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Email

Addendum to the Standard Operating Procedure, 2020 for Disbursal of Compensation under the Delhi Victim Compensation Scheme, 2018 for POCSO Cases.

Mon, Sep 30, 2024 03:07 PM
3 attachments

From : Nisha Sharma <drscms.dhc@gov.in>

Subject : Addendum to the Standard Operating Procedure, 2020 for Disbursal of Compensation under the Delhi Victim Compensation Scheme, 2018 for POCSO Cases.

O/o the Principal District & Sessions Judge
Diary No. 1405
01 OCT 2024

To : PDJ Office North East <pdj-northeast@ddc.nic.in>, Secretariat to Pr Distt and SJ SW <djsw.ddc@gov.in>, PDJ Office New Delhi District <pdj-newdelhi@ddc.nic.in>, PS to PDJ CUM SPL JUDGE CBI RADC <pdj-racc@ddc.nic.in>, Mr Shamim <djwest.ddc@gov.in>, Viresh Panwar <pdj-east@ddc.nic.in>, PDJ OFFICE NORTH WEST ROHINI <pdj-northwest.ddc@nic.in>, PDJ Office HQ <pdj-central@ddc.nic.in>, Ram Singh <djst.ddc@gov.in>, PDJ OFFICE SOUTH EAST SAKET <pdj-southeast@ddc.nic.in>, Tilak Raj <pdj-shahdara@ddc.nic.in>, Ram Janma Prasad <pdj-north@ddc.nic.in>, RAM SINGH <pdj-south@ddc.nic.in>, Secretariat to Pr Distt and SJ <pdj-southwest@ddc.nic.in>, VIKAS BHARDWAJ <pdj-west@ddc.nic.in>, Delhi Judicial Academy <dja@nic.in>, Member Secretary, Delhi SLSA <dslsa-phc@nic.in>, Member Secretary, Delhi SLSA <dslsa-phc@nic.in>, Sanjay Arora <cp.sanjayarora@delhipolice.gov.in>

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Secretary DLSA (SND) for compliance and OIC Judl. for circulation among the concerned Judl. officers

Respected Sir/ Madam,

Please find attached herewith the scanned copy of circular dated 30.09.2024 on the subject cited above, alongwith the copy of Judgment dated 24.09.2024 and the SOP (with respect to operation of Delhi Victim Compensation Scheme 2018) for your kind information and further necessary action in this regard.

01/10/2024 (SND)

Regards,
Ravinder Singh, DHJS
Joint Registrar (Judicial) (SCMS)
High Court of Delhi.

Be circulated amongst all the Judicial Officers of Shahdara District through Secy. DLSA, Computer Branch to upload the same on website of Dist. Courts

30.09.2024.pdf
150 KB

11(SJ) 07/10/2024 Judl. Secy. DLSA, Delhi

- FINAL SOP DVCS 2018.pdf
  820 KB

- Judgement dated 24.09.24.pdf
  11 MB

HIGH COURT OF DELHI: NEW DELHI

No. 180/SCMS/DHC/2024
Dated:- 30.09.2024

CIRCULAR

Addendum to the Standard Operating Procedure, 2020 for Disbursal of Compensation under the Delhi Victim Compensation Scheme, 2018 for POCSO Cases

It is hereby circulated for information and compliance by all Special Courts dealing with cases under the Protection of Children from Sexual Offences (POCSO) Act, 2012 that Hon'ble Delhi High Court in ***W.P. (C) No.4827/2024 titled Abhishek Yadav vs. Delhi State Legal Services Authority & Anr. Vide Dated 24.09.2024*** has added the following addendum in form of ***Part F to the Standard Operating Procedure, 2020 already having five (05) parts A to E issued by Delhi State Legal Services Authority*** **(with respect to** ***operation of Delhi Victim Compensation Scheme, 2018).***

Part F

Preface

F-1 A harmonious reading of the provisions of the 2018 Scheme and Section 33(8) of the POCSO Act and the rules framed thereunder could establish that a child victim of sexual abuse is entitled to the following three (03) kinds of compensation:

(i) Interim compensation given directly under the 2018 Scheme based on the schedule appended thereto and the judgment rendered by the court in X v. State of NCT of Delhi (Acting through its Secretary) & Anr., 2022 SCC OnLine Del 3496. This compensation is payable once the victim makes an application in that behalf to the concerned District Legal Services Authority [DLSA].

(ii) Interim compensation awarded by the concerned special court under the POCSO Act.

(iii) Final compensation awarded by the special court under the POCSO Act.

F-1.1 Thus, the direction and instructions in this part would apply only to disbursal of compensation where the offence committed falls within the ambit of the POCSO Act and compensation is to be given in the circumstances referred to in F-1 (i) to (iii) referred to hereinabove.

F-2 Directions

F-2.1 DLSAs will strictly adhere to the compensation disbursal regime put in place in this part concerning child victims of sexual abuse whose cases come within the purview of the POCSO Act.

F-2.2 The directions and instructions in this part will be in addition to and not in derogation of those set out in parts A to E of the SOP. However, in case of conflict between the directions/instructions in this part and those in other parts of the SOP, the directions/instructions in this part shall prevail.

F-3 Procedure and safeguards for disbursal of compensation

F-3.1 The child victim would be required to submit only the following documents to the concerned DLSA for disbursal of compensation referred to under sub-clauses (i) to (iii) of Clause F-1 above:

(a) Documents such as an Aadhar card and birth certificate would suffice as proof of the child victim's identity.

(b) To establish the existence of a valid bank account in the name of the child victim, inter alia, the copy of the passbook issued by the bank. A valid account will be one that satisfies the requirements of clause 11(1) and/or clause 15 of the 2018 Scheme, as applicable.

(c) An undertaking/indemnity bond shall be furnished in terms of clause B.12 of the SOP. No affidavit will be sought in terms of Part-I clause 4 of the 2018 Scheme.

F-4 As regards child victims who ordinarily reside outside the NCT of Delhi but were subjected to offences within the jurisdiction of NCT of Delhi, the concerned DLSA shall seek assistance of the local DLSA and/or any other statutory authority which has sway over the area where the child victim is located for conducting verification of documents.

F-4.1 After the child victim submits relevant documents, the concerned DLSA shall, with the assistance of the Investigating Officer [IO], endeavour to complete verification of the documents submitted within two (2) weeks commencing from the date of submission of the said documents.

F-4.2 The Deputy Police Commissioner having jurisdiction over the concerned area will ensure that the timeline indicated above is not crossed.

F-4.3 To ensure strict adherence to timelines, the Commissioner of Police will issue standing instructions to all field formations.

F-4.4 Upon completion of verification of documents by the concerned DLSA with the assistance of an I.O., a certificate will be issued detailing the documents that stand verified. Thereafter, in case the child victim is awarded any further compensation, whether under sub-clause (i), (ii), or

(iii) of Clause F-1 or otherwise, the said certificate shall be taken as valid proof of his/her documents being verified.

F-4.5 Once verification is complete and a certificate is issued, the concerned DLSA will ensure that no further objections regarding jurisdiction are raised for issuing compensation to the bank account of the child victim.

F-4.6 The child victim will not be required to undergo a re-verification unless the reliance is placed on new documents not mentioned in the certificate. In case such an eventuality arises, verification of the new document shall be conducted by the concerned DLSA with the assistance of the I.O. at the earliest, at least two (02) weeks from the date of submission of the new document(s).

F-5 The DSLSA, along with the concerned DLSA, shall ensure that disbursal of interim or final compensation takes place within 30 days from the date of issuance of direction by the concerned DLSA for grant of compensation in terms of sub-clause (i) of Clause F-1 above or the receipt of the order passed by the special court for grant of compensation under subclause (ii) or (iii) of Clause F-1 above.

Apart from the addendum mentioned above in form of Part F to the Standard Operating Procedure 2020 issued by DSLSA (with respect to operation of Delhi Victim Compensation Scheme, 2018), the Hon'ble Court in the aforesaid judgment has also issued the following additional directions to all the POCSO Courts for necessary compliance :-

(i) The special courts established under the POCSO Act shall communicate orders to the concerned DLSA as soon as they are

passed, though not later than three (03) working days from the date of issuance of the order, by sending a copy of the order physically and also via the official email id of the designated court reader.

(ii) The special courts shall ensure that the victim impact assessment report is filed by the I.O. ordinarily within two (02) weeks.

Above directions of the Hon'ble Court should be complied scrupulously by all the Special Courts dealing with cases under the Protection of Children from Sexual Offences (POCSO) Act, 2012 so as to ensure timely and effective disbursal of compensation to the child victims.

