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SCHEMES, ORDERS AND CIRCULARS RELATED TO VICTIM COMPENSATION

JHARKHAND STATE LEGAL SERVICES AUTHORITY

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ARTICLES

Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012

Introduction

An Overview of the Protection of Children from Sexual Offences Act, 2012

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the Rules framed thereunder.

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor. People who traffick children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months’ imprisonment and/ or a fine.

The said Act also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child.

The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a

courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

The said Act recognises almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences.

The said Act is to be implemented with the active participation of the State Governments. Under Section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including non-governmental organisations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage. The following guidelines are Model Guidelines formulated by the Central Government, based on which the State Governments can then frame more extensive and specific guidelines as per their specific needs.

Multi-sectoral Approach

Children who have been sexually abused are not only traumatised as a result of their experience, but are also more vulnerable to further and repeated abuse and at risk of secondary victimisation at the hands of the justice delivery process. A common example is the handling of cases of child victims by unspecialized police, prosecutors and judges who are not trained in justice for children, children's rights or how to deal and communicate with victim children and their families. The lack of clear guidelines and procedures on how to deal with child victims and their families in a child – sensitive manner during the court process affects the quality of trial and evidence and trial process; the child is subjected in such cases to repeated probing and questioning, made to relive the traumatic incident again and again, and thereby suffer in the retelling. Another instance is that of child victims not receiving proper medical support and counselling, causing physical and mental distress to the child and his/her family and hampering the healing process for the child. In addition to this, families and child victims are unable to benefit from legal aid as the appropriate agencies are not involved at the right stage in the procedure. Child victims do not receive timely advice and assistance so as to be free from a fear of family breakdowns and social isolation if the offender is a relative and/or the breadwinner of the family. There is also no system of supervision for checking the welfare and well-being of child victims during and after the court process, particularly when the abuser is the parent or guardian of the child.

There is thus a need for prompt and systematic multi-sectoral intervention that will be conducive to the justice delivery process, minimise the risks of health problems, enhance the recovery of the child and prevent further trauma. This can be achieved through action that addresses the needs of the child effectively, not only to protect him from further abuse and help him deal with his/her trauma but also to ensure that he is not revictimised in the course of the

justice delivery process. In addition to this, it also has to be ensured that the child is steered towards the path of healing, recovery and rehabilitation.

The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinated response of all the key players, which include the police, prosecution, Courts, medical institutions, psychologists and counsellors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. Needless to say, the identification and understanding of the roles of each of these professionals is crucial to avoid duplication and promote effective convergence.

A multi-sectoral approach, while mindful of children's rights, would address the problems related to uncoordinated interagency mechanisms that child victims face in the legal and social service process. It will provide a frame work within which the service providers will work, and provide a mechanism for information-sharing to help the victim. The process of investigation and referral of cases will also improve. It is envisaged that such an approach will ensure support for the child and his/her family, including assistance with police and court proceedings, arrangements for emergency shelter for children, arrangements for counselling, therapy, and training courses, appropriate rehabilitative services including protective custody and foster care, if necessary; information on and access to financial assistance, where appropriate, and monitoring of family involvement.

The responsibility of supporting children who have been sexually abused should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process. These guidelines are therefore aimed at various professionals involved in providing services to the child and other affected persons including his/her family. Their objective is to foster better response mechanisms involving coordination amongst these professionals, so as to result in the evolution of a multi-sectoral, multi-disciplinary approach that will go a long way in achieving the objectives of the POCSO Act, 2012.

General Principles for use of Professionals and Experts Assisting the Child at Pre-trial and Trial Stages

The fundamental principles to be followed in the determination of a case involving a sexual offence against a child have been laid down in various international instruments and in the Preamble to the POCSO Act, 2012 itself. The State Governments, the Child Welfare Committee, the Police, the Special Courts, all other Government functionaries as well as Non-Government Organisations, and all professionals and experts assisting the child at the trial and pre-trial stages are bound to abide by these principles.

These principles are -

- a) *Right to life and survival* -Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect; and to a chance for harmonious development and a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.

- b) *The best interests of the child* - Every child has the right to have his/her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development. Protecting the child's best interests means not only protecting the child from secondary victimisation and hardship while involved in the justice process as victim or witness, but also enhancing the child's capacity to contribute to that process. Secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.
- c) *The right to be treated with dignity and compassion* - Child victims should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Interference in the child's private life should be limited to the minimum needed and information shared on a need to know basis. Efforts should also be made to reduce the number of professionals interviewing the child. At the same time, however, it is important that high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process. In order to avoid further hardship to the child, interviews, examination and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner in a child-friendly environment. All interactions should also take place in a language that the child uses and understands. Medical examination should be ordered only where it is necessary for the investigation of the case and is in the best interests of the child and it should be minimally intrusive.
- d) *The right to be protected from discrimination* - The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste and socio-economic condition, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, according to his/her age and level of maturity.
- e) *The right to special preventive measures* - Children may already face twice as much risk of repeated victimisation as adults because they often are or are perceived by a potential offender as being vulnerable, unsure of how to defend themselves or unable to properly assert themselves and take a strong position against an adult. A preventive measure that could be used to protect children is to demand references and a criminal background assessment before hiring personnel likely to work with children, such as schoolteachers.
- f) *The right to be informed* - There are two aspects of child victims' and witnesses' right to be informed. The first aspect is the more general one and consists of informing child victims and witnesses about the assistance they are entitled to, the way legal proceedings are organized and the role they can play in those proceedings if they decide to do so. The second aspect is more specific and relates to information on the particular case in which the child is involved: it implies being informed about the progress of the case, about the scheduling of the proceedings, about what is expected of the child, about the decisions rendered, about the status of the offender, and so forth.

- g) *The right to be heard and to express views and concerns*—Every child has the right to be heard in respect of matters affecting him/her. The child has a right to participate at all levels: being informed, expressing an informed view, having that view taken into account, and being the main or joint decision maker. When, for any good reason, the requirements and expectations of the child cannot be met, it needs to be explained to the child, in a child-friendly way, why certain decisions are made, why certain elements or facts are or are not discussed or questioned in Court and why certain views are not taken into consideration. It is important to show respect for elements that a child finds important in his/her story, but which are not necessarily relevant as evidence.
- h) *The right to effective assistance*—The child must receive the required assistance to address his/her needs and enable him/her to participate effectively at all stages of the justice process. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s healing, as well as for justice and reintegration.
- i) *The right to privacy*—The child’s privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim or witness, in particular in the media, may endanger the child’s safety, cause the child intense shame and humiliation, discourage him from telling what happened and cause him severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers and community, especially in cases of sexual abuse. In some cases it might also lead to stigmatization by the community, thereby aggravating secondary victimization of the child. There are two essential ways of protecting the privacy of child victims and witnesses: firstly, by restricting the disclosure of information on child victims and witnesses and secondly, by restricting the attendance of the general public or non-essential persons in courtrooms.
- j) *The right to be protected from hardship during the justice process* - Throughout the justice process, child victims are exposed to hardship, also referred to as secondary victimization: this can occur while reporting the crime and recounting what has happened, while awaiting trial and while testifying in court. The judicial process is a very stressful one for the child; as far as possible, any stress the child may have as a result of the process should be minimized.
- k) *The right to safety* - Where the safety of a child victim may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child.
- l) *The right to compensation*— The child victim may be awarded compensation¹ for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of trial, as well as at the conclusion of the trial. Procedures for obtaining

¹ As per Section 33 (8) of POCSO Act, 2012 and Rule 7(3) of POCSO Rules, 2012 so as to commensurate with the short and long term negative impact on the child. Further, as stated in Rule 7 (4) of the POCSO Rules, 2012, the compensation is to be paid by State Government from the Victims Compensation Fund or other scheme or fund established by it under

and enforcing reparation should be readily accessible and child-sensitive. Victims may be repaid for material losses and damages incurred, receive medical and/or psychosocial support and obtain reparation for ongoing suffering.

Guidelines on Interviewing a Child: Forensic Interview Protocol

There are two distinct aspects to the gathering of information from the child (or attending adults) in cases of alleged child sexual abuse: (a) the medical history and (b) the interview. The interview stage of the assessment goes beyond the medical history in that it seeks to obtain information directly related to the alleged sexual abuse, for example, details of the assault, including the time and place, frequency, description of clothing worn and so on. Interviewing of children is a specialized skill and, if possible, should be conducted by a trained professional.

In the context of the POCSO Act, 2012 interviews may need to be conducted by a variety of professionals, including police or investigative agencies. These are forensic rather than therapeutic interviews, with the objective being to obtain a statement from the child in a manner that is developmentally-sensitive, unbiased, and truth-seeking, that will support accurate and fair decision-making in the criminal justice and child welfare systems. Information obtained from an investigative or forensic interview may be useful for making treatment decisions, but the interview is not part of a treatment process.

The following are some basic guidelines that should be kept in mind while conducting the forensic interview to ensure that the interview process does not become traumatic for the child. Regardless of who is responsible for the medical history and interview, the two aspects of information gathering should be conducted in a coordinated manner so that the child is not further traumatized by unnecessary repetition of questioning and information is not lost or distorted.

1. Reasons for interviewing the child

- i) To get a picture of the child's physical and emotional state;
- ii) To establish whether the child needs urgent medical attention;
- iii) To hear the child's version of the circumstances leading to the concern;
- iv) To get a picture of the child's relationship with their parents or family;
- v) To support the child to participate in decisions affecting them according to their age and maturity;
- vi) To find out who the child trusts;
- vii) To inform the child of any further steps to be taken in the enquiry;
- viii) To assure the child that he/she is now safe and would be cared for, looked after, protected;
- ix) To identify areas that would / might need counselling / psychiatric intervention.

1.1 Interview setting

Code of Criminal Procedure, 1973 or any other law for the time being in force, and in the absence of such fund or scheme, by the State Government.

The more comfortable a child is, the more information he is likely to share. Also, children may be too embarrassed to share intimate details when they believe that others can overhear what they are saying. As far as possible, interviews should be conducted in a safe, neutral and child-friendly environment.

The interviewer can incorporate elements to make a room appear child-friendly, such as toys, art material or other props. Distractions like ringing phones, other people's voices and elaborate play material should be removed as far as possible.

1.2 Things to be kept in mind while interviewing a child

- i) All children should be approached with extreme sensitivity and their vulnerability recognized and understood.
- ii) Try to establish a neutral environment and rapport with the child before beginning the interview. For example, if the interview must be conducted in the child's home, select a private location away from parents or siblings that appears to be the most neutral spot.
- iii) Try to select locations that are away from traffic, noise, or other disruptions. Items such as telephones, cell phones, televisions, and other potential distractions should be temporarily turned off.
- iv) The interview location should be as simple and uncluttered as possible, containing a table and chairs. Avoid playrooms or other locations with visible toys and books that will distract children.
- v) Always identify yourself as a helping person and try to build a rapport with the child.
- vi) Make the child comfortable with the interview setting. Gather preliminary information about the child's verbal skills and cognitive maturity. Convey that the goal of the interview is for the child to talk and ask questions that invite the child to talk (e.g., "tell me about your family").
- vii) Ask the child if he/she knows why they have come to see you. Children are often confused about the purpose of the interview or worried that they are in trouble.
- viii) Convey and maintain a relaxed, friendly atmosphere. Do not express surprise, disgust, disbelief, or other emotional reactions to descriptions of the abuse.
- ix) Avoid touching the child and respect the child's personal space. Do not stare at the child or sit uncomfortably close.
- x) Do not suggest feelings or responses to the child. For example, do not say, "I know how difficult this must be for you."
- xi) Do not make false promises. For example, do not say, "Everything will be okay" or "You will never have to talk about this again."
- xii) Establish ground rules for the interview, including permission for the child to say he/she doesn't know and permission to correct the interviewer.

- xiii) Ask the child to describe what happened, or is happening, to them in their own words. The interviewer should, as far as possible, follow the child's lead; however, he may have to delicately introduce the topics of the abuse.
- xiv) Always begin with open-ended questions. Avoid asking the child a direct question, such as "Did somebody touch your privates last week?". Instead, try "I understand something has been bothering you. Tell me about it."
- xv) After initially starting like this, move on to allow the child to use free narrative. For example, you can say, "I want to understand everything about [refer back to child's statement]. Start with the first thing that happened and tell me everything you can, even things you don't think are very important."
- xvi) Avoid the use of leading questions that imply an answer or assume facts that might be in dispute and use direct questioning only when open-ended questioning/free narrative has been exhausted.
- xvii) The interviewer should clarify the following:
 - a) Descriptions of events.
 - b) The identity of the perpetrator(s).
 - c) Whether allegations involve a single event or multiple events.
 - d) The presence and identities of other witnesses.
 - e) Whether similar events have happened to other children.
 - f) Whether the child told anyone about the event(s).
 - g) The time frame and location/venue.
 - h) Alternative explanations for the allegations.
- xviii) However, interviewers should avoid probing for unnecessary details. For example, it may not be essential to get a detailed description of an alleged perpetrator if he/she is someone who is familiar to the child (e.g., a relative or teacher). Although it is useful if the child can recall when and where each event occurred, children may have difficulty specifying this information if they are young, if the event happened a long time ago, or if there has been ongoing abuse over a period of time
- xix) The child may get exhausted frequently and easily; in such an event, it is advisable not to prolong the inquiry, but rather to divert the child's mind and come back to the sexual abuse when the child is refreshed.
- xx) Regularly check if the child is hungry or thirsty, tired or sleepy, and address these needs immediately.
- xxi) Let the child do the talking and answer any questions the child may have in a direct manner.
- xxii) Avoid questioning the child as to why he behaved in a particular way (e.g., "Why didn't you tell your mother that night?"). Young children have difficulty answering such questions and may feel that you are blaming them for the situation.

- xxiii) Avoid correcting the child's behaviour unnecessarily during the interview. It can be helpful to direct the child's attention with meaningful explanations (e.g., "I have a little trouble hearing, so it helps me a lot if you look at me when you are talking so that I can hear you") but avoid correcting nervous behaviour that may be slowing the pace of the interview or even preventing it from proceeding.
- xxiv) When two professionals will be present, it is best to appoint one as the primary interviewer, with the second professional taking notes or suggesting additional questions when the interview is drawing to a close.
- xxv) Interviewers should not discuss the case in front of the child.
- xxvi) Individuals who might be accused of influencing children to discuss abuse, such as parents involved in custody disputes or therapists, should not be allowed to sit with children during interviews.
- xxvii) In some cases, the interviewer may consider it appropriate to allow a support person to sit in on the interview; but in these situations, such a person be instructed that only the child is allowed to talk unless a question is directed to the support person. Also, the support person should be seated out of the child's line of vision to avoid allegations that the child was reacting to nonverbal signals from a trusted adult.
- xxviii) When planning investigative strategies, consider other children (boys as well as girls) that may have had contact with the alleged perpetrator. For example, there may be an indication to examine the child's siblings. Also consider interviewing the parent or guardian or other family member of the child, without the child present.
- xxix) The interviewer should convey to all parties that no assumptions have been made about whether abuse has occurred.
- xxx) The interviewer should take the time necessary to perform a complete evaluation and should avoid any coercive quality to the interview.
- xxxi) Interview procedures may be modified in cases involving very young, minimally verbal children or children with special needs (e.g., developmentally delayed, electively mute, non-native speakers).
- xxxii) Try to establish the child's developmental level in order to understand any limitations as well as appropriate interactions. It is important to realize that young children have little or no concept of numbers or time, and that they have limited vocabulary and may use terminology differently to adults, making interpretation of questions and answers a sensitive matter.
- xxxiii) A variety of non-verbal tools may be used to assist young children in communication, including drawings, toys, dollhouses, dolls, puppets, etc. Since such materials have the potential to be distracting or misleading they should be used with care. They are discretionary for older children.
- xxxiv) Storybooks, colouring books or videos that contain explicit descriptions of abuse situations are potentially suggestive and are primary teaching tools. They are typically not appropriate for information-gathering purposes.

In certain situations, the interviewer may consider it appropriate to interview the child victim together with his/her parent or guardian or other person in whom the child has trust and confidence. In such cases, the following guidance may be useful:

- i) When possible, interviewing the primary caregiver and reviewing other collateral data first to gather background information may facilitate the evaluation process.
- ii) The child should be seen individually, except when the child refuses to separate from a parent/guardian. Discussion of possible abuse with the child in the presence of the caregiver during evaluation interviews should be avoided except when necessary to elicit information from the child. In such cases, the interview setting should be structured to reduce the possibility of improper influence by the caregiver on the child's behaviour or statements.
- iii) In some cases, joint sessions with the child and the non-accused caregiver or accused or suspected individual might be helpful to obtain information regarding the overall quality of the relationships. Such joint sessions should not be conducted for the purpose of determining whether abuse occurred based on the child's reactions to the participating adult. Joint sessions should not be conducted if they will cause significant distress for the child.

2. Children with special needs

- i) It is important to understand that children may have special physical or mental needs, or a combination of both.
- ii) Be aware that the risk of criminal victimization (including sexual assault) for children with special needs appears to be much higher than for those without such needs. Children with special needs are often victimized repeatedly by the same offender. Caretakers, family members, or friends may be responsible for the sexual abuse.
- iii) Respect the child's wishes to have or not have caretakers, family members, or friends present during the interview. Although these persons may be accustomed to speaking on behalf of the child, it is critical that they not influence the statements of the child. If professional assistance is required (e.g., from a language interpreter or mental health professional) this should be arranged.
- iv) Ideally those providing assistance should not be associated with the child. Thus as far as possible, avoid using a relative or friend of the child as an interpreter.
- v) When preparing for the interview, consult with the adults in the child's world who understand the nature of his/her disability and are familiar with how the child communicates. Teachers and other professionals or paraprofessionals who have had experience in communicating with the child can be an invaluable resource to the interview team. This may include speech/language pathologists, educational psychologists, counsellors, teachers, clinical psychologists, social workers, nurses, child and adolescent psychiatrists, paediatricians, etc.
- vi) Speak directly to a child with special needs, even when interpreters, intermediaries, or guardians are present. Assess the child's level of ability and need for assistance during the interview process.

- vii) Note that not all children who are deaf or hard-of-hearing understand sign language or can read lips. Not all blind persons can read Braille. Be aware that a child with sensory disabilities may prefer communicating through an intermediary who is familiar with his/her patterns of speech. Ideally, this would be someone not associated with the child, but in some cases this may be necessary.
- viii) The child may experience difficulty with the concept of time, such as the concept of before and after, and being able to sequence events. The child may not be able to accurately define when something happened. It may be helpful to link events with major activities in the child's life, school events, or routines such as mealtimes.
- ix) Allow extra time for the interpreter to transfer the complete message to the child and for the child to form answers.
- x) Recognize that the child may have also some degree of cognitive disability: mental retardation, mental illness, developmental disabilities, traumatic brain injury, etc. Note however that not all developmental disabilities affect cognitive ability (e.g., cerebral palsy may result in physical rather than mental impairment). Be aware that a child with cognitive disabilities may be easily distracted and have difficulty focusing. Speak to the child in a clear, calm voice and ask very specific, concrete questions. Be exact when explaining what will happen during the medical examination process and why.
- xi) Keep in mind that children with special needs may be reluctant to report the crime or consent to the examination for fear of losing their independence. For example, they may have to enter a long-term care facility if their caretakers assaulted them or may need extended hospitalization to treat and allow injuries to heal.
- xii) While a child's special need may have resulted in him being more vulnerable to abuse, it is important to listen to his/her concerns about the assault and what the experience was like for them, and not focus on the role of his/her special need.
- xiii) Assure the child that it is not his/her fault that he was sexually assaulted. If needed, encourage discussion in a counselling/advocacy setting if he/she is concerned about their safety in the future.

3. Procedures when interviewing parents/caregivers:

- i) Inform parents/caregivers in an open and honest way of existing concerns and reports about their child or children;
- ii) Explain how information about the case has been, and will be, obtained;
- iii) Identify the professionals who have been contacted so far;
- iv) Invite the parents/caregivers to give an explanation of their view of the concern;
- v) Show a willingness to consider different interpretations of the concern;
- vi) Ensure that the parents/caregivers are fully aware of the way that information is going to be assessed and evaluated, and what expectations are held of them about the way they care for and protect their children;
- vii) Explain the legal context in which the concern is being investigated;

- viii) If the concern arose from an incident perpetrated by one of the child's parents/caregivers, the worker should try to gain the support and cooperation of the other parent/caregiver to facilitate ongoing protection of the child;
- ix) A child should never be asked to discuss the possible abuse in front of an accused or suspected parent.

If it is considered necessary by CWC to remove a child from his/her parents/caregivers or their homes, then the following must be considered:²

- i) In the first instance, all possible efforts should be made to place the child in a situation that is familiar, preferably with family or friends
- ii) As far as possible, the timing of the move should be sensitively handled.
- iii) The child's parents/caregivers should be informed of the action proposed, unless doing so would endanger the child or jeopardise the placement process.
- iv) The child should be informed of the proposed action if he or she has not been involved in the decision.
- v) The child's parents/caregivers should be informed of the child's location, unless otherwise directed by the Court.
- vi) The child's parents/caregivers should be advised about and assisted in obtaining legal advice.

4. Best practice principles for the use of interpreters

Interpreters may be needed during both the investigation and trial of cases of child sexual abuse. They may be needed for witnesses and for parties who speak a language different from that of the Court in that State, or for witnesses and parties who have speech or hearing impairments or other communication difficulties.

The police or SJPU may contact the District Child Protection Unit (DCPU), whose responsibility it is under the POCSO Act and Rules, 2012 to provide interpreters, translators, etc. Where an interpreter is not available, a non-professional may be asked to interpret for the child; however, in these cases, it must be ensured that there is no conflict of interest. For example, where there is an allegation of child sexual abuse against the child's father, the mother should not be asked to interpret.

- i) Promote access to interpreter services in order to facilitate the best possible communication with the child, to ensure everything is fully explained and that there is no room for misinterpretation.
- ii) Be clear with the interpreter about roles and responsibilities in the process of engagement with the family. Interpreters need to understand that their role is to translate direct communications between the police or support person etc. and the family members, not to talk on either party's behalf or act as the family's representative.

² Rule 4(5) and (6) of POCSO Rules, 2012 state that prior to making a determination as to whether the child needs to be taken out of the custody of his/her family or shared household, the inquiry should be conducted in a manner that does not unnecessarily expose the child to injury or inconvenience. Hence, these considerations would help ascertain the same.

- iii) Services must be planned ahead where possible to meet the child's needs.
- iv) Interpreter should declare that there is no prior acquaintance or relationship with the victim/witness
- v) Maintain high quality, timely, precise records along with supporting documents; as far as possible, this should be a verbatim record of the communication.
- vi) There should be a record of a child's interpreter needs, including language and dialect, and whether the interpreter is required for oral and written communication. Where an interpreter is offered but declined by the child, this should also be recorded.
- vii) Promote qualified interpreters who can work in partnership in the best interests of the child.
- viii) Interpreters should be subject to references and background checks and must sign a written agreement regarding confidentiality.

Medical and Health Professionals (Doctors and supporting medical staff)

1. Relevant Legal Provisions in the Act and Rules and related laws:

Section 27 – Medical Examination:

- 27.(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.
- (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- (3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
- (4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

Rule 5 - Emergency medical care:

- (1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

- (2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.
- (3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.
- (4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including --
 - (i) treatment for cuts, bruises, and other injuries including genital injuries, if any;
 - (ii) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;
 - (iii) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;
 - (iv) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,
 - (v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.
- (5) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.

Thus, doctors and support medical staff are involved both at the time of rendering emergency medical care as well as at the time of medical examination.

2. Emergency Medical care:

The child may be brought to the hospital for emergency medical care as soon as the police receive a report of the commission of an offence against the child. In such cases, the rules under the POCSO Act, 2012 prescribe that the child is to be taken to the nearest hospital or medical care facility. This may be a government facility or a private one.

This is reiterated by Section 23 of the Criminal Law Amendment Act, which inserts Section 357C into the Code of Criminal Procedure, 1973. This section provides that all hospitals are required to provide first-aid or medical treatment, free of cost, to the victims of a sexual offence.

2.1 Medical Examination:

Medical examination is to be conducted as per the provisions of Section 27 of the POCSO Act, 2012 and Section 164A of the CrPC, 1973 which states:

- (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with

whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

- (2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of her examination giving the following particulars, namely:-
 - (I) the name and address of the woman and of the person by whom she was brought;
 - (II) the age of the woman;
 - (III) the description of material taken from the person of the woman for DNA profiling;
 - (IV) marks of injury, if any, on the person of the woman;
 - (V) general mental condition of the woman; and
 - (IV) other material particulars in reasonable detail.
- (3) The report shall state precisely the reasons for each conclusion arrived at.
- (4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.
- (5) The exact time of commencement and completion of the examination shall also be noted in the report.
- (6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.
- (7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

In the above legal provision, the term “woman” may be substituted by the term “child”, and applied in the context of the POCSO Act, 2012.

2.2 Compensation for medical expenses:

Section 33(8) provides:

“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.”

Rule 7 provides further details in relation to the payment of this compensation. It specifies that the Special Court may order that the compensation be paid not only at the end of the trial, but also on an interim basis, to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report [Rule 7(1)]. This could include any immediate medical needs that the child may have. Further, Rule 7(3) provides that the criteria to be taken into account while fixing the amount of compensation to be paid include the severity of the mental or physical harm or injury suffered by the child; the expenditure incurred or likely to be incurred on his/her medical treatment for physical and/or mental health; and any disability suffered by the child as a result of the offence. Hence, the child may recover the expenses incurred on his/her treatment in this way.

3. Modalities of Medical Examination of Children

3.1 Role of Medical Professionals in the context of the POCSO Act, 2012

Doctors have a dual role to play in terms of the POCSO Act 2012. They are in a position to detect that a child has been or is being abused (for example, if they come across a child with an STD); they are also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse.

The role of the doctor may include:

- i) Having an in-depth understanding of sexual victimization
- ii) Obtaining a medical history of the child's experience in a facilitating, non-judgmental and empathetic manner
- iii) Meticulously documenting historical details
- iv) Conducting a detailed examination to diagnose acute and chronic residual trauma and STDs, and to collect forensic evidence
- v) Considering a differential diagnosis of behavioural complaints and physical signs that may mimic sexual abuse
- vi) Obtaining photographic/video documentation of all diagnostic findings that appear to be residual to abuse
- vii) Formulating a complete and thorough medical report with diagnosis and recommendations for treatment
- viii) Testifying in court when required

There are at least three different circumstances when there is no direct allegation but when the doctor may consider the diagnosis of sexual abuse and have to ask questions of the parent and child. These include but are not limited to:

- (i) when a child has a complaint that might be directly related to the possibility of sexual abuse, such as a girl with a vaginal discharge;
- (ii) when a child has a complaint that is not directly related to the possibility of sexual abuse, such as abdominal pain or encopresis (soiling);

(iii) when a child has no complaint but an incidental finding, such as an enlarged hymenal ring, makes the doctor suspicious.

3.2 Mandatory Reporting: When a doctor has reason to suspect that a child has been or is being sexually abused, he/she is required to report this to the appropriate authorities (i.e. the police or the relevant person within his/her organization who will then have to report it to the police). Failure to do this would result in imprisonment of up to six months, with or without fine.³

3.3 Medical or health history: The purpose of this is to find out why the child is being brought for health care at the present time and to obtain information about the child's physical or emotional symptoms. It also provides the basis for developing a medical diagnostic impression before a physical examination is conducted. The medical history may involve information about the alleged abuse, but only in so far as it relates to health problems or symptoms that have resulted there from, such as bleeding at the time of the assault, or constipation or insomnia since that time.

Where a child is brought to a doctor for a medical examination to confirm sexual abuse, the doctor must:

- i) Take the written consent of the child. The three main elements of consent are information, comprehension and voluntariness. The child and his/her family should be given information about the medical examination process and what is involved therein, so that they can choose whether or not to participate. Secondly, they should be allowed enough time to understand the information and to ask questions so that they can clarify their doubts. Lastly, the child and/or his or her parent/guardian should agree to the examination voluntarily, without feeling pressurised to do so. In some situations it may be appropriate to spend time with the child/adolescent alone, without the parent/guardian present. This may make it easier for the child to ask questions and not feel coerced by a parent/guardian.
- ii) Where the child is too young or otherwise incapable of giving consent, consent should be obtained from the child's parent, guardian or other person in whom the child has trust and confidence.
- iii) The right to informed consent implies the right to informed refusal.
- iv) To be able to give informed consent, the child and his/ her parents/guardian need to understand that health care professionals may have a legal obligation to report the case and to disclose information received during the course of the consultation to the authorities even in the absence of consent.
- v) Document who was present during the conversation with the child.
- vi) Document questions asked and child's answers in the child's own words.
- vii) Conduct the examination in a sensitive manner. It is important that the exam is never painful. The exam should be done in a manner that is least disturbing to the child.

3 Section 21, Protection of Children from Sexual Offences Act, 2012.

- viii) Focus on asking simply worded, open-ended, non-leading questions, such as the “what, when, where, and how” questions, which are important to the medical evaluation of suspected child sexual abuse.
- ix) Reliance should be placed as far as possible on such questioning as “tell me more” followed by “and then what happened?”
- x) Do not ask uncomfortable questions related to details of the abuse, but try to find out more about the medical and family history of the child
- xi) Using the child’s words for body parts may make the child more comfortable with difficult conversations about sexual activities.
- xii) Using drawings may also help children describe where they may have been touched and with what they were touched.
- xiii) Ensure that the child has adequate privacy while the examination is being conducted
- xiv) Do not conduct the examination in a labour room or other place that may cause additional trauma to the child
- xv) Always ensure patient privacy. Be sensitive to the child’s feelings of vulnerability and embarrassment and stop the examination if the child indicates discomfort or withdraws permission to continue.
- xvi) Always prepare the child by explaining the examination and showing equipment; this has been shown to diminish fears and anxiety. Encourage the child to ask questions about the examination.
- xvii) If the child is old enough, and it is deemed appropriate, ask whom they would like in the room for support during the examination. Some older children may choose a trusted adult to be present. Sexual abuse of children is usually not physically violent. In the large majority of children the physical exam is normal. A normal or non-specific exam does not rule out sexual abuse.
- xviii) As a minimum, the medical history should cover any known health problems (including allergies), immunization status and medications. In terms of obtaining information about the child’s general health status, useful questions to ask would be:
 - a) Tell me about your general health.
 - b) Have you seen a nurse or doctor lately?
 - c) Have you been diagnosed with any illnesses?
 - d) Have you had any operations?
 - e) Do you suffer from any infectious diseases?
- xix) Carefully collect and preserve forensic evidence
- xx) Clothing collection is critical when evidence is collected. Clothing, especially underwear, is the most likely positive site for evidentiary DNA.

- xxi) Scene investigation, including collection of linens and clothing should be done early. Evidence from clothing and other objects is more likely to be positive than evidence from the patient's body.
- xxii) Children often report weeks or months after the abuse event, and physical injuries to the genital or anal regions usually heal within a few days. This is why the medical provider should always consider differential diagnosis and alternative explanations for physical signs and symptoms.
- xxiii) In the case of a child with special needs, ensure that the procedures are explained to the child in a manner which he/she understands and that he/she is asked what help he/she requires, if any (e.g., a child with physical disabilities may need help to get on and off the medical examination table or to assume positions necessary for the examination). However, do not assume that the child will need special aid. Also, ask for permission before proceeding to help the child.
- xxiv) Recognize that it may be the first time the child is having an internal examination. The child may have very limited knowledge of reproductive health issues and not be able to describe what happened to them. He/she may not know how he/she feels about the incident or even identify that a crime was committed against him/her.
- xxv) Wherever necessary, refer the child for counselling
- xxvi) Wherever applicable, refer the child for testing for HIV and other Sexually Transmitted Diseases

3.4 If the child resists the examination

- i) If a child of any age refuses the genital-anal examination, it is a clinical judgment of how to proceed. A rule of thumb is that the physical exam should not cause any trauma to the child. It may be wise to defer the examination under these circumstances.
- ii) It may be possible to address some of the child's fears and anxieties (e.g. a fear of needles) or potential sources of unease (e.g. the sex of the examining health worker). Further, utmost comfort and care for the child should be provided e.g., examining very small children while on their mother's (or caregiver's) lap or lying with her on a couch.
- iii) If the child still refuses, the examination may need to be deferred or even abandoned. Never force the examination, especially if there are no reported symptoms or injuries, because findings will be minimal and this coercion may represent yet another assault to the child.
- iv) The child should not be held down or restrained for the examination (exception for infants or very young toddlers).

3.4.1 Techniques to help the child relax

- i) Offer clear age-appropriate explanations for the reasons for each procedure, and offer the child some control over the exam process.
- ii) Proceed slowly, explain each step in advance.
- iii) Use curtains to protect privacy, if the child wishes.
- iv) Explain to parent or support person that their job is to talk to and distract the child, and the findings of the exam will be discussed with them after the exam is completed.
- v) Position the parent near the child's head.
- vi) Use distracters. For example, ask the parent to sing a song, or tell a familiar story, or read a book to the child. A nurse or other helper can do this if the parent is unable.
- vii) Use TV, cell phone game, or other visual distraction.
- viii) Do not forcibly restrain the child for the examination

3.5 Sedation for Medical Treatment

- i) Sedation is rarely needed if the child is informed about what will happen and there is adequate parental support for the child.
- ii) Consider sedation or a general anesthetic only if the child refuses the examination and conditions requiring medical attention, such as bleeding or a foreign body, are suspected.
- iii) If it is known that the abuse was drug-assisted, the child needs to be told that he/she will be given a sedative or be put to sleep, that this may feel similar to what he/she has experienced in the past.
- iv) Reassure the child about what will take place during the time under sedation and that he/she will be informed of the finding.
- v) However, conscious sedation is an option if examination and evidence collection is required, and the child is not able to cooperate.
- vi) Speculum exam on a pre-pubertal girl should be done under anaesthesia, not conscious sedation.

3.6 The following pieces of information are essential to the medical history:

- i) Last occurrence of alleged abuse (younger children may be unable to answer this precisely). When do you say this happened?
- ii) First time the alleged abuse occurred. When is the first time you remember this happening?
- iii) Threats that were made.
- iv) Nature of the assault, e.g. anal, vaginal and/or oral penetration. What area of your body did you say was touched or hurt? (The child may not know the site of penetration but may be able to indicate by pointing. This is an indication to examine both genital and anal regions in all cases.)
- v) Whether or not the child noticed any injuries or complained of pain.

- vi) Vaginal or anal pain, bleeding and/or discharge following the event. Do you have any pain in your bottom or genital area? Is there any blood in your panties or in the toilet? (Use whatever term is culturally acceptable or commonly used for these parts of the anatomy.)
- vii) Any difficulty or pain with voiding or defecating. Does it hurt when you go to the bathroom? (indication to examine both genital and anal regions in all cases.)
- viii) Any urinary or faecal incontinence.
- ix) Whether or not the child noticed any injuries or complained of pain.
- x) In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.

3.7 When performing the head-to-toe examination of children, the following points are particularly noteworthy:

- i) Record the height and weight of the child (neglect may co-exist with sexual abuse). Note any bruises, burns, scars or rashes on the skin. Carefully describe the size, location, pattern and colour of any such injuries.
- ii) Check for any signs that force and/or restraints were used, particularly around the neck and in the extremities.
- iii) Record the child's sexual development stage and check the breasts for signs of injury.
- iv) If the survivor is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly.
- v) Some amount of evidence is lost because of menstruation. Hence it is important to record whether the survivor was menstruating at the time of assault/examination.
- vi) The same applies to bathing, douching, defecating, urinating and use of spermicide after the assault.

3.8 Role of Medical Professionals as Expert Witnesses

Deciding cases of child sexual abuse would be much easier if it left clear-cut physical evidence. Unfortunately, child sexual abuse often leaves no such evidence. Child sexual abuse is often exceedingly difficult to prove. It usually occurs in secret, often over a prolonged period of time, and does not always leave physical marks; in addition to this, the child is usually the only eyewitness. While many children are capable witnesses, some cannot give conclusive testimony, and consequently, children's testimony is sometimes ineffective. In such cases, the testimony of an expert medical witness can be useful. Physicians can provide opinion testimony that is based upon the child's history, statements, and medical examination, even if the physician's examination of the child reveals no concrete physical evidence supportive of the child's allegations.

- i) Courts in India in their judgments described an expert as a person who has acquired special knowledge, skill or experience in any art, trade or profession. Experts have knowledge, skill, experience, or training concerning a particular subject matter

that is generally beyond the knowledge of the average person. Such knowledge may have been obtained by practice, observation or careful study. The expert thus operates in a field beyond the range of common knowledge.

- ii) Expert evidence is covered under Ss.45-51 of Indian Evidence Act. The subjects of expert testimony mentioned by the section are foreign law, science, art and the identity of handwriting or finger impressions.
- iii) In general, whether or not the testimony of an expert will be useful in any given case is almost always left to the discretion of the trial judge before whom the testimony is proffered. However, even where the Court has some degree of knowledge or familiarity with the subject, an expert's testimony may be valuable to add insight and depth its understanding of the matter, or to educate them as to commonly held prejudices and misconceptions which might negatively impact upon an impartial and just decision.
- iv) In general, the opinions of medical professionals are admissible upon questions such as insanity, the causes of diseases, the nature of the injuries, the weapons which might have been used to cause injuries or death, medicines, poisons, the conditions of gestation, etc. In the case of questions pertaining to age determination, positive evidence furnished by birth register, by members of the family, with regard to the age, will have preference over the opinion of the doctor: but, if the evidence is wholly unsatisfactory, and if the ossification test in the case is complete, such a test can be accepted as a surer ground for determination of age.
- v) In their testimony regarding a forensic examination, medical professionals typically describe the process of examining the victim, the physical findings that were observed, and their interpretation. It is important to remember that the medical professional cannot be asked to testify to "diagnose" sexual abuse. The doctor cannot make any definitive conclusions regarding the degree of force used by the abuser or whether the victim consented to any sexual activity. What he/she can appropriately conclude is whether there is evidence of sexual contact and/or recent trauma. He/she can state whether the medical history and examination are consistent with sexual abuse.
- vi) In many child abuse cases, experts have firsthand knowledge of the child because the expert treated or examined the child. However, an expert may be called upon to render an opinion concerning a child without personally examining the child.
- vii) However, it is important to remember that doctors are rarely expert in interviewing, and often assume the truth of what the patient tells them. The testimony is presented as if the doctor's opinion is based on physical findings when it is not. It is often largely or wholly based on statements made, a far different and less scientific basis than objective findings upon examination.
- viii) In addition to this, opinions may be sought from mental health experts as to the psychological effects of child sexual abuse, such as PTSD and Child Sexual Abuse Accommodation Syndrome.
- ix) It is for the legal representative who proposes the use of expert testimony to establish his/her credentials, preferably listing his/her formal qualifications.

The adequacy of the qualification of the expert and the admissibility of his/her testimony are within the discretion of the Special Court.

- x) Before giving evidence the expert will usually have prepared a report, either assessing one or more parties to the case or assessing other experts' reports. His/her report should be reliable on the basis of the following criteria:
 - a) It should provide a context in layman's terms from which to understand the basis of his/her opinion
 - b) It should be clear when the expert is stating corroborated fact and when he/she is merely repeating what he/she has been told by the alleged offender. Assertions which are based entirely on the alleged offender's perception are likely to be misleading.
 - c) The expert must review the information impartially rather than ignore matters which are inconvenient to his/her conclusions.
 - d) The report should avoid restating incidental trivia and give preference to examining and analysing the crucial issues of the case.
 - e) The expert should demonstrate knowledge of the process and dynamics of child sexual abuse and help to make sense of the child's and non-abusing parent's experiences and perceptions. Victims and non-abusing partners of offenders often do not act rationally and can appear collusive with the offender, whereas their behaviour results from the control the offender exercises over them. It is useful to have this explained in the expert report.
 - f) All professions have their exclusive language, but it is best that the expert present the issues in language that the court, advocate and parties can understand.
 - g) The expert must not rely solely on quoted research to support his/her arguments, and should refer to clinical experience as well.

An expert opinion must be premised on a reasonable degree of certainty. The expert cannot speculate or guess. It is clear, however, that an expert need not be absolutely certain about a subject before offering an opinion. All that is required is reasonable clinical certainty.

It is important to remember that while an expert's testimony may be deemed relevant, necessary, reliable, and therefore admissible under the aforementioned guidelines, it is ultimately the prerogative of the judge to determine what weight should be afforded the testimony. No matter how qualified the expert, the court is not bound by an expert's conclusions and can exercise its discretion in this regard, keeping in mind all the other evidence presented to it.

4. FAQs on Medical Examination

Doctors may be faced with some of these questions from children as well as parents and caregivers:

- i) Why is the medical examination necessary?

The medical exam is a very important tool in evaluating sexual abuse. The physical examination can identify both new and old injuries, detect sexually transmitted diseases and provide evidence of sexual contact. If done in a sensitive manner, the examination can answer any questions or concerns the child may have and reassure the child about their well-being and that their body is private. The exam also has evidentiary value in a court of law.

- ii) The last time my child was touched in a sexually inappropriate manner was over a year ago. Is the medical exam still necessary?

Yes. Most children reveal their experience of abuse after a long time has passed, for example, when they are older or feel that they are no longer in danger of being abused again. Some even reveal it accidentally. In such cases, the medical examination can reassure the child about their well-being and address any worried the child may have about the injuries they suffered due to the abuse. Some children may have injuries that healed a long time ago but can be seen with the help of special equipment.

- iii) Is the examination uncomfortable for the child?

No. the examination itself is rarely physically uncomfortable for the child; however, what may cause discomfort is the attitude of the person conducting the examination. For this reason, it is important that all medical health care professionals be trained in conducting medical examinations of children in a sensitive manner. The doctor is expected to explain the procedure to the child and his/ her parents and obtain their consent prior to conducting the examination, as well as answer any questions they may have.

- iv) Can the parent(s) be present while the examination is being conducted?

Yes. Section 27 of the new POCSO Act, 2012 specifically requires that the examination be conducted in the presence of the child's parents/ guardian or other person in whom the child has trust and confidence.

- v) Is the medical examination of the child conducted in the same manner as an adult female gynaecological examination?

- vi) Will the doctor/ nurse be able to tell if there was penetration?

- vii) How is the examination of a boy different from that of a girl?

- viii) Why can't a family doctor or another doctor known to the child do the examination?

- ix) Will the child be tested for HIV/ STDs?

- x) Will the doctor/nurse give evidence in court if needed?

- xi) Will the child have to be sedated for the examination?

- xii) Where will the medical examination be conducted?

- xiii) Who will conduct follow-up examinations, in case the child needs treatment for STDs or HIV?

- xiv) What happens after the medical exam, will the child and his/her parents be allowed to see the report?
- xv) What about the child's mental health needs?

Psychologists and Mental Health Experts

1. Relevant Legal Provisions in the Act and Rules and related laws:

Rule 4(2)(e): *Where an SJPU or the local police receives any information under sub-section (1) of section 19 of the Act, they must inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief*

Rule 5 (4) (v): *Wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made by the medical professional rendering emergency medical care to the child.*

Thus, the rules made under the POCSO Act, 2012 provide that the child may be referred for counselling either by the police or by a doctor.

