

Rehabilitation and Victim Compensation for Child Victims of Sexual Abuse

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Restorative Care as part of Access to Justice

- Although “restorative care” per se is not a term that figures in the existing literature on access to justice, its elements are visible in use of words like support services, relief measures, compensation etc.
- Traditionally, “restorative care” is a term used in the medical and health care system. It refers to follow-up care and rehabilitation of patients whose recovery takes a longer period. It uses a **multi-disciplinary approach** to bring such patients to their optimal functional level and restore them to their previous living arrangement. Thus, it typically **involves an inter-disciplinary team** consisting of nursing, occupational therapy, physiotherapy, recreation, social work, and other healthcare professionals who work through a **consultative process**, based on a **comprehensive assessment** and **restoration plan**. The **focus is on quality of life** including medical, physical, social, spiritual, and psychological needs. It is this restorative care philosophy that has driven the project goals in addition to addressing the other barriers to children’s access to justice.

[<http://www.centralhealth.nl.ca/restorative-care/>]

Why Restorative Care?

Given that the goals and process of “restorative care” as used in the medical field are no different from those sought to be achieved for children who are victims of violence and abuse, HAQ: Centre for Child Rights strongly recommends incorporation of the term “restorative care” in policy, law and action and as distinct element of “access to justice”.

Mental Health Concerns and Challenges

- 186 out of 237 (63%) children supported by HAQ in the last few years needed emotional assistance after abuse.
- Post abuse trauma takes up different forms like anxiety, depression, memory lapses and insomnia, flashbacks etc. Sometimes, it exhibits itself as psychosomatic symptoms like stomach aches and fever.
- In some cases, are scared of stepping out of the house, or trusting another person.
- Child victims are also wracked with guilt and shame.
- Parents and caregivers are equally traumatised and add to the child's trauma. Their healing is equally important, but seldom considered as part of child's rehabilitation plan.
- Mental Health services are not accessible. When available, it is often very expensive. Government facilities are often overloaded, and end up being insensitive and tardy.
- Psychologists often do not give a bill that can be shown for computation of victim compensation. Neither is it known before hand as to how many healing sessions would a child require.

Understanding Medical Needs

- In 51 out of 237 cases, the children needed medical support. 5 of them needed assistance through pregnancy and during delivery. In 3 cases the child needed follow up after MTP.
- In cases, where a child is pregnant or undergoes an MTP, post abortive and post-delivery care are of utmost importance to the child's health.
- Children sometimes need support for non-abuse related medical urgencies too.
- Free treatment in government hospitals does not take care of all medical needs.
- Sometimes hospitals lack the equipment required for certain tests and treatment. Families have trouble keeping up with the additional costs of medicines and tests which might be necessary for the child. Children who undergo colostomy surgery, need to frequently change the plastic bag that is attached to the artificial opening created for passing urine and stool.
- The waiting list in Government hospitals is too long and many have to make several visits before they get their turn, losing out on their daily wages.
- Such needs seldom get assessed.

Shelter/Protection Needs

- In 38 cases, children and their families received threats and proposals to compromise, as the accused and the family of the accused knew the child's location.
- In 7 cases, the family of the accused lived nearby, making it difficult for the children and their families to continue to live in the same neighbourhood. In 4 such cases families relocated.
- Relocation is not easy as often people's workspaces are located close to their homes. It is also difficult for those who live in self owned houses and may not get another house in what they can afford. Those living as tenants may have to pay higher rents for relocating.
- In cases of incestuous abuse, where the accused is from the family, sometimes the children have to be placed within shelter homes, as the child is not safe in their own home.

Educational Needs

Educational status of the children	No. of Children
Dropped due to incident	58
Dropped before incident	25
Changed school due to incident	6
Never been to school	11
Children had no motivation and will to go to school	7

- All 94 students who had dropped out of the school before or after the incident, or who had never been to school, HAQ ensured that 83 resumed studies or joined a vocational training course.
- 18 children were enrolled through the National Institute of Open Schooling, 15 were enrolled in Vocational Training Courses and 40 into regular schools.
- 3 children were enrolled in special schools, while 3 children are pursuing both vocational training and school simultaneously.
- 2 children are linked to private coaching centres so as to help them take their exams privately.
- 1 child now goes to an Anganwadi, while another young child has started going to a Madarsa.

