



**iProbono**

# **COMPENSATION**

**UNDER THE POCSO ACT**

**IN DELHI**

# TABLE OF CONTENTS

<b>I. INTRODUCTION</b>	<b>3</b>
<i>A. Interim Compensation</i>	<b>5</b>
<i>B. Final Compensation</i>	<b>14</b>
<b>ANNEXURE</b>	<b>18</b>
<i>Relevant Provisions on Compensation</i>	
<b>RELEVANT CASE LAWS</b>	<b>22</b>

# INTRODUCTION

*“Since the system cannot turn the clock back nor ‘undo’ the offence, there is little else the court can do other than prosecute the offender and provide to the victim whatever psychological security and sense of empowerment that monetary compensation can give”.*<sup>[1]</sup>

For many years, India did not have an exclusive law to counter cases of child sexual abuse. Instead, offences of child sexual abuse would be tried under provisions of the regular penal law - the Indian Penal Code, 1860 (IPC). The IPC, which was notified in the statute books over a century ago, was not drafted keeping in mind the best interests of children, thereby proving largely inadequate in addressing different forms of child sexual abuse and in providing for the specific needs of child victims prior to, during, and after the trial.

To fill in this lacuna, the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) was conceptualised and notified in November, 2012. Attendant rules in the form of the Protection of Children from Sexual Offences Rules (POCSO Rules) were also notified in 2012 and then replaced with new Rules in 2020. Both the POCSO Act and the POCSO Rules together recognise a broad range of offences on child sexual abuse and provide a variety of child-friendly procedures as well as a range of reliefs in the best interest of these child victims. These include providing compensation and special relief.

Compensation refers to monetary relief made available for the child victim’s rehabilitation and welfare needs. It is extremely valuable for children and families, especially those from lower socio-economic

[1] X v. State and Ors. (2021) SCC OnLine Del 2061.

backgrounds who suffer financially from the costs associated with a POCSO case, as well as due to the offence itself. These costs, including expenses attached to rehabilitation and medical costs of the child victim, loss of the breadwinner's income in cases of incest, travel costs to and from the court, can push families to financial ruin. The compensation payable by the Court to these children and families is a valuable aid, which alleviates their burden to a great extent.

Compensation under the POCSO Act can be availed as 'interim compensation' before or during the trial and as 'final compensation' after the conclusion of the trial. This primer provides key information and case law relevant to the filing, claiming, and disbursement of compensation in Delhi.



## A. INTERIM COMPENSATION

### 1. What is interim compensation?

Interim compensation refers to monetary compensation payable to the child victim when a case is ongoing before the Special Court.

### 2. Why is interim compensation important for child victims?

The needs of a child victim of abuse are often urgent, and merit immediate attention and aid. This includes, for example, the onerous medical costs – both physical and mental. Many times, child victims and their families might have to relocate (especially in cases of incest where the accused is a relative/parent who can exert pressure on the child victim to withdraw the case) or switch schools due to the presence of the accused in the vicinity. In such instances, immediate financial help provides great succour to the child victims and their families. It is important to note that interim compensation is not meant merely for expenses incurred due to the offence, but also for relief and rehabilitation of the child victim.<sup>[2]</sup>

### 3. Before which authority can an Interim Compensation application be filed in Delhi?

- In Delhi, the Hon'ble Delhi High Court in *X v. State and Ors*<sup>[3]</sup> reaffirmed that as mentioned in the Standard Operating Procedure ("SOP") with respect to operation of the Delhi Victim Compensation Scheme, 2018 'only the Special Courts have the power to quantify the compensation to be awarded to the child victims and forward the same to the DLSA/DLSLA for disbursal of the awarded amount. DLSA/DLSLA concerned only has powers of disbursal'.

[2] Ibid.

[3] Ibid.

- Special Courts do not need to wait for an application to be filed, and can suo moto initiate action to grant interim compensation.<sup>[4]</sup>
- The Special Court has a duty to inform the child victims about their right to move an application for interim compensation when the case comes up for trial.<sup>[5]</sup>

#### **4. Under which provision should an application for interim compensation be filed before the Special Court?**

An application for interim compensation before the Special Court is filed under Section 357-A of the Code of Criminal Procedure (CrPC), section 33(8) of the POCSO Act, 2012 and Rule 9 of the POCSO Rules, 2020. All the relevant provisions pertaining to compensation are attached as ANNEXURE- A.

