

Understanding Impact of POCSO Offences on Victim and Rehabilitation of Victim

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Some Critical Issues

The impact of sexual abuse on children is unimaginable. In fact it impacts the entire family and not just the child.

- Children are pushed out of school
- Landlords ask their parents to vacate
- Fear grips the entire family
- Children's movement gets restricted as a result – they cannot lead a normal life any more
- Children start blaming themselves
- Parents blame themselves for not being able to protect their children
- Apprehensions and fears of parents and inability to deal with their anxieties adds to their trauma
- No psychological healing for victims
- No care for caregivers

Some impact can be mitigated if attention is paid to the following:

- Victim Compensation
- Right to Legal representation
- Judicious use of powers bestowed upon the courts
- Right to be heard during bail
- Witness Protection
- Support Services

Need Assessment Data for 342 families of CSA survivors

S. No	Need of the family	Number of the families
1	Food	130
2	Medical	15
3	Domestic Violence reported	4
4	Shelter	54
5	Threats	6
6	Education	9 - Not able to attend online classes or summer camps as family do not have an android phone
		6 – Not able to pay school fees and hence have not been attending classes
Total number of families contacted		342

Law of Compensation in POCSO Act vs. Victim Compensation Scheme

Settled by

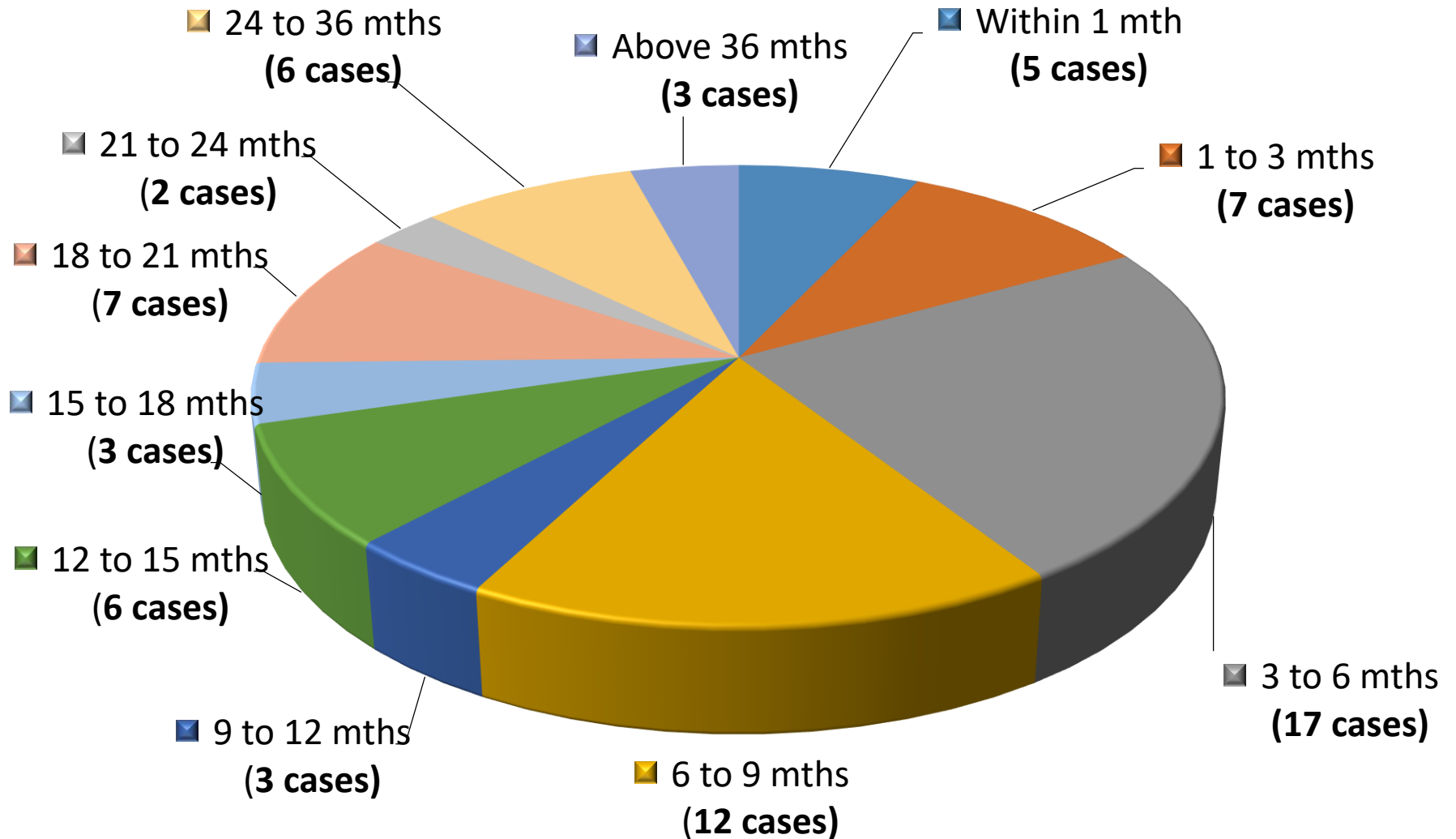
- Nipun Saxena & Anr vs. Union of India [Writ Petition Civil no. 565 of 2012] – Supreme Court of India
- Bijoy v. State of West Bengal [2017 Cril. J. 3893]
- Delhi High Court in The Minor Through Guardian Zareen Versus State Govt. of NCT of Delhi in [W.P. (Crl.) 798 of 2015]

Reality Bytes...

