

Horror of rape in India: to deter or prevent – A critical legal study

Baglekar Akash Kumar¹

Abstract

In India, are we making laws and ordinances to stop the public outcry or to prevent the horror of rape? The recent Criminal law (Amendment) Ordinance, 2018, promulgated by the President of India, imposes death penalty for rape of minor below Twelve years of age. Every time a huge public support for a rape victim and increasing media attention, Government of India is passing legislation or Ordinance to keep itself aloof from the blame.

These laws are not deterring the perpetrators, but are increasing alarmingly. This is very much evident from the statistics produced by NCRB that an offence relating to rape has increased by 12.4% in 2016. The reasons attributed are related to patriarchal ideology, corrupt officials, political interference and slow wheel of criminal procedure resulting in low conviction of offenders. This further prevents the victim from not disclosing the incident due to social stigma and fear of retaliation by the offender and his supporters.

This paper will focus on legislations and trending situation relating to rape in India. Will 'rarest of rare' principle be applied in all rape cases too? The Ordinance restricts the High Courts from granting bail in Rape cases, but will it prevent the Courts from exercising their 'Judicial activist' principle of 'Bail is a rule and Jail is an exception'?

There are new preventive policies and measures to prevent the crime itself probably, like conducting orientation programs, banning pornography websites, promoting co-education, constructing hostels for girls, curb the use of alcohol and drugs to minors, compensate victims, provide legal assistance and setup of special fast-track courts for women at all levels of society from rural to urban, domestic to industrial and corporate sectors.

KEYWORDS: Anticipatory Bail, Deterrent, National Crime Records Bureau, Ordinance, Prevention.

¹STUDENT, LLB (5YDC) 2ND YEAR, UNIVERSITY COLLEGE OF LAW, OSMANIA UNIVERSITY, HYDERABAD.

Introduction:

India is a nation which had Mahatma Gandhi, who advocated the concept of Ahimsa (Nonviolence) as its role model has now become so unbelievably violent that for every fourteenth minute,² a woman is raped in this country.

Rape is a combination of illegal sex and violence and is a traumatic experience for the victim. The very mention of it conjures visions of a wicked and aggressive offender and of a hapless victim. It is also violative of the victim's most cherished of the fundamental rights, namely, right to life and personal liberty contained in Article 21 of Indian Constitution. The Supreme Court in Justice K.S Puthaswamy (Retd.) v. Union of India³ said that, "Privacy ensures that a human being can lead a life of dignity by securing the inner recesses of the human personality from unwanted intrusion." Therefore, rape is an unwarranted intrusion into the private life of woman. The menace of rape against women is common in all countries in the world, but it is deteriorating in India because of 'Politicization' of the issue by the political parties in India. The Government of India passes laws to stop the public outcry and not to prevent the horror of rape. With a society in shock about the violence its children are facing and the growing demands for a swift and definite response, the government responded with the Criminal Ordinance, 2018, that among other things, introduced the death penalty for child rape.

What happened in Unnao in Uttar Pradesh is that, a seventeen year old was raped by an M.L.A in June 2017, but the police refused to file an FIR against the M.L.A, and after huge public support to the victim, the police filed an FIR after ten months, but didn't arrest the M.L.A.⁴ Further, victim's father died in a police custody.

In Kathua in Jammu & Kashmir, the young girl was raped by six men over a period of time and then murdered. The accused include public servants and a special police officer. The same happened in New Delhi, where a brutal attack and gang-rape of a para-medical student (Nirbhaya) on 16th December 2012, united the people of this country for the first time, urging the Government to do something to stop this rape brutality on women. Due to increasing world media attention, on 23rd December 2012, a committee led by Justice J.S

² See NCRB, Crimes in India, 2016 report at Pg-133.

³ Justice K.S Puthaswamy (Retd.) v. Union of India, AIR 2017 SC 4161 at Pg. 4236.

⁴ *After Ten Months Of Agony, UP Police Finally File FIR Against BJP MLA In Unnao Gang Rape Case*, INDIATIMES, <https://www.google.com/amp/s/amp.indiatimes.com/news/india/after-ten-months-of-agony-up-policefinally-file-fir-against-bjp-mla-in-unnao-gang-rape-case-343312.html>.