2. Counsellors

2.1 Role of Counsellors

The counsellor's duties will include:

- i) To understand the child's physical and emotional state
- ii) To resolve trauma and foster healing and growth
- iii) To hear the child's version of the circumstances leading to the concern
- iv) To respond appropriately to the child when in crisis
- v) To provide counselling, support, and group-based programs to children referred to them
- vi) To improve and enhance the child's overall personal and social development, and his/her health and wellbeing
- vii) To facilitate the reintegration of the child into his/her family/ community

2.2 Who may be appointed as a Counsellor?

Counselling for children and families at risk is an integral component of the ICPS. The ICPS envisages the development of a cadre of counsellors to provide professional counselling services under various components of the scheme. Counselling may be provided under ICPS by any of the following:

- i) CHILDLINE Service
- ii) Counsellors appointed by the District Child Protection Society, who will report to the Legal-cum-Probation Officer and will be responsible for providing counselling support to all children and families coming in contact with the DCPS

- iii) NGOs and other voluntary sector organisations

In all cases of penetrative sexual assault and all aggravated cases, arrangements should be made as far as possible to ensure that the child is provided counselling support. Where a counsellor is not available within the existing ICPS framework, the State Government may secure the engagement of external counsellors on contract basis.

2.3 Criteria for engagement as Counsellor

In order to enable the engagement of counsellors from outside the ICPS, including senior counsellors for the more aggravated cases, the DCPU in each district shall maintain a list of persons who may be appointed as counsellors to assist the child. These could include mental health professionals employed by Government or private hospitals and institutions, as well as NGOs and private practitioners outside the ICPS mechanism, chosen on the basis of objective criteria.

As indicative criteria, for any counsellor engaged to provide services to a sexually abused child, a graduate degree, preferably in Sociology/ Psychology (Child Psychology)/ Social Work is a must. In addition to this, at least 2 to 3 years of work experience related to providing counselling services to children in need of care and protection as well as their parents and families and training on handling cases of child sexual abuse is essential in order to ensure that the child receives counselling from those qualified for and experienced in providing it.

2.4 Counselling Services under the Integrated Child Protection Scheme: Training of personnel

Counselling can be difficult for children because of the nature of being a child and the difficulty in relating to an adult, especially an adult that they don't know. Counselling for abused children therefore requires that the counsellor is trained in the subject and understands how children communicate. The ICPS therefore provides that only trained professionals provide services (including counselling) to children.

If untrained persons are holding these posts, the State Government or the Officer-in-charge should provide for in-service training to them. The State Government may take the help of NIPPCD, National Institute of Social Defence (NISD), NIMHANS and recognized schools/institutes of social work or expert bodies/institutions specialized in child related issues for organizing specialized training programmes for different categories of personnel. The training programmes should include issues relating to child rights, child psychology, handling children sensitively, counselling, life skills training, dealing with problem behaviour, child sexual abuse and its impact, child development, trauma, neurobiology, handling disclosure and basic counselling skills. These training programmes could be arranged as:

- i) Orientation and training for newly-recruited staff and in-service training for existing staff.
- ii) Refresher training courses for every staff member at least once in every two years.

- iii) Participation in periodic staff conferences, seminars and workshops with the various other stakeholders or functionaries of the Juvenile Justice System and the State Government at various levels.

2.5 Payment to Counsellors

Counsellors employed by the DCPU are entitled to receive their monthly salaries at the predetermined rates. They will be performing their duties in relation to the POCSO Act, 2012 in the scope of their work and will not receive additional remuneration for this work, except reimbursement of local travel costs and other miscellaneous expenditure.

Counsellors engaged externally may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other Fund set up by the State Government for this purpose. The rates for payment shall be as fixed by the DCPU.

2.6 Basic Principles of Counselling Young Children

Sexually abused children are traumatised and vulnerable. They may show certain identifiable behavioural signs of abuse, but often, these are not immediately obvious and will reveal themselves only over a period of time. As a counsellor, one must be aware of the signs of sexual abuse. Children often find it very difficult to disclose sexual abuse, due to the following reasons:

3. Why a child may not disclose abuse

Reasons include but are not limited to:

- i) He/she is embarrassed
- ii) He/ she does not know if what is happening to them is normal or not
- iii) He/ she does not have the words to speak out
- iv) The abuser is a known person and the child does not want to get them in trouble
- v) The abuser told the child to keep it a secret
- vi) The child is afraid that no one will believe him/ her
- vii) The abuser bribes or threatens the child
- viii) He/ she thinks you already know

Being aware of these signs would alert the counsellor to the possibility of sexual abuse.

4. Indicators

4.1 Behavioural Indicators:

- i) Abrupt changes in behaviour such as self harm, talks of suicide or attempt to suicide, poor impulse control etc.
- ii) Reluctance to go home.
- iii) Sexualised behaviour or acting out sexually.
- iv) Low self-esteem.

- v) Wearing many layers of clothing regardless of the weather.
- vi) Recurrent nightmares or disturbed sleep patterns and fear of the dark.
- vii) Regression to more infantile behaviour like bed-wetting, thumb-sucking or excessive crying.
- viii) Poor peer relationships.
- ix) Eating disturbances.
- x) Negative coping skills, such as substance abuse and/or self-harm.
- xi) An increase in irritability or temper tantrums.
- xii) Fears of a particular person or object.
- xiii) Aggression towards others.
- xiv) Poor school performance.
- xv) Knowing more about sexual behaviour than is expected of a child of that age:
 - a) child may hate own genitals or demand privacy in an aggressive manner.
 - b) child may think of all relationships in a sexual manner.
 - c) child may dislike being his/her own gender.
 - d) child may use inappropriate language continuously in his or her vocabulary or may use socially unacceptable slang.
 - e) child may carry out sexualised play (simulating sex with other children).
 - f) Unwarranted curiosity towards sexual act like visiting adult sites or watching adult images or content.

4.2 Physical Indicators:

- i) Sexually transmitted diseases,
- ii) Pregnancy,
- iii) Complaints of pain or itching in the genital area,
- iv) Difficulty in walking or sitting,
- v) Repeated unusual injuries,
- vi) Pain during elimination, and
- vii) Frequent yeast infections.

7. Effects of child sexual abuse

Counsellors have a very important role to play in limiting the short-term and long term effect of child sexual abuse. These are as below:

- i) Feeling of powerlessness;

- ii) Anger;
- iii) Anxiety;
- iv) Fear;
- v) Phobias;
- vi) Nightmares;
- vii) Difficulty concentrating;
- viii) Flashbacks of the events;
- ix) Fear of confronting the offender
- x) Loss of self esteem and confidence
- xi) Feelings of guilt

If childhood sexual abuse is not treated, long-term symptoms can go on through adulthood. These may include:

- i) PTSD and anxiety
- ii) Depression and thoughts of suicide
- iii) Sexual anxiety and disorders, including having too many or unsafe sexual partners
- iv) Difficulty setting safe limits with others (e.g., saying no to people) and relationship problems
- v) Poor body image and low self-esteem
- vi) Unhealthy behaviours, such as alcohol, drugs, self-harm, or eating problems. These behaviours are often used to try to hide painful emotions related to the abuse
- vii) Issues in maintaining relationships

8. The language of the child

- i) The first step in counselling a sexually abused child is to establish a trusting relationship with the child, so that the child can communicate freely with the counsellor. Thus, the counsellor would need to speak to the child in its own language, taking into account his or her age, maturity and emotional state.
- ii) It is important to explain the purpose of counselling to the child and to explain that it will include discussion about the abuse suffered by the child. This will help the child to be prepared for the discussion, and prevent him or her from withdrawing when an uncomfortable topic comes up.
- iii) Allow for free flow of talk without too many intensive questions. Don't begin questioning the child immediately about his/her problem.
- iv) Try not to be intimidating authoritarian or too patronizing. Don't control the child's conversation – follow the child's lead.
- v) Children often lack the vocabulary to discuss sexual acts, and it is important for the counsellor to be aware of the child's sensitivities and difficulties before talking

about sexual issues with him or her. To gain this insight, all relevant legal, medical and family history of the case should be collected from the Probation Officer or parents/guardian.

- vi) While the police or other investigative agency may have already obtained a disclosure from the child about the main incident of abuse, the child's sessions with the counsellor may reveal new incidents. It is thus advisable to get the counsellor involved as early as possible into the pre-trial process.

9. How to respond if the child discloses abuse

- i) Believe him or her. The most important thing is to believe the child. Children rarely lie about abuse; what is more common is a child denying that abuse happened when it did. Tell the child you believe him/her.
- ii) Don't be emotionally overwhelmed and try to remain composed while talking to the child.
- iii) Do not interrogate the child. It can be traumatic for the child to repeat his/her story numerous times. Leave the questioning to the legal and police personnel.
- iv) Reassure the child that the abuse is not their fault. The child's greatest fear is that he or she is responsible for the abuse. Be sure to make it clear that what happened is not a result of anything he/she did or did not do. This is particularly important when the accused person is a member of the child's family, such as his or her father, and the child feels guilty at having put that person to trouble. Reassure them that prompt and adequate steps will be taken to stop the abuse.
- v) Do not make promises you can't keep. Do not make promises such as the child will never have to see the abuser again, that nothing will change, or other such promises.
- vi) Believing and supporting the child are two of the best actions to start the healing process. Appropriate and helpful responses to disclosures are as follows:
 - a) "I am glad you told me, thank you for trusting me."
 - b) "You are very brave and did the right thing."
 - c) "It wasn't your fault."

The counsellor should be aware that the effects of child sexual abuse are long-term and can change the world view and the course of life of the child. The first step in the healing process is for the child to talk about the abuse, and it is the counsellor's duty to facilitate this; however, the process of recovery may be long and the child will have other needs that the counsellor can attend to. These include:

- i) Rapport Building,
- ii) working on the feelings of the child,
- iii) Psychological Education on safe and unsafe touches, feelings, thoughts and behaviour, safer coping techniques
- iv) Helping the child to understand the abuse was not their fault;

- v) Helping the child to develop of or regain their self-confidence;
- vi) Provide sex education;
- vii) Encourage appropriate social behaviour;
- viii) Help the child to identify people who can form a supportive social environment around him or her.

The counsellor is therefore a very important tool for the child in rebuilding his or her life after he has been sexually abused.

8. Counselling for families

Having to cope with the abuse of their own child may be the most difficult challenge of a parent's life. If the parent(s) can get counselling for themselves through this difficult period, it will also help the child with his/her counselling.

8.1 Experience of parents after a child sexual abuse disclosure

When parents first find out about their children being sexually abused, they will experience a wide range of feelings. They may experience denial, anger, betrayal, confusion and disbelief. Parents often tend to blame themselves for not paying attention to their child's behaviours or complaints earlier on. They may feel that they have failed as parents and they didn't protect their children. For some parents they may wonder why their children didn't disclose to them directly but to others. Some parents also become angry at themselves or at their spouses for not supporting the family. In addition to a wide range of emotional experiences, parents may also experience insomnia, change of appetite or other physical complaints.

Some parents also feel conflicting emotions, especially if the accused perpetrator is someone they have trusted, a close friend or a family member. There may be feelings of loyalty and love towards the offending person as well as towards the victim. Family members may choose sides with some believing it happened and others refusing to believe it could have. Parents may disagree about how to handle the situation.

If the offender is the spouse or partner of the parent, what the relationship is like can strongly influence the parent's actions once he/she learns of the abuse. If feelings toward the offending spouse/partner are positive or mixed, decisions about staying together, or to divorce or separate will be more difficult to sort through.

Parents may be faced with making decisions about whether to continue the relationship with the offender, how to deal with contact between the offender and the child, and re-establishing trust and communication in the family.

The feelings a parent has toward the offender may affect a parents' ability to believe in and support the child. When offenders deny or minimize the abuse or blame the child the situation gets very complicated. If a parent doesn't believe a child who has been abused and supports the offender, there can be severe damage to the child. The child will feel betrayed by the parent as well as the offender. What every child victim needs is to be believed and to know that he or she is not at fault.

When the parent is able to support and stand up for the child, the child has an excellent chance of recovering from the effects of sexual abuse. It is very important to get help and support for their feelings because parents' reactions make a big difference in children's recovery. Families are children's most important resource for recovery.

8.2 Coping after the child's sexual abuse disclosure:

- i) The parents should be advised to try not to completely immerse themselves in supporting or worrying about their child. No matter how much they love and care about their family, they also need to consciously set aside time for their own needs.
- ii) As they are dealing with the police investigation, social workers' interview or other professionals regarding their child's sexual abuse disclosure, it is especially important for them to take care of themselves physically and emotionally.
- iii) Their child needs their care and their attention during this time of confusion and overwhelming circumstances. If they are experiencing insomnia or depression, they may need to talk to their doctor about treatment or seek professional counselling.
- iv) They should be advised to find diversions that will lighten their emotional load and recharge their ability to give support. If they have a spouse, partner or other children, they should spend time with them. They should demonstrate to their child that there is life beyond what has happened. This will also aid the child's recovery process and help the child go on with his or her own life.
- v) They may find that they feel over-protective towards their child and do not want to let them out of their sight. However, it is important not to restrict the child's play for their own peace of mind – the child will feel they are punishing him/her by not letting him/her play with friends. Playing is also a kind of therapy.
- vi) The parents should allow the child, as far as possible, to carry on with his/her normal activities and encourage the child to participate in any activities available either at school or in the community. This will divert the child's attention and help him/ her to understand that things will eventually get better.
- vii) As they try to deal with the sexual abuse of their child, they may start to piece together many clues and indicators of the child abuse that went unnoticed earlier. This information will help them to understand what their child has gone through and the impact on him or her.
- viii) However, it may also increase their sense of guilt and they may blame themselves for not acting earlier. It is important for such a parent to be told that no parent/caregiver can be everywhere all the time. Instead of tormenting themselves, they should share with an understanding family

member or friend about their feelings and emotions; this will help them to move on.

- ix) Where the abuser is not a parent, it is crucial for both parents to support each other during this critical and painful time. Blaming each other for not protecting their child will not help solve the problem. Open or secret blaming on one of the parents will further impact their child's sense of safety and sense of security. Their child has already been violated and has experienced lack of safety. Therefore, it is critical for both parents to focus on supporting the child as a team. A crisis like this may put a strain on their relationship, especially a relationship that has already been shaky or difficult.
- x) They naturally want to comfort, heal and protect their child in the aftermath of a traumatic experience, but their own physical and emotional energy isn't limitless. If they try to give too much of themselves throughout the recovery process, they may find themselves resenting or withdrawing just when their child needs them most. No one person -- not even a parent -- can give a child all the support they need, so they should help their child to spend „quality time' with other people who care about them and can support in their recovery.
- xi) Seeking professional counselling is important especially if their child's or their behavioural & emotional reactions do not subside. Seeking professional help earlier on can be very helpful. Talk to a counsellor or a therapist for a few sessions to debrief and process their emotions regarding the child's sexual abuse incident as well as their confusion. A trained professional will be able to facilitate a healing and closure for them. It is important for them to be able to find strengths to support and reassure their child after these traumatic experiences.

8.3 Protecting the Child from Further Harm

Here are some ways to help protect their child from further abuse and minimize the emotional trauma their child may experience:

- i) Prevent contact between their child and the offender until an investigation has taken place. Explain to their child that he/she should tell them immediately if the offender attempts to touch or bother them again in any way.
- ii) Do not talk to the offender in front of the child.
- iii) Continue to believe their child and do not blame him/her for what happened. Give their child support and reassurance that he/she is okay and safe.
- iv) Respond to concerns or feelings their child expresses about sexual abuse calmly. Listen to their child but do not ask a lot of questions.
- v) Respect their child's privacy by not telling a lot of people, and make sure that other people who know, don't bring the subject up to their child. Listen to their child, but don't ask for information on personal safety or details about the abuse. Let the professionals do the interviewing to find out the details. A legal case can be negatively affected if the child has been questioned by non-professionals.

- vi) Try to follow the regular routine around the home; maintain the usual bedtimes, chores and rules.
- vii) Let the child's brothers and sisters know that something has happened to the child and that he or she is safe now and will be protected. Make sure that all children in the family are given enough information on personal safety so to be able to protect themselves from the offender without discussing the details of the incident.
- viii) Talk about their feelings with someone they trust – a friend, relative, or counsellor. It is best not to discuss their worries in front of, or with, their children.

Social Workers and Support Persons

1. Social Worker: Inquiry

As per Section 19(6) of the POCSO Act, 2012 where an F.I.R. has been registered before the Special Juvenile Police Unit (SJPu) or local police station in respect of any offence committed against a child under the said Act, the case should be reported by the SJPu or the local police to the Child Welfare Committee (CWC) within 24 hours.

Additionally, as per Rule 4(3), a child is to be produced before the CWC in the following three situations:

- i) There is a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or
- ii) The child is living in a child care institution and is without parental support, or
- iii) The child is found to be without any home and parental support.

Where a child is produced before the CWC in the three situations described above, the relevant CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act), to make a determination within three days, either on its own or with the assistance of a Social Worker /Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC, as to whether the child needs to be taken out of the physical custody of his/her family or shared household and placed in a Children's Home or a Shelter Home.

As per Rule 4(5) of the POCSO Rules, 2012, the CWC should take into account any preference or opinion expressed by the child on the matter together with best interest of the child. Also, prior to making such determination, an inquiry should be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

This inquiry may therefore be conducted either by the CWC itself or with the assistance of a Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC to be appointed for this purpose. Where a support person has been appointed for the child, the same person may be engaged to conduct the inquiry under Rule 4(5) to assist the CWC in its inquiry.

The Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC may prepare his/her report after interviewing the child and other affected persons to determine the following:

- (i) the child's physical and emotional state;
- (ii) whether the child needs any urgent care such as medical/mental health intervention, shelter, etc.;
- (iii) to hear the child's version of the circumstances leading to the concern;
- (iv) to get an insight into the child's relationship with his/her parents or guardian or other person in whom the child has trust and confidence;
- (v) to support the child to participate in decisions affecting him according to his/her age and level of maturity; and

2. Guidelines for interviewing the child and other affected and relevant persons

The interviewer should follow the guidelines in Chapter 1 in his/ her interaction with the child.

Where the child has been found to be without family support, the interviewer should ask the child to confirm whether s/he has a relative or other person in whom s/he has trust and confidence to support him/her. In this case, attempt should be made to contact such person and inquire whether s/he is fit and willing to assume charge of the child before a decision is taken to institutionalise the child.

Where the child had been living in a child care institution prior to the abuse, and the abuse is alleged to have occurred within that institution, the interviewer must confirm this with the child. In such cases, a recommendation would then have to be made to transfer the child to another institution.

Where the alleged offender is a member of the child's family or shared household, the interviewer should consider interviewing the parent or guardian or other family member of the child, in the child's absence. The interviewer should however convey to all parties that no assumptions have been made about whether abuse has occurred, and whether it occurred at the hands of the alleged offender.

An interview with the child could result in sharing of confidential information. Hence, it should be conducted in a place where the child is assured of privacy.

The interviewer should also consider other children (boys as well as girls) that may have had contact with the alleged perpetrator and recommend to keep the alleged perpetrator away from such children. For example, there may be an indication to examine the child's siblings or other children living in the child care institution where the child was abused.

After the interview, the following details must be recorded:

- (i) A summary sheet containing family details;
- (ii) A record of all enquiries made about the case and the response obtained;
- (iii) A record of all contacts between the worker and the child and his or her parents/ caregivers;

- (iv) A record of all contact between the worker and other professionals, including working arrangements and agreements;
- (v) A summary, to be updated regularly, on recent events and their significance;
- (vi) A report of all Court proceedings, reviews and any other meetings, as well as any other relevant documentation;
- (vii) Details of assessment and outcomes;
- (viii) A record of any decisions made;
- (ix) A copy of any child protection plans;
- (x) A copy of all correspondence about the case.

2.1 Social Worker's/Probation Officer's/Non-Governmental Organization's (NGO)/any other person's (found fit by the CWC) recommendation and further action by CWC

Where the Social Worker/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC concludes, following his/her interaction with the child and other affected persons, that the child needs to be removed from the physical custody of his/her parents/ guardian/care giver, s/he should make a recommendation to the CWC to this effect.

Upon receiving the report of the Social worker/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC, the CWC has to make a determination as to whether the child must be removed from the custody of his/her parents/guardian/ care giver and placed in a Children's Home or Shelter Home. In making this determination, the CWC shall take into account any preference or opinion expressed by the child on the matter, together with all relevant factors that may have a bearing on the best interests of the child, having regard to the considerations referred to in Rule 4(5) of POCSO Rules, 2012. However, the CWC shall as far as possible avoid repeatedly questioning or interviewing the child.

3. Support persons: Relevant provision

The child must have access to support services which provide information, emotional and psychological support and practical assistance which are often crucial to the recovery of the child and help him to cope with the aftermath of the crime and with the strain of any criminal proceedings.

The Protection of Children from Sexual Offences Act, 2012 introduces the concept of a support person, to provide support to the child through the pre-trial and trial process. The support person is thus, in a way, a guardian ad litem for a child. He can be a useful intermediary between the authorities and the child.

Rule 4(7) of the POCSO Rules states:

The Child Welfare Committee, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his/her parent or guardian or other person in whom the child has trust and

confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and his/her parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

Thus, the support person may be appointed either by the Child Welfare Committee or by the child and his/her family themselves.

Rule 4(2) (e) of the POCSO Rules, 2012 states that it shall be the duty of the police official who receives a report of an offence to inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief. The police official should therefore inform the child and his/her parent, guardian or other person in whom the child has trust and confidence of the provision for engaging a support person to help him and his/her family through the trial and pre-trial process, and assist them in accessing these services.

Under Rule 4 (9) and (10) of the POCSO Rules, 2012 the Special Court is to be informed by the SJPU or local police station about the appointment and termination of support person. This reflects that the support person also has a role to play before the Special Court. The support person may be called upon by the Special Court to ascertain information about the child, such as whether the child is in a safe and protective environment, preferences of the child in a given situation. As the support person is required to assist the child through the entire process, s/he should also be present each time the child is required to attend before the Special Court.

3.1 List of Support Persons

The DCPU and the CWC shall maintain a list of persons/ NGOs who may be appointed as support person to assist the child. This could include the following:

- i) Persons working in the field of child rights/ child protection
- ii) NGO or other organisation working in the field of child rights/ child protection, including Childline and its support organisations
- iii) Officials of a children's home or shelter home
- iv) Persons employed by the DCPU, including:
 - (a) Legal-cum-Probation Officer
 - (b) Social worker
 - (c) Outreach worker
 - (d) Counsellor

The CWC may appoint any professional or any other person as a support person in the best interest of a particular child. However, in such cases, the CWC must ensure that there is no conflict of interest in the appointment of the support person, and must also give its reasons in writing for having appointed as support person such professional or person.

Rule 4(10) of the POCSO Rules, 2012 provides that the services of a support person may be terminated by the CWC upon request by the child or his/her parent or guardian or person in whom the child has trust and confidence, and that the child or person requesting the termination is not required to give any reason for this request.

Thus, where the child or his/her parent or guardian or person in whom the child has trust and confidence have reason to believe that the support person is not acting in the best interest of the child, they may request his/her removal. In such a case, a new support person may be provided by CWC with the consent of the child and his/her parents or guardian or other person in whom the child has trust and confidence.

3.2 Training of support persons

The support person should fulfil the requirements of having basic training in communicating with and assisting children of different ages and backgrounds to prevent the risks of revictimization and secondary victimization. Further, the support person must have an understanding of the legal and Court procedures involved in the conduct of a case under the POCSO Act, 2012. He has to be able to render concrete support to the child and facilitate his/her active participation, while not disturbing the proceedings by his/her presence.

To ensure this, the DCPU must arrange for periodic training modules to impart this knowledge to those registered with it or with the CWC for engagement as support persons.

3.3 Payment to Support Person

Officials of Children's Homes and Shelter Homes and persons employed by the DCPU are entitled to receive their monthly salaries at the pre-determined rates. They will be performing the functions of support persons as part of the scope of their work and will not receive additional remuneration for this work, except reimbursement of local travel costs and other miscellaneous expenditure.

Child rights/ child protection experts and NGOs may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other State Government Fund at rates set up by the State Government including DCPU for this purpose.

The duties and role of a support person are given under Rule 4 of the POCSO Rules, 2012. The support person is instrumental in maintaining the link between the child and law enforcement authorities by providing information to the child and his/her family about the progress of the case. Further, the successful rehabilitation of the child is dependent on the degree of sensitivity and level of understanding

with which the support persons deals with him the child while addressing his/her problems.

- i) Establishing trust with the support person is important and may only happen over a period of time. It is therefore advisable to appoint a support person at an early stage and to have the same person accompany the child throughout the whole proceedings. The more the child feels familiar with his/her support person, the more he will feel at ease.
- ii) It would also be useful to this end if the selection of the support person is done via a process involving the child.
- iii) Decisions on when to carry out any interviews should as far as possible take account of the child's situation and needs.
- iv) It is important to prevent secondary victimisation by ensuring that the child is interviewed as early as possible. Interaction with authorities should be as easy as possible, whilst limiting the number of unnecessary interactions the child has with them.
- v) Appropriate steps should be taken to ensure that the child does not have to come into contact with accused or suspected persons.

4. Child Protection Plan (CPP)

As stated in Rule 4(7) of the POCSO Rules, 2012 the Child Welfare Committee, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5) and with the consent of the child and his/her parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU.

After the support person has had an opportunity to interact with the child, the support person should formulate a Child Protection Plan (CPP) in respect of the child. CPP may be submitted to the CWC and can serve as a working tool that should enable the family and professionals to understand what is expected of them and what they can expect of others. The aims of the plan are to safeguard the interests of the child, to support the child's wider family and to care for the child and promote his/her welfare.

In cases where the child is produced before the CWC under Rule 4(3) of the POCSO Rules, 2012, and an Individual Care Plan (ICP) as defined in Rule 2 (h) of the Juvenile Justice (Care and Protection of Children) Rules, 2007⁴, is being developed for the child, the above mentioned CPP would supplement such Individual Care Plan (ICP).

4 Rule 2 (h): "individual care plan" is a comprehensive development plan for a juvenile or child based on age specific and gender specific needs and the case history of the juvenile or child, prepared in consultation with the juvenile or child, in order to restore the juvenile's or child's self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following needs of a juvenile or a child:

- (i) Health needs;
- (ii) Emotional and psychological needs;
- (iii) Educational and training needs;

The basic components of the CPP are:

- (i) Identification of current and potential sources of risk to the child, including the position of the abuser;
- (ii) Identification of strategies to protect the child and reduce the risks over the pre-trial and trial period;
- (iii) Identification of protective aspects of the child's situation, which may need to be strengthened and developed;
- (v) Consultation and negotiation with the child and his/her parents/guardians/caregivers on the content and feasibility of the plan;
- (vi) Communication of information between all the parties involved;
- (vii) Identification of resources necessary to carry out the plan, including family support and treatment services where required;
- (viii) Consideration of the position of the abuser alleged offender and potential risks to the child from this front; and,
- (ix) Need for counselling the child and his/her parents / guardians / care givers; and
- (x) Need for rehabilitation and compensation

5. Code of Conduct for Support Persons and Social Workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC

The primary responsibility of the Support Person or the Social Worker/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC is to protect the child and the child's interests during contact with the criminal justice system and to promote the well-being of the child. In general, the child's interests are the paramount consideration, but the Support Person' or Social Worker's/ Probation Officer's/Non-Governmental Organization's (NGO)/any other person's (found fit by the CWC) responsibility to the larger society or in the case of specific legal obligations may on limited occasions take precedence over the loyalty owed the child, and the child should be so advised.

For instance, where a worker in an NGO comes to know that a child who has come to him/her has been sexually abused, s/he is required by the POCSO Act, 2012 to report this to the police, even in a case where the child expresses his/her reluctance in doing so. In such cases, the child and his/her family should be counselled and made to understand the obligation to report.

- i) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should provide their services to the child only in the context of a professional relationship based, when

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- (iv) Leisure, creativity and play;
 - (v) Attachments and relationships;
 - (vi) Protection from all kinds of abuse, neglect and maltreatment;
 - (vii) Social mainstreaming; and
 - (viii) Follow-up post release and restoration.
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appropriate, on valid informed consent. Where the social worker or support person is being appointed through the CWC, the appointment should be made, as far as possible with the involvement of the child.

- ii) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should use clear and understandable language to inform the child of the purpose of their services, risks related to their services, reasonable alternatives, the child's right to refuse or withdraw consent, and the stage up to which s/he will be available to support the child. The child should also be given the opportunity to ask questions and clarify doubts.
- iii) In cases where the child is not literate or has difficulty in understanding the Social worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC or support person, such person should take steps and seek assistance to ensure the child's comprehension. This may include providing the child with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.
- iv) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should provide services and represent themselves as competent only within the boundaries of their education, training, certification, consultation received, supervised experience, or other relevant professional experience.
- v) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment. A conflict of interest occurs when a social worker's or support person's services to or relationship with the child is compromised, or might be compromised, because of decisions or actions in relation to another child, colleague, him or herself, or some other third party. Potential or actual conflicts of interest are very complex situations for social workers and support persons, or for any professional for that matter. Conflicts of interest can occur in many different contexts. For example, when a support person is appointed by the CWC, and such support person in the case of a child has a family relationship with someone in the child's family, there could be a conflict of interest. In such cases, the social worker or support person should inform the child and the CWC should take reasonable steps to resolve the issue in a manner that makes the child's interests primary and protects the child's interests to the greatest extent possible. In some cases, protecting the child's interests may require termination of the professional relationship with proper referral of the child to another Social Worker/Support Person.
- vi) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should not take unfair advantage of any professional relationship or exploit it to further their personal, religious, political, or business interests.

- vii) When Social workers/ Probation Officer/Non-Governmental Organization (NGO)/ any other person found fit by the CWC and support persons provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties the nature of social workers' professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.
- viii) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should respect the child's right to privacy. Social workers and support persons should not solicit private information from the child unless it is essential to providing services in the best interest of the child.
- ix) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/ any other person found fit by the CWC and support persons should protect the confidentiality of all information obtained in the course of professional service, except in the discharge of their professional duties. Social workers and support persons may disclose confidential information when appropriate with valid consent from the child or a person legally authorized to consent on behalf of the child and whose interests are not in conflict with that of the child. However, in any case, social workers and support persons should inform the child, to the extent possible, about the disclosure of confidential information and its potential consequences.
- x) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/ any other person found fit by the CWC and support persons should not discuss confidential information in any setting unless privacy can be ensured.
- xi) As provided in Section Section 23 (2) of POCSO Act, 2012, Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should not disclose the identity of the child when responding to or interacting with the media unless permitted by the Special Court in the best interest of children with reasons recorded in writing.⁵
- xii) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/ any other person found fit by the CWC and support persons should under no circumstances engage in sexual activities or sexual contact with the child and/or his/her relatives, whether such contact is consensual or forced.
- xiii) Further, they should not sexually harass the child. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favours, and other verbal or physical conduct of a sexual nature.

5 Section 23 (2): No reports in any media shall disclose, the identity of the child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child. Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

- xiv) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should not use derogatory language in their written or verbal communications to or about the child. Social workers should use accurate and respectful language in all communications to and about the child.
- xv) In the event that services are interrupted by factors such as unavailability due to other commitments, relocation, illness, disability or death, the CWC should appoint another suitable Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC or support person as soon as possible.

6. Role of Non-Governmental Organisations

Civil society organisations (independent institutions, non-governmental organisations (NGOs) and independent experts) have a positive role to play in the effective implementation of the POCSO Act, 2012 not only in raising public awareness on children's rights and in disseminating a new culture of child-adult relationships, but also in preventing and responding to violence against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children.

6.1 Relevant legal provisions

The POCSO Act, 2012 and POCSO Rules, 2012 envisage the involvement of NGOs as support persons for the child, as well as under various other provisions.

- i) Making report to police under Section 19(1) of POCSO Act, 2012 - any person, including a member of an NGO, may make a report under this section. Many NGOs work closely with vulnerable children and are in a position to detect child abuse. In many cases, a child may feel more comfortable disclosing abuse to an NGO worker rather than someone in his/her own family. An NGO that has knowledge of the sexual abuse of a child is also bound by the principle of mandatory reporting under section 21(1) of POCSO Act, 2012.
- ii) An NGO worker is included in the term "person of trust and confidence". Thus, such person's presence can be requested at the time of recording a statement before the Police or Magistrate [section 26(1)], medical examination [section 27(3)], and Special Court proceedings [section 33(4) and 37].
- iii) An NGO worker may be appointed as a support person by the CWC to assist the child through the pre-trial and trial procedure (sub-rule 7 of rule 4 of POCSO Rules, 2012). Also, the parents, guardian or other person in whom the child has trust and confidence can approach an NGO to act as a support person (proviso to sub-rule 7 of rule 4 of POCSO Rules, 2012).
- iv) Where an NGO is appointed as the support person, its worker has a right to be informed under sub-rule 11 of rule 4 of POCSO Rules, 2012 of the developments, including the arrest of the accused, applications filed and other court proceedings. The NGO support person in turn communicates this information to the child and his/her family.

- v) The NGO assisting a child can, under rule 7 of POCSO Rules, 2012 file an application for interim and final compensation with the Special Court, as well as with the Legal Services Authority.

It has been noted that victims of child sex abuse, and often their families, prefer to approach and seek advice from an NGO even before they report the matter to the police. Thus, in such situations, the NGO becomes a first point of contact for the child, providing counselling, legal advice and assistance to report the matter.

NGOs must maintain regular contact with the SJPU and local police stations in their areas of operation. Cooperation between the police and NGOs would facilitate speedy action and reduction of secondary trauma. Where an NGO is approached by a child and/or his/her parents or guardian or other person in whom the child has trust and confidence before the latter approaches the police, the NGO can arrange contact with the police. On the other hand, where the child and/or his/her parents or guardian or other person in whom the child has trust and confidence approach the police on their own, the police can inform and refer them to NGOs that offer support and guidance. This course of action has been recommended for the police in many districts, and is followed in some.

Where an NGO worker is appointed as the designated support person under Rule 4 of POCSO Rules, 2012 such person should refer to the guidelines for support persons.

6.2 General Comments:

In addition to these support functions, an NGO can also play a vital role in identifying child sexual abuse concerns. A number of NGOs work with children closely, and are aware of the particular problems and behaviour of each child. The NGO worker is in a position to keep a watch on these children, and to look out for children who are at risk of sexual abuse as well as for signs of sexual abuse even before the child himself may disclose it. In this way, an NGO worker can contribute to the detection of sexual abuse and to the initiation of remedial measures, including judicial processes, in respect of the sexual abuse.

NGOs are the primary channel for awareness-generation and proactive monitoring of government policies and action. They can contribute to the objectives of the POCSO Act, 2012 by providing technical support to children's institutions in developing Child Protection Policies addressing issues of recruitment, monitoring, complaints mechanism, disciplinary proceedings, and police reporting within their own organisational or institutional setting, and training their staff in this regard. They can also train CWC, lawyers, doctors and other professionals who come in contact with children about the POCSO Act, 2012 and in communicating with children. In addition to this, they can set up education and training programmes for children and youth. They can hold consultations with children and youth to understand their views and perspectives on the issue of child sexual abuse and provide them with opportunities and ways to put recommendations forward as well as opportunities to get involved in implementation.

In addition to this, NGOs can monitor media coverage and ensure sensitive handling of the issue. They can also develop and disseminate position papers and other academic and awareness materials. They can create alliances with other NGOs, business groups, private organisations and the local, national and regional media networks, share best practices, submit articles, involve the press in relevant events and lobby with the media to raise awareness with the general public.

NGOs can thus play a vital role in the implementation of the provisions of the POCSO Act, 2012 and in general in combating the problem of child sexual abuse.

Child Development Experts

Child development refers to the various stages of physical, social, and psychological growth that occur from birth through young adulthood. A child who has been the victim of a sexual offence is likely to have been severely traumatised, both mentally as well as physically. A child development expert is therefore a person who is trained to work with children with physical or mental disabilities, to evaluate such a child's mental and physical development in the context of that child's experience, and to accordingly facilitate communication with the child.

1. Legal Provisions:

As per the definitions in the rules framed under the POCSO Act, 2012, Rule 2(c) states:

"Expert" means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability.

Section 26(3) states, *"the Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.*

Section 38(2) states, *"if a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child".*

Thus, the Act envisages a role for child development experts at the stage of taking evidence from the child and recording his/her statement for the purpose of investigation and trial under the Act. The role of this expert is to facilitate communication between the child and the authority concerned.

Rule 3 provides for the engagement of various experts, including child development experts, for the purposes of the Act. It specifies the qualifications and experience of the experts engaged for facilitating communication with the child, stating that such an expert shall be qualified in the relevant discipline from a recognized University or an institution recognized by the Rehabilitation Council of India.

The Rehabilitation Council of India runs programmes in various aspects of child development, including working with physically and mentally disabled children. It also recognises courses run by other universities in these disciplines.

Rule 3(6) provides that payment for the services of an expert shall be made by the State Government from the Fund maintained under section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them. It is thus for each DCPU to fix the rates payable to experts in various disciplines. However, it is suggested that these rates be fixed at the level of the State to provide for administrative consistency.

The following is also to be kept in mind while engaging the services of an expert:

- i) Any preference expressed by the child as to the gender of the expert, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child – Rule 3(7).
- ii) The interpreter, translator, Special educator, expert, or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest. He shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973 - Rule 3(8).
- iii) In proceedings under section 38, it is for the Special Court to ensure that there is no conflict of interest in engaging a particular expert to provide services under the Act – Rule 3(9).
- iv) Any expert appointed under the provisions of the Act or its rules shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872 – Rule 3(10).

2. General Comments:

The dynamics of child sexual abuse are such that often, children rarely disclose sexual abuse immediately after the event. Moreover, disclosure tends to be a process rather than a single episode and is often initiated following a physical complaint or a change in behaviour. In such a situation, when the child finally discloses abuse, and a report is filed under the POCSO Act, 2012 more information will have to be gathered so that the child's statement may be recorded.

Information so obtained will become part of the evidence.

However, given the experience that the child has gone through, he is likely to be mentally traumatised and possibly physically affected by the abuse. Very often, law enforcement officers interview children with adult interrogation techniques and without an understanding of child language or child development. This compromises the quality of evidence gathered from the child, and consequently, the quality of the investigation and trial that are based on this evidence.

The interviewing of such a child to gather evidence thus demands an understanding of a range of topics, such as the process of disclosure and child-centred developmentally-sensitive interviewing methods, including language and concept formation. A child development expert may therefore have to be involved in the management of this process. The need for a professional with specialized training is identified because interviewing young children in the scope of an investigation is a skill that requires knowledge of child

development, an understanding of the psychological impact sexual abuse has on children, and an understanding of police investigative procedures.

Such a person must have knowledge of the dynamics and the consequences of child sexual abuse, an ability to establish rapport with children and adolescents, and a capacity to maintain objectivity in the assessment process. In the case of a child who was disabled/ physically handicapped prior to the abuse, the expert would also need to have specialised knowledge of working with children with that particular type of disability, e.g. visual impairment, etc.

Legal Representatives

1. Free Legal Aid

Under Section 12(c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act. The POCSO Act, 2012 confirms the right to free legal aid under Section 40, providing that the child or his/her family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority⁶.

In every District, a District Legal Services Authority has been constituted to implement the Legal Services Programmes in the District. The District Legal Services Authority is usually situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

1.1 Public Prosecutor

The Protection of Children from Sexual Offences Act, 2012 provides, under Section 32:

32. (1) The State Government shall, by notification in the Official Gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under subsection (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.

1.2 Child-friendly procedures

The Act provides for child-friendly pre-trial and trial procedures to minimise the trauma felt by child victims and to eliminate the possibility of revictimisation at

⁶ Section 40: Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act: Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

the time of trial. The child friendly pre-trial procedures cast duties on the police and are to be implemented at the time of reporting of offences and recording of the child's statement. These are given in detail in Sections 19-26 of the Act.

The child-friendly procedures during the trial are to be followed by the Special Courts set up under Section 28(1) to try offences under the Act. They aim to ensure that the child is protected from intimidation, whether intentional or not. All legal representatives, whether representing the accused or the child, must be aware of these provisions. Given the particular vulnerabilities of children, additional measures should also be made available and utilised even in normal circumstances. The child-friendly trial provisions are detailed in Section 33 – 38 of the Act.

1.3 Services that may be provided by Legal Aid Authorities:

i) Legal Representation

The abused child should be provided with such care and protection as required by law. Any such action shall be in accordance with the procedures established by the State Legal Services Authority and the National Legal Services Authority. The Form for Application for Legal Services should be provided to the child by the police at the time of making the report under Section 19(1).

ii) Legal Counselling

Complainants in need of legal aid/ assistance/ advice in cases of violations of child rights may seek aid/ assistance from the Legal Aid Cell so that the child is able to testify in court without fear.

iii) Legal Advice

The Cell shall render such aid/ assistance/ advice to the complainant as well as send its legal opinion in such cases to the concerned govt. authorities for suitable action. Governmental and Non Governmental Organisations, Civil Society Organisations, voluntary organisations, parents, relatives, concerned friends and members of the public may, on behalf of the child in need of care & protection, approach the Cell and receive legal advice regarding the legal rights of the child and the means for accessing those rights. The Cell will provide requisite information and advice to the concerned persons regarding the legal options available for protecting the interests of the child. The Cell will also assist the concerned in making a decision regarding various options available to pursue the case and if required help in formulation of complaints, petitions, etc.

Other services offered by the Legal Services Authority:

- i) Payment of court and other process fee;
- ii) Charges for preparing, drafting and filing of any legal proceedings;
- iii) Charges of a legal practitioner or legal advisor;
- iv) Costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding;

v) Costs of paper work, including printing, translation etc.

1.4 Mode of selection of lawyers to represent children who have been sexually abused:

The DLSA shall draw a panel of qualified and experienced advocates to represent child victims of sexual abuse. This panel should comprise of a mix of advocates having practice experience of more than 3 to 5 years as well as junior advocates. Conviction, commitment and experience in the field of child rights should be relevant considerations for empanelment.

Advocates may initially be empanelled for a period of one year which can be extended on the basis of performance.

1.5 Payment of Legal Aid Counsellors

The Legal Aid Counsels will be paid for their services by the LSA as per the approved schedule of fees.

2. Guidance on examining child victims and witnesses

During criminal investigation, some minimum levels of protection are required in relation to any interviews with the victim. These should be carried out in a sensitive manner and advocates as well as law enforcement officials should have received appropriate training to this end. Such training should ensure that these persons know appropriate methods of interviewing which will take account of a victim's particular situation, minimise distress and maximise the collection of high-quality evidence. In order to ensure that the child-friendly trial procedures established under the Act are optimised, the following guidance should be kept in mind by legal representatives of a child who has been a victim of an offence under the Act:

2.1 Before trial

- i) List cases for an as soon as possible and avoid adjournments:** It is in the interest of the child that the trial is concluded as quickly as possible. Prolonging the judicial process will only cause more trauma to the child.
- ii) Ensure that communication with the child is in an understandable language and manner:** The majority of young witnesses experience communication difficulties while giving evidence, often because questioning is developmentally or otherwise inappropriate. Before a child gives evidence, try having a conversation with him outside the Court so that you have an idea about his/her communication abilities and concentration span.
- iii) Consider what special measures may be taken in light of the child's wishes and needs:** Make whatever applications are necessary to ensure that the child receives the benefit of existing child-friendly measures. Ensure applications are made within time limits so that the child can be informed of decisions before trial.
- iv) Ensure that the child is able to exercise his/her right to be accompanied by an adult in whom he has trust and confidence:** This could be the child's

parent, guardian, or other person, or the support person appointed by the CWC.

