



Research Article

From Victimhood to Legal Redress: Reconstructing the Jurisprudence of Compensation for Child Victims Under POCSO

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Abstract

The problem of compensation under the Protection of Children from Sexual Offences Act, 2012 finds itself at a peculiar point wherein the criminal law is near civil remedy. The manner in which Section 33(8) treats compensation makes it a discretionary measure depending on the circumstances. However, the interpretation given to this provision by various High Courts gives the matter an element that borders on being mandatory due to the provisions of Rule 9 of the POCSO Rules, 2020 and the NALSA Compensation Scheme of 2018. This essay attempts to show the evolution of compensation from an ancillary measure of punishment to a legal right that the State owes to the children due to its duty to protect them. The shortcomings that exist in the execution of compensation, including delay in payment, inconsistency in granting of compensation and collection of compensation from child witnesses who have since become hostile, among others, are some of the areas of discussion.

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INTRODUCTION

This Act came into force in the year 2012 and provides for a special law that is gender-neutral in addressing the problem of sexual offenses committed against individuals below the age of eighteen years. It has ensured that the best interests of the child were always considered in any process.¹ The gravity of the problem that the Act is supposed to address has, in fact, increased ever since the enactment of the Act. The latest statistics from the National Crime Records Bureau show more than sixty thousand cases registered under the Act in a single year, a matter that the Supreme Court considered important enough to exercise suo motu jurisdiction on in 2019.² In the case titled "In Re: Alarming Increase in the Number of Cases of Child Rape Reportedly Registered", the issue of compensation becomes vital for the case and becomes an integral part of proving the thesis of this research paper since it is here that the issue of compensation ceases to be a secondary one and becomes a very important one, since the court finds out that not many children have been compensated under the provision of the law.³

Even though there is not much literature on this topic yet, there have been numerous advancements in this area since 2023. According to Ahmed and Baruah in their study on the compensation of victims through the Act, there have been major differences in the amount of compensation that has been provided to the victims depending on the different states. This study has revealed how the help of the support person and other NGOs is required to help the victims comply with the procedure, especially the child victims.⁴ The study by them has identified the lack of a comprehensive national scheme for POCSO as the main structural deficiency in the current system, as it has been observed that the existing general NALSA scheme is used for POCSO cases through analogy. The field work carried out by Parveen & Goenka on the issue of compensation for children in Delhi has also identified a major operational challenge. The child is often made to do the procedures at the bank, which the child cannot perform alone.⁵ While the paper draws from both fields of inquiry, the approach adopted in this paper is to look into the manner in which courts have interpreted and implemented the statutes and how, if at all, the growth of judicial activism has outpaced the institutional infrastructure necessary for such growth.

The premise of the argument presented in this paper is a comparative observation that has not been subjected to much scholarly analysis. The decision of the Supreme Court in Ankush Shivaji Gaikwad, made in the context of the provision of general compensation, which is provided in Section 357 of the Code of Criminal Procedure, states that where a court does not take into consideration compensation and records no reasons for rejecting it, such omission would constitute an error

of law which can be reviewed on appeal.⁶ It was later clarified by the Supreme Court that "the power to pay compensation does not merely flow as an incident from the act of punishment but is rather an independent reaction intended to deal with the problem of the right of the victim to redress." It is contended in this paper that the jurisprudence of POCSO has recognized this principle and has consistently expanded its ambit, while the machinery for its implementation, particularly in terms of payment, has not followed suit.

2. The statutory architecture of compensation

Section 33(8), on the other hand, gives the Special Court power, whenever felt necessary, to award compensation to the child for any physical or psychological trauma resulting from the commission of the offense, or alternatively arrange for the rehabilitation of the child apart from punishing the offender.⁷ This provision is quite brief, as it outlines most of the procedural requirements in Rule 9 of the POCSO Rules, 2020. In contrast to the corresponding provision of 2012 Rules, this provision is much more elaborated. According to Rule 9(1), Special Court may, suo motu or upon application made by the child himself/herself or by another person on behalf of the child, award interim compensation at any stage after the filing of FIR, if such assistance is needed in order to cover the immediate needs of the child. Rule 9(2) gives the right to the Court to recommend final compensation regardless of the result of the criminal proceeding, namely in case of conviction, acquittal, discharge of the accused, or when the identity of the accused could not be established, but the Court is convinced that the child has been subjected to some loss or damage due to the commission of the offence. Rule 9(3) defines the procedure for the payment of compensation. The compensation should be paid in most cases via special victim compensation funds. When there is no such option, it is the duty of the State Government to pay the compensation.