Sd/-

Kanwal Jeet Arora
Registrar General

Endst. No.:181-187/SCMSC/DHC/2024 Dated: 30.09.2024

Copy forwarded for information to:

1. All Special POCSO Courts in Delhi through the Learned Principal District and Sessions Judges (HQ), Tis Hazari Courts, Delhi.
2. All Learned Principal District and Sessions Judges, Delhi with a request to bring the circular to the notice of all the Judicial Officers in their respective District along with the request to upload the same on the official website of the respective District Courts and Delhi District Courts.
3. The Director (Academics), Delhi Judicial Academy
4. Member Secretary, Delhi State Legal Services Authorities (DSLSA).
5. The Commissioner of Police, Delhi.
6. P.A. to Registrar (Computer) for uploading the same on the website of this court under the heading of Notifications and Practice Directions.
7. Guard File.

DELHI STATE LEGAL SERVICES AUTHORITY

(Constituted Under the 'Legal Services Authorities Act, 1987', an Act of Parliament)

Under the Administrative Control of High Court of Delhi

Central Office, Patiala House Courts Complex, New Delhi - 110001

Ph. : 23384781, Fax : 23387267, Email : **dslsa-phc@nic.in**

STANDARD OPERATING PROCEDURE

(with respect to operation of DELHI VICTIM COMPENSATION SCHEME 2018)

INTRODUCTION:-

1. Criminal Justice System imposes a ***positive, important*** **and** ***dominant*** obligation on the State, to protect its citizens from any harm to their person or property. State is obligated with a responsibility to deprive individuals of the power to take law into their hands in order to commit crime against fellow citizens. This proposition of State responsibility puts the blame of crime, on the State of having failed to protect its subjects against crime. "***Grant of compensation to the victims***" of crime, is thus a necessary consequence of such failure. Even otherwise, State is supposed to assist the vulnerable and marginalized, as a matter of public policy.

2. *Universal Declaration of Human Rights, International Covenant on Civil* and Political Rights as well as *General Assembly Resolutions* have defined a model of **'Victim Compensation'** which is accepted by most States as an obligation towards their citizens.

3. On the basis of 41st Report of Law Commission of India, Section 357 was introduced in Code of Criminal Procedure vide Code of Criminal Procedure Bill of 1970, with the object and intent to provide relief to the victims of crime. Besides, Section 357 of Code of Criminal Procedure, Section 5 of Probation of Offenders Act, 1958 is there on the statute book, as the Statutory Commands for awarding compensation to the victims of crime.

4. Bare perusal of the ***words*** and ***import*** of these two statutory provisions, using which criminal courts **may** direct grant of compensation to the victims, reveals **inherent limitations** therein. The same are:

i. Both can be **invoked only** in the event of the person put to trial, being held guilty and convicted of crime.
ii. Quantum of compensation awarded to the victim depends upon the **financial capacity** of the convict.
iii. These provisions **do not** give security of compensation to the victim.
iv. These Provisions **do not** contemplate any contingency for grant of emergent/interim compensation, to the victim.
v. These provisions **do not** prescribe any outer limit or the timeline for payment of compensation.

5. With the turn of the present century, development had taken place in ***"Victim Centric Jurisprudence"***. There had been debates and extensive discussions on the role and responsibility of the State as well as Courts. In terms of ***victimology***, it has been extensively debated, as to

whether responsibility of the State ends merely by registering a case, conducting investigation, initiating prosecution and the resultant acquittal/ conviction of the person put to trial or it extends any further vis a vis the "*victim of the crime*". Citizens of any State, more particularly the "***victim of crime***", do have a legitimate expectation from the State, not only to catch and punish the guilty but also of ***reparation***. It is the expectation of the victim, that State should look for his/her *rehabilitation* including ***monetary compensation*** for the loss or injury, suffered because of the crime.

6. ***Victim Centric Jurisprudence*** has brought about a shift in the paradigm of justice, putting obligation on the State, that in addition to ensuring successful prosecution, it is required to support the victims and their dependents for their rehabilitation. To commemorate the same, instead of being limiting itself just to monetary compensation, ***Legislature and Courts*** of various countries have adopted laws, policies and Schemes for ***"restitution and reparation"*** of the victims.

7. Keeping pace with the change and the resultant obligation on ***Legislature***, has seen the advent of Section 357A in Code of Criminal Procedure, by way of Code of Criminal Procedure (Amendment) Act, 2008

8. ***Hon'ble Apex Court*** *too* has put a positive obligation, on the Courts dealing with criminal trials in a case titled ***"Ankush Shivaji Gaikwad vs. State of Maharashtra"***, (2013) 6 SCC 770. Hon'ble Apex Court directed that:-

"while the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation".

(emphasis supplied)

9. *On the aspect of grant of compensation to the victim, in case titled "**Suresh vs. State of Haryana**" reported as (2015) 2 SCC 227, Hon'ble Apex Court noted inherent limitations of Section 357 Cr.P.C. as under:-*

"21. Though a provision has been made for compensation to victims under Section 357 Cr.PC, there are several inherent limitations. The said provision can be invoked only upon conviction, that too at the discretion of the Judge and subject to financial capacity to pay by the accused. The long time taken in disposal of the criminal case is another handicap for bringing justice to the victims who need immediate relief, and cannot wait for conviction, which could take decades. The grant of compensation under the said provision depends upon financial capacity of the accused to compensate, for which, the evidence is rarely collected. Further, victims are often unable to make a representation before the court for want of legal aid or otherwise. This is perhaps why even on conviction this provision is rarely pressed into service by the courts. Rate of conviction being quite low, inter alia, for competence of investigation, apathy of witnesses or strict standard of proof required to ensure that innocent is not punished, the said provision is hardly adequate to address to the need of victims...||

(emphasis supplied)

10. Hon'ble Apex Court in **Suresh's case (supra)** while imposing a positive obligations on all the Criminal Courts, went on to direct as under:

"16. ...It is the duty of the courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the court

ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case.||

(emphasis supplied)

11. It clearly emerges from plain reading of ***Section 357A Cr.P.C.*** coupled with the directions given by Hon'ble Apex Court in ***"Ankush Gaikwad's case & Suresh's case"*** (Supra) that the award of compensation to the victim is now not dependent on an individual being found guilty. Compensation can be awarded from the funds made available by the State under ***Victim Compensation Scheme***, even if the offender is not traced or identified or case brought against any person has resulted in acquittal or discharge. No doubt, in order to have a legitimate claim under Section 357A Cr.P.C. in terms of Victim Compensation Scheme, there must be *requisite proof* of commission of crime/offence and victim of such offence being properly identified requiring rehabilitation.

Purpose/Vision:-

12. Section 357A Cr.P.C. which on one hand ***obligates*** State Government to draw a *"Victim Compensation Scheme"*, on the other hand it defines the role of District Legal Services Authorities to decide the quantum of compensation (i.e. interim and/or final) to be awarded to the victim.

13. In compliance of the statutory obligation, Delhi Victim Compensation Scheme was promulgated for the ***first time*** in the year ***2011*** and after the directions of the Hon'ble Supreme Court of India, this 'scheme' has been amended and updated. Thus, now ***Delhi Victim Compensation Scheme, 2018*** (hereinafter referred to as *'Scheme'*) is in vogue.

14. Purpose of the ***'Scheme'*** is to minutely gauge, recognize and redress the rights and rehabilitation needs of each victim. Under this 'Scheme', Delhi State Legal Services Authority (hereinafter referred to as 'Authority') was made the Nodal Agency to award/disburse appropriate compensation to the victims. The Scheme also provides for creation of ***separate*** Victim Compensation ***Fund*** and it is from this Victim Compensation Fund, *adequate compensation* as per 'Scheme' is awarded/disbursed by the Authority.

15. Section 357A Cr.P.C. further ***obligates*** the District Legal Services Authorities to make provisions of immediate *medical assistance* and / or *monitory assistance to the victim,* either on an application of the victim himself / herself, SHO or on recommendation made by the Court. It thus ***envisions*** a programme to harmoniously tie the provisions of Section 357, Section 357A Cr.P.C., rehabilitative support, role of the Courts, role and duties of District Legal Services Authorities, vis a vis the accountability of the State in the ***best interest of the victim.***

16. The coordination between the various limbs i.e. Courts, investigating agency, DLSA as well as State Legal Services Authority must be streamlined in the best interest of the victim, in realizing the compensation to him/her which is the very **object** and purpose for which *"Victim Compensation Scheme"* has been notified under section 357A C.P.C.

17. Delhi Victim Compensation Scheme contemplates grant of **interim** compensation and **final** compensation. Interim compensation, as the name suggests, can be awarded immediately after registration of case and before the final decision.

18. In some of the cases, more particularly in rape cases, where interim compensation has been awarded, it is seen that at times, complainant **ceases** to be a victim, in terms of 'Scheme', as he/she **withdraws** allegations made by him/her, at the time of registration of case or **turns hostile** during examination before court or the allegations so levelled are found to **false**. Such a complainant/beneficiary should be made accountable for the interim compensation disbursed, on the basis of initial averments made in the FIR. Such situations though uncalled-for, do arise and to avoid misuse of public funds, relevant provisions of recovering back the compensation, which are there in the 'Scheme', must be made **alive**. By doing so, not only the public money given to such **undeserving** beneficiary, can be brought back in the ***victim compensation fund***, but the same also acts as an inhibiting factor against vexations allegation.