Familial Needs

Familial Need identified	No. of Cases
Family members undergoing trauma after the incident and require counselling	16
There is violence in the family and necessary steps needed to be taken to protect the child from violence	9
Mother of the child required assistance for dealing with domestic violence	6
Mother of the child needs to be empowered economically to earn a livelihood	7
There is an alcoholic parent in the family / sibling or parent is addicted to drugs	5
Total	43

Paralegal Needs

- In 45.6% of the cases (108 out of 237), the families and children needed paralegal assistance for
 - getting their documents in place to access compensation or admission in school or benefits under any government programmes
 - get copies of basic case related documents and information from the police / court as mandated under Rules 4(11) and 4(12) of the POCSO Rules and Section 25 of the POCSO Act
 - pre-testimony court visit to get familiarised with the court procedures and ambience
 - Processing and following up on victim compensation with DLSA or the police
 - Seeking protection through the Child Welfare Committee

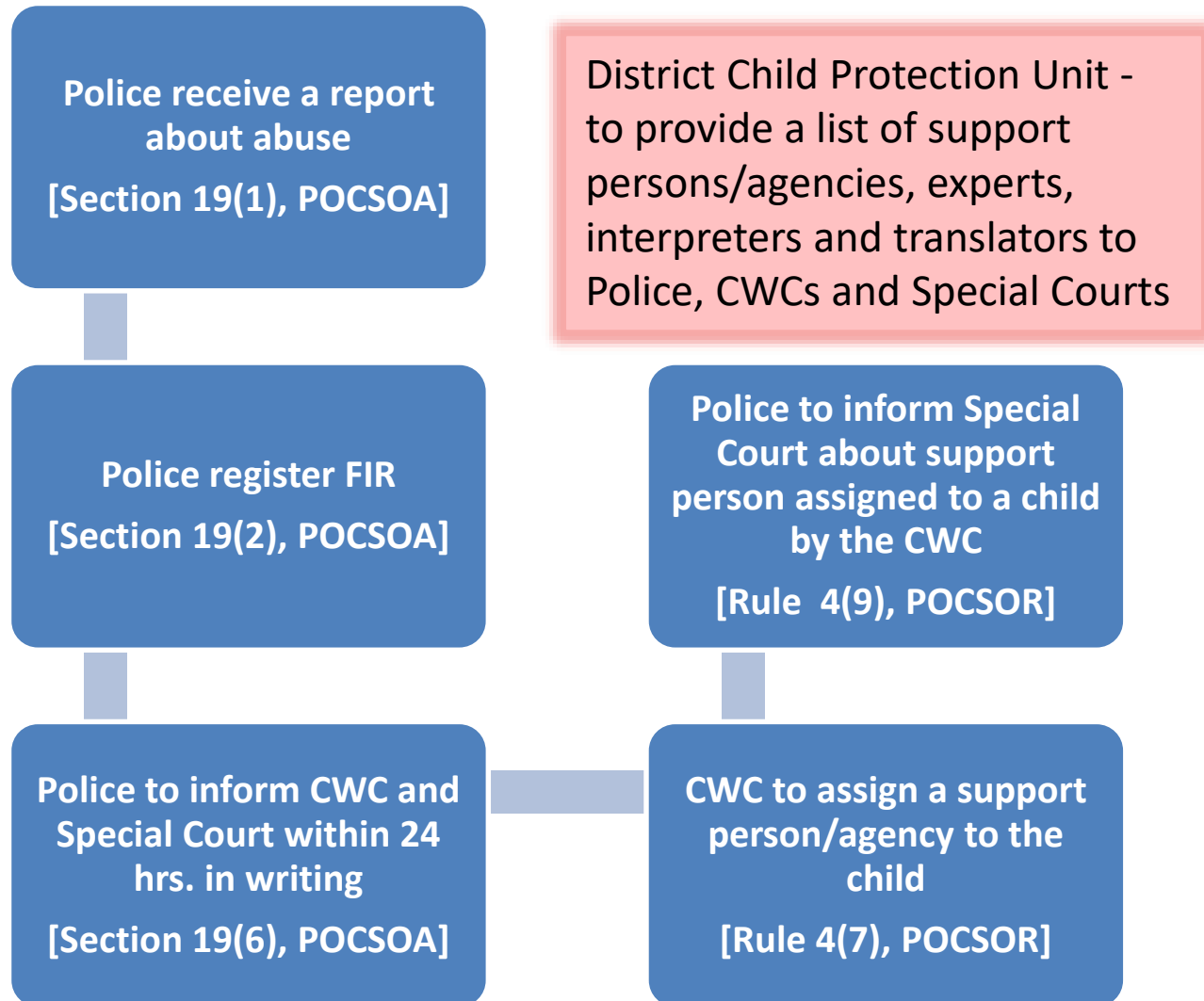
Restorative Care as part of Access to Justice