- v) **Chart all stages of children's evidence to minimize time at court and give them a fresh start in the morning:** The start of children's testimony should not be delayed by other matters on the court list. It is best to make an estimate of the amount of time the child will have to be present in Court, and in doing this, to bear in mind his/her concentration span, the length of any recording, the best time to view it and the need for breaks. Request the Special Court to accommodate these requirements.
- vi) **Request that the child is given an opportunity to visit the court to familiarize himself with it before the trial:** This will enable the child to experience the atmosphere in Court so that he is not intimidated at the trial and avoid the need for him to attend early on the day of trial to see facilities. It will also allow him to express an informed view about special measures, so that a revised application can be made if necessary in advance of trial.
- vii) **Request that the child sees or can be briefed on his/her statement for the purpose of memory-refreshing before trial**
- viii) **Consider the witness's access to the building and suitability of waiting areas:** Where it is difficult to segregate young witnesses from defendants within and around the building, consider standby arrangements or the use of remote live links.

2.2 At trial

- i) **Children have the right to be heard in any judicial and administrative proceedings affecting them.** They must be given a reasonable opportunity to express their views all matters affecting him and these must be taken into account. He should also be allowed to provide initial and further information, views or evidence during the proceedings.
- ii) **Children have the right to information about the case in which they are involved,** including information on the progress and outcome of that case, unless the lawyer considers that it would be contrary to the welfare and best interests of the child. It would be best if the lawyer coordinates with other persons or agencies concerned with the child's welfare, such as the support person, so that this information is conveyed in the most effective manner. Victims should receive the most appropriate information on the proceedings from all their representatives, and the assistance of a support person appointed under Rule 4(7) most often constitutes the best practice in ensuring that full information is conveyed to the victim.

Such information would include:

- (a) Charges brought against the accused or, if none, the stay of the proceedings against him;
- (b) The progress and results of the investigation;
- (c) The progress of the case;

- (d) The status of the accused, including his/her bail, temporary release, parole or pardon, escape, absconding from justice or death;
 - (e) The available evidence;
 - (f) The child's role in the proceedings;
 - (g) The child's right to express their views and concerns in relation to the proceedings;
 - (h) The scheduling of the case;
 - (i) All decisions, or, at least, those decisions affecting their interests;
 - (j) Their right to challenge or appeal decisions and the modalities of such appeal;
 - (k) The status of convicted offenders and the enforcement of their sentence, including their possible release, transfer, escape or death.
- iii) **Ensure ahead of time that equipment is working, recordings can be played and that camera angles will not permit the witness to see the defendant:** Do not wait until the young witness is in the live link room to run checks: delays and malfunctions can be disruptive to the child. Where a live link is being used during the child's testimony, ensure that they are able to see all of the questioner's face.
- iv) **Explain that the judge or magistrates can always see the witness over the live video link:** Explain that this is the case even when the witness cannot see the judge or magistrates.
- v) **Request the Public Prosecutor to himself to the child before the trial and to answer his/her questions:** Judges and magistrates may also ask if the child would like to meet them before the trial starts, to help to establish rapport and put the child at ease. Under the POCSO Act, 2012 questions to the child will be routed through the Judge, and it would be useful for the child to be familiar with their manner of conversation, and vice versa.
- vi) **Encourage the child to let the court know if they have a problem:** They may not understand a question or questions that are too fast, or they may need a break. However, many children will not say they do not understand, even when told to do so. Professional vigilance is therefore always necessary to identify potential miscommunication, and it is the child's counsel who will have to be mindful of any instance where the child is losing concentration, feeling ill, etc.
- vii) **Do not ask the child at trial to demonstrate intimate touching on his/her own body:** This may be construed as abusive. The child can instead be asked to point to a body outline diagram.

3. Role of lawyer for the child

The Legal Aid services lawyer, or, as the case may be, the private lawyers appointed by the child and/ or his/her family, plays a critical role. While it is the Special Public Prosecutor appointed under the POCSO Act, 2012 who will essentially be in charge of the trial in the Special Court, the child's lawyer is entrusted with the task of ensuring that the child's interest is protected. Thus, his/her role extends to representing the child, helping uncover the nature and extent of abuse, identifying responsible parties and securing damages to compensate the victim and facilitate the healing process.

In addition to this, the legal aid or private lawyer should also be able to build a good rapport with the Special Public Prosecutor, as this would ensure that all concerns in respect of the child are raised before the Court in the course of the trial.

- i) The lawyer must provide independent representation and advice to the child.
- ii) The lawyer has a duty to put before the Court the views of the child, but should not require the child to express a view if he does not want to do so. However, the lawyer shall not be required to put before the Court any views expressed to him in confidence.
- iii) Where a lawyer has been appointed to represent a number of children, some of whom are able to provide a view as to representation and some of whom are unable to do so, the lawyer must be alert to the possibility of conflict. In some cases the lawyer may be obliged to seek separate representation for one or more of the children.
- iv) Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.
- v) Where a conflict arises between a child's views and information relevant to the welfare and best interests of the child, the lawyer should:
 - a) discuss the issues and the lawyer's obligations with the child;
 - b) attempt to resolve the conflict with the child; and
 - c) advise the Court of the lawyer's position and, in the case where the lawyer is unable to resolve the conflict and as a matter of professional judgement can advocate only the child's views, invite the Court to appoint another lawyer.

3.1 The lawyer shall represent the child in accordance with the child's welfare and best interests.

Where a child is:

- i) by virtue of his/her age, maturity or disability, unable to express a view; or
- ii) able to express a view but his/her age, maturity or disability are such that any view should be treated with caution; or
- iii) unable or unwilling to express a view or in any way guide representation,

In such cases, the lawyer may be guided by the following general guidance:

- i) The older the child, the more weightage should be given to the child's instructions. The younger the child, the more representation shall be in accordance with the child's welfare and best interests.
- ii) The lawyer has a duty to see that all factors that impact on the child's welfare and best interests are put before the Court.
- iii) In determining what best serves the child's welfare and best interests, the lawyer must take into account the principle that decisions affecting the child should be made and implemented within a timeframe that is appropriate to the child's sense of time.
- iv) The lawyer must meet with the child he is appointed to represent, unless there are exceptional circumstances to prevent this. The timing and venue for such meeting and any further meetings should be at the discretion of the lawyer. However, the lawyer shall meet with the child at a time which ensures that the child's views are up to date at the time of the hearing so that they can be taken into account by the Court.
- v) As a general rule, the lawyer shall act in terms of the child's instructions, conveying them to the Court by direct evidence if possible, call such witnesses as are required to carry out those instructions and examine and cross-examine and make submissions on behalf of the child.
- vi) The Act provides under Section 33(8) that the Special Court may award compensation to the child. The lawyer should ensure that the child and his/her family are aware of this, and should make the appropriate applications for interim and final compensation as provided under Rule 7.

3.2 At a hearing, the lawyer should:

- i) Identify all relevant issues which need to be determined in regard to the child's welfare and best interests;
- ii) Ensure that the Court has all the necessary information that is relevant to the welfare and best interests of the child, including the views of the child, so that an informed decision can be made;
- iii) Call evidence where appropriate (other than any Court's witness), for example, from psychological and/or medical professionals and teachers;
- iv) Ensure the lawyer does not give evidence himself or herself;
- v) Cross-examine to ensure all relevant issues are fully explored; and
- vi) Make submissions on behalf of the child.

3.3 After the conclusion of the trial

- i) The lawyer should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding. He should give the necessary information on possible measures that could be taken, such as appeal or other mechanisms for complaints as well as compensation.

- ii) When a decision has not been enforced, the child should be informed through his/her lawyer of available remedies either through non-judicial mechanisms or access to justice.
- iii) The child's lawyer, guardian or legal representative should take all necessary steps to claim compensation for the child. Rule 7(6) provides that nothing shall prevent a child or his/her 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. Thus, if there is any additional scheme for compensation, the child's lawyer should inform the child of this and seek instructions on how to proceed further.

4. Child-Friendly Courtrooms and Waiting Areas

Many children find the courtroom experience intimidating and this intimidation can create stress in child victims. Under these circumstances, a child can be a poor witness, and the process of navigating the criminal justice system can compound a child's trauma. The POCSO Act, 2012 provides for a number of child-friendly procedures to be followed in the Special Court. In addition to this, some measures can be out in place in the Special Court to ensure that the child is not overcome by the circumstances. However, the rights of the accused, of example that of cross-examination of the child, must be protected while balanced against the rights and needs of these child victims.

Some of the ways to ensure the child's comfort is that screens are permanently in place in the Special Courts for the witness stands for the children. Additionally, the child-friendly courtrooms can be equipped with closed circuit television capabilities, which allow the child to testify in a separate room from the accused. Special waiting rooms should be provided within the court premises to allow the families to wait in privacy throughout the court proceedings.

Guide to Mandatory Reporting

Section 21(1) of the POCSO Act, 2012 requires mandatory reporting of cases of child sexual abuse to the law enforcement authorities, and applies to everyone including parents, doctors and school personnel. Failure to report a suspicion of child abuse is an offence under the Act. The legislation makes it clear that the reporting obligation exists whether the information was acquired through the discharge of professional duties or within a confidential relationship. Any private person who fails to report suspected child abuse, having acquired the information in the discharge of his or her professional responsibilities, commits a summary conviction offence.

Similarly, school personnel, doctors and other professionals may, in the course of delivering services, receive information which causes them to suspect that a child has been sexually abused. It is possible that the information obtained includes the identity of the perpetrator. The alleged perpetrator may be a person who is unknown to the reporter of the offence, but the suspicion could also involve a colleague, co-worker, friend or other associate. The obligation to report is unrestricted by any pre-condition that the complaint be first reported within the respective departments, services or agencies, even if the perpetrator is alleged to be an employee of that institution, service or agency. Thus, a person who has knowledge that an offence has been committed under the child can directly report it to the police or magistrate.

1. Why report?

The purpose of reporting is to identify children suspected to be victims of sexual abuse and to prevent them from coming to further harm. Without detection, reporting and intervention, these children may remain victims for the rest of their lives, carrying the scars of the abuse throughout their lives and even, in some cases, repeating the pattern of abuse with their own children.

However, the nature of sexual abuse, the shame that the child victim feels and the possible involvement of a parent, family friend or other close person, makes it extremely difficult for children to come forward to report sexual abuse. This is why the law provides for mandatory reporting, placing the responsibility to report not on the child but on a surrounding adult who may be in a better position to help.

2. Obligation to inform the child

The Act does not lay down that a mandatory reporter has the obligation to inform the child and/or his/her parents or guardian about his/her duty to report. However, it is good practice to let them know that this will need to be done.

For example, where a doctor is confronted with a situation where a child brought into his/her care is exhibiting symptoms of child sexual abuse, he should inform the child and/or his/her caregiver that he has a legal duty to report the abuse. This will help establish an open relationship and minimize the child's feelings of betrayal if a report needs to be made. When possible, discuss the need to make a child abuse report with the family. However, be aware that there are certain situations where if the family is warned about the assessment process, the child may be at risk for further abuse, or the family may leave with the child.

3. What to Report?

Explain, as well as you can, what happened or is happening to the child. Describe the nature of the abuse or neglect and the involved parties. Be as specific as possible. Be prepared to give the name, address, and telephone number of the child and also the name of the parent or caretaker if known. Even if you do not know all of this information, report what you do know. Tell all you know about the situation.

However, the reporter is not expected to investigate the matter, know the legal definitions of child abuse and neglect, or even know the name of the perpetrator. This should be left to the police and other investigative agencies.

A report of sexual abuse should contain the following information, if it is known:

- i) The names and home address of the child and the child's parents or other persons believed to be responsible for the child's care.
- ii) The child's present whereabouts.
- iii) The child's age.
- iv) The nature and extent of the child's injuries, including any evidence of previous injuries.
- v) The name, age, and condition of other children in the same household.

- vi) Any other information that you believe may be helpful in establishing the cause of the abuse to the child.
- vii) The identity of the person or persons responsible for the abuse or neglect to the child, if known
- viii) Your name and address.

4. Sanctions

4.1 Failure to Report Child Abuse

The POCSO Act, 2012 provides under Section 21(1) that any person, who fails to report the commission of an offence or who fails to record such offence shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

4.2 Reporting False Information

The POCSO Act, 2012 makes it an offence to report false information, when such report is made other than in good faith. It states that any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both. Where such information is provided against a child, the punishment may extend to one year.



The Victim and Witness Protection Act of 1982: Retroactive Application for Continuing Crimes

INTRODUCTION

In response to the needs of victims of federal crimes, the 97th Congress enacted the Victim and Witness Protection Act of 1982 (“VWPA”).¹ The VWPA authorizes a federal court to award restitution as part of a defendant’s sentence² but, by its terms, applies only to offenses occurring on or after January 1, 1983, the effective date of the statute.³ Federal courts are divided over whether the statute permits restitution for losses sustained by victims of continuing crimes when such losses occurred before the effective date. The Third, Fourth and Fifth Circuits look to the language of the effective date and allow restitution only for losses occurring on or after January 1, 1983.⁴ Under this approach, victims may still recover pre-effective date losses in subsequent civil proceedings.⁵ The Second, Sixth, Ninth and Eleventh Circuits, however, grant restitution for losses occurring before and after the effective date of the VWPA when the offense is a continuing crime or scheme to defraud.⁶

These circuits focus on the unified nature of continuing offenses and regard such criminal acts as having been committed after the effective date of the VWPA.⁷

This Note discusses whether the VWPA should provide restitution for losses occurring before the effective date of the statute if those losses were sustained as a result of a continuing crime. Part I examines the legislative history of the VWPA and the policies served by restitutionary remedies. Part II discusses the nature of continuing crimes and the problems in applying the effective date of the VWPA to such crimes. Part II argues that where continuing crimes are concerned, going beyond the effective date of the VWPA is essential in order to fulfill the purpose of the statute. Part III addresses the ex post facto clause and the constitutionality of

1 Pub. L. No. 97-291, 96 Stat. 1248 (1982) (codified as amended in scattered sections of 18 U.S.C. and Fed. R. Crim. P. 32(c)(2)).

2 See 18 U.S.C. § 3663(a) (Supp. V 1987) (originally codified at 18 U.S.C. § 3579(a)(1)). “The court, when sentencing a defendant convicted of an offense under this title ... may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense.” *Id.*

3 See 18 U.S.C. § 1512 note (a)(2) (1982 & Supp. V 1987).

4 See, e.g., *United States v. Corn*, 836 F.2d 889, 896 (5th Cir. 1988) (“When the defendant’s offense is a unitary conspiracy or scheme to defraud, the government must identify which losses resulted from acts committed before and which from acts committed after the effective date for the purposes of restitution. . . .”); *United States v. Oldaker*, 823 F.2d 778, 781 (4th Cir. 1987) (“Although conspiracy is commonly viewed as an ongoing offense, the losses suffered by Oldaker’s victims after January 1, 1983, are the only ones compensable under the Act.”); *United States v. Martin*, 788 F.2d 184, 189 (3d Cir. 1986) (“[W]hile a scheme to defraud ... may properly be viewed as one unitary offense, the losses which resulted therefrom must be separately identified as those which occurred before and those which occurred after January 1, 1983 . . .”).

5 See Note, *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 *Harv. L. Rev.* 931, 940 n.71 (1984); cf. 18 U.S.C. § 3663(e) (Supp. V 1987) (originally codified at 18 U.S.C. § 3579(e)(2)) (“Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages”).

6 See, e.g., *United States v. Bortnovsky*, 879 F.2d 30, 42 (2d Cir. 1989) (“[A]ny loss sustained as a result of one of the predicate acts underlying the RICO offenses seems to us to fall within the scope of the Act.”); *United States v. Angelica*, 859 F.2d 1390, 1393 (9th Cir. 1988) (“Because the fraudulent scheme continued beyond January 1, 1983, we hold that all of the victims’ losses are subject to a judgment of restitution under the VWPA.”); *United States v. Purther*, 823 F.2d 965, 968 (6th Cir. 1987) (“The district court correctly held that [defendant] pled guilty to the offense of mail fraud involving a scheme which continued in operation after January 1, 1983, and therefore, was subject to the restitution provisions of the Act.”); *United States v. Barnette*, 800 F.2d 1558, 1571 (11th Cir. 1986) (“[T]he conspirators continued to defend and promote their fraudulent scheme after January 1, 1983 Therefore, the restitution order imposed... is authorized.”) (citation omitted), cert. denied, 480 U.S. 935 (1987).

7 See *Bortnovsky*, 879 F.2d at 42; *Angelica*, 859 F.2d at 1393; *Purther*, 823 F.2d at 968; *Barnette*, 800 F.2d at 1571.

demanding restitution for losses incurred before the VWPA's effective date. This Note concludes that the VWPA should permit restitution for pre-effective date losses when such losses are suffered as part of a continuing crime.

I. LEGISLATIVE HISTORY AND THE POLICY OF RESTITUTION

A. Legislative History

Addressing the judiciary's mistreatment of crime victims,⁸ President Reagan said in 1982 that, "The plight of innocent citizens victimized by lawlessness deserves immediate national attention."⁹ The President urged "all ... involved in the criminal justice system to devote special attention to the needs of victims of crime, and to redouble their efforts to make our system responsive to those needs."¹⁰

Sharing the President's views, the Special Senate Subcommittee on Aging and the Senate Judiciary Subcommittee on Criminal Law¹¹ conducted hearings on victims' rights.¹² These hearings indicated that victims were the "forgotten persons¹³ in the criminal justice system and that their needs were being ignored."¹⁴

Soon after these hearings, and in response to the national outcry concerning victims' rights,¹⁵ separate bills were introduced in the Senate and House which eventually became the VWPA.¹⁶ The VWPA passed both houses with exceptional speed¹⁷ and support, and created a panoply of devices that increase protection of both victims and witnesses. The VWPA has three major provisions. First, the VWPA amends the Federal Rules of Criminal Procedure to

8 For discussion of the judiciary's mistreatment of crime victims, see R. Elias, *Victims of the System: Crime Victims and Compensation in American Politics and Criminal Justice* (1983). See generally Goldstein, *Defining the Role of the Victim in Criminal Prosecution*, 52 *Miss. L.J.* 515, 518-20 (1982) ("alienation of the victim"); Kiesel, *Crime and Punishment: Victim Rights Movement Presses Courts, Legislature*, 70 *A.B.A. J.* 25 (1984) (whether nation's system of justice has failed in meeting the needs of victims); Metz, *The Illusion of Victim Rights*, *Stud. Law.*, Mar. 1989, at 17 ("[t]he problem is not whether you're rich or poor, . . . but essentially: Is there any system there for anybody?"); *Victims of Crime: Giving Them Their Day in Court*, *Judges' J.*, Spring 1984 (special issue discussing rights and needs of victims); Blackmore, *Paying the Price of Crime*, *Police Mag.*, July 1979, at 54 (inefficiency of judiciary and lack of response to witness needs).

9 Proclamation No. 4929, 47 *Fed. Reg.* 16,313 (1982), reprinted in 1982 *U.S. Code Cong. & Admin. News* A47.

10 *Id.* The President further declared the week beginning April 19, 1982 as "Crime Victims' Week." See *id.*

11 See S. Rep. No. 532, 97th Cong., 2d Sess. 30 (1982), reprinted in 1982 *U.S. Code Cong. & Admin. News* 2515, 2536 [hereinafter *Senate Report on Criminal Law*].

12 See *Hearings Before the Special Committee on Aging*, 97th Cong., 2d Sess. S141-43 (1982) (testimony of witnesses appearing before the Committee on the Effects of Crime on the Elderly); *Hearings Before the Senate Judiciary Committee Concerning the Omnibus Victims Protection Act*, 97th Cong., 2d Sess. S521-81 (1982) (testimony about mistreatment of crime victims by judicial system).

13 See *Senate Report on Criminal Law*, *supra* note 11, at 2516.

14 See *id.*

15 See *supra* note 8 and accompanying text.

16 Senator Thurmond of South Carolina began the process on September 17, 1981, with the introduction of the Criminal Code Reform Act of 1981. See S. 1630, 97th Cong., 1st Sess., 127 *Cong. Rec.* 20,925 (1981). On April 22, 1982, this bill was combined with the Omnibus Victims Protection Act. See S. 2420, 97th Cong., 2d Sess., 128 *Cong. Rec.* 7423 (1982). For the House, two bills were introduced by Representative Rodino of New Jersey: The Victims of Crime Compensation Act of 1982, H.R. 6447, 97th Cong., 2d Sess., 128 *Cong. Rec.* 11,051 (1982), and The Victim and Witness Protection and Assistance Act of 1982, H.R. 6448, 97th Cong., 2d Sess., 128 *Cong. Rec.* 11,051 (1982).

17 The Senate Judiciary Committee reported on its version of the Bill, S. 2420, on August 19, 1982. See S. Rep. No. 532, 97th Cong., 2d Sess. 1, reprinted in 1982 *U.S. Code Cong. & Admin. News* 2515. The Senate considered and passed S. 2420 twenty six days later, on September 14, 1982. See 128 *Cong. Rec.* 23,391 (1982). On September 30, 1982, the House passed H.R. 7191, its version of the Bill, and passed the Senate Bill, S.2420, with amendments. See 128 *Cong. Rec.* 26,348-63 (1982). On October 1, 1982, the Senate passed the House version, with amendments of its own. See 128 *Cong. Rec.* 26,809 (1982). The House then approved the final version from the Senate on October 1, 1982. See 128 *Cong. Rec.* 27,386 (1982). President Reagan signed the Act into law on October 12, 1982, less than two months after it left committee in the Senate.

require that a pre-sentencing report assessing the financial, social, psychological and medical impact of the crime upon the victim be filed with the trial judge.¹⁸ Second, Section 1512 of Title 18 broadens the definition of witness to include victims and expands witness protection to cases other than organized crime offenses.¹⁹ Section 1512 also provides criminal penalties for intimidation of victims and witnesses²⁰ and lowers the threshold requirements for commission of an intimidation offense.²¹ Third, Section 3663 of Title 18 authorizes restitution for crime victims,²² but does so only when its imposition will not unduly complicate or prolong the sentencing process.²³

Congress intended the restitution provision, Section 3663, to “ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime. . .”²⁴ The Senate report accompanying the Act called the “insensitivity and lack of concern for the victim and witness ... a tragic failing in our criminal justice system”²⁵ and asserted that federal courts were following the trend of state courts by “reducing restitution from being an inevitable if not exclusive sanction to being an occasional afterthought.”²⁶ Consequently, by enacting Section 3663, the Senate ensured that “the wrongdoer [would be] required to the degree possible to restore the victim to his or her prior state of well-being.”²⁷

By providing restitution as part of a defendant’s sentence, the VWPA fills what the Ninth Circuit felt was a sentencing gap in the Uniform Probation Act,²⁸ the predecessor of the VWPA.

18 See Fed. R. Crim. P. 32(c)(2). The “Victim Impact Statement” is prepared by the Probation Department; see also Senate Report on Criminal Law, supra note 11, at 2517-20 (testimony of probation department that a victim impact statement be prepared).

19 See 18 U.S.C. § 1512(a) (1982 & Supp. V 1987).

20 See id.

21 See 18 U.S.C. § 1512(a),(b) (1982 & Supp. V 1987).

22 See 18 U.S.C. § 3663 (Supp. V 1987) (originally codified at 18 U.S.C. § 3579).

23 See 18 U.S.C. § 3663(d) (Supp. V 1987).

24 18 U.S.C. § 1512 note (b)(2) (1982 & Supp. V 1987). The Act, according to Senator Heinz, was “a constructive federal approach designed to rebalance the scales of justice in favor of the valid interest of the victim.” See 128 Cong. Rec. 26,809 (1982). Senator Heinz commented that “it is, unfortunately, not too strong a statement to make that most crime victims are victimized twice-the second time by the insensitivity of a criminal justice system which fails to acknowledge that people, too, are victims. This bill takes a long step forward in preventing that second crime.” See 128 Cong. Rec. 26,810 (1982); see also 128 Cong. Rec. 27,392 (1982) (statement by Representative Fish) (“It is time for this Congress to show the compassion to victims of Federal crime that they deserve and have a right to expect”).

25 Senate Report on Criminal Law, supra note 11, at 2516.

26 Id. at 2536. The Senate sought to implement “new methods of constructive, victim-oriented sentencing practices [that] can insure... that the prosecutorial, judicial and probation authorities know, and are encouraged to respond to, the victim’s monetary damages.” Id. at 2537.

27 Id. at 2536. Senator Laxalt stated that “[i]t is the intent of Congress that judges order restitution in each and every case where the court finds there has been property loss or injury to the victim. The purpose of this bill is to attempt to make the victim whole once again.” 128 Cong. Rec. 26,811 (1982).

28 See *United States v. Signori*, 844 F.2d 635, 640 (9th Cir. 1988). The Uniform Probation Act provided, in pertinent part, that the court, [u]pon entering a judgment of conviction of any offense not punishable by death or life imprisonment, ... may suspend the imposition or execution of sentence and place the defendant on probation for such period and upon such terms and conditions as the court deems best. While on probation and among the conditions thereof, the defendant ... [m]ay be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had 18 U.S.C. § 3651 (repealed Nov. 1, 1987). In addition to filling the sentencing gap, Congress expanded the term “offense” under Section 3663 of the VWPA. The Uniform Probation Act provided that a defendant “[m]ay be required to make restitution... to aggrieved parties for... loss caused by the offense for which conviction was had. . . .” 18 U.S.C. § 3651 (1986) (repealed Nov. 1, 1987). The VWPA does not contain this limiting language and provides that a court may order “the defendant make restitution to any victim of such offense”. 18 U.S.C. § 3663(a) (Supp. V 1987). This liberalization of “offense” is some indication of intent by Congress to expand the reaches of Section 3663 beyond those for which a conviction was had. See Project, *Congress Opens a Pandora’s Box-The Restitution Provisions of the Victim and Witness Protection Act of 1982*, 52 *Fordham L. Rev.* 507, 509-17 (1984).

The Uniform Probation Act awarded restitution only as a condition of probation.²⁹ The VWPA, in contrast, allows restitution in conjunction with imprisonment or fine.³⁰

B. Policy of Restitution

The two primary goals of restitution are to prevent unjust enrichment³¹ and to promote rehabilitation.³² Traditional notions of justice provide that a defendant who profits from wrongdoing “in equity and good conscience... should not be permitted to retain that by which [he] has been enriched.³³ Furthermore, by forcing the defendant to disgorge his ill-gotten gains, restitution fosters societal confidence in the fairness of the legal system.³⁴ Restitution also forces a defendant to assume financial responsibility for his unlawful actions³⁵ and impresses upon the criminal that he has injured a human being.³⁶ “Through restitution, an offender can express guilt in a socially acceptable manner and can increase his self-respect by gaining a sense of accomplishment.”³⁷

29 See 18 U.S.C. § 3651 (repealed Nov. 1, 1987).

30 See 18 U.S.C. § 3663(b)(1)(A),(B) (Supp. V 1987). The federal courts were authorized “for the first time, to order payment of restitution independently of a sentence of probation.” S. Rep. No. 532, 97th Cong., 2d Sess. 3, reprinted in 1982 U.S. Code Cong. & Admin. News 2515, 2536.

31 See Restatement of the Law of Restitution § 1 (1937).

32 See B. Galaway, *Toward the Rational Development of Restitution Programming, Restitution in Criminal Justice* 77 (1977). Professor Galaway postulates five purposes for restitution: (1) redress for victims; (2) rehabilitation for offenders; (3) reduction of the need for vengeance by the victim; (4) less severe and more humane sanctions for offenders; and, (5) reduced demand upon the criminal justice system. See *id.* at 82-83. “[R]estitution is an appropriate and effective criminal sanction that promotes the criminal law’s goals of rehabilitation, deterrence and retribution. Moreover, only within the criminal justice system can restitution foster these aims.” Note, *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 Harv. L. Rev. 931, 941 (1984); see S. Rep. No. 532, 97th Cong., 2d Sess. 3, reprinted in 1982 U.S. Code Cong. & Admin. News 2538 (VWPA allows alternative forms of restitution so that restitution can “satisfy the victim and provide maximum rehabilitative incentives to the offender”).

33 *Federal Sugar Refining Co. v. United States Sugar Equalization Bd., Inc.*, 268 F. 575, 582 (S.D.N.Y. 1920). One commentator argues that the deterrent value of restitution would be greater if supervised restitution were imposed in an amount which would penalize the criminal. See K. Menninger, *The Crime of Punishment* 68 (1968).

34 See Lamborn, *Remedies for the Victims of Crime*, 43 S. Cal. L. Rev. 22 (1970); McAdam, *Emerging Issue: An Analysis of Victim Compensation in America*, 8 Urban Law. 346, 349-50 (1976). If victims are given prompt and full restitution, they have an immediate sense that justice has been done. See Lamborn, *supra*, at 27. The criminal justice system, by forcing the convicted defendant to make the victim whole, restores trust and confidence to our judicial system. See *id.*

35 See *Durst v. United States*, 434 U.S. 542, 554 (1978); B. Galaway, *supra* note 32, at 83; Note, *supra* note 32, at 939. Restitution’s rehabilitative effectiveness “stems from its direct relation to the amount of damage suffered by the victim: by ordering restitution, a court forces the defendant to acknowledge... the harm he has caused.” Note, *supra* note 32, at 938; see Comment, *Compensation for Victims of Crime-The Texas Approach*, 34 Sw. L.L 689, 690 (1980).

36 When the criminal is forced to compensate the victim, this enforces the idea that his incarceration is not a punishment by and for the state, but is a result of his injuring the victim. See Laster, *Criminal Restitution: A Survey of its Past History and an Analysis of its Present Usefulness*, 5 U. Rich. L. Rev. 71, 80 (1970).

37 Note, *supra* note 32, at 938. Restitution provides the offender an opportunity for a cathartic recognition of his wrongdoing and a symbolic expiation of guilt. See Eglash, *Creative Restitution: A Broader Meaning for an Old Term*, 48 J. Crim. L. & Criminology 619, 622 (1958); Schafer, *Restitution to Victims of Crime-An Old Correctional Aim Modernized*, 50 Minn. L. Rev. 243, 249-50 (1965); see also 128 Cong. Rec. 26,348 (1982) (statement of Rep. Rodino) (“One who successfully makes restitution should have a positive sense of having earned a fresh start and will have tangible evidence of his or her capacity to alter old behavior patterns and lead a law-abiding life.”) (citing *Huggett v. State*, 83 Wis. 2d 790, 798, 266 N.W.2d 403, 407 (Wis. 1978)).

II. CONTINUING CRIMES UNDER THE ACT

A. Continuing Crimes

Continuing crimes occur over a period of time,³⁸ often have more than one objective,³⁹ and are perpetrated by acts in furtherance of a general scheme.⁴⁰ Continuing crimes, which include schemes to defraud and conspiracies,⁴¹ are unique because they are unitary in nature; several distinct acts, legal or illegal, are components of a single offense.⁴² The VWPA expressly authorizes the sentencing court to order a defendant to “make restitution to any victim of the offense.”⁴³ It is the unitary nature of continuing crimes which permits a court to impose restitution on preeffective date losses. As the Supreme Court said: “As the offense has not been terminated or accomplished [the perpetrator of a continuing crime] is still offending. And we think, consciously offending, offending as certainly, as we have said, as at the first moment of his confederation, and consciously through every moment of its existence.”⁴⁴ An examination of two specific continuing crimes, conspiracy and mail fraud, illustrates the unique nature of all continuing crimes.

1. Conspiracies

A conspiracy has been defined as “a combination between two or more persons to accomplish a criminal or unlawful act, or to do a lawful act by criminal or unlawful means.”⁴⁵ Conspiracy is an offense distinct from the object of the conspiracy.⁴⁶ Under the no-merger rule, conspiracy is prosecuted as a crime separate from any substantive offenses committed in the course of the conspiracy.⁴⁷ Federal statutes provide criminal liability for each member

38 See *infra* notes 54-56.

39 See *United States v. Walker*, 653 F.2d 1343, 1350 (9th Cir. 1981), cert. denied, 455 U.S. 908 (1982). See, e.g., *United States v. Inryco, Inc.*, 642 F.2d 290, 295 (9th Cir. 1981) (conspiracy to violate Sherman Act included subsidiary objective of recovering a subcontract award), cert. dismissed, 454 U.S. 1167 (1982).

40 See *infra* note 53.

41 See W. LaFave & J. Israel, *Criminal Procedure* 699 (1985).

42 See *Phillips v. United States*, 679 F.2d 192, 196 (9th Cir. 1982).

43 18 U.S.C. § 3579(a)(1) (1982) (emphasis added).

44 *Hyde v. United States*, 225 U.S. 347, 369 (1912) (“The conspiracy accomplished or having a distinct period of accomplishment is different from one that is to be continuous.”).

45 *R. Perkins & R. Boyce, Criminal Law* 681 (1982) (citing *Pettibone v. United States*, 148 U.S. 197, 203 (1893)); see *Troutman v. United States*, 100 F.2d 628, 632 (10th Cir. 1938) (“two or more persons combining with the intent and purpose of committing a public offense by doing an unlawful act or doing a lawful act in an unlawful manner”). Several elements make up a common law conspiracy. These elements are often changed by statutory definition. First, there must be an agreement. See *Krulewitsch v. United States*, 336 U.S. 440, 447-48 (1949) (Jackson, J., concurring). The agreement, however, need not be formalized. See *United States v. American Radiator & Standard Sanitary Corp.*, 433 F.2d 174, 182 (3d Cir. 1970), cert. denied, 401 U.S. 948 (1971). Second, either the ends or the means must be illegal. See *R. Perkins & R. Boyce, supra*, at 684. It is not the agreement which is illegal, but the result of the agreement. See *United States v. Kissel*, 218 U.S. 601, 608 (1910). Third, while at common law a mere agreement between parties was enough to constitute a conspiracy, see *R. Perkins & R. Boyce, supra*, at 684, statutes now commonly require an overt act in furtherance of the conspiracy. See 18 U.S.C. § 371 (1982). Acts sufficient to satisfy this third element include, for example, taking a position to observe the activities of the intended victim of a kidnapping planned for the future, see *People v. Stevens*, 78 Cal. App. 395, 396, 248 P. 696, 697 (Cal. Dist. Ct. App. 1926), or purchasing the necessary stamps to be used in a conspiracy to commit murder by mail. See *People v. Corica*, 55 Cal. App. 2d 130, 134, 130 P.2d 164, 167 (Cal. Dist. Ct. App. 1942). One court held that a meeting to discuss plans was not an overt act in addition to the agreement because it was a part of the agreement itself. See *People v. Hines*, 168 Misc. 453, 457, 6 N.Y.S.2d 2, 5 (N.Y. Sup. Ct. 1938).

46 See *Troutman v. United States*, 100 F.2d 628, 632 (10th Cir. 1938); see also *United States v. Kissel*, 218 U.S. 601, 603-04 (1910).

47 See *Troutman*, 100 F.2d at 632. This doctrine is known as the “No Merger Rule.” See *Johl v. United States*, 370 F.2d 174, 177 (9th Cir. 1966). The “Pinkerton Rule”, articulated by the Supreme Court in *Pinkerton v. United States*, 328 U.S. 640 (1946), further broadened the net of conspiracy by concluding that, when a conspiracy and a substantive offense

of the conspiracy⁴⁸ in actions brought within a five-year statute of limitations.⁴⁹ The statute of limitations begins to run immediately after the completion of the last overt act in furtherance of the conspiracy.⁵⁰

Conspiracies begin when an agreement has been formed and one or more overt acts have been performed in furtherance of the unlawful design⁵¹ and continue as long as the conspirators act to further the ends of the agreement.⁵² If the conspirators agree to further their primary purpose by taking additional steps, such as dividing profits,⁵³ the conspiracy will continue until those additional acts are accomplished or abandoned.⁵⁴ Conspiracies end when their goals are accomplished or the conspiracy has been abandoned.⁵⁵

2. Mail Fraud

Mail fraud, like conspiracy, is a continuing crime.⁵⁶ The federal mail fraud statute provides that anyone who devises a scheme to defraud and uses the mails in furtherance of that scheme can be held criminally liable.⁵⁷ The essential elements of mail fraud are the act of having devised

are charged, a conspirator can be held guilty of the substantive offense even though he did no more than join the conspiracy. See *id.* at 647.

48 The general federal conspiracy statute provides: If two or more persons conspire either to commit any [Title 18] offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both. If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. 18 U.S.C. § 371 (1982). Conspiracy is one of the most commonly charged offenses in federal prosecutions. See Selz, *Conspiracy Law in Theory and in Practice: Federal Conspiracy Prosecutions in Chicago*, 5 Am. J. Crim. L. 35, 48-49 (1977).

49 See 18 U.S.C. § 3282 (1982).

50 See W. LaFave & J. Israel, *supra* note 41, at 699.

51 See *Troutman v. United States*, 100 F.2d 628, 632 (10th Cir. 1938).

52 See *United States v. Hickey*, 360 F.2d 127, 141 (7th Cir.), cert. denied, 385 U.S. 928 (1966); see also *United States v. Kissel*, 218 U.S. 601, 607 (1910) (“mere continuance of the result of a crime does not continue the crime”).

53 See *United States v. Walker*, 653 F.2d 1343, 1350 (9th Cir. 1981), cert. denied, 455 U.S. 908 (1982); *Atkins v. United States*, 307 F.2d 937, 940 (9th Cir. 1962); *Koury v. United States*, 217 F.2d 387, 388 (6th Cir. 1954) (*per curiam*); see also *United States v. CFW Construction Co., Inc.*, 583 F. Supp. 197, 206 (D.S.C.) (where agreement includes a payoff, conspiracy continues until payoff received), *aff’d*, 749 F.2d 33 (4th Cir. 1984).

54 See *United States v. Hickey*, 360 F.2d 127, 141 (7th Cir.), cert. denied, 385 U.S. 928 (1966); *United States v. Allegretti*, 340 F.2d 254, 256 (7th Cir. 1964), cert. denied, 381 U.S. 911 (1965); *McDonald v. United States*, 89 F.2d 128, 133 (8th Cir.), cert. denied, 301 U.S. 697 (1937). Conspiracies, however, are not continued by express or implied agreements among their members to keep the conspiracy secret. See *Grunewald v. United States*, 353 U.S. 391, 399-400 (1957) (quoting *Krulewicz v. United States*, 336 U.S. 440, 443-44 (1949)); *Fiswick v. United States*, 329 U.S. 211, 217 (1946). If conspiracies were continued by implied agreements to keep them secret, the statute of limitations on a conspiracy would effectively be tolled. All conspiracies include an implied agreement to remain silent. See *Grunewald*, 353 U.S. at 404-06.

55 See *United States v. Kissel*, 218 U.S. 601, 608 (1910).

56 See *United States v. Purther*, 823 F.2d 965, 968 (6th Cir. 1987); see also *United States v. Cohen*, 516 F.2d 1358, 1364 (8th Cir. 1975) (“proof of mail fraud scheme involving two or more persons is analogous to the nature of proof in a conspiracy”).

57 The mail fraud statute provides: Whoever, having devised ... any scheme or artifice to defraud, [and] ... for the purpose of executing such scheme ... places in any post office ... any matter or thing ... to be sent or delivered by the Postal Service, ... shall be fined not more than \$1,000 or imprisoned not more than five years, or both. 18 U.S.C. § 1341 (1982). The federal mail fraud statute has been applied to a broad range of offenses. See, e.g., *United States v. Lovett*, 811 F.2d 979 (7th Cir. 1987) (bribery); *United States v. Washita Construction Co.*, 789 F.2d 809 (10th Cir. 1986) (bid rigging); *United States v. Girdner*, 754 F.2d 877 (10th Cir. 1985) (election fraud). The Supreme Court, in *McNally v. United States*, 483 U.S. 350 (1987), greatly restricted the applicability of the federal mail fraud statute by holding that it could not be used to prosecute those who fraudulently deprive others of “intangible rights” such as the right to an honest government. See *id.* at 366-67 (Stevens, J., dissenting). The Court so held even though mail fraud was often the “sole instrument of justice that could be wielded against the ever-innovative practitioners of deceit.” Note, *McNally v. United States and its Effect on the Federal Mail Fraud Statute: Will White Collar Criminals Get a Break?*, 39 Mercer L. Rev. 697, 697 (1988) (quoting Rakoff, *The Federal Mail Fraud Statute I*, 18 Duq. L. Rev. 771, 772 (1980)).

or intended to devise a scheme to defraud,⁵⁸ and the act of placing or causing mail to be placed in an authorized depository with the intent to carry out an essential step in the execution of the scheme to defraud.⁵⁹

A mailing must be sufficiently related to the scheme to defraud to constitute mail fraud.⁶⁰ For example, letters used to lure victims into the scheme are closely related to the scheme and are covered by the statute.⁶¹ A mailing which is not sufficiently related to the scheme, such as mailing stolen credit card receipts,⁶² or which occurs after the scheme has reached fruition,⁶³ does not fall within the purview of the mail fraud statute.

Although each use of the mails may constitute a separate instance of mail fraud,⁶⁴ when the mailings are part of a larger mail fraud scheme, all of them must be prosecuted as one unified scheme to defraud.⁶⁵ Consequently, each mailing is simply a count within the indictment.⁶⁶

B. The VWPA and Continuing Crimes

A strict interpretation of the VWPA, adopted by the Fifth, Fourth and Third Circuits, precludes restitution for losses from a continuing crime which occurred prior to January 1, 1983.⁶⁷ This interpretation, however, creates procedural difficulties. In the case of continuing crimes, it may be very difficult to distinguish between losses taking place before and after the effective date.⁶⁸ This confusion can have the effect of complicating and prolonging the sentencing process.⁶⁹ If substantial, the complication might bar the granting of restitution.⁷⁰ In addition, this strict interpretation ignores the VWPA's mandate to provide compensation to victims of offenses⁷¹ and furthers neither the purpose of the VWPA nor the policy of restitution.⁷² Rather than follow this literal approach, courts should construe the effective date of the VWPA to permit pre-effective date restitution.

58 See 18 U.S.C. § 1341 (1982).

59 See *id.*

60 See *United States v. Ashdown*, 509 F.2d 793, 799 (5th Cir.), cert. denied, 423 U.S. 829 (1975).

61 See *United States v. Maze*, 414 U.S. 395, 403 (1974). "Lulling letters" include not only those which entice the victim into the scheme, but also those which lull a victim into a false sense of security or postpone the victims' ultimate complaint. See *Ashdown*, 509 F.2d at 799-800.

62 See *Maze*, 414 U.S. at 402. The defendant was engaged in a stolen credit card scheme. When a merchant mails receipts from stolen credit cards to the collecting bank, he is not perpetuating the scheme.

63 See *Kann v. United States*, 323 U.S. 88, 94 (1944). The scheme, purchasing goods or services with fraudulent checks, reached fruition when the defendant received the goods or services. The bank's use of the mails in the ordinary course of business to effectuate collection of the check was not in furtherance of the scheme.

64 See *Sanders v. United States*, 415 F.2d 621, 626 (5th Cir. 1969), cert. denied, 397 U.S. 976 (1970).

65 See *United States v. Woods*, 775 F.2d 82, 88 (3d Cir. 1985). The offense [of mail fraud] is a scheme to defraud, and each count is simply an act in furtherance of the unitary scheme; therefore, establishing that a single count caused a specific loss would be difficult. It is the overall scheme that is central to all the counts and gives rise to the victims' financial loss. *Id.*

66 See *United States v. Ledesma*, 632 F.2d 670, 679 (7th Cir.), cert. denied, 449 U.S. 998 (1980); *United States v. Weatherspoon*, 581 F.2d 595, 602 (7th Cir. 1978); *Hanrahan v. United States*, 348 F.2d 363, 366 (D.C. Cir. 1965), cert. denied, 389 U.S. 845 (1967).

67 See *supra* note 4, 5 and accompanying text.

68 See *United States v. Purther*, 823 F.2d 965, 968 (6th Cir. 1987).

69 Two circuit courts have found that the severance of a mail fraud or conspiracy into pre- and post-effective date loss is at best impractical and would certainly complicate the sentencing process. See *United States v. Purther*, 823 F.2d 965, 968 (6th Cir. 1987); *United States v. Woods*, 775 F.2d 82, 88 (3d Cir. 1985). For example, in *Purther*, a mail fraud case, the court stated that "[i]t would be virtually impossible to determine precisely when each victim of a scheme ... actually suffered his or her loss. This is especially so where ... the perpetrator makes some payments of 'interest' or 'return on investment'." *Purther*, 823 F.2d at 968.