19. Experience has shown that in certain cases either false allegations were levelled or the allegations initially levelled were withdrawn, during the pendency of the matter, which leads to acquittal of the accused person.

20. One such matter came to the notice of Hon'ble High Court and taking note of such **aberrations,** Hon'ble High Court of Delhi in the case titled as *"**Rajkumar Vs. State** bearing Crl. Appeal No.187/2008 decided on 03.12.2019,* has enjoined Member Secretary, DSLSA with duty to issue guidelines and to take appropriate measures for recovering the compensation from undeserving beneficiaries, so that there is **no abuse** of the Victim Compensation Scheme and that it attains its intended objectives.

21. Thus, Standard Operating Procedure (SOP) for all the stakeholders to be followed, is put in place so that desired objective of **Victim Compensation Scheme 2018,** may be accomplished.

(PART-A)

ROLE AND RESPONSIBILITY OF COURT

16

A.1 The Code of Criminal Procedure 1973 defines "victim" vide Section 2 (wa) as under:-

> *"victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused persons has been charged and the expression "victim" includes his or her guardian or legal heir."*

(emphasis supplied)

A.2 It is inherent in the expression of *"Victim"* mentioned in the definition, to be a person *"who has suffered loss or injury as a result of crime and who requires rehabilitation"*. **Commission** of crime thus is *pre requisite* or *sine qua non,* besides the **identification** of a particular person as *"Victim"* requiring rehabilitation, for disbursal of **compensation**. Meaning thereby if ***"no offence"*** has been committed, for the purposes of criminal law, there can be no victim and accordingly, no compensation can be granted in such case.

A.3 On composite analysis of Section 357 & Section 357A Cr.P.C, **Courts** dealing with trial of criminal cases, **cannot *"direct"* but can only *"make recommendation"*** for grant of compensation to be paid under Section 357A Cr.P.C.

A.4 Before making a ***recommendation*** under sub-Section (2) of Section 357A Cr.P.C, for compensation to be paid in a criminal case wherein a person has been ***found guilty*** of complicity in the crime which has been proved, the criminal court must make inquiry as to whether :

(a) The victim (or his dependents) had **suffered** "loss or injury as a result of the crime" and "require rehabilitation";

(b) the compensation can be ordered to be paid under Section 357 Cr.P.C by the convict;

(c) the compensation awarded under Section 357 Cr. PC is "**not adequate**" for "**rehabilitation**";

A.5 If a criminal case ends in ***"acquittal"*** **or** ***"discharge"*** of the person arraigned as the accused, the criminal court may "make recommendation for compensation" if :

(a) the ***commission*** of the offence has been duly ***proved***;

(b) the victim of such offence has been duly ***identified***; and

(c) there is a case made out of ***"loss or injury as a result of the crime"*** suffered by such victim requiring ***"rehabilitation"***.

A.6 As per *Section 33(8) of the POCSO Act, 2012,* only the Special Court designated as ***Children Court / POCSO Court*** are authorized by law to **quantify** the quantum of compensation. The said Special Court while quantifying the compensation should take into account the Schedule of compensation annexed in **Delhi Victim Compensation Scheme, 2018;**

A.7 ***No other Court*** except the Children Court/POCSO Court should quantify the quantum of compensation and it **can only recommend** the matter for grant of compensation to the concerned District Legal Services Authority;

A.8 Trial Court while recommending the matter for grant of compensation should take into consideration Delhi Victim Compensation Scheme, 2018 as well as the fact that those offences which ***are not*** covered under the 'Scheme', cannot be considered by District Legal Services Authority. Thus, such matters **should not** be recommended for grant of compensation.

A.9 Trial Court, at any stage of the proceeding pending before it, may recommend/refer the matter for grant of **interim compensation** to the victim. The interim compensation can only be **quantified** by POCSO Court under **Section 33(8) of POCSO Act, 2012**;

A.10 In **complaint cases**, the Court may recommend for **grant of interim compensation** to District Legal Services Authority **only when** accused has been summoned on the basis of pre summoning evidence and not at any stage prior thereto;

A.11 Trial Court while recommending the matter to concerned District Legal Services Authority for grant of compensation should send a **copy of the judgment** in case of **final** compensation and / or **copy of order** while recommending the matter for **interim** compensation;

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A.12 For prompt and immediate consideration of the recommendations so made for compensation, it is desired of the Court to mention the details of victims and/or dependents including their addresses, telephone numbers to facilitate the District Legal Services Authority to conclude its enquiry at the earliest;

A.13 The authorisation in law by virtue of sub-section (6) of Section 357A Cr. PC to arrange for "*immediate first-aid facility or medical benefits*" or "*any other interim relief* to be made available to the victim, on the **certificate of police** or the magistrate also necessarily requires due proof, on the basis of ***"tangible material"***, of commission of an offence and it having resulted in loss or injury on which account, the victim is in need of being helped ***"to alleviate the suffering"***. Thus, the Court before passing any order for grant of such relief, which in itself should be treated as a certificate, is required to consider these pre-requisites

A.14 **Recovery of compensation** : In case Trial Court while finally deciding the matter records the finding to the effect that the allegations levelled by the victim were **false or that no offence** has taken place and if in that case any interim compensation was granted, it should ***recommend*** the concerned District Legal Services Authority to initiate proceedings, as per 'Scheme' for **refund** of the interim compensation and while doing so, copy of the judgment/finding to that effect, be also forwarded to the concerned DLSA;

A.15 **Recovery of Compensation from person(s) responsible for causing loss of life or injury as a result of the crime committed:** In appropriate cases if the trial court while recommending the matter to DLSA for grant of compensation feels that, the said compensation if granted, to the victim under Delhi Victims Compensation Scheme, 2018, should be recovered from the person(s) responsible for causing loss of life or injury, then the said trial court should ***recommend DLSA***, to get the said compensation amount recovered from the person responsible for causing injury to the victim by instituting appropriate proceedings. However, in order to **determine** whether the offender is capable of compensating the victim or not, the Trial Court **may ask** the offender to submit an **affidavit** containing the details of his/her **assets/ income** while hearing arguments on point of sentence.

Note: In order to sensitize the Judicial Officers presiding over the criminal courts for effective and efficient implementation of "Victim Compensation Scheme" and proper utilization of "Victim Compensation Fund", an oral request has already been made to Director / Officiating Chairperson, Delhi Judicial Academy. Written Communication to this effect shall be submitted with Delhi Judicial Academy after approval of the SOP by Hon'ble Executive Chairperson and Hon'ble Patron in Chief, DSLSA, so that Delhi Judicial Academy may incorporate the same in its Calender.

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(PART-B)

ROLE AND RESPONSIBILITY OF DISTRICT LEGAL SERVICES AUTHORITY (DLSA) / DISTRICT VICTIM COMPENSATION COMMITTEE

22

B.1 On composite reading of Section 357A Cr.P.C. coupled with Delhi Victim Compensation Scheme, 2018, ***Secretary*** District Legal Services Authority being empowered to grant compensation to the extent mentioned in the Schedules appended to Part-I and Part-II of the Scheme, is appointed as ***"Nodal Officer"*** for the same. Every district in order to assist the Secretary, has a ***"District Victim Compensation Committee*** (DVCC)" to assess the grant as well as quantum of compensation in terms of the *"Scheme"*.

B.2 Secretary, District Legal Services Authority (DLSA) / DVCC while considering any matter referred/recommended to it by the Trial Courts and/or on the application of the victim(s), shall consider the same on touchstone of the factors/parameters mentioned in the Scheme and **shall not** travel beyond the enumerated factors/parameters.

B.3 District Legal Services Authority /DVCC before deciding to award compensation, shall make **proper inquiry**, to independently find and assess, whether a case is made out in law and under the *"Scheme"* for payment of compensation. In doing so, District Legal Services Authority shall be guided by the conclusion / observation of the Court, recommending the grant of compensation.

B.4 In case none of the factors mentioned in the Scheme is found applicable, the District Legal Services Authority/ DVCC may **reject** the application for grant of compensation (in terms of Clause 9 of Part I of Delhi Victim Compensation Scheme 2018).

B.5 It is **not** necessary for DLSA to grant *"interim compensation"* in each and every case recommended to it or on application so filed before it by the victim. It has every right to **refuse** interim compensation for reasons to be recorded and consider the matter for *"final compensation"*, based on the outcome of the case and findings of the court.

B.6 District Legal Services Authority / DVCC while considering the matter before it for grant of compensation under Part-I of the Scheme should take into account that the victims and/or dependents **have not** received or granted compensation under any other Governmental Scheme. Whereas, while considering the case under Part-II of the Scheme, compensation under *"Delhi Victim Compensation Scheme 2018"* though can be granted, however the compensation so received by the victim, under any other government scheme, is required to be ***adjusted***.

B.7 District Legal Services Authority / DVCC is **not** empowered to grant compensation in those cases in which compensation is granted by Motor Accident Claims Tribunal.