There are two aspects of the framework which are particularly noteworthy. The first aspect is that the right to receive compensation is not made contingent upon the defendant's being found guilty in court. Since Rule 9(2) applies regardless of the result of the criminal proceedings, the right to claim compensation will still exist even in cases where the accused either succeeds in the criminal proceedings or remains unidentified, or even more importantly in the case that will be discussed in later parts of the paper, when the child witness becomes hostile towards the prosecution. Secondly, there is a clear distinction made in the Rules between interim and final compensation, both in terms of time and purpose of compensation. Interim compensation can be awarded at the earlier stages of the process, while final compensation is awarded post-trial proceedings, in which the compensation

¹ The Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of 2012), Preamble.

² National Crime Records Bureau, Crime in India 2022, Vol. II, Ch. 6 (Ministry of Home Affairs, New Delhi, 2023).

³ In Re: Alarming Rise in the Number of Reported Child Rape Incidents, Suo Motu Writ Petition (Crl.) No. 1 of 2019, order dated 12 July 2019.

⁴ Punam Ahmed and Aparajita Baruah, "Reviewing the Adequacy of Victim Compensation Under the POCSO Act, 2012 and Rules,

2020", 11(17s) International Journal of Environmental Sciences 1701, 1703 (2025).

⁵ Shabana Parveen and Shivangi Goenka, "The Upper Limit of Compensation: Survivors of Child Sexual Abuse", India Development Review, 2024.

⁶ Ankush Shivaji Gaikwad v. State of Maharashtra, (2013) 6 SCC 770, para 46.

⁷ The Protection of Children from Sexual Offences Act, 2012, s. 33(8).

amount is reduced taking into consideration any interim compensation received earlier. Rule 9(5) further states that the State Government shall pay the compensation awarded by the Special Court within 30 days. As will be discussed in Section 5 of this paper, non-compliance with this statutory deadline has emerged as the biggest flaw of the framework.

3. The interface with the general law of victim compensation

Compensation under POCSO is part of the overall scheme of victim compensation, not an independent scheme, and this scheme has undergone considerable change in terms of the law. The authority to order the payment of compensation from State funds, previously laid down in Section 357A of the Code of Criminal Procedure, 1973, is now specified in Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Under this section, it is obligatory on the part of every State Government in cooperation with the Central Government to formulate a scheme for compensating victims for the loss or injury sustained by them.⁸ Proposed in 2009 in accordance with the recommendation of the Law Commission, section 357A became the first statute in Indian criminal procedure which acknowledged that a victim has the right to reparation which is independent of any conviction of the accused.⁹

Since there is no compensation scheme specifically dealing with the POCSO victims, the courts have adopted the provisions of the National Legal Services Authority's Scheme for Compensating Women Victims and Survivors of Sexual Assault and Other Crimes, 2018, which was primarily meant for adult victims of crimes. The compensation provided under this scheme has prescribed minimum and maximum limit of compensation according to the crime committed. It is up to the concerned Legal Services Authority to decide the amount of compensation according to the factors such as loss of earnings, medical costs, interruption in studies, etc.¹⁰ The above provision further clarifies that the compensation paid to the claimants under the scheme shall be in addition to the fine and compensation awarded by any criminal court, and it shall not be in lieu thereof. In resolving the issue of conflict, the Karnataka High Court ruled that in the absence of a compensation scheme for children's victims under POCSO, the Special Courts shall apply both Rule 9 of the 2020 Rules and the NALSA scheme. It was further highlighted that such compensation cannot be left to the discretion of the trial court judge alone.¹¹

The manner of approach of the Supreme Court in Nipun Saxena in relation to the protection of the identity of the victims is important from the point of view of the principles laid down by the Court, although the case pertained to the disclosure of the identity of the rape victim, and not the matter of compensation. In this case, the Court held that the dignity

which is protected under Section 228A of the Indian Penal Code, and thereby the larger dignity of victims of sexual offences, is not dependent on the result of the criminal trial.¹² In the case of X v. State of West Bengal, the Calcutta High Court adopted a similar method in respect of compensation, stating that the awarding of compensation to the child-victim is a remedy of the failure of the State to perform its sovereign responsibility to protect, rather than being a part of the punishment to the accused.¹³ Under such a scheme, the liability of the state to give compensation and the criminal liability of the accused are considered to be two distinct wrongs, each of them leading to a different remedy. It was felt by the Court that it was essential to make such a differentiation so that a child's right to rehabilitation is free from any uncertainty due to the long and complex process of criminal prosecution that might go for several years before coming to an end or failing to bring about any conviction.

