

Rape Survivor: A Victim Based Approach!

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Abstract

Rape survivors are often seen as a curse in the society where people start believing that the rape victim was herself into some fault for the commission of the crime. A victim of rape is ignored at every stage of a criminal trial at first when the crime is committed by showing the lack of security she has from the state which is equivalent to the respect a woman has in a society thereafter while registering the complaint with the law enforcement agency thereafter during the investigation, trial along with sufferings of being a rape survivor (victim) in the case. It is very important to acknowledge that it is upon the victim the offence is committed and she has to undergo the ordeals of the justice delivery system while she awaits for justice whether it is taking care about her interim needs to that of her present needs along with giving psychological attention to her. She has every right to know about the progress of her case along with a dialogue with the public prosecutor which often a denial as the criminal justice system is more inclined in protection of rights of the accused. It is also very important to analyze how far the victim compensation scheme which is not a statutory right under Section 357A² has been applied uniformly across India. Whether the victims are getting interim compensation accordingly? The increase in punishment or making the laws more stringent than proper implementation is a victim centric approach or familiarising the victim and giving adequate representation in the criminal justice system is the right path?

Keywords: *Right to be Heard, Victim Compensation Scheme, Physical and Psychological Needs of the Rape Survivor, Criminal Justice Delivery System*

1. Introduction

The evolution of rape laws in India has changed a lot in the course of time it has not only have broadened the scope and ambit of the laws but also have become more stringent now than earlier. Rape survivors are different to that of other victims of crimes to the nature that they suffer both physical and mental trauma during the offence and after the offence is committed on her. The State's duty is to protect all the citizens from any kind of loss/injury and when it fails to do so the State must compensate for the loss/injury is the concept behind the theory of compensation. However, rights such as proper representation in the criminal justice system still remains absent though victim compensation is now a reality with Section 357A of Criminal Procedure Code. The Government of India along with National Legal Service Authority (NALSA) with the objective of 'access to justice for all' has introduced several guidelines, schemes, gazettes for

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² Code of Criminal Procedure, 1973.

proper implementation of the victim compensation scheme which needs to be assessed with the growing crime rate and indices of crime.

This paper has analysed the need of compensatory jurisprudence of rape victims and how it is applied in India along with the statistical references to support the law. The author has also tried to analyse the schemes and guidelines which are in force and how they are being applied along with better implementation possibilities of the same. Further the author has also referred to other ancillary rights which the victim will need for securing the rights in a more holistic manner.

2. The Offence of Rape

An offence of rape not only deters a woman physically but also psychologically. She is subjected to discrimination in the society though she did not add to the commission of the act. An offence of rape primarily revolves around circumstantial evidence as it often occurs within closed door where it is difficult for the prosecution to gather direct evidence. In the course of gathering evidence, time bound medical examination of the rape victim is of utmost importance which if lost due to time might be detrimental to the case. Prior to 2013 the rape laws were rather less strict and it required 'penetration' to be proved before conviction to constitute the offence of rape³. The Criminal Amendment Act 2013 has not only remodelled the penal provisions altogether for sexual offences committed against women but also have expanded the scope and ambit for the definition of rape which has no doubt protected the women in society. However, at the same time whether the crime can be curbed by increasing punishments, has to be justified with the help of empirical evidence.

Legal representation including legal representation of the victims of rapes is the most basic human right as enshrined in the Indian Constitution and International law. Criminal law mandates that evidence needs to be recorded in presence of the victim. The right to fair and proper hearing shall not be guaranteed unless the victim has a proper representation. Our criminal justice system is a accused centric one which protects the accused pre-arrest stage, during arrest and even during post arrest period. Article 22(1) and 39A of the Constitution of India. The International Covenant on Civil and Political Rights has also recognised that when the accused does not have the means to avail the services of a lawyer, a legal representation must be extended at the expense of the State. In various landmark decisions of the Supreme Court it has been discussed that application of accused for providing him with legal representation is not condition precedent for providing legal representation but mandatory for the success of criminal

³ Section 375 of Indian Penal Code.

trials. Sexual offences are always derogatory upon the victim as well as the society as it fails to protect the citizens from such kind of inhuman offences.