Verma was formed by the Centre to look into possible amendments in the criminal law to provide for quicker trial and enhance punishment for criminals committing sexual assault of extreme nature against women. Subsequently, the Criminal law (Amendment) Act was passed in 2013.

Conceptual evolution

During ancient times, women in India were treated as equal to men. The Rig Veda says,⁵“The wife and husband, being equal halves of one substance, are equal in every respect.” Women were revered as forms of Goddess Lakshmi. Then, slowly started Patriarchal form of society. Whenever a king with his army used to attack and invade another kingdom, after victory they forcefully brought women of the defeated kingdoms and had sexual pleasures with them. In this way sexual violence against women started in our society. Historically, sexual assault and rape were defined as property offences. Women were considered the property of either their father or husband. Consequently, raping a woman made her ‘less valuable’ if she were not married, or was considered as damaging her husband’s property if she were married.

Though the Constitution of India mandated Equality and Liberty principles, but the women in India faces fear and discrimination at every walk of her life.

Legislative changes brought after Nirbhaya rape case:

The Criminal law (Amendment) Act, 2013 includes: -

1. Specific provisions to punish offenders for Acid attack, Attempt to acid attack.
2. It defined and prescribed punishment for the offences of stalking, voyeurism, and sexual harassment.
3. It has widened the definition of rape, enhanced punishment for custodial and other kinds of rape.
4. This Act stipulates that any sexual violence incident shall be registered by the women police officer.
5. To ensure speedy justice, this Act has urged that trial shall be disposed of within two months from date of filing of charge sheet.

⁵<https://en.m.wikisource.org/wiki/The-Rig-Veda/Mandala-5/Hymn-61>.

6. To aid poor victims, hospitals are directed to provide free treatment to acid attack and rape victims.
7. Under Evidence Act, provision has been made where previous character of victim's sexual experience shall be irrelevant.
8. This Act urges that court shall presume if a victim states that rape was without her consent.
9. Witnesses can depose their statement either in writing or by signs.
10. This Act has amended the POCSO Act, 2012 so as to harmonize the said Act with the provisions of Criminal law (Amendment) Act, 2013.

Legislative changes after Unnao and Kathua incidents:

The Criminal law (Amendment) Ordinance, 2018 includes: -

1. Punitive punishment to offenders, by prescribing capital punishment for rape of a child below Twelve years of age and imprisonment up to convict's natural life for rape of a child below Sixteen years of age.
2. The Ordinance aims for speedy investigation of offence of rape on girl child, therefore, it reduced the investigation period from three months to two months.
3. To ensure speedy justice, the amended Ordinance has made provision for disposal of appeal within six months.
4. Further, this Ordinance restricts High court's power under section 438 of Cr. Pc to not to grant anticipatory bail to rape accused and even if High court wants to grant bail, it shall give fifteen days' prior notice to public prosecutor.

If one goes through the bare reading of the above Act and Ordinance, we can find that the Government intends to curb the horror of rape, but in spite of such punitive laws, these laws are not really deterring the perpetrators and further reactivating them to commit the offence of rape more brutally on women. "A total of 36,735 rape cases were registered during 2014, a 9.0% increase from the year 2013 (33,707), when the crucial Criminal Amendment Act was passed. In 2015, 34,651 rape cases were reported, a decrease of 5.7%, while again in 2016 the cases reported increased to 38,947 both under IPC and POCSO Act, 2012."⁶Further, even after Promulgation of the recent Ordinance, there are increasing reported incidents of rape on minors, one such incident where a 60 year old

⁶ See NCRB Crime in India reports -2014, 2015, 2016.

man raped a 9 year old minor in Guntur, A.P.⁷This increasing rape cases prescribe that punitive laws are not deterring the criminals and the legislation is in impasse. The above provided rape statistics of India must be taken with the proverbial pinch of salt. The figures may be highly misleading since the visible part of the crime as known, reported, investigated and subsequently taken to the courts may be like the tip of the floating iceberg. The victim may not disclose the incident due to fear of retaliation, fear of scandal, decision to deal with the matter privately and social stigma, etc.