70 See 18 U.S.C. § 3663(d) (Supp. V 1987).

71 The term "offense" has caused some interpretational problems. One commentator discussed the problems courts were having in applying both a broad and narrow interpretation of offense. See *Project*, *supra* note 28, at 509-17.

72 See *supra* notes 24-37 and accompanying text.

1. Statute of Limitations Analysis

A statute of limitations has the procedural effect of barring prosecution for an offense if the action is not brought within a requisite time period.⁷³ Limiting exposure to criminal prosecution relieves individuals of the burden of defending themselves against charges when the relevant facts have been obscured by the passage of time.⁷⁴ All statutes of limitations provide that the period of limitations begins to run when every element in the statutory definition of an offense has been committed.⁷⁵ For continuing crimes, the statute of limitations begins to run when the course of conduct or defendant's complicity terminates.⁷⁶

A statute of limitations also has an evidentiary effect when applied to continuing crimes.⁷⁷ Despite the time-bar to prosecution, acts occurring outside the statute of limitations may be introduced into evidence when they are part of a continuing crime.⁷⁸

Criminal acts occurring within the statute of limitations are subject to prosecution under the no-merger rule. In contrast, evidence of criminal acts occurring outside the statute of limitations can be admitted only as evidence of the continuing nature of a continuing crime, but cannot be introduced to support substantive prosecution of the criminal act.⁷⁹ Thus, crimes which cannot be the focus of an indictment can nevertheless be used as evidence to demonstrate the nature of the scheme and the intent required to prove a continuing crime.⁸⁰ Courts admit proof of events occurring outside the statute of limitations because "[It would be a bizarre result indeed if a [continuing] crime properly prosecuted within the limitations period could not be proven because an essential element ... could only be established by proof of incidents occurring outside the period."⁸¹

73 See *Toussie v. United States*, 397 U.S. 112, 114 (1970).

74 See *id.* at 114.

75 See *W. LaFave & J. Israel*, *supra* note 41, § 18.5(a), at 699.

76 See *Hyde v. United States*, 225 U.S. 347, 368-69 (1912) (defendant convicted of conspiracy); *United States v. A-A Electrical Co.*, 788 F.2d 242, 245 (4th Cir. 1986) (defendant convicted of conspiracy in restraint of trade); *United States v. Girard*, 744 F.2d 1170, 1172 (5th Cir. 1984) (dismissal of indictment for bid rigging based on expiration of statute of limitations).

77 See *United States v. Brasco*, 516 F.2d 816, 818 (2d Cir.), *cert. denied*, 423 U.S. 860 (1975).

78 See *United States v. Seuss*, 474 F.2d 385, 391 (1st Cir.) ("pre-statute of limitations evidence [is] admissible 'to show the nature of the scheme and the intent', but only 'if it is connected up with the scheme existing when the overt acts were performed' ") (quoting defendant's admission regarding pre-statute of limitations evidence) (citation omitted), *cert. denied*, 412 U.S. 928 (1973). "evidence tending to prove relevant acts or conduct which occurred before the date on which it is charged the scheme was devised, or more than three years before the return of the indictment, may be admitted if within the period of limitations the mails were used in furtherance of such scheme." *Id.* at 633; see *United States v. Perholtz*, 842 F.2d 343, 365 (D.C. Cir.) (because mailings that clearly furthered scheme to defraud occurred within five years of indictment, mail fraud prosecution is not time barred as agreement to pay bribes falling within time-barred period), *cert. denied*, 109 S. Ct. 65 (1988); *United States v. Castellano*, 610 F. Supp. 1359, 1384 (S.D.N.Y. 1985) (racketeering act falling outside of limitation period may be used as element of RICO prosecution, provided at least one other act occurred within period); *United States v. Blosser*, 440 F.2d 697, 699 (10th Cir. 1971) ("proof running back of the statute is admissible to show the scheme and intent if it is connected up with the scheme existing when use of the mails occurred"); *Weatherby v. United States*, 150 F.2d 465, 467 (10th Cir. 1945) (if any use of the mails was within period, the prosecution was timely); *Little v. United States*, 73 F.2d 861, 867 (10th Cir. 1934) (no defense that scheme was formed prior to the limitations period); *Fournier v. United States*, 58 F.2d 3, 6 (7th Cir.) (date of mailing rather than date of agreement is germane to statute of limitations), *cert. denied*, 286 U.S. 565 (1932); *Munch v. United States*, 24 F.2d 518, 519 (5th Cir. 1928) (usage of mails, not scheme to defraud, triggers the statute of limitations); *United States v. Epperson*, 552 F. Supp. 359, 361 (S.D. Ill. 1982) (while only nine of fourteen acts comprising mail fraud were committed within statute of limitations, court admitted remaining five acts as evidence of mail fraud scheme). However, it must be proven that one overt act was performed during this period and that the overt act was performed in furtherance of the conspiracy. See *Grunewald v. United States*, 353 U.S. 391, 396-97 (1957).

79 See *supra* note 47 and accompanying text.

80 See *United States v. Blosser*, 440 F.2d 697, 699 (10th Cir. 1971).

81 *United States v. Ashdown*, 509 F.2d 793, 798 (5th Cir.), *cert. denied*, 423 U.S. 829 (1975).

The effective date provision of the VWPA is arguably similar in operation to a statute of limitations.⁸² Both create cut-off dates, points at which prior events cannot be made the basis for the pertinent government action. Neither, however, should bar courts from recognizing the unique nature of continuing crimes and treating them as unitary crimes.⁸³ A rigid adherence to effective date requirements would subvert the primary purpose of the underlying statute. Courts should be able to interpret the effective date of the VWPA to provide complete restitution to victims of continuing crimes. Similarly, in the statute of limitations context, the government may ignore the statute of limitations for evidentiary purposes despite the fundamental policies behind the statute of limitations.⁸⁴

Given the legislative history of the VWPA and the policy underlying all restitution, going beyond the effective date of the VWPA is no more objectionable than “breaching” the statute of limitations for evidentiary purposes.⁸⁵ In the statute of limitations context, evidence is permitted to prove such essential elements as intent even though that evidence may offend the policies behind the statute of limitations.⁸⁶ In contrast, going beyond the effective date of the VWPA clearly furthers the policy behind the VWPA.⁸⁷ Going beyond the effective date of the VWPA provides complete restitution, and thereby fulfills the purposes of the VWPA.⁸⁸ “Incomplete compensation does not remedy fully the wrong committed,”⁸⁹ therefore, permitting the perpetrator of a continuing crime to avoid making restitution for pre-effective date losses is “intolerable from a societal perspective.”⁹⁰

82 See Attorney General’s Memorandum, Implementation of the Restitution Provisions of the Victim and Witness Protection Act of 1982 (1983) (on file at Fordham Law Review). The Attorney General stated: [T]he United States Attorney’s offices should take the position that it is the intent of the legislation to aid victims; therefore, the Act should apply to crimes that were committed, or continued, past the effective date of the legislation provisions. An analogy may be drawn to the statute of limitations; a continuing offense that occurs in part before the statute runs may be included in the offense charged. *Id.* at 21.

83 Any restitution to the victim must comply with the defendant’s due process rights. See Project, *supra* note 28, at 544-67. In order to provide pre-effective date restitution for continuing crimes, therefore, it may be useful for the trial court to use a special interrogatory charge to the jury to determine which acts were included in the conviction for the continuing crime. See *United States v. Ruggiero*, 726 F.2d 913, 922-23 (2d Cir.), cert. denied, 469 U.S. 831 (1984). Such special interrogative will ensure that “[a]ny dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence.” 18 U.S.C. § 3664 (Supp. V 1987) (originally codified at 18 U.S.C. § 3580(d)) (emphasis added). One could argue that if restitution cannot be imposed for acts no longer subject to prosecution as substantive offenses because they occurred outside the statute of limitation, that restitution for those acts should also be prohibited. The connection between restitution and prosecution, however, is not so clean. For example, courts have given restitution for acts not leading to convictions when those acts are counts in a plea-bargained indictment. See, e.g., *United States v. Davies*, 683 F.2d 1052, 1055 (7th Cir. 1982) (“restitution of any amount up to the entire illicit gain from such a scheme, even if only some specific incidents are the basis of the guilty plea”); *United States v. Roberts*, 619 F.2d 1, 2 (7th Cir. 1979) (when amount of actual damages caused by defendant and sufficient identification of the victim to allow reparation are established, the requirements of Section 3651 are satisfied). But see *United States v. Buechler*, 557 F.2d 1002, 1008 (3d Cir. 1977) (“Because that amount exceeds the ‘loss caused by the offense for which conviction was had,’ the restitution order exceeded the authority conferred by Section 3651 and is, to that extent, illegal.”); *Karrell v. United States*, 181 F.2d 981, 987 (9th Cir.) (“the trial court erred in ordering restitution as to losses sustained by any [victim] other than one directly concerned in the six counts upon which appellant stands convicted”), cert. denied, 340 U.S. 891 (1950); *United States v. Follette*, 32 F. Supp. 953, 955 (E.D. Pa. 1940) (judge may order restitution only “for actual damages or loss caused by the offense for which conviction was had”).

84 See Attorney General’s Memorandum, *supra* note 82; *supra* notes 77-81 and accompanying text.

85 See Attorney General’s Memorandum, *supra* note 82.

86 See *United States v. Ashdown*, 509 F.2d 793, 798 (5th Cir.), cert. denied, 423 U.S. 829 (1975).

87 See *supra* notes 31-37 and accompanying text.

88 See *supra* notes 25-28 and accompanying text.

89 Partial restitution, although it does not fully address pecuniary harm, may still have some rehabilitative effects. See Epstein, Crime and Tort: Old Wine in Old Bottles, in *Assessing the Criminal: Restitution, Retribution, and the Legal Process* 231, 257 (1977).

90 *United States v. McLaughlin*, 512 F. Supp. 907, 912 (D. Md. 1981). The court stated that such incomplete restitution would not foster a defendant’s acceptance of responsibility for his unlawful actions. See *id.*

III. CONSTITUTIONAL CONSIDERATIONS: *Ex POST FACTO ANALYSIS*

The United States Constitution forbids the federal and state governments from enacting any ex post facto law or bill of attainder.⁹¹ Ex post facto laws retroactively criminalize past innocent acts,⁹² retroactively increase the punishment for crimes,⁹³ or retroactively alter the rules of evidence to permit courts to receive less or different testimony than the law required at the time of the offense.⁹⁴ The Supreme Court recognizes that the ex post facto prohibition furthers two important purposes. First, it ensures “that legislative Acts give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.”⁹⁵ Second, the prohibition also “restricts governmental power by restraining arbitrary and potentially vindictive legislation.”⁹⁶

In *United States v. Corn*, the Fifth Circuit refused to grant restitution for losses incurred prior to the effective date of the VWPA, reasoning that doing so would increase the punishment applicable to crimes and violate the ex post facto clause.⁹⁷ This court, however, erred in its application of ex post facto principles to continuing crimes. When criminal conduct continues after the enactment or amendment of a statute which increases the penalty imposed on such conduct, the statute may be applied to the part of the continuing crime occurring before its enactment without violating the ex post facto prohibition.⁹⁸ By engaging in criminal conduct after the effective date of a statute, the defendant voluntarily subjects himself to the increased penalty. Simply because the increased penalty relates to the conduct occurring prior to the effective date does not create an ex post facto violation. Courts universally cite the unitary nature of continuing crimes and conclude that a statute imposing a greater penalty for a continuing crime, where the crime is still being carried on after the date when the statute becomes effective, does not violate the ex post facto provision.⁹⁹

CONCLUSION

Given the policies that underlie restitution, the legislative intent of the VWPA and the unitary nature of continuing crimes, pre-effective date losses suffered as a result of ongoing crimes should be subject to restitution under the VWPA. It was Congress’ intent to help the “forgotten persons”¹⁰⁰ of the criminal justice system; granting pre-effective date restitution would further this goal.

Douglas J Kepple



91 See U.S. Const. art. I, § 9, cl. 3; § 10, cl. 1.

92 See *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390 (1798). *Calder* envisioned the government enacting a law that would criminalize an act that was previously innocent, then applying the law to acts occurring before the law was passed. See *id.*

93 See *id.*

94 See *id.*

95 *Weaver v. Graham*, 450 U.S. 24, 28-29 (1981).

96 *Id.* at 29.

97 See *United States v. Corn*, 836 F.2d 889, 895-96 (5th Cir. 1988).

98 See, e.g., *United States v. Johnson*, 537 F.2d 1170, 1175 (4th Cir. 1976); *United States v. Ferrara*, 458 F.2d 868, 874 (2d Cir.), cert. denied, 408 U.S. 931 (1972); *Huff v. United States*, 192 F.2d 911, 915 (5th Cir. 1951), cert. denied, 342 U.S. 946 (1952); *United States v. Shackelford*, 180 F. Supp. 857, 859 (S.D.N.Y. 1957); *United States v. Ogull*, 149 F. Supp. 272, 274 (S.D.N.Y. 1957); cf. *Christianson v. United States*, 226 F.2d 646, 652-53 (8th Cir. 1955) (rule forbidding use of evidence of acts or admissions of one conspirator, occurring before the conspiracy was formed or after termination, against another conspirator is not violated by admitting evidence establishing an existing conspiracy to violate a law not yet in effect), cert. denied, 350 U.S. 994 (1956).

99 See *Johnson*, 537 F.2d at 1175; *Ferrara*, 458 F.2d at 874; *Huff*, 192 F.2d at 915; *Shackelford*, 180 F. Supp. at 859; *Ogull*, 149 F. Supp. at 274.

100 See Senate Report on Criminal Law, *supra* note 11, at 2516.

**VICTIM
COMPENSATION
SCHEME**

(7)

15

GOVERNMENT OF ARUNACHAL PRADESH
HOME DEPARTMENT, ITANAGAR.

NOTIFICATION

Dated Itanagar, the 24th Jan/2012

No.HMB(B)37/97 : In exercise of the powers conferred by section 357 A of the Code of Criminal Procedure, 1973 (Act No 2 of 1974), the Governor of Arunachal Pradesh in co-ordination with the Central Government is pleased to frame the following scheme of 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

1. **Title** : These rules may be called the Arunachal Pradesh Victim Compensation Scheme 2011.

2. **Commencement** : They shall come into operation from their date of publication in the official Gazette.

3. **Definitions** : in this scheme, unless the context otherwise requires :

(a) "Act" means the Code of Criminal Procedure, 1973.

(b) "Schedule" means Schedule appended to this Scheme.

(c) "State" means State of Arunachal Pradesh.

(d) "Victim" means any person who himself or herself has suffered loss or injury as a result of crime and requires rehabilitation.

(e) "Dependent" means and includes those who at the time of the deceased's death was : either the spouse or a natural parent or a child of the deceased.

4. **Constitution of Arunachal Pradesh Victim Compensation Fund** : Under the scheme, the State Government shall provide from time to time such funds/ grants/ allocations to the Nodal Department to defray, on the recommendations of the Arunachal Pradesh State Legal Services Authority, all expenses to the victims under the Arunachal Pradesh Victim Compensation Scheme, 2011 for which a separate provision shall be made every year in the State Budget.

5. **Eligibility for compensation** : The victim or his dependent satisfying the following criteria shall be eligible for the receipt of compensation :

1. He/She should not have been in receipt of any compensation for such loss or injury from any Government authorities or any other scheme of the Central / State Government, for which the applicant or his dependents shall file a declaration to that effect along with the application form as set out in Annexure-II;

2. The loss or injury sustained by the victim or his dependents should have caused substantial loss to the income of the family making it difficult to make both ends to meet without the financial aid or which requires such expenditure beyond his means on medical treatment of such mental/physical injury to the victim;

3. Where the offender of the crime is untraceable or cannot be identified, but the victim is identifiable, the victim or his dependents may also apply for grant of compensation under sub-section (4) of section 357 A of the Act;

4. Where the trial court at the conclusion of the trial is satisfied that the compensation awarded under section 357 of the CrPc is not adequate for rehabilitation, or where the case end in acquittal or discharge and the victim is to be rehabilitated and has therefore recommended a higher compensation;

6. Procedure for grant of compensation:

(i) Under the scheme, the victim or his dependents shall, as soon as an FIR is filed, apply for compensation in the specified format as at Annexure-I to the area Superintendent of Police or the Judicial Magistrate along with the supporting documents, who shall on receipt of such application forward the same to the District Legal Services Authority certifying the eligibility of such claims.

(ii) On such application made by any victim or his dependents under sub-section (4) of section 357 A of the Code of Criminal Procedure, 1973 Act to the District Legal Services Authority, it shall examine the case and get verified the contents of the claim with regard to the assessment of such loss or injury caused to the claimant by a competent medical Board constituted for the purpose and it may also call for any other relevant as deemed necessary for consideration of the claim from the concerned authority. Thereafter, the District Legal Services Authority will submit its recommendations for compensation to the State Legal Services Authority.

(iii) The Medical Board as referred in Para (ii) above shall be constituted by the District Medical officer on the requisition of District Legal Services Authority and shall at least consist of not less than two medical officers possessing special knowledge in the subject.

(iv) The application so received by the District Legal Services Authority will be duly examined and forwarded to the State Legal Services Authority with its recommendations a period of 30 (Thirty) days or which may be liable to be extended in case of extreme necessity.

(v) The District Legal Services Authority may in urgent and extreme necessity in order to alleviate the suffering of the victim, order for immediate first aid facility or medical benefit to be made available free of cost on the certificate of the Police officer not below the rank of Superintendent of Police or such interim relief whether in cash or kind as it deem fit from its own resources which shall be deducted from the final amount of compensation to be awarded by the State Legal Services Authority.

(vi) The amount of compensation shall be decided by the State Legal Services Authority based on standard criteria given in the Schedule-I within a period of 30 (Thirty) days or which may be liable to be extended in case of extreme necessity.

(vii) Enhanced compensation if required on the recommendations of the trial courts may be awarded at the end of the trial for which the State Legal Services Authority may initiate actions accordingly.

7. Mode of payment:

All payments to the claimants or his/her dependents shall be invariably be made in Cheque / Draft to the Deputy Commissioner of the concerned district who shall disburse the same

8. Recovery of compensation awarded to the victim or his dependents:

(i) The State Legal Services authority, if deemed fit, may on receipt of the order the trial court if any as to the enhancement of the compensation of the victim or his dependent should be paid by the perpetrator of crime may in case, compensation is not instantly paid institute proceedings before a competent court of law in consultation with the office of the concerned public prosecutor for recovery of compensation granted to the victim or his dependents. The amount so recovered shall be deposited in the Victim Compensation Fund and thereafter be paid to the victim or his dependents, as the case may be.

(ii) The amount so recovered shall be deposited in the Victim Compensation Fund and thereafter be paid to the victim or his dependents, as the case may be.

9. Limitation : Under this scheme, no claims for compensation under this scheme by the victim or his dependents shall be entertained by the District Legal Services Authority after

the expiry of a period of one year from the occurrence of the crime.

Provided that the District Legal Services Authority, may if satisfied, for reasons to be recorded in writing, condone the delay in filing the claim.

10. Order to be placed on record :

The State Legal Services Authority after the award of compensation shall cause to transmit a copy of such order to the trial court to enable such court to pass order of compensation under Sub-section 3 of Section 357 of the Act.

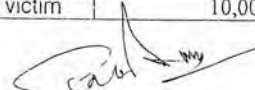
11. Appeal :

Any victim aggrieved by the denial of recommendation of his case by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of 90 days and the State Legal Services Authority may take up his case afresh and after taking into consideration all relevant information may decide the quantum of compensation.

Provided that the State Legal Services Authority; if satisfied, for the reasons to be recorded in writing may condone the delay in filing appeal.

Schedule - I

Sr. No.	Particular of Loss or Injury	Maximum Limit of Compensation
1.	Loss of Life	2,00,000/- ✓
2.	Rape	50,000/- ✓
3.	Acid Attack	100,000/- ✓
4.	Loss of any limb or part of body resulting 80% or above handicap	50,000/-
5.	Loss of any limb or part of body resulting 40% and below 80% handicap	20,000/- ✓
6.	Rehabilitation	20,000/- ✓
7.	Loss of any limb or part of body resulting below 40% handicap	10,000/- ✓
8.	Loss of injury causing severe mental agony to women and child victims in case like Human Trafficking etc.	10,000/- ✓
9.	Simple Loss or injury to Child victim	10,000/- ✓


Chief Secretary,
Govt. of Arunachal Pradesh
Itanagar

ANNEXURE-1

APPLICATION FORM FOR ASSISTANCE TO THE VICTIM OR THE DEPENDENTS OF THE VICTIMS OF THE CRIMES UNDER SECTION 357A OF THE CODE OF CRIMINAL PROCEDURE,1973.(see rule 6)

PART A

A. DETAILS OF THE VICTIM (to be filed in block letters)

- 1.Name:
- 2.age:
- 3.Sex:
- 4.Occupation:
- 5.Father's name/Husband's name:
- 6.Mother's name:
- 7.Address:
- 8.Identification Proof:

9.Effect of violence: (Plz Tick) i) Death ii) Rape iii) Acid Burns iv) Loss of any limb or part of body resulting in handicap of 80% or above v) above 40% and below 80%. vi) below 40%handicap vii) Rehabilitation viii) loss or injury due to mental agony to women and child victim of human trafficking ix) Simple loss or injury to child victim.(please enclose all relevant documents like FIR/Police Report and injury report, if any.

B. DETAILS OF FAMILY MEMBERS OF THE VICTIM:

Sl No	Name	Sex	Age	F/name or Husbands name	Relationship with the victim

C. DETAILS OF THE BENEFICIARY. (To be filed in block letters)

- 1.Name:
- 2.age:
- 3.Sex:
- 4.Occupation:
- 5.Father's name/Husband's name:
- 6.Mother's name:
- 7.Address:
- 8.Identification Proof:
- 9.Relationship with the victim:

FORWARDING

This is to certify that the(victim applicant/dependents) are eligible for receipt of the compensation under the Arunachal Pradesh Victim Compensation Fund Scheme,2011 and as such their case is recommended for consideration.
Date:
Place:

(Superintendent of Police / Judicial Magistrate)

ANNEXURE-II

D. RECOMMENDATION OF THE _____ (name of the concerned Dist Legal Services authority) DISTRICT LEGAL SERVICES AUTHORITY:

This is to certify that _____ (name of the victim/dependent claimant) aged _____ years, male/female, resident of _____, s/o w/o _____ is a victim of the crimes of _____ (here specify the nature of the crime and the result) and that _____ (name of the victim/dependent claimant) has been found eligible to receive compensation of Rs. _____ (Rupees _____) under the said scheme and as such, this Authority recommends the same.

Following documents have been submitted by the claimant/dependent:

- i. Police/FIR Report.
- ii. Death Certificate(if applicable)
- iii. Sucession Certificate of the deceased victim(if applicable).
- iv. Recommendation of the District Legal Services Authority(with sig of members)

Date:
Place:

(Signature of the Chairman,
..... District Legal Services Authority)

GOVERNMENT OF ASSAM
POLITICAL (A) DEPARTMENT : DISPUR

ORDER BY THE GOVERNOR
NOTIFICATION

Dated Dispur, the 18th October, 2012

No. PLA.757/2010/123 : In exercise of the powers conferred by section 357-A of Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Assam, in co-ordination with the Central Government is hereby pleased to make the following scheme for providing funds for the purpose of compensation to the victim or his/her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely :-

1. Short title, extent and commencement. -

- (1) This scheme may be called the Assam Victim Compensation Scheme, 2012.
- (2) It shall extend to the whole of Assam.
- (3) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions. -

In this scheme, unless the context otherwise requires, -

- (a) "Act" means the Code of Criminal Procedure, 1973(2 of 1974);
- (b) "Fund" means "the Victim Compensation Fund" constituted under para 3;
- (c) "Schedule" means Schedule appended to this Scheme;
- (d) "State Government" means the Government of Assam;
- (e) "The State Legal Services Authority" means the Assam State Legal Services Authority;
- (f) "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;
- (g) "Department" means the Political Department of the Government of Assam;
- (h) "Nodal officer" means an officer of the department authorized to handle the affairs relating to the scheme at Government level;
- (i) Words and expressions used herein and not defined but defined in the Indian Penal Code (IPC), Code of Criminal Procedure (Cr. PC) and the Indian Evidence Act shall have the meanings respectively assigned to them in these Acts.

3. Victim Compensation Fund. -

- (1) There shall be constituted a fund, namely, the Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his / her dependents who have suffered loss or injury as result of the crime and who require rehabilitation.

(2)

- (2) The State Government shall allot a separate budget for the purpose of the scheme every year.
- (3) The fund shall be operated by the Member Secretary, State Legal Services Authority and he will place the funds at the disposal of District Legal Services Authorities as per requirement from time to time.
- (4) The expenditure will be made from the head of account to be created under the control of department and the Senior Most Secretary of department shall be the chief controlling authority of the fund.
- (5) The State Legal Services Authority shall be responsible for maintaining the accounts and the fund will be audited by the Accountant General of Assam.
- (6) Department will release the fund to the State Legal Services Authority and the State Legal Services Authority will furnish periodical returns/accounts to the department.
- (7) All amounts shall be paid through bank transfers only. Cash payment of any amount shall not be made from the fund at any level.

4. Eligibility for compensation. -

The victim or his dependents satisfying the following criterion shall be eligible for grant of the compensation:-

- (1) Loss or injury sustained by the victim or his dependents should have caused substantial loss to the income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means on medical treatment of mental/physical injury and a recommendation is made by Court for compensation.
- (2) The victim/dependents report the crime to the Officer-in-Charge of Police Station or Judicial magistrate of the area promptly, provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting:
- (3) The victim/dependents co-operates with the police and prosecution during the investigation and trial of the case.
- (4) Where the perpetrator of heinous crime is not traceable or goes unpunished after trial, but the victim is identifiable and the victim has to be rehabilitated physically and mentally, such victim may also apply for grant of compensation under sub-section (4) of section 357-A of the Act.

Contd...3/

(3)

5. Procedure for grant of compensation. –

- (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependents under sub-section (2) of section 357-A of the Act, to the State Legal Services Authority or the District Legal Services Authority, as the case may be, the said Authorities respectively shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal service Authority or the State Legal Services Authority, as the case may be, shall, after due inquiry, award compensation within two months, in accordance with provisions of this Scheme.
- (2) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (1) (b) of section 357 of the Act, the victim/dependents shall remit an amount of compensation, or the amount ordered equal to the amount of compensation, or the amount ordered to be paid under sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim/dependents before the disbursement of the compensation amount.
- (3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or these dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The Compensation may vary from case to case depending on facts and circumstances of each case.
- (4) According to the Schedule of this Scheme, the quantum of compensation to be awarded under the Scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund.
- (5) Compensation received by the victim from the Central Government, State Government, insurance company or any other institution in relation to the crime in question namely, insurance, ex-gratia and/or payment received under any other Act or State-run scheme, shall be considered as part of the compensation amount under this scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance shall be paid out of the Fund.
- (6) In fixing the quantum of compensation, regard must be had to the minimum wages and schedule to motor vehicle act, 1988.

Contd...4/

(4)

- (7) The State or the District Legal services Authority, 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 Magistrate of the area concerned or any other interim relief as it may deem fit.
- (8) The compensation to the victim under this scheme shall not exceed the maximum amount prescribed in the Schedule.
- (9) State Government may review the maximum limit of compensation indicated in the Schedule by issuing official notification from time to time.

6. Order to be placed on record.

Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section (3) of section 357 of the Act.

7. Limitation. -

No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of six months from occurrence of the crime:

Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

8. Appeal. -

Any victim aggrieved of the denial of compensation by the District Legal Services Authority, may file an appeal before the State Legal Services Authority within a period of ninety days from the date of order of denial:

Provided that the State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

9. Power to remove difficulties. -

If any difficulty arises in giving effect to any provision of this scheme, the State Government in the Political Department may make such order, not inconsistent with the provisions of the Act or this Scheme, as may appear to it to be necessary for the purposes of removing the difficulty.

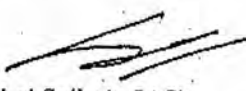
Contd...5/

10
(5)

Schedule
(See para 5)

Sl. No.	Particulars of loss or injury	Maximum limit of compensation for rehabilitation
1.	Death	Rs. 2,00,000/-
2.	Rape	Rs. 75,000/-
3.	Rape of minor/Gang Rape	Rs. 1,00,000/-
4.	Loss of any limb or part of body resulting in 80% or above handicap	Rs. 25,000/-
5.	Loss of any limb or part of body resulting in 40% & below 80% handicap	Rs. 15,000/-
6.	Loss of any limb or part of body resulting less than 40% handicap	Rs. 10,000/-
7.	Loss or injury causing severe mental agony to women and child victims in cases like Human Trafficking, Kidnapping, Cruelty U/S 498(A) IPC etc.	Rs. 15,000/-
8.	Simple Loss/injury to child victim	Rs. 10,000/-
9.	Facial injury caused due to acid attack	Rs 175000/-

In any other case, not specifically mentioned in the Schedule, the maximum limit of compensation shall be Rs. 20,000/-


 (Shri Sailesh, IAS)
 Principal Secretary to the Govt. of Assam,
 Home & Political Department

28 जुलाई 2011

सं० एल०जी०-6-01/2011-152/लेज, सं० 151 दिनांक 28 जुलाई 2011 का निम्नलिखित अनुवाद बिहार-राज्यपाल के प्राधिकार से इसके द्वारा प्रकाशित किया जाता है जो भारतीय संविधान के अनुच्छेद 348 के खंड(3) के अधीन अंग्रेजी भाषा में उक्त अधिसूचित स्कीम, 2011 का प्राधिकृत पाठ समझा जायेगा।

बिहार-राज्यपाल के आदेश से,
विनोद कुमार सिन्हा,
सरकार के सचिव।

The 28th July 2011

No. L.G.-6-01/2011-151/lej—In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Bihar in co-ordination with the Central Government, hereby frames the following 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, namely:-

1. *Short title, extent and Commencement.*—(1) This scheme may be called the Bihar Victim compensation Scheme, 2011.

(2) It shall extend to the whole of the State of Bihar.

(3) It shall come into force at once.

2. *Definition.*—In this scheme, unless the context otherwise requires, -

(a) "Act" means the code of Criminal Procedure, 1973 (2 of 1974);

(b) "Schedule" means Schedule appended to this Scheme;

(c) "State" means State of Bihar;

(d) "Victim" means a person who himself has suffered loss or injury as a result of crime causing substantial loss to the income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means on medical treatment of Mental/Physical injury and require rehabilitation.

(e) In this scheme "Dependent" means member of family of the victim, namely Husband/Wife, Mother/Father, Brother/Sister, Son/Daughter, Grand Mother/Grand Father, Father-in-Law/Mother-in-Law and it includes any other person who is leading life on the income of the victim.

3. *Victim Compensation Fund.*—(1) There shall be constituted a fund, namely, Victim Compensation Fund, from which amount of compensation under this Scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) The State Government shall allot a separate budget for the purpose of the Scheme every year.

(3) The fund shall be operated by the Secretary, State Legal Services Authority.

(4) The State Govt. may allocate such amount, as it think proper, out of victim compensation fund, to constitute a fund at Police Station level for providing quick and immediate Medical Assistance to the victim of road accident and other cases of grievous hurt. Such fund shall be operated by concerned Officer-in-charge.

4. *Eligibility for Compensation.*—A victim shall be eligible for the grant of compensation if. -

(a) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply for grant of compensation under sub section (4) of section 357-A of the Act,

(b) the victim/claimant report the crime to the Officer-in-charge of Police Station or Judicial magistrate of the area promptly provided that the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the victim/claimant co-operates with the police and prosecution during the investigation and trial of the case.

5. *Procedure for grant of compensation.*—(1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (4) of section 357-A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Service Authority shall after due enquiry award compensation within two months, in accordance with provision of the Scheme.

(2) compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursement of the compensation amount.

(3) The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on facts of each case.

(4) According to the schedule of this scheme the quantum of compensation to be awarded under the Scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund.

(5) Compensation received by the victim from the Central/State Govt., Insurance company or any other institution in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act or State-run Scheme, shall be considered as part of the compensation amount under these scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the Fund.

(6) In fixing the quantum of compensation, regard must be had to the minimum wages and the schedule to the Motor vehicle Act, 1988.

(7) The District Legal Service Authority, 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 magistrate of the area concerned, or any other interim relief as it may deem fit.

6. *Order to be placed on record.*—Copy of the order of compensation passed under this Scheme shall be mandatory placed on record of the trial Court to enable the court to pass order of compensation under sub-section (3) of section 357 of the Act.

7. *Limitation.*—No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of six months of the crime:

Provided that the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

8. *Appeal.*—Any victim aggrieved of the denial of compensation by the District Legal Service Authority may file an appeal before the State legal Service Authority within a period of ninety days computed from the date of order of denial:

Provided that the State Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

By order of the Governor of Bihar,
VINOD KUMAR SINHA,
Secretary to Government.

SCHEDULE
See Para 5(4)

Sl. No.	Particulars of loss or injury	Maximum limit of compensation Rs.
1	Rape	50,000
2	Loss or injury causing severe mental agony to women and child victims in case like Human Trafficking, Kidnapping etc.	25,000
3	Loss of life.	1,00,000
4	Grievous hurt as defined in section 320 of the Indian Penal Code, 1860.	25,000
5	Injury caused by acid attack.	25,000

अधीक्षक, सचिवालय मुद्रणालय,
बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।
बिहार गजट: (असाधारण) 370-571+500-डी0टी0पी0।
Website: <http://egazette.bih.nic.in>

Raipur, the 3rd August 2011

NOTIFICATION

No. F 3-87/2011/Home-Two.—In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Governor of Chhattisgarh, in co-ordination with the Central Government, hereby frames the following scheme for providing a Fund for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of crime and who require rehabilitation :—

1. **Short title** :— This scheme may be called the “Victim Compensation Scheme-2011”.
2. **Definitions** :— In this Scheme, unless the Context otherwise requires :
 1. “Act” means the Code of Criminal Procedure, 1973
 2. “Schedule” means the Schedule appended to this Scheme.
 3. “State” means State of Chhattisgarh.
 4. “Victim” means a person who himself has suffered loss or injury as a result of crime and requires rehabilitation and this includes dependant family members also.
3. (1) **Victim Compensation Fund** :—A Fund shall be constituted namely Victim Compensation Fund by the State Government. The amount of compensation under this scheme shall be paid to the Victim or his dependants by the Office of the Collector of the district concerned.
 - (2) The State Government shall make provision for the Fund in the budget of Home Department. The Home Department shall be nodal department for the scheme and shall give allotment to the Collectors of the districts as per requirement.
 - (3) The Collector of the district concerned shall maintain account relating to the Fund and shall submit quarterly return of expenditure to the Home Department.
4. **Eligibility for Compensation** :— A victim or his dependant satisfying the following criteria shall be eligible for the grant of compensation :
 - (A) Loss or injury sustained by the victim should have caused substantial loss to the income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means on medical treatment of mental/physical injury.
 - (B) The victim/dependant should have reported a crime to the officer in-charge of the Police Station/ Executive Magistrate/Judicial Magistrate of the area without undue delay.
 - (C) The victim/dependant should Co-operate with the police and prosecution during the investigation and trial of the case respectively.
5. **Procedure for grant of compensation** :—
 - (1) Whenever a recommendation is made by a court under Section 357 of the Act or an application is made by the Victim or his dependant under sub section 4 of the Section 357-A of the Act to the District Legal Service Authority, the said Authority shall verify the facts and the claims after due enquiry and consultation with the SP concerned and award adequate compensation in accordance with the provisions of the scheme by completing the enquiry within two months.
 - (2) The compensation under this scheme shall be paid subject to the condition that if the trial court, while passing judgment at a later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the amount of compensation already awarded by the District Legal Service Authority shall be duly considered and adjusted. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the compensation amount.

- (3) The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependants on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation, keeping in view the minimum wages prevalent at the time and including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.
- (4) Compensation received by the victim in relation to the crime in question from other sources namely Insurance, exgratia, payment received under any other Act or Scheme of Central/State Government shall be considered as part of compensation amount under this scheme and shall be adjusted against the compensation amount awarded under this Scheme.
- (5) The quantum of compensation to be awarded to the victim or his dependants by the District/State Legal Service Authority shall not exceed the upper limit as provided in the schedule of this scheme.
- (6) The cases covered under Motor Vehicle Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.
- (7) The District Legal Service Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost or any other interim relief as it may deem fit on the certificate of the police officer not below the rank of the office-in-charge of the police station or the Executive Magistrate of the area concerned.
6. **Recovery of Compensation from the person/persons responsible for causing loss/injury :—**
- (1) The State Legal Service Authority, if deemed fit, shall institute a proceeding before the competent court of law in consultation with the office of the district prosecution officer for recovery of the compensation granted to the victim or his dependants from the person/persons responsible for causing loss or injury as a result of the crime committed by him/them.
- (2) The amount so recovered shall be deposited in the victim compensation fund.
7. **Order to be placed on record :—**Copy of the order of compensation passed under this scheme shall be mandatorily placed on record of the trial court to enable the court to pass order of compensation under subsection (3) of section 357 of the Act.
8. **Limitation :—**No application of the victim or his dependants under subsection (4) of section 357-A of the act shall be entertained after a period of one year from the date of suffering loss/injury.
9. **Appeal :—** Any victim aggrieved of the denial of compensation by the district legal service authority may file an appeal before the state legal service authority within a period of ninety days.

Provided that the state legal service authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

By order and in the name of the Governor of Chhattisgarh,
S. P. SHORI, Joint Secretary.

SCHEDULE

S. No.	Details of Loss or Injury	Maximum Limit of Compensation
1.	Loss of Life ✓	1.00 Lac
2.	Loss of limb or part of body resulting 80% or above handicap or serious injury due to Acid Attack. ✓	50,000
3.	Loss of Limb or part of body resulting above 40% and below 80% handicaped. ✓	25,000
4.	Rape of Minor ✓	50,000
5.	Rape ✓	25,000
6.	Rehabilitation ✓	20,000
7.	Loss of limb or part of body resulting below 40% handicap ✓	10,000
8.	Injury causing severe mental agony to women and child victim in case like human Trafficking.	20,000
9.	Simple loss or injury to child victim ✓	10,000



Government of Goa
DEPARTMENT OF HOME (GENERAL)
SECRETARIAT
Porvorim – Goa

Tel.No. (0832) – 2419450

Email: usgen-home.goa@nic.in

No. 2/91/2010-HD(G) | 3507

Dated: 14 /12/2012

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 357 A of the code of Criminal Procedure, 1973(Central) Act 2 of 1974), the Government of Goa in co-ordination with the Central Government hereby frames the following 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, namely :-

1. **Short title and commencement** .- (1) This Scheme may be called the Goa Victim Compensation Scheme, 2012.
(2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint.
2. **DEFINITIONS** .- (1) In this Scheme, unless the context otherwise requires,-
 - (a) "Act" means the Code of Criminal Procedure, 1973 (Central Act 2 of 1974);
 - (b) "District Legal Services Authority" means the District Legal Services Authority constituted under section 9 of the Legal Services Authorities Act, 1987 (Central Act 39 of 1987); for a district of the State of Goa;
 - (c) "Form" means a form appended to this Scheme;
 - (d) "Fund" means the Victim Compensation Fund constituted under clause 3 of this Scheme ;
 - (e) "Government" means the Government of Goa ;
 - (f) "Offence" means any of the offences mentioned in the Indian Penal Code, (45 of 1860) or in any other law for the time being in force;
 - (g) "Official Gazette" means the official Gazette of the Government ;

- (h) "Schedule" means Schedule appended to this Scheme ;
- (i) "State" means the State of Goa;
- (j) "State Legal Services Authority" means Legal Services Authority constituted under section 6 of the Legal Services Authorities Act, 1987 (Central Act 39 of 1987), for the State of Goa;
- (k) "Victim" means a person who has suffered loss or injury as a result of the crime and who requires rehabilitation.

(2) Words and expressions used in this Scheme and not defined, shall have the same meaning as assigned to them in the Act.

- 3. VICTIM COMPENSATION FUND .-** (1) The Government shall constitute a fund called Victim Compensation Fund. There shall be credited into the said fund an amount allocated for the same by budgetary provision every year.
- (2) Compensation from the said fund under this Scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
 - (3) The said Fund shall be operated by the Secretary of the Legal Services Authority for the State of Goa.

- 4. ELIGIBILITY FOR COMPENSATION .-** 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 if,-
- (1) he has not been compensated for the loss or injury under any other Scheme of the Central or State Government, insurance company or any other institution;
 - (2) the loss or injury sustained by the victim has caused substantial loss of income to his family making it difficult to meet their both ends without any compensation.

- 5. PROCEDURE FOR MAKING APPLICATION BEFORE THE STATE OR DISTRICT LEGAL SERVICES AUTHORITY.-** An application for the award of compensation shall be submitted in form "I" hereto alongwith a copy of the First Information Report (FIR)/complaint, medical report, death

certificate, complaint made to the Court, (in case where the police have not registered the FIR) newspaper report if any, to the State or District Legal Services Authority.

6. RELIEFS THAT MAY BE AWARDED BY THE STATE OR DISTRICT LEGAL SERVICES AUTHORITY .- The State or District Legal Services Authority may award compensation to the victim or his dependent to the extent as specified in schedule hereto.

7. REJECTION OF THE APPLICATION.- The State or District Legal Services Authority may reject an application where it is of the considered opinion that,-

- (1) the applicant has failed to take all reasonable steps to inform the police or other body or person considered by the State or District Legal Services Authority to be appropriate for the purpose about the circumstances giving rise to the loss or injury; or
- (2) the applicant failed to co-operate with the police or the Court to bring the accused to justice; or
- (3) the applicant has failed to give all reasonable assistance to the State or District Legal Services Authority for deciding the application; or
- (4) the applicant has previously filed an application, in respect of the loss or injury suffered as a result of the same crime under this scheme, for compensation and such application is already granted or rejected or pending adjudication.
- (5) the applicant, after having filed the complaint, wilfully turned hostile in the trial and has not supported the case of the prosecution;
- (6) the alleged crime prima-facie is collusive in nature and not based up on verifiable facts,
- (7) any other reason deemed fit by State or District Legal Service Authority.

8. PROCEDURE FOR GRANT OF COMPENSATION.- (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent to State or District Legal Services Authority, the State or District Legal Service Authority shall examine and verify the claim made with regard to the loss or injury caused to the victim and arising out of the reported crime. It may call for any other relevant

information in order to determine genuineness of the claim. After verifying the claim and after due inquiry, the State or District Legal Services Authority shall award compensation within a period of two months from the date of such recommendation or application as the case may be, in accordance with provisions of this Scheme.

- (2) The award of compensation under this Scheme shall be subject to the condition that if later on the trial court while passing the Judgment orders the accused person to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim shall refund the amount of compensation awarded under this Scheme, or the amount of compensation received in pursuance of the order passed under sub-section (3) of section 357 of the Act, whichever is less. An Undertaking in Form "II" hereto shall be obtained from the victim before the disbursal of the compensation amount under this scheme.
- (3) The State or District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or to his dependants on the basis of the loss or injury caused to the victim as a result of the crime and his/their requirements of rehabilitation.
- (4) The compensation awarded under this Scheme shall be disbursed to the victim or his dependants, as the case may be, from the Fund, by remitting the same into the bank account specified in the Application by the victim/dependents.
- (5) In case where the victim or dependent is a minor, the amount of compensation shall be released to the guardian or whoever has filed the application on behalf of such minor after the State or District Legal Services Authority is satisfied about the proper utilization of funds in the best interest of and for the welfare of such minor.
- (6) The compensation already received by the victim or his dependents from the Insurance Company or from the Government in relation to the crime in question, including ex-gratia and /or other payment received under any law or under Central or State run Scheme, shall be treated as the compensation awarded under this Scheme, and if the amount of compensation to be received under this Scheme exceeds the payment already received by the victim from the sources mentioned above, the balance amount shall be paid out of fund to the victim.