However, there are many practical difficulties involved in the extension of such a broad framework of compensation through analogy to legislation specially made for children. There are certain procedural requirements laid down under the NALSA scheme, such as the Victim Impact Report, which have been drafted keeping in mind adult victims and fail to take into consideration issues related to guardianship, banking and distribution in case the victim is a minor. It is with such considerations in mind that Rule 9 of the scheme seeks to remedy this shortcoming in terms of Form 3.¹⁴ Precedent from an earlier line of cases decided by the Supreme Court constitutes the constitutional basis for this measure, which holds that when courts are acting under their *parens patriae* power with respect to a minor, it is incumbent upon them to determine on their own what award is in the best interest of the minor, even though this rule emerged from elsewhere.¹⁵

4. Judicial reconstruction: from discretion to duty

The term "may" used in Section 33(8) indicates that the legislature envisaged the presence of some discretion, and based on a literal interpretation, therefore, it might enable a Special Court to refrain from awarding compensation without having to provide any further explanation. However, judicial interpretation has distanced itself from such an approach. While Ankush Shivaji Gaikwad may not be an authority on the interpretation of Section 33(8) which relates specifically to the scheme of POCSO, it established the interpretative principle that has subsequently been applied by High Courts to Section 33(8). Failure of the court to address the issue of compensation or its denial without providing any reasons constitutes an appealable flaw since the provision embodies an objective of the legislature which is mandated to be enforced.

The suo motu actions of the Supreme Court furnish a convincing proof that the interpretation has received

⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act No. 46 of 2023), s. 396.

⁹ The Code of Criminal Procedure, 1973, s. 357A.

¹⁰ National Legal Services Authority, Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018, cl. 6.

¹¹ Karnataka State Legal Services Authority v. State of Karnataka, 2021 SCC OnLine Kar 566, para 14.

¹² Nipun Saxena v. Union of India, (2019) 2 SCC 703, para 46.

¹³ X v. State of West Bengal, 2022 SCC OnLine Cal 2521, para 11.

¹⁴ The Protection of Children from Sexual Offences Rules, 2020, r. 9(1), read with Form 3.

¹⁵ Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1, para 22.

institutional recognition. In its October 2019 order, the Court instructed State Legal Services Authorities to provide information regarding the amount of compensation paid out in POCSO cases, given that the numbers being reported were quite surprisingly low relative to the number of convictions and interim compensation orders. In March 2021, having expressed its dissatisfaction with the slow pace of progress on the issue, the Court instructed the Ministry of Women and Child Development to participate in formulating a separate national scheme of compensation for POCSO survivors. As of this writing, that effort has not been fully concluded yet. In its subsequent orders, the Court has categorized delays in the payment of compensation as one of the failings of the criminal justice system, putting it together with other delays such as delays in investigation and trial.

High Courts have taken up this institutional mandate as their doctrinal duty. The High Court of Kerala ruled that there is no reason for a District Legal Services Authority to refuse payment of the interim compensation awarded by a Special Court, on the ground that the particular scheme that applies to that Authority does not make provision for POCSO victims. The 2020 Rules under Rule 9 stand alone and are independent of the criteria of eligibility provided under any State scheme.¹⁶ In addition, it was held by the Court that where a restrictive scheme of the State is not in tune with the order passed by the Special Court under Rule 9, the order of the Special Court should take precedence. This is owing to the fact that Rule 9 being subordinate legislation made in pursuance of the POCSO Act cannot be displaced by executive rules which are made under comparatively inferior statutory provisions. In addition, the High Court of Karnataka stated that the compensation award should not be based on the subjective likes or dislikes of the trial judge, but rather should be decided in accordance with the relevant considerations specified under Rule 9 in conjunction with the slabs provided under the NALSA scheme. This principle constitutes an important step in the evolution of the law, where a power which at first sight appeared to confer wide discretion upon the courts has, through a series of decisions by the higher courts, come to acquire the characteristics of an administrative duty.