2.1. Section 375 of Indian Penal Code

The definition of rape⁴ have been expanded by taking into consideration penetration of the penis to the extent into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person. Further it also adds to inserting to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person. Lastly, the process of manipulating any part of a woman's body to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person is said to be also within the definition of rape.

The definition also clarifies that if the man applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, which falls within these seven principles such as - against her will, without her consent, with her consent, or when the consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt, or with her consent when the man knows that he is not the husband of the woman and that the consent is given because she believes that the another man is lawfully married or with her consent when by reason of unsoundness of mind or intoxication or the administration by the man personally or through another of any stupefying or unwholesome substance, to which the lady fails to understand the nature and consequences of that to which she gives consent or with or without her consent when the lady is under eighteen years of age or when the lady is unable to communicate consent.

After a close reading of the provisions as amendment by the Amendment Act of 2013, it is clear that sexual intercourse is not necessary for constituting rape which was difficult to prove as per the earlier law as now the new definition of rape doesn't make it necessary for sexual intercourse. For instance, when the accused tried to rape a woman by uncovering her private parts but sexual intercourse was not possible due to the lack of physical development of the victim it would have been difficult to prove the offence of rape under the previous law.

⁴ Section 375 of the Criminal Law Amendment Act 2013.

2.2. Rape Law Punishment

Sl. no.	Provision of law	Punishment
1.	Except in the cases provided for in sub-section (2) of Section 375 ⁵	10 years – life imprisonment and also fine
2.	In all other cases (police officer, public servant, superintendent of jail/hospital, repeat offence, victim who is not able to give consent, victim with physical/mental disability, victim who is pregnant)	10 years – life imprisonment and also liable for fine
3.	Below the age of 16 years	20 years – life imprisonment and also liable for fine
4.	Punishment for causing death or resulting in persistent vegetative state of victim – 376A	20 years – life imprisonment and also liable for fine
5.	Sexual intercourse by husband upon his wife during separation – 376B	2 years – 7 years and also liable for fine
6.	Sexual intercourse by person in authority – 376C	5 – 10 years and also liable for fine
7.	Gang rape – 376D	20 years – life imprisonment and also liable for fine (medical expenses and rehabilitative needs of victim)
8.	Punishment for gang rape on woman under sixteen years of age – 376DA	imprisonment for the remainder of that person's natural life, and with fine (medical expenses and rehabilitative needs of victim)
9.	Punishment for gang rape on woman under twelve years of age -376DB ⁶	imprisonment for the remainder of that person's natural life, and with fine, or with death (medical expenses and rehabilitative needs of victim)
10.	Punishment for repeat offenders – 376E	imprisonment for the remainder of that person's natural life, or with death

⁵ Ibid.

⁶ Criminal Law (Amendment) (Ordinance) Act, 2018.

From the above table we can see the punishments in respect to the offence of rape. It is to be noted that though a rape is committed the amount of punishment changes with the identity or position of the accused in society. No doubt the punishments after the 2013 Act are stringent now but in all cases 'rape' is committed but the punishment is not uniform. Also, the concept of marital rape is not yet introduced though rape during judicial separation has been introduced. This non-recognition of marital rape directly affects a woman's right to live a dignified life in the light of Article 14, 19 and 21 of the Indian Constitution where she does have a right to reproduce, terminate a pregnancy, considered equally to that of men in senior positions and many other rights.