- (7) The cases covered under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) wherein the compensation is to be awarded by the Motor Accidents Claims Tribunal, shall not be covered under this Scheme.
- (8) The State or the District Legal Service Authority, 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 it may deem fit.
- 9. THE ORDER TO BE PLACED ON RECORD** - Copy of the order of compensation passed under this Scheme shall be placed on record of the trial Court so as to enable the trial Court to pass an appropriate order of compensation under sub-section (3) of section 357 of the Act.
- 10. LIMITATION.** - An application for compensation under sub-section (4) of section 357 A of the Act shall be made within one hundred and eighty days from the date of Commission of the Crime:
- Provided that the State or District Legal Service Authority may entertain the application received after the expiry of said period of one hundred and eighty days if it is satisfied that the applicant was prevented by sufficient cause from filing the application in time.
- 11. APPEAL.**- (1) Any victim or his dependent if aggrieved by the Order of the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days from the date of such Order:
- Provided that the State Legal Services Authority may admit the appeal after the expiry of the period of ninety days if it is satisfied that the victim or his dependent was prevented by sufficient cause from filing the appeal in time.
- (2) The decision or order of the State Legal Services Authority on all matters shall be final.
- 12. Accounts and Audit of the Fund:** (1) The Secretary of the Legal Services Authority of the State of Goa shall maintain proper accounts and other

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relevant records and prepare an annual statements of accounts including the income and expenditure account and the Balance sheet in respect of said Fund. These accounts shall be audited by an auditor appointed by the Government.

(2) An audited statement of Accounts shall be submitted by the Secretary of the Legal Services Authority of the State of Goa, to the Government, every year.

By order and in the name of
the Governor of Goa

Neetal P. Amonkar

(Neetal P. Amonkar)
Under Secretary (Home)

Copy to: -

The Director, Printing & Stationary, Panaji with a request to kindly published the enclosed notifications in the Official Gazette at an early date. Five copies of the said Gazette may be forwarded to this Department for official use.

Copy to:-

1. The Secretary of the Legal Services Authority of the State of Goa, Secretariat Porvorim.
2. The Director General of Police, Panaji.
3. The Director of Prosecution, Panaji Goa.
4. Guard file.
5. Office file.

SCHEDULE
(See Clause 6)

- (1) In case of death of the sole earning member of the family where children are minor and / or unemployedUpto Rs. 2,00,000/-
- (2) Loss of any limb or part of the body resulting 80% or above disability including acid attack ... Upto Rs. 50,000/-
- (3) Loss of any limb or part of the body resulting in 40% and below 80% disability including acid attack ... Upto Rs. 25,000/-
- (4) In case of death of non-earning Member..... Upto Rs. 25,000/-
- (5) Loss of any limb or part of the body resulting below 40% disability including acid attack ...Upto Rs.10,000/-
- (6) In case of injury causing, severe mental agony to women and child Upto Rs. 10,00,000/-
(e.g. in human trafficking and rape cases, Acid cases)

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Form "I"

Application for the award of compensation

(1) Name of the victim :

Name of the Dependent :

(2) Age of the victim/Dependent:

(3) Name of the parents (a) Father :

(b) Mother :

(4) Address :

(5) Date and time of the incident :

(6) Name of the Applicant :

(7) Relationship with the Victim (Legal Heir or NGO):

(8) Whether FIR has been lodged ? If 'Yes', enclose a copy of
the FIR.

If 'No' give reasons thereof.

(10) Whether a complaint has been filed in the Court ?; If Yes,
Enclose a copy of complaint.

(11) Whether medical examination has been done ? : If yes, enclose
Medical report/death certificate.

(12) Details of Bank Account :

Date

Signature of Applicant

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(16)
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GOVERNMENT OF GUJARAT
Home Department
Block No.2, 1st Floor
Sachivalaya, Gandhinagar
Date.05/01/2013.

No.GG/ 01 /SB.2/COM/132011/GAD/165605:- In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974), the State Government hereby frame the scheme for providing funds for compensation to the victims or their dependents, who have suffered loss or injury on account of offence against body and who require rehabilitation, namely:-

1. Short Title:- This scheme may be called the Gujarat Victim Compensation Scheme,2013.

2. Definitions:- (1) In this scheme, unless the context otherwise require,-

- (a) "Code" means the Code of Criminal Procedure, 1973 (Central Act No.2 of 1974);
- (b) "Schedule" means Schedule appended to this scheme;
- (c) "State" means the State of Gujarat; and
- (d) "Victim" means a person who has suffered loss or injury as a result of crime and require rehabilitation and the expression victim includes his/her dependents

(2) Words and expressions used herein and not defined but defined in the Indian Penal Code 1860 (Central Act No.45 of 1860) or the General Clauses Act, 1955 (Central Act No. VIII of 1955 Act) have the same meanings respectively as assigned to them in the Code and the General Clause Act 1955.

3. Victim Compensation Fund. – (1) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his/her dependents.

- (2) The State Government shall allot a separate budget for this scheme every year.
- (3) The fund shall be placed at the disposal of the Secretary, Legal Department.

4. Eligibility.- A victim or his/her dependents shall be eligible for the grant of compensation if:-

- (a) the perpetrator of a heinous crime is not traceable or goes unpunished after trial, but the victim is identifiable and has to incur expenses on physical and mental rehabilitation, such victim may also apply for the grant of compensation under sub-section (4) of section 357-A of the Code;
- (b) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub-section (4) of section 357-A of the Code;
- (c) the victim/claimant report the crime without unreasonable delay to the Judicial Magistrate of the area provided that the State Legal Services Authority or the District Legal Services Authority if satisfied, for the reasons to be recorded in writing, may condone the delay.

5. Procedure for grant of compensation.-(1) Whenever a recommendation is made by the Court under Sub-section (2) and (3) or an application is made by any victim or his/her dependent under sub-section (4) of section 357-A of the Code to the District Legal Service Authority or the State Legal Service Authority, as the case may be, District Legal Service Authority or the State Legal Service Authority shall

examine the case and verify the contents of the claim with regard to the loss or injury caused to victim/claimant and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. The District Legal Service Authority or the State Legal Service Authority, as the case may be, shall award compensation within two months, in accordance with provisions of this Scheme.

(2) 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 to victim or his/her dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on facts of each case.

(3) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, order the accused persons to pay any amount by way of compensation under sub section (3) of section 357 of the Code, the victim/claimant shall remit an amount equal to the amount of compensation already paid, or the amount ordered to be paid under the said sub section (3) of section 357 of the Code, whichever is less. An undertaking to this effect shall be given by the victim/claimant before disbursal of the compensation amount.

(4) The quantum of compensation decided by the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall be disbursed to the victim or his/her dependents, as the case may be, from the Victim Compensation Fund.

(5) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, **ex-gratia** and/ or payment received under any other Act or scheme run by the State shall be considered as part of the Compensation amount under this scheme and if the Compensation amount granted under this scheme exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Victim Compensation Fund.

(6) The case covered under Motor vehicle Act, 1988 (Central Act No.59 of 1988) wherein Compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(7) The District Legal Service Authority or the State Legal Service 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 the cost on the certificate of the police officer not below the rank of the officer in charge of the police station or Magistrate of the area concerned, or any other interim relief as it may deem fit.

(8) The quantum of compensation to be awarded to the victim or his/her dependants shall not exceed the maximum limit as per Schedule.

6. Order to be placed on record.- Copy of the order of compensation passed under this scheme shall be placed on record of the trial Court to enable the court to pass on order of compensation under sub-section (3) of section 357-A of the code.

7. Recovery of Compensation:- (1) The District Legal Service Authority or the State Legal Service Authority, as the case may be, if deemed fit, shall institute proceeding before the competent Court of Law in consultation with the office of concerned public prosecutor for recovery of the compensation granted to the victim or his/her dependants from the person responsible for causing loss or injury as a result of the crime committed by them.

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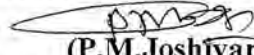
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(2) The amounts, so recovered, shall be deposited in the Victim Compensation Fund.

SCHEDULE
[See rule 5 (8)]

S.N.	Particulars of loss or injury	Maximum Limit of compensation(In rupees)
✓1.	Loss of Life	1,50,000=00
2.	Loss of any limb or part of body resulting 80% or above Handicap.	1,00,000=00
✓3.	Loss of any limb or part of body resulting above 40% & below 80% Handicap.	50,000=00
✓4.	Rape	1,00,000=00
✓5.	Loss of any injury causing sever mental agony to women and child victim in case like Human Trafficking.	25,000=00
✓6.	Permanent disfiguration of the head or face by acid. (In case of acid attack on a woman)	1,00,000=00
✓7.	Assault on women disfiguring her face or any part of body by <u>acid</u> or any other weapon.	50,000=00
8.	In case of sodomy.	25,000=00
9.	Rehabilitation.	50,000=00

By order and in the name of Governor of Gujarat,


(P.M.Joshiyara)

**Under Secretary to the Government.
Home Department.
Sachivalaya, Gandhinagar**

Copy to :

- P.S. to H.E. The Governor, Raj Bhavan, Gandhinagar.
- The P.S. to Hon. Chief Minister, Sachivalaya, Gandhinagar.
- The Personal Secretary to MOS(Home), Gandhinagar,
- The Personal Secretary to The Chief Secretary, Gandhinagar.
- The Personal Secretary to All Minister/Minister of State.
- All the Departments of the Sachivalaya, Gandhinagar.
- The Secretary, Legal Department, Gandhinagar.
- The Executive Chairman, Gujarat State Legal Service Authority, Ahmedabad.
- Chairman, All District Legal Service Authority of Gujarat State.
- The Secretary, Gujarat Legislature Assembly, Gandhinagar.
- The Secretary, Gujarat Vigilance Commission, Gandhinagar.*
- The Registrar, Gujarat High Court, Ahmedabad.*
- The Secretary, Gujarat Service Public Service Commission, Ahmedabad.*
- The Secretary, Gujarat Civil Services Tribunal, Gandhinagar.*
- The Secretary, Gujarat Subordinate Services Selection Board, Gandhinagar.*
- The Personal Secretary to ACS(Home), Gandhinagar.
- The Personal Secretary to Secretary(Home), Gandhinagar.
- The Accountant General, Gujarat State, Ahmedabad/Rajkot.
- The Director of Account & Treasury, Gujarat State, Gandhinagar.
- The Pay & Account Officer/Resident Audit Officers, Gujarat State, Ahmedabad/Gandhinagar.

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- All the Heads of Department under the Home Department.
- All the officers and branches in the Home Department.
- The Director General & Inspector General of Police Gujarat State, Gandhinagar
- All Additional Director General of Police Gujarat State, Gandhinagar.
- The Commissioner of Police Ahmedabad city/Rajkot city/Vadodara city/Surat city.
- All District Magistrate, Gujarat State.
- All Inspector General of Police, Gujarat State.
- All Deputy Inspector General of Police
- All Superintendent of Police
- The Director of Information, Sachivalaya Gandhinagar.
- All District Treasury Officer, Gujarat State.
- The Manager, Government Central Press; Gandhinagar,

With a request to publish this Notification in Part-IX B of Gujarat Government Gazette and send 200 copies.

- The Legislative and Parliamentary Affairs Department- With Request to publish Gujarati Translation and send 100 Copies to this Department.

Authorised English Translation]

HARYANA GOVERNMENT

HOME DEPARTMENT

Notification

The 3rd April, 2013

No. S.O. 41/C.A. 2/1974/S. 357-A/2013.—In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Haryana in co-ordination with the Central Government hereby frames the following scheme for providing funds for the purpose of compensation to the victim or his/her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely:—

Short title.

1. This scheme shall be called the Haryana Victim Compensation Scheme, 2013.

Definitions.

2. In this scheme, unless the context otherwise requires,—

(a) "Act" means the Code of Criminal Procedure, 1973 (2 of 1974);

(b) "crime" means illegal act of omission or commission or an offence committed against the human body of the victim;

(c) "dependents" means wife/husband, father, mother, unmarried daughter, minor children and includes other legal heir of the victim who, on providing sufficient proof, is found fully dependent on the victim by the District Legal Services Authority;

(d) "family" means parents, children and includes all blood relations living in the same household;

(e) "Schedule" means Schedule appended to this scheme;

(f) "State" means the State of Haryana.

Victim
Compensation
Fund.

3. (1) There shall be constituted a fund namely Victim Compensation Fund.

(2) The Victim Compensation Fund shall consist of,—

(a) budgetary allocation for which necessary provision shall be made in the annual budget by the State;

(b) receipt of amount of fines imposed under section 357 of the Act and ordered to be deposited by the courts in the Fund.

(c) amount of compensation recovered from the wrongdoer/accused under clause 7 of the Scheme.

(d) donations/contributions from international National Philanthropist/charitable institution/organization and individuals.

(3) The Administration of Justice Department shall be Nodal Department for regulating, administering and monitoring this scheme.

(4) The State Legal Services Authority shall be accountable for its functions under the scheme and for furnishing periodical returns of the sums distributed to them by the State Government through the Nodal Department.

(5) The Fund shall be operated by the Member Secretary, State Legal Services Authority.

4. (1) A victim shall be eligible for the grant of compensation where.— Eligibility for compensation

(a) a recommendation is made by the Court under sub-sections (2) and (3) of section 357-A of the Act or the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub-section (4) of section 357-A of the Act;

(b) the victim/claimant report the crime to the officer-in-charge of the police station or any senior police officer or Executive Magistrate or Judicial Magistrate of the area within 48 hours of the occurrence;

Provided that the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the offender is traced or identified, and where trial has taken place, the victim/claimant has cooperated with the police and prosecution during the investigation and trial of the case;

(d) The income of the family should not exceed Rs. 4.5 Lac per annum.

(e) The Crime on account of which the compensation which to be paid under this scheme should have been occurred within the jurisdiction of Haryana State.

(2) The employees of Central/State Government, Boards, Corporations and Public Undertakings and income tax payees shall not be eligible under this scheme.

Procedure for grant of compensation.

(1) Whenever a recommendation is made by the Court under sub-section (2) of section 357-A of the Act or an application is made by any victim or his dependent under sub-section (4) of section 357-A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After verifying the claim and by conducting due enquiry, the District Legal Service Authority shall award compensation within two months, in accordance with provisions of this scheme.

(2) Compensation under this scheme shall be paid subject to the condition that if the trial court while passing judgement at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim-claimant shall remit an amount equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim-claimant before the disbursement of the compensation amount.

(3) The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.

(4) The quantum of compensation to be awarded to the victim or his dependents shall be as per Schedule I.

(5) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund. While making payment of amount of compensation, the District Legal Services Authority shall ensure that all the provisions of this scheme are strictly complied with.

(6) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/ or payment received under any other Act or 'Rajiv Gandhi Pariwar Bima Yojna' or any other State-run scheme, shall be considered as part of the compensation amount under this scheme. The victim/ claimant who has received compensation amount from collateral sources mentioned above shall be deemed to be compensated under this scheme and shall not be entitled to separate compensation under this scheme. If the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Fund.

(7) The cases covered under Motor Vehicle Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(8) The District Legal Services Authority, 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 Magistrate of the area concerned, or any other interim relief, as it may deem fit.

6. Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section (3) of section 357 of the Act.

Order to be placed on record.

7. The District Legal Services Authority, if deem it proper, may institute proceedings before the competent court of law for recovery of the compensation granted to the victim or his/her dependent(s) from the person responsible for causing loss or injury as a result of the crime committed by him.

Recovery of compensation awarded to victim from wrongdoer/ accused.

8. No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of six months of the crime:

Limitation.

Provided that the District Legal Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

9. Any victim aggrieved of the denial of compensation by the District Legal Service Authority may file an appeal before the State Legal Service Authority within a period of ninety days:

Appeal.

Provided that the State Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

Schedule I

Sr. No. Particular of Loss or Injury Maximum Limit of Compensation

- 1. Loss of Life
 - a. Age 40 years or below ₹ 3.00 lacs
 - b. Age above 40 years and up to 60 years ₹ 2.00 lacs
 - c. Age above 60 years ₹ 1.00 lacs
- 2. Loss of any limb or part of body (80%) including loss due to acid attack.
 - a. Age 40 years or below ₹ 2.00 lacs
 - b. Age above 40 years and up to 60 years ₹ 1.00 lacs
 - c. Age above 60 years ₹ 50,000/-
- 3. Loss of any limb or part of body (50%) including loss due to acid attack.
 - a. Age 40 years or below ₹ 1.00 lac
 - b. Age above 40 years and up to 60 years ₹ 50,000/-
 - c. Age above 60 years ₹ 25,000/-
- 4. Rape. ₹ 3.00 lacs
- 5. Loss or injury causing severe mental agony to women and child victims in cases like Human Trafficking, Kidnapping and Molestation, etc. ₹ 50,000/-

The following expenses shall be payable in addition to compensation outlined above:

- (i) Funeral expenses ₹ 2,000/-
- (ii) Medical Expenses-Actual expenses incurred before death or on account of injury supported by bills/vouchers but not exceeding ₹ 15,000/-

SAMIR MATHUR, Additional Chief Secretary to Government, Haryana, Home Department.

50980-L.R.-H.G.P., Chd.

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(Authoritative English text of this Department notification No.Home(A)E(3)43/2011 dated 06.09.2012 as required under clause(3) of article 348 of the Constitution of India).

Government of Himachal Pradesh
Home Department.

NOTIFICATION

No. Home (A) E (3)43/2011 Dated: Shimla-171002, 06.09, 2012.

In pursuance to sub section (1) of section 357A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Himachal Pradesh in co-ordination with the Central Government is pleased to frame the following 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, namely: _

Short title: 1. This Scheme may be called the Himachal Pradesh (Victim of Crime) Compensation Scheme, 2012.

Definitions: 2. In this Scheme unless the context otherwise requires:-

(a) "Act" means the Code of Criminal Procedure 1973 (Act 2 of 1974).

(b) "Annexure" means the Annexure-I of the Scheme on which application under the scheme has to be submitted by the applicant;

(c) "Applicant" means the victim or the person making an application on behalf of the victim where he or she, due to physical or mental incapacity, is unable to submit the same or

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where the victim has died, includes his legal heirs;

- (d) "Fund" means the Himachal Pradesh Victim Compensation Fund constituted under the Scheme;
- (e) "Schedule" means Schedule appended to the Scheme;
- (f) "State" means State of Himachal Pradesh;
- (g) "Legal Service Authority" means the State/District Legal Services Authority, as the case may be, constituted under the Legal Services Authorities Act, 1987; and
- (h) "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir;

Victim Rehabilitation Fund

3 (1) There shall be constituted a fund namely Himachal Pradesh Victim Compensation Fund from which an amount of compensation under this Scheme shall be paid to the victim who has suffered loss or injury as a result of a crime and who requires rehabilitation.

(2) The State Government shall allot a separate budget for the purpose of the Scheme every year.

(3) The fund shall be operated by the Secretary, State Himachal Pradesh, Legal Services Authority.

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**Eligibility for
Compensation**

4. (1) A victim shall be eligible for the grant of compensation :-

(a) Where the Court under sub section (2) of section 357A of the Act makes a recommendation or an application is made under sub section (4) of section 357A of the Act to the State or District Legal Services Authority within 90 days of recording of FIR.

(b) Where the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 of the Act is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated and a recommendation by the Court for compensation is made.

Provided that the victim, within reasonable time frame, gives information to the officer-in-charge of a Police Station of the commission of crime within the limits of such station or to a Judicial Magistrate empowered to take cognizance of such offence arising out of the crime:

Provided further that the victim cooperates with the police and prosecution during investigation and trial of the case:

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Provided also that the application is made on Annexure-I to the District Legal Services Authority of the District where the crime was committed (for award of compensation as provided in sub section (4) of section 357A of the Act).

- 2.(a) Such recommendation or application, as the case may be, shall be transferred to the District Legal Services Authority of the District where the crime was committed.
- (b) Where the crime is committed partly in one local area and partly in another or where it consists of several acts done in different local areas, the District Legal Services Authority having jurisdiction over any of such local areas may proceed under section 357A of the Act.
3. A victim would also be eligible for grant of compensation where the offender is not traced or identified, and where no trial takes place.

Procedure for grant of compensation 5. (1) Whenever under sub section (2) of section 357A of the Act, a recommendation for compensation is made by the Court, or an application is made to the District Legal Services Authority for award of compensation, the said Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim arising out of the reported crime .

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- (2) During the course of verification, the District Legal Services Authority, may call for any other relevant information necessary in order to determine genuineness of the claim and shall after due enquiry, award compensation within sixty days, in accordance with provisions of the Schedule.
- (3) The State or the District Legal Services Authority, as the case may be, to elevate the suffering of the victim, may order for immediate interim aid facility or medical benefit to be made available free of cost on the certificate of police officer not below the rank of 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.
- (4) Where the victim or his/her dependents have suffered more than one injury or loss, the compensation payable in each individual case shall only be for the severest injury or loss suffered as a result of the crime.
- (5) Compensation so paid shall be subject to the condition that if the Court while passing the judgment in the case arising out of the crime, orders of the accused person(s) to pay any amount by way of compensation under sub-section (3) of

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section 357 of the Act, an amount equivalent to compensation so paid under section 357A of the Act shall be remitted by the Court directly to the State or the District Legal Services Authority, as the case may be, by whom the compensation had been paid under the Scheme.

(6) The State or the District Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded to the victim on the basis of type and severity of loss caused to the victim, medical expenses to be incurred for treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case, depending on the facts of such case and subject to such limits as prescribed in the Schedule.

(7). The quantum of compensation to be awarded under the Scheme shall be remitted into the Bank Account provided in the application. As far as practicable, the amount may be transferred electronically, so as to provide efficacious and speedy disbursement to the victim from the fund. In case where the victim is a minor or mentally ill, the amount shall be remitted to the Bank Account of his /her parent or

- 6 -

guardian after the State or District Legal Services Authority, as the case may be, awarding the compensation would be properly utilized in the interest of and welfare of such minor or mentally ill victim.

(8). In relation to the crime in question, the payments so received by the victim on account of insurance claim, ex-gratia etc. under any other Act or Scheme(s), shall be considered as part of the compensation amount under this Scheme and if the eligible compensation amount exceeds the payments so received by the victim from collateral sources mentioned above, only the balance amount shall be payable out of the fund.

(9). The cases covered under Motor Vehicles Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal shall not be covered under the Scheme.

Non admissibility of 6. compensation in certain cases

No compensation shall be admissible under the scheme where :-

- (a) the victim has previously lodged any claim for compensation in respect of the same crime; or
- (b) the incident is so belated that no evidence would be forthcoming.

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Refund of compensation in certain cases 7. (1) Where the applicant after receipt

of compensation under the scheme :-

(a) fails to cooperate with the police or prosecution during investigation and trial of the case ; or

(b) victim has failed to give all reasonable assistance to the State or District Legal Services Authority in connection with the proceedings under the Scheme; or

(c) furnishes, as true, information relating to the crime which he knows or has reason to believe to be false; or

(d) being legally bound by an oath or affirmation to state the truth in relation to the crime to any public servant or other person authorized by law to administer such oath or affirmation, makes any statement which is false or knows or believes to be false ; or

(e) gives false evidence in any stage of a judicial proceeding or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding ; or

(f) causes any evidence of the commission of the offence to

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disappear with the intention of screening the offender from legal punishment or with that intention gives any information respecting the offence which he knows or believes to be false

(2) The District Legal Services Authority by whom the compensation was awarded under the Scheme shall be informed in writing of the said fact by the police or the prosecuting agency, as the case may be .

(3) On receipt of such information the District Legal Services Authority may serve a notice upon the applicant, calling upon him/her to show cause as to why the compensation under the Scheme so received by as the case may be him/her may not be refunded back to the State or District Legal Services Authority.

(4) The State or District Legal Services Authority by whom the compensation was awarded under the Scheme after considering the explanation, if any, to the show cause notice issued and after giving the victim a reasonable opportunity of being heard, by order, record a finding as to whether the amount of compensation so received deserves to be refunded by the victim to such authority within a period of sixty days from such order, failing which

the said amount shall be recovered from the victim as arrears of land revenue.

Order to be placed on record 8.

The Court at the time of ordering compensation under sub section(3) of section 357 of the Act shall take into account any sum paid as compensation under the Scheme and copy of such order of compensation made under section 357A of the Act shall be placed on record of the Court .

Limitation. 9. (1)

No claim made by the victim under sub-section (4) of section 357-A of the Act shall be entertained after a period of ninety days of the crime.

(2)The District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the claim.

Appeal 10.

(1) An applicant aggrieved by the denial of compensation by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days from the date of such order.

(2)The State Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the appeal.

(3) An applicant aggrieved by the orders of the District Legal Services Authority calling upon him/her to refund the compensation as provided in sub para (3) of para 8 of the Scheme may file an appeal before the State Legal Services Authority within a period of ninety days from the date of such order.

(4) No appeal shall lie against the orders of the State Legal Services Authority.

Accounts and

Audit: 11.

(1) The State and the District Legal Services Authorities shall maintain proper accounts of the fund and other relevant records and prepare an annual statement of accounts.

(2) The Accounts shall be audited by the Examiner, Local Audit Department, Himachal Pradesh.

By Order,

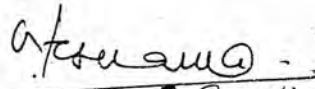
- Principal Secretary(Home) to the Government of Himachal Pradesh.

Endst.No. No. As above, Dated: Shimla-2, 06-09-2012.

Copy forwarded to the following for information and necessary action to:-

- 1 Registrar General, Hon'ble High Court of Himachal Pradesh, Shimla.

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- 2 All Administrative Secretaries to the Government of Himachal Pradesh.
 - 3 All the District & Sessions Judges in Himachal Pradesh.
 - 4 Secretary, State Legal Services Authority, SDA Complex Kasumpti Shimla-9.
 - 5 All the Heads of Department, Himachal Pradesh.
 - 6 All the Deputy Commissioner, Himachal Pradesh.
 - 7 All the District Superintendent of Police Himachal Pradesh.
 8. The Controller Printing & Stationary, Himachal Pradesh, Shimla-5 for publication of the Notification in the Rajpatra. He is requested to upload the notification in the Rajpatra and make available a copy of Gazettee to this department.


5.9.2012

Deputy Secretary (Home) to the
Government of Himachal Pradesh.

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ANNEXURE-I

1. Name of the victim:
2. Age of the victim:
3. Name of the parents
 - (a) Father:
 - (b) Mother:
4. Address:- -----House No.-----
Village/Ward-----
Tehsil-----
District-----
PIN-----
Telephone-----
Mobile-----
5. Date and time of the incident;
6. Place of the incident:
7. (i) Name and details of the applicant.
(ii) Relationship with the victim(dependent family members or any other, specify, in case the application is made on behalf of a minor, mentally ill/mentally challenged victim or on the death of the victim.
8. Whether FIR has been lodged or complaint has been made to the Judicial Magistrate?
 - (a) If yes, state the date, time and place alongwith the copy of FIR/ information.
 - (b) If not, reasons thereof.
9. Whether the victim has previously lodged any claim for compensation in respect of the same crime.
 - (a) If yes, details thereof

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**Schedule of compensation under the Himachal Pradesh
(Victim of Crime) Compensation Scheme, 2012.**

The compensation payable for the injury or loss suffered by a victim of a crime (including an acid attack) shall be in the following manner:-

- ✓ 1. Rs. 1,00,000/- in case of death or disability equal to or more than 80%.
- ✓ 2. Rs. 50,000/- in case of acid attack.
- ✓ 3. Rs. 50,000/- in case of loss of limb etc. where the permanent disablement is equal to or more than 40% but less than 80% and is certified by a Govt. Doctor or Doctor from the panel approved by the Government.
4. Rs. 25,000/- in case of grievous hurt, certified by a Govt. Doctor or Doctor from the panel approved by the Government.
- ✓ 5. Rs. 50,000/- in case of rape or unnatural offence, establishment in the Medico Legal Report.
- ✓ 6. Rs. 24,000/- in case of Human Trafficking.

Note: For the purpose of this Schedule, permanent disablement of a victim shall be deemed to have resulted if he has suffered any injury or injuries involving:-

- (a) privation of the sight of either eye or the hearing of either ear, or privation of any member or joint, or
- (b) destruction or impairing of the powers of any member or joint; or
- (c) disfiguration of the head or face.



Government of Jammu and Kashmir
Home Department

NOTIFICATION

Jammu, the ~~23rd~~ April 2013

SRO 229.-In exercise of the powers conferred by sub-section (1) of Section 545-A of the Code of Criminal Procedure Samvat, 1989(Act No XXIII of 1989), the Government hereby makes the following scheme for providing funds for the purpose of compensation to the victims or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation; namely: -

1. **Short titled:** This Scheme may be called the Jammu and Kashmir Victim Compensation Scheme, 2013.

Definitions: In this scheme, unless the context otherwise requires: -

- a) "Act" means the code of Criminal Procedure Samvat, 1989 (Act No XXIII of 1989);
- b) "Schedule" means Schedule appended to this notification.
- c) "State" means State of Jammu and Kashmir.
- d) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes dependent family members.

2. **Victim Compensation Fund:**

- i) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
 - ii) The Government shall allot a separate budget for the purpose of the scheme every year.
- JJK

- (ii) The funds shall be operated by the Member Secretary, Jammu and Kashmir State Legal Services Authority.

Eligibility for Compensation:

A victim shall be eligible for the grant of compensation if:-

- (a) The offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply for grant of compensation under sub-section (4) of Section 545-A of the Act;
- (b) He/She should not have been compensated for the loss or injury under any other scheme of the Central/State Government, Insurance Company or any other Institution;
- (c) The victim/claimant shall co-operate with the police and prosecution during the investigation and trial of the case.
- (d) The compensation shall be provided to the victim/claimant only after filing of charge sheet or final report in the competent court of law.

3. Procedure for grant of compensation:

- 1) The victim/claimant shall report the crime to the Officer-in-charge of the Police Station or a Judicial Magistrate of the area within a period of six months of the commission of crime;
- 2) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of Section 545-A of the Act to the concerned District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Services Authority shall after due enquiry award compensation within two months, in accordance with provisions of this Scheme;
- 3) The compensation received by the victim/claimant under the scheme shall be recovered and credited to the victim compensation fund if he/she

resiles from the statement during trial of the case in the court of competent jurisdiction resulting in the acquittal/discharge of the accused;

- 4) Compensation under this scheme shall be paid to the victim/claimant subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of Section 545 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub section (3), whichever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the compensation amount.
- 5) The concerned District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of losses caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on facts of each case. However, the quantum of compensation shall not exceed the amount mentioned in the Schedule-I appended to this scheme.
- 6) The quantum of compensation to be awarded under the Scheme shall be disbursed to the victim or his dependents as the case may be, from the Victim Compensation Fund.
- 7) Compensation received by the victim from the State in relation to the Crime in question namely, insurance, ex-gratia and/or payment received, under any other Act or State-run scheme, shall be considered as part of the compensation amount under this scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Victim Compensation Fund.
- 8) The cases covered under Motor Vehicle Act, 1988 wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under this Scheme.
- 9) The District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical benefits to be made available free of cost or any other interim relief as it may deem fit

on the production of a certificate of the police officer not below the rank of the Officer-in-charge of the police station or Magistrate of the area concerned.

4. Orders to be placed on record:

Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section (3) of section 545-A of the Act.

5. Limitation:

No claim made by the victim or his dependents under sub section (4) of section 545-A of the act shall be entertained after a period of six months of the commission of crime:

Provided that the District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the claim.

6. Appeal:

Any victim aggrieved of the denial of compensation by the District Legal Services Authority, may file an appeal before the State Legal Services Authority within a period of 90 days:

Provided that the State Legal Services Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in filing the appeal.

By order of the Government of Jammu and Kashmir



(Suresh Kumar) IAS

Principal Secretary to the Government
Home Department

No: Home/ISA/OWP/115/2012 | 2383

Dated 23.04.2013.

Copy to the: -

1. Principal Secretary to Hon'ble Chief Minister.
2. Director General of Police J&K, Jammu.
3. All Principal Secretaries to Government.
4. All Commissioners/Seretaries to Government.

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5. Secretary to the Government, Department of Law, Justice and Parliamentary Affairs.
6. Private Secretaries to all the Hon'ble Cabinet Ministers/Hon'ble Ministers of State.
7. OSD to Hon'ble Minister of State for Home.
8. Private Secretary to Principal Secretary to the Government, Home Department.
9. SRO/Stock File.


Schedule-I to Notification SRO _____ dated 23.04.2013.

S.No.	Particulars of loss or injury	Maximum limit of compensation
1.	Loss of life (normal)	₹1.00 lakh
2.	Death by torture in police custody	₹2.00 lakh
3.	Loss of any limb or part of body resulting in 80% or above handicap	₹50,000/-
4.	Loss of any limb or part of body resulting in 40% and below 80% handicap	₹20,000/-
5.	Rape of Minor or rape in Police custody	₹1.00 lakh
6.	Rape	₹50,000/-
7.	Acid Victims	₹20,000/-
8.	Injury causing severe mental agony to women and child victims in case like Human Trafficking	₹10,000/-



(Suresh Kumar) IAS
Principal Secretary to the Government
Home Department

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**Government of Jharkhand
Home Department**

Notification

The 3rd August, 2012

No. 5 Misc. (01)-81/2010/3735:- In exercise of the powers conferred by section 357A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Jharkhand hereby frames the following 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, namely :-

Short title:-

1. This scheme may be called the Jharkhand Victim Compensation Scheme, 2012.

Definitions:-

2. In this scheme, unless the context otherwise requires:-
 - (a) "Act" means the Code of Criminal Procedure, 1973 (2 of 1974);
 - (b) "Schedule" means Schedule appended to this Scheme;
 - (c) "State" means State of Jharkhand;
 - (d) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes dependent family members.
 - (e) "District Legal Services Authority" means a authority constituted under the Chairmanship of the Principal District and Session Judge of the District constituted under the Legal Services Authorities Act 1987.
 - (f) The "State committee" means a Committee constituted under the Chairmanship of the Director, Prosecution of the State to be notified by the State Government.

Victim Compensation Fund:-

3.
 - (1) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.
 - (2) The State Government shall allot a separate budget for the purpose of the scheme every year.
 - (3) The Fund shall be operated by the Director, Prosecution, Government of Jharkhand.
 - (d) The fund at the district level shall be placed by the Director, Prosecution and to be operated by the respective District Magistrates.

Eligibility for compensation:-

4. A Victim shall be eligible for the grant of compensation if, -
- (a) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub section (4) of section 357-A of the Act;
 - (b) the victim/claimant report the crime to the officer-in-charge of the police station within 48 hours of the occurrence : or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;
 - (c) the victim/claimant cooperate with the police and prosecution during the investigation and trial of the case.

Procedure for grant of compensation:-

5. (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Services Authority shall after due enquiry award compensation within two months, in accordance with provisions of this Scheme.
- (2) Compensation under this Scheme shall be paid subject to the condition that if the Trial court while passing judgement at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount order to be paid under the said sub-section (3) of section 357 of the Act, which ever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the compensation amount.
- (3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.
- (4) The quantum of compensation to be awarded to the victim or his dependents shall not exceed the maximum limit as per schedule-I.

(5) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependents as the case may be, from the Fund.

(6) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act or State-run scheme, shall be considered as part of the compensation amount under these rule and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Fund.

(7) The cases covered under Motor Vehicle Act, 1988(59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(8) The District Legal Services Authority, 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 Magistrate of the area concerned or any other interim relief as it may deem fit.

Order to be placed on record:-

6. Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section(3) of section 357 of the Act.

Limitation:-

7. No claim made by the victim or his dependents under sub-section(4) of section 357A of the Act shall be entertained after a period of six months of the crime:

Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

Appeal:-

8. Any victim aggrieved of the denial of compensation by the District Legal Services Authority may file an appeal before the State Committee within a period of ninety days:

Provided that the State Committee, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

Sl. No.	Particular of Loss or Injury	Maximum limit of compensation
1	Loss of life	Rs. 2.00 lacs
2	Loss of any limb of part of body resulting 80% or above handicap	Rs. 50,000/-
3.	Loss of any limb or part of body resulting 40% & below 80% handicap	Rs.20,000/-
4.	Rape of Minor	Rs. 50,000/-
5.	Rape	Rs.20,000/-
6.	Rehabilitation	Rs.20,000/-
7.	Loss of any limb or part of body resulting below 40% handicap	Rs.10,000/-
8.	Loss of injury causing severe mental agony to women and child victims in case like Human trafficking	Rs. 10,000/-
9.	Simple Loss or injury to Child victim	Rs. 10,000/-

JS/CS
 Div (CR)

At last!
 P. put up
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By the order of Governor, Jharkhand

Sd/-

(J.B. Tubid)
 Principal Secretary.

Memo No. /

Ranchi, Dated / /2012

Copy forwarded to the Superintendent, Govt. Press, Doranda, Ranchi for publication in the next issue of Gazette and supply 200 copies to the undersigned.

Sd/-

Deputy Secretary to Govt.

Memo No. /

Ranchi, Dated / /2012

Copy forwarded to the Accountant General, Jharkhand, Ranchi/Principal Secretary to Governor of Jharkhand/Principal Secretary to the Chief Minister of Jharkhand/ All Principal Secretaries/Secretaries/Head of Department, Jharkhand/Registrar General, Jharkhand, High Court, Ranchi/All Divisional Commissioner, Jharkhand/ Director General & Inspector General of Police, Jharkhand, Ranchi/Director/Asst. Director, Directorate of Prosecution, Jharkhand, Ranchi/All D.Cs/S.S.Ps/S.Ps., Jharkhand for information & necessary action please.

Sd/-

Deputy Secretary to Govt.
 Ranchi, Dated 03/08/2012

Memo No. 3735 /

Copy forwarded to Addl. Secretary, Ministry of Home Affairs (CS Division) Government of India, North Block, New Delhi for information please.

Deputy Secretary to Govt.

PROCEEDINGS OF GOVERNMENT OF KARNATAKA

Sub: Victim Compensation Scheme, 2011 - revision
of quantum of compensation.

Read:

Notification No.HD 1 PCB 2011 dated 22-02-2012

M (LSI)
Dir (ES-D) ✓
Dir (SM)

PREAMBLE:

Government vide in the Notification read above have formulated a scheme in co-ordination with the Government of India for providing compensation to the victims or his/her dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. In the schedule of the said Notification the Government have quantified the following rate of compensation to the victims.

Sl. No.	Particulars of Loss or Injury due to crime	Maximum limit of quantum of Compensation
1	Loss of Life	Rs.2.00 lacs
2	Loss of any limb or part of body resulting 80% or above handicap	Rs.1.00 lac
3	Loss of any limb or part of body resulting 40% & below 80% handicap	Rs.50,000/-
4	Rape of Minor	Rs.50,000/-
5	Rape	Rs.40,000/-
6	Rehabilitation necessitated due to damage to house, vehicle etc.	Rs.20,000/-
7	Loss of any limb or part of body resulting below 40% handicap	Rs.20,000/-
8	Grievous injuries other than the injuries mentioned above	Rs.10,000/-
9	Women and Child victims in cases like human trafficking, who themselves or their dependents have suffered separation, dislocation and disturbance	Rs.10,000/-

Now, Government have felt that there is a need to revise the nature of injuries and quantum of compensation provided thereon. Hence, this order.

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Government Order No: HD 1 PCB 2011, Bangalore, dated: 19-09-2013

Government is pleased to substitute the schedule mentioned in the Notification dated 22-02-2012 read above, with the following modified schedule.

SCHEDULE

Sl. No.	Particulars of Loss or Injury due to crime	Compensation to be paid
1	Loss of Life	
	a) 40 Years of age or below	Rs.3.00 lacs to the next of kin
	b) 40 Years to 60 years	Rs.2.00 lacs to the next of kin
	c) 60 Years and above	Rs.1.00 lac to the next of kin
	Note:- In case of death of a victim, expenses incurred for actual medical treatment, before death, upto a maximum of Rs.25,000/- and a maximum of Rs.20,000/- may be given as funeral expenses, to the next kin of the victim in case of victim's death.	
2	Loss of any limb or part of body resulting 80% or above handicap due to any crime including Acid Attack	Rs.3.00 lacs
3	Loss of any limb or part of body resulting 40% & below 80% handicap due to any crime including Acid Attack	Rs.2.00 lacs
4	Loss of any limb or part of body resulting below 40% handicap due to any crime including Acid Attack	Rs.1.00 lac
5	Rape of Minor	Rs.3.00 lacs
6	Rape other than minor	Rs.1.5 lacs
7	(a) Rehabilitation necessitated due to damage to house etc. 80% or more	Rs.50,000/-
	(b) Rehabilitation necessitated due to damage to house etc. less than 80%	Rs.25,000/-
8	Grievous injuries other than the injuries mentioned above	Rs.20,000/-

9	Women and Child victims in cases like human trafficking, who themselves or their dependents have suffered separation, dislocation and disturbance	Rs.1.00 lac
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The above revised compensation shall come into immediate effect.

The other conditions prescribed in the victim compensation scheme, 2011 shall continue to be in effect.

By Order and in the name of the
Governor of Karnataka

S. Chandrappa
(S. CHANDRAPPA)

Under Secretary to Government
Home Department (Crimes)

To:-

The Compiler, Karnataka Gazette, Bangalore for publication in the next issue of Karnataka Gazette and supply 200 copies to the Government.

Copy to:-

1. The Accountant General of Karnataka, Bangalore.
- ✓ 2. The Secretary (CS Division) to the Government of India, Ministry of Home Affairs, North Block, New Delhi.
3. The Additional Chief Secretary to Government, Finance Department, Vidhana Soudha, Bangalore.
4. The Director General and Inspector General of Police, Nrupathunga Road, Bangalore.
5. The Principal Secretary to Government, Women & Child Development Department, Bangalore.
6. The Secretary, Karnataka State Legal Services Authority, "Nyaya Degula", H.Sidaiah, Road, Bangalore - 560 027.
7. The Director, Women & Child Development Department, Bangalore.
8. The Project Director, Integrated Child Protection Scheme, Bangalore.
9. The Director, Department of Prosecutions & Government Litigation, Cauvery Bhavan, Bangalore - 560 009.

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10. The Director General of Police, COD, Trg. Special Units and Economic Offences, Palace Road, Bangalore - 560 001.
11. The Additional Director General of Police (Law & Order)/(Crimes)/(Intelligence) Nrupathunga Road, Bangalore.
12. All the Inspector General of Police of all the Ranges (through D& & IGP)
13. All the Commissioners of Police in the State (through DG & IGP)
14. All the Deputy Commissioners/ District Magistrates of the State
15. All the Superintendent of Police of the State (through DG & IGP)
16. All the Chief Executive Officers, Zilla Panchayats of the State
17. Guard File/Spare Copies.

