.nic.in/Concluded_Programmes/2019-20/P-1196_PPTs/7.Rehabilitation%20and%20Victim%20Compensation.pdf (Last visited on September 9, 2021).

36 Criminal Revision Petition No. 306 of 2018.

37 Trial Courts Can Only Recommend Compensation Under POCSO Rules, Cannot Decide the Quantum: Karnataka HC, available at: <https://www.livelaw.in/news-updates/trial-courts-can-only-recommend-compensation-under-pocso-rules-and-not-decide-quantum-151935> (Last updated on January 23, 2020).

38 W.P.(CRL.) 3244/2019.

39 Duty of special court to award interim compensation in POCSO cases, says HC", *The Hindu*, June 16, 2020 available at: <https://www.thehindu.com/news/cities/Delhi/duty-of-special-court-to-award-interim-compensation-in-pocso-cases-says-hc/article31841684.ece> (Last modified on June 16, 2020).

40 *Ibid.*

compensation, especially the interim compensation that is supposed to be provided for immediate relief.

CRITICAL ANALYSIS OF EFFECTIVENESS OF THE SCHEME: AMALGAMATION OF GENDER DISPARITY AND PROCEDURAL LACUNAE

There is no specific and clear data for the whole country in the public domain on the number of victims who received compensation under the POCSO Act, 2012 in a specific year in a specific region and the number of victims who did not receive the same. However, a few studies have been undertaken by some non-governmental organizations in specific regions at different times which indicate that the situation is as worse as it seems.

A study shows that only 5% of the total victims who have filed cases under the POCSO Act, 2012 managed to receive the compensation in 2017 and only 4% had received it in 2016, while only 1% received compensation in the form of interim relief.⁴¹ The amount of compensation that the few victims have managed to receive is also very little and is, hence, not adequate enough to fulfil the rehabilitative needs of the child victims.⁴² According to the NCPDR, in the first year of its establishment, a total of 6816 cases were filed under the POCSO Act, 2012 and in 166 of them, the accused person was convicted. Out of these, only 86 victims received compensation and only 27 victims received the interim compensation until the year 2014.⁴³ Thus, 49% of the victims did not receive their rightful compensation although

41 Despite SC intervention, victim compensation in POCSO cases poor due to cumbersome process, failure to invoke law, available at: <https://www.firstpost.com/india/despite-sc-intervention-victim-compensation-in-pocso-cases-poor-due-to-cumbersome-process-failure-to-invoke-law-7711731.html> (Last visited on September 9, 2021).

42 Govt. of NCT Delhi, Report: *Mapping of needs and priorities, A study of Child rape victims in Delhi* (Delhi Commission for protection of child Rights, 2019).

43 *Ibid.*

the accused had been convicted. Whereas, in 83% of the cases, the victims did not receive interim compensation even after one year had passed since the crime had been committed. This frustrates the very objective of interim compensation as that is meant to provide immediate relief to the victims. Another study by the DCPCR, conducted in 2019, found that only 15% of the victims had received compensation.⁴⁴ It was further pointed out in the study that 60% of the caregivers of the total victims who had not received compensation were not even aware that such a scheme existed under which they could apply for compensation. Thus, their ignorance resulted in them not receiving anything.⁴⁵

In 2018, the National Legal Services Authority had devised a Special Victim Compensation Scheme for rape victims and women survivors of sexual assault, which was brought into operation vide Supreme Court's order dated 05.09.2018 in *Nipun Saxena* case.⁴⁶ In the same order, the Court observed that since there is no special Victim Compensation Scheme for sexual assault survivors who are children, the special scheme devised for women would be taken into consideration by the special courts while deciding the award of compensation to be provided to them.⁴⁷ The minimum amount of compensation for sexual assault under this scheme is Rs. 4 Lakhs while the compensation for rape and gang rapes is minimum Rs. 4 lakhs and 5 lakhs respectively.⁴⁸ On the contrary, the victims under the POCSO Act, 2012 in Delhi received only a scanty amount of 1/10th or even lesser.

The amount awarded to 68% of them was between Rs. 30,000-50,000 while for the rest 20% it was lesser than Rs. 30,000.⁴⁹ A survey among

44 Govt. of NCT Delhi, Report: *Mapping of needs and priorities, A study of Child rape victims in Delhi* (Delhi Commission for protection of child Rights, 2019).

45 *Ibid*.

46 *Nipun Saxena & Anr. v. Union of India*, Writ Petition (C) No. 565 of 2012.

47 *Ibid*.