It is necessary for us to examine both the gains made through the above process as well as its limitations. The empirical analysis by Ahmed and Baruah suggests that even despite all these developments, the compensation paid to children in such cases is far less than what is being paid to the adults who survive these cases. It appears to be so because there are no specific guidelines on how to calculate compensation for the children, like there are some in Rule 9 regarding the factors of eligibility for the compensation. Thus, while it can be seen that the courts have been able to make the matter of payment of compensation a legal duty, the matter of calculation of the amount still lacks any structure.

5. Persisting fault lines: delay, disbursement and the hostile witness problem

These decisions and field studies continue to show three practical problems that persist unresolved despite the doctrinal reconstruction outlined above. The first problem relates to the delays in payment. In the iProbono case study about delays in interim payments, it is shown that even if an order is made in the Special Court, the process of document preparation, verification, and sending exceeds the thirty-day period as stated in Rule 9(5). In some instances, it can take a couple of months, with the process being done either by the family members of the child or a guardian, rather than by an official designated by the State. In this case study, it is mentioned that these delays are mostly caused by the lack of a clearly specified authority handling the matter, rather than a mistake in administration. In spite of the fact that the Special Court orders the payment, the claim will be processed by the District Legal Services Authority and will be released by the State Government. Still, none of these organizations have their clear responsibilities for moving the claim from one step to another. The second problem is related to banking and guardianship, which is covered by Rule 9 only to a limited extent. Since a minor is generally incapable of conducting transactions through the bank account that will receive compensation, Parveen & Goenka's examination of compensation practices in Delhi finds examples where the compensation order is delayed for months on end due to the failure to create an appropriate guardian account. This becomes even more problematic in cases where the person who was intended to be the guardian is either himself guilty of, or in any other way linked to the crime. As such, the thirty-day period stipulated by Rule 9(5) could turn out to be an impossible deadline for State authorities to satisfy, not because there is any dispute regarding the compensation, but because the process of receiving it does not take into consideration the peculiarities of the case of a minor.¹⁷ Thirdly, this problem is much more serious than the other two in that it represents an intentional policy choice, and not just bureaucratic obstacles. It has been found that, in some instances, the Special Court has asked the child-victim or his/her guardian to pay back the interim compensation paid to the victim because the child has become hostile and not helped the prosecution in its case.¹⁸ Commentary on this practice suggests that it negates the main purpose of Rule 9(2), which has been drafted in such a manner that the right to compensation is not dependent on the outcome of the trial. Moreover, hostility shown by the child in the trial can be due to the fact that he has suffered from trauma or there is some kind of influence from the family members or there is a fear of being punished, which Section 33(8) is supposed to address and not provide any basis for making the child liable to pay the money. In addition to this, Rule 9(1) specifically refers to interim compensation as a process that is meant to be prospective in nature. It is not an advance payment on the condition of conviction of the person concerned.

¹⁶ Kerala Legal Services Authority v. State of Kerala, 2023 SCC OnLine Ker 4821, para 9.

¹⁷ The Protection of Children from Sexual Offences Rules, 2020, r. 9(5).

¹⁸ Bhavya Pandey, "Courts Asking POCSO Victims Who Turn Hostile to Return Compensation: Right or Wrong?", The Leaflet, 2023.

6. Towards a rights-based reconstruction

As shown in this paper, these developments in the doctrine are more appropriately viewed as representing a movement from a residual approach to compensation, which was traditionally associated with punishment, to one based on a right. According to this approach, the child's right is independent from whether there are ongoing proceedings or any other outcome of the criminal process and represents an absolute duty of the State. While the decision of the Karnataka High Court in *We the Women of India* case mostly dealt with the different right of the child to be provided with a support person according to the Rules, it provides an important example of this broader development in doctrine. It clearly states that the provisions listed in Form A in the Rules do not represent mere guidelines for the investigating agencies to follow. Instead, they create enforceable rights of the child.¹⁹ In *Ankush Shivaji Gaikwad*, the court reasoned that a right which although the law acknowledged it as being owed to a child but attached no consequence to its non-grant, would be a right in name only. Such an approach holds true even with regard to the child's right to compensation as per Rule 9.