Copy for information to:

1. The Chief Secretary to Government, Vidhana Soudha, Bangalore.
2. The Additional Chief Secretary to Government, Home Department, Vidhana Soudha, Bangalore.
3. The Principal Secretary to Government, Home Department (PCAS), Vidhana Soudha, Bangalore.
4. The Principal Secretary to Chief Minister, Vidhana Soudha, Bangalore
5. Personal Secretary to Home Minister, Vidhana Soudha, Bangalore
6. The Additional Secretary to Government, Home Department (Police Services), Vidhana Soudha, Bangalore.
7. The Additional Secretary to Government, Home Department (L & O), Vidhana Soudha, Bangalore.
8. The Deputy Secretary to Government, Home Department (Auxillary Services) Bangalore.
9. The Deputy Secretary & Internal Financial Advisor, Home Department, Bangalore.
10. All the Under Secretaries of Home Department, Vidhana Soudha, Bangalore.



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ವಿಶೇಷ ಪತ್ರಿಕೆ

ಭಾಗ - IV-A	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಏಪ್ರಿಲ್ ೧೯, ೨೦೧೨ (ಜೈತ್ರ ೨೦, ಶಕ ವರ್ಷ ೧೯೩೪)	ನಂ. ೨೮೩
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HOME SECRETARIAT

NOTIFICATION

No. HD 1 PCB 2011, Bangalore, Dated: 22-02-2012

Whereas sub-section (1) of section 357 of Code of Criminal Procedure, 1973 mandates for the State Government to prepare a scheme in co-ordination with the Central Government for providing funds for the purpose of compensation to the victims or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

Now, therefore, in exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974). The Government of Karnataka hereby frames the following scheme for providing funds for the purpose of compensation to the victims or their dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely:-

1. Title and Commencement.- (1) This scheme may be called the Karnataka Victim Compensation Scheme, 2011.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions.- In this scheme, unless the context otherwise requires:-

(a) "Act" means the Code of Criminal Procedure, 1973 (Central Act 2 of 1974);

(b) "District Authority" and "State Authority" means the District Legal Service Authority and State Legal Service Authority as defined under the Legal Services Authorities Act, 1987 (Central Act 39 of 1987);

(c) "Schedule" means schedule appended to this scheme;

(d) "State" means the State of Karnataka.

(e) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes his dependents who had suffered loss or injury as a result of the crime and who require rehabilitation.

3. Victims Compensation Fund.- (1) There shall be a Fund called the Victims Compensation Fund.

(2) There shall be credited to the said fund, -

(i) all grants, subventions, donations and gifts made by the Central Government, State Government, any local authority or anybody, whether incorporated or not or any person;

(ii) all other sums received by or on behalf of the victims compensation from any source whatsoever.

(3) Except as otherwise directed by the State Government all moneys credited to the Fund shall be invested in any Scheduled Bank or in the State Government Treasury.

4. Application of the Victims Compensation Fund.- The fund shall be applied for carrying out the purposes of this Scheme.

5. Grant by the State Government.- The State Government may every year make a grant to the fund of a sum equivalent to the expenses of the previous year or the probable expenditure requested by the State Legal Service Authority.

6. Eligibility for Compensation.- A victim shall be eligible for the grant of compensation if, -

(1) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply for grant of compensation under sub-section (4) of section 357-A of the Act.

(2) the victim/claimant report the crime to the officer-in-charge of the police station within 48 hours of the occurrence or any senior police officer or Executive Magistrate or Judicial Magistrate of the area;

Provided that the District Legal Service Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in reporting.

(3) the victim/claimant shall co-operate with the police and prosecution during the investigation and trial of the case .

7. Procedure for grant of compensation.- (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported criminal activity and the District Legal Service Authority may call for any other relevant information necessary in order to determine genuineness of the claims. After verifying the claim, the District Legal Service Authority shall after due enquiry award compensation within two months, in accordance with the provisions of this scheme.

(2) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgement at a later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, is paid or recovered and paid to the

victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursement of the compensation amount.

(3) The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.

(4) The quantum compensation to be awarded to the victim or his dependents shall not exceed the maximum limit specified in Schedule 1.

(5) The amount of compensation decided under the Scheme shall be disbursed to the victim or his dependents as the case may be from the Fund through cheque.

(6) Compensation received by the victim from the State in relation to the crime in question, namely insurance, ex-gratia and /or payment received under any other Act or State run scheme that includes compensation awarded by State/National Human Rights Commissions or any Court/Commission shall be considered as part of the compensation amount under this scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount only shall be paid out of Fund.

(7) The Cases covered under Motor Vehicle Act, 1988, (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(8) The District Legal Services Authority, to alleviate the suffering of the victims, 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 Magistrate of the area concerned or any other interim relief as it may deem fit.

(9) The District Legal Service Authority shall not allow any participation or representation by a legal practitioner or any other person or institution or Non-Governmental Organisation on behalf of the victim/claimant.

(10) If a victim or his dependents have obtained an order sanctioning compensation under this scheme based on false/vexatious/fabricated complaint which is so held by the trial Court, the compensation awarded shall be recovered with 15% interest per annum.

8. Order to be placed on record.- Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to pass order of compensation under sub-section (3) of section 357 of the Act.

9. Limitation.- No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of twelve months from the date of the crime.

Provided that the District Legal Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the claim.

10. Appeal.- Any victim aggrieved of the denial of compensation by the District Legal Service Authority may file an appeal before the State Legal Service Authority within a period of ninety days:

Provided that the State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

SCHEDULE

Sl. No.	Particulars of Loss or Injury due to crime	Maximum limit of quantum of Compensation
1	Loss of life	Rs. 2.00 lacs
2	Loss of any limb or part of body resulting 80% or above handicap	Rs. 1.00 lacs
3	Loss of any limb or part of body resulting 40% & below 80% handicap	Rs. 50,000/-
4	Rape of Minor	Rs. 50,000/-
5	Rape	Rs. 40,000/-
6	Rehabilitation necessitated due to damage to house, vehicle etc.	Rs. 20,000/-
7	Loss of any limb or part of body resulting below 40% handicap	Rs. 20,000/-
8	Grievous injuries other than the injuries mentioned above	Rs. 10,000/-
9	Women and Child victims in cases like human trafficking, who themselves or their dependents have suffered separation, dislocation and disturbance	Rs. 10,000/-

By Order and in the name of the Governor of Karnataka,

M.M. HIREMATH
Under Secretary to Government,
Home Department (Crimes)

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കേരള സർക്കാർ
Government of Kerala
2014



Regn. No. KERBIL/2012/45073
dated 5-9-2012 with RNI
Reg. No. KLTV(N)/634/2012-i4

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KERALA GAZETTE

അസാധാരണം
EXTRAORDINARY

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ആധികാരികമായി പ്രസിദ്ധപ്പെടുത്തുന്നത്
PUBLISHED BY AUTHORITY

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GOVERNMENT OF KERALA

Home (C) Department

NOTIFICATION

G. O. (Ms.) No. 37/2014/Home.

Dated, Thiruvananthapuram, 24th February, 2014
12th Kumbham, 1189.

S. R. O. No. 167/2014.—In exercise of the powers conferred by section 357A of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), the Government of Kerala, in co-ordination with the Central Government, hereby make the following 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, namely:—

PRINTED AND PUBLISHED BY THE SUPERINTENDENT OF GOVERNMENT PRESSES
AT THE GOVERNMENT CENTRAL PRESS, THIRUVANANTHAPURAM, 2014.

33/1102/2014/DTP.

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1. *Short title and commencement.*—(1) This scheme may be called the Kerala Victim Compensation Scheme, 2014.

(2) It shall come into force at once.

2. *Definitions.* In this scheme, unless the context otherwise requires,—

(a) “applicant” means a victim or the dependent of a victim who applies for compensation;

(b) “Code” means the Code of Criminal Procedure, 1973 (Central Act 2 of 1974);

(c) “Fund” means the Victim Compensation Fund constituted under paragraph 3;

(d) “injury” means any injury specified in the Schedule;

(e) “loss”, includes loss to property occurred as a result of an injury;

(f) “probation officer” means an officer appointed by the State Government as a probation officer under section 13 of the Probation of Offenders Act, 1958 (20 of 1958);

(g) “Schedule” means the Schedule appended to this scheme;

(h) “State” means the State of Kerala;

(i) “victim” means a person who has suffered any loss or injury caused by reason of the act or omission on the part of the accused and who requires rehabilitation under this scheme and includes the guardian or legal heir of such person, but does not include a person who is responsible for injury to such person;

(j) “Dependent” includes wife, husband, father, mother, unmarried daughter and minor children of victim as determined by the authority empowered to issue dependency certificate or any other authority authorised by Government in this regard;

(k) All other words and expressions used herein and not defined, but defined in the Criminal Procedure Code, 1973 (Central Act 2 of 1974), Indian Penal Code, 1860 (Central Act 45 of 1860) or the Kerala General Clauses Act have the same meanings respectively as assigned to them in the said Acts.

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3. *Constitution of Victim Compensation Fund.*—(1) There shall be a Fund to be constituted, namely, the "Victim Compensation Fund".

(2) the Victim Compensation Fund shall consist of:—

(a) budgetary allocation made in the annual budget by the State;

(b) receipt of amount of fines imposed under section 357 of the Code;

(c) donations and contributions received from International or National Charitable Institutions, organisations and individuals.

(3) The amount in the Fund shall be held in Public Account under the new head of account.

(4) The existing head of account in which the fines and fees are deposited as per section 357 of the Code have to be credited to the newly opened head of account.

(5) The Home Department shall be the Nodal Department for regulating, administering and monitoring the scheme.

(6) The Fund shall be operated by the Member-Secretary, Kerala State Legal Services Authority.

(7) The State Legal Services Authority shall be accountable for its functions under the scheme and for furnishing periodical returns of the amounts allotted to them by the State Government through the Nodal Department.

4. *Eligibility for Compensation.*—The victim or his dependent shall be eligible for compensation under the scheme in the following cases, namely:

(a) where a recommendation is made by the Court under sub-section (2) or sub-section (3) of section 357 A of the Code;

(b) where the trial Court makes a recommendation, on conclusion of the trial, when it is satisfied that the compensation awarded under section 357 of the Code is not adequate for such rehabilitation or where the case ends in acquittal or discharge and the victim has to be rehabilitated;

(c) where the offender is not traced or identified, but the victim is identified and where no trial takes place and in which case, the victim or his dependent may make an application to the District Legal Services Authority;

(d) employees of Central or State Governments, Boards, Corporations, Public Sector Undertakings and those whose family income exceeds the creamy layer limit fixed by the respective Governments from time to time will not be eligible;

(e) the crime, on account of which the compensation is to be paid under the scheme, should have been occurred within the State.

Exception.—In case, the crime has occurred outside the State and the victim is found within the limit of the State, he/she shall be eligible for interim relief contemplated under sub-section (6) of section 357A of the Code.

5. Procedure for grant of compensation.—(1) On receipt of the recommendation by the trial court or on application under sub-section (4) of section 357A of the Code, the State or the District Legal Services Authority shall, after due enquiry through appropriate authority as deemed fit by the State or the District Legal Services Authority, award adequate compensation by completing the enquiry within two months.

(2) The District Legal Services Authority shall examine and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the crime. The Authority may call for any relevant informations necessary to determine the genuineness of the claim. After verifying the claim and conducting due enquiry, the District Legal Services Authority shall award adequate compensation within two months, in accordance with the provisions of the scheme.

(3) The District Legal Services Authority 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 an officer-in-charge of the police station or a Judicial or Executive Magistrate or a competent medical officer of the area concerned or any other interim relief as deemed fit by the Authority.

(4) The amount of compensation will be decided by the District Legal Services Authority based on the standard criteria given in the Schedule appended to the scheme.

(5) Compensation shall be paid as a single lump sum or in two instalments as decided by the District Legal Services Authority.

(6) The District Legal Services Authority shall decide the quantum of compensation under sub-section (2) and (3) of section 357 A of the Code within sixty days of the receipt of the recommendation.

(7) The District Legal Services Authority shall decide the quantum of compensation on the basis of loss caused to the victim, medical expenses

urred on treatment, minimum sustenance amount required for rehabilitation including incidental charges like funeral expenses.

(8) In the case of compensation to victim of rape/victim under trauma, the matter shall be informed to the probation officer in the district concerned for effective rehabilitation and continuous evaluation.

(9) If the trial court, while passing judgment at a date later than the award of compensation, order the accused person to pay any amount by way of compensation under sub-section (3) of section 357 of the Code, the accused person shall remit an amount equal to the amount of compensation or the amount ordered to be paid under sub-section (3) of section 357 of the Code, whichever is less. An undertaking to this effect shall be given by the victim or his claimant before the disbursement of the compensation amount.

(10) The amount of compensation decided under the scheme shall be disbursed to the victim or his dependent from the Victim Compensation Fund. Compensation received by the victim from the State in relation to crime in question, namely, insurance, ex-gratia or payment received under any other Act or any other State scheme, shall be considered as part of the compensation amount under this scheme. The victim or his dependent who has received compensation amount from collateral sources mentioned above shall be deemed to have been compensated under this scheme and shall not be entitled to separate compensation under this scheme. If the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the Fund.

(11) The cases covered under the Motor Vehicles Act, 1988 (Central Act 59 of 1988) wherein compensation is to be awarded by the Motor Accidents Claims Tribunal, shall not be covered under the scheme.

(12) Copy of the order of compensation passed by the District Legal Services Authority under this scheme shall be placed on record of the trial court to enable the court to pass an order of compensation under sub-section (3) of section 357 of the Code.

(13) The District Legal Services Authority, shall institute proceedings before the competent court of law for recovery of the compensation, granted to the victim or his dependent, from the accused if found ineligible later.

6. Disbursement of compensation.—(1) Disbursement of compensation will be done through the Aadhar linked bank account.

(2) In the case of a victim who is a minor, the amount of compensation awarded shall be deposited in the account of the minor as fixed deposit, to be withdrawn only on attainment of his majority. In exceptional cases, the amount of compensation can be withdrawn for educational or medical needs of the beneficiary by the competent person as decided by the District Legal Services Authority/Appeal Authorities.

(3) In case of acid attack a sum of ₹ 1 lakh (one lakh) shall be paid to such victim within 15 days of such incidents.

7. Rejection, withholding or reduction of compensation.—The District Legal Services Authority may reject, withhold or reduce the award of compensation where the Authority considers that:

(a) the applicant failed to inform the crime to the Police Officer without reasonable delay;

(b) the applicant failed to co-operate with the police officer or other authority to bring the accused before justice;

(c) the applicant failed to give all reasonable assistance to the District Legal Services Authority or other related authorities in connection with the application;

(d) the eligibility of the victim as shown by the facts and circumstances of the case does not justify award of compensation.

8. Dependency Certificate.—The Tahsildar concerned or the authority designated as competent authority by the Government from time to time, shall issue Dependency Certificate within a period of fifteen days from the date of the application.

9. Limitation.—No claim made by the victim or his dependent under sub-section (4) of section 357 A of the Code shall be entertained after a period of one hundred and eighty days from the occurrence of the crime. The District Legal Services Authority, if satisfied, for reasons to be recorded in writing, may condone the delay in filing the said claim.

10. Appeal.—(1) Any victim or his dependents aggrieved by the rejection of his/her claim by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days;

(2) A second appeal shall lie to Government in Home Department against the decision of 1st Appeal Authority, viz. State Legal Services Authority within a period of 30 days from the date of decision of the first Appeal

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Authority and the decision of second Appeal Authority shall be final:

Provided, that the State Legal Services Authority/Government if satisfied, for sufficient reasons to be recorded in writing, may condone the delay in filing the appeal.

(3) A decision made by the District Legal Services Authority and accepted by the applicant will normally be considered as final. The State Legal Services Authority/Government may, however, subsequently re-open a case where there has been such a material change in the medical condition of the victim that injustice would occur if the original assessment of compensation were allowed to stand, or where the victim has died in consequence of the injury.

SCHEDULE

COMPENSATION TO VICTIMS FOR INJURY/LOSS

<i>Sl. No.</i>	<i>Description of injury/loss</i>	<i>Amount of compensation</i>
(1)	(2)	(3)
1	Death	Maximum upto ₹ 5 lakhs
2	Culpable homicide not amounting to murder	Maximum upto ₹ 3 lakhs
3	Causing death by negligence	Maximum upto ₹ 2 lakhs
4	Dowry related violence	Maximum upto ₹ 2 lakhs
5	Permanent Disability (80% or more)	Maximum upto ₹ 3 lakhs
6	Partial Disability (40% to 80%)	Maximum upto ₹ 1 lakh
7	Burns affecting greater than 25% of the body	Maximum upto ₹ 2 lakhs
8	Burns affecting less than 25% of the body	Maximum upto ₹ 20,000
9	Loss of foetus	Maximum up to ₹ 50,000
10	Physical abuse of minor	Maximum upto ₹ 50,000
11	Rape	Maximum upto ₹ 3 lakhs
12	Sexual assault	Maximum upto ₹ 50,000
13	Fracture/dislocations	Maximum upto ₹ 1.5 lakhs

(1)	(2)	(3)
14	Injury resulting in surgery/ serious damage to vital organs	Maximum upto ₹ 2 lakhs
15	Loss of fertility	Maximum upto ₹ 1.5 lakhs
16	Major injuries not specified otherwise	Maximum upto ₹ 50,000
17	Minor injuries not specified otherwise	Maximum upto ₹ 25,000
18	Acid Attack (Disfigurement of greater than 40%)	Maximum upto ₹ 3 lakhs
19	Acid Attack (Disfigurement of less than 40%)	Maximum upto ₹ 1 lakh
20	Rehabilitation (in addition to 1 to 19 above)	Maximum upto ₹ 1 lakh

Note.— If the victim is 14 years or less, the compensation shall be increased 50% more than specified above.

By order of the Governor,

L. RADHAKRISHNAN,
Principal Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

For the purpose of implementing section 357 A of the Code of Criminal Procedure, 1973, Government have decided to make the Kerala Victim Compensation Scheme, 2014 in co-ordination with the Central Government for providing funds for the purpose of giving compensation to the victims or his dependents, who have suffered loss or injury as a result of the crime and who require rehabilitation.

The notification is intended to achieve the above object.

HOME DEPARTMENT

World Trade Centre, Centre-1, 30th Floor,
Cuffe Parade; Mumbai 400 005, dated the 11th April 2014.

NOTIFICATION

CODE OF CRIMINAL PROCEDURE, 1973.

No. CPC.0211/C.R. 101/POL-7.—In exercise of the powers conferred by section 357A of the Code of Criminal Procedure, 1973 (II of 1974), the Governor of Maharashtra in co-ordination with the Central Government hereby frames the following scheme for providing funds for the purpose of compensation to the victims or their dependents, who have suffered loss or injury as a result of a crime and who require rehabilitation, namely :—

1. *Short title.*—This Scheme shall be called the Maharashtra Victim Compensation Scheme, 2014.

2. *Definition.*—(1) In this Scheme, unless the context otherwise requires,—

(a) “Code” means the Code of Criminal Procedure, 1973 (II of 1974) ;

(b) “Schedule” means Schedule appended to this scheme ;

(c) “State” means the State of Maharashtra ;

(d) “Victim” means a person as defined in clause (wa) of section 2 of the Code of Criminal Procedure, 1973 (II of 1974) ;

(e) “dependents” means wife, husband, father, mother, unmarried daughter, minor children and includes other legal heirs of the victim who, on providing sufficient proof, is found fully dependent on the victim by the District Legal Services Authority.

(2) Words and expressions used herein and not defined but defined in the Indian Penal Code, 1860 (XLV of 1860) or the General Clauses Act, 1897 (X of 1897) have the same meanings respectively as assigned to them in the Indian Penal Code, 1860 and the General Clauses Act, 1897.

3. *Victim Compensation Fund.*—(1) There shall be constituted a fund, namely, “the Victim Compensation Fund” from which the amount of compensation under this scheme shall be paid to the victims or their dependents.

(2) The State Government shall allot a separate budget for the purpose of the Scheme every year.

(3) The Victim Compensation Fund shall consist of,—

(a) the receipt of amount of fines imposed under section 357 of the Code and ordered to be deposited by the courts in the Victim Compensation Fund ;

(b) the amount of compensation recovered from the wrongdoer or accused under clause 7 of the Scheme ;

(c) the donations or contributions from International, National, Philanthropist, Charitable Institutions or Organizations and individuals.

(4) The Victim Compensation fund shall be operated by the Secretary, Maharashtra State Legal Services Authority.

(5) The Home Department, shall be a Nodal Department for regulating, administering and monitoring this scheme.

(6) The Maharashtra State Legal Services Authority shall be accountable for its functions under the Scheme and for furnishing periodical returns of the sums distributed to them by the State Government through the Nodal Department.

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4. *Eligibility for Compensation.*— Victim or his dependents shall be eligible for the grant of compensation where,—

(a) recommendation is made by the Court under sub-section (2) and (3) of section 357A of the Code of the offender is not traced or identified but the victim is identified, and where no trial takes place, such victim or his dependents may apply for grant of compensation under sub-section (4) of the said section 357A of the Code ;

(b) the victim or the claimant reports the crime to the Officer-in-charge of the concerned Police Station or Executive Magistrate or Judicial Magistrate of the area within reasonable time :

Provided that, the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting the crime ;

(c) the victim or claimant co-operates with the police and prosecution during the investigation and trial of the case ;

(d) the victim is not compensated for the loss or injury under any other scheme of the Central or State Government or any other institution ;

(e) the loss of injury sustained by the victim or his dependents have caused substantial loss of income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means on medical treatment of mental or physical injury ;

(f) the perpetrator of a crime is not traceable or goes unpunished after trial, but the victim is identifiable and has to incur a lot of expenses on physical and mental rehabilitation ;

(g) the Crime on account of which the compensation is to be paid under this Scheme has been occurred within the jurisdiction of Maharashtra State ; and

(h) the employees of the Central or State Government, Boards, Corporations and Public Undertakings and income tax payees shall not be eligible for compensation under this Scheme.

5. *Procedure for grant of compensation.*—(1) Whenever a recommendation is made by the Court under sub-sections (2) and (3) or an application is made by any victim or his dependents under sub-section (4) of section 357A of the Code to the District Legal Service Authority or the State Legal Service Authority, as the case may be, the District Legal Service Authority or the State Legal Service Authority, shall examine the case and verify the contents of the claims with regard to the loss or injury arising out of the victim or claimant and the loss or injury arising out of the reported criminal activity, and may call for any other relevant information necessary in order to determine the genuineness of the claim. After verifying the claim and due inquiry, the District Legal Service Authority or the State Legal Service Authority, as the case may be shall, award adequate compensation by completing the enquiry within two months, in accordance with the provisions of this Scheme.

(2) The District Legal Service Authority or the State Legal Service Authority, as the case may be, upon its satisfaction, shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of the loss caused to the victim, medical expenses incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on the facts of each case.

(3) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Code, the victim or the claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Code, whichever is less. An undertaking to this effect shall be given by the victim or the claimant before the disbursement of the compensation amount.

(4) The quantum of compensation decided by the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall be disbursed to the victim or his dependents, as the case may be, from the Fund. While making payment of amount of compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall ensure that all the provisions of the Scheme are strictly complied with.

(5) Compensation received by the victim from the Central or State Government, Insurance Company or any other institution in relation to the crime in question, namely, Insurance, *ex-gratia* and/or payment received under any other Act or State run Scheme, shall be considered as a part of the compensation amount under this Scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned, the balance amount shall be paid out of the Fund.

(6) In fixing the quantum of compensation regard must be had to the minimum wages and the Schedule appended to the Motor Vehicles Act, 1988.

(7) The cases covered under the Motor Vehicles Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(8) The quantum of compensation to be awarded to the victim or his dependents shall not exceed the maximum limit as per the Schedule.

(9) If a victim or his dependents have obtained an order sanctioning compensation under this Scheme based on false, vexatious or fabricated complaint which is so held by the trial Court, the compensation awarded shall be recovered with fifteen per cent interest per annum.

(10) 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 treatment to be made available free of cost if a 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, has been produced to the medical authority concerned or any other interim relief as the appropriate authority, deems fit.

6. *Order to be placed on record.*—Copy of the order of compensation passed under this Scheme shall be placed on record of the trial Court to enable the court to pass an order of compensation under sub-section (3) of section 357 of the Code.

7. *Recovery of compensation awarded to the victim from wrongdoer or accused.*—The District Legal Services Authority, if deem fit proper, may institute proceedings before the competent court of law for recovery of the compensation granted to the victim or his dependent(s) from the person responsible for causing loss or injury as a result of the crime committed by him.

8. *Limitation.*—No claim made by the victim or his dependents under sub-section (4) of section 357A of the Code shall be entertained after a period of six months of the crime :

Provided that, the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

9. *Appeal.*—Any victim aggrieved by the denial of compensation by the District Legal Service Authority may file an appeal before the State Legal Service Authority within a period of ninety days :

Provided that, the State Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

Schedule

[see 5 (8)]

Sr. No.	Particulars of loss or injury	Maximum limit of compensation
1.	Loss of Life	Rs. 2.00 lacs
2.	Permanent Disability	Rs. 0.50 lacs
3.	Acid Attack	Rs. 3.00 lacs

The following expenses shall be payable in addition to compensation outlined above :—

1. Funeral expenses-Rs. 2,000.
2. Medical expenses-Actual expenses incurred before death or on account of permanent disability by bills or vouchers but not exceeding Rs. 15,000.

By order and in the name of the Governor of Maharashtra,

DR. AMITABH RAJAN,
Additional Chief Secretary to Government.

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GAZETTE

EXTRAORDINARY
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No. 400

Imphal, Friday, August 5, 2011

(Sravana 13, 1933)

GOVERNMENT OF MANIPUR
SECRETARIAT: HOME DEPARTMENT

NOTIFICATION

Imphal, the 1st August, 2011

No. 4/14(R-14)/2010-H(Reh).— In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Manipur in co-ordination with the Central Government hereby frames the following scheme for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation, namely:

1. Short title- This scheme may be called the Manipur Victim Compensation Scheme, 2011.
2. Definitions- In this scheme, unless the context otherwise requires,
 - (a) "Act" means the Code of Criminal Procedure, 1973 (2 of 1974);
 - (b) "Schedule" means Schedule appended to this Scheme;
 - (c) "State" means State of Manipur;
 - (d) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes dependent family members.
3. **Victim Compensation Fund:**
 - (1) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.
 - (2) The State Government shall allot a separate budget for the purpose of the scheme every year.
 - (3) The Fund shall be operated by the Secretary, State Legal Services Authority.

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4. Eligibility for Compensation :

A victim shall be eligible for the grant of compensation if, - (a) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply for grant of compensation under sub section (4) of section 357-A of the Act;

(b) the victim/ claimant reports the crime to the Officer-in-Charge of the concerned Police Station, Magistrate or Judicial Magistrate of the area provided that the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the victim/claimant cooperate with the police and prosecution during the investigation and trial of the case.

5. Procedure for grant of compensation :

(1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357 -A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Service Authority shall after due enquiry award compensation within two months, in accordance with provisions of this Scheme.

(2) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at a later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/ claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursement of the compensation amount.

(3) The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependants on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.

(4) The quantum of compensation to be awarded in the Scheme shall be disbursed to the victim or his dependants, as the case may be, from the Fund.

(5) Compensation received by the victim from the State in relation to the crime in question, namely insurance, ex-gratia and/ or payment received under any other Act or

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State-run scheme, shall be considered as part of the compensation amount under these rule and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the Fund.

(6) The cases covered under Motor Vehicle Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(7) The District Legal Services Authority, 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 Magistrate of the area concern, any other interim relief as it may deem fit,

6. Order to be placed on record : Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section (3) of section 357 of the Act.
7. Limitation - No claim made by the victim or his dependants under sub-section (4) of section 357 -A of the Act shall be entertained after a period of six months of the crime:

Provided that the District Legal Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

8. Appeal : Any victim aggrieved of the denial of compensation by the District Legal Service Authority may file an appeal before the State Legal Service Authority within a period of ninety days:

Provided that the State Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

9. This issues in consultation with Law and Finance Departments and with the prior approval of the State Cabinet.

SCHEDULE-I

Sl. No.	Particular of Loss or Injury	Maximum Limit of Compensation
1.	Loss of Life	Rs.1.00Lac
2.	Loss of any limb of part of body resulting 80% or above handicap.	Rs.50,000/-
3.	Victim of acid attack	Rs.50,000/-
4.	Loss of any limb or part of body resulting 40% & below 80% handicap.	Rs.20,000/-
5.	Rape of Minor	Rs.30,000/-
6.	Rape	Rs.20,000/- ✓
7.	Rehabilitation ✓	Rs.20,000/-
8.	Loss of any limb or part of body resulting below 40% handicap.	Rs.10,000/-
9.	Loss of injury causing severe mental agony to women and child victims in case like Human Trafficking.	Rs.10,000/-
10.	Simple injury to Child victim.	Rs.10,000/-

M. YAISKUL MEITEI,
Additional Secretary (Home),
Government of Manipur.

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NOTIFICATION

No. D-32019/1/2005-HM: In exercise of the powers conferred by Sec. 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Mizoram, in coordination with the Central Government, hereby frames the following Scheme for providing funds for the purpose of compensation to the victims of crime in particular acid attack victims or their dependants who have suffered loss or injury as a result of crime and who require rehabilitation as indicated hereunder:

- Short Title: 1. This Scheme shall be called the '*Mizoram Victims of Crime Compensation Scheme, 2011.*'
- Introduction & Operation: 2. The broad aim of the Scheme is to make fund provision for the purpose of compensation to the victims of crime or their dependants who have suffered loss or injury as a result of crime and who require rehabilitation.
- Definitions 3. In this Scheme, unless the context otherwise requires, -
- (a) "Act" means the Code of Criminal Procedure, 1973 (2 of 1974);
 - (b) "Central Government" for the purpose of this scheme, the Central Government means Government of India, Ministry of Home Affairs;
 - (c) "Court" means a Court notified by the State Government under Section 3-6 with all the other enabling provisions of the Mizoram Civil Courts Act, 2005 and after consulting the Hon'ble Gauhati High Court;
 - (d) "Crime" for the purpose of the scheme, the term connote an unlawful act which is an offence against the public and renders the person guilty of the act or default liable to legal punishment under Indian Penal Code (45 of 1860);
 - (e) "Fund" means fund arranged by the State Government for the purpose of compensation to the victim or his dependants who suffered loss or injury as a result of the crime and who require rehabilitation;
 - (f) "Injury" for the purpose of this scheme means physical wrong or burns or maiming or disfiguring or mental illness caused to the victim;
 - (g) "Legal Service Authority" means the legal service authority notified by the State Government under Legal Services Authorities Act, 1987;
 - (g) "Loss" property with which the owner involuntarily has parted through act of violence, coercion, etc.;
 - (h) "State Government" for the purpose of this scheme, the State Government means Government of Mizoram;
 - (i) "Victim" means a person who himself has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged ; and causing burns or maiming or disfiguring or disabling or causing grievous hurt as a result of acid attacks and require rehabilitation and the expression "victim" includes dependent family members.
 - (j) "Rehabilitation" means a sum of money paid to the victims/dependent family members from the Victim Compensation Fund.

**Victim
Compensation
Fund**

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4. (a) There shall be constituted a fund, namely, Victim Compensation Fund, from which amount of compensation under this Scheme shall be paid to the victims or their dependents who have suffered loss or injury as a result of crime and who require rehabilitation.
- (b) The State Government shall allot a separate budget for the purpose of the Scheme every year and the expenditure for such compensation shall be met from the head of accounts:
- 2014 - Administration of Justice,
 - 00 -
 - 114 - Legal Advisers & Counsels
 - (03) - Legal Services Authority (NP)
 - 00 -
 - (50) - Other Charges
- (c) The Fund shall be operated by the Secretary, State Legal Services Authority.

Eligibility

5. The victim or his dependent, satisfying the following criteria, shall be eligible for grant of compensation:
- (a) where the perpetrator is not traced or identified or goes unpunished after trial, but the victim is identifiable and the victim has to incur a lot of expenses on physical and mental rehabilitation, such victim may apply for compensation under sub-section 4 of Section 357 A of the Act;
 - (b) the victim/claimant submits a report of the crime to the Officer-in-Charge of the nearest Police Station, Magistrate or Judicial Magistrate of the area, provided that the District Legal Services Authority, is satisfied, for the reasons to be recorded in writing may condone the delay in reporting;
 - (c) the victim/claimant cooperates with the Police and prosecution during the investigation and trial of the case;
 - (d) For the purpose of this Scheme, the dependants would mean husband/wife, dependent children upto the age of 21 years (including legally adopted children) dependent parents, dependent daughter of any age and physically or mentally challenged children of any age.
 - (e) The compensation would be given to the victim and his/her dependents in the event of loss of property worth more than Rs. 1.00 lakh and in the event of death or permanent incapacitation of the victim who was the sole bread-winner of the family through act of crime. The death/permanent incapacitation of either the husband or the wife irrespective of whether one or both were earning members, would entitle his/her dependent for compensation.
 - (f) Only BPL family would be considered for eligibility under the Scheme.
 - (g) The eligible claimant can file his/her claim within 6 (six) months of the relevant incident of crime. This can however be extended for another 6 (six) months for the reasons to be recorded in writing by the District Legal Services Authority.

Compensation

6. The following rate of compensation for disability under the scheme will be sanctioned to the victims and their kins/dependants as below-

- (a) Death/Permanent disability ✓ *85* :: Rs. 1,00,000/-
- (b) Loss of two limbs or two eyes or two ears :: Rs. 1,00,000/-
- (c) Loss of one limb or one eye or one ear :: Rs. 50,000/-
- (d) Permanent loss/damage of part of the body :: Rs. 30,000/-
- (e) In case of hospitalization due to injury caused by a particular incident of crime. Lump sum payment of Rs. 5,000/- subject to a maximum of Rs. 20,000/- :: Rs. 20,000/-
- (f) Rape ✓ :: Rs. 50,000/-
- (g) Loss or injury causing severe mental agony to women and child victim in case like human trafficking, kidnapping, etc ✓ :: Rs. 20,000/-

Procedure for grant of Compensation

7. (a) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Services Authority shall, after due enquiry, award compensation within two months, in accordance with provisions of this Scheme.
- (b) Compensation under this Scheme shall be paid subject to the, condition that if the trial court while passing judgement at a later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim/claimant before the disbursal of the compensation amount.
- (c) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses, etc. The compensation may vary from case to case depending on the facts of each case.
- (d) The quantum of compensation to be awarded to the victims/dependent(s) under the Scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund.
- (e) Victim or dependents who are in possession of property insurance policy and life insurance policy worth more the Rs. 1.00 lakh would not be entitled to receive compensation under the scheme.
- (f) The cases covered under Motor Vehicle Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims tribunal, shall not be covered under the Scheme.
- (g) Victim or dependents would not be eligible to get compensation under the scheme if they have received any other assistance, by way of payment of ex-gratia or any other type of relief from the State Government or any other source.

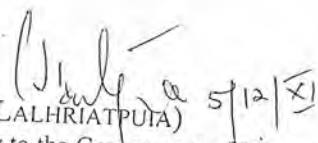
- (h) In case employment is given to any family member of victim of crime, the family would not be entitled to assistance under the scheme. However, in case such employment is given after the release of assistance under the scheme, the assistance would not be withdrawn.
- (i) The perpetrators of crime or his/her dependants will not be entitled to any compensation under the scheme.
- Order to be placed on record 8. Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the Court to pass order of compensation under sub-section (3) of section 357 of the Act.
- Limitation 9. (a) No claim made by the victim or his dependents under subsection (4) of section 357-A of the Act shall be entertained after a period of six months of the crime:
(b) Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.
- Appeal 10. Under this Scheme, no claim made by the victim or his dependents under sub-section 4 of Section 357 A of the Act shall be entertained after a period of 2 (two) years.

Sd/- K. RIACHHO
Secretary to the Government of Mizoram,
Home Department.

Dated Aizawl, the 5th Dec., 2011.

Memo No. D-32019/1/2005-HM:
Copy to:

1. Secretary to the Governor, Mizoram.
2. Secretary to the Chief Minister, Mizoram.
3. P.S. to Speaker, Mizoram.
4. P.S. to Home Minister, Mizoram.
5. P.S. to Ministers/Ministers of State/Deputy Speaker, Mizoram/Parliamentary Secretaries, Mizoram.
6. Sr. P.P.S to Chief Secretary, Government of Mizoram.
7. P.P.S. to Home Secretary, Government of Mizoram.
8. Joint Secretary, Govt. of India, Ministry of Home Affairs, CS Division with reference to his letter No. 24013/43/MISC/2010-CSR-III (Part-II) dt. 27. 4. 2011.
9. All Head of Administrative Department, Government of Mizoram.
10. Controller, Printing & Stationary with 5 (five) spare copies for publication in the Mizoram Gazette.
11. Guard File.


(LALHRIATPUTA) 5/12/11
Deputy Secretary to the Government of Mizoram,
Home Department.

NOTIFICATION

Dated Kohima, the 18th Decemeber, 2012

No.CON-1/G/6/2011:: In exercise of the powers conferred by sections 357A of the Code of Criminal Procedure, 1973 (Act-2 of 1974), the Governor of Nagaland in co-ordination with the Central Government is pleased to frame a scheme for providing funds for the purpose of compensation to the victims or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation, namely:-

1. **Short Title:** This Scheme may be called the Nagaland Victim Compensation Scheme, 2012.
2. **Definitions:-**
 - (1). "Act" means the Code of Criminal Procedure, 1973(2 of 1974)
 - (2). "Schedule" means schedule appended to this scheme.
 - (3). "State" means State of Nagaland.
 - (4). "Victim" means a person who himself has suffered loss or injury as a result of crime and requires rehabilitation and includes dependent family members.
3. **Victim Compensation Fund:-**
 - (1). There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his/her dependents who have suffered loss or injury as a result of crime and require rehabilitation.
 - (2). The State Government shall allot a separate budget for the purpose of the scheme every year.
 - (3). The Fund shall be operated by the Secretary, Relief & rehabilitation in Home Department.
4. **Eligibility for compensation:-**

A victim shall be eligible for the grant of compensation if:-

 - (1). The offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub-section (4 of the Section 357-A of the Act.

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- (2). The victim/claimant shall report the crime to the officer in charge of police station Judicial Magistrate of the area; provided that such officers, if satisfied, for the reasons to be recorded in writing may condone the delay in reporting.
- (3). The victim/claimant cooperates with the police and prosecution during the investigation and trial of the case.

5. Procedure for grant of Compensation:-

- (1). Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub-section 4 of Section 357A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and shall verify the contents of the claim with regard to the loss or injury caused to victim arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Service Authority shall after due enquiry award compensation within two months, in accordance with the provisions of this Scheme.
- (2). Compensation under the scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of Section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of Section 357 of the Act, whichever is less to the State Government Treasury Challan. An undertaking to this effect shall be given by the victim/claimant before the disbursement of the compensation amount. (Format appended as Schedule-II)
- (3). The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges, as funeral expenses etc. The compensation may vary from case to case depending on fact of each case. The basis on which the quantum of compensation has been fixed shall be specified in writing.

- (4). The quantum of compensation to be awarded under the scheme shall be disbursed to the victim or his dependents, as the case maybe, from the fund. The District Legal Service authority shall communicate the quantum of compensation awarded to the Secretary, Relief & Rehabilitation under Home Department, who shall pay the compensation from the fund so earmarked by the State Government.
 - (5). Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia Cash Doles, cash relief and/or payment received under any other Act or State-run Scheme, shall be considered as part of the compensation amount under these Scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of fund.
 - (6). The cases covered under Motor Vehicle Act, 1988(59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the scheme.
 - (7). The District Legal Services Authority, 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 Magistrate of the area concerned, or any other interim relief as it may deem fit.
 - (8). A format for the certificate may be appended as schedule-(III)
- 6. Order to be placed on record.**
- Copy of the order of compensation passed under this scheme shall be mandatorily placed on record of the trial court to enable the court to pass order of compensation under sub-section (3) of section 357 of the Act.
- 7. Recovery of compensation awarded to the victim or his dependents:-**
- (1). The State Legal services Authority, if deem fit shall institute proceedings before the competent court of law in consultation with the concerned Public Prosecutor for recovery of the compensation granted to the victim or his dependents from the person responsible for causing loss or injury as a result of the crime committed by them.
 - (2). The amount so recovered shall be deposited in the Victim Compensation Fund.

8. Limitation:

No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of 3 years of the crime:-

- (1) Provided that the District Legal Authority, if satisfied, for the reason to be recorded in writing, may condone the delay in filing the claim.

9. Appeal

Any victim aggrieved of the denial of compensation by the District Legal Service Authority may file an appeal before the State legal Service Authority within a period of 90 days:-

- (1) Provided that State legal Service Authority, if satisfied, for the reason to be recorded in writing, may condone the delay in filing the appeal.

SCHEDULE I

Sl. No.	Particulars of Loss or Injury	Maximum Limit of Compensation
1.	Loss of Life	Rs. 2,00,000/-
2.	Loss of any limb or part of body resulting 80% or above handicap.	Rs. 1,00,000/-
3.	Loss of any limb or part of body resulting 40% & below 80% handicap.	Rs. 75,000/-
4.	Rape of Minor	Rs. 1,00,000/-
5.	Rape	Rs. 50,000/-
6.	Rehabilitation	Rs. 50,000/-
7.	Loss of any limb or part of body resulting below 40% handicap.	Rs. 75,000/-
8.	Loss of injury causing severe mental agony to women and child victims in case like Human Trafficking.	Rs. 1,00,000/-
9.	Simple Loss or injury to Child victim.	Rs. 20,000/-

SCHEDULE-II

UNDERTAKING

I, Shri/Smti/kumari.....S/o,D/o
 of..... Town/villagebeing
 the victim of crime under FIR No.....and case
 No.....do hereby solemnly undertake the following. In the
 event of any court of law in the country in its decision, pertaining to the above
 said case No.....adjudicates for granting compensation to
 me, the victim of the above said crime, I shall re-imburse an amount not
 greater than the compensation received by me from the Victim Compensation
 Fund.

(Victim/Dependent)

Signature with date :

Name :

Full Address :

.....

.....

.....

Mobile No if any :

Schedule-III

MEDICAL CERTIFICATE

Name & Signature of the victim.....

I, Dr/ Shri/Smti/Kumari.....under sub-section 7 of the Section 5 of the Nagaland Victim Compensation Scheme 2012, after careful personal observation, hereby certify that Shri/Smti/Kumari.....a victim of crime under FIR No.....and case No.....whose signature is given above suffered injuries and I consider that immediate First Aid/Medical benefits is absolutely necessary for the restoration of his/her health.

Signature with date

Name of the Medical Officer :

Designation :

Station :

(SEAL)

Witnesses if any:

OC(Police Station) / Magistrate

Signature & date :

Name :

Designation :

Station :

(SEAL)

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Government of Odisha
Home Department

NOTIFICATION

95/2012/US(CSR)
26/7/2012

4006912/1011
26/7/12

No. 27466 / Bhubaneswar dated, the
CP/CR-07/12

12.7.2012

In pursuance of section 357-A of the Code of Criminal Procedure, 1973 (2 of 1974), the State Government in co-ordination with the Central Government do hereby make the following scheme for providing funds for the purpose of compensation to the victims who have suffered loss or injury as a result of the crime and require rehabilitation, namely:-

1. Short Title and Commencement: -

- (a) This scheme may be called "The Odisha Victim Compensation Scheme-2012".
- (b) It shall come into force on the date of it's publication in the Odisha Gazette.

2. Definitions:-In this scheme, unless the context otherwise requires,

- (a) "Act" means the Code of Criminal Procedure, 1973.
- (b) "District Legal Services Authority" and "State Legal Services Authority" shall respectively mean a District Legal services Authority and the State Legal Services Authority constituted under section 9 and section 6 of the Legal Services Authorities Act, 1987 respectively.
- (c) "Fund" means the Victim Compensation Fund.
- (d) "Schedule" means the Schedule appended to this scheme.
- (e) "State Government" means the Government of Odisha.
- (f) "Loss or injury" means as defined in the Schedule and
- (g) "Victim" means a person who himself/herself suffered loss or injury as a result of crime and requires rehabilitation and in case of his/her death also his/her dependents.