- The most critical component of “restorative care” process is case-work management. The case worker is the support person, who is part of a larger process that needs to be systematic and organised in order to achieve the goals of “restorative care”.
- Unfortunately support persons for such case-work management are not being provided.
- Most support persons are DLSA or court appointed lawyers, who meet the child for the first time on the day of the child’s testimony.

Who can be a support person? [Rule 4(7), POCSOR]

- An individual such as:
 - Social Worker working in the field of child rights or child protection
 - Counsellor working in the field of child rights or child protection
 - Official of a children's home or shelter home having custody of the child
 - DCPO or such other person employed by the DCPU
- Non Governmental Organisation(NGO) working in the field of child rights or child protection

Where will Support Persons come from?



What if CWC does not assign / appoint a support person?

Child / parent or guardian / person trusted by child can independently seek the support / assistance of any person or non-governmental organisation
[Proviso to Rule 4(7), POCSOR]

Special Court can facilitate the appointment of a support if a child does not have one. The Court has powers to take assistance of EXPERTS for recording child's evidence **[Section 38, POCSOA]**.

**Victim Compensation:
Not Even a Drop in the Ocean**

Ankush Shivaji Gaikwad v. State of Maharashtra
AIR 2013 SC 2454

“...unless Section 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision.”

“...compensation is not ancillary to other sentences but is in addition to other sentences.”

Delhi Domestic Working Women Forum v. Union of India
(1995) 1 SCC 14

“Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not conviction has taken place.”

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

There is a statutory duty upon the State, under Section 357A of CrPC, to award compensation to victims of crime.

A new Section 357A was introduced to the Criminal Procedure Code in order to cast a responsibility on the State Governments to formulate Schemes for compensation to the victims of crime in coordination with the Central Government.

Unlike Section 357, the onus was not simply on the offender to pay the compensation, but had been put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case.

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

“The object and purpose of the provision of Section 357A CrPC is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated.”

Victim Compensation under the POCSO Act



Section 33 (8)...

In appropriate cases, the Special Court **may**, in addition to punishment, direct payment of such compensation as may be prescribed, **to the child** for any physical or mental trauma caused to her / him **or for immediate rehabilitation** of such child.

The term used in Section 33 (8) is “child”, i.e. a living child.

What about compensation for a child who dies as a result of sexual assault or during the course of trial?

Who will get the compensation in that case?

Will definition of ‘victim’ under Section 2 (wa) of the (Cr.P.C.) apply?

Interim Compensation under the POCSO Rules



Rule 7 (1) of POCSO Rules –
Interim compensation
order may be passed by
Special Court...

- on its own
- on an application filed by
or on behalf of child
- to meet immediate
needs of the child for
relief and rehabilitation
- at any stage after
registration of FIR

What is meant by “any stage after registration of FIR”?

