Chapter VI

PLIGHT OF RAPE VICTIMS VERSUS JUDICIAL APPROACH: AN ANALYSIS

THE ORDEAL OF RAPE VICTIMS: AN OVERVIEW

A rapist violates the victim's privacy and personal integrity, and causes physical and psychological harm. Rape is a physical assault on the woman and is destructive of her whole personality. A murderer destroys the physical body of the victim, but a rapist degrades the very soul of the helpless victim. Rape is horrible experience which shakes the lives of the victims. For many its effect is a long term one, impairing the capacity for personal relationship, altering their behaviour and values, and generating endless fear.

The victim who reports a rape suffers at each stage i.e. after reporting to the Police, during investigation and trial. The witness of the victim also suffers harassment, humiliation, financial loss, loss of time resulting mental pain and suffering to the victim and her witness. The criminal justice system does not take into account all these factors. It is satisfied with the process of apprehending, trial and punishment of the offender only. The system does not adequately compensate the victim of rape for the irreparable pain, suffering, loss of earning etc. In the end, even if the offender is punished, the victim does not gain substantially. Psychiatry and the helping professions have nothing to offer to the rape victim. There is no scheme to rehabilitate and treat the victims.

An unsympathetic legal system is another stumbling block in the way of a victim seeking justice. Such cases turn into a script for the court room drama where the victim is asked for the intimate details of the act. Thus, it becomes a source of sadistic pleasure for the media, police and the masses too. She was interrogated and asked obscene questions about sexual assault on different occasions in the presence of the culprit. Ultimately the case was closed down due to lack of substantial evidence. How does our law expect that a girl of eight will
Almost every man who commits a rape does so with a sense of knowing we probably get away with it. Going through the legal provisions rapists would end up spending seven years in jail. The reality, however, is quite different and over 80 percent of all reported rapists walk free.

In *Mohammed Habib’s case* a seven years old girl was raped. There were bite marks on her body. Witnesses were deposing in her favour. But High Court Bench ruled that since the offender had no marks of injury on his panis, there was no resistance and therefore no rape is committed. Habib walked free.

The first step in a long drawn legal journey towards justice begins with the reporting of the crime. Unlike other criminal acts, rape very often goes unreported. Rape survivors are either too traumatised or too stigmatised. There is another factor: 84 per cent rapists are known to their victims, according to the National Crime Records Bureau. When they are relatives as fathers or uncles or brothers or families tend to hush up the matter, says Prabha Nagaraja of TARSHI (Talking About Reproductive and Sexual Health Issues).

Assuming a survivor does cross the first hurdle, next comes the messy business of police investigation. “In government hospitals there is no privacy. Doctors sometimes lack sensitivity and aren’t geared towards counselling. Most victims find the experience extremely traumatic,” says Leena Menghaney, who has been working on the legal aspects of rape.

There is another hurdle to cross. Judges, especially in lower courts, are not exactly known for their sensitivity. In the landmark Bhanwari Devi case, the judge concluded that Bhanwari Devi was a Dalit and so her rapists an upper caste men could not have possibly raped her.

Equally amazing was the Gyatri rape case where a social activist was raped by a district collector while in police custody. Oh, said the judge, an educated IAS officer could not have committed rape!

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Judges would also allow rapists to present ‘character evidence’ of their victims.

“The accused would attack the moral character of the woman,” says Indira Jaising of the Lawyer’s Collective. “It would be the woman on trial rather than the offender.”

Thus, ‘loose’ women cannot hope to get justice. Equality, if the accused has an impressive resume, he can be quite confident of finding himself off the hook.3

**JUDICIAL PRONOUNCEMENTS TOWARDS THE OFFENCE OF RAPE: AN OVERVIEW**

When we talk about the judicial attitude regarding rape cases we find that only a few rapists are actually punished in India. Most of the rapists go unpunished due to the lack of evidence and delay in decisions. Most of the rapists are left to commit rape again in the society. Owing to our ailing judicial system.