#### **5. What are the documents to be submitted before the Special Court for grant of interim compensation?**

Documents like bills showing expenses may be filed along with the application. No further documents are required to be submitted unless specifically sought for by the Special Court.

#### **6. Who can file an interim compensation application?**

An application for interim compensation can be filed by the special public prosecutor handling the specific case or a counsel of the rape crisis cell of the Delhi Commission of Women (DCW) or a child victim's counsel before the Special Court.

#### **7. When can an interim compensation application be filed before the Special Court?**

- An interim compensation application can be moved anytime after an FIR is registered.<sup>[6]</sup>

[4] Ibid.

[5] Ibid.

[6] Rule 9(1) of POCSO Rules, 2020.

- However, some Special Courts as a matter of practice often wait until after the child victim's testimony is recorded to process an interim compensation application. This occurs for multiple reasons: some judges fear that on granting interim compensation, the child victim may turn hostile, and others feel it premature to offer compensation prior to establishing the guilt of the accused. However, it is important to understand that waiting until the child victim's testimony is recorded to process the application frustrates the concept of interim compensation, which is meant to be an emergency fund for those who have had their lives upturned and require money for rehabilitation.

## 8. What are the factors relevant to an interim compensation application before the Special Court?

Rule 9 (3) of the POCSO Rules provides a non-exhaustive list of factors that can be considered by the Special Court while passing an order on an interim compensation. The Special Court is not confined to just these factors and can consider additional elements depending on the injury or loss caused to child victims of abuse. Factors being:

Type and gravity of an offense.	Medical expenditure spent on nursing both the child's physical and/or mental needs.
Loss of educational opportunity of the child victim or loss of employment opportunity of the child victim as a consequence of the offense.	The relationship of the child victim to the offender, if any.
If the offense occurred a single time or repeatedly.	If the child victim became pregnant and/or suffered a disability as a result of the offense.
If the child victim contracted a sexually transmitted disease (STD) or human immunodeficiency virus (HIV) as a result of the offence.	The financial condition of the child victim to determine the child victim's need for rehabilitation.

**Note** - Under Part II of the Delhi Victim Compensation Scheme 2018, the proviso to the schedule states that if a child is born out of pregnancy, compensation or part thereof may be disbursed in favour of this child. This means both the child victim and the infant (born as a result of the sexual abuse) have the right to get compensation under the scheme and application/s can be filed before the Special Court for the same.

In Delhi, Special Courts as a matter of practice direct investigating officers to prepare and submit a 'Victim Impact Assessment Report' as directed by the Hon'ble Delhi High Court in *Karan v. State of NCT of Delhi*<sup>[7]</sup> with details on factors mentioned in the POCSO Act (mentioned above) to help them determine the quantum of interim compensation.

### **9. What are the guidelines to be followed by the Special Court passing an order on interim compensation under the POCSO Act?**

The "Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018" (NALSA Scheme) is to be followed as a guideline by the Special Court for awarding interim compensation until exclusive guidelines on interim compensation are notified under the POCSO Act.<sup>[8]</sup>

### **10. Do Special Courts have to compulsorily pass an order if an application for interim compensation is filed?**

Yes, notwithstanding the Special Court's decision to grant or reject an application for interim compensation, the Special Court has a duty to mandatorily apply its mind to the question and pass an order with reasons explaining its decision.<sup>[9]</sup>

[7] *Karan v. State NCT of Delhi & Anr* (2020) SCC OnLine Del 775.

[8] *Nipun Saxena v. Union of India*, (2018) SCC OnLine SC 2439.

[9] *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770.



11. What is the timeframe within which interim compensation must be disbursed by the DLSA, where so ordered by the Special Court?

Rule 9 (5) of the POCSO Rules states that the DLSA must pay the interim compensation ordered within 30 days of receipt of the order by the Special Court.

12. Once an order granting interim compensation is passed, what is the procedure for the family to receive the compensation?

An application for interim compensation is decided by the Special Court, a copy of the order is forwarded to the DLSA.