It is also to be noted from the above discussion that the Criminal Law Amendment, 2013 has recognised the offence of rape when committed by the husband upon her wife during separation but fails to recognise the offence of rape when the same is committed in during a marital relationship, however the same can be contented that though it is not recognised as a separate penal offence but is said to be covered under the definition of Section 498A of the Indian Penal Code which recognises⁷ mental or physical torture and the result which may drive a married woman to commit suicide or cause grave injury to her life, limb or health. It was also deliberated that how it is now important for the courts to think about rape as no more 'penetrative' in nature rather a it is based on sexual violence relying on the larger ambit of the definition of 'rape' under Section 375 of Indian Penal Code. The drafting of the Indian Penal Code of 1860 was said to be based on the Victorian patriarchies where men and woman were not considered as equal. It is now time to look into Section 375(2) which acts as an exception in regard to rape in marriages. The Women's Sexual, Reproductive and Menstrual Rights Bill 2018⁸ proposes to annul the exception 2 to Section 375. The new bill also proposes to introduce a proviso that "the women's ethnicity, religion, caste, education, profession, clothing preference, entertainment preference, social circle, personal opinion, past sexual conduct or any other related grounds shall not be a reason to presume her consent to the sexual activity." The bill further goes on to propose amendment to the Medical Termination of Pregnancy Act 1971 naming it to be Legal Termination of Pregnancy Act 1977 where it is contended that in rural India the doctors are scared to carry out termination of pregnancy on rape victims which is a curse for them to carry the pregnancy arising out of the rape as doctors fear arrest as per Section 312 of the Indian Penal Code when a person causes voluntary miscarriage of a woman along with extending the

⁷ Marital Rape Already Criminalized as Cruelty Under Section 498A IPC: Delhi Government to High Court available at <https://www.livelaw.in/marital-rape-already-criminalized-cruelty-section-498a-ipc-delhi-govt-hc/>

⁸ Lok Sabha Bill no. 255 of 2018 to be introduced by Dr. Shashi Tharoor.

time of termination of pregnancy from 20 weeks to 24 weeks. This bill not only strengthens women rights but also secures them to have an identity of their own; sometimes it's the re-establishing the lost identity acts as a means of restorative justice. The associated rights of privacy which also included in sexual acts was affirmed in *K.S. Puttaswamy vs. Union of India*⁹ along with considering the right to a dignified life within the meaning of Article 21 of the Indian Constitution in *Kharak Singh vs. State of Uttar Pradesh*¹⁰.

2.3. Compensation of Rape Victims

On earlier occasion the compensation towards victims was provided from the amount of fine recovered from the accused but in cases where the fine was found to be inadequate in such a scenario the victim was further refrained from getting compensation. Further when the accused prefers an application¹¹ for suspension of sentence pending appeal, the payment of fine towards the exchequer of the State gets delayed which in return makes it difficult for the victim to avail compensation.

The jurisprudence behind awarding of compensation originates from the case of *Delhi Domestic Working Women's vs. Union of India*¹² where the Supreme Court of India gave the following guidelines:

- a) The victims of sexual assault cases must have proper legal representation which makes the victim aware of the criminal justice system. Here the job of the victim's advocate will certainly not only be to help the victim to realise about the nature of the court proceedings but also to help the victim to get ready with the case along with assisting the victim in the police station and in court which also includes to provide her with all the means of assistance which she can get from all sources such as psychological or medical assistance.
- b) The court also highlighted upon the need of legal assistance at the police station since the victim's first contact point is the police station, the guidance and support of a legal person while the victim is at the police station and during questioning will be of much help for the victim ensuring proper emotional balance.
- c) It is also to be noted that the police must inform the victim about the right of representation before any questions are asked by the police, along with making a mandatory police report about such compliance – this also brings in the concept of a mandatory duty upon the police which only can be ensured if a similar compliance 'memo' is issued

⁹ (2017) 10 SCC 1

¹⁰ AIR 1963 SC 1295.

¹¹ 'Section 389 Cr.P.C.'

¹² (1995) 1 SCC 14.

by the police like that of the 'arrest memo', 'seizure list' to the victim.

- d) The police stations must maintain details of advocates who are to take up cases of sexual violence against women which the victims may contact when they are unable to find a suitable advocate on her own as she can be completely new to the criminal justice system and its practices.
- e) The appointment of the advocate shall be made by the court on receiving information from the police at the earliest convenient moment which has been reflected in the law as also the presence of an advocate is not only solicited during the trial but also during police questioning.
- f) During the investigation, trial of rape cases or pronouncement of judgment, anonymity of the victim must be maintained as far as necessary. This has now been recognised under Section 228A of Cr.P.C which bears two years of imprisonment and fine. This is also the reason why media houses and victims under the Prevention of Children from Sexual Offences Act 2012 recognises this as an offence if the name¹³, address, family, neighbourhood of the victim is disclosed making it a punishable¹⁴ offence under section 23(4) with at least six months of imprisonment but which may extend to one year or with fine or both.
- g) The court had asked to establish a Criminal Injuries Compensation Board within the meaning of Article 38(1) of the Constitution of India. Rape victims undergoing trauma often face financial crisis. By implementing the victim compensation scheme the States can notify and maintain this fund and the Courts are at liberty to award not only final compensation but also interim compensation along with awarding more compensation than the prescribed limits by the States.
- h) The court also secured the victim rights by declaring that compensation for victims shall be awarded by the courts when the offenders were convicted and also when the trial did not result in conviction by taking into consideration the pain, suffering, trauma, loss of earnings due to pregnancy after a rape incident along with the expenses of child birth if this occurred as a result of the rape.