48 NALSA's Compensation Scheme for women Victims/ Survivors of Sexual Assault/other Crimes-2018, available at: <https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018> (last visited on September 9, 2021).

49 *Supra* Note 11.

the recipients of this amount showed that they are highly dissatisfied with the amount given to them as it was insufficient for rehabilitation.⁵⁰

In the year 2015, the Central Government had established a Central Victim Compensation Fund (CVCF) to provide support to the already existing Schemes in different States or Union Territories so that there is effective implementation of the Compensation Schemes. A part of the aim was also to provide special support to the victims of sex crimes, especially children and to reduce the disparity in the quantum of compensation in different states.⁵¹

The problem, therefore, is not shortage of funds. The problem is the carelessness and indifference on the part of authorities and the compensation disbursement mechanism due to which the victims suffer repeatedly.

The ambiguity in allocating the power to quantify the amount of compensation, as explained in the preceding part of the paper, results in the victims running from special courts to DLSA/SLSA, not knowing who exactly is responsible for the task of quantifying the compensation. Apart from this, the laws have left the provision of compensation on the discretion of the courts, such that they may not grant compensation if they do not wish to. In many cases, the courts refuse grant of compensation on flimsy grounds which lead to great losses to the victims. Another weak point of the mechanism was the involvement of support person, who is a person appointed to assist the child victims in the whole process of justice delivery⁵², or a non-governmental organisation in the process of recovering compensation. The point to be worried about is that in maximum cases, the victims are able to receive compensation only when such persons are involved in the process and without them, it is nearly impossible to be able to get compensation. This makes them wholly dependent on such middle-persons for something that is actually their right.

50 *Ibid*

51 Central Victim Compensation Fund Guidelines, available at: https://www.mha.gov.in/sites/default/files/CVCF_revised_27072017_0.PDF (last visited on September 09, 2021)."

52 Protection of Children from Sexual Offences Rules, 2020, Rule 4(8).

PREJUDICE IN AWARDING COMPENSATIONS: TRUTH OR FALLACY

When victims normally suffer so much from the procedural lacunae and loopholes in the victim compensation system, gender bias rules out the chances to receive compensation for the non-female victims. In the study conducted by DCPCR, "Mapping of needs and priorities: A study of Child Rape Victims in Delhi", it was found that all the victims who had received compensation under POCSO were girls and not even a single boy had received such compensation. Thus, the Victim Compensation Scheme under POCSO Act, 2012 has been an absolute failure for male and transgender child victims. In fact, the study was not inclusive of the transgender victims, clearly indicating that no consideration has been given to their plights.

In 2018, the Minister for Women and Child Development had to request, in writing, the Chief Ministers of all States and Union Territories to do what is necessary so that the male child victims of sexual abuse are included in the Victim Compensation Scheme Fund. The request was based on NCPCR Data which suggested that the "disbursements of compensation has not been uniform or satisfactory."⁵³ Sadly, even after almost three years, no substantial change has been brought about by the government.

The point worth noting even here is that even the Ministry for Women and Child Development forgot to mention the children who identify themselves as transgenders. Their condition is, hence, pitiable. However, pity is not what they really need.

SUGGESTIONS AND CONCLUSIONS

With the increasing rate of crimes committed against children, it is high time to advance and improve our implementation of compensation

53 Male child victims of Sexual abuse should be included in the States/UTs Victim Compensation Scheme/Fund, available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=179633> (Last modified on May 30, 2018).

schemes. Grant of compensation to the minor male and transsexual victims under S.7 of the POCSO Act has been unsatisfactory. Refusal of the interim compensation to these victims makes it difficult for them to seek immediate medical help and cater to their other essential needs. Thus, deficiency in providing relief to the victims nullifies the efforts to reduce the impact of victimization to null.

The efforts made towards the enactment of a gender-neutral legislation will be rendered infructuous if the victims of the crime are not compensated adequately and equally. Further, mere acceptance of gender neutrality in the distribution of compensation on paper is of no use if the fruits of such an effort do not reach the needy victims for whom the scheme was formulated. The reporting and collection of data must be done with more diligence as the same would assist in further research and can effectively point out the lacunae in procedural implementation. The exclusion of other genders in disbursement of adequate compensation not only defeats the purpose of enacting a gender-neutral act but also impairs the idea of restorative justice which is every victim's right irrespective of gender. The procedural lacunae should also be reduced to the maximum extent possible. A harmonious operating procedure should be devised to end the confusions about deciding quantum of compensation. The mechanism has to be made more gender inclusive and social acceptance for the victims who do not conform to the gender norms of the society has to be increased.

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