CHAPTER 6
CONCLUSION AND SUGGESTIONS

"All history attests that man has subjugated woman, to minister to his sexual pleasure, to be instrumental in promoting his comfort... He has done all he could do to debase and enslave her mind and now he looks triumphantly on the ruin he has wrought, and says the being he has thus injured is his inferior."¹

6.1 Conclusion

6.1.1 Ever since the inception of this world, women, irrespective of race, religion or region, have acquired a secondary status. They have been treated as mere chattels. Rape, one of the gravest offences known to mankind, rests on this idea of inferiority. It originated to safeguard the "masculine pride in the exclusive possession of a sexual object".² As Susan Brownmiller asserts³, "The ancient patriarchs who came together to write their early covenants has used the rape of a woman to forge their own male power-how then could they see rape as a crime of man against woman? Women were wholly owned subsidiaries and not independent beings. Rape could not be envisioned as a matter of female consent or refusal: nor could a definition acceptable to males be based on a male-female understanding of a female's right to her bodily integrity. Rape entered the

law through the backdoor, as it were, as a property crime of man against man. Woman, of
course, was viewed as the property."

6.1.2 The above proposition, though true of other civilizations, did not match with the
Indian scenario. Ancient India presented a completely different picture of gender equality
and independence. Men and women were treated at par with each other and enjoyed their
rights with equal fervor and zeal. It was, but natural, that in such an enlightened society,
the offence of rape was viewed as an invasion of a woman’s bodily integrity – an
infringement of her self esteem, dignity and honor. The victims of the misfortune were
treated with care and compassion, while condign punishments were prescribed for the
rapists. With the passage of time, there was a decline in the position of women in Indian
society. The later Vedic period, followed by the Muslim invasion and the period of
colonial rule, witnessed the gradual deterioration of women to a secondary status. She
enjoyed very little rights and freedoms; she was always under the control of her father,
husband and son. In other words, she was reduced to a mere being, holding an
insignificant position in the patriarchal social set up.

6.1.3 The western notions of female inferiority and its subsequent influence on Indian
soil exhibited itself most blatantly in Macaulay’s drafting on the Indian Penal Code.
Clauses 359 and 360 devoted to the offence of rape perceived it as, a non-consensual
sexual intercourse perpetrated through fear, force or fraud. Sexual intercourse by a
husband was not to be treated as rape in any case. A wide range of punishment, from two
years to fourteen years, was prescribed for the offence. Though a good piece of
legislation, the Macaulian provisions gave a very restricted treatment to the offence of rape, inasmuch as, the status of women and their caste and class made ample differences on the question of guilt and severity of punishment. The Macaulian Code was subsequently enacted with minor modifications, in 1860.

6.1.4 The law of rape, thereafter, witnessed changes, from time to time, but the basic framework therein remained intact. The ideas of male dominance, female inferiority and sexual morality continued to persist, until 1983, when for the first time, a conscious legislative effort was made to reform the law of rape, in order to protect women and ensure their freedom and liberty in society effectively.

6.1.5 The Criminal Law (Amendment) Act, 1983⁴, introduced the concepts of custodial rape, gang rape, child rape, trials in camera etc., and prescribed severe penalties for the offence. But, even in spite of such drastic amendments, the Legislature failed to design a gender-neutral law that could afford complete protection to the hapless victims of the heinous crime. It were the ideas of patriarchism and male chauvinism, which loomed large in every single provision of sections 375 and 376 Indian Penal Code, 1860. Furthermore, the chastity, virginity and moral character of a woman were the predominant aspects on which the law sought to emphasize upon.