The DLSA then calls upon either the investigating officer/support person/child victim/legal guardian to submit all required documents including bank account details, copy of the passbook of the bank account of the child victim, copy of AADHAR card and passport size photos.



After verifying the details, the amount is disbursed in favour of the child victim.

### 13. What amount is usually granted as interim compensation? Is there a limit on the compensation amount that can be granted?

- The quantum of compensation is fixed based on the loss and injury suffered by the child victim and other factors and is not be restricted to the minimum amounts prescribed in any victim compensation fund.<sup>[10]</sup>
- The Hon'ble Delhi High Court while remarking on how the quantum of interim compensation should be specified in POCSO cases, stated that “when the act provides two spectrum one minimum one maximum, the leaning must be towards the maximum.” The Court held that interim compensation should be at least 25 percent of the maximum amount of compensation mentioned.<sup>[11]</sup>

### 14. What is the mode of payment for disbursement of interim compensation?

The amount payable is deposited in the bank account of the child victim either in the single or joint name of the child/dependent. In the event the child victim does not have a bank account, the DLSA<sup>[12]</sup> or the CWC<sup>[13]</sup> will facilitate the opening of a bank account along with the assistance of the District Child Protection Unit (DCPU) and the Support Person.

[10] X v. State and Ors, (2021) SCC OnLine Del 2061.

[11] Ibid@10

[12] Rule 11(1) of the NALSA Scheme.

[13] Rule 10 (2) of the POCSO Rules.



In cases where the child victim does not have a parent or legal guardian, the interim compensation granted or interim relief is disbursed into the bank account of the child victim opened under the guardianship of the superintendent of the child care institution where the child is residing. In the absence of the superintendent, the drawing and disbursing officer /sub divisional officer is relevant.<sup>[14]</sup>

### **15. Can an application for grant of interim compensation be filed more than once before the Special Court?**

Yes, an application for grant of interim compensation can be filed multiple times before the Special Court. There is no bar which restricts the Special Court from granting interim compensation more than once.<sup>[15]</sup> However, such an additional application is maintainable only if circumstances have subsequently arisen that were not in contemplation when the previous application for interim compensation was being considered by the Special Court.<sup>[16]</sup>

The Special Court has the discretionary powers to summon the bank account statements/records of details in which the initial interim compensation amount was utilised by the child victim and/or their family.

### **16. Does an application for interim compensation under the POCSO Act preclude the child victim from seeking compensation or aid from other Government Schemes?**