Fortunately the Supreme Court has awarded death penalty only in *Jumman Khan v. State of U.P.*4 In this case Jumman Khan raped a six years old girl and after that she was ghastly murdered by him.5

In *Mohd. Chaman v. Delhi*, (2000) the rapist raped one and half year old child, as a result of which she died. The District and High Court gave death penalty to the offender, but the Supreme Court turned death sentence into life imprisonment and opined as follows:

This is not the case of the “rarest of rare” and the appellant is not a dangerous criminal. If we don’t give death penalty, he will not create danger to the society so, the death penalty of appellant was converted into life imprisonment. Thus, our judiciary appears to be not in favour of awarding death sentence to the rapists, because of certain reasons. According to the court the death sentence could be given in such situation where the death of the victim takes place under

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3 Ibid.
4 1999 Cr.L.J. 439; 1983 (S.C.)
The Courts are surely over burdened with cases which drag on for years, coupled with lax investigations, leading to more acquittals than convictions in rape cases. In the year 2003 itself, there have been 362 acquittals in rape cases as compared to last year's 344. Social pressures and financial constraints often force women to stay out of courts and the trauma that comes with it. And since in 90 per cent of cases, the victim is known to the rapist, the pressures are that much higher. “In most cases, the families of victims agree for out-of-court settlements because they can’t afford lengthy legal procedures,” said a lawyer. Not to mention the countless trips to courts to record statements, cross examination and so on.  

In April 1995, Md. Chaman raped his three-year-old neighbour in Gandhi Nagar. The baby was rushed to hospital, but she died. The session’s court in 1998 gave Chaman death penalty. He appealed in the High Court, which upheld the session court’s judgement in 1999. In December 2000, the Supreme Court upheld the High Court ruling. 

In June 2001, a girl of Ambedkar Nagar alleged that Ram Prabhu had raped her. The girl knew the rapist. But during her court testimony, she turned hostile and refused to identify her rapist. The sessions court held that the girl was acting under fear or had been bribed into lying and convicted the accused on April 18 this year. 

Rajkumar had been making advances to his sister-in-law for a long time. In August 1997, he raped her at knifepoint. Seven years after the rape, the sessions court in September this year sentenced Rajkumar to six years imprisonment. 

In March 1992, a man was charged with raping his minor daughter at home. The sessions court framed charges of rape against him. But he was let off by the court, saying there was no sufficient ground to convict him. On 31 July, 1996, the

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7 Ibid. 
8 Ibid. See, Hindustan Times, October 17, 2003. 
9 Ibid. 
10 Ibid. 
11 Ibid.
Supreme Court upheld the sessions court ruling, saying it would be unfair to subject the child to a volley of questions and cause further mental trauma.\footnote{Ibid.}

In December 2002, a woman from Dwarka alleged that she was raped by a man and later by his friend. She alleged that the two had threatened to kill her if she reported the matter. Additional Session Judge acquitted both the accused in July 2003 because the victim refused to give any statement against the main accused. Later, the victim married one of the accused.\footnote{See, Hindustan Times, October 17, 2003.}

In May 2000, Mithilesh allegedly was raped by his neighbour at her home. When the case came up for hearing, the girl told the court that she had sex with Mithilesh of her own will. The sessions court acquitted him.\footnote{See, Hindustan Times, October 18, 2003.}

In \textit{Swati Lodha v. State of Rajasthan},\footnote{1991 Cri. L.J. 939 (Rajasthan).} Swati Lodha was allegedly raped by Raj Kumar. When she threatened to make this incident known to her parents Raj Kumar assured to marry her but did not do so later on. At times Raj Kumar also told Swati that he was an M.L.A. and thus an influential person. When Raj Kumar married another girl, Swati filed a criminal complaint against Raj Kumar for offence under section 376 I.P.C. Later on she gave birth to a male child. There was no medical examination of Swati after the alleged rape and ravishment to show forcible sexual intercourse or any other injury on her body to show resistance on her part to show rupture of her hymen. She contended the blood sample of Raj Kumar be taken and tested and compared with the blood of baby born so as to establish that the sexual intercourse was committed by Raj Kumar with her, the product of which was the child.

It was held that taking of blood from the veins of accused does not amount to compelling the accused person to witness against himself. Hence there is no violation of Article 20(3) of the Constitution. Giving of blood does not amount to importing of knowledge by the accused. A blood cannot be conceal or change its
intrinsic character. A blood sample by itself is not testimony at all being wholly innocuous. It is only material for comparison, in order to lend assurance to the court that an inference based on other pieces of evidence is relevant.