The jurisprudence behind award of compensation originates from the basic understanding that an offence under the criminal law is the offence against

¹³ Section 23(2) of Protection of children from sexual offences Act 2012.

¹⁴ Ibid, Section 23(4).

the society also which is the reason it is a offence against the State where the State had a duty to protect its citizens from any injury/loss which when failed makes the State vicariously liable in the offence though the State did not aid the accused in the commission of the crime nor the accused was acting upon the direction of the State.

The Calcutta High Court in one of its judgement it is said that the court is not¹⁵ restricted upon the victim compensation scheme as notified by the State and it can exceed the maximum limit for awarding compensation where the case and the situation need, further the Calcutta High Court has opined that denning victim compensation in accordance of Section 357A of Cr.P.C. would amount to infringement¹⁶ of Article 21 of the Constitution.

The incident which occurred in Delhi which shook the entire nation was the gruesome act of gang rape in a moving bus introduced several new provisions in the law and changed the rape laws completely. The victim compensation fund guidelines¹⁷ was released by the Ministry of Home Affairs to aid and better implementation of the victim compensation scheme which was set up with a corpus of Rs. 200 crores and all the States were directed a) to aid and substitute the existing victim compensation schemes which were so published by the States and Union Territories, b) to reduce the irregularity in the amount of compensation vis-a-vis the injuries suffered by the victim as notified by the States and Union Territories of the offences in accordance with the Indian Penal Code, c) to encourage the States and Union Territories for better implementation of victim compensation scheme. The guidelines also disclosed the specified amounts with respect of the offences which required to be implemented by the States and the Union Territories to curb the difference of compensation amounts between the States and Union Territories. The jurisprudence behind this is that the definition of offences as per the Indian Penal Code is similar to all States and the amount of injury suffered by the victim cannot vary from State to State or Union Territory. The guidelines also notified the amount of money allocated for each state and union territory totaling to Rs. 200 cr. Out of which Uttar Pradesh was allocated the highest amount of (Rs. 2810 lakhs) followed by Madhya Pradesh (Rs. 2180 lakhs); Maharashtra (Rs. 1765 lakhs), Rajasthan (Rs. 1545 lakhs); Odisha (Rs. 1060 lakhs); West Bengal

¹⁵ 2017 (1) Calcutta Criminal (Cal) Rep. 692.

¹⁶ Denial of compensation to victim in pursuance to Section 357A Cr. P.C. is infringement of Article 21 of the Constitution: Calcutta HC available at <https://blog.scconline.com/post/2018/07/02/denial-of-compensation-to-victim-in-pursuance-to-s-357a-crpc-is-a-violation-of-article-21-of-the-constitution-calcutta-hc/> (visited 5th September, 2018).

¹⁷ Central Victim Compensation Fund Scheme Guidelines https://mha.gov.in/sites/default/files/CVCFGuidelines_140716.PDF (visited 7th September, 2018).

(1265 lakhs) out of which the least was allocated to Arunachal Pradesh (Rs. 33 lakhs). In regard to the Union Territories the highest amount was awarded for Delhi (Rs. 880 lakhs).