B.8 District Legal Services Authority / DVCC while considering the application for compensation has to take into account the **extent of injury** suffered by the victim. DVCC is required to focus only on the physical or mental injury sustained by the victims and/or by the dependents in case of loss of life.

B.9 As the Scheme **does not** envisage the compensation for loss of any movable or immovable property, therefore the District Legal Services Authority / **DVCC, should not** grant compensation, for the same.

B.10 Grant of interim compensation should be considered by the District Legal Services Authority / DVCC on the basis of injury sustained by the victim, coupled with the medical need and assistance required by the victim and likely expenses on medical treatment.

B.11 If the investigation into the crime which is alleged, does not lead to the offender being ***"traced"*** or ***"identified"***, District Legal Services Authority/ DVCC still may award *"adequate compensation"* but, before it does so, it must hold an enquiry and find, on the basis of ***"tangible material"***, that :

i. the crime was in fact committed;
ii. there is a victim duly identified who has *"suffered loss or injury as a result of the crime"* and requires *"rehabilitation"*.

B.12 The payment of "interim compensation" under the "Victim Compensation Scheme" is ***subject to*** **"Final Determination"** of the right to receive compensation under the Law. Secretary, District Legal Service Authority, after passing the order for grant of *"interim/final compensation"* either on the basis of recommendation of the Court or on application of the victim, should get an *"undertaking/ indemnity bond"* filled from the victim in a prescribed format in English or Hindi, format of the *"undertaking/indemnity bond"* to be given are annexed as ***Annexure A1*** & ***A2***. In cases of **minor victim**, the said undertaking/indemnity bond be got filled from the guardian, through whom the compensation is granted to the victim in the prescribed format in English or Hindi, format of the same are annexed as ***Annexure B-1*** & ***B-2***.

B.13 It is incumbent upon ***Secretary*** of each District Legal Services Authority to send a copy of order of grant of **interim / final** compensation immediately after passing of the order to Delhi State Legal Services Authority (DSLSA) for disbursement as well as to the concerned Trial Court for record purposes.

B.14 ***Secretary***, District Legal Services Authority, in cases of grant of ***"Interim compensation"*** before filing of charge sheet, should also hand over a copy of such order to the Investigating Officer (IO) for him to incorporate the said fact in the charge-sheet, while filing it before the Court, and also for annexing copy of such order with the chargesheet.

B.15 In terms of judgment of Hon'ble High Court titled ***"Geeta Devi vs. Union of India"*** bearing FAO 22/2015 decided on 21.04.2017 and ***"Sachindra Mishra Vs. Sunita and Others"*** [WP(C) No.7398/2016, decided on 04.05.2017)] as well as **Rule 12** of Part I and **Rule 11** of Part II, of Delhi Victim Compensation Scheme 2018, compensation (whether interim or final) is not to be released to the beneficiary in ***lump-sump***. It is mandate of the scheme that care should to be taken that the compensation money is used for rehabilitation of the victim and not frittered away. Thus, only 25% of the same should be released initially and rest in a phased / staggered manner.

B.16 ***Secretary*** of each District Legal Services Committee, being the Nodal Officer on the basis of decision taken by DVCC, shall therefore pass the award granting interim / final compensation in a staggered manner, strictly in compliance with the provisions of the ***"Scheme"***.

B.17 In order to ensure that the compensation amount so awarded is released to the beneficiary / victim, strictly in accordance with the award, a copy of the same shall be sent to the banker of the beneficiary, ***seeking necessary compliance***. Banker of the beneficiary shall submit a compliance report to the **Secretary** of the concerned DLSA.

B.18 Secretaries of DSLSA in turn, on **quarterly basis** shall forward all these "Compliance Reports to Delhi State Legal Services Authority, for record purposes and for future action, if required.

B.19 **Recovery of compensation:** In case of receipt of recommendation from the Court regarding recovery of interim/final compensation granted to the victim, on the basis of finding recorded by the Court of **false allegations** or to the effect that **no offence** has taken place, ***Secretary DLSA*** should take

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immediate steps for recovery of the compensation already awarded in terms of Clause 10(7) of First Part and / or Clause 9(5) of Second Part of Delhi Victim Compensation Scheme 2018.

B.20 In case the factum of **falsehood** of allegations comes to the knowledge of Secretary DLSA, otherwise than the orders of the Court, and also if on conclusion of investigations, 'cancellation report' is filed and accepted by the Court on finding that ***"no offence"*** was committed, then DLSA shall conduct an enquiry at the earliest, by giving a Show Cause Notice to the victim calling upon him/her as to why the compensation already granted to him/her be not ordered to be recovered/refunded. An opportunity of being heard be given by Secretary DLSA to the beneficiary before passing the orders.

B.21 In cases of initiation of such inquiry, Secretary of the concerned DLSA should recommend *stopping of all payments* including interest to the account of victim from the FDR(s), which was/were, made out of the compensation awarded to the victim, by directing the Bank of the beneficiary to do so.

B.22 After passing the order for grant of *"interim/final compensation"* either on the basis of recommendation of the Court or on application of the victim, should get an *"undertaking/ indemnity bond"* filled from the victim in a prescribed format in English or Hindi, format of the *"undertaking/indemnity bond"* to be given are annexed as ***Annexure A1*** & ***A2***. In cases of **minor victim**, the said undertaking/Indemnity bond be got filled from the guardian, through whom the compensation is granted to the victim in the prescribed format in English or Hindi, format of the same are annexed as ***Annexure B-1*** & ***B-2***.

B.23 **Recovery of Compensation from person(s) responsible for causing loss of life or injury as a result of the crime committed:** Delhi State Legal Services Authority/DLSA, in appropriate cases, shall institute proceedings on its own or **on directions of Trial Court,** before the competent court of law for recovery of the compensation granted to the victim (*under Section 357A Cr.P.C. or Clause 15 of IInd Part of Delhi Victim Compensation Scheme 2018*) or his/her dependent(s) from person(s) responsible for causing loss of life or injury as a result of the crime committed by him/her.

B.24 Delhi State Legal Services Authority in order to ensure the release of compensation in a phased manner, has also issued directions to Secretaries of District Legal Services Authorities to send copy of the Award granting compensation (interim / final) in staggered manner, to the banker of the beneficiary. Secretary of each District Legal Services Authority is further called upon to seek necessary ***"compliance report"*** from the bankers of beneficiaries. They are further obligated to furnish these 'compliance reports' on "***quarterly basis***" to Delhi State Legal Services Authority for record purposes and for future action, if any.

> ***Note: Secretaries of all District Legal Services Authorities have already been sensitized to strictly follow the guidelines for uniform implementation of the "Scheme" strictly to achieve the objective for which the same was enacted. Secretaries have been further sensitized to monitor the progress and result of investigation and trial with respect to all cases wherein "interim compensation" is provided and to initiate recovery proceedings in all appropriate cases.***

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(PART-C)

ROLE AND RESPONSIBILITY OF DELHI STATE LEGAL SERVICES AUTHORITY (DSLSA)

C.1 Delhi State Legal Services Authority, being the Nodal Agency and Custodian of "***Victim Compensation Fund***" is under an obligation to see that the funds are utilized in the best interest of the victim to **alleviate** the sufferings sustained by the victim, owing to the crime and are not **frittered** away by unscrupulous persons, levelling false and vexatious accusations only for the purposes of getting compensation.

C.2 Delhi State Legal Services Authority immediately on receipt of the award from "District Legal Services Authorities" with respect to grant of "Interim / Final Compensation", coupled with copy of the 'undertaking / indemnity bond', given by the beneficiaries, shall disburse the amount at the earliest (*subject to availability of funds*) strictly in terms of the award.

C.3 Delhi State Legal Services Authority in order to scrupulously follow and ensure that the compensation be released in a phased / staggered manner, has already issued instructions to its banker ie. UCO Bank, Patiala House Branch, directing it to get the necessary software developed. Delhi State Legal Services Authority in order to ensure that the FDRs in the name of beneficiaries are prepared and retained for the period mentioned in the award with banker of the Authority ie. UCO Bank Patiala House Court Branch, New Delhi has issued instructions to the Manager for needful.

C.4 It has been informed by Manager UCO Bank, Patiala House Branch that they are in touch with their head-office and shall prepare the necessary software at the earliest, keeping in mind the RBI Guidelines.

C.5 Delhi State Legal Services Authority, has directed its banker ie. UCO Bank, Patiala House Branch, that till the time necessary software is developed by them, they while releasing the compensation amount to the

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banker of beneficiary shall **forward** the copy of award passed by DLSAs, with directions to release the same to the beneficiary strictly in terms thereof. Banker of DSLSA is further mandated to seek ***"compliance report"*** from the banker of beneficiary and submit a ***"Monthly Report"*** to that effect to Delhi State Legal Services Authority (DSLSA).

C.6 Delhi State Legal Services Authority in order to ensure the release of compensation in a phased manner, has also issued directions to Secretaries of District Legal Services Authorities to send copy of the Award granting compensation (interim / final) in staggered manner, to the banker of the Beneficiary. Secretary of each District Legal Services Authority is further called upon to seek necessary ***"compliance report"*** from the bankers of beneficiaries. they are further obligated to furnish these 'compliance reports' on ***"quarterly basis"*** to Delhi State Legal Services Authority for records and for future action, if any.