In State of Haryana v. Prem Chand,16 is a review petition was filed by the State of Haryana against the judgment of the Supreme Court in Prem Chand v. State of Haryana.17

In Prem Chand v. State of Haryana (1989) the Supreme Court had held that keeping in view the peculiar facts and circumstances of case coupled with condition of girl not calling of minimum sentence of ten years' R.I. as prescribed by section 376(2) the sub-minimum sentence provided by proviso would meet the ends of justice.

Explaining the meaning of the word 'conduct' as used in Prem Chand v. State of Haryana (1989) the Supreme Court made it clear that the factors like the character or reputation of the victim of rape are wholly alien to the very scope and object of section 376 of I.P.C. It was held in the review petition (1990) that the Supreme Court in 1989 case had not expressed any view that character, reputation or status of a raped victim is a relevant factor for consideration by the Court while awarding the sentence to rapist. It was further held that the Supreme Court in 1989 case had used the expression in the lexigraphical meaning for the limited purpose of showing as to how the victim had behaved or conducted herself in not telling anyone for about 5 days about the sexual assault perpetrated on her.

In State of Rajasthan v. Om Prakash,18 the prosecutrix aged about 8 years was alleged to be raped at 9 a.m. The F.I.R. was registered at about 11.30 a.m. next day, no independent witness other than family members were examined by prosecution. It was held that when such an act is done, the natural tendency is not to talk about it to others but, to an extent possible, hide it. There was nothing unnatural for other villagers not visiting the house of parents of victim.

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18 2002 Cri. L.J. 2951 (S.C.)
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It was held that the assumption that in natural course of events if rape had been committed, the young child girl and her mother would have shouted so as to collect others and they would have visited her house, would not be proper. The prosecutrix was unconscious. There was no question of prosecutrix shouting as assumed by the High Court. The aspect of the non-examination of the persons other than family members of the victim could not be given undue importance without having regard to contextual facts. The cases involving sexual molestation and assault require a different approach which a court may adopt in dealing with normal offence under penal laws. There is nothing on record to substantiate that there were some disputes between the accused and father of the prosecutrix over exchange of some land and that is the reason for implicating the accused. No such suggestion was even put during cross-examination of father of prosecutrix. On the facts, it could not be said that revenge of account of alleged dispute would be taken by the father of the prosecutrix by foisting on the accused a false case of rape involving his young daughter particularly in the setting of a village environment.

It was further held that conviction of the accused could not be set aside for the non-examination of independent witness and the accused having played with the life of a child does not deserve any leniency. Sympathy sought for on ground that the incident took place about 13 years back and by now accused has matured and become 31 years of age and had already undergone nearly 3 years of undergo remaining part of sentence awarded by trial court.

In State of Maharashtra v. Abdul Hafiz Faroki, the offence of rape was alleged to have been committed by eight persons and that too twice and that accused had pushed prosecutrix out of running train after giving kicks. In the first information report given by PW-1 Rukmani her version was that Kesarbai was taken into latrine of the compartment and therein the accused had committed rape on her. In her evidence before the court she changed her version and she and

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Kesarbai both stated that rape was committed on her not inside the latrine but inside the compartment on the floor in between two berths. Further according to the evidenced of PW-1 after the accused had committed rape on Kesarbai they had pushed her giving kicks upto the door of the compartment and then had thrown her out of the compartment when the train was passing through Wardha railway yards and was only a short distance away from the station. Kesarbai has also stated that she was pushed out of the running train. It was held that if really 8 persons committed rape on Kesarbai and that too twice and pushed her out of the running train after giving kicks then some injuries would have been found on her person. But except for a small incised wound on her right hand and some minor superficial abrasions no other injury was found on her person. There was no evidence that prosecutrix raised shouts while accused were taking her forcibly to railway yard. Therefore there is possibility of prosecutrix going with the accused willingly and with ulterior motive both of them had falsely involved.

In State of Rajasthan v. Kishanlal, on the night of occurrence, the husband of prosecutrix had gone to watch Ramlila after bolting the outer doors. Prosecutrix was sleeping with her 5-6 months old child and her brother-in-law was sleeping in other room along with his wife nearly 20-25 feet away. In the night, the accused entered her house whom she recognized in the light of the chimney. He had come to have sexual intercourse with her. When the prosecutrix cried, the accused put a handkerchief in her mouth. When she continued to cry, the accused had shown her a knife and threatened her that he will stab her if she makes but did not give the money. The accused had sexual intercourse with her. In the mean time her husband came and asked her as to whether she had called the accused. The accused was apprehended in the house but no knife was recovered from him.