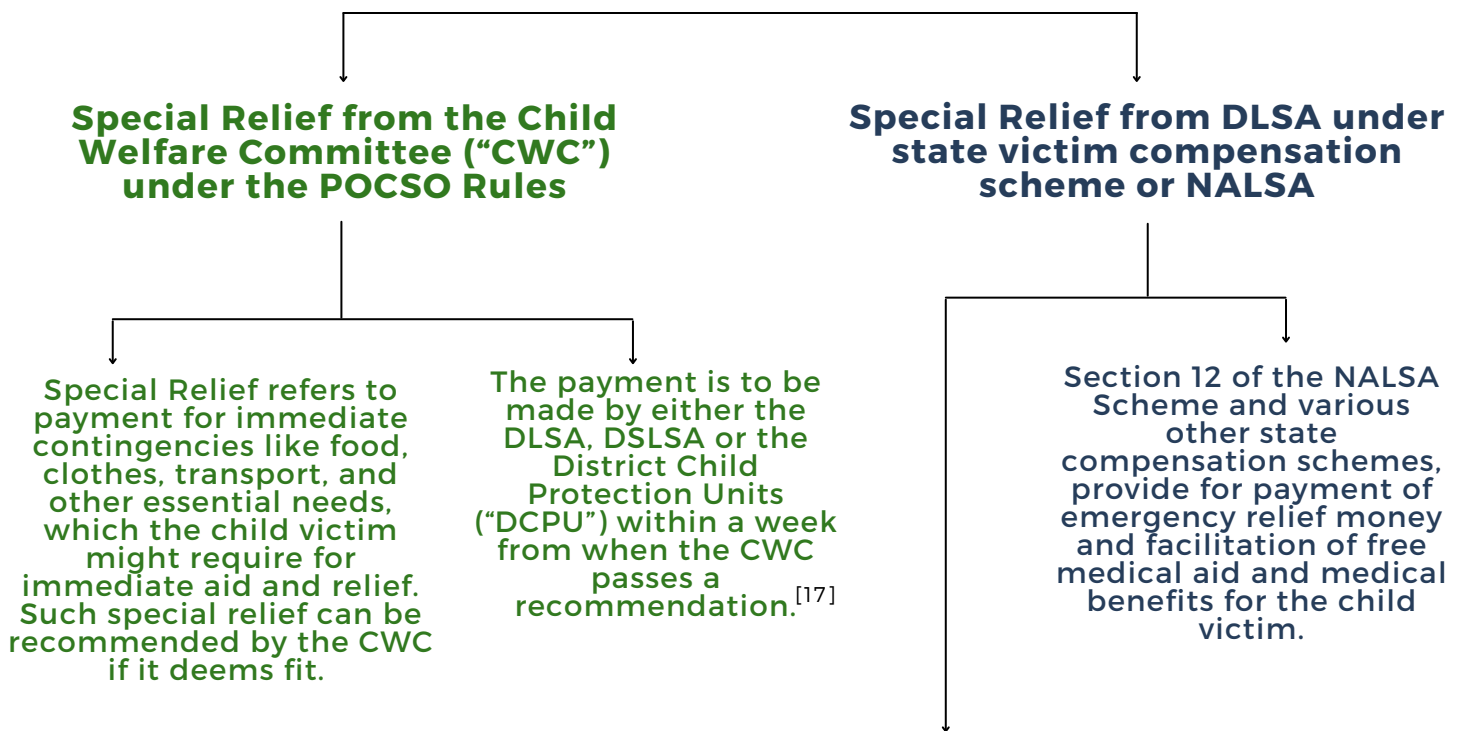
As per Rule 9 (6) of the POCSO Rules, a child victim is free to apply for compensation under other Government Schemes irrespective of whether the child victim has filed an application for interim compensation under the POCSO Act.

[14] Section 15 of NALSA Scheme, 2018.

[15] Mother Minor v. State of Delhi (2020) SCC OnLine Del 2388.

[16] Ibid@10

17. What are the other monetary reliefs available to child victims other than interim compensation?



The NALSA scheme states that apart from a certificate from a police officer not under the rank of the officer-in-charge of the police station, a certificate can be obtained from the Magistrate of the area concerned or the victim or her dependents can directly apply for special relief. The NALSA Scheme also states that DLSA or the SLSA can suo moto provide special relief.<sup>[18]</sup>

18. Can the entire sum of interim compensation be withdrawn by the child victim following its disbursement to the bank account of the child?

Yes, the entire sum of interim compensation can be withdrawn by the child victim provided the order passed by the Special Court does not mention a bar on complete withdrawal of the said amount.

In some cases, the Special Court may mention that only a certain amount of compensation may be immediately utilised by the child with the rest of the amount becoming available for withdrawal only post the child attaining majority (i.e. after turning 18 years old).

[17] Section 7(8) of the Karnataka Victim Compensation Scheme, 2012.

[18] Section 12 of the NALSA Scheme, 2018.

[19] Section 9(5) of the NALSA Scheme, 2018; Section 7 (10) of the Karnataka Victim Compensation Scheme, 2011.

**19. Can the Special Court ask for information on how the amount disbursed as interim compensation is utilised?**

Yes, as a discretionary power, the Special Court may ask the support person to file a report on how the interim compensation amount granted has been utilised.

**20. Can the Special Court/DLSA/SLSA recover the amount awarded as interim compensation?**

Following the disbursement of compensation, if it comes to the notice of the SLSA that any relevant fact shared with it during the inquiry for compensation was false, the DLSA or the SLSA can initiate proceedings for recovery of part or full compensation awarded. This amount is to be recovered only after affording an opportunity to be heard to the beneficiary.<sup>[19]</sup>

In cases where child victims have turned hostile after being granted interim compensation, some Special Courts have initiated recovery proceedings to recover the state aid provided to the child victim.