When do Special Courts first interact with the child?

How do the Special Courts then determine the immediacy of the need?

**Who decides the amount to be awarded
– Special Court of DLISA?**

More Areas of difficulty

- If order for interim compensation may be passed at any stage 'after registration of FIR, what will happen in cases where the accused is a child in conflict with the law (CICL) and no FIR is registered as the alleged offence does not fall in the category of heinous offences?

Final Compensation under the POCSO Rules



May recommend award of compensation

- on its own
- on an application filed by or on behalf of victim
- if in opinion of the Special Court, the child has suffered loss or injury as a result of the offence
- irrespective of
 - Conviction
 - Acquittal
 - Discharge
 - Accused not traced or not identified

Use of both “victim” and “child” is confusing and raises the same question about whether a deceased child is entitled to compensation?

Who decides the amount to be awarded – Special Court of DLSA?

Should the Special Court pass an order on final compensation as part of the judgement, even if an application for compensation is rejected?

Victim Compensation under the POCSO Rules



Rule 7(3)...

- Lists certain factors to be considered for making a direction for award of final compensation
- Gives discretion to Special Courts to consider any factors other than those listed

Are these factors to be considered only for determining final compensation or also for determining interim compensation?

Is there any role for victim compensation scheme of the Central Government or State Governments if the Special Courts have to determine compensation based on the listed factors?

Bijoy v. State of West Bengal

2017 Cril. J. 3893

*“34. Compensation envisaged under the aforesaid provision of law may be awarded by the Special Court at the interim stage also for immediate relief and rehabilitation of a child victim in light of the parameters laid down under Sub-Rule (3) of Rule 7 of the aforesaid Rules. Such compensation payable by the State is independent of the compensation which may be directed to be paid by the convict upon conviction in terms of Section 357(2) and (3) of the Code. The philosophy of awarding compensation by the State is in the nature of a reparation to the victim of crime on its failure to discharge its sovereign duty to protect and preserve sanctity and safety of the individual from the ravages of such crime. I am informed that **a Victim Compensation Fund has been notified by the State under Section 357A CrPC, which, inter alia, prescribes the minimum amount of compensation that may be awarded for various offences/injuries in the following manner as set in the schedule of the notifications.**”*

**The Minor Through Guardian Zareen v. State (Govt
of NCT of Delhi)
W.P.(CRL) 798/2015**

*“The definition under Section 357 (A) is very wide and would in fact even cover cases which are covered under The Protection of Children from Sexual Offences Act, 2012 but then the **reading of Section 33 of the Act would show that the power has been given to the Special Court to grant compensation and there is no outer limit which has been fixed while granting the compensation.**”*

Victim Compensation under the POCSO Rules

Rule 7(4)...

The obligation of the State Government to pay compensation is absolute

Compensation to be paid –

- from the Victims Compensation Fund or any scheme or fund
(Such scheme of fund should have been established for compensation and rehabilitation of victims under Section 357A of the CrPC or under any other law)
- If no Victim Compensation Fund or other scheme exists, such compensation is payable by the State Government.

Victim Compensation Fund is the vehicle through which the compensation amount is to be paid by the State Government.

Such Fund or Scheme does not limit the powers of the Special Court in determining the amount of compensation.

Nipun Saxena v. Union of India
Writ Petition (Civil) No. 565/2012

Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes

Order dated 5 September 2018...

“the NALSA’s Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse under Rule 7 until the Rules are finalized by the Central Government”

“the legislation is gender neutral and, therefore, the Guidelines will be applicable to all children.”

The scheme and guidelines became operational on October 2, 2018.

Victim Compensation under the POCSO Rules

Rule 7 (5)...

- Compensation awarded by the Special Court must be released to the victim within 30 days of the Special Court's order

Rule 7 (6)...