3. Victim Compensation Scheme Guidelines 2015¹⁸

Sl no.	Description of injury ¹⁹	Prescribed amount of compensation ²⁰
1.	Acid attack	Rs. 3 lakhs
2.	Rape	Rs. 3 lakhs
3.	Physical abuse of minor	Rs. 2 lakhs
4.	Rehabilitation of victim of Human Trafficking	Rs. 1 lakh
5.	Sexual assault (excluding rape)	Rs. 50,000
6.	Death	Rs. 2 lakhs
7.	Permanent Disability (80% or more)	Rs. 2 lakhs
8.	Partial Disability (40% to 80%)	Rs. 1 lakh
9.	Burns affecting greater than 25% of the body (excluding acid attack)	Rs. 2 lakhs
10.	Loss of foetus	Rs. 50,000

3.1. Implementation of Victim Compensation Scheme in India

SL No.	Amount of Compensation	State
1.	Rs. 3 lakhs	West Bengal ²¹
2.	Rs. 1.5 lakh	Karnataka ²²
3.	Rs. 3 lakhs	Punjab ²³
4.	Rs. 3 lakhs increased to Rs. 7 lakhs	Bihar ²⁴
5.	Rs. 1 lakh	Gujarat ²⁵

¹⁸ Central Victim Compensation Fund Scheme available at https://mha.gov.in/sites/default/files/CVCFGuidelines_141015_2.pdf (visited 5th September, 2018).

¹⁹ Ibid.

²⁰ Ibid.

²¹ West Bengal victim compensation scheme available at <https://www.wbslsa.org/img/act.pdf> (visited 5th September, 2018).

²² Karnataka victim compensation scheme available at <http://kslsa.kar.nic.in/docs/Victim%20Compensation%20Scheme.pdf> (visited 5th September, 2018).

²³ Punjab victim compensation scheme available at <http://pulsas.gov.in/WriteReadData/uploads/Scheme%20under%20357-A.pdf> (visited 8th September, 2018).

²⁴ Bihar Victim Compensation Scheme 2018 available at <https://sarkariyojna.co.in/bihar-victim-compensation-scheme-2018-rape-acid-attack-victims/> (visited 5th September, 2018).

6.	Gang Rape – Rs. 3 lakhs along with free medical treatment in government hospital Minors – Rs. 2 lakhs and free medical treatment in government hospital	Madhya Pradesh ²⁶
7.	Rs. 2 lakhs	Uttar Pradesh ²⁷
8.	The official gazette notification does not recognize ‘rape’ as an injury/loss for award of compensation	Maharashtra ²⁸
9.	Rape: Rs. 2 – 5 lakhs Gang rape: Rs. 3 – 7 lakhs	Delhi ²⁹
10.	Rs. 3 lakhs	Kerala ³⁰
11.	Rs. 5 lakhs	Rajasthan ³¹
12.	Rs. 2 lakhs	Andhra Pradesh

The above table shows the implementation of the victim compensation scheme in India which gives us a clear picture though there is a circular by the Government of India there is inadequacy in the quantum of compensation awarded by each State.

²⁵ Gujarat victim compensation scheme available at https://home.gujarat.gov.in/Upload/The_Gujarat_Victim_Compensation_Scheme_11-01-2015656.pdf (visited 5th September, 2018).

²⁶ Madhya Pradesh victim compensation scheme available at <https://www.indianemployees.com/gazette-notifications/details/madhya-pradesh-crime-victim-compensation-scheme-2015> (visited 5th September, 2018).

²⁷ Uttar Pradesh victim compensation scheme available at <https://www.scribd.com/document/275839557/Uttar-Pradesh-Victim-Compensation-Scheme-2014> (visited 5th September, 2018).

²⁸ Maharashtra victim compensation scheme available at <https://legalservices.maharashtra.gov.in/Site/Upload/Pdf/Victim-Eng.pdf> (visited 6th September, 2018).

²⁹ Delhi victim compensation scheme available at <http://plindia.org/wp-content/uploads/2016/11/Victim-Compensation-Scheme-2015.pdf> (visited 5th September, 2018).

³⁰ Kerala victim compensation scheme available at <http://latestlaws.com/wp-content/uploads/2015/08/Kerala-Victim-Compensation-Scheme2014.pdf> (visited 9th September, 2018).

³¹ Rajasthan victim compensation scheme available at <http://www.rlsa.gov.in/JJ%20Consultation%20Material/J4C/Victim%20%20Compensation%20Scheme.pdf> (visited 5th September, 2018).