Critical review of the act and ordinance:

1. Death penalty will not deter rapists:

The central government brought an Ordinance which makes death as penalty for perpetrators, who rape the child below the age of 12 years. But it should not be forgotten that the death penalty has never been a deterrent against any sort of crime as the age old clichés warns us, ‘bad cases makes bad law’. Regarding death as a punishment, the authors of Indian Penal code, 1860 said that death penalty shall be very sparingly inflicted. There is also little empirical evidence to show that those about to commit a capital offence would stop themselves merely out of fear of being hanged. Contemporary history of nations proves that there is no relationship whatsoever between presence or absence of death penalty with respect to crime. Despite India government's rejection of Six resolutions calling for ‘moratorium on death penalty’ adopted by United Nations General Assembly⁸ on the ground that it effects its sovereignty⁹, but still the Indian judiciary saves it from extreme violation of Law. There is a legitimate concern that the country’s judicial system has not been consistent in awarding the death penalty and during last decade from 2004 to 2014, out of 1303 death sentences awarded only three executions were carried out¹⁰ and the fourth and last been on 30th July, 2015 of Yakub memom.

⁷ MD Ilyas, *60 year old rapes 9 year old girl in Guntur*, DECCANCHRONICLE, <https://www.google.com/amp/s/www.deccanchronicle.com/amp/nation/crime/040518/60-year-old-rapes-9-year-old-girl-in-guntur.html>.

⁸ See resolutions on the moratorium on the use of the death penalty: Resolution 62/149 (2007), Resolution 63/168 (2008), Resolution 65/206 (2010), Resolution 67/176 (2012), Resolution 69/186 (2014), Resolution 71/187 (2016). It is important to note that India is not a signatory to these resolutions.

⁹<https://www.google.com/amp/s/m.hindustantimes.com/word-news/india-opposes-un-reslotion-formoratorium-on-death-penalty/story-9bubGHhTzZWxJTa1eplYpn-amp.html>.

¹⁰<https://www.google.com/amp/www.indiaspend.com/cover-story/10-years-1303-death-sentences-3executions-89089/amp>.

The seven judge bench of the top court of India in *Maneka Gandhi v. Union of India*¹¹, has given a new interpretative dimension of the provisions of Article 14, 19 & 21 and their inter-relationship and according to this new interpretation every law of punitive detention both in its procedural and substantive aspects must pass the test of all the three Articles of Indian Constitution. Further, the Supreme Court in *Bachan Singh v. State of Punjab*¹² held that, “Death penalty shall be imposed in ‘Rarest of rare case’.” The law commission of India also recommended for abolition of the death penalty and grant only in terrorism- related cases.¹³

Further, as we all know under-reporting of child sexual abuse is a massive problem in India. In this case, if we introduce death penalty, it will only worsen under-reported crimes as we are now asking victim and her family members to risk sending one of their own to the gallows.

Lastly, taking the life of an offender is not a solution as death penalty granted to one person may not control the sexual libido of other person. Indeed, what will act as deterrence is various measures taken to prevent the crime.

2. **Anticipatory bail:**

The Ordinance restricts High court's power to grant anticipatory bail under section 438 of Cr.Pc. This is appreciated as the state has special power to make laws for women, but it will not restrict the judiciary from exercising its principal of “Bail is a rule, Jail is an exception”. The Supreme Court in *Gurbaksh Singh Sibbia v. State of Punjab*¹⁴ has held that, “Section 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail”. Now, the Judiciary which has recently in *S.K. Mahajan v. State of Maharashtra*,¹⁵ has nullified Section 18 of SC/ST Atrocities Act, 1986 and ordered to grant anticipatory bail to accused as presumption of innocence is a human right, will it deny anticipatory bail to rape accused and go against the concept of equality and liberty, an inalienable right of an individual.

3. **Custodial rape:**

¹¹*Maneka Gandhi v. Union of India*, 1978 (2) SCR 621.

¹²*Bachan Singh v. State of Punjab*, AIR 1980 SC 898.

