

By e-mail

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

No. HC.III-15/2018/ 1368 /G

From: Shri D.K. Das,
Registrar (Judicial),
Gauhati High Court, Guwahati.

✓**To:**

The District & Sessions Judge,

Barpeta / Baska, Mushalpur / Bongaigaon / Cachar, Silchar /
Chirang, Kajalgaon / Darrang, Mangaldoi / Dhemaji / Dhubri /
Dibrugarh / Dima Hasao / Goalpara / Golaghat / Hailakandi /
Jorhat / Kamrup (M), Guwahati / Kamrup (R), Amingaon / Karbi
Anglong / Karbi Anglong (West) / Karimganj / Kokrajhar /
Lakhimpur, North Lakhimpur / Morigaon / Nagaon / Nalbari /
Sivasagar / Sonitpur, Tezpur / Tinsukia / Udalguri, Assam.

Dated Guwahati the 1st October, 2018

Ref: Order dated 05.09.2018, passed by the Hon'ble Supreme Court of
India in WP(C) No. 565/2012.

Sir / Madam,

I am directed to forward of order dated 05.09.2018, passed by the
Hon'ble Supreme Court of India in the case under reference along with a copy of
the "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other
Crimes-2018" prepared by NALSA for your information and further circulation
amongst all the Judicial Officers under your respective jurisdiction.

I am further directed to request you to upload the "Compensation
Scheme for Women Victims/Survivors of Sexual Assault/other Crimes-2018" in
the website of your respective District.

This is for your information and necessary action please.

Yours faithfully,

Encl: As stated above.

REGISTRAR (JUDICIAL)

3.10.18
01/10/18

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

684261

WRIT PETITION (C) NO.565 OF 2012

NIPUN SAXENA & ANR.

PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

RESPONDENT(S)

WITH

W.P.(CrI.) No. 1/2013

W.P.(C) No. 22/2013

W.P.(C) No. 148/2013

SLP(CrI.)...CRLMP No. 16041/2014

W.P.(C) No. 568/2012

ORDER

Handwritten signature and date: 15.9.18

Subsequent to our order dated 10th August, 2018, the Committee has looked into the suggestions made to the Victim Compensation Scheme and now finally the Guidelines have been placed before us under the heading of NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes-2018.

It has been brought to our notice that as far as children are concerned, no Scheme of this nature has been framed with regard to the victims of sexual abuse under the provisions of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

Section 33 of the POCSO Act deals with the procedure and powers of the Special Courts. Our attention has been drawn to Section 33(8) of the POCSO Act. This reads as follows:

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

Section 45 of the POCSO Act deals with the rule making power and it refers, *inter alia*, to the payment of compensation under sub-section (8) of Section 33 of the POCSO Act.

Our attention has also been drawn to Rule 7 of the Protection of Children from Sexual Offences Rules, 2012.

This Rule reads as follows:

"7. Compensation .-(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 immediate needs of the child 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.

(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.

(3) 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, 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:

(i) type of abuse, gravity of the offence and the severity of the mental or physical harm or injury suffered by the child;

(ii) the expenditure incurred or likely to be incurred on his medical treatment for physical and/or mental health;

(iii) 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;

(iv) 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;

(v) the relationship of the child to the offender, if any;

(vi) whether the abuse was a single isolated incidence or whether the abuse took place over a period of time;

(vii) whether the child became pregnant as a result of the offence;

(viii) whether the child contracted a sexually transmitted disease (STD) as a result of the offence;

(ix) whether the child contracted human immunodeficiency virus (HIV) as a result of the offence;

(x) any disability suffered by the child as a result of the offence;

(xi) financial condition of the child against whom the offence has been committed so as to determine his need for rehabilitation;

(xii) any other factor that the Special Court may consider to be relevant.

(4) 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 or any other laws for the time being in force, or, where such fund or scheme does not exist, by the State Government.

(5) The State Government shall pay the compensation ordered by the Special Court within 30 days of receipt of such order.

(6) Nothing in these rules shall prevent a child or his parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government."

On a reading of the aforesaid Rule, it appears to us that the Special Court may, in appropriate cases, on its own or on an application having been filed, pass an order for interim compensation for the immediate needs of the child. Of course, this Rule is a gender neutral provision.

Ms. Pinky Anand, learned Additional Solicitor General informs us that there is a proposal to amend the POCSO Act and that the Rules will be framed after the amendment in the POCSO Act is made.