Provided where the victim is a minor, his/her parents would be dependants in case they are found to have been affected by the crime or in case the perpetration of crime has left a scar on their dependant family members.

Odisha Court has
withdrew the VCS.
M. put up

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USECSRT
20/7/12

26/7/12
So(CSR-III)
Sh. Bal. 164
26/7/2012

This is for CSR-III

26/7
USECSRT
26/7/12
So(CSR-III)

3. Objectives of the Scheme:

The Scheme aims at providing:

- (a) Financial assistance to the victim; and
- (b) Support services such as shelter, counseling, medical aid, legal assistance, education and vocational training depending upon the needs of the victim.

4. Victim Compensation Fund :

- (a) There shall be constituted a Fund namely Victim Compensation Fund from and out of which the amount of compensation shall be paid to the Victim or his/her dependants, as the case may be.
- (b) The Fund shall be operated by the Secretary, State Legal Services Authority.
- (c) There shall be credited to the Fund -
 - (i) Money out of budget provision made by the State Government for the purpose of the Scheme;
 - (ii) All grants, subscriptions, donations and gifts made by the Central Government, State Government, any local authority or anybody, whether incorporated or not or any person and
 - (iii) All other sums received by or on behalf of the victims compensation from any source whatsoever including in compliance to any court order.

5. Target Group/Beneficiaries:

The Scheme shall cover the victims and in case of death of the victim, his/her dependants or the member/members of the family of victim who have suffered the atrocity resulting from crime or by the crime, the member/members who have been visited with a scar and would be eligible for compensation as per the compensation order.

6. Assistance under the Scheme:

- a) Under this scheme, the victim or dependants, as the case may be, shall be entitled to financial assistance and restorative support services.
- b) Assistance under the scheme shall be available in respect of each of the cases where the F.I.R. is lodged.

7. **Eligibility for compensation:** The victim satisfying the following criteria shall be eligible for compensation:

- a) He/She has not been compensated for the loss or injury under any other scheme of the Central or the State Government or Insurance Company or any other institution. The victim shall inform to the authority the details of claims for compensation made under any other scheme or from any other source. The victim will be free to choose another scheme of Government, if the same is more beneficial to him or her. He/She cannot claim both, or part benefit from one scheme and part from another.
- b) Loss or injury sustained by the victim have caused substantial loss to the income of the family making it difficult to live as before without the financial aid or has affected his/her dignity or personality or the medical treatment of mental/physical injury should have caused financial stress for the family.
- c) The victim shall co-operate with the police and prosecution from the stage of investigation till conclusion of trial of the case.

8. **Authorities responsible for implementation of the Scheme:**

(A) **District Legal Services Authority**

A District Legal Services Authority in every district will have the exclusive jurisdiction to deal with applications for assistance received under the Scheme in that district.

(B) **Functions of the District Legal Services Authority:**

The District Legal Services Authority shall perform the following functions:-

- (a) To consider the claims and provide financial assistance and support services, as the case may be in accordance with the procedure prescribed under the scheme.
- (b) To arrange for psychological, medical and legal assistance to the affected persons.

- (c) To arrange for counseling support to the affected woman including counseling of the spouse in case the affected woman is married.
- (d) To arrange shelter for the affected woman for such period as may be required.
- (e) To arrange for education or vocational/professional training as the case may be for the affected woman under the ongoing schemes/programmes should she require such a support for rehabilitation.
- (f) Issue directions to the appropriate authorities to provide protection to the affected persons whenever deemed necessary.
- (g) Whenever a recommendation is made by the Court or an application is made by any victim under sub-section 4 of section 357-A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and shall verify the contents of the claim with regard to the loss or injury caused to the claimant and also may call for any other relevant information necessary for consideration of the claim from the concerned. After verifying the claim, the District Legal Service Authority will make recommendations for compensation.
- (h) The State Legal Service Authority shall decide the quantum of compensation to be awarded to the victim on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges, as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.
- (i) The quantum of compensation to be awarded to a victim shall not exceed the maximum limit as per the Schedule.
- (j) The amount of compensation as decided by the State Legal Service Authority, in accordance with the schedule shall be disbursed to the victim from the Fund.

9. Procedure for grant of compensation:

- (a) Whenever a recommendation is made by the Court or an application is made by any victim under sub section (4) of section 357-A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal Service Authority shall after due enquiry award compensation within two months, in accordance with provisions of this scheme.
- (b) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgement at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less. An undertaking to this effect shall be given by the victim before the disbursement of the compensation amount.
- (c) The District Legal Service Authority shall decide the quantum of compensation to be awarded to the victim on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case subject to the maximum limit as given in the Schedule.
- (d) The quantum of compensation to be awarded under the Scheme shall be disbursed to the victim or his dependents as the case may be, from the Fund. The quantum of compensation to be awarded to a victim shall not exceed from the maximum limit as specified in the Schedule.

- (e) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act or State-run scheme or Central-run scheme, shall be considered as part of the compensation amount under the Scheme and if the eligible compensation amount exceeds the payments received by the victim from above sources mentioned above, the balance amount shall be paid out of the Fund. The quantum of compensation to be awarded to a victim shall not exceed the maximum limit as specified in the Schedule.
- (f) The victims of cases covered under the Motor Vehicle Act, 1988(59 of 1988) wherein compensation awarded by the Motor Accident Claims Tribunal or under the provisions of the Act, shall not be covered under the Scheme.
- (g) The cases covered under SC & ST (POA) Act and P.C.R. Act, 1955 shall not be covered under the Scheme.
- (h) The cases covered under the scheme of "Financial Assistance and Support Services to Victims of Rape" operated by Women & Child Development Department, Government of Odisha shall not be covered under the Scheme.
- (i) The compensation awarded shall be paid in two phases, first half being within any time before commencement of trial and the rest half on conclusion of trial.
- (j) The District Legal Services Authority, 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 Magistrate of the area concerned, or any other interim relief as it may deem fit.
- (k) The payment from Victim Compensation Fund will be made by Account Payee Cheque or electronic money transfer to the Account of the payee.

10. Limitation:-

No claim made by the victim or his dependents under sub section 4 of section 357A of the Act shall be entertained after a period of twelve months from the date of the crime.

11. **Appeal :** Any victim aggrieved of the denial of compensation by the District Legal Service Authority may file an appeal before the State Legal Service Authority within a period of ninety days:

Provided that the State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.


Schedule

Sl. No.	Particular of loss or injury	Maximum limit of Compensation (in rupees)
1.	Loss of life	Earning member Rs.1,50,000/- Non earning member Rs.75,000/-
2.	Loss of any limb or part of body resulting 80% or above disability (including Acid Attack)	Earning member Rs.1,00,000/- Non earning member Rs 50,000
3.	Loss of any limb or part of body resulting disability of 40% & above but below 80% (including Acid Attack)	Rs.40,000/-
4.	Loss of any limb or part of body resulting below 40% disability.	Rs.10,000/-
5.	Loss or injury causing severe mental agony to women and child victims in case like Human Trafficking	Rs.10,000/-
6.	Simple injury to Child victim.	Rs.10,000/-

Explanation :-

For the purpose of assessing the percentage of disability, the certificate of C.D.M.O or S.D.M.O as the case may be shall be conclusive unless authority finds it unacceptable for reasons to be recorded by writing.

By Order of the Governor,


(U.N. Behera)

Principal Secretary to Government.

Memo No. 27467

101

/C&HR Dated the 12.7.2012

Copy forwarded to the Mr.C.K.Parasan, Solicitor General of India, Hon'ble Supreme Court of India, New Delhi, for kind information and necessary action.

S. G. 12/7/12
Under Secretary to Government.

Memo No. 27468 /C&HR Dated the 12.7.2012

Copy forwarded to the Deputy Secretary to the Government of India, Ministry of Home Affairs, (CS DIVISION), Government of India, North Block, New Delhi, for kind information and necessary action.

S. G. 12/7/12
Under Secretary to Government.

Memo No. 27469 /C&HR Dated the 12.7.2012

Copy forwarded to the D.G. & I.G. of Police, Orissa, and Cuttack for information and immediate necessary action.

S. G. 12/7/12
Under Secretary to Government.

Memo No. 27470 / C&HR Dated the 12.7.2012

Copy forwarded to the I.G. of Police, CID, CB, Orissa, Cuttack/ Commissioner of Police, Bhubaneswar-Cuttack/ All I.Gs. of Police/ All D.I.Gs. of Police/ All Superintendents of Police/ All D, C, Ps. of Police for information and immediate necessary action.

S. G. 12/7/12
Under Secretary to Government.

Memo No. 27471 / C&HR Dated the 12.7.2012

Copy forwarded to the Principal Secretary to Government, Law Department/ Commissioner-cum- Secretary to Government, Women & Child Welfare Department/ Commissioner-cum- Secretary to Government, Health & Family Welfare Department for information and immediate necessary action.

S. G. 12/7/12
Under Secretary to Government.

Memo No. 27472 / C&HR Dated the 12.7.2012.

Copy forwarded to the Director, Printing, Stationery and Publication, Orissa, Cuttack for information. He is requested to publish this Resolution in the next issue of the Extra-Ordinary issue of Orissa Gazette and supply the Home Department with 100 copies.

S. G. 12/7/12
Under Secretary to Government

Memo No. 27473 / C&HR Dated the 12.7.2012.

Copy forwarded to all Police Sections of Home Department / Home (IMU) Department and 20 spare copies to guard file for information and necessary action.

S. G. 12/7/12
Under Secretary to Government.

1	2	3
8.	मानव दुर्व्यपार जैसे मामले में, जिसमें महिलाओं और बाल पीड़ितों को गंभीर मानसिक पीड़ा कारित करने वाली हानि या क्षति हुई है	25,000/- रु.
9.	बाल पीड़ित को साधारण हानि या क्षति	20,000/- रु.
10.	तेजाब द्वारा सिर या चेहरे की स्थायी विद्रूपिता	2,00,000/- रु.

[संख्या एफ.17(154)होम/10]

राज्यपाल के आदेश से,

जी.एस. संघु,

प्रमुख शासन सचिव।

HOME DEPARTMENT**NOTIFICATION**

Jaipur, January 05, 2012

S.O. 157:- In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974), the State Government hereby frame the scheme for providing funds for the compensation to the victims or their dependents, who have suffered loss or injury as a result of the crime and who require rehabilitation, namely:-

1. Short Title.- This scheme may be called the Rajasthan Victim Compensation Scheme, 2011.

2. Definitions - (1) In this scheme, unless the context otherwise requires,-

(a) "Code" means the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974);

(b) "Schedule" means Schedule appended to this scheme;

(c) "State" means the State of Rajasthan; and

(d) "Victim" means a person who has suffered loss or injury as a result of crime and require rehabilitation and the expression victim includes his dependents.

(2) Words and expressions used herein and not defined but defined in the Indian Penal Code 1860 (Central Act No.45 of 1860) or the General Clauses Act, 1955 (Central Act No. VIII of 1955 Act) have the same meanings, respectively as assigned to them in the Code and the General Clauses Act 1955.

3. Victim Compensation Fund. - (1) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under this scheme shall be paid to the victim or his dependants.

(2) The State Government shall allot a separate budget for this scheme every year.

(3) The fund shall be operated by the Secretary, State Legal Services Authority.

4. Eligibility.- A victim or his dependents shall be eligible for the grant of compensation if :-

(a) he/she has not been compensated for the loss or injury under any other scheme of the Central/State Government or any other institution.;

(b) loss or injury sustained by the victim or his dependents should have caused loss of income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means on medical treatment of mental/physical injury;

(c) the perpetrator of a heinous crime is not traceable or goes unpunished after trial, but the victim is identifiable and has to incur of expenses on physical and mental rehabilitation, such victim may also apply for the grant of compensation under sub-section (4) of section 357-A of the Code;

(d) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub section (4) of section 357-A of the Code;

(e) the victim/claimant report the crime without unreasonable delay to the Judicial Magistrate of the area provided that the District Legal Service Authority, if Satisfied, for the reasons to be recorded in writing, may condone the delay; and

(f) the victim/claimant cooperate with the police and prosecution during the investigation and trial of the case.

5. Procedure for grant of compensation.- (1) Whenever a recommendation is made by the Court under sub-section (2) and (3) or an application is made by any victim or his/her dependent under sub-section (4) of section 357-A of the Code to the District Legal Service Authority or the State Legal Service Authority, as the case may be, the District Legal Service Authority or the State

Legal Service Authority, as the case may be, shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim/claimant and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. The District Legal Service Authority or the State Legal Service Authority, as the case may be, shall award compensation within two months, in accordance with provisions of this Scheme.

(2) 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 to victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case.

(3) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub section (3) of section 357 of the code, the victim/Claimant shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub section, (3) of section 357 of the Code, whichever is less. An undertaking to this effect shall be given by the victim/claimant before disbursement of the compensation amount.

(4) The quantum of compensation decided by the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall be disbursed to the victim or his dependents, as the case may be, from the Victim Compensation Fund.

(5) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and /or payment received under any other Act or scheme run by the State shall be considered as part of the compensation amount under this scheme and if the compensation amount granted under this scheme exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Victim Compensation Fund.

(6) The cases covered under Motor vehicle Act, 1988(Central Act No. 59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.

(7) The District Legal Services Authority or the State Legal Service 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 Magistrate of the area concerned, or any other interim relief as it may deem fit.

(8) The quantum of compensation to be awarded to the victim or his dependants shall not be exceeded from the maximum limit as per Schedule.

6. Order to be placed on record.- Copy of the order of compensation passed under this scheme shall be placed on record of the trial Court to enable the court to pass an order of compensation under sub-section (3) of section 357-A of the code.

7. Limitation.- No claim made by the victim or his dependents under sub-section (4) of section 357-A of the code shall be entertained after a period of one year from the date of commission of the crime:

Provided that the District Legal Service Authority or State Legal Service Authority, as the case may be if satisfied that the reasons to be recorded in writing, may condone the delay in filing the claim.

8. Recovery of compensation.- (1) The District Legal Service Authority or the State Legal Service Authority, as the case may be, if deemed fit shall institute proceedings before the competent Court of Law in consultation with the office of concerned public prosecutor for recovery of the compensation granted to the victim or his dependants from the person responsible for causing loss or injury as a result of the crime committed by them.

(2) The amounts, so recovered, shall be deposited in the Victim Compensation Fund.

SCHEDULE

[See rule 5(8)]

S.N.	Particulars of loss or injury	Maximum Limit of compensation
1	2	3
1.	Loss of Life	Rs, 2,00,000/-
2.	Loss of any limb or part of body resulting 80% or a above Handicap.	Rs, 1,00,000/-

1	2	3
3.	Loss of any limb or part of body resulting 40% & below 80% Handicap.	Rs, 50,000/-
4.	Rape of Minor	Rs, 3,00,000/-
5.	Rape	Rs, 2,00,000/-
6.	Rehabilitation	Rs, 1,00,000/-
7.	Loss of any limb or part of body resulting 40% Handicap.	Rs, 25,000/-
8.	Loss of any injury causing sever mental agony to women and child victims in case like Human Trafficking/	Rs, 25,000/-
9.	Simple loss or injury to child victim.	Rs, 20,000/-
10.	Permanent disfiguration of the head or face by acid	Rs, 2,00,000/-

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[No. F. 17 (154) Home/10]

By Order of the Governor,

जी. एस. संधु,

Principal Secretary to the Government.

Government Central Press, Jaipur.

SIKKIM

GOVERNMENT  **GAZETTE**

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok

Friday 24th June, 2011

No. 332

GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK

No. 50 /Home/2011

Date: 24/06/2011

NOTIFICATION

In exercise of the powers conferred by section 357 A of the Code of Criminal Procedure, 1973 (2 of 1974), the Governor of Sikkim is hereby pleased to frame the following Scheme for providing funds for the purpose of compensation to the victims or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation, namely: -

Short title and commencement 1. (1) This Scheme may be called the Sikkim Compensation to Victims or his Dependents Schemes, 2011.

(2) It shall come into force on the date of its publication in the Official Gazette.

Definitions

2. In this Scheme, unless the context otherwise requires, -

(a) "Code" means the Code of Criminal Procedure, 1973;

(b) "Schedule" means the Schedule appended to this Scheme;

(c) "State" means the State of Sikkim;

(d) "Victim" means a person who himself has suffered loss or injury as a result of crime and require rehabilitation and includes dependent family members.

Victim Compensation Fund

3. A Victim Compensation Fund shall be provided by the State Government to the State Legal Services Authority whenever, verified claims arise. A provision for the same shall be made every year in the State Budget.

Eligibility for Compensation

4. The victim or his dependent satisfying the following criteria shall be eligible for the grant of compensation, namely: -

(i) he/She should not have been compensated for the loss or injury under any other scheme of the Central or State Government or Insurance Company or any other institution.

The Schedule

Sl.No.	Particular of Loss or Injury	Maximum Limit of Compensation
1.	Loss of life	Rs.2.00 lacs.
2.	Loss of any limb or part of body resulting 80% or above handicap.	Rs.1.00 lakh
3.	Loss of any limb or part of body resulting 40% & below 80% handicap.	Rs.80,000/=
4.	Assault on women disfiguring her face or any part of body by acid or any other weapon.	Rs.30,000/=
5.	Rape	Rs.50,000/=
6.	Rehabilitation	Rs.30,000/=
7.	Loss of any limb or part of body resulting below 40% handicap.	Rs.30,000/=
8.	Loss of injury causing severe mental agony to women and child victims in case like Human Trafficking.	Rs.25,000/=
9.	Simple Loss or injury to Child victim.	Rs.20,000/=

N.D. CHINGAPA, IAS,
CHIEF SECRETARY
F.No.Home/Confdl./1988/01/Vol-II.

- (ii) loss or injury sustained by the victim or his dependent should have caused substantial loss to the income of the family making it difficult to meet their both ends without the financial aid or has to spend beyond his means on medical treatment of mental and physical injury.
- (iii) where the perpetrator of the heinous crime is not traceable or goes un-punished after trial, but the victim is identifiable and the victim has to incur a lot of expenses on physical and mental rehabilitation such victim may also apply for grant of compensation under sub-section (4) of section 357 A of the Code.

Procedure for grant of compensation

5.

- (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub-section (4) of section 357-A of the Code to the District Legal Service Authority, the District Legal Service Authority shall examine the case and shall verify the contents of the claim with regard to the loss or injury caused to the claimant and also may call for any other relevant information necessary for consideration of the claim from the concerned applicant. After verifying the claim, the District Legal Service Authority will make recommendations for compensation.
- (2) The State Legal Service Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges, as funeral expenses etc. The compensation may vary from case to case depending on the facts of each case.
- (3) The quantum of compensation to be awarded to the victim or his dependents shall not exceed from the maximum limit as prescribed in Schedule-I.
- (4) The amount of compensation as decided by the State Legal Service Authority shall be disbursed to the victim or dependents, as the case may be, from the Victim Compensation Fund.

Recovery of compensation awarded to the victim or his dependents

6.

- (1) The State Legal Service Authority, if deemed fit, may institute proceedings before the competent Court of Law in consultation with the concerned public prosecutor for recovery of the compensation granted to the victim or his dependents from the person responsible for causing loss or injury as a result of the crime committed by him.
- (2) The amount so recovered shall be deposited in the Victim Compensation Fund.

Limitation

7.

Under this Scheme, no claim made by a victim or his dependent under sub-section (4) of section 357-A of the Code shall be entertained after a period of three years from the date of the crime.

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F.6 (9)-PD/2010
GOVERNMENT OF TRIPURA
HOME DEPARTMENT

13th August, 2012

NOTIFICATION

In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Tripura hereby frames the following scheme for providing fund 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, namely:

1] Short title & Commencement

- (i) This scheme may be called the Tripura Victim Compensation Scheme, 2012
- (ii) It shall come into effect from 15th August, 2012.

2] Definition

- i) In this scheme, unless the context otherwise required,
 - a) "Act" means the Code of Criminal Procedure, 1973 (2 of 1974);
 - b) "Schedule" means Schedule appended to this Scheme;
 - c) "State" means State of Tripura;
 - d) "Dependent" means any of spouse, dependent children upto age of 21 years (including legally adopted children) and dependent parents
 - e) "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.
- ii) All other words and expressions used herein and not defined but defined in the Scheme shall have the same meaning assigned to them in the Scheme.

3] Victim Compensation Fund

- i) There shall be constituted a fund namely "Victim Compensation Fund" from which amount of compensation under this scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

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- The scheme shall be implemented through the Inspector General of Prisons.
- iii) The balance fund in Victim Compensation Fund created under the "Victim Compensation Rules, 2007" shall form the initial corpus under the present scheme.
 - iv) The Victim Compensation Fund shall be credited with 20% of the wages deducted from the convicted prisoners and such other contribution and or grants as the State or Central Government or any other organization or individual may make from time to time.
 - v) The fund deducted from wages of convicted persons shall be credited into the Personal Deposit Account (PDA) opened at District Level by the Superintendent of Prison and a separate Personal Deposit Account at the State Level by the Inspector General of Prisons.
 - vi) The fund collected in the PDA at district level will be transferred by the Superintendent of Prison to PDA maintained by Inspector general of Prisons at the end of every month.

4] Eligibility for compensation

- i) Victim shall be eligible for the grant of compensation if ordered by the Court,
- ii) Victim shall be eligible for the grant of compensation if;
 - a) The offender is not traced or identified, but the victim is identified and the victim has to incur a lot of expenses on physical and mental rehabilitation, such victim may also apply grant of compensation under sub-section (4) of section 357 A of the Act provided they satisfy the conditions laid down in clause (b) to (j);
 - b) The victim or claimant must report the crime to the officer-in-charge of the local Police Station under whose jurisdiction the offence was committed or to the Judicial Magistrate having jurisdiction before making claim for compensation;
 - c) The victim or claimant (in the case of death of victim) cooperates with the Police and prosecution during the investigation and trial of the case. Turning hostile, refusing to depose or turn up during trial shall be considered to be non cooperation.
 - d) The crime must be one in which the victim sustains mental or bodily injury or dies.

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- e) The death or permanent incapacitation of the victim was not the result of victim's own wrong doing or own substantial provocation.
 - f) The victim suffers substantial loss of income as a result of the crime or is unable to take care of expenses of medical treatment for injury caused on account of crime.
 - g) Due to death of the victim as a result of the crime, dependents may claim compensation if the family becomes destitute and there is no earning member in the family who will support the dependents.
 - h) The compensation would be admissible to the victim in the event of loss of property worth Rs.1.0 lakh or more and in the event of death or permanent incapacitation of the victim because of act of crime.
 - i) Perpetrators of crime or his/her dependent will not be eligible to any compensation under the scheme.

5] Procedure for grant of compensation

- i) Wherever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357 A of the Cr. P.C, 1973, to the District Legal Services Authority, it shall then examine the claim and verify the contents of the same with regard to the loss or injury caused to victim arising out of the reported criminal activity and may call for medical report, FIR and related papers, copy of charge sheet/final report of the investigating officer or any other relevant information necessary in order to determine genuineness of the claim. After due inquiry and being satisfied of the commission of the offence, District Legal Services Authority shall determine compensation within two months, in accordance with provisions of this Scheme appended in the schedule and forward it to the Inspector General of Prisons for payment.
- ii) The quantum of compensation to be determined under the Scheme shall be disbursed by Inspector General of Prison to the victim or his dependents as directed by the Court or the Legal Services Authority, as the case may be, either on personal appearance of the victim in the Office of the Inspector General of Prisons or by other mode of payment, but the payment must be made on an urgent basis.

iii) Compensation under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the code, the victim or claimant (in the case of death of victim) shall remit an amount ordered equal to the amount of compensation, or the amount ordered to be paid under the said sub-section (3) of section 357 of the code, whichever is less. An undertaking to this effect shall be given by the victim/ claimant (in the case of death of victim) before the disbursement of the compensation amount.

6] **Quantum of compensation**

- i) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on fact of each case, but shall not exceed the amount specified in the schedule.
- ii) Compensation received by the victim or dependent from the State in relation to the crime in question, namely, insurance, ex-gratia and / or payment received under any other Act or State-run scheme, shall be considered as part of the compensation amount under these scheme and if the eligible compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of Fund.
- iii) The case covered under Motor Vehicle Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal and cases covered under existing schemes/facilities e.g. extremist violence scheme, die-in-harness scheme etc, shall not be covered under the scheme.
- iv) The District Legal Services Authority, to alleviate the suffering of the victim, may order for immediate first aid facility or medical treatment 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 Magistrate of the area concerned, or any other interim relief as it may deem fit.
- v) In case employment is given to any family member of victim of crime, the family would not be eligible to assistance under the scheme. However, in case such employment is given after release of compensation under the scheme, the assistance would not be withdrawn.

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7] **Order to be placed on record**

Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial Court to enable the court to pass order of compensation under sub-section (3) of section 357 of the code.

8] **Limitation**

No claim made by the victim or his dependents under sub-section (4) of section 357 - A of the code shall be entertained after a period of six months of the crime.

Provided that the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim for another six months.

9] **Appeal**

Any victim aggrieved of the denial of compensation by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days:

Provided that the State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

10] **Power to remove difficulties**

If any difficulty arises in giving effect to provisions of this scheme, the Government may, as occasion arises, by order, do anything not inconsistent with the provisions of this scheme, which appears to be necessary to remove difficulty.

11] **Repeal**

The Tripura Victim Compensation Fund Rules, 2007 stand repealed from the date of 15th August, 2012.

Notwithstanding such repeal, any order issued, action taken or anything whatsoever done under the Rules so repealed shall be deemed to have been made, issued, taken or done under corresponding provisions of these scheme and the provision of Tripura General Clauses Act, 1966 will apply in determining the effect of such repeal.

By order of the Governor,

(R.P. Datta)
(R.P. Datta)

Deputy Secretary to the
Government of Tripura

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SCHEDULE

- (I) **Loss of Life:**
Maximum limit of compensation shall not exceed Rs.1,00,000/- (Rupees one lakh only)
- (II) **Loss of Limb/ Permanent Disability in Acid Attack:**
Maximum limit of compensation shall not exceed Rs.75,000/- (Rupees seventy five thousand only)
- (III) **Loss of Limb/Permanent Disability in cases other than acid attack:**
Maximum limit of compensation shall not exceed Rs.50,000/- (Rupees fifty thousand only).
- (IV) **Rape:**
The compensation shall be Rs.50,000/- of which Rs.5,000/- shall be paid after preliminary verification of the complaint and the balance amount shall be sanctioned on filing of charge sheet.
- (V) **Loss or injury causing severe mental agony in Child abuse/Human Trafficking cases:**
Maximum limit of compensation shall not exceed Rs.20,000/- (Rupees twenty thousand only)
- (VI) **Grievous Hurt or Loss of property in Communal Violence/Riot:**
Maximum limit of compensation in such cases shall not exceed Rs.20,000/- (Rupees twenty thousand only).
- 20/12/2012

Tripura Victim Compensation Scheme, 2012

Background of the Scheme

A new Scheme called 'Tripura Victim Compensation Scheme, 2012' has been introduced w.e.f. 15th August, 2012 after repealing 'The Tripura Victim Compensation Fund Rules, 2007'. The Scheme has been introduced as per provision of Section 357-A of Cr. P. C, 1973 and in compliance of order of the Hon'ble Supreme Court.

Why this Scheme ?

The Scheme is introduced for the purpose of providing financial assistance to person or his dependents (in case of death), who have suffered loss or injury as a result of the crime.

For whom the Scheme meant?

The compensation shall be paid to the victim or his dependents (in case of death) who have suffered loss or injury as a result of the crime. The rate of compensation for different type of crime is enclosed. The compensation will be paid even if the offender is not traced or identified.

Procedure for grant of compensation

- The victim or claimant must report the crime to the Officer-in-Charge of local Police Station or to the Judicial Magistrate making claim for compensation.
- The District Legal Services Authority shall examine the claim in accordance with the provision of the scheme and determined the amount to be paid.
- The scheme shall be implemented by the Inspector General of Prisons who shall arrange to make the amount recommended by the District Legal Services Authority.
- Cases covered under Motor Vehicle Act, 1988 and/or existing schemes/facilities e.g. Extremist Violence schemes, Die-in-Harness Scheme etc will not be eligible for assistance under this scheme.

Rate of compensation

- **Loss of Life:** Subject a maximum of Rs.1,00,000/- (Rupees one lakh only)
- **Loss of Limb/ Permanent Disability in Acid Attack:** Subject a maximum of Rs.75,000/- (Rupees seventy five thousand only)
- **Loss of Limb/Permanent Disability in cases other than acid attack:** Subject a maximum of Rs.50,000/- (Rupees fifty thousand only).
- **Rape:** Subject a maximum of Rs.50,000/- of which Rs.5,000/- shall be paid after preliminary verification of the complaint and the balance amount shall be sanctioned on filing of charge sheet.
- **Loss or injury causing severe mental agony in Child abuse/Human Trafficking cases:** Subject a maximum of Rs.20,000/- (Rupees twenty thousand only)
- **Grievous Hurt or Loss of property in Communal Violence/Riot:** Subject a maximum of Rs.20,000/- (Rupees twenty thousand only).

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UTTAR PRADESH SHASAN

Grih (Police) Anubhag- 9

The Governor is pleased to order the publication of the following English translation of notification No.-653/VI-P-9-2014-31(90)/2010 dated: April 09, 2014.

No.-653/VI-P-9-2014-31(90)/2010.
Lucknow: Dated: April 09, 2014.

NOTIFICATION

In exercise of the powers conferred by section 357-A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Uttar Pradesh, in co-ordination with the Central Government, hereby frames the following 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, namely :

THE UTTAR PRADESH VICTIM COMPENSATION SCHEME

Short title

1. This Scheme may be called the Uttar Pradesh Victim Compensation Scheme, 2014

Definitions

2. In this Scheme, unless the context otherwise requires,

(a) "Act" means the Code of Criminal Procedure, 1973 (Act No.-2 of 1974);

(b) "Schedule" means the Schedule appended to this Scheme;

(c) "State" means the State of Uttar Pradesh;

(d) "Victim" means a person who himself has suffered loss or injury as a result of the crime and requires rehabilitation, and includes his dependent family members;

(e) "District Legal Services Authority" means the District Authority constituted under Section 9 of the Legal Services Authorities Act, 1987.

(f) "State Legal Services Authority" means the State Authority constituted under section 6 of the Legal Services Authorities Act, 1987.

Victim
Compensation
Fund

3. (1) There shall be established a fund namely Victim Compensation Fund from which amount of compensation under this Scheme shall be paid to the victim or his dependents who have suffered loss or injury as result of the crime and who require rehabilitation.

(2) The State Government shall allot a separate budget for the purpose of the Scheme every year.

(3) The Fund shall be operated by the Secretary, State Legal Services Authority.

Eligibility for

4. A victim shall be eligible for the grant of compensation if :

compensation

(a) the offender is not traced or identified, but the victim is identified and where no trial takes place; such victim may also apply for grant of compensation under sub section (4) of section 357-A of the Act;

(b) the victim/claimant reports the crime to the officer-in-charge of the police station within 48 hours of the occurrence or any senior police officer or Executive Magistrate or Judicial Magistrate of the area provided that the District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in reporting;

(c) the victim/claimant cooperates with the police and the prosecution during the investigation and trial of the case.

Procedure for grant of compensation

5. (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub section (2) of section 357-A of the Act to the District Legal Services Authority, the District Legal Services Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness of the claim. After verifying the claim, the District Legal Services Authority shall, after due enquiry, award compensation within two months from the date of receipt of the recommendation of the court or the receipt of application under sub-section (4) of section 357-A of the Act in accordance with the provisions of this Scheme.

(2) Compensation under this Scheme shall be paid subject to the condition that if the trial court, while passing judgment at later date, orders the accused persons to pay any amount by way of compensation under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of compensation or the amount ordered to be paid under the said sub-section (3) whichever is less. An undertaking to this effect shall be given by the victim/ claimant before the distribution of the compensation amount.

(3) The District Legal Services Authority shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The compensation may vary from case to case depending on the facts of each case.

(4) Keeping in view the particular vulnerabilities and special needs of the affected person in certain cases, the District Legal Services Authority or the State Legal Services Authority, as the case may be, will have the power to provide additional assistance of Rs.

- 25,000/- subject to maximum of Rs. 1,00,000/-, in the cases where:
- (a) The affected person is a minor girl requiring specialized treatment and care;
 - (b) The person is mentally challenged requiring specialized treatment and care;
 - (c) Any other case as may be deemed fit by the Legal Services Authority concerned.

(5) The quantum of compensation to be awarded to the victim or his dependents shall not exceed the maximum limit as per Schedule-1.

(6) The amount of compensation decided under the Scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund. The interim or final financial assistance, as the case may be, shall be remitted to the bank account of the applicant preferably within a week. In cases where the person affected is a minor, the amount shall be remitted to the bank account of his parent or guardian after the Authority concerned is satisfied about the proper utilization of the amount of compensation.

(7) Compensation received by the victim from the State in relation to the crime in question, namely, insurance, ex gratia and/or payment received under any other Act or State-run Scheme, shall be considered as part of the compensation amount under this Scheme and if the due compensation amount exceeds the payments received by the victim from collateral sources mentioned above, the balance amount shall be paid out of the Fund.

(8) The cases covered under the Motor Vehicles Act, 1988 (Act no.- 59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under this Scheme.

(9) The District Legal Services Authority, 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 the Magistrate of the area concerned. The district Legal Services Authority may order for any other interim relief as it may deem fit.

6. While determining the compensation and rehabilitation services to be provided on the basis of the restorative needs of the affected person, the Authority shall be guided by the following factors:

- (a) Type and severity of the bodily injury suffered by the affected person and expenditure incurred or likely to be incurred on victim's medical treatment and psychological counseling.
- (b) Age and financial condition of the affected person so as to determine the need for his education or professional or vocational training, as the case may be.

Principles governing the determination of assistance to the affected person

- (c) Non-pecuniary loss entailing suffering, mental or emotional trauma or humiliation faced.
- (d) Expenses incurred in connection with provision of any alternate accommodation in cases where the affected person resides in a place other than where the offence was committed and the FIR has been recorded and/or criminal trial initiated.

Order to be placed on record

7. Copy of the order of compensation passed under this Scheme shall be mandatorily placed on record of the trial court to enable the court to pass order of compensation under sub-section (3) of section 357 of the Act.

Limitation

8. No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of six months of the crime:

Provided that the District Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing any claim.

Appeal

9. Any victim aggrieved of the denial of compensation by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days :

Provided that the State Legal Services Authority, if satisfied for the reasons to be recorded in writing, may condone the delay in filing the appeal.

S.K. Ragnuvanshi
Sachiv.

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Schedule - 1

	Particulars of loss or injury	Maximum limit of compensation
1	Rape	Rs. 2,00,000/-
2	Loss or injury causing severe mental agony to the victim of the crime	Rs. 1,00,000/-
3	Victim of corrosive substance i.e. acid attack etc.	Rs. 3,00,000/-
4	Death (Non-earning member)	Rs. 1,50,000/-
5	Death (Earning member)	Rs. 2,00,000/-
6	Victim of Human Trafficking	Rs. 2,00,000/-

S.K. Raghuvanshi
Sachiv.

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In pursuance of the provisions of clause (3) of Article 348 of "the Constitution of the India", the Governor is pleased to order the publication of the following English translation of Notification No. 4520 /XX(3)-05(09)/2011 Dated: 16 July, 2013 for general information.

Government of Uttarakhand
Home Section-3
No. 4520 /XX-3-2012-05(09)2011
Dehradun: Dated: 16 July, 2013

Notification

In exercise of the powers conferred by Section 357-A of the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974), the Governor in co-ordination with the Central Government hereby is pleased to frame the following scheme for providing funds for the purpose of assistance and rehabilitation to the victim or his dependents who have suffered loss or injury as a result of the crime.

The Uttarakhand Victim from Crime Assistance Scheme, 2013

Short title and commencement 1.(1) This scheme may be called the Uttarakhand Victim from Crime Assistance Scheme, 2013.

(2) It shall be deemed to have come into force from 31 December 2009.

Definitions

2. In this scheme, unless the context otherwise requires,-

(a) "Act" means the Code of Criminal Procedure, 1973 (Act No. 2 of 1974);

(b) "Schedule" means Schedule appended to this Scheme;

(c) "State" means State of Uttarakhand;

(d) "Victim" means a person, who himself has suffered loss or injury as a result of crime, Acid attack, Human trafficking, Serious accident etc and require rehabilitation and includes dependent family members.

Victim from crime assistance Fund

3. (1) The State Government shall establish a Victim from crime assistance Fund. Under this scheme shall be paid given amount in Schedule-1 as per manner to the victim person or his dependents, who have suffered loss or injury as a result of the crime, Acid attack, Human trafficking, Serious accident etc and who require rehabilitation.

Handwritten signature

- (2) The State Government shall allot a separate Assistance amount for this scheme which shall be deposited in a corpus fund established for this purpose. The amount of this fund shall be deposited in fixed deposit account of any Nationalised Bank.
- (3) Donation, Gift and Grant in aid received from government or non-government sources shall be acceptable for Assistance Fund excluding allotted budget.
- (4) **The Fund shall be operated by the Director General of Police and the assistance shall be paid by account payee cheque with the joint signatures of the Principal Secretary/Secretary Home Department Government of Uttarakhand and Director General of Police. The payment in the District shall be made by the account payee cheque with the joint signature of the District Magistrate and Senior Superintendent of Police/Superintendent of Police.**

Eligibility for 4. assistance

A Victim or the dependant of victim shall be eligible for the grant of assistance if,-

- (a) the offender is not traced or identified, but the victim is identified, and where no trial takes place, such victim may also apply grant of compensation under sub section (4) of section 357-A of the Act;
- (b) the victim/claimant report the crime to the Magistrate in charge or Judicial Magistrate of the area ;

Provided that the District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in reporting;

- (c) the victim/claimant cooperate with the police and prosecution during the investigation and trial of the case.

Procedure for 5. grant of assistance

- (1) Whenever a recommendation is made by the Court or an application is made by any victim or his dependent under sub-section (2) of section 357-A of the Act to the District Legal Service Authority, the District Legal Service Authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to victim and arising out of the reported criminal activity and may call for any other relevant information necessary in order to determine genuineness. After verifying the claim, the District Legal

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Service Authority after due enquiry shall decide the amount of assistance within two months, in accordance with provisions of this Scheme.

- (2) Assistance under this Scheme shall be paid subject to the condition that if the trial court while passing judgment at later date, orders the accused persons to pay any amount by way of assistance under sub-section (3) of section 357 of the Act, the victim/claimant shall remit an amount ordered equal to the amount of assistance, or the amount ordered to be paid under the said sub-section (3) of section 357 of the Act, whichever is less, an undertaking to this effect shall be given by the victim/claimant before the disbursal of the assistance amount.
- (3) The District Legal Service Authority shall decide the quantum of assistance to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on medical treatment, minimum sustenance amount required for rehabilitation including such incidental charges as funeral expenses etc. The assistance may vary from case to case depending on fact of each case.
- (4) The quantum of assistance to be awarded to the Scheme shall be disbursed to the victim or his dependents, as the case may be, from the Fund.
- (5) Assistance received by the victim from the State in relation to the crime in question, namely, insurance, ex-gratia and/or payment received under any other Act or State-run scheme, shall be considered as part of the assistance amount under these rule and if the eligible assistance amount exceeds or is equivalent to the payments received by the victim from collateral sources mentioned above, then no assistance amount shall be acceptable by this scheme.
- (6) The cases covered under Motor Vehicle Act, 1988 (Act No. 59 of 1988) wherein assistance is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under the Scheme.
- (7) The District Legal Services Authority, 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

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the officer-in-charge of the police station or Magistrate of the area concerned, or any other interim relief as it may deem fit.

Order to be placed on record

6. Copy of the order of assistance passed under this Scheme shall be mandatorily placed before the trial Court to enable the court to pass order of assistance under sub-section (3) of section 357 of the Act.

Limitation

7. No claim made by the victim or his dependents under sub-section (4) of section 357-A of the Act shall be entertained after a period of six months of the crime by the State or District Legal Service Authority:
Provided that the State or District Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the claim.

Appeal

8. Any victim aggrieved of the denial of assistance by the District Legal Service Authority may file an appeal before the State Legal Service Authority within a period of ninety days;
Provided that the State Legal Service Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

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By Order,
Om Prakash
(Om prakash)
Principal Secretary.
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Sr.No.	Particulars of Loss or Injury	Maximum Limit of Assistance
1	2	3
1	✓ Rape	Rs. 2,00,000/- ✓
2	✓ Loss of injury causing severe mental agony to women and child victim in case like Human Trafficking.	Rs. 1,00,000/- ✓
3	✓ Loss of life	Rs. 2,00,000/- ✓
4	✓ Grievous hurt as defined in Section 320 of the IPC 1860	Rs. 20,000/- ✓
5	✓ Injury caused by acid attack	
	(a) If face/ head injured	Rs. 1,50,000/- ✓
	(b) If other organs injured	Rs. 30,000/- ✓
6	✓ Loss of any limb or part of body resulting 40% and below 80% handicap.	Rs. 50,000/- ✓
7	✓ Loss of any limb or part of body resulting below 40% handicap.	Rs. 10,000/- ✓
8	✓ Loss of any limb of part of body resulting 80% or above handicap	Rs. 1,00,000/- ✓
9	✓ Rape of Minor	Rs. 2,50,000/- ✓
10	✓ Rehabilitation	
	(a) In the case of rape victims	Rs. 1,00,000/-
	(b) In other cases	Rs. 20,000/-
11	✓ Simple Loss or injury to Child victim.	Rs. 10,000/- ✓

Om Prakash
 (Om Prakash)
 Principal Secretary.

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Kolkata



Gazette

सत्यमेव जयते

Extraordinary
Published by Authority

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THURSDAY, NOVEMBER 8, 2012

[SAKA 1934

PART I—Orders and Notifications by the Governor of West Bengal, the High Court, Government Treasury, etc.

GOVERNMENT OF WEST BENGAL

Home Department

NOTIFICATION

No. 5299-PL dated 1st November, 2012.— In exercise of the powers conferred by section 357A by the Code of Criminal Procedure 1973 (2 of 1974) the Governor is pleased to declare the following Scheme for providing compensation to those victims of crimes or his/her dependents who have suffered loss or injury and who require rehabilitation, namely:—

Scheme

- Short title and commencement.** 1. (1) These Scheme may be called the West Bengal Victim Compensation Scheme, 2012;
(2). This may come into force at once.
- Definitions.** 2. In these Scheme, unless the context otherwise required
(a) “Act” means the Code of Criminal Procedure, 1973 (2 of 1974);
(b) “Dependents” mean a person who fully depends on the earnings of the victim;
(c) “Schedule” means Schedule appended to these Scheme;
(d) “State” means State of West Bengal;
(e) “Victim” means a person who himself has suffered loss or injury as a result of crime and requires rehabilitation and includes dependent.
- Victim Compensation Fund** 3. (1) There shall be constituted a fund namely Victim Compensation Fund from which amount of compensation under these Scheme shall be paid to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation,



Eligibility for Compensation

- (2) The State Government shall allot a separate budget for the purpose of the Scheme every year,
 - (3) The Fund shall be operated by the Secretary, State Legal Services Authority or the District Legal Services Authority, as the case may be,
 - (4) The Fund will be maintained and audited as per existing Government rules.
4. A victim of acid attack and sexual offences including rape and human trafficking shall be eligible for the grant of compensation if :—
- (a) a recommendation is made by the Court for compensation under sub-section (2) of Section 357A of the Act;
 - (b) the Trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has been rehabilitated, makes recommendation for compensation under sub-section (3) of section 357(A) of the Act;
 - (c) the offender is not traced or identified, but the victim is identified and where no trial takes place, such victim or his dependent may apply for award of compensation under sub-section (4) of section 357A of the Act;
 - (d) they should not have been compensated for the loss or injury under any other scheme of the Central or State Government, Insurance Company or any other institutions.