3.2. Reporting of Rapes in India

Year \Rightarrow	2012 ³²	2013 ³³	2014 ³⁴	2015	2016 ³⁵
No. of cases	24923	33707	36735	32328	36657
Crime rate	2.1	5.7	6.1	5.4	6.1
Conviction rate	23.1 ³⁶	27.1 ³⁷	28.0 ³⁸	29.4 ³⁹	25.1 ⁴⁰

The reporting of cases of rape is increasing at alarming rate but the conviction rate which seems to stagnant with years, whether it is the fault of the prosecution in proving its case or it is the inordinate delay in starting of the trail/during trial or it is the fault in the criminal justice remains unanswered.

3.3. Crime Rate in 2015 and 2016

Sl. NO.	Name of State	No. of cases reported – 2015	Crime rate – 2015	No. of cases reported – 2016	Crime rate – 2016
1.	West Bengal	1199	2.6	1110	2.4
2.	Karnataka	589	1.9	1655	5.4
3.	Madhya Pradesh	4391	11.9	4882	13.1
4.	Uttar Pradesh	3025	3	4816	4.6
5.	Kerala	1256	6.9	1656	9.1
6.	Punjab	886	6.7	838	6.2
7.	Bihar	1041	2.1	1002	2
8.	Gujarat	503	1.7	982	3.3
9.	Maharashtra	275414	9.3	4189	4216
10.	Rajasthan	4144	7.3	3656	10.4
11.	Andhra Pradesh	1027	4	994	3.9
12.	Delhi UT	2199	23.7	2155	22.6

³² <http://ncrb.gov.in/StatPublications/CII/CII2012/Statistics2012.pdf> p. 24 (visited 5th September, 2018).

³³ <http://www.nisc.gov.in/PDF/NCRB-2013.pdf> p. 24 (visited 5th September, 2018).

³⁴ Crime In India 2014 <http://www.ncrb.gov.in/StatPublications/CII/CII2014/Compendium%202014.pdf> (visited 5th September, 2018).

³⁵ Crime In India 2016 available at <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20-%202016%20Complete%20PDF%20291117.pdf> (visited 5th September, 2018).

³⁶ Crime in India p. 360

³⁷ Crime in India pp. 360

³⁸ Crime in India pp. ii

³⁹ Crime in India pp. 200

⁴⁰ Crime in India pp. 200

3.4. Psychological and Physical Needs of a Rape Victim

It is said that the job of the lawyer is not only to assist the victim during the course of the trial but also to inform her about the rights which she is entitled to. It is important to note that the medical examination of the rape victims within the meaning of Section 164A of the Code of Criminal Procedure must adhere to at any cost. Only on the request of a police officer who is not below the rank of a sub-inspector, the medical examination of a rape victim shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority, if there are “reasonable grounds to believe that examination of the victim will afford evidence as to the commission of the offence”. In the absence of any such government hospital within six kilometers of radius from the place of offence, any other medical practitioner can conduct such examination. This is significant because the provision of the law is to enable an alternative when a nearby government hospital is not available otherwise the truthfulness of the medical report will be questioned by the defense which the most important evidence in case of rape is.

3.5. Victim Compensation Scheme

Section 357A was inserted in the Criminal Procedure Code with the Amendment Act 5 of 2009 (with effect from 31.12.2009) to introduce a provision of victim compensation scheme which required the management of the States for its proper implementation. The States in coordination with the Central Government have been directed to prepare a scheme in order to compensate the victims or her dependants who have suffered loss or injury as a result of the crime and who require rehabilitation. It is the responsibility of the District Legal Services Authority or the State Legal Service Authority to decide the amount of compensation as soon as the court recommends for such action and make arrangements for the payment of such compensation, after completing the due enquiry within two months.⁴¹ In case where, at the conclusion of the trial, if the court feels that the compensation is not adequate or the case ends in acquittal, it may recommend for compensation.⁴² Even if the offender is untraceable or unidentifiable but the victim can be identified, the victim herself may apply to the State or District Legal Services Authority for such compensation. This ensured that for the purposes of needs of the victim there shall be no more reliance upon the fines recovered from accused nor the State is in liberty to decide whether to compensate or not the concept changed after introduction of victim compensation scheme.