It was held that it is surprising that the accused entered the house at night and though the brother-in-law of prosecutrix and his wife were sleeping only 20-25 feet away, the prosecutrix could not raise an alarm so as to attract their

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20 2002 Cri. L.J. 2963 (S.C.)
attention. It is further clear that the prosecutrix was known to the accused and that is why the first question asked by her was as to why he had come in the night. To this accused replied that he wanted to have sexual intercourse with her. The accused offered her Rs. 20/- and also stated that another persons will also pay her the same amount for having sexual intercourse. This shows that both were quite intimate. The other surprising feature is that, the husband of the prosecutrix who entered the house during incident did not straight away chase the accused. He first questioned his wife whether she had called the accused, forcibly raped her, the husband started chasing the accused and caught him. This again probabilises the fact that the husband also had at least some suspicion about the nefarious activities of his wife, otherwise it would be quite unnatural for a husband asking his wife, even before attempting to catch the accused, as to whether she had called the accused and whether the accused had sexual intercourse with her consent. All the more the non-seizure of the knife raises a serious suspicion about the truthfulness of the prosecution version that the accused had sexual intercourse with her consent. All the more the non-seizure of the knife raises a serious suspicion about the truthfulness of the prosecution version that the accused the probability of the accused having had sexual intercourse with the prosecutrix with her consent cannot be ruled out. Therefore, he was held entitled to benefit of doubt and was acquitted.21

In Kanhai Mishra v. State of Bihar,22 the accused on 27th July, 1995 at about 5 a.m. went to a co-villager Ram Sunder Jha, the informant and told his daughter Rita Kumari to go with him to the orchard of Shobha Kant Mishra to pluck flowers. Thereafter Rita went out of the house for plucking flowers followed by the appellant. At 6 a.m. some of the co-villagers came to the house of the informant, the father of the girl and intimated him that dead body of his daughter Rita was lying in the jute field of Prabhu Mishra whereupon he along

22 2001 Cr. L.J. 1259 (S.C.).
with them and his family members went there and found his daughter lying on the ground and her red undergarment removed from one of her legs. It was also noticed that there were white spots resembling semen around her genital organ and black marks of scratches around both sides of her neck. The flower basket with flowers was found scattered there and her chappals were seen at some distance. It was alleged that the appellant accused enticed Rita, committed rape upon her and killed her by pressing the neck. It was held that non-examination of material witnesses, who first informed the informant that his daughter was raped and murdered by accused by strangulation and her body was lying in jute field caused a material discrepancy and infirmities in evidence of witnesses regarding going of victim asnd accused towards orchard and plucking flowers there. The circumstances that accused and victim were last seen together in field plucking flowers was also not proved. The evidence that accused was seen fleeing away in vicinity of jute field immediately after alleged occurrence is not reliable. There was no credible evidence that the accused was absconding from his house and surrendered in court after about a month. The investigating officer also suppressed the fact that informer went to police station and narrated incident to him at police station. Therefore the proof of solitary circumstance of giving proposal to victim for going to orchard for plucking flowers was not sufficient to convict accused in view of laches on the part of prosecuting agency in conducting investigation and trial. The conviction and sentence awarded against appellant were, therefore, set aside.

In Shiv Lal v. State of Himachal Pradesh, the accused was punished with rigorous punishment of seven years with fine. The accused was the son of the real sister of the prosecutrix. In view of Poius relationship between them, sentence of R.I. was enhanced from 5 to 7 years plus fine.

In *Maroti Wankhede v. State of Maharashtra*,\(^{24}\) needs another attention. The fact of the case were that the accused was alleged to have taken prosecutrix under threat and committed rape on her. No contradictions and omissions in evidence of prosecutrix and her evidence of proxicutrix stands completely corroborated by medical evidence. Evidence shows that prosecutrix tried her best to prevent the accused from committing the sexual intercourse with her. Not a case where the prosecutrix said to be a consenting party to the act of sexual intercourse. Further the court said that birth certificate issued by *Sarpanch* of Gram Panchayat wherein the date of birth of the prosecutrix is shown below 16 years being a public document is admissible in evidence. It could be said that prosecutrix, at the relevant time, was below 16 years of age so the conviction of accused was proper.