The larger idea expressed in *Ankush Shivaji Gaikwad* about compensation having a restorative purpose, independent of and unencumbered by the sentence imposed upon the perpetrator, provides the basis for this argument. Coupled with Rule 9(2) which makes compensation independent of conviction, and the State-failure doctrine as laid down in *X v. State of West Bengal*, the jurisprudence developing through these cases tends to view the right of the child to be more like a tortious liability of the State for failing to protect the child, as opposed to a mere ancillary right. The need for a different statutory regime, as urged by Ahmed and Baruah, is therefore clear from this line of argument. Insofar as the entitlement is truly independent of the criminal proceedings and the financial position of the accused, the enforcement of the same cannot be made conditional on a scheme formulated for a different kind of claimant, whose entitlement to redress must be derived by putting together various judicial pronouncements without having one clear instrument of law available.

Such a rights-based approach to the issue leads to at least three practical consequences which the current regime has not sufficiently ensured. First, the compensation payable needs to be determined based on publicly available slabs of compensation for children similar to those provided under the NALSA Scheme for adult victims. Second, the provision of disbursement within thirty days as required by Rule 9(5) should also have an official authorized to do so appointed in every district legal services authority following the logic adopted by the Calcutta High Court in *X v. State of West Bengal*. Finally, and most directly in line with the analysis done in Section 5, any interim compensation paid to a child who becomes hostile at a later stage should not usually be recoverable. This is because such a thing should not be left to

the discretion that the Karnataka High Court has warned the trial courts not to exercise.

7. CONCLUSION AND RECOMMENDATIONS

It has been shown in this paper that the law regarding compensation under the POCSO Act has reached a level far above that envisaged under Section 33(8). The progression of this line of cases stems from the general principles laid down in *Ankush Shivaji Gaikwad* and applying those principles under Rule 9 of the 2020 Rules in cases concerning the POCSO Act, and is strengthened by the decisions of the High Courts which have made compensation an entitlement of the child regardless of any trial or proceeding whatsoever.²⁰ Such an interpretation is in consonance with the broader purpose of protection of the Act, which has been endorsed by the Supreme Court on numerous occasions, by putting the interest of the child above strict interpretations of the law.²¹ The reasoning of the court regarding marital rape exceptions serves as an effective parallel as well. In the sense that the status of the child as a victim of a crime cannot be affected by the relationship of the offender with the child or any other factors which have nothing to do with the criminal act committed against the child. Consequently, in cases where the vulnerability of the child is not affected by the perpetrator, the compensation rights of the child too will be independent of the prosecution result.

Four recommendations are offered in this paper. Firstly, the Ministry of Women and Child Development must ensure the completion of the National Compensation Scheme ordered by the Supreme Court in 2021, and Quantum slabs should be made specifically for child victims and not on the basis of NALSA scheme. Secondly, the thirty-day time frame in Rule 9(5) must include a disbursing officer for every district. In case there is non-payment within the designated period, such failure needs to be reported to the Special Court independently. This will be aimed at bridging the difference between the compensation and its actual realization by the child. Thirdly, interim compensation should not be recoverable from a child witness simply because he or she turns hostile. Therefore, rule 9 needs to be amended explicitly to make this provision. In this way, the difference between the two processes will be retained despite the current practice which fails to do so. Fourth, the distribution process needs to be based on the real-life situations that minor claimants face in terms of guardianship and banking processes. In case there is no proper guardian, compensation can be paid through the Child Welfare Committee which has been mandated to take care of children who need care and protection.²²

The title of the paper shows how there is movement from the position of being a victim to having legal remedies, and indeed, the doctrine has shown that such movement is not only real but very significant. The next problem here is not that the court acknowledges the right of the child, since this matter has been settled over a period of ten years of litigation; rather, the problem lies with the system set up by the Executive and

¹⁹ *We the Women of India v. Union of India*, 2023 SCC OnLine Kar 1256, para 8.

²⁰ *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1, para 39.

²¹ *Independent Thought v. Union of India*, (2017) 10 SCC 800, para 82.

²² *The Juvenile Justice (Care and Protection of Children) Act*, 2015 (Act No. 2 of 2016), s. 2(14)(v).

Parliament to give effect to this right. Without the special scheme, the child victim will have a legal right which may be more easily articulated in courts than fulfilled in practice.

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