⁴¹ Section 357A (2) and (5)

⁴² Section 357A(3)

Section 357B was inserted by the Criminal Law Amendment Act, 2018 which prescribes compensation payable by the State Government⁴³ shall be in addition to the payment of fine to the victim under ‘*section 326A, section 376AB, section 376D, section 376DA and section 376DB*’ of the Indian Penal Code, 1860 respectively.

The Amendment Act 2018⁴⁴ also states that all hospitals, public or private, irrespective of it being run by the Central Government or State Government or local bodies or any other person, is liable to provide medical attention without asking costs from the victims when any offence has been committed under section ‘*326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E*’ of the Indian Penal Code⁴⁵, 1860 and shall immediately inform the police of such incident.

This has strengthened the position of the victim in the criminal justice system more though rights about information about the ongoing process of the case; whether bail application filed by the accused and whether such application was allowed/rejected is now possible by the e-courts initiative of the Government where the parties are able to track the cause lists as well as daily orders of the cases going on and do not have to rely upon the words of the advocate. But a victim whether a victim of rape or some other offence merely remains a prosecution witness after being a charge-sheeted witness because our criminal justice system has no place for victim impact statement.

3.6. Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018⁴⁶

National Legal Services Authority has come with a scheme in 2018 discussing or elaborating the scope and ambit of the victim compensation scheme. It states that in case of an interim compensation the order of payment must be 25% of the total compensation as per the State victim compensation scheme. The scheme also makes it clear that within 15 days the amount of compensation has to be released in the bank account of the victim in case of a minor with the help of the guardian.

In cases of acid attack the guidelines has made it distinct that interim compensation of Rs. 1 lakh has to be paid within 15 days from the notice received from District Legal Service Authority and remaining amount to be disbursed within 60 days.

⁴³ ‘Section 357A Cr.P.C.’.

⁴⁴ Ibid.

⁴⁵ Indian Penal Code <http://hyderabadpolice.gov.in/acts/Indianpenalcode1860.pdf> (visited 5th September, 2018).

⁴⁶ Nalsa’s Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018 http://www.wcd.nic.in/sites/default/files/Final%20VC%20Sheme_0.pdf (visited 5th September, 2018).

Guideline number five of the scheme also talks about interim compensation is to be forwarded by the head (officer in charge) of the concerned police station upon preliminary verification of facts and purpose of interim compensation along with mandatory reporting of FIR by the Superintendent of Police/Deputy Commissioners/ SHO's in case of offences under section '*Sections 326A, 354A to 354D, 376A to 376E, 304B, 498A*' of the Indian Penal Code, 1860. (physical injury).

Lastly, it is also notified that the minimum amount of compensation of a rape victim shall be Rs. 4 lakhs and a maximum amount of Rs. 7 lakhs to be given to the rape victim. However, the direction of interim compensation within 15 days is only for the victims of acid attack and not for other offences as per the victim compensation scheme.

4. Conclusion

A victim is not only a victim of the crime but also the criminal justice system as whole. This makes it very important for all the stakeholders of the system to function in a cogent and holistic manner.

The other issues which remains unanswered are:

1. Whether the lower judiciary can exercise the power of interim compensation? If yes, whether on application of the victim or the public prosecutor or by the court itself?
2. What is the time taken by the District Legal Services Authorities/State Legal Services Authorities to disburse victim compensation?
3. Whether the fund allocated to the States for giving compensation is enough or there is dearth of funds?
4. A need for a impact assessment study on the implementation of Section 357A Cr.P.C.
5. Whether a victim of rape is given a representation in the parole hearings when a parole application is preferred by the accused? Are the victims at all informed about such applications filed?

An important question which arises is that in protecting the rights of defacto complainant or mandatory hearing of the victim's side during granting of a bail application or admission of an appeal against an order of acquittal, whether the State in form of Public Prosecutors/Assistant Public Prosecutors has the right to contact/meet the victim to understand the effect of the crime. Another area to look into is the availing of the facilities of professional counseling for rape survivors is important. There is also requirement of proper training and sensitization of the lawyers who handle these cases as it requires utmost care and patience while dealing with such cases.