In *Dev Kishan and others v. State of Rajasthan*,\(^{25}\) In this case Sec. 376(2)(g) of I.P.C., was in conflict. The case was related to gang rape. There was presumption as to absence of consent of victim. Oral testimony of victim that 3 accused persons forcibly took her to forest and had sexual intercourse with her for whole day and 2 nights-Injuries noted by doctor on victim tallied with time of occurrence. According to the doctor that signs of forcible sexual assault were present. There were rape as evidence of corroborated by medical evidence. Court held that it shall presume that victim did not give consent. The accused was held to be guilty under sec. 376 (2) (g) of Act.

The case of *Sappu alias Sitaram v. State of U.P.*,\(^{26}\) was related to Ss. 376, 300, 201 of I.P.C., (Rape, murder and causing disappearance of evidence). In this case circumstantial evidence showed that accused raped and killed a minor girl and thereafter carried her dead body, concealed in gunny bag and threw it in Nala. The Court laid down that evidence of witness having last seen deceased in company of accused going to his house was reliable. Evidence of witness that he

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\(^{24}\) 2003 Cr.L.J. 978.

\(^{25}\) 2003 Raj. HC 2003 Cr.L.J. 1118.

\(^{26}\) 2002 Cr.L.J. 4550: 2000 All. L.J. 2165 (D.B.)
had seen accused moving towards the Nala with gunny bag on his back and recovery of dead body from Nala concealed in that very gunny bag next day and recovery of blood stained earth, one pair of chappal belonging to deceased and her wristwatch which she was going to repair from his house furnish sufficient circumstantial evidence. Moreover the medical evidence showed that deceased was subjected to rape before she was murdered. The court held that conviction of the accused under Ss. 302, 376 and 201 of I.P.C. was proper.

In *Shaik Mehtab v. State of Andhra Pradesh*, the case dealt with Sec. 378 I.P.C. The fact of the case was that prosecutrix was subjected to forcible sexual intercourse when she was returning home from market. Evidence of prosecutrix and doctor clearly showed the commission of rape on prosecutrix. Evidence of prosecutrix inspired confidence and was further corroborated by other evidence including evidence of doctor which show the commission of rape. The guilt of accused was established beyond all reasonable doubt. The accused was convicted, sentence however reduced to 3 years R.I. in view of fact that accused was a poor person on whom entire family is depending.

*Amit alias Ammu v. State of Maharashtra*,

SS. 302, 376 of I.P.C. (Rape and murder) were in conflict. Death sentence was given by the lower courts. As accused was convicted for committing offence of rape and murder of young school girl about 12 years of age. Accused was a young man and at the time of incident he has no record of any previous heinous crime. Offence committed by accused is a most heinous crime and deserves severe condemnation. But on cumulative facts and circumstances, cases do not falls in the category of “rarest of rare” the case. So higher court modified death penalty into life imprisonment.

Gian Chand, the accused respondent was charged under section 376 IPC for having sexual intercourse with the prosecutrix, a girl of the age of 5 years and 6

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27 2002 Cr.L.J. 1421, Andhra Pradesh.
28 2003 Cr. L.J. 3873.
months, on 29.10.1991 at about 6.30p.m. at village Baru. On the trial, the learned
session Judge found the accused guilty and sentenced him to undergo rigorous
imprisonment for a period of 10 years and to pay a fine of Rs. 5,000 and in default
of payment of fine to undergo rigorous imprisonment for a further period of 6
months. The amount of fine, was realized and was directed to be paid to the
mother of the prosecutrix. The accused-respondent preferred an appeal. A
division bench of the High Court has by judgement dated 22.12.1995 allowed the
appeal, setting aside the conviction of the accused and directed that respondent to
be released. Feeling aggrieved thereby the state of Himachal Pradesh filed special
leave petition in the Supreme Court. The Supreme Court accepted the appeal, set
aside the judgment of the High Court and the accused was sent and into the
custody to undergo the sentence passed by the trial court.29

The operating part of the judgment reads under:

Delay in lodging the FIR cannot be used as a ritualistic formula for
doubting the prosecution case and discarding the delay in lodging the first
information report. Delay has the effect of putting the court in its guard to search
if any explanation has been offered, whether it is satisfactory or not. If the
prosecution fails to explain the delay satisfactory and there is possibility of
embellishment in prosecution version on account of such delay, the delay would
be fatal to the prosecution. However, if the delay is explained to the satisfaction
of the court, the delay cannot be itself be a ground for disbelieving and discarding
the entire prosecution case.