(6) FUTURE MECHANISM FOR MONITORING THE PROGRESS / & RESULT OF INVESTIGATION OR TRIAL IN ALL SUCH CASES IN WHICH INTERIM RELIEF OF COMPENSATION HAS BEEN PROVIDED UNDER THE VICTIM COMPENSATION SCHEME.

FOR

RECOVERY OF COMPENSATION:

C.7 Secretary of each District Legal Services Authority is appointed as **"NODAL OFFICER"** to monitor the progress & result of investigation or trial, with respect to all cases in which interim compensation is provided under "Delhi Victim Compensation Scheme". Being Nodal Officer, Secretary of the concerned Legal Service Authority, is further authorized / directed to initiate the recovery of the compensation provided to the beneficiary, in the event of it being found on conclusion of investigations or trial that ***"no offence"*** was committed.

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C.7 Further in the event of an accused being held guilty and convicted, if Secretary on its own or on recommendation of the Court, finds that compensation so paid from the "Victim Compensation Fund" under section 357A Cr.P.C, has to be recovered from the wrong doer, Secretary of District Legal Services Committee shall initiate the necessary recovery proceedings before Court of Law under intimation to Delhi State Legal Services Authority.

(a) **Mode and Manner in case recovery is to be affected from COMPLAINANT / BENEFICIARY :**

C.8 In case of receipt of recommendation from the Court regarding recovery of *"interim/final compensation"* to the victim / complainant, on the basis of finding recorded by the Court of **false allegations** or to the effect that **no offence** has taken place, the compensation already paid has to be recovered back from the beneficiary.

C.9 ***Secretary*** of the concerned District Legal Services Authority, is appointed as 'Nodal Officer' for initiating the recovery proceedings, in terms of Clause 10(7) of Ist Part and / or Clause 9(5) of IInd Part of Delhi Victim Compensation Scheme 2018.

C.10 ***Secretary*** of the concerned District Legal Services Authority, has been authorized to the effect that in case, the factum of **falsehood** of allegations comes to the knowledge of DLSA, otherwise than the orders of the Court, then Secretary DLSA shall conduct an enquiry at the earliest, by giving a ***Show Cause Notice*** to the victim calling upon him/her as to why the compensation already granted to him/her be not ordered to be recovered/refunded. An opportunity of being heard shall be given by ***Secretary*** of the concerned District Legal Services Authority, to the beneficiary before passing the orders.

C.7 Further in the event of an accused being held guilty and convicted, if Secretary on its own or on recommendation of the Court, finds that compensation so paid from the "Victim Compensation Fund" under section 357A Cr.P.C, has to be recovered from the wrong doer, Secretary of District Legal Services Committee shall initiate the necessary recovery proceedings before Court of Law under intimation to Delhi State Legal Services Authority.

(a) **Mode and Manner in case recovery is to be affected from COMPLAINANT / BENEFICIARY :**

C.8 In case of receipt of recommendation from the Court regarding recovery of *"interim/final compensation"* to the victim / complainant, on the basis of finding recorded by the Court of **false allegations** or to the effect that **no offence** has taken place, the compensation already paid has to be recovered back from the beneficiary.

C.9 ***Secretary*** of the concerned District Legal Services Authority, is appointed as 'Nodal Officer' for initiating the recovery proceedings, in terms of Clause 10(7) of Ist Part and / or Clause 9(5) of IInd Part of Delhi Victim Compensation Scheme 2018.

C.10 ***Secretary*** of the concerned District Legal Services Authority, has been authorized to the effect that in case, the factum of **falsehood** of allegations comes to the knowledge of DLSA, otherwise than the orders of the Court, then Secretary DLSA shall conduct an enquiry at the earliest, by giving a ***Show Cause Notice*** to the victim calling upon him/her as to why the compensation already granted to him/her be not ordered to be recovered/refunded. An opportunity of being heard shall be given by ***Secretary*** of the concerned District Legal Services Authority, to the beneficiary before passing the orders.

C.11 In cases of initiation of such inquiry, Delhi State Legal Services Authority shall direct its banker to stop all pending payments of compensation including interest to the account of victim from the FDR(s), which was/were, made out of the compensation awarded to the victim. For the same, requisite directions shall be issued to the banker of the beneficiary as well.

(b) Mode and Manner, in case, recovery is to be affected from the CONVICT:-

C.12 It is trite to say that primary liability, responsibility to compensate the victim for the loss / injury suffered owing to the crime, is of the 'wrong-doer'. There can be instances where a finding is returned by the Court to the effect, that the person facing trial is **held guilty,** and also the observation that the said person is **financially capable** of paying compensation to the victim. Then on receipt of such findings and / or recommendation from the Court regarding recovery of ***"interim / final compensation"*** paid to the victim from the "Victim Compensation Fund" under section 357A Cr.P.C that the same is to be recovered from the wrong-doer, ***Secretary*** of the concerned District Legal Services Authority, is **mandated** to initiate recovery proceedings in terms of Clause 15 of Part-II of Delhi Victim Compensation Scheme 2018.

C.13 Secretary of the concerned District Legal Services Authority, for the purposes of initiating recovery proceedings from the wrong doer being the "Nodal Officer" is permitted to hold an 'Inquiry', guided of course, by the finding / observations made by the trial court.

(c) SAFEGUARDS to be adopted to ensure recovery of the compensation paid to the beneficiary in case of any eventuality as mentioned hereinabove:-

C.14 *Secretary* of the concerned District Legal Services Authority, is directed to obtain an **"Undertaking / Indemnity Bond"** from the beneficiary, to take care of the possibility of recovering it back in the event of it being ultimately concluded that, the accusations with respect to *'commission of offence'* were **unfounded / false.** The format of "Undertaking / Indemnity Bond" is enclosed herewith as *Annexure A-1, Annexure A-2 and Annexure B-1 and Annexure B-2.*

C.15 It is obligated on the part of Secretary DLSA to send a copy of this "Undertaking / Indemnity Bond" along with the copy of award of interim compensation and/or final compensation immediately to **Delhi State Legal Services Authority (DSLSA)** for disbursement & record purposes.

C.16 *Secretary* of each District Legal Services Authority is directed to furnish ***"Quarterly Reports"*** to Delhi State Legal Services Authority, in all such cases where recovery proceedings is initiated by him for getting back the compensation amount either from the beneficiary or from the convict, *as the case may be.* Delhi State Legal Services Authority through Special Secretary shall monitor the progress of each such case initiated for recovering the compensation amount.

(7) MECHANISM FOR SCRUTINY OF ALL PAST CASES WHERE INTERIM COMPENSATION WAS AWARDED (including those of 2017) NOTED BY HON'BLE HIGH COURT IN 'RAJ KUMAR'S CASE (supra) FOR TAKING NECESSARY MEASURES FOR RECOVERY OF THE AMOUNTS GRANTED AS COMPENSATION WRONGFULLY.

C.17 In compliance of the directions given by Hon'ble High Court in Para-90 (vi) of the judgment in *Raj Kumar's Case (supra),* a Committee consisting of *Sh.Gautam Manan, Special Secretary* Delhi State Legal Services Authority and *Ms.Namrita Aggarwal, Additional Secretary,* Delhi State Legal

Services Authority, was constituted by the undersigned to scrutinize all cases pertaining to FIRs registered in the year 2016, 2017 and 2018 for offences under section 376 IPC and / or under POCSO Act, wherein interim compensation was granted to the victim / beneficiaries, and which have resulted in ***acquittals***.

C.18 It was mandated to the committee to scrutinize the final judgments delivered in all such cases, in order to find out as to whether Court has returned the finding to the effect that ***"no offence"*** was committed. Committee was directed to prepare list of all such cases, so that the necessary measures for recovery in accordance with law, of such amounts, as has been wrongly paid can be initiated against the beneficiaries.

C.19 The Committee after scrutiny of all such cases has prepared a list of 24 such cases, which pertains to different District Legal Services Authorities. The same is enclosed herewith as ***"Annexure C-1"***.

C.20 Requisite directions have been given to the Secretary of concerned District Legal Services Authorities, to issue a "Recovery Notice" *(draft of which has also been supplied to them)* to the beneficiaries, asking them to **return / refund** the amount of *"interim / final compensation"* paid to them, immediately. They have further been ***directed*** to initiate necessary ***"Recovery Proceedings"*** before Court of Law, in case, the said wrongful beneficiaries fails to return / refund the amount within the notice period.

C.21 Delhi State Legal Services Authority through Special Secretary Delhi State Legal Services Authority shall monitor the progress of all such cases initiated for recovery of the "*Interim / final compensation*" wrongly paid to the beneficiaries, so as to see that the amount gets back to the *"Victim Compensation Fund"*.