Procedure for grant Compensation

5. (1) Whenever a recommendation is made by the Court of Compensation or an application is made by any victim or his dependent under sub-section (4) of section 357A of the Act to the State or the District Legal Services Authority, the State or the District Legal Services Authority shall examine the case and shall verify the contents of the claim with regard to the loss or injury caused to the claimant and also may call for any other relevant information necessary for consideration of the claim from the concerned victim or his dependent. After verifying the claim and after due enquiry the State or the District Legal Services Authority shall award compensation under sub-section (5) of section 357A of the Act.
- (2) The State or the District Legal Services Authority, as the case may be, shall decide the quantum of compensation to be awarded to the victim or his dependents on the basis of loss caused to the victim, medical expenses to be incurred on treatment, minimum sustenance amount required for rehabilitation including such incidental charges, as funeral expenses etc.
 - (3) The quantum of compensation to be awarded to the victim or his dependents shall not exceed from the maximum limit as per Schedule-I.
 - (4) The amount of compensation as appended to these scheme by the State or the District Legal Services Authority shall be disbursed to the victim or his dependents, as the case may be, from the Victim Compensation Fund.
 - (5) The cases covered under Motor Vehicles Act, 1988 (59 of 1988) wherein compensation is to be awarded by the Motor Accident Claims Tribunal, shall not be covered under these Scheme.
 - (6) The State or the District Legal Services Authority, 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 Magistrate of the area concern, or any other interim relief as it may deem fit.

Limitations

6. Under these Scheme, no claim made by the victim or his dependents under sub-section (4) of section 357A of the Act shall be entertained after a period of six months of the Crime.

Provided that, the State or the District Legal Services Authority, if satisfied, for the reasons to be recorded in writing may condone the delay in filing the claim.

This Notification is issued with concurrence of Finance Department (Group D), vide their U.O. No. D 182/3 dated 07.03.2012 and with the approval of Cabinet held on 06.09.2012.

Schedule-I

Sl. No.	Particular of Loss or Injury	Maximum Limit of Compensation
✓1.	Loss of Life	Rs. 2.00 lacs
2.	Loss of any limb or part of body resulting 80% or above handicap	Rs. 50,000/-
✓3.	Loss of any limb or part of body resulting 40% & below 80% handicap	Rs. 20,000/-
✓4.	Rape of Minor	Rs. 30,000/-
✓5.	Rape	Rs. 20,000/-
✓6.	Rehabilitation	Rs. 20,000/-
✓7.	Loss of any limb or part of body resulting below 40% handicap	Rs. 10,000/-
✓8.	Loss or injury causing severe mental agony to women and child victims in cases of Human Trafficking	Rs. 10,000/-
✓9.	Loss or injury to Child victims	Rs. 10,000/-

By order of the Governor,

B. BANERJEE

Principal Secretary to the Government of West Bengal.

CHANDIGARH ADMINISTRATION
HOME DEPARTMENT
NOTIFICATION

The 3/9/, 2012

No.HIII(2)-2012/ 16810

In exercise of the powers conferred by Section 357A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Administrator of the Union Territory of Chandigarh, hereby makes the following scheme for providing funds for the purpose of Assistance to be given to the victim or his/her dependent(s) who have suffered loss or injury or both as a result of the crime and who require rehabilitation.

1. Short title and commencement.

(i) This scheme may be called the Union Territory of Chandigarh Victim Assistance Scheme, 2012.

(ii) This shall come into force on the date of its publication in the Official Gazette of Union Territory of Chandigarh.

2. Definitions.

In this scheme, unless the context otherwise requires:-

- a) 'Victim' means as defined in clause (wa) of section 2 of the Code of Criminal Procedure 1973;
- b) 'Act' means the Code of Criminal Procedure, 1973 (Act 2 of 1974).
- c) 'Collector' means the Collector of District of the Union Territory of Chandigarh or any person authorized in this behalf.
- d) 'Dependent' means wife or husband, father, mother, unmarried daughter and minor children of the victim as determined by the authority empowered to issue dependency certificate;
- e) 'Schedule' means the Schedule appended to the scheme.
- f) 'Union Territory' means the Union Territory of Chandigarh; and
- g) 'State Legal Services Authority', Union Territory, Chandigarh and 'District Legal Services Authority', Chandigarh means State Legal Services Authority or District Legal Services Authority of Union Territory of Chandigarh as defined in Legal Services Authority Act, 1987;

3

(1) Victim Assistance Scheme will be funded from the Consolidated Fund of India, as per requirements of the Scheme. The funds for this Scheme will be made available to the Union Territory by the MHA by way of Grant under Grant No.'55' Other Expenditure of MHA.

(2) Amounts of fine imposed under Section 357 Cr. P.C. and ordered to be deposited by the Courts in the Victim Compensation/Assistance fund will be deposited into the Consolidated Fund of India.

Smt. Kaur
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(3) The cost of the Assistance shall be recovered from the wrongdoer/accused and shall be treated as Public Demand to be recovered in accordance with the relevant provisions of law.

(4) The said Fund shall be operated by the Collector/Deputy Commissioner of the Union Territory of Chandigarh.

4. Eligibility for Assistance:

The victim or his/her dependent(s) satisfying the following criteria shall be eligible for the grant of Assistance, namely :-

- (i) He/she should not have received any Assistance for the loss or injury under any other scheme of the Central Government or UT Administration of this nature.

5. Procedure for grant of Assistance:-

- i) Wherever a recommendation is made by the Court for Assistance under sub-section 2 of Section 357-A of the Code or an application is made by any victim or his/her dependent(s) under sub section 4 of section 357-A of the Code to the State Legal Services Authority or the District Legal Services Authority as the case may be, shall examine the case and verify the contents of the claim with regard to the loss or injury or both and rehabilitation necessitated as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.
- ii) The inquiry as contemplated under sub-section (5) of Section 357-A of the Code shall be completed within a period of sixty days from the date of receipt of the recommendation or application.
- iii) After completion of inquiry, the State Legal Services Authority or the District Legal Services Authority as the case may be, upon its satisfaction, shall decide the quantum of Assistance to be awarded to the victim or his/her dependent(s) on the basis of loss or injury or both or for rehabilitation, medical expenses to be incurred on treatment and such incidental charges as funeral expenses etc.

Provided that the quantum of Assistance to be awarded to the victim or his/her dependent(s) shall not be less or more than what is provided in Schedule attached to the scheme and if at a later date, compensation awarded by the Court is more than maximum limit, the amount of Assistance already paid shall be adjusted.

6. Order to be placed on record:-

The copy of the order of Assistance shall be placed on record of the trial court to enable the court to pass order

of compensation under sub-section (3) of Section 357-A of the Code.

7. Method of disbursement of Assistance:-

- (1) The amount of Assistance so awarded shall be deposited in a nationalized bank or in the scheduled bank where the branch of Nationalized bank is not available in the single or joint name of the victim or dependent(s) and out of the amount so deposited, 75% of the same shall be in fixed deposit for a minimum period of three years and the remaining 25% shall be available for the utilization and initial expenses by the victim or the dependent(s) or petitioner(s), as the case may be, and in exceptional circumstances, District or Union Territory Legal Services Authority after being satisfied may allow withdrawal upto 50% for the welfare of the victim or the dependent(s) or petitioner(s).
- (2) In the case of a minor, 80% of the amount of Assistance so awarded shall be deposited in the fixed deposit account and shall be withdrawn only on attainment of the age of majority. However, exception can be made for educational or medical needs of the beneficiary at the discretion of State Legal Services Authority or the District Legal Services Authority.
- (3) The interest on the amount of fixed deposit shall be credited directly by the bank in the saving account of the victim or the dependent(s) on monthly basis.

8. Medical aid to the victim:-

The State Legal Service Authority or District Legal Services Authority of the Union Territory of Chandigarh, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits or any other interim relief as deemed fit, to be made available free of cost to the victim, which shall not be adjustable against the amount of Assistance.

9. Dependency Certificate

The authority empowered to issue the dependency certificate shall issue the same within a period of 15 days and in no case the period shall be extended and the State Legal Services Authority or the District Legal Services Authority as the case may be, in case of non-issuance of dependency certificate by the authority within the said period of 15 days, may proceed on the basis of an affidavit to be obtained from the claimant.

10. Limitation :-

No claim of Assistance shall be entertained after a period of 3 years from the date of commission of crime.

Provided that at the State Legal Services Authority or the District legal Services Authority as the case may be, if

satisfied for reasons to be recorded in writing, may entertain a claim after the said period of three years.

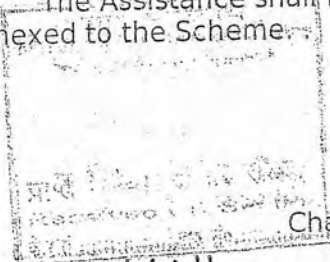
11. Appeal:-

Any victim aggrieved of the denial of Assistance by the District Legal Services Authority may file an appeal before the State Legal Services Authority within a period of ninety days.

Provided that the State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone delay in filing the appeal.

12. Quantum of Assistance:-

The Assistance shall be granted as per the Schedule annexed to the Scheme.



Anil Kumar, IAS
Home Secretary,
Chandigarh Administration.

Endst. No.HIII(2)-2012/ 16811

Chandigarh, dated the: 3/9/12

A copy with a copy of its enclosure is forwarded to the Controller Printing & Stationery, U.T., Chandigarh for publication of the notification in the Chandigarh Administration Gazette (extra ordinary) and to supply 20 copies to this department in due course for record.

Premshri
Additional Secretary Home,
For Home Secretary,
Chandigarh Administration.

Endst. No.HIII(2)-2012/ 16812

Chandigarh, dated the: 3/9/12

A copy with a copy of its enclosure is forwarded to the Under Secretary, Govt. of India, Ministry of Home Affairs, New Delhi w.r.t. his letter No.U.1F039/64/2010-Ig.Cell/UTL dated 13.8.2012 for information.

Premshri
Additional Secretary Home,
For Home Secretary,
Chandigarh Administration.

Endst. No.HIII(2)-2012/ 16813

Chandigarh, dated the: 3/9/12

A copy with a copy of its enclosure is forwarded to the Director Public Relations, U.T., Chandigarh for giving wide publicity to the scheme through the print and electronic media.

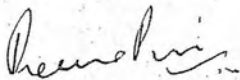
Premshri
Additional Secretary Home,
For Home Secretary,
Chandigarh Administration.

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Endst. No.HIII(2)-2012/ 16814

Chandigarh, dated the: 3/9/12

A copy with a copy of its enclosure is forwarded to all the Administrative Secretaries/ Heads of Departments/Boards/ Corporations for information.


Additional Secretary Home,
For Home Secretary,
Chandigarh Administration.
←

Schedule - I

Sr. No.	Particulars of Loss or Injury	Minimum Limit of Assistance	Maximum Limit of Assistance
1	Loss of life	₹ 3 lacs	₹ 5 lacs
2.	Rape	₹. 2 lacs	₹ 3 lacs
3	Loss of any limb or part of body resulting in 80% permanent disability or above.	₹ 2 lacs	₹ 3 lacs
4	Loss of any limb or part of body resulting in above 40% and below 80% permanent disability.	₹ 1 lac	₹ 1.5 lacs
5	Loss of any limb or part of body resulting in above 20% and below 40% permanent disability.	₹ 60,000/-	₹ 1 lac
6.	Loss of any limb or part of body resulting in below 20% permanent disability.	₹ 50,000/-	₹ 50,000/-
7.	Victim of Human Trafficking, child abuse and kidnapping	₹ 50,000/-	₹ 50,000/-
8	Simple loss or injury to child victim	₹ 10,000/-	₹ 10,000/-
9	Rehabilitation	₹ 20,000/-	₹ 20,000/-
10	Victims of acid attack a. In case of disfigurement of face; b. Other cases of injury	₹ 2 lacs ₹ 50,000/-	₹ 3 lacs ₹ 50,000/-

Administration of
Dadra & Nagar Haveli (UT)
(Home Department)
Secretariat, Silvassa.

No. DNH/DS(Home)/Victim/2011/299

Dt. 22.10.2012.

Read: (1) Letter No.U.15039/64/2010-Plg.Cell/UTL dtd.13th August,2012 received from the Government of India, Ministry of Home Affairs, New Delhi.

(2) Notification No. U - 15039/64/2010 - Plg/UTL, dtd. 13th August, 2012 of Govt. of India, Ministry of Home Affairs, New Delhi, delegating the powers of the State Government to Administrators of Union territories, under section 357 A of the Code of Criminal Procedure, 1973 (2 of 1974) within their respective Union Territories.

NOTIFICATION

In exercise of the powers conferred by Section 357 A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Administrator, Dadra and Nagar Haveli Silvassa hereby makes the following scheme for providing funds for the purpose of Assistance to be given to the victim or his dependents who have suffered loss or injury or both as a result of the crime and who require rehabilitation.

1. **Short title and commencement:** (1) This scheme may be called the Union Territory of Dadra & Nagar Haveli Victim Assistance Scheme, 2012.
(2) This shall come into force on the date of its publication in the Official Gazette of the Union Territory of Dadra & Nagar Haveli.
2. **Definitions:** In this scheme, unless the context otherwise requires:-
 - (a) 'Victim' means as defined in clause (wa) of section 2 of the Code of Criminal Procedure 1973
 - (b) 'Act' means the Code of Criminal Procedure, 1973 (Act 2 of 1974).
 - (c) 'Collector' means the Collector of a District of the Union Territory of Dadra and Nagar Haveli or any person authorized in this behalf.
 - (d) 'Dependent' means wife or husband, father, mother, unmarried daughter and minor children of the victim as determined by the authority empowered to issue dependency certificate.
 - (e) 'Schedule' means the Schedule appended to the scheme.
 - (f) 'Union Territory' means the Union Territory of Dadra and Nagar Haveli.
 - (g) 'Union Territory Legal Services Authority' and "District Legal Services Authority" means Union Territory Legal Services Authority or District Legal Service Authority of Union Territory of Dadra and Nagar Haveli as defined in Legal Services Authority Act, 1987

- 3(1) Victim Assistance Scheme will be funded from the Consolidated Fund of India, as per requirements of the Scheme. The funds for this Scheme will be made available to the Union Territory by the MHA by way of Grant under Grant No. '55' other Expenditure of MHA.
- 3(2) Amounts of fines imposed under Section 357 Cr. PC. and ordered to be deposited by the Courts in the Victim Compensation/Assistance fund will be deposited into the Consolidated Fund of India.
- 3(3) The cost of the Assistance shall be recovered from the wrongdoer/accused and shall be treated as Public Demand to be recovered in accordance with the relevant provisions of law.
- 3(4) The said Fund shall be operated by the Collector of the Union territory of Dadra and Nagar Haveli.
4. **Eligibility of Assistance:** The victim or his dependents satisfying the following criteria shall be eligible for the grant of Assistance, namely:-
- (1) He should not have received any Assistance for the loss or injury under any other Scheme of the Central Government or Union territory Administration of this nature.
5. **Procedure for grant of Assistance:-**
- (1) Whenever a recommendation is made by the Court for compensation under sub-section 2 of section 357 A of the Act or an application is made by any victim or his dependents under sub-section 4 of section 357 A of the Act to the Union Territory Legal Services Authority, the Union Territory Legal Services Authority or the District Legal Service Authority as the case may be, shall examine the case and verify the contents of the claim with regard to the loss or injury or both and rehabilitation necessitated as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.
- (2) The inquiry as contemplated under sub-section (5) of section 357 A of the Act shall be completed within a period of sixty days from the date of receipt of the recommendation or application.
- (3) After completion of inquiry, the Union Territory Legal Services Authority or District Legal Service Authority as the case may be, upon its satisfaction, shall decide the quantum of Assistance to be awarded to the victim or his dependents on the basis of loss or injury or both or for rehabilitation, medical expenses to be incurred on treatment and such incidental charges as funeral expenses etc.

Provided that the quantum of Assistance to be awarded to the victim or his dependents shall not be less or more than what is provided in Schedule attached to the scheme and if at a later date, compensation awarded by the Court is more than maximum limit, the amount of Assistance already paid shall be adjusted.

6. **Order to be placed on record:** The copy of the order of Assistance shall be placed on record of the trial court to enable the court to pass order of compensation under sub section (3) of section 357 A of the Act.
7. **Method of disbursement of Assistance:** - (1) The amount of Assistance so awarded shall be deposited in a nationalized bank or in the Scheduled bank where the branch of Nationalized bank is not available, in the joint name of the victim or the dependents and out of the amount so deposited, 75% of the same shall be put in a fixed deposit for a minimum period of three years and the remaining 25% shall be available for the utilization and initial expenses by the victim or the dependents or petitioners as the case may be and in exceptional circumstances, District or Union Territory Legal Authority after being satisfied may allow withdrawal upto 50 % for welfare of the victim or the dependents or petitioners.
- (2) In the case of a minor, 80% of the amount of Assistance so awarded shall be deposited in the fixed deposit account and shall be withdrawn only on attainment of the age of majority, however, exception can be made for educational or medical needs of the beneficiary at the discretion of Union Territory Legal Service Authority or District Legal Services Authority.
- (3) The interest on the amount of fixed deposit shall be credited directly by the bank in the saving account of the victim or the dependents on monthly basis.
8. **Medical aid to the victim:**-The Union Territory Legal Service Authority or the District Legal Service Authority of Union Territory of Dadra and Nagar Haveli to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits or any other interim relief as deemed fit, to be made available free of cost to the victim, which shall not be adjustable against the amount of Assistance.
9. **Dependency Certificates:** - The authority empowered to issue the dependency certificate shall issue the same within a period of fifteen days and in no case the period shall be extended and the Union Territory Legal Services Authority or the District Legal Services Authority as the case may be, in case of non - issuance of Dependency Certificate by the authority within the said period of fifteen days, may proceed on the basis of an affidavit to be obtained from the claimant.
10. **Limitation:** - No claim of Assistance shall be entertained after a period of three years from the date of commission of crime.
- Provided that the Union Territory Legal Services Authority or the District Legal Services Authority as the case may be, if satisfied for reasons to be recorded in writing, may entertain a claim after the said period of three years.
11. **Appeal:** - Any victim aggrieved of the denial of Assistance by the District Legal Services Authority may file an appeal before the Union Territory Legal Service Authority within a period of ninety days.

Provided that the Union Territory Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

12. **Quantum of Assistance:** - The Assistance shall be granted as per the Schedule annexed to the Scheme.

For and on Behalf of the
Administrator, Dadra and Nagar
Haveli, Silvassa.

MI Jaw
Deputy Secretary (Home)
DNH, Silvassa.

Copy fd. to :

- (1) The Collector, DNH Silvassa.
- (2) The Superintendent of Police, DNH Silvassa.
- (3) The Director of Social Welfare
- (4) The Mamlatdar, Silvassa/Khanvel.
- (5) The Asstt. Director (Plg. & Stat) Secretariat, DNH, incharge Govt. Printing Press for publication of the scheme in the official Gazette.

SCHEDULE

Sr.No.	Particulars of Loss or Injury	Minimum Limit of Assistance (In Rs.)	Maximum Limit of Assistance (In Rs.)
1	Loss of life	3 lakh	5 lakh
2	Rape	2 lakh	3 lakh
3	Loss of any limb or part of body resulting in 80 % permanent disability or above.	2 lakh	3 lakh
4	Loss of any limb or part of body resulting in above 40 % and below 80 % permanent disability	1 lakh	1.5 lakh
5	Loss of any limb or part of body resulting in 20% and below 40 % permanent disability.	60,000/-	1 lakh
6	Loss of any limb or part of body resulting in below 20 % permanent disability	50,000/-	50,000/-
7.	Victim of human trafficking, child abuse and kidnapping.	50,000/-	50,000/-
8.	Simple loss or injury to child Victim	10,000/-	10,000/-
9.	Rehabilitation	20,000/-	20,000/-
10.	Victim of acid attack a. In case of disfigurement of face b. Other cases of injury	2 lakh 50,000/-	3 lakh 50,000/-

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सरकारी राजपत्र OFFICIAL GAZETTE



सत्यमेव जयते

भारत सरकार
Government of India

संघ प्रदेश दमण एवं दीव प्रशासन

U.T. ADMINISTRATION OF DAMAN & DIU

प्राधिकरण द्वारा प्रकाशित
PUBLISHED BY AUTHORITY

UT ADMINISTRATION OF DAMAN AND DIU
HOME DEPARTMENT
SECRETARIT, DAMAN

READ: Letter F. No. U-15039/64/201-Plg./UTL dated 13th August, 2012
from the Ministry of Home Affairs, Government of India.

NOTIFICATION

No. 1/DC/Home/VAS/30/2012-13/402

The 5th October, 2012

In exercise of the powers conferred by Section 357 A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Administrator of Union Territory of Daman & Diu hereby makes the following scheme for providing funds for the purpose of Assistance to be given to the victim or his dependents who have suffered loss or injury or both as a result of the crime and who require rehabilitation.

1. **Short title and Commencement :** (1) This scheme may be called the Union Territory of Daman & Diu Victim Assistance Scheme, 2012.
(2) The scheme shall come into force on the date of its publication in the Official Gazette of Union Territory of Daman & Diu Administration.
2. **Definitions.-** In this scheme, unless the context otherwise requires :-
 - (i) "Victim" as defined in clause (wa) of section 2 of the Code of Criminal Procedure, 1973;
 - (ii) "Act" means the Code of Criminal Procedure, 1973 (Act 2 of 1974);

Contd./---

- (iii) "Collector" means the Collectors of a District of the Union Territory of Daman & Diu or any person authorized in this behalf;
- (iv) "Dependent" means wife or husband, father, mother, unmarried daughter and minor children of the victim as determined by the authority empowered to issue dependency certificate;
- (v) "Schedule" means the Schedule appended to this scheme;
- (vi) "Union Territory" means the Union Territory of Daman & Diu; and
- (vii) "Union Territory Legal Services Authority" and "District Legal Services Authority" means Union Territory Legal Services Authority or District Legal Service Authority of Union Territory of Daman & Diu as defined in Legal Services Authority Act, 1987;

3 (1) Victim Assistance Scheme will be funded from the Consolidated Funds of India, as per requirements of the Scheme. The funds for this Scheme will be made available to the Union Territory by the MHA by the way of Grant under Grant No. '55' Other Expenditure of MHA.

3 (2) Amounts of fines imposed under Section 357 Cr. PC. and ordered to be deposited by the Courts in the Victim Compensation/Assistance fund will be deposited into the Consolidated Fund of India.

3 (3) The cost of the Assistance shall be recovered from the wrongdoer/accused and shall be treated as Public Demand to be recovered in accordance with the relevant provision of law.

3 (4) The said Fund shall be operated by the Collector of the Union Territory of Daman & Diu.

4. **Eligibility for Assistance :-** The victim or his dependents satisfying the following criteria shall be eligible for the grant of Assistance, namely:-

(1) He should not have been received any Assistance for the loss or injury under any other scheme of the Central Government or Union Territory Administration of this nature.

5. **Procedure for grant of Assistance :-**

(i) Whenever a recommendation is made by the Court for Assistance under sub-section 2 of section 357-A of the Act or an application is made by any victim or his dependents under sub section 4 of section 357-A of the Act to the Union Territory Legal Services Authority, the Union Territory Legal Services Authority or District Legal Service Authority as the case may be, shall examine the case and verify the contents of the claim with regard to the loss or injury or both and rehabilitation necessitated as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.

(ii) The inquiry as contemplated under sub section (5) of section 357-A of the Act shall be completed within a period of sixty days from the date of receipt of the recommendation or application.

Contd./---

(iii) After completion of inquiry, the Union Territory Legal Services Authority or District Legal Service Authority as the case may be, upon its satisfaction shall decide the quantum of Assistance to be awarded to the victim or his dependents on the basis of loss or injury or both or for rehabilitation, medical expenses to be incurred on treatment and such incidental charges as funeral expenses etc.

Provided that the quantum of Assistance to be awarded to the victim or his dependent shall not be less or more than what is provided in schedule attached to the scheme and if at a later date, compensation awarded by the Court is more than the maximum limit, the amount of Assistance already paid shall be adjusted.

6. **Order to be placed on record :-** The copy of the order of assistance shall be placed on record of the trial court to enable the court to pass order of compensation under sub section (3) of section 357-A of the Act.
7. **Method of disbursement of Assistance :-** (1) The amount of Assistance so awarded shall be deposited in a nationalized bank or in the Scheduled commercial bank where the branch of Nationalized banks is not available, in the joint or single name of the victim or the dependents and out of the amount so deposited, 75% of the same shall be put in a fixed deposit for a minimum period of three years and the remaining 25% shall be available for the utilization and initial expenses by the victim or the dependents or petitioners, as the case may be, and in exceptional circumstances, District or Union Territory Legal Service Authority after being satisfied may allow withdrawal upto 50 % for welfare of victim or dependents or petitioners.
(2) In the case of a minor, 80% of the amount of Assistance so awarded shall be deposited in the fixed deposit account and shall be withdrawn only on attainment of the age of majority, however, exception can be made, for educational or medical needs of the beneficiary at the discretion of Union Territory Legal Service Authority or District Legal Services Authority.
(3) The interest on the amount of fixed deposit shall be credited directly by the bank in the saving account of the victim or dependents on monthly basis.
8. **Medical aid to the victim :-** The Union Territory Legal Service Authority or District Legal Service Authority of Union Territory of Daman & Diu to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits or any other interim relief as deemed fit, to be made available free of cost to the victim, which shall not be adjustable against the amount of Assistance.
9. **Dependency Certificates :-** The authority empowered to issue the dependency certificate shall issue the same within a period of fifteen days and in no case this period shall be extended. The Union Territory Legal Services Authority or District Legal Services Authority as the case may be, in case of non-issuance of Dependency certificate, by the authority within the said period of fifteen days, may proceed on the basis of an affidavit to be obtained from the claimant.
10. **Limitation :-** No claim of Assistance shall be entertained after a period of three years from the date of commission of crime.

Provided that the Union Territory Legal Services Authority or the District Legal Services Authority as the case may be, if satisfied for reasons to be recorded in writing, may entertain a claim after the said period of three years.

11. **Appeal :-** Any victim aggrieved of the denial of Assistance by the District Legal Services Authority may file an appeal before the Union Territory Legal Service Authority within a period of ninety days.

Provided that the Union Territory Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone the delay in filing the appeal.

12. **Quantum of Assistance :-** The Assistance shall be granted as per the Schedule annexed to the Scheme.

Schedule

Sr. No.	Particulars of Loss or Injury	Minimum Limit of Compensation	Maximum Limit of Compensation
1.	Loss of life	₹ 3 lacs	₹ 5 lacs
2.	Rape	₹ 2 lacs	₹ 3 lacs
3.	Loss of any limb or part of body resulting in 80% permanent disability or above.	₹ 2 lacs	₹ 3 lacs
4.	Loss of any limb or part of body resulting in above 40% and below 80% permanent disability	₹ 1 lacs	₹ 1.5 lacs
5.	Loss of any limb or part of body resulting in 20% and below 40% permanent disability above	₹ 60,000/-	₹ 1 lacs
6.	Loss of any limb or part of body resulting in below 20% permanent disability	₹ 50,000/-	₹ 50,000/-
7.	Victim of human trafficking, child abuse and kidnapping.	₹ 50,000/-	₹ 50,000/-
8.	Simple loss or injury to child Victim	₹ 10,000/-	₹ 10,000/-
9.	Rehabilitation	₹ 20,000/-	₹ 20,000/-
10.	Victim of acid attack		
	a. In case of disfigurement of face	₹ 2 lacs	₹ 3 lacs
	b. Other cases of injury	₹ 50,000/-	₹ 50,000/-

This is issued in suppression of earlier Notification No. 1/DC/Home/VCS/30/2011-12/356 dated 25th July, 2011.

Sd/-
Deputy Secretary (Home)
Secretariat, Daman

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**ADMINISTRATION OF THE
UNION TERRITORY OF LAKSHADWEEP
(HOME DEPARTMENT)
KAVARATTI – 682555.**

NOTIFICATION

Dated the 16th November, 2012.

F. No. 05/56/2009-CO In exercise of the powers conferred by section 357 A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Administrator of the Union territory of Lakshadweep hereby makes the following scheme for providing funds for the purpose of Assistance to be given to the victim or his dependents who have suffered loss or injury or both as a result of the crime and who require rehabilitation.

1. Short title and commencement:- (1) This scheme may be called the Lakshadweep Victim Assistance Scheme, 2012.
(2) This shall come into force on the date of its publication in the Official Gazette of the Union territory of Lakshadweep.

2. Definitions:- In this scheme, unless the context otherwise requires,-

- (a) "Victim" means as defined in clause (wa) of section 2 of the Code of Criminal Procedure 1973;
- (b) "Act" means the Code of Criminal Procedure, 1973 (Act 2 of 1974);
- (c) "Collector" means the Collector of a District of the Union Territory of Lakshadweep or any person authorized in this behalf;
- (d) "Dependent" means wife or husband, father, mother, unmarried daughter and minor children to issue dependency certificate of the victim as determined by the authority empowered to issue dependency certificate.
- (e) "Schedule" means the Schedule appended to the scheme;
- (f) "Union territory" means a Union territory of Lakshadweep; and
- (g) "Union territory Legal Services Authority" and "District Legal Services Authority" means Union territory Legal Services Authority or District Legal Services Authority of Union Territory of Lakshadweep as defined in Legal Services Authority Act, 1987;

3.(1) Victim Assistance Scheme will be funded from the Consolidated Fund of India, as per requirements of the Scheme. The funds for this scheme will be made available to the Union Territory by the MHA by way of Grant under Grant No. '55' Other Expenditure of MHA/ Govt. of India.

3.(2) Amounts of fine imposed under Section 357 Cr.PC. and ordered to be deposited by the Courts in the Victim Compensation/ Assistance fund will be deposited into the Consolidated Fund of India.

3.(3) The cost of the Assistance shall be recovered from the wrongdoer/ accused and shall be treated as Public Demand to be recovered in accordance with the relevant provisions of law.

3.(4) The said Fund shall be operated by the Collector/ Deputy Commissioner of the Union Territory of Lakshadweep.

4. Eligibility for assistance:- The victim or his/ her dependents, satisfying the following criteria, shall be eligible for the grant of Assistance, namely:-

(1) He/ she should not have received any Assistance for the loss or injury under any other scheme of the Central Government or Union Territory Administration of this nature.

5. Procedure for grant of Assistance:-

(1) Wherever a recommendation is made by the Court for Assistance under sub-section 2 of section 357 A of the Act or an application is made by any victim or his dependents under sub-section 4 of section 357 A of the Act to the Union territory Legal Services Authority, the Union Territory Legal Services Authority or the District Legal Services Authority as the case may be, shall examine the case and verify the contents of the claim with regard to the loss or injury or both and rehabilitation necessitated as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.

(2) The inquiry as contemplated under sub-section (5) of section 357 A of the Act shall be completed within a period of sixty days from the date of receipt of the recommendation or application.

(3) After completion of inquiry, the Union Territory Legal Services Authority or the District Legal Services Authority as the case may be, upon its satisfaction, shall decide the quantum of Assistance to be awarded to the victim or his/ her dependents on the basis of loss or injury or both or for rehabilitation, medical expenses to be incurred on treatment and such incidental charges as funeral expenses etc.

Provided that the quantum of Assistance to be awarded to the victim or his dependents shall not be less or more than what is provided in schedule attached to the scheme and if at a later date, compensation awarded by the Court is more than maximum limit, the amount of Assistance already paid shall be adjusted.

6. Order to be placed on record:- The copy of the order of Assistance shall be placed on record of the trial court to enable the court to pass order of compensation under sub section (3) of section 357 A of the Act.

7. Method of disbursement of Assistance:- (1) The amount of Assistance so awarded shall be deposited in a nationalized bank or in Scheduled bank where the branch of Nationalized bank is not available in the single or joint name of the victim or the dependents and out of the amount so deposited, 75% of the same shall be in fixed deposit for a minimum period of three years and the remaining 25% shall be available for the utilization and initial expenses by the victim or the dependents or petitioners, as the case may be, and in exceptional circumstances, District or Union territory Legal Services Authority after being satisfied may allow withdrawal upto 50% for the welfare of the victim or the dependents or petitioners.

(2) In the case of a minor, 80% of the amount of Assistance so awarded shall be deposited in the fixed deposit account and shall be withdrawn only on attainment of the age of majority, however, exception can be made for educational or medical needs of the beneficiary at the discretion of Union territory Legal Services Authority or the District Legal Services Authority.

(3) The interest on the amount of fixed deposit shall be credited directly by the bank in the saving account of the victim or the dependents on monthly basis.

8. Medical aid to the victim:- The Union territory Legal Services Authority or the District Legal Services Authority or the Union territory of Lakshadweep to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits or any other interim relief as deemed fit, to be made available free of cost to the victim, which shall not be adjustable against the amount of Assistance.

9. Dependency certificate:- The authority empowered to issue the dependency certificate shall issue the same within a period of fifteen days and in no case the period shall be extended and the Union territory Legal Services Authority or the District Legal Services Authority as the case may be, in case of non-issuance of Dependency certificate by the authority within the said period of fifteen days, may proceed on the basis of an affidavit to be obtained from the claimant.

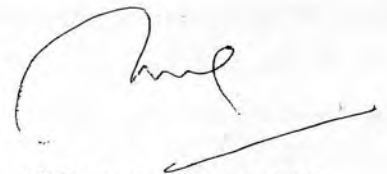
10. Limitation:- No claim of Assistance shall be entertained after a period of three years from the date of commission of crime;

Provided that the Union territory Legal Services Authority or the District Legal Services Authority as the case may be, if satisfied for reasons to be recorded in writing, may entertain a claim after the said period of three years.

11. Appeal:- Any victim aggrieved of the denial of Assistance by the District Legal Services Authority may file an appeal before the Union territory Legal Services Authority within a period of ninety days:

Provided that the Union territory Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone delay in filing the appeal.

12. Quantum of Assistance:- The Assistance shall be granted as per the Schedule annexed to the Scheme.



**H. Rajesh Prasad, IAS
Administrator
U.T of Lakshadweep**

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GOVERNMENT OF PUDUCHERRY

Abstract

Home Department - Victim Assistance Scheme for the Union Territory of Puducherry for the victims of crime in view of insertion of a new section 357A in the Code of Criminal Procedure, 1973 - Orders - Issued.

HOME DEPARTMENT

G.O.Ms.No.8

Pondicherry, dated 04.02.2013

Read: F.No.15039/64/2010-Plg.Cell(Part) dated 13.06.2011 from Under Secretary (Plg. Cell), Ministry of Home Affairs, New Delhi.

ORDER:

The following notification shall be published in the next issue of the extra-ordinary official gazette:-

NOTIFICATION

In exercise of powers conferred by section 357A of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Lieutenant-Governor of the Union territory of Puducherry hereby makes the following scheme for providing funds for the purpose of assistance to be given to the victim or his/her dependents who have suffered loss or injury or both as a result of the crime and who require rehabilitation.

1. Short title and commencement.

(1) This scheme may be called the Union territory of Puducherry Victim Assistance Scheme, 2012.

(2) This shall come into force on the date of its publication in the Official Gazette of the Union territory of Puducherry.

2. Definitions.- In this scheme, unless the context otherwise requires.

- (a) "Act" means the Code of Criminal Procedure, 1973 (Act 2 of 1974);
- (b) "Collector" means the Collector of a District of the Union territory of Puducherry or any person authorized in this behalf;
- (c) "dependent" means wife or husband, father, mother, unmarried daughter and minor children of the victim as determined by the authority empowered to issue dependency certificate;
- (d) "District Legal Services Authority" means the District Legal Services Authority for Pondicherry Region and the Taluk Legal Services Committee, Karaikal/Mahe/Yanam as defined in Legal Services Authorities Act, 1987.
- (e) "Schedule" means the schedule appended to the scheme;
- (f) "Union territory" means the Union territory of Puducherry; and
- (g) "Union territory Legal Services Authority" means Union Territory of Puducherry Legal Services Authority as defined in Legal Services Authorities Act, 1987.
- (h) "Victim" means as defined in I clause(wa) of section 2 of the Code of Criminal Procedure, 1973.

3. Fund of the Scheme

(1) Victim Assistance Scheme will be funded from the Consolidated Fund of India, as per requirements of the scheme. The funds for this scheme will be made available to the Union Territory

by the Ministry of Home Affairs by way of Grant under Grant No. '55' Other Expenditure of Ministry of Home Affairs.

(2) Amounts of fines imposed under section 357 of the Code of Criminal Procedure and ordered to be deposited by the Courts in the Victim Compensation/Assistance fund will be deposited into the Consolidated Fund of India.

(3) The cost of the Assistance shall be recovered from the wrongdoer/accused and shall be treated as Public Demand to be recovered in accordance with the relevant provisions of law.

(4) The said Fund shall be operated by the Collectors of the Union territory of Puducherry.

4. **Eligibility for Assistance.**

The victim or his /her dependents satisfying the following criteria shall be eligible for the grant of Assistance, namely- he/she should not have received any Assistance for the loss or injury under any other scheme of the Central Government or Union territory Administration of this nature.

5. **Procedure for grant of Assistance.-**

(1) Wherever a recommendation is made by the Court for Assistance under sub-section (2) of section 357 A of the Code or an application is made by any victim or his/her dependents under sub-section (4) of section 357 A of the Code to the Taluk Legal Services Committees Karaikal/Mahe/Yanam or Union territory of Puducherry State Legal Services Authority or the District Legal Services Authority for Puducherry Region or as the case may be, shall examine the case and verify the contents of the claim with regard to the loss or injury or both and rehabilitation necessitated as a result of the crime and may also call for any other relevant information necessary for consideration of the claim from the concerned.

(2) The inquiry as contemplated under sub-section (5) of section 357 A of the Code shall be completed within a period of sixty days from the date of receipt of the recommendation or application.

(3) After completion of inquiry, the Union territory of Puducherry State Legal Services Authority or District Legal Services Authority for Puducherry Region or the Taluk Legal Services Committees Karaikal/Mahe/Yanam as the case may be, upon its satisfaction, shall decide the quantum of Assistance to be awarded to the victim or his dependents on the basis of loss or injury or both or for rehabilitation, medical expenses to be incurred on treatment and such incidental charges as funeral expenses etc.

Provided that the quantum of Assistance to be awarded to the victim or his dependents shall not be less or more than what is provided in schedule attached to the scheme and if at a later date, compensation awarded by the Court is more than maximum limit, the amount of Assistance already paid shall be adjusted.

6. **Order to be placed on record.-** The copy of the order of Assistance shall be placed on record of the trial court to enable the court to pass order of compensation under sub section (3) of section 357 A of the Code.

7. **Method of disbursement of Assistance:-** (1) The amount of Assistance so awarded shall be deposited in a nationalized bank or in Scheduled bank where the branch of Nationalized bank is not available in the single or joint name of the victim or the dependents and out of the amount so deposited, 75% of the same shall be in fixed deposit for a minimum period of three years and the remaining 25% shall be

available for the utilization and initial expenses by the victim or the dependents or petitioners, as the case may be, and in exceptional circumstances, the Union territory of Puducherry State Legal Services Authority or District Legal Services Authority for Puducherry Region or the Taluk Legal Services Committees Karaikal/Mahe/Yanam after being satisfied may allow withdrawal upto 50% for the welfare of the victim or the dependents or petitioners.

(2) In the case of a minor, 80% of the amount of Assistance so awarded shall be deposited in the fixed deposit account and shall be withdrawn only on attainment of the age of majority, however, exception can be made for educational or medical needs of the beneficiary at the discretion of Union territory of Puducherry Legal Services Authority or the District Legal Services Authority for Puducherry Region or the Taluk Legal Services Committees Karaikal/Mahe/Yanam.

(3) The interest on the amount of fixed deposit shall be credited directly by the bank in the saving account of the victim or the dependents on monthly basis.

8. Medical aid to the victim.- The Union territory of Puducherry State Legal Services Authority or District Legal Services Authority for Puducherry Region or the Taluk Legal Services Committees Karaikal/Mahe/Yanam to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits or any other interim relief as deemed fit, to be made available free of cost to the victim, which shall not be adjustable against the amount of Assistance.

9. Dependency certificate.- The authority empowered to issue the dependency certificate shall issue the same within a period of fifteen days and in no case the period shall be extended and Union territory of Puducherry State Legal Services Authority or District Legal Services Authority for Puducherry Region or the Taluk Legal Services Committees, Karaikal/Mahe/Yanam as the case may be, in case of non-issuance of Dependency certificate by the authority within the said period of fifteen days, may proceed on the basis of an affidavit to be obtained from the claimant.

10. Limitation.- No claim of Assistance shall be entertained after a period of three years from the date of commission of crime.

Provided that the Union territory of Puducherry State Legal Services Authority or District Legal Services Authority for Puducherry Region or the Taluk Legal Services Committees, Karaikal/Mahe/Yanam as the case may be, if satisfied for reasons to be recorded in writing, may entertain a claim after the said period of three years.

11. Appeal.- Any victim aggrieved of the denial of Assistance by District Legal Services Authority for Puducherry Region or the Taluk Legal Services Committee, Karaikal/Mahe/Yanam may file an appeal before the Union territory of Puducherry State Legal Services Authority within a period of ninety days

Provided that the Union territory of Puducherry State Legal Services Authority, if satisfied, for the reasons to be recorded in writing, may condone delay in filing the appeal.

12. Quantum of Assistance.- The Assistance shall be granted as per the schedule annexed to the scheme.

SCHEDULE

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SL. No.	Particulars of loss or injury	Minimum limit of Assistance (In Rs.)	Maximum limit of Assistance (In Rs.)
1	Loss of life	3 lakh	5 lakh
2	Rape	2 lakh	3 lakh
3	Loss of any limb or part of body resulting in 80% permanent disability or above	2 lakh	3 lakh
4	Loss of any limb or part of body resulting in above 40% and below 80% permanent disability	1 lakh	1.5 lakh
5	Loss of any limb or part of body resulting in above 20% and below 40% permanent disability	60,000	1 lakh
6	Loss of any limb or part of body resulting in below 20% permanent disability	50,000	50,000
7	Victims of human trafficking, child abuse and kidnapping	50,000	50,000
8	Simple loss or injury to child victim	10,000	10,000
9	Rehabilitation	20,000	20,000
10	Victim of acid attack: (a) In case of disfigurement of face; (b) Other cases of injury	2 lakh 50,000	3 lakh 50,000

// BY ORDER OF LIEUTENANT-GOVERNOR //

**M. SATHIYAVATHY
CHIEF SECRETARY TO GOVERNMENT**

To

The Director of Stationery and Printing, Puducherry - with a request to supply 20 copies of the above Notification to this Department.

Copy to:

1. The Chief Judge, Puducherry.
2. The Union Territory of Puducherry Legal Services Authority/District Legal Services Authority for Puducherry Region / the Taluk Legal Services Committee, Karaikal/Mahe/Yanam
3. All Secretaries to Government of Puducherry.
4. The Collector, Puducherry/Karaikal.
5. The Inspector General of Police, Puducherry.
6. Inspector General of Prison, Puducherry.
7. The Regional Administrator, Mahe/Yanam.
8. The Central Record Branch, Puducherry. 9. G.O. file. 10. Stock file.

//Forwarded/ By Order //

**(PANKAJ KUMAR JHA)
ADDL. SECRETARY TO GOVERNMENT**



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