6.1.6 The judiciary, manned by conservative, narrow-minded patriarchs of the society also interpreted the substantive law of rape to the advantage of the accused. The strict rules of corroboration, past sexual history of the victim and ‘consent’, were all read in a

⁴ Act 43 of 1983.
manner so as to inflict utmost disgrace and ignominy on the womenfolk of the country. The Mathura Rape Case\(^5\), however, brought about a change. It acted as an eye opener to the hitherto judicial trend of barbarism and despotism. The judiciary, realizing its follies, modified its tone and the nineties saw the emergence of an activist institution furthering the cause of women. It defined ‘consent’ in clear and explicit terms, so as to rule out the possibility of passive submission being interpreted as consent. It relaxed the rules of corroboration and specified that, where the testimony of the victim suffers from no serious infirmity, there is no need to assert on further corroboration. It also shed its age-old inhibitions regarding the character of the victim. The Court made itself clear that, even a woman of promiscuous sexual behavior has the right to refuse herself to anyone and no stigma can be cast on her. It also recognized the right of a rape victim to legal representation, speedy trial, anonymity in trial, civilized treatment during trial and compensation. With regard to the last aspect, the apex court has observed that rape involves gross violation of the fundamental right to ‘life’ guaranteed under Art. 21 of the Constitution.\(^6\) Consequently, the woman is entitled to seek compensation for deprivation of her dignity. The Supreme Court has also directed the Law Commission to reformulate the laws of rape, so as to restrict the occurrence of child sexual abuse in the country\(^7\). In view of such directives, the Commission submitted its 172\(^{nd}\) Report on Rape Laws\(^8\), wherein it has renamed ‘rape’ as ‘sexual assault’ and included within its ambit all forms of penetration. The Commission has also recommended a gender neutral law. Sexual

\(^5\) Tukaram \textit{v.} State of Maharashtra \textit{AIR} \text{1979 SC 185.}

\(^6\) Article 21 states, “No person shall be deprived of his life and personal liberty except according to the procedure established by law.”

\(^7\) Saakshi \textit{v.} Union of India (1999) 5 SCC 591.

\(^8\) Law Commission of India, One Hundred and Seventy Second Report of Rape Laws, March 2000.
assault by persons in trust or authority, or by near relations, has been incorporated and made punishable with severe penalties.

6.1.7 The Commission's recommendations are awaiting legislative consideration. In the meanwhile, in 2004 a writ petition under Art.32 of the Indian Constitution was filed in the Supreme Court\(^9\) whereby Saakshi wanted the Court to deliberate on widening the contours of the offence of rape and pass appropriate orders with regard to child sexual abuse and its victims, keeping in mind their special needs. Once again the Court expressed its inability, in the absence of Legislative amendment, to give a new definition to the offence, though it passed some directions with regard to child victims of sexual abuse.

6.1.8 As has been witnessed by the present writer, the law of rape and its consequent attitude towards its victims has undergone a change, but the same has been slow and inadequate. Society changes with time and each society brings in new problems, new dimensions, new perspectives, which requires new laws and new interpretations. Law must acknowledge and address the changes as it takes place. Nothing can be worse than a static legislature and a mute judiciary. Appreciation is definitely recorded for all that has been done, but still much remains to be fulfilled. The writer would herein attempt to provide a catalogue of desirable changes:

6.2 Suggestions

6.2.1 Widening the ambit of Rape:

\(^9\) *Sakshi v. Union of India and Ors.* AIR 2004 SC 3566.
6.2.1.1 In the first place, the laws of rape need to be reformed. In present times, sexual
abuse and sexual assault has taken many forms and shapes. As stressed in Saakshi\textsuperscript{10}, "The
existing trend … has been to treat sexual violence, other than penile/vaginal penetration,
as lesser offences falling under either Section 377 or 354 of the IPC and not as a sexual
offence under Section 375/376 IPC. It has been found that offences such as sexual abuse
of minor children and women by penetration other than penile/vaginal penetration, which
would take any other form and could also be through use of objects whose impact on the
victims is in no manner less than the trauma of penile/vaginal penetration as traditionally
understood under Section 375/376, have been treated as offences falling under Section
354 of the IPC as outraging the modesty of a women or under Section 377 IPC as
unnatural offenses" That is wholly irrational and erroneous. The offence of rape should
take within its fold all such forms of sexual violence. The suggestions of the Law
Commission in its 172\textsuperscript{nd} Report may be given effect to in this regard. They are as
follows:

"375. Sexual assault means -

(a) penetrating the vagina (which term shall include

the labia majora), the anus or urethra of any

person with -

i) any part of the body of another person or

ii) an object manipulated by another person

\textsuperscript{10} Id.
except where such penetration is carried out for proper hygienic or medical purposes;

(b) manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia majora), the anus or the urethra of the offender by any part of the other person's body;

(c) introducing any part of the penis of a person into the mouth of another person;

(d) engaging in cunnilingus or fellatio; or

(e) continuing sexual assault as defined in clauses (a) to (d) above

6.2.2 Recognition of Marital Rape

6.2.2.1 Marital rape should be treated as an offence and made punishable in a manner as any other form of rape. The concept of Hale that a woman who consents to marriage must necessarily be deemed to have consented for all that is incidental to it, perhaps, is fallacious in modern times. We have recognized the equal rights of man and woman in marriage. She, therefore, must be held to have the right to refuse consent when she deems
it improper. Furthermore, research has shown that marital rape has serious consequences on the physical and psychological front of a woman. As opined by Raquel Kennedy Bergen on Marital Rape, "Despite the historical myth that rape by one's partner is a relatively insignificant event causing little trauma, research indicates that marital rape often has severe and long-lasting consequences for women. The physical effects of marital rape may include injuries to the vaginal and anal areas, lacerations, soreness, bruising, torn muscles, fatigue and vomiting (Adams, 1993; Bergen, 1996). Women who have been battered and raped by their husbands may suffer other physical consequences including broken bones, black eyes, bloody noses, and knife wounds that occur during the sexual violence. Campbell and Alford (1989) report that one half of the marital rape survivors in their sample were kicked, hit or burned during sex. Specific gynecological consequences of marital rape include vaginal stretching, miscarriages, stillbirths, bladder infections, infertility and the potential contraction of sexually transmitted diseases including HIV (Campbell & Alford, 1989). Some researchers have compared the psychological effects of being raped by one's partner to other forms of violence. Given that women who are raped by their partners are likely to experience multiple assaults, completed sexual attacks, and rape by someone that they once presumably loved and trusted, it is not surprising that marital rape survivors seem to suffer severe and long-term psychological consequences (Kilpatrick, Best, Saunders, & Vernon, 1988; Frieze, 1983). Similar to other survivors of sexual violence, some of the short-term effects of marital rape include anxiety, shock, intense fear, depression, suicidal ideation, and post-traumatic stress disorder (Bergen, 1996; Kilpatrick et al., 1988; Russell, 1990). Compared to women raped by strangers and those whom they don't know well, marital rape survivors report even higher rates of anger and

depression (Koss, Dinero, Siebel, & Cox, 1988). Long-term effects often include disordered eating, sleep problems, depression, problems establishing trusting relationships, and increased negative feelings about themselves (Bergen, 1996; Frieze, 1983). Research has also indicated that the psychological effects are likely to be long lasting—some marital rape survivors report flashbacks, sexual dysfunction, and emotional pain for years after the violence (Bergen, 1996; Whatley, 1993)."

6.2.3 Gender-Neutral Approach

6.2.3.1 Thirdly, it must be recognized as a matter of social reality that rape is no longer a woman centric offence. It has acquired a gender-neutral character with instances of male rape gradually coming into fore. A study conducted in United States revealed a shocking number of instances of male rape.