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(PART-D)

ROLE AND RESPONSIBILITY OF INVESTIGATING AGENCY

D.1 Investigating Officers/SHOs in all appropriate cases, as per the Victim Compensation Scheme should report the matter along with his / their recommendations to the concerned District Legal Services Authority, for grant of *"interim compensation"*. Investigating Officers are further directed that they should also provide the necessary details of the of the victim(s) / dependent(s) with respect to their addresses, contact numbers and bank details to the concerned District Legal Services Authority, so that necessary inquiry may be conducted by the Authority / District Victim Compensation Committee at the earliest.

D.2 In order to assist the District Victim Compensation Committee/ District Legal Services Committee, for conducting the inquiry with respect to the question of grant of ***"interim compensation"*** to the victim(s), Investigating Officers / SHOs should personally assist the victim(s) or dependent(s).

D.3 Investigating Officers / SHOs in cases where award for ***"interim compensation"*** has been passed by Secretary of District Legal Services Authority, is directed to obtain a copy of such award. Investigating Officer is further directed to file copy of such award with the charge-sheet, as and when the same, is filed before the Court.

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(PART-E)

ROLE AND RESPONSIBILITY OF BANKERS

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E.1 In terms of Judgment of Hon'ble High Court titled ***"Geeta Devi vs. Union of India"*** bearing FAO 22/2015 decided on 21.04.2017 and ***"Sachindra Mishra Vs. Sunita and Others"*** [WP(C) No.7398/2016, decided on 04.05.2017)] as well as **Rule 12** of Part I and **Rule 11** of Part II, of Delhi Victim Compensation Scheme 2018, compensation (whether interim or final) is not to be released to the beneficiary in lump-sum. It is mandate of the scheme that care should be taken that the compensation amount is used for rehabilitation of the victim and not frittered away. Thus, only 25% of the same should be released initially and rest in a phased / staggered manner.

E.2 Secretary of each District Legal Services Committee, being the Nodal Officer on the basis of decision taken by DVCC, is supposed to pass the award granting interim / final compensation in a staggered manner, strictly in compliance with the provisions of the Scheme.

E.3 In order to ensure that the same is accordingly released to the beneficiary / victim, strictly in accordance with the award, a copy of the same shall be sent to the banker of the beneficiary seeking necessary compliance. Banker of the beneficiary **shall submit** a *"compliance report"* to the **Secretary** of the concerned DLSA.

E.4 Secretary in turn, on **quarterly basis** shall forward all these *"Compliance Reports"* to Delhi State Legal Services Authority.

E.5 Delhi State Legal Services Authority (DSLSA) maintains following accounts with UCO Bank, Patiala House Court Branch, through which the compensation amount is disbursed to the banker of beneficiaries:-

(i) Delhi Victim Compensation Account (DVCA)

(ii) Women Victim Compensation Fund Account (WVCF)

(iii) DSLSA Delhi Victim Compensation

(iv) Central Victim Compensation Fund (CVCF)

E.6 Pursuant to the receipt of copy of award alongwith copies of requisite "Undertaking/Indemnity Bond" filled by beneficiary, from District Legal Services Authority (DLSA), Delhi State Legal Services Authority (DSLSA) issues a mandate to its banker i.e. UCO Bank, Patiala House Court Branch, to release the awarded amount to the banker of beneficiary through RTGS.

E.7 In order to ensure that the compensation amount in terms of the Award, is released to the account of beneficiary in a phased manner, instructions were given to Manager of UCO Bank, Patiala House Court Branch, to come up with the solution / mechanism of creation of FDR(s), in the name of beneficiary. It was informed by the Manager of UCO Bank that owing to RBI Guidelines, FDR(s) cannot be prepared without necessary KYC and personal presence of beneficiaries / victims in the bank. It is however stated by Manager of UCO Bank Patiala House Court Branch, that he has forwarded the request to the Head Office, of the bank and they are in the process of creating a Software

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for ensuring the release of awarded compensation amount, in staggered / phased manner.

E.8 A communication has been received from the bank stating that they shall create a new software to cater to the needs of DSLSA for releasing the compensation amount to the beneficiaries in staggered manner at the earliest.

E.9 In the meantime, in order to ensure that victim / beneficiary gets the compensation amount strictly in accordance with the Award, **Manager UCO Bank Patiala House Court Branch**, is directed that on the basis of the mandate given to him for release of the compensation amount through RTGS, to the account of beneficiary, he shall ensure that another copy of Award is forwarded by UCO Bank to the "*bank of the beneficiary*" with directions to comply with the same and **not to** release the entire amount to the beneficiary in lump-sump.

E.10 Manager UCO Bank Patiala House Court branch is directed to get necessary *"compliance reports"* from the banks of the beneficiaries and in turn, submit the same to this Authority on ***'monthly basis'***.

Annexure A-1

Undertaking

To be submitted before the disbursal of the compensation amount under Delhi Victim Compensation Scheme, 2018

I/We.....(Name of the Victim or their Dependents) S/o,D/o,W/o ..... R/o..... hereby undertake that I/We have read all the entire Delhi Victims Compensation Scheme, 2018 and after fully understanding the same, I/We have filed in this Undertaking form.

I/We have understood that as a victim of an offence compensation has been awarded to me/us. I/we undertake that if Court gives a finding that criminal complaint & allegations against the offender/accused were false and no offence has been committed against victim, in such a case, if ordered by DSLSA/DLSA, I/we shall refund the amount received by me/us on behalf of victim to DSLSA/DLSA.

I fully understand that compensation has been awarded to me in staggered form. I undertake that without prior permission of Authority I shall not seek release of compensation amount prior to the expiry of period of FDR mentioned in the disbursal order.

I/we shall have no objection in case the amount supposed to be refunded by me/us in future is obtained by this Authority directly from my/our bank account/FDR opened/ prepared at the time of disbursal of the compensation under the Scheme.

This undertaking is given by me/ us is true and I/we shall abide by the aforesaid undertaking.

Date_____ **Signature of the Victim/Dependent**

Annexure – A-2

दायित्व पत्र

(दिल्ली पीड़ित क्षतिपूर्ति योजना, 2018के अंतर्गत क्षतिपूर्ति राशि वितरण से पूर्व प्रस्तुत)

मैं ..... (पीड़ित अथवा उनके आश्रितों के नाम) पुत्र/पुत्री/पत्नी..... निवासी .....
..... यह वचन देता/देती हूँ कि मैने दिल्ली पीड़ित क्षतिपूर्ति योजना, 2018 पढ़ ली है और इसे पूर्णतः समझने के पश्चात मैने यह दायित्व पत्र दायर किया है।

मैं यह समझ गया/गयी हूँ कि मुझे अपराध पीड़ित के रूप में क्षतिपूर्ति राशि प्रदान की गई है। मैं दायित्व लेता/लेती हूँ कि इस केस में यदि अदालत यह मानती है कि अपराधी/अभियुक्तों के खिलाफ लगाए गए आरोप झूठे थे और पीड़ित के खिलाफ कोई अपराध नही हुआ है तो DSLSA/DLSA के द्वारा आदेश पर मेरे द्वारा प्राप्त की गई राशि को मैं DSLSA/DLSA को लौटा दूंगा/दूंगी।

मैं पूरी तरह से समझता/समझती हूँ कि मुआवजे की राशि को मुझे किश्तों में दिया गया है। मैं यह वचन देता/देती हूँ कि प्राधिकरण की पूर्व अनुमति के बिना मैं FDR की राशि FDR के निर्धारित समय से पूर्व नही लूंगा/लूंगी।

मुझे भविष्य में योजना के अंतर्गत क्षतिपूर्ति वितरण के समय इस प्राधिकरण से प्राप्त राशि सीधे मेरे बैंक अकांउट / एफ डी आर से लौटाने में कोई आपत्ति नही होगी।

मेरे द्वारा दिया गया यह दायित्व पत्र पूर्णतः सही है और मैं उपरोक्त दायित्व पत्र का पालन करूंगा/करूंगी।

दिनांक .....

पीड़ित/आश्रित के हस्ताक्षर

Annexure B-1

Undertaking by Parent/Guardian of Victim

To be submitted before the disbursal of the compensation amount under Delhi Victim Compensation Scheme, 2018

I/We.....(Parent/Guardian of .....)

S/o, D/o, W/o .....

R/o.....

hereby undertake that I/We have read Delhi Victims Compensation Scheme, 2018 and after fully understanding the same, I/We have filled this Undertaking form.

I/We have understood that as a victim of an offence, compensation has been awarded to Victim .....(name).... I/we undertake that if Court gives a finding that criminal complaint & allegations against the offender/accused were false and no offence has been committed against victim, in such a case, if ordered by DSLSA/DLSA, I/we shall refund the amount received by me/us on behalf of victim to DSLSA/DLSA.

I fully understand that compensation has been awarded to me in staggered form. I undertake that without prior permission of Authority I shall not seek release of compensation amount prior to the expiry of period of FDR mentioned in the disbursal order.

I/we shall have no objection in case the amount supposed to be refunded by me/us in future is obtained by this Authority directly from my/our bank account/FDR opened/ prepared at the time of disbursal of the compensation under the Scheme.