**21. What is the mechanism in place to appeal an order of interim compensation?**

In the event, a child victim is not satisfied with the amount of interim compensation granted by the Special Court, they can appeal the order of the Special Court before an Appellate Court.

## **B. FINAL COMPENSATION**

### **1. At which stage is the application for final compensation filed?**

An application for final compensation is filed at the stage of arguments on sentencing. The Special Court may also take *suo moto* cognizance and award final compensation without any formal application being filed on behalf of the child victim.

### **2. Does the accused need to be convicted for a child victim to receive final compensation?**

No, the Special Court can award compensation even if there is an acquittal as long as the child victim has suffered loss or injury as a result of the offence.<sup>[20]</sup> Even when the accused has passed away, compensation can be granted.<sup>[21]</sup>

### **3. What is the timeframe within which final compensation must be paid?**

Similar to interim compensation applications, the State Government through the DLSA must grant the compensation to the child victim within 30 days from the receipt of the order of the Special Court.<sup>[22]</sup>

### **4. Does the Special Court have to compulsorily pass an order on final compensation?**

Yes. As with interim compensation applications, regardless of whether the Special Court passes an order granting or rejecting final compensation to the accused, the Special Court has to pass an order with reasons for its decision.<sup>[23]</sup>

[20] Section 357A of the CrPC; Suresh v. State of Haryana, (2015) 2 SCC 227.

[21] Eera through Manjula Krippendorf v. State (Govt. of NCT of Delhi) and Ors, (2017) 15 SCC 133.

[22] Rule 9 (5) of the POCSO Rules.

[23] Nipun Saxena v. Union of India, (2018) SCC OnLine SC 2439.

5. Under which provision(s) is an application for final compensation filed?

**Section 357 of the CrPC:**

Under this provision, the Special Court can direct compensation to be paid to the child victim out of the fine levied on the accused;

**Section 357A of the CrPC:**

Under this provision, the Special Court can direct compensation to be paid by the State government out of the victim compensation scheme notified by every State across the country;

**Both Section 357 and Section 357A of the CrPC:**

The Special Court can direct that compensation be paid under both Section 357 and Section 357A of the CrPC. The Special Court can order for compensation under both provisions, when the Court is satisfied that compensation awarded under Section 357 is “not adequate” for rehabilitation of the child victim. [24]

6. What is the difference between Section 357 and Section 357A of the CrPC?

<b>Section 357</b>	<b>Section 357A</b>
<ul style="list-style-type: none"> <li>• can be invoked only if the accused is convicted</li>   <li>• no payment of compensation is permitted till the time period for presenting an appeal has elapsed or, in cases where an appeal has been presented, the Appellate Court has passed its decision [25]</li> </ul>	<ul style="list-style-type: none"> <li>• can be invoked regardless of whether there is a conviction or not, if the Special Court believes that the child victim is in need of rehabilitation.</li>   <li>• No such limitation exists</li> </ul>

[24] Section 357A(3) of the CrPC; Raj Kumar v. State, (2019) SCC OnLine Del 11546.

[25] Raj Kumar v. State, (2019) SCC OnLine Del 11546.

## **7. Under which schemes is final compensation granted?**

In Delhi, as per the 'Delhi Victim Compensation Scheme, 2018' (DVC Scheme) has to be followed by the Special Court as guidelines while determining the amount of compensation to be paid to the child victim.

## **8. How is the final compensation amount disbursed?**

Once an order for final compensation is passed by the Special Court, a copy of the said order is forwarded to the DLSA. The bank account details of the child victim are cross-referenced and the amount is then disbursed in favour of the child.

## **9. Can the entire sum of final compensation be withdrawn by the child victim following its disbursement?**

No, the entire sum of final compensation awarded cannot be withdrawn from the bank account of the child victim.<sup>[26]</sup> As per the NALSA Scheme, 75% of the final compensation amount must be put in a fixed deposit, and the remaining 25% will be made available immediately for utilisation and initial expenses by the victim/dependent(s).<sup>[27]</sup> In the case of a minor, 80% of the final compensation shall be put in a fixed deposit for a minimum period of three years and the remaining 20% shall be available for utilisation and initial expenses by the child victim/dependent(s), as the case may be.

[26] Section 11 of the NALSA Scheme.