¹³<https://www.google.com/amp/www.thehindu.com/news/national/law-commission-recommends-abolition-of-death-penalty-except-in-terror-cases/article10344061.ece.amp/>.

¹⁴*Gurbaksh Singh Sibbia v. State of Punjab*, 1980 (2) SCC 565

¹⁵*S.K. Mahajan v. State of Maharashtra*, AIR 2018 SC 1498.

Section 376(2) OF IPC which categorically says if a person who is a Police officer or Army officer or Public servant or Staff of Hospital or Fiduciary relator had a sexual intercourse with a woman within his territorial authority shall be punished with imprisonment for life till their natural death or shall be hanged. This is a good change, but what if a police officer while on duty commits rape by threatening the victim outside the territorial limits of his police station. What is the rationale behind this provision does it wants to punish these individuals because they are on public duty or that they shouldn't commit offence within the sanctum of public office? The literal understanding of the provision supports the later argument. Now what if the above mentioned individuals abusing their position had sexual intercourse outside their custody or charge. Hence, territorial limitation shouldn't be the barrier for the punishment to these perpetrators and they should make laws where all officers on public duty of the State or Centre shall be punished if they commit the offence of Rape anywhere while on duty.

4. Child rape:

Sexual intercourse with a girl child below the age of 16 either with or without her consent amounts to rape and same is punishable up to imprisonment till convict's natural life. Further, the Hon'ble Supreme court in Independent thought v. Union of India¹⁶ said that "Sexual intercourse with a girl below 18 years of age is rape regardless of whether she is married or not." Hence, both the legislature and the Judiciary are making efforts to stop the horror of rape in India.

5. Incestuous rape:

Incest means sexual contact between persons who are so closely related that their marriage is illegal. And an incestuous rape would be when such a sexual relationship is carried out by force, without the consent of one person. Today 94.6% of rapes on women especially girl child is incestuous kind of rapes. Therapists shower the child with attention, treats, toy or trips to places that children enjoy and isolate them from world and harm them. The Indian legal statues do not contain any specific provisions against incest. Even if a case is reported as incest it is tried under the provisions of section 376 of IPC. Many developed countries such as Britain, USA, etc. have strong laws against incest. UK, which made incest punishable in 1908, sets a prison term of 12 years for the offence. Punishment in US varies from one state to another, extending

¹⁶ Independent thought v. union of India, AIR 2017 SC 4904.

up to life imprisonment in the States of Nevada, Montana, Idaho, etc. while in Hawaii, Iowa, etc. it is five years.¹⁷

6. General exceptions:

Under General exceptions chapter of IPC, offenders who are insane, drunk involuntarily and a minor are all immune from the guilt. The Ordinance provides for death penalty for rape of a minor, optimizing that it will act as a deterrent. But, will the court grant death penalty to a minor, who is protected under Juvenile Justice Act, 2015 and commits rape on another minor. Further, will the court punish the perpetrator who is an insane person or drunken person and due to his insanity or being in an inebriated condition, he fails to understand the resistance by victim. In its recent judgement, the Delhi High court in Mohd. Farooqi v. State (Delhi)¹⁸ acquitted the appellant on one of the grounds that negation of consent was not clear enough. Even after women friendly amendments were made under criminal law in 2013, the High court judgement has established the rigidity and fixity of the conservative legal framework which the Supreme Court followed in Tuka Ram v. State of Maharashtra,¹⁹ where the accused were acquitted because the victim did not raised any alarm and there were no visible marks of resistance. Therefore, till this extraneous presumption of innocence of accused in Indian criminal jurisprudence goes out of the minds of conservative judges, these laws and ordinances are ineffective.

7. Low conviction rate:

The Criminal law (Amendment) Act, 2013 has made provision that the trial of a rape case shall be disposed of within Two months of filing the charge sheet. According to National Crime Bureau Statistics in 2016²⁰ out of 1,52,165 cases sent for trial, trial was completed only in 18,792 cases including plea bargaining, while still in 1,33,373 cases trial is pending. And out of 18,792 cases, a meagre 25.1% were convicted (4,739). The reason for such low conviction cannot be attributed to fact of false complaint by victim, because that it is very rare that a girl or woman in our society makes a false story showing herself as the victim of sexual intercourse by men and publicize that she

¹⁷*State Criminal Incent Statutes,*

NDAA, https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.ndaa.org/pdf/criminal_incent%2520chart%2520_2010.pdf.