Interim Compensation (in cases supported by HAQ for both legal and psychosocial needs)

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

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 (in cases supported by HAQ for both legal and psychosocial needs)

Year of FIR	No. of cases	Year of Grant							
		2013	2014	2015	2016	2017	2018	2019	Total
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

Victim Compensation

- Why is it so difficult to grant interim compensation?
- Why are immediate interim compensation procedures so cumbersome in cases under the POCSO Act?
- Is it an entitlement or a charity?
- Hasn't the state failed the child as much as the accused?
- And isn't every other institution of the state failing the child by delaying or neglecting the victim compensation needs?
- Compensation for victims residing in child care institutions/orphans – who can apply, who will manage the use of compensation amount, procedures for monitoring the use of victim compensation amount in case of children in institutional care
- Compensation for a deceased child - who dies in the course of trial ???

- **Final Compensation** – who shall determine the amount? POCSO Courts are not bound by the state victim compensation scheme. They can grant higher amounts if there is a need.
- Should there not be an order declining compensation if it is not awarded?
- Compensation “may” be given should imply an order accepting or rejecting. But there is silence when compensation is not being granted. No orders to that effect are made.
- Courts have to take suo moto cognizance of POCSO cases and take up victim compensation also suo moto if there is no application.

Incest- father in jail – mother unsupportive – child in institution – who will sign the vakaltnama so that child can exercise their right to be represented by a lawyer of their choice u/s 40 of the POCSO Act?

- Smt. Lavanya Anirudh Verma vs. State of NCT Delhi (Crl. M.C. 301/2017) – Delhi High Court

Continuous threats from the accused's side and pressure to compromise. Yet bail is granted. Should victims not be heard at the time of granting bail? This is not to say don't grant bail. This is to say ensure victims are heard and their protection needs are addressed while granting bail.

- Criminal Law Amendment, 2018
- Reena Jha and Anr. Vs. Union of India & Ors. (W.P.(C) 5011/2017)– Delhi High Court
- Miss G. (Minor) Through her Mother vs. State of NCT Delhi & Anr. (Crl.M.C. 1474/2020) – Delhi High Court

Witness Protection

- Sexually abused by a Tantrik, Minor ‘X’ succumbed to her mental illness aggravated by the trauma of abuse and threats to her and her family from the accused.
- These are some unnerving cases. There may others not so bad, but equally deserving of witness protection. For example, cases of stalking.

Wither Witness Protection?

- Mahender Chawla & Ors. Vs. Union of India & Ors. [Writ Petition (Crl.) No. 156/2016] – Supreme Court
- Witness Protection Scheme, 2018

Are Special Courts really Special? A Case Study

- “Perusal of the file reveals that PW3 prosecutrix 'D' is the only star witness of this case but she has turned hostile and has not supported the prosecution case”.
- The hesitation of the child to initiate action against her father is reflected in the deposition of the trainee teacher (PW2) - “Prosecutrix 'D' was too reluctant to take any legal action against her father at that time as she was worried about the family and thought that such an action would bring a bad name to the family.” **PW2’s evidence was not considered as she was not brought to court for cross-examination.**
- The Court has ample powers under Section 165 of the Indian Evidence Act to put any question to the witness to elicit the truth. How often is this power brought to use?
- Why was the teacher not brought to court for cross-examination in this case?
- Why is it that most critical witnesses are either not found in the list of witnesses or not followed-up? Is it not the responsibility of the Prosecution to ensure this? Why then is the Prosecution silent almost always when it comes to the list of witnesses and their follow-up? Is the Prosecution there to serve the police and its lack of capacity or is it to represent the state as a body that failed to protect a child in the first place?

Courts not aware of CWC appointed Support Persons

Rule 4, POCSO Rules 2020 –

- CWC to appoint Support Person
- Police to inform Special Court about the appointment of Support Person within 24 hours
- Courts remain unaware of support persons appointed by CWCs
- Legal Aid Lawyers cannot be support persons as they come into the picture only at the time of testimony or for victim compensation
- Courts need to engage with the support persons to understand the impact of abuse on the victim and their needs or even cases of consensual sexual relationships for that matter

Delays are a hurdle in Rehabilitation

- How long do children wait before their testimony is recorded?
- The delays do not allow victims to move on in life.
- Many grow up into adults during the course of trial.
- Children belonging to another state or district – should they be restored or not? Can they be kept away from home just because their testimony is to be recorded?
- Is it easy to bring them back for their testimony?
- Is testimony through video conferencing arranged?

THANK YOU!