[27] Ibid@10



**10. After final compensation is awarded, and the accused gets acquitted on appeal, will the child victim still be entitled to final compensation?**

Yes, regardless of the outcome of the trial, a child victim is entitled to receive final compensation if the Special Court concludes that the child victim in the case before them has suffered as a consequence of sexual abuse.

**11. Under which mode of payment is final compensation disbursed to a child victim?**

The amount payable is deposited in the bank account of the child victim either in the single or joint name of the child victim/dependent. In the event the child victim does not have a bank account, DLSA<sup>[28]</sup> or the CWC<sup>[29]</sup> will facilitate the opening of a bank account along with the assistance of the District Child Protection Unit (DCPU) and the Support Person.

In cases where the child victim doesn't have a parent or legal guardian the compensation granted or interim relief is disbursed to the bank account of the child victim opened up under the guardianship of the Superintendent of the Child Care Institution the child victim is residing. In the absence of the superintendent, the amount is disbursed in the account of the drawing and disbursing officer/sub divisional officer.

[28] Rule 11(1) of the NALSA Scheme.

[29] Rule 10 (2) of the POCSO Rules.

## ANNEXURE A

### RELEVANT PROVISIONS ON COMPENSATION

Name of Act/Rules	Section	Relevant Part
<b>POCSO Act</b>	Section 33(8)	In appropriate cases, the Special Court may, in addition to the punishment of imprisonment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to the child and for immediate rehabilitation of the child.
<b>POCSO Rules</b>	Rule 9 (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 needs of the child victim 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.
<b>POCSO Rules</b>	Rule 9 (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.
<b>POCSO Rules</b>	Rule 9 (3)	<p>Where the Special Court, under sub-section (8) of section 33 of the Act read with sub-sections (2) and (3) of section 357A of the Code of Criminal Procedure, 1973 (2 of 1974) 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:-</p> <ul style="list-style-type: none"> <li>• type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;</li> <li>• the expenditure incurred or likely to be incurred on child's medical treatment for physical or mental health or on both;</li> <li>• 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;</li> <li>• 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;</li> </ul>

Name of Act/Rules	Section	Relevant Part
		<ul style="list-style-type: none"> <li>• the relationship of the child to the offender, if any;</li> <li>• whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;</li> <li>• (vii) whether the child became pregnant as a result of the offence;</li> <li>• (viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;</li> <li>• (ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;</li> <li>• (x) any disability suffered by the child as a result of the offence;</li> <li>• (xi) financial condition of the child against whom the offence has been committed so as to determine such child's need for rehabilitation;</li> <li>• (xii) any other factor that the Special Court may consider to be relevant.</li> </ul>
<b>POCSO Rules</b>	Rule 9 (4)	<p>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, 1973 or any other law for the time being in force, or, where such fund or scheme does not exist, by the State Government.</p>
<b>POCSO Rules</b>	Rule 9 (5)	<p>The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.</p>
<b>POCSO Rules</b>	Rule 9 (6)	<p>Nothing in the POCSO Rules prevents the child or child's parent or guardian or any other person whom the child trusts, including the Support Person, from applying for seeking relief under any rules or scheme of the Central Government or State Government.</p>
<b>POCSO Rules</b>	Rule 10 (1)	<p>The Child Welfare Committee (CWC) shall coordinate with the DLSA to ensure that any amount of fine imposed by the Special Court under the Act is to be paid to the child.</p>
<b>CrPC</b>	Section 357 (1)	<p>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—</p> <ul style="list-style-type: none"> <li>• in defraying the expenses of properly incurred in the prosecution;</li> </ul>

Name of Act/Rules	Section	Relevant Part
		<ul style="list-style-type: none"> <li>• 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;</li> <li>• 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;</li> <li>• 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.</li> </ul>
<b>CrPC</b>	Section 357 (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.
<b>CrPC</b>	Section 357 (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.
<b>CrPC</b>	Section 357 (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.
<b>CrPC</b>	Section 357 (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.
<b>CrPC</b>	Section 357A (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.

Name of Act/Rules	Section	Relevant Part
<b>CrPC</b>	Section 357A (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).
<b>CrPC</b>	Section 357A (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.
<b>CrPC</b>	Section 357A (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.
<b>CrPC</b>	Section 357A (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.
<b>CrPC</b>	Section 357A (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.