¹⁸*Mahm,oodFarooquivs State (GovtofNct of Delhi),* INDIAKANOON, <http://indiankanoon.org/doc/160377045>.

¹⁹Tuka Ram v. State of Maharashtra, AIR 1979 SC 185.

²⁰See NCRB Crimes in India report, 2016 at Pages – 152 & 153.

had lost her virtue, chastity and honour at the hands of a stranger. The factors for rate of low conviction may be summarized as follows:

- **POLICE FUNCTIONING**: - The police as a functionary of criminal justice system have to play a key role in maintenance of peace and enforcement of law and order within its territorial jurisdiction. Quite contrary to this, in India, police have a very low profile in the public and there is a general distrust for them. The mounting problem of law & order and increasing incidence of various crimes in general and sexual violence against women in particular has badly shattered the efficiency of the police administration which is already overburdened with multifarious preventive activities.
- **Political interference**: - Another potential cause which shatters public confidence in police is increasing interference of politicians in police working. Politics paralyzed the police efficiency in combating crime. The recent incident, which shook the country shows that how due to involvement of the cheeky politicians the criminal administration is being shattered.
- **Low judge's ratio**: - Another major factor for both pending of cases for years and subsequently low conviction is that Judges-People ratio is very less. According to data put forth by the law ministry in public domain²¹ the Judge to population ratio in India stands at 17.86 Judges per 10 Lakh people. That apart, the relationship between the police and magistracy in India also lacks mutual trust and confidence. There is need for a change in this attitude and the magistrate should begin the trial of the accused with the assumption that the police have done their job honestly and used legitimate methods in investigation of the case.
- **Widespread corruption**: - In India, criminals often manage to escape detection and prosecution by seeking recourse to corrupt practices or bribing the corrupt public officials thereby tarnishing the image of criminal justice system. Hence, to prevent corruption in all stakes of government, stringent laws should be enacted and speedy trial of corruption cases should be ensured to bring transparency in criminal justice system.

Prevention method is effective:

²¹<http://indianexpress.com/article/india/india-news-india/india-has-18judges-per-ten-lakh-peoplelawministry-2953735>.

Crime prevention is future orientated and is concerned with reducing the risk of occurrence and the potential seriousness of crime and disorder events, by intervening in their causes. Until the middle half of the 20th century, it was believed that crimes could be effectively eliminated by inflicting severe punishment on offenders. But now, the current trend is to treat crime as a social and individual phenomenon and prevent its recurrence by adopting an attitude conducive to re-socialization and reformation of criminal within the community itself through an intensive treatment and aftercare programme. Various crime surveys suggest that sexual violence against women is about four times as high as that recorded by the police. The only way possible would be to take steps for the development of a critical perspective on crime prevention policy. This perspective also points out about ineffectiveness of using the criminal justice system alone as a deterrent to crime. Prevention is seen to be a good thing because social problems are bad things.

The people of this country are not expecting from the government, punitive laws for crime on our women, indeed they are requesting the authorities to take stringent measures and practices to curb the menace on women. Sister of Jessica Lal, who was shot dead in bar by convict Manu Sharma, Sabrina Lal said that she has forgiven the guilty because he has suffered more than what he deserves.²²

Probably, legalizing prostitution cannot be a solution to stop the heinous crime of rape because research conducted by the British medical journal : the lancet²³ has published a report indicating that sexual violence against women in countries like New Zealand and Australia, where prostitution is legalized is at third highest level in the world. Further, Article-6 of “Convention on elimination of all forms of discrimination against women” prohibits prostitution²⁴ and India being a signatory to it has to oblige itself to the convention.

Measures:

The possible measures to prevent rape of women and ensure speedy justice can be as follows:

1. Conducting orientation programmes:

²²<https://www.google.com/amp/s/anp.indiatimes.com/news/india/jessica-lal-s-sister-has-forgiven-murderer-manu-sharma-and-won-t-oppose-his-release-from-jail-344001.html>.