"There were approximately 4,890 rapes of males age 12 and over in the United States in 1994. The rate for rapes of males was .8 per 1,000 persons age 12 or older. (Bureau of Justice Statistics, 1997). In 1985, the U.S. Department of Justice, Bureau of Justice Statistics reported in The Crime of Rape that there were 123,000 male rapes over a ten-year period. (Bureau of Justice Statistics, 1985)."12

"While less research has been conducted about male rape victims, case research suggests that males also commonly experience many of the reactions that females experience. These reactions include: depression, anger, guilt, self-blame, sexual dysfunctions, flashbacks, and suicidal feelings (Isley, 1991). Other problems facing males include an increased sense of vulnerability, damaged self-image and

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emotional distancing (Mezey & King, 1989). Male rape victims not only have to confront unsympathetic attitudes if they choose to press charges, they also often hear unsupportive statements from their friends, family and acquaintances (Brochman, 1991). People will tend to fault the male victim instead of the rapist. Stephen Donaldson, president of Stop Prisoner Rape (a national education and advocacy group), says that the suppression of knowledge of male rape is so powerful and pervasive that criminals such as burglars and robbers sometimes rape their male victims as a sideline solely to prevent them from going to the police.13

6.2.4 Sentencing Policy

6.2.4.1 Sentencing policy should be evolved in order to bring about some uniformity in matters of sentencing. The United States opted for a Sentencing Commission as early as 1984 following the passing of the Sentencing Reform Act that year. The Commission was entrusted with the task of formulating guidelines for judges to use while taking a decision on the penalty once a charge is proved. When challenged, in 1989, the U.S. Supreme Court upheld the constitutionality of the Sentencing Commission. The U.K. has a Sentencing Advisory Panel set up in 1999 in pursuance of the Crime and Disorder Act of 1998. It frames guidelines on its own initiative or at the request of the Home Secretary or Court of Appeal.14 The need for a uniform sentencing pattern has been felt in recent times where wide disparity has been noticed. India, in fact, has always been in favor of individualized punishment, where the penalty is fitted in the backdrop of facts and

13 id.
circumstances of a particular case. Nevertheless, as observed by the President's Commission on Law Enforcement and Administration of Justice\textsuperscript{15}:

"Unwarranted sentencing disparity is contrary to the principle of even handed administration of the criminal law... It is obviously repugnant to one's sense of justice that the judgment meted out to an offender should be dependant in large part on a purely fortuitous circumstance, namely, the personality of the particular judge before whom the case happens to come by disposition. Unjustified disparity adversely affects correctional administration. Prisoners compare their sentences and a man who is given cause to believe that he is a victim of a judge's prejudices often is a hostile inmate, resistant to correctional treatment as well as discipline."

6.2.4.2 In cases of rape, if one analyses the sentencing pattern, no uniform chord can be struck. Though on an average, judges have preferred to award the minimum sentence keeping in mind the age of the offender, delay in final disposition of the case, socio economic background of the offender, the present status of the victim etc., yet many cases have gone to show wide disparity amongst the judges even when the factual matrix of the cases appear somewhat similar.

6.2.4.3 In \textit{Ghanshyam Mishra v. State}\textsuperscript{16} the victim was a young girl of 10 years and the offender an adult of 39 years. The offender was the teacher of the girl and taking advantage of his position, he raped her. The Court enhanced his sentence from 3 years to seven years imprisonment. In a similar situation where a head master had raped a student

\textsuperscript{15}Ahmad Siddiqui, \textit{Criminology, Problems and Perspectives} (Eastern Book Company, 4\textsuperscript{th} Edn, 1997) p. 367; Cf. The Courts, 1967, pp. 23-24