## RELEVANT CASE LAWS

Rationale	Case Name	Excerpts
<p><b>Special Courts under POCSO Act are vested with the power to process interim compensation applications</b></p>	<p><i>Mst.X (Through Mother and Natural Guardian) v. State &amp; Ors. SCC OnLine Del 2061</i></p>	<p>“26(k). There appears to be some dissonance and confusion insofar as the use of the words 'recommendation', 'order' and 'direction' is concerned, in that sections 357A(2) and (3) Cr.P.C. Clause 9(1)(Part-II) of the DVC Scheme 2018 and Rule 9(2) of the 2020 Rules speak of the court making 'recommendation' for award of compensation to the concerned legal service authority; but Rule 9(1) and (3) of the 2020 Rules say that the court may make an 'order' and 'direction' for award of interim compensation and compensation respectively. In relation to payment of interim compensation, under Rule 9(1) the court is empowered to make "an order for interim compensation". <u>To meaningfully construe these words, in the opinion of this court, a court seized of a plea for compensation under the POCSO Act, may in its discretion, do one of three things: (i) if the application is for interim compensation, the court may order payment of interim compensation to a victim; (ii) if the application is for compensation, the court may either recommend the award of compensation without specifying the quantum of compensation to be paid, leaving it to the concerned legal service authority to quantify it in accordance with the applicable schedule of the DVC Scheme 2018; or (iii) if the application is for compensation, the court may direct the concerned legal service authority to pay the compensation as quantified by it. Even a recommendation made by a court would be binding on the legal service authority and compensation would decidedly be payable, except the quantum payable would be left to be computed by the authority.</u> A direction to pay a quantified amount as compensation, would obviously be binding with no discretion left with the legal service authority.”</p> <ul style="list-style-type: none"> <li>• If a victim applies for compensation directly to the legal service authority and not to the court, the authority would decide whether compensation is payable, and if so in what amount, subject to the other stipulations contained in the DVC Scheme 2018.</li> <li>• <u>There should be no confusion that a decision made by the court, whether as a 'recommendation', 'order' or 'direction', would be binding on the legal service authority, subject only to the court leaving the discretion to quantify the compensation payable to the authority or otherwise, depending upon what is said in the decision.</u></li> </ul>

Rationale	Case Name	Excerpts
<p><b>In the absence of guidelines for passing orders on interim compensation under the POCSO Act, Special Courts are to follow NALSA guidelines</b></p>	<p><i>Nipun Saxena v. Union of India (2019) 13 SCC 715</i></p>	<p>“9. Keeping this hiatus in mind, we are of the opinion, after hearing learned Counsel for the parties as well as learned Additional Solicitor General, that <u>the NALSA Compensation Scheme should function as a guideline to the Special Court for the award of compensation</u> to victims of child sexual abuse.”</p>
<p><b>There is no bar on the Special Courts from disbursing interim compensation more than once to a victim child under the POCSO Act</b></p>	<p><i>Mother Minor v. State of Delhi (2020) SCC OnLine Del 2388</i></p>	<p>“25. This Court is of the view that since there is <u>no express bar which restricts the Special Courts to grant interim compensation only once, an application for further interim compensation can be considered.</u>”</p> <p>“26. It is also necessary to observe that an application for seeking further interim compensation cannot be premised on the ground that the order for payment of interim compensation passed in an earlier application is erroneous or inadequate. Such an application would be maintainable only if circumstances have subsequently arisen that were not in contemplation at the time when the special court had evaluated the requirement of interim compensation.”</p>
<p><b>Special Courts can suo moto grant interim compensation to a child victim; While granting interim compensation, Special Courts are not constrained by the limits provided in the State Victim Compensation Scheme</b></p>	<p><i>Bijoy v. State of West Bengal (2017) SCC OnLine Cal 417</i></p>	<p>“40(9). The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR <u>shall on his own or on the application of the victim</u> make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. <u>The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund.</u> The interim/final compensation</p>