²³<http://rpe.co.nz/latest-news/rate-of-sexual-assault-in-newzland-more-than-double-the-world-average-newreport-indicates/>.

²⁴<http://www.un.org/womenwatch/daw/Cedaw/text/econvention.htm#article-6>.

The primary purpose behind the rape of women is that our Indian society has inhabited the patriarchal form of ideology, where they think that men are masters of the women and they have more rights than women. Hence, this patriarchal ideology shall be changed. “The classic profile of child rapists are men who are exposed to violence growing up, brought up with anger, negativity, beating and rejects.”²⁵ There is some evidence to suggest that factors such as personality, attitudes, and moral senses predispose some individuals to commit crime. Men can be given counselling sessions about various factors such as not to draw conclusions. A woman is entitled to dress or behave in any way she likes; men cannot assume that because she looks proactive or sexy, she wants sex with them or anyone else. Further, a woman may speak to men on any topic, but they should not assume that this means to have sex with them. In the industrialized era, women have to work along with men.

Hence, compulsory orientation programmes should be conducted at all levels of society from rural to urban, domestic to industrial and corporate sectors. Next would be watching men's language. How one behaves when other men talk about sexual violence. If he talks in such a way as to give the impression that men are entitled to sex and women are required to provide it, he could be the beginning a chain reaction which results in someone being raped or murdered.

2. Ban pornography websites:

Commercial sexual exploitation via electronic media has changed the nature of crime committed against a woman. A rapidly growing cause of sexual violence against women is excessive watching of pornography, readily available on the internet. Even on Public WI-FI spots, people are accessing pornography websites. They become so obsessed with disturbing images and alternate between view and self-loathing. But, like all other stimuli, pornography does not have a single, homogeneous effect on all consumers.

Access to pornography leads as breeding ground for sexual violence against women in India and this is because of the fact that in India, any discussion about sex is considered ‘taboo’, and most people do not have even basic sex education. Sex education provides factual information about sexuality. Hence, along with banning pornography websites, efforts could be taken to introduce sex education in India.

3. Constructing hostels for girls:

²⁵Dr. Manju Mehta, AIIMS Doctor in an article of India today Cover story (Child rapists), Volume XLIII number 21, for the week May 15-21, 2018 at Pg-35.

This initiative if taken by the government will be solving two issues –

- i. Safety of girl child from all illegal acts like Acid attacks, Rape, etc.
- ii. Reduction in girl child school dropout's rate.

There are more incidents of rape cases on a minor girl child and generally in most of therape cases, the accused knows the victim and more incest cases are reported. Secondly, in India, as distance to school increases parents deem it unsafe to send their child to school fearing for her security and force them into child labor, therefore increasing inequality in education where men are securing high jobs and women have to settle at minor jobs with a less salary.

Hence, if the government constructs separate hostels for girl child from primary school till the child attains higher education with adequate and vigilant security measures, then the child parents may feel secure to send their child to school and this will reduce school dropoutsof girls and also protect them from sexual violence. This will furtherenhance Girl's Right of education.

4. **Curb use of alcohol and drugs:**

The Lancet in its Journal,²⁶ - "Worldwide prevalence of non-partner sexual violence: a systematic review" says to prevent sexual violence factors that would be helpful to address are reductions in harmful use of alcohol and addressing of social norms on sexual entitlement and masculinity." Hence, the government shall make stringent efforts that alcohol and drugs are not gone into the hands of minors.

5. **Providing legal assistance:**

The major reason for acquittal of perpetrator is lack of legal knowledge in rape victim. By virtue of Article 39-A of the Indian Constitution which directs the State to provide free legal aid to citizens, the Legal Services Authority Act was passed in 1987. Section 12(C) of this Act stipulates that free legal aid shall be provided to a woman or a child. In spite of very clear legislation, the people hardly utilize it because most victims don't have knowledge to inform effectively to law enforcement agencies and her psychological condition forbids rational post-rape planning.