This undertaking is given by me/ us is true and I/we shall abide by the aforesaid undertaking.

Date_____ **Signature of Parent/Guardian of victim**

Annexure – B-2

पीड़ित के माता पिता/अभिभावकों के द्वारा दायित्व पत्र

(दिल्ली पीड़ित क्षतिपूर्ति योजना, 2018के अंतर्गत क्षतिपूर्ति राशि वितरण से पूर्व प्रस्तुत)

मैं ..... माता–पिता/अभिभावक पुत्र/पुत्री/पत्नी .....

..... निवासी.....

..... यह वचन देता/देती हूँ कि मैने दिल्ली पीड़ित क्षतिपूर्ति योजना, 2018 पढ़ ली है और इसे पूर्णतः समझने के पश्चात मैने यह दायित्व पत्र दायर किया है।

मैं यह समझ गया/गयी हूँ कि अपराध पीड़ित के रूप में क्षतिपूर्ति राशि पीड़ित..... (नाम). को प्रदान की गई है। मैं दायित्व लेता/लेती हैं कि इस केस में यदि अदालत यह मानती है कि अपराधी/अभियुक्तों के खिलाफ लगाए गए आरोप झूठे थे और पीड़ित के खिलाफ कोई अपराध नही हुआ है तो DSLSA/DLSA के द्वारा आदेश पर मेरे द्वारा प्राप्त की गई राशि को मैं DSLSA/DLSA को लौटा दूंगा/दूंगी।

मैं पूरी तरह से समझता/समझती हूँ कि मुआवजे की राशि को किश्तों में दिया गया है। मैं यह वचन देता/देती हूँ कि प्राधिकरण की पूर्व अनुमति के बिना मैं FDR की राशि FDR के निर्धारित समय से पूर्व नही लूंगा/लूंगी।

मुझे भविष्य में योजना के अंतर्गत क्षतिपूर्ति वितरण के समय इस प्राधिकरण से प्राप्त राशि सीधे मेरे बैंक अकांउट / एफ डी आर से लौटाने में कोई आपत्ति नही होगी।

मेरे द्वारा दिया गया यह दायित्व पत्र पूर्णतः सही है और मैं उपरोक्त दायित्व पत्र का पालन करूंगा/करूंगी।

दिनांक .....

माता–पिता/अभिभावक के हस्ताक्षर

५१

Annexure – B2

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Contact No.....

Notice

1. That a case was registered vide FIR No._____ in PS _____.
2. That as per contents of FIR you have been mentioned as a victim of the crime and on the basis of your claim as victim of crime, you were awarded an amount of ₹_____ in pursuance to FIR No._____ PS_____ U/s _____ which have been deposited in your bank account as per details provided by you.
3. Vide Order dated _____ it has been decided by the Court that you are not a victim of crime hence, you are not eligible for any compensation under DVCS.
4. Therefore, you are directed to deposit the amount of ₹_____ received as compensation in District Legal Services Authority within 15 days, otherwise the compensation amount would be recovered from you through Legal proceedings. If, any legal proceeding is initiated then you shall be liable to pay the amount of Compensation received along with interest and expenses of legal proceedings.

Secretary

_____District Legal Services Authority

Annexure – B1

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.....

.....

Contact No.....

नोटिस / Notice

1. यह कि थाना..... में FIR No. ....., ... को दर्ज किया गया।
2. यह कि उपरोक्त FIR में आपने यह दावा किया कि आप अपराध से पीड़ित हैं, और आपके दावे के आधार पर आपको अपराध का पीड़ित मानते हुए आपको दिनांक ..... को ..... जिला विधिक सेवाएं प्राधिकरण द्वारा FIR No. ..... PS ....., ... U/s.....में ₹ .....का मुआवजा दिया गया था। जो आपके द्वारा दिए गए बैंक खाते में जमा करवाया गया।
3. दिनांक ..... के निर्णय में न्यायालय द्वारा यह निर्धारित हुआ कि आपके साथ कोई अपराध नही हुआ है इसलिए आप DVCS के तहत मुआवजे के अधिकारी नही हैं।
4. अतः आप मुआवजे के तौर पर प्राप्त की गई राशि ₹ .....15 दिन के भीतर जिला विधिक सेवाएं प्राधिकरण में जमा करवा दें अन्यथा मुआवजे की राशि की वसूली के लिए कानूनी कार्रवाई की जाएगी। अगर कानूनी कार्रवाई हुई तो आप यह राशि ब्याज सहित व मुकदमें के खर्चे के साथ देने के देनदार होंगे / होंगी।

सचिव

..... जिला विधिक सेवाएं प्राधिकरण

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Reserved on: 09.09.2024
Pronounced on:24.09.2024.

\+ **W.P.(C) 4827/2024**

ABHISHEK YADAV .....Petitioner

Through: Ms Mansi Sood, Ms Nimisha Menon and Ms Ragini Nagpal, Advocates.

versus

DELHI STATE LEGAL SERVICES AUTHORITY & ANR. .....Respondents

Through: Dr Amit George, Mr Adhishwar Suri, Ms Ibansara Syiemlieh, Mr Arkaneil Bhaumik, Advocates.
Mr Satyakam, ASC, with Mr Pradyut Kashyap, Advocate for GNCTD.
Ms Aditi Mohan and Ms Puru Lekhi, Advocates for Delhi High Court.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE AMIT BANSAL
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.

1. Although the instant petition is framed as a Public Interest Litigation Action [hereafter referred to as "PIL Action"], it is not adversarial, something that learned counsel appearing on behalf of the respondents acknowledge.

2. The petitioner claims to be a social worker who has acquired more than three years of experience as a support person for survivors under the Protection of Children from Sexual Offences Act, 2012 [hereafter referred to as the "POCSO Act"]. The petitioner claims that he has often accompanied

child survivors and their families to various District Legal Services Authority [DLSA] offices to assist them in navigating through the documentation and other procedural hiccups that come in the way of timely receipt of compensation.

3. These experiences have propelled the petitioner to file the instant writ action in public zeal.

4. During the hearing, we realized the present writ action has two parts.

4.1 The first part concerns shedding light and enhancing awareness of victims concerning their right to receive compensation.

4.2 The second part involves examining suggestions made by the petitioner to improve the process for disbursal of compensation, both interim and final, under the regime put in place, i.e., the POCSO Act and the Delhi Victim Compensation Scheme, 2018 [hereafter referred to as "2018 Scheme"] concerning child survivors of sexual abuse.

5. In this regard, the hearings were more in the form of deliberations between learned counsel for the petitioner, i.e., Ms Mansi Sood and learned counsel for the respondents, i.e., Dr Amit George, learned counsel, who appeared on behalf of the Delhi State Legal Services Authority [DSLSA]; Ms Aditi Mohan, learned counsel, who appeared for the Delhi High Court and Mr Satyakam, learned counsel, who appeared on behalf of the Delhi Police.

6. We examined the suggestions made against the backdrop of the 2020 Standard Operating Procedure [SOP]. We are consciously not referring to

the Delhi Victim Compensation Scheme, which was framed in 2011 and 2015, as it has been overtaken by the POCSO Act and the 2018 Scheme.

7. As indicated above, the part relating to making the child sexual abuse survivors aware of their right to receive compensation was crystalized in our order dated 01.08.2024. For convenience, the relevant part of the said order, which encapsulates awareness SOP, is set forth hereafter:

> *"1. Front Offices: District Legal Service Authorities (DLSAs) will set up a Front Office in a conspicuous place, preferably at the main entrance of the concerned court complex*
>
> *2. **Help Desks:***
>
> *(i) The Advocate and the Paralegal Volunteer (PLV) assigned duty at the Front Office shall be members of the Victim Compensation Help Desk at the Front Office of each DLSA. They shall interact with the victim(s) and resolve their queries regarding victim compensation while maintaining privacy and confidentiality, as required under the law.*
>
> *(ii) If the victim or her/his family member requires or desires it, PLVs shall accompany her/him to the designated courtroom to render assistance in moving an application for interim or final compensation or to inquire about the status concerning its disposal, and/or to respective DLSAs for obtaining information regarding the status of disbursal of compensation as well as availing of free legal aid.*
>
> *(iii) Whenever required, the PLVs would assist victims in availing the services of the counsellor appointed by DSLSA for each DLSA.*
>
> *3. **Nodal Officer**: The dealing official in every DLSA handling victim compensation matters shall be designated as the **Nodal Officer** to deal with any information/query of the victim regarding victim compensation. The Advocates and the PLVs manning the Victim Compensation Help Desk shall consult the Nodal Officer, if required, to provide the necessary information/assistance to the victim(s) regarding their compensation matters.*
>
> *4. **Training and Sensitization: The Advocates as well as PLVs manning the Victim Compensation Help Desk shall be trained, sensitized, and onbourded concerning issues arising from, but not limited to, the provisions of 'The Protection Of Children From Sexual Offences Act, 2012' ["POCSO Act"], 'the Protection of Children from Sexual Offences Rules, 2020' ["POCSO Rules"], and the Delhi Victims Compensation Scheme, 2018 ["2018 scheme"] by the concerned Secretary, DLSA, or his nominees [including domain experts]***

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by the 30th of every month, concerning the duties allocated to them in the coming month. The staff officials at the Front Office and the Nodal Officer posted at each DLSA shall also be given training and orientation concerning the scope of their work and duties.