In the interim, therefore, the situation is that there are no Guidelines or Rules that are applicable on the basis of which the Special Court can pass appropriate orders.

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 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 Special Judge will, of course, take the provisions of the POCSO Act into consideration as well as any circumstances that are special to the victim while passing an appropriate order.

We need not emphasise that the legislation is gender neutral and, therefore, the Guidelines will be applicable to all children.

The Special Judge will also pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or mis-utilized and is actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest-bearing account may be passed.

A copy of the NALSA's Compensation Scheme as well as a copy of this order should be sent by the Registry to the Registrar General of every High Court with a direction that the Registrar General will circulate them to all the concerned District Judges for circulation to the Special Judges and the State, District and Taluka Legal Services Committees.

A copy of the Scheme and a copy of the order passed by this Court will also be sent by the Registry to all the Judicial Academies for information.

We also direct that the publicity should be given to the Scheme as well as the order passed by us on regular basis until the Rules are finalized by the Central Government. Learned Additional Solicitor General assures us that the needful will be done on a regular basis through all forms of media.

Needless to say that the Scheme and the Guidelines will be operational from 2nd October, 2018.

We acknowledge and appreciate the efforts put in by the Committee and NALSA in framing the Scheme and assisting us in its extension to child victims.

After the Scheme and the Guidelines are operational for some time, if necessary, revisions can be made.

.....Sd/-.....J.
(MADAN B. LOKUR)

.....Sd/-.....J.
(S. ABDUL NAZEER)

.....Sd/-.....J.
(DEEPAK GUPTA)

NEW DELHI
SEPTEMBER 05, 2018



NALSA's

Compensation Scheme for Women Victims/Survivors of
Sexual Assault/other Crimes - 2018

National Legal Services Authority

12/11, Jam Nagar House, Shahjahan Road, New Delhi
Website: www.nalsa.gov.in e-mail: nalsa-dla@nic.in

Background

Hon'ble Supreme Court of India in W.P. (C) No. 565/2012 titled *Nipun Saxena Vs. Union of India* opined that *"it would be appropriate if NALSA sets up a Committee of about 4 or 5 persons who can prepare Model Rules for Victim Compensation for sexual offences and acid attacks taking into account the submissions made by the learned Amicus. The learned Amicus as well as the learned Solicitor General have offered to assist the Committee as and when required. The Chairperson or the nominee of the Chairperson of the National Commission for Women should be associated with the Committee."*

In view of the above, NALSA set up a committee consisting of the following members for preparation of Model Scheme:

Ms. Pinky Anand
Additional Solicitor General

Shri Rakesh Srivastava
Secretary, Ministry of Women and Child Development,
Government of India

Shri T.V.S. N. Prasad
Additional Secretary, Ministry of Home Affairs,
Government of India

Ms. Indira Jaising,
Senior Advocate, Supreme Court of India

Shri Alok Agarwal
Member Secretary, NALSA

Shri Surinder S. Rathi,
Director, NALSA

Ms. Anju Rathi Rana,
Joint Secretary,
Department of Legal Affairs,
Ministry of Law and Justice, Govt. of India

Shri K.L. Sharma,
Joint Secretary
National Commission for Women

Ms. Bharti Ali
Co-Director,
HAQ: Centre for Child Rights

The Committee held rounds of meetings and it was decided to prepare a separate "Chapter" or a "Sub-Scheme" within the existing Victim Compensation Scheme for victims of sexual assault.

The Committee drafted Part – II of the Victims Compensation Scheme and invited suggestions/comments from various stakeholders on the draft. Taking into consideration the suggestions/comments, the Committee has finalized the **Compensation Scheme for women Victims/Survivors of Sexual Assault/other Crimes** and submitted the same before the Hon'ble Supreme Court of India on 24.04.2018.

Submissions were made before the Hon'ble Bench and other stakeholders were also heard on 10.05.2018. Additional suggestions received during the hearing were also incorporated and final Scheme was filed before the Hon'ble Supreme Court of India on 11.05.2018. On this day, after hearing NALSA and Ld. Amicus Curiae, Hon'ble Bench was pleased to accept this Scheme and directed all the State Governments/UT Administrations to implement the same in their respective States/UTs.

Hon'ble Supreme Court of India further observed that while nothing should be taken away from this Scheme, but it does not preclude the State Governments/UT Administrations from adding to the Scheme.

(Surinder S. Rath)
 Director, NALSA

PART-II

The Chapter contained in this part shall be called “**Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes**”

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