\textsuperscript{16}AIR 1957 Ori. 78.
of the same age, life imprisonment was reduced to 10 years sentence taking the view that
the harshest punishment ought to be inflicted only in extreme and rarest of rare
cases.\textsuperscript{17} The Supreme Court in \textit{Nafe Singh v. State of Haryana}\textsuperscript{18} held that the fact that
there was resignation and no resistance on the part of the victim when the act of rape was
inevitable did not amount to a mitigating circumstance. However, in another case, the
court held that though the sexual intercourse committed on the girl below the age of 18
years amounted to rape, no severe sentence was called for in view of the fact that the girl
appeared to be quite used to sexual intercourse\textsuperscript{19}. In \textit{Prem Chand v. State of Haryana}\textsuperscript{20}
where a young girl, who had run away from home was raped by two constables, the
Supreme Court reduced the sentence from 10 years to 5 years imprisonment by invoking
the proviso to Section 376 IPC. S. Ratnavel Pandian J., speaking for B.C. Roy J.,
observed that though an offence of this nature had to be viewed very seriously and
punished severely, the peculiar facts and circumstances of the case coupled with the
conduct of the girl, did not warrant the minimum sentence of 10 years.

6.2.4.4 Similarly, in cases of murder and rape of young girls, many discrepancies have
been noted in the court’s opinion as to whether the same can be termed as the “rarest of
rare” so as to warrant the imposition of death sentence for the accused. As opined by the
court in \textit{Dhananjoy Chatterjee’s case}\textsuperscript{21}, “…that shockingly large number of criminals go
unpunished thereby increasingly, encouraging the criminals and in the ultimate making
justice suffer by weakening the system’s creditability. The imposition of appropriate

\textsuperscript{17} \textit{Ramroop Das v. State} 1993 Cri.L.J. 1000.
\textsuperscript{18} (1971) 3 SCC 934
\textsuperscript{20} 1989 Supp (1) SCC 286.
punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.\(^{22}\)

Saying so, the court went on to give death penalty to the accused, a security guard for having raped and murdered a teenager in her flat. Again, in the case of *State of U.P v. Satish*\(^{23}\), the Supreme Court, while upholding the death sentence of the accused observed that:

"The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes, the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty of

\(^{22}\) *State of Madhya Pradesh v: Babbu Barkare @ Dalap Singh* 2005 CriLJ 3117

\(^{23}\) *AIR 2005 SC 1000*
greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.\textsuperscript{24}

6.2.4.5 However, in the case of \textit{Surendra Pal Shivbalakpal v. State of Gujarat}\textsuperscript{25}, the Supreme Court set aside the capital sentence imposed on the accused for rape and murder while observing that we do not think that this is a 'rarest of rare case' in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had involved in any other criminal case previously and the appellant was a migrant labour from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to the society in future.\textsuperscript{26} Again in the case of \textit{State of Uttar Pradesh v. Devendra Singh}\textsuperscript{26}, which was a gruesome case of rape and murder of a 10 year old girl by the accused, the Supreme Court upheld the sentence of life as distinguished from death sentence. This wide disparity can be avoided in case we develop a uniform sentencing policy.

6.2.5 Speedy and Fair Investigation and Trial

6.2.5.1 Conducting a fair trial for those, who are accused of criminal offence, is the cardinal stone of democracy. Conducting the speedy and fair trial is beneficial both to the

\textsuperscript{24} \textit{id.}
\textsuperscript{25} 2004 Crl.L.J. 4642.
\textsuperscript{26} AIR 2004 SC3690
accused as well as to the victim and society, at large. The right to speedy trial of criminal
offence has been well recognized in the broad sweep and content of Article 21. In Kartar
Singh v. State of Punjab\textsuperscript{27}, the apex court has observed:

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" The concept of speedy trial is read into Art. 21 as an essential part of the
fundamental right to life and liberty guaranteed and preserved under our
Constitution. The right to speedy trial begins with the actual restraint imposed by
arrest and consequent incarceration and continues at all stages, namely, the stage
of investigation, inquiry, trial, appeal and revision so that any possible prejudice
that may result from impermissible and avoidable delay from the time of the
commission of the offence till it consummates into a finality, can be averred."
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6.2.5.2 The Malimath Committee has also observed with respect to speedy investigation
and trial\textsuperscript{28} as follows:

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" The Committee therefore recommends that so far as offences of rape and other
sexual offences against women are concerned, a suitable provision should be
made requiring the investigation agency to complete the investigation within the
prescribed time and for the court to dispose of such cases on priority basis within
a period of four months."
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6.2.6 Scientific Investigation