Hence, rules could be made in this regard where legal jurists who are keen to serve the society, shall be appointed at every police station, where they shall assist rape victims whenever they approach the police station to lodge a complaint, assist the victim to

²⁶[http://doi.org/10.1016/S0140-6736\(13\)62243-6](http://doi.org/10.1016/S0140-6736(13)62243-6).

prepare her case, assist the police in proper investigation of case and assist victim and witnesses in deposing proper evidence during trial.

6. Compensation board shall be constituted:

The Central government has implemented a scheme called 'Central victim compensation fund' in 2015 under Section-357A of Cr.Pc, where a minimum amount of Rupees Three Lakhs is to be given to rape victims, but as per latest report submitted by National legal services authority (NALSA) to Supreme Court, "Only 5% to 10% of rape and other types of sexual assault victims are getting compensation under Nirbhaya and other scheme."²⁷

Further, in case of *Bodhisathwa Gautama v. Subhra Chakraborty*²⁸ the apex court has awarded an interim compensation of Rupees One thousand per month to the victim of rape until the case is decided by the trial court.

Hence, a compensation board shall be constituted where victim of sexual offence can get speedy and adequate compensation to meet her medical and other expenses and the accused shall be made liable to pay compensation irrespective of his subsequent conviction or accusation.

7. Establish special courts:

The famous legal quote that "Justice delayed is Justice denied" can be well applied in Indian criminal jurisprudence as the victim has to wait years to get justice because of slow wheel of criminal justice system where Indian courts are over burdened with increasing number of cases and less judicial officers to administer justice.

In the case of trial for rape, Section 309 of Cr. Pc states that the trial shall be conducted within two months of filing of charge sheet. When the legislature passes a law of this kind, it is difficult to understand the purpose behind such a direction to the courts, as we all know that the supply of judicial time falls short of the demands for time.

Further, in case of rape, medical evidence is critical to the outcome of the case and results can be provided only by forensic laboratory. It is notorious fact that this country lacks adequate numbers of forensic labs and forensic experts to provide the results for timely disposal of a case. The Supreme Court in *Alakh Alok Srivastava V. Union of*

²⁷Only 5-10 % Sexual Assault Victims Paid Compensation: NALSA Tells SC, 9 May 2018, LIVE LAW NEWS NETWORK, <https://www.livelaw.in/only-5-10-sexual-assault-victims-paid-compensation-nalsa-tells-sc/http://www.livelaw.in/only-5-10-sexual-assault-victims-paid-compensation-nalsa-tells-sc/>.

²⁸*Bodhisathwa Gautama v. SubhraChakraborty*, AIR 1996 SC 922.

India²⁹, issued slew of measures for establishment of special courts to expedite cases relating to sexual assault against minor girl under POCSO, Act, 2012.

After the gang rape in Delhi, the Central government announced the setting up of a special Nirbhaya fund in 2013 for women's safety. Under this scheme, the concerned ministry or department can frame a scheme for women's safety and send the proposal to women and child development ministry for allocating funds.³⁰ But, the sad part is that only 30% of Nirbhaya fund has been utilized in last five years.³¹

Hence, under Nirbhaya fund scheme the government shall allocate amount for establishment of "Special women courts", with recruitment of adequate number of judges who shall deal exclusively with the crime cases relating to women and also establish forensic labs with adequate number of forensic experts to ensure that victim gets her due justice at appropriate time as "Speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of Indian constitution."³²

Conclusion:

To sum up, along with the Government, we all responsible citizens of India shall ensure that the mothers and sisters of our country are safeguarded from the perpetrators, who are none other than our own countrymen.

²⁹<https://www.advocatekhaj.com/library/judgements/announcement.php?WID=10069>.

³⁰*Nirbhaya fund guidelines*, WCD, <http://www.wcd.nic.in/acts/nirbhaya-fund-guidelines>.

³¹<https://www.google.com/amp/www.newindiaexpress.com/nation/2018/feb/11/less-than-30-per-cent-ofnirbhaya-fund-utilised-rti-reply-1771735>.

³²*Hussain&Anr v. Union of India*, 2017 (2) S.C.R. 626.