In India there is neither a comprehensive legislation nor a statutory scheme
to provide compensation to rape victims either by offender or by the State. The
State, at times, makes to the rape victim under the direction of the Supreme Court.
ex-gratia payment which is not only adhoc and discretionary but also inadequate.

The material section in case of rape seems to be sub-sections (3) of 357.
Cr.P.C. This section was introduced with the passing of the new Cr.P.C. in 1973.

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The sub section empowers a court in its discretion to order the accused to pay by way of compensation a specified amount to the victims of the offence even if fine does not form a part of the sentence imposed on him.

However, Section 357, Cr.P.C. suffers from certain weaknesses and it has limitations of its own. Thereby it does not fully cater to the victim's needs. The limitations are:

(i) the compensation awarded under this section cannot exceed the fine imposed on the offender.

(ii) the order for payment of compensation must be reasonable, the quantum of compensation is to be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay.

(iii) in awarding compensation, no sum in excess of the loss actually suffered by the complainant should be ordered to be paid.

(iv) the loss or injury must be of such a nature to entitle a person for an action in civil court.

(v) compensation is at the discretion of the court.

Payment of Compensation to the Rape Victims vis-à-vis the Judicial Response

The courts in India have earlier rarely resorted to these statutory provisions to exercise their discretionary powers to compensate victims of crime. The trial courts have in fact ignored these provisions and have not utilised these during their sentencing process. Perhaps the main reason for this is due to the traditional outlook of criminal justice agencies which are totally offender-oriented, and, by and large, have felt satisfied as having fulfilled their responsibility when an offender has been punished. Another reason could be that the recent advancement of victimological knowledge has not flown into the penological corridors of our presiding officers, despite the law having empowered them to utilise these provisions. However, from the year 1995 onwards, there appears to be a shift in
the attitude of the Supreme Court towards rape victims. The Supreme Court had laid down the guiding principles in Harikrishnan's Case.\textsuperscript{30}

"It is an important provision but courts have seldom invoked it perhaps due to ignorance of the object of it... This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well reconcile the victim to the offender. It is to some extent a constructive approach to crime. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all courts to exercise this power liberally so as to meet the ends of justice in a better way."

The Supreme Court in a sensational rape case had observed\textsuperscript{31}, "Judges who bear the sword of justice should not hesitate to use that sword with utmost severity to the full and to the end if the gravity of the offences so demand. In this case, the accused Medical Officer was convicted for 7 years RI and fine of Rs. 25,000.00 was ordered to be paid to the victim as compensation".

In yet another rape case\textsuperscript{32} of Nuns, both the rape victims were awarded 2.5 Lakhs as victim compensation. The other affected Nuns who were assaulted and molested were also paid compensation of one Lakh each.

The Government of Tamil Nadu has paid compensation to a victim woman of Rs. 1 Lakh because she was assaulted and ravished at one Police Station\textsuperscript{33} and in another case order was passed for immediate payment of Rupees 50,000/- as victim compensation in Maharashtra.\textsuperscript{34}

The Court gave a further direction to the compensatory law in rape cases, in its verdict in Delhi Working Women's Forum's Case.\textsuperscript{35} Again the Supreme Court in Bodhisatwa Case,\textsuperscript{36} laid down that rape is violative of Art. 21 of the

\textsuperscript{31} Naval Dubey's case 1992, AIR SCW 1480, pp. 1496-97.
\textsuperscript{32} Times of India, February 8, 1995, p. 6.
\textsuperscript{33} Padmini v. State of Madras, 1993 Cr.L.J. 2694 Madras.
\textsuperscript{34} State of Maharashtra v. Chandra Prakash, AIR 1990 SC 658.
\textsuperscript{35} Delhi Working Women's Forum v. Union of India, 1995 1 SCC 14.
\textsuperscript{36} Bodhisatwa Gautam v. Subhra Chakraborty, AIR 1996 SC 922.
Constitution, which guarantees the right to life and personal liberty to a person. The Court went a step further than the Delhi Working Women's Forum's Case and awarded interim compensation to the victim a sum of Rs. 1,000/- every month, during the pendency of the case together with arrears of compensation during the period i.e. from the date of filing of the case by the victim. Further, the victims of rape need social rehabilitation because with no fault of their own they get social ostracization. In rape cases to safeguard the prestige of affected woman, Hon'ble Court of Orissa ordered not to publish the name of women in any media and further, she is to be described as 'Victim' in that case during the trial.