6.2.6.1 More and more emphasis on scientific evidence should be the rule of the
millennium. Science has scored centuries in terms of its inventions and achievements and

\textsuperscript{27} (1994) 3 SCC 569

\textsuperscript{28} Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India,
March 2003, para. 16.6.2.
the same can be well made use of in criminal investigation. Thus, lie detector test, brain mapping, penile plethysmograph, DNA fingerprinting must be applied, wherever possible and the same should be made admissible before the courts as a relevant piece of evidence. So far as DNA is concerned, recent trends have shown an increased use of the same technology to determine the identity of accused. Medical evidence also plays a crucial role in sex offences. It is in fact the evidence of the doctor which decides whether a sexual intercourse had taken place and whether the same was forcible. There are several problems in this process: first, victims are taken for medical examination, sometimes hours or days later; secondly, the hospitals entitled to take medico legal cases refuse or delay examination; the victim is treated in the most shabby manner by the doctors or other medical staff; for lack of proper training, sometimes the examination only centers round the fact as to whether the girl was habituated to sexual intercourse or a virgin. All these aspects defeat the purpose of criminal justice system and ultimately the cause of the victim. Proper training and infrastructure must be provided for so that all cases can be handled with care and precision.

6.2.7 Special Courts Headed by Women Judges

6.2.7.1 In India we have the problem of pendency of cases for months and years together. To deal with the huge backlog, the Central Government has evolved a scheme by establishing special Courts in the name of fast track Courts. As noted by Hon’ble Justice N.N. Mathur\textsuperscript{29} "The fast track Courts within four years has not only brought the backlog of 24000 Sessions cases to nil, but has also enhanced the speed of disposal of Sessions

\textsuperscript{29} \textit{Suo Motu} v. \textit{State of Rajasthan} RLW 2005 (2) Raj. 1385.
cases double to the rate of institutions. This has significantly brought down the crime rate in the State. The Fast track Courts have been established with the especially constituted team and special task which has created conducive atmosphere different from the routine functioning of the Courts.” Such Courts must be brought in for the trial of rape cases. As far as possible, such courts should be manned by women judges as emphasized by the Supreme Court in several cases over the years. The presence of women judges would ensure the dignity and respectability of the victim in the Court as well as a sympathetic and forbearing attitude towards them.

6.2.8 Role of Judges

6.2.8.1 The role of a judge in a rape trial is of significance. None is oblivious to the fact that in a rape trial the victim is often made to undergo the trauma for times together. She has to repeat the story with emphasis on minor details, and sometimes the cross-examination becomes atrocious, indecent and scandalous. As experienced by the writer in a rape trial in court, the victim, a child, was questioned as to what was inserted and whether it was the penis or a finger or something else. The girl child was at a loss and could not explain the same. Questions as to the feelings of the woman or girl and whether she felt the ecstasies of the intercourse are also asked in order to elicit the notion of consent on her part. While on the one hand, the defense should be directed to operate within the levels of decency and sobriety, at the other level, the judge must not be a mere spectator to the show. He/she should intervene and sieve the questions being put to the woman. After all, the object of the Criminal Justice System is never to humiliate and

degrade the victims but to see that justice is done with fairness and impartiality towards the parties.

6.2.9 Compensation to Victims

6.2.9.1 "Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the Apex Court. The recent decisions... are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensation has been awarded against the instrumentalities of the State for failure to protect the rights of victim."\(^{31}\) However, a fragmented and piecemeal approach is not sufficient. The urgent need of the hour is to enact a suitable legislation to provide for compensation to the victims of sexual crimes. It should define primarily the criteria for eligibility for seeking compensation from the offender and/or the state; mode of assessment of compensation and the composition, powers and responsibilities of the compensatory authorities.\(^{32}\) It may be submitted that a statutory board called the Criminal Injuries Compensation Board may be created, in lines of the Criminal Injuries Act, 1991, for administering the scheme of compensation. It shall consist of judges, legal experts

\(^{31}\) Supra n.28.