- Awarding of compensation to a child under the POCSO Act shall not exclude such child from seeking relief, including compensation, under any other scheme of the Central Government or State Government

Reality Bytes...237 children supported by HAQ

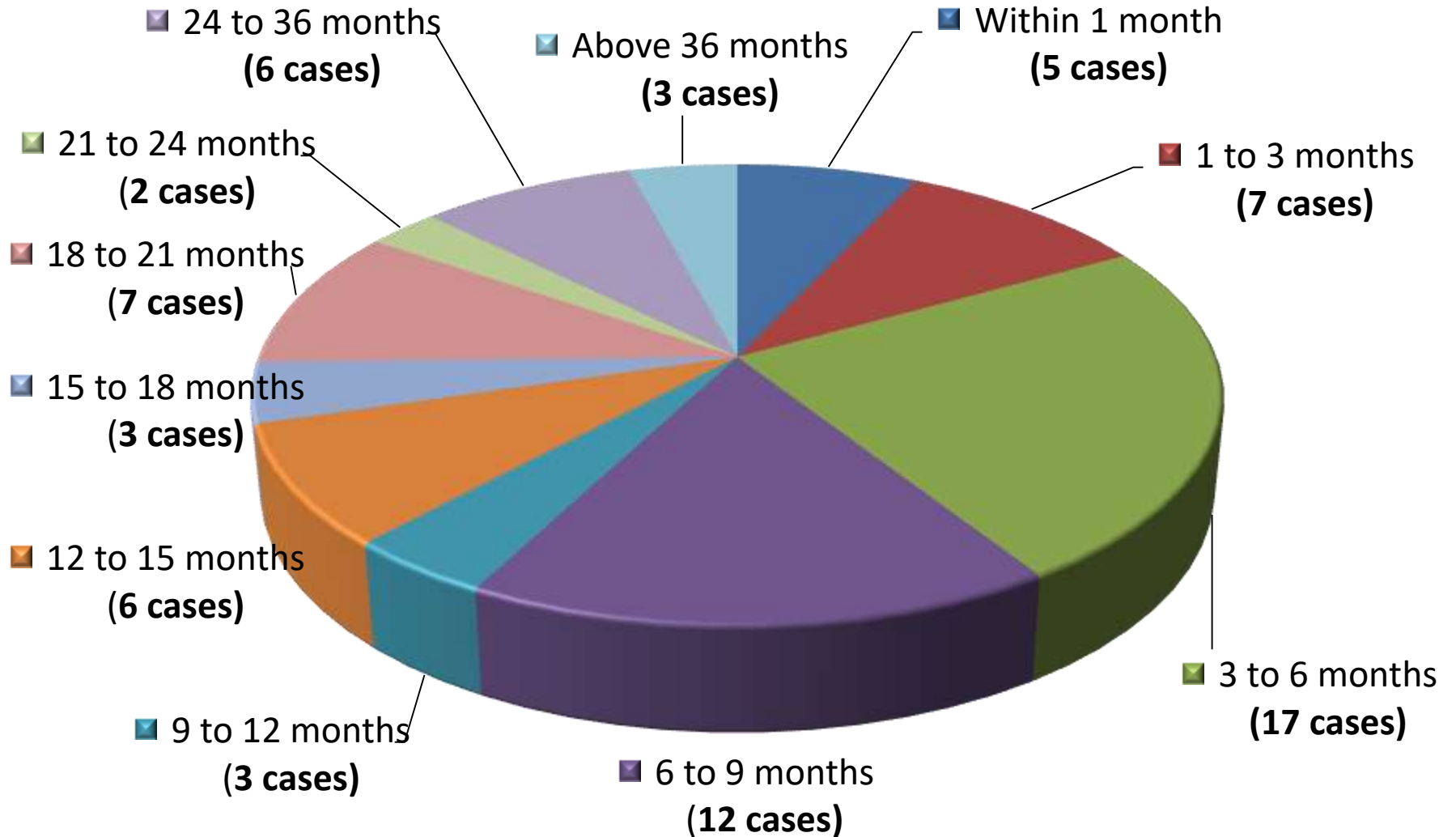
Interim Compensation

Year of FIR	No. of cases	Year of Grant							
		2013	2014	2015	2016	2017	2018	2019	Total
2012	4	0	1	0	0	0	0	0	1
2013	12	0	3	0	1	0	0	0	4
2014	11	0	2	0	1	1	0	0	4
2015	63	0	0	7	4	5	4	0	20
2016	42	0	0	0	8	6	1	0	15
2017	33	0	0	0	0	3	5	1	9
2018	49	0	0	0	0	0	3	13	16
2019	23	0	0	0	0	0	0	2	2
Total	237	0	6	7	14	15	13	14	71