In *Chairman, Railway Board v. Chandrima Das*, the Supreme Court was held that where a foreign national, a Bangladeshi woman was gang raped compensation can be granted under Public Law (Constitution) for violation of Fundamental Rights on the ground of domestic jurisdiction based on the ground of constitutional provision and Human Rights jurisprudence. In this case a practicing advocate of the Calcutta High Court filed a petition under Article 226 of the Constitution against the various Railway Authorities of Eastern Railway claiming compensation for the victim Smt. Hanuffa Khatoon, a Bangladesh national who was gang raped by the employees of Railways in a room at Yatri Niwas of Hawarh Station of the Eastern Railway. The High Court awarded a sum of Rs. 10 lacs as compensation to the victim. In the present appeal it was argued on behalf of the State that the Railway was not liable to pay compensation to the victim as she was a foreigner and not an Indian National. It was also contended that for doing damages for the offence perpetrated on the victim, the remedy lay in the domain of Private Law and not under Public Law and therefore no compensation could have been awarded by the High Court under Article 226 of the Constitution and to, at the instance of a practising lawyer who in no way, was connected with the victim. In brief, it was contended that the victim should have gone to the civil court for damages and should not have come under Article 226 of the constitution.

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37 *AIR 2000 SC 988.*
The Supreme Court negatived these contentions and held that where a rape was committed by railway employees on a woman in a building belonging to Railways a writ petition filed by victim against the government for compensation is maintainable under Article 226 of the constitution. The court said that where public functionaries are involved and the matter related to the violation of Fundamental Rights or the enforcement of public duties the remedy would be avoidable under the public law, notwithstanding that a suit could be filed for damages under private law. It was more so when it was not a more violation of an ordinary right of a person. But the violation of Fundamental Rights was involved as petitioner was a victim of rape which is violative of the Fundamental Rights was involved as petitioner was a victim of rape which is violative of Fundamental Right of a person guaranteed under Article 21 of the constitution.

As regard the question, whether Fundamental Rights are available to a foreign nationals, or the court held that relief can be granted to the victim for two reasons, firstly on the ground of domestic jurisprudence based on the constitutional provisions and secondly, on the ground of Human Rights Jurisprudence based on the Universal Declaration of Human Rights, 1948 which has the international recognition as the “Moral Code of Conduct” having been adopted by the General Assembly of the United Nations.

As regards the contention that the Rights are available only to “citizens” and not to aliens, the court held that since the word “life” has been used in Article 21 of the Constitution and recognized as basic Human Right in the same sense as understood in the Universal Declaration of Human Rights, 1948, there is no reason why it is available not only to every citizen of this country, but also to a “person” who may not be a citizen of the country. Thus, even those who are not citizens of the country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to “Life” in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is
under obligation to protect the life of every citizen in the country; so also the state is under an obligation to protect the life of the persons who are not citizens.

Thus, we may conclude that our judiciary is probably not in the favour of awarding death penalty. There are many legal hurdles before the court, first of all if the court, provide death sentence, we will have to follow the doctrine of the “rarest of rare” than how we will determine this formula, secondly, the killing of victim will increase and the conviction rates will decrease. That is why, most probably our judiciary is escaping from providing death sentence to the rapists. Now the judiciary is definitely laying emphasis in providing the compensation to the victim and her family.

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The definition of rape is part of the problem.

Death to rapists? Yes, but it won't deter rapists. Experts say capital punishment won't deter rapists.

Women find Delhi unsafe, cops useless.

Majority of rapists may be serial offenders. Experts say death to rapists.

Bill to bar grilling of rape victims passed.

SC plugs loophole in law to keep mentally disabled in jail.

Make legal definition of rape comprehensive.