Rationale	Case Name	Excerpts
		<p>shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357A of the Code or any other law for the time being in force through the State Legal Services Authorities on the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of Section 33(8) of the Act.”</p>
<p><b>Court to apply its mind on every case to awarding/ refusing compensation and provide reasons for refusal of the same.</b></p>	<p><i>Ankush Shivaji Gaikwad v. State of Maharashtra (2013) 6 SCC 770</i></p>	<p>“66. While the award or refusal of compensation under Section 357 of Code of Criminal Procedure, in a particular case may be within the Court's discretion, <u>there exists a mandatory duty on the Court to apply its mind to the question in every criminal case.</u> Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation. It is axiomatic that for any exercise involving application of mind, the Court ought to have the necessary material which it would evaluate to arrive at a fair and reasonable conclusion.”</p>
<p><b>Courts to exercise the power available under Section 357 of the Cr.P.C.</b></p>	<p><i>Hari Singh v. Sukhbir Singh and Ors (1988) 4 SCC 551</i></p>	<p>“10. ... Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused... It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to the victim who has suffered by the action of the accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.”</p>



Rationale	Case Name	Excerpts
<p><b>De-linking victim compensation with conviction</b></p>	<p><i>Manohar Singh v. State of Rajasthan (2015) 3 SCC 449</i></p>	<p>“10. We find that the Court of Sessions and the High Court have not fully focused on the need to compensate the victim which can now be taken to be integral to just sentencing. Order of sentence in a criminal case needs due application of mind. <u>The Court has to give attention not only to the nature of crime, prescribed sentence, mitigating and aggravating circumstances to strike just balance in needs of society and fairness to the accused, but also to keep in mind the need to give justice to the victim of crime.</u></p> <p>“11. ....While punishment to the accused is one aspect, determination of just compensation to the victim is the other. At times, evidence is not available in this regard. Some guess work in such a situation is inevitable. Compensation is payable under Section 357 and 357-A. <u>While under section 357, financial capacity of the accused has to be kept in mind, Section 357-A under which compensation comes out of State funds, has to be invoked to make up the requirement of just compensation.</u></p>
<p><b>Criminal court is under an obligation to consider the case of grant of interim compensation after taking cognizance of the matter.</b></p>	<p><i>Suresh v. State of Haryana (2015) 2 SCC 227</i></p>	<p>“16. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. 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”.</p>
<p><b>Importance of a Victim Impact Assessment Report while deciding compensation applications</b></p>	<p><i>Karan v. State NCT of Delhi &amp; Anr, (2020) SCC OnLine Del 775</i></p>	<p>“176. Upon receipt of the judgment and the affidavit of the accused, DSLSA shall conduct a summary inquiry to compute the loss suffered by the victims and the paying capacity of the accused and shall submit the Victim Impact Report containing their recommendations to the Court within 30 days. Delhi State Legal Services Authority shall seek the necessary assistance in conducting the inquiry from SDM concerned, SHO concerned and/or prosecution who shall provide the necessary assistance upon being requested.”</p> <p>“177. The Trial Court shall thereafter consider the Victim Impact Report of the DSLSA with respect to the impact of crime on the victims, paying capacity of the accused and expenditure incurred on the prosecution; and after hearing the parties including the victims of crime, the Court shall award the compensation to the victim(s) and cost of prosecution to the State, if the accused has the capacity to pay the same.”</p>

## ABOUT iProbono

iProbono is a social justice organisation whose mission is to enable people to access their rights. iProbono was born of the recognition that legal professionals have a responsibility to use their skills to serve and empower individuals and communities who require support. We bring together the legal expertise of our carefully curated community of panel lawyers, ground-level insights of our grassroots partners, and the ethos of social action litigation to advance justice and equality in India.

One of the main pillars of our work is litigation, in which we focus on cases of children in need of care and protection including survivors of sexual abuse, trafficking, and bonded labour. We engage in this work with the support of our panel advocates in Delhi, Mumbai, Bengaluru, Kolkata, Jaipur, and Jodhpur.

In addition to this, our team of social workers provide psychosocial support to child victims of abuse and their families. We also work towards systemic change by conducting training sessions and creating resource materials for NGOs, lawyers, and communities to build awareness on a variety of laws and also through targeted research and policy advocacy efforts with government agencies.