Interim Compensation

Legal provisions put to use	Application filed before the Special Court + Granted by the Special Court + Amount of compensation also decided by the Special Court	Application filed before the Special Court + Special Court forwarded to DLSA for further action (to decide on whether to grant or not as well the amount)	Application filed before DLSA + Awarded by DLSA
u/s 357A CrPC	2	8	6
u/s 33(8) POCSO Act /Rule 7 POCSO Rules	50	5	0

Time Taken from the Date of FIR for Granting Interim Compensation



Delay - From Grant to Actual Disbursement and Receipt of Interim Compensation

FIR Date	Award of Interim Compensation	Delay since award of interim compensation (as on 30 September 2019)
11 Feb 2017	11 April 2018	17 months 27 days
4 March 2018	27 April 2019	5 months 6 days
7 February 2018	20 July 2019	2 months 12 days
6 March 2018	31 August 2019	1 month
6 March 2018	31 August 2019	1 month
15 June 2018	3 April 2019	6 months
28 August 2018	17 November 2018	10 months 17 days
3 December 2018	25 September 2019	5 days
29 April 2019	28 May 2019	4 months 5 days
4 April 2019	26 September 2019	4 days

This is just a glimpse of 10 cases where HAQ team has been struggling to help the child with interim compensation.

Final Compensation

Year of FIR	No. of cases	Year of Grant							Total
		2013	2014	2015	2016	2017	2018	2019	
2012	4	0	0	0	0	0	0	1	1
2013	12	0	0	0	0	0	0	1	1
2014	11	0	0	0	0	1	0	1	2
2015	63	0	0	0	1	1	1	2	5
2016	42	0	0	0	0	1	0	0	1
2017	33	0	0	0	0	0	0	0	0
2018	49	0	0	0	0	0	0	2	2
2019	23	0	0	0	0	0	0	0	0
Total	237	0	0	0	1	3	1	6	12

More Reality Bytes...

In a study of 1803 cases from six Special Courts in Delhi,

- 365 cases were disposed of by way of acquittal or conviction.
- No compensation was awarded in cases that ended in acquittal.
- Of the 79 cases that ended in conviction, information on compensation was available only in seven cases.

Study by HAQ: Centre for Child Rights & FACSE. Available at:

<http://haqcrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>

Summing Up

- Rehabilitation of children is the weakest component under the POCSO Act and poor implementation combined with lack of necessary convergence and coordination make things worse for children.
- Even the few necessary linkages between JJ Act and POCSO Act that stand established in law, are missing on ground.
 - For example, Children are restored without court's knowledge – no linkage between Special Courts and JJ system
- Special Courts need to use services of support persons who can not only help with case work management but also help the courts with needs assessments, including witness protection needs

Summing Up

- Interim compensation loses its meaning as Special Courts do not dispose of the application until the child has testified in court and does not turn hostile.
- Opening of bank accounts is a huge problem as many children do not have proper documents.
- Sometimes bank managers create difficulties by putting the entire amount in a fixed deposit, even if it is interim compensation granted to meet the immediate needs of the child for which money is required.
- DLSAs rely on IOs and SHOs for verification of documents, which causes further delay.

Summing Up

- Special Courts are still not determining the quantum of compensation and are passing the decision to DLSAs, which causes further delay
- Final compensation is not being given in cases that end in acquittal or for that matter where the accused cannot be traced or identified, despite the fact of sexual assault getting established.

THANK YOU!