\(^{32}\) K.I. Vibhute, Victims of Rape and Their Right to Live with Human Dignity and to be Compensated: Legislative and Judicial Trends in India, 41 JILI 223 (1999).
and members of non-governmental organizations. The board will be entrusted with the task of awarding adequate compensation to every victim of sexual assault or rape. The payment shall be, by way of grants, made by the Central government, as per law passed by parliament. The quantum of compensation may vary according to the type and gravity of bodily injury, mental agony suffered by the victim, any financial or other loss incurred etc. An appropriate minimum compensation to be awarded in all cases of rape has to be fixed keeping in view the physical, mental and psychological condition of the victim. It must also be enumerated that the compensation payable shall be independent of the final judgment of the criminal Court. This is necessary because rape has immediate effect on the mind and body of the victims, whereas the courts take years to reach the final verdict. If the compensation were to be made payable after that, then the very purpose of giving recompense would be frustrated. Apart from these provisions, the recommended Act shall also provide for the setting up of rape crisis centers in each district or town, for adequate treatment and rehabilitation of victims. Such centers shall be funded by the Central or State government, and shall consist of medical experts, especially psychiatrists, legal experts and social activists. Besides psychological and medical aid, these centers shall render legal aid to the victims, arrange for their education and professional training and help them to secure employment. In fact the provisions of the Legal Services Authorities Act, 1987 can be used more effectively in this regard.

6.2.10 A Path Breaking Initiative
6.2.10.1 At this juncture, it would be apt to mention the recent decision delivered by the Rajasthan High Court. It was a case of Rape of a German Lady Tourist in the city of Jodhpur by two autorickshaw drivers. Under instructions of the Hon’ble High Court of Rajasthan, the fast track court decided the case within a period of two weeks of its occurrence. The investigation, including medical tests and DNA, was completed and charge sheet laid within a record time of 36 hours. The accused persons were represented by competent lawyers and the judge gave full opportunity for defense to cross-examine the victim, thereby ensuring a fair and speedy trial. The accused were thereafter convicted and sentenced to imprisonment for life. From the victim’s perspective what was remarkable was that she was provided boarding and lodging by the State Government and all expenses during the days of trial were borne by the former. Additionally, an amount of Rs. 3 lacs was awarded as compensation by the High Court of Rajasthan. While disposing of the civil writ petition, the High Court passed the following directions:

- The Registrar General shall ensure that the trial in cases of Sexual Violence is completed within a period of four months from the date of filing the chargesheet.

- The State Government must prepare a scheme within one month to ensure that victims of violence are immediately provided necessary financial, medical, psychological and social assistance and where the victims are foreigners, their statements be recorded immediately.

- Courts trying sexual offences must ensure that victims are not harassed, victims are not made to wait for long hours to tender evidence, evidence is recorded in an atmosphere conducive to the woman. Any disrespectful language to victim used
by a Court Officer including the lawyer shall be construed as a misconduct to be appropriately dealt with by the respective authorities.

6.3 Concluding Remarks

6.3.1 To conclude, it may be asserted that no reform can be successful, unless it is accepted by the people at large. The societal attitude towards rape and its victims must change. To achieve this goal, social workers and/or organizations must make sincere, intensive efforts and organize educative programs, mass awareness camps, and advertisements to change the societal values. However, we must remember that it is not the sole task of one sector of the society, but of every individual, to cooperate with the criminal justice system, to protest against this inhumanity called rape. Rape is an expression of domination, power and aggression; a serious violation of the dignity and freedom of a person. Hence, each one of us must bear the moral responsibility of raising our voices against the occurrence of these vulgar incidents and support their ill-fated victims in all possible ways, so as to establish a society where womanhood will be respected, with equal concern and sensitivity.