*5. **Information Boards** – Bilingual Information Boards regarding the availability of victim compensation under the 2018 scheme shall be installed outside each designated court dealing with POCSO cases, setting forth, amongst other aspects, the following:*

i) First, victims are entitled to receive compensation under the 2018 scheme in consonance with the directions passed by the POCSO court under Section 33(8) of the POCSO Act, read with Rule 9 of the POCSO Rules.

ii) Second, victims are entitled to free legal aid from the concerned DLSA for preferring applications for grant of interim or final compensation.

iii) Third, particulars concerning the location of DLSA and the contact number of the concerned official/Nodal Officer.

*6 **Pamphlets** – DLSA will publish and circulate pamphlets to disseminate information and bring about awareness amongst the general public as well as the victims concerning entitlement and the process involved in receipt of compensation. Amongst other things, the pamphlet will detail out [the] documents required to be filed in support of the claim. The pamphlets published by DSLSA shall be placed in the Front Office of each DLSA and the designated courtroom, and will be simultaneously uploaded on the DSLSA website.*

*7. **Counselors**— The nine (9) full-time Counselors engaged by DSLSA who have been provided training and are now rendering services in DLSAs will provide psychosocial counselling and support to the victims. The SOP devised for the Counselors will form part of the instant protocol."*

8. Regarding the second aspect, we have concluded, *albeit* after discussing the issue with learned counsel for the parties, that an addendum to the existing SOP framed in the context of the 2018 Scheme needs to be appended. We have thus decided to have an addendum to the 2018 Scheme to provide a separate SOP for victims of child sexual abuse.

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9. This decision has been taken having regard to the fact that the 2018 Scheme framed by the National Capital Territory of Delhi [hereafter referred to as "NCT of Delhi"] under Section 357A of the Code of Criminal

Procedure, 1973 [hereafter referred to as "CrPC"] and the SOP of 2018 Scheme have aspects which would be relevant for disbursal of compensation to child victims whose cases fall under the POCSO Act. Therefore, to iron out the difficulties experienced by the child victims, which sometimes do not get addressed by the existing 2018 SOP, it is thought fit to have an addendum to it in the form of Part F.

10. It is pertinent to point out, at this juncture, that the existing SOP which has been framed in the backdrop of 2018 Scheme has five (05) parts [A to E]. The addendum we intend to put in place will be the sixth part, marked as Part F.

11. Thus, Part F would have five (05) clauses which would read as follows:

Part F

Preface

F-1 A harmonious reading of the provisions of the 2018 Scheme and Section 33(8) of the POCSO Act and the rules framed thereunder could establish that a child victim of sexual abuse is entitled to the following three (03) kinds of compensation:

(i) Interim compensation given directly under the 2018 Scheme based on the schedule appended thereto and the judgment rendered by the court in ***X v. State of NCT of Delhi (Acting through its Secretary) & Anr.***, 2022 SCC OnLine Del 3496. This compensation is payable once the victim makes an application in that behalf to the concerned District Legal Services Authority [DLSA].

(ii) Interim compensation awarded by the concerned special court under the POCSO Act.

(iii) Final compensation awarded by the special court under the POCSO Act.

F-1.1 Thus, the direction and instructions in this part would apply only to disbursal of compensation where the offence committed falls within the ambit of the POCSO Act and compensation is to be given in the circumstances referred to in F-1 (i) to (iii) referred to hereinabove.

F-2 Directions

F-2.1 DLSAs will strictly adhere to the compensation disbursal regime put in place in this part concerning child victims of sexual abuse whose cases come within the purview of the POCSO Act.

F-2.2 The directions and instructions in this part will be in addition to and not in derogation of those set out in parts A to E of the SOP. However, in case of conflict between the directions/instructions in this part and those in other parts of the SOP, the directions/instructions in this part shall prevail.

F-3 Procedure and safeguards for disbursal of compensation

F-3.1 The child victim would be required to submit only the following documents to the concerned DLSA for disbursal of compensation referred to under sub-clauses (i) to (iii) of Clause F-1 above:

(a) Documents such as an Aadhar card and birth certificate would suffice proof of the child victim's identity.

(b) To establish the existence of a valid bank account in the name of the child victim, *inter alia*, the copy of the passbook issued by the bank. A valid account will be one that satisfies the requirements of clause 11(1) and/or clause 15 of the 2018 Scheme, as applicable.

(c) An undertaking/indemnity bond shall be furnished in terms of clause B.12 of the SOP. No affidavit will be sought in terms of Part-I clause 4 of the 2018 Scheme.

F-4 As regards child victims who ordinarily reside outside the NCT of Delhi but were subjected to offences within the jurisdiction of NCT of Delhi, the concerned DLSA shall seek assistance of the local DLSA and/or any other statutory authority which has sway over the area where the child victim is located for conducting verification of documents.

F-4.1 After the child victim submits relevant documents, the concerned DLSA shall, with the assistance of the Investigating Officer [IO], endeavour to complete verification of the documents submitted within two (2) weeks commencing from the date of submission of the said documents.

F-4.2 The Deputy Police Commissioner having jurisdiction over the concerned area will ensure that the timeline indicated above is not crossed.

F-4.3 To ensure strict adherence to timelines, the Commissioner of Police will issue standing instructions to all field formations.

F-4.4 Upon completion of verification of documents by the concerned DLSA with the assistance of an I.O., a certificate will be issued detailing the documents that stand verified. Thereafter, in case the child victim is awarded any further compensation, whether under sub-clause (i), (ii), or (iii) of

Clause F-1 or otherwise, the said certificate shall be taken as valid proof of his/her documents being verified.

F-4.5 Once verification is complete and a certificate is issued, the concerned DLSA will ensure that no further objections regarding jurisdiction are raised for issuing compensation to the bank account of the child victim.

F-4.6 The child victim will not be required to undergo a re-verification unless the reliance is placed on new documents not mentioned in the certificate. In case such an eventuality arises, verification of the new document shall be conducted by the concerned DLSA with the assistance of the I.O. at the earliest, at least two (02) weeks from the date of submission of the new document(s).

F-5 The DSLSA, along with the concerned DLSA, shall ensure that disbursal of interim or final compensation takes place within 30 days from the date of issuance of direction by the concerned DLSA for grant of compensation in terms of sub-clause (i) of Clause F-1 above or the receipt of the order passed by the special court for grant of compensation under sub-clause (ii) or (iii) of Clause F-1 above.

12. Apart from the addendum mentioned above in the form of Part F to the 2018 Scheme, we are inclined to issue the following directions to DSLSA, Delhi Police and the Registrar General of this Court:

(a) The DSLSA will issue and disseminate a detailed protocol regarding the procedure and safeguards for conducting biometric verification before disbursing compensation to child victims.

(b) Biometric protocol will, *among other things*, take into account the following:

(i) The biometric data is stored and transmitted only in encrypted form.

(ii) The encrypted biometric data is decrypted only on authentication.

(iii) The service provider does not obtain access to decrypted biometric data.

(iv) The decrypted or digital key is kept separate from the biometric data.

(v) The protocol put in place by DSLSA would also provide the leeway to the victim to seek deletion of his/her biometric record after attaining majority in terms of the extant legal regime.

(c) As regards those victims who were residing outside NCT of Delhi but are subjected to offences within the jurisdiction of NCT of Delhi, after verification is completed in terms of Part F of the SOP, compensation will be disbursed in their bank account wherever it is located, *albeit* within the territory of India, without raising objections with regard to the bank's situs.

(d) Delhi Police will ensure that the I.O.s verify documents in accordance with the SOP given above.

(e) The Commissioner of Police will ensure that the responsibilities given to the police department is followed scrupulously.

(f) Insofar as the Registrar General of this Court is concerned, the following directions are issued:

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Signing Date:21.08

(i) The special courts established under the POCSO Act shall communicate orders to the concerned DLSA as soon as they are passed, though not later than three (03) working days from the date of issuance of the order, by sending a copy of the order physically and also *via* the official email id of the designated court reader.

(ii) The special courts shall ensure that the victim impact assessment report is filed by the I.O. ordinarily within two (02) weeks.

13. The Registrar General will ensure that a circular is taken out whereby the addendum to the 2018 SOP is brought to the notice of all concerned, i.e., the special courts, the concerned DLSAs and officers manning the special courts.

13.1 Likewise, the DSLSA will issue a circular bringing to the notice of the concerned DLSAs the directions issued *via* the instant judgment.

14. The writ petition is disposed of in the aforesaid terms.

15. Parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

AMIT BANSAL, J

SEPTEMBER 24, 2024
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Date: [illegible]