

## **Rehabilitation of Rape Survivors: Policy, Trends and Challenges in India**

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### **Abstract**

*According to the National Crime Records Bureau, for every minute, three rapes are committed in India. What makes it worse is the ill treatment meted out to the rape victims by society and the legal system. The rape victim faces humiliation during the judicial procedure and delays in the rehabilitation procedure.*

*Rape survivors need the help of a variety of institutions like the police, hospitals, government, society, and rehabilitation centres to overcome the physical and mental trauma. This paper will discuss the procedure for the rehabilitation of the rape victim and the legal provisions followed by the government during the trial procedure. Penal provisions and the recent changes in these legal provisions for the rape accused are also discussed in the paper.*

*Compensation is part of the relief provided by the government as it fails to protect the victim's basic rights. As rape is a serious infringement of the victim's fundamental right, which is guaranteed by the government, the state is duty-bound to rehabilitate the victim.*

*Although we have provisions for monetary compensation for rape victims in our legal system, there is an urgent need to revitalise the implementation process. Despite the fact that compensation, which is provided by the competent authority to the rape victim, cannot heal the victim physically or psychologically, it still helps the victim survive in this civilised society.*

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*This paper covers various government schemes for the victim's rehabilitation. This paper has also focussed on the adequacy of the rehabilitation procedure and the monetary compensation that is given by the government.*

**Keyword:** Rape, Punishment, Code of criminal Procedure, Legal service authority, rehabilitation, victim, Punishment, offence.

## **I. Introduction**

Rape is the most heinous crime against women in any country. As per the 2020 Report of the National Crime Records Bureau, there were a total of 28,046 rapes committed under IPC 1860, of which Rajasthan has largest number of rape reported (5316), followed by Uttar Pradesh (2769)<sup>3</sup>. It is a very harsh reality of such incidents that almost 90% of the perpetrators are familiar with the rape victim, or they are familiar with the family member's relatives or friends<sup>4</sup>. As per the statistical data it is shown that 77 rape cases were reported on daily basis making the situation very alarming in India.<sup>5</sup>

Recently, the emphasis has shifted away from the crime's strict definition as a forcible carnal encounter against the victim's will and needing equal resistance from the victim towards the crime's non-consensual nature. Sexual assault means the "ravishment of a woman without her consent or by force against her will"<sup>6</sup>. According to the legal definition in India, rape is committed when a man inserts his private part, any object, or applies his mouth into the vagina, anus, or urethra

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<sup>3</sup>National Crime Bureau Report, *Crime in India 2020*, volume 1, page 31, (2020) <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf> (Last Visited on June 16, 2022)

<sup>4</sup>Malika Kapoor, *Rape Laws in India*, LAW TIMES JOURNAL, (29 July, 2020) <https://lawtimesjournal.in/rape-laws-in-india/> (Last visited on June 16, 2022)

<sup>5</sup>News 18, <https://www.news18.com/news/india/77-rape-cases-daily-80-murders-a-day-in-2020-ncrb-report-shows-spike-in-crime-against-scst-4206896.html> (Last visited on June 16, 2022)

<sup>6</sup>Sakshi Rewaria, *Critical Analysis Of Rape Law In India and Judicial Opinion*, Latest Law, <https://www.latestlaws.com/wp-content/uploads/2018/08/Critical-Analysis-of-Rape-Laws-in-India-and-Judicial-Opinion-By-Sakshi-Rewaria.pdf> (Last visited on June 20, 2022)

of any female, and also if it falls under any of the seven circumstances that are mentioned under **Section 375**<sup>7</sup> of the Indian Penal Code 1860 (IPC).<sup>8</sup>

In *State of Uttar Pradesh v. Babul Nath*<sup>9</sup> the Supreme Court held that to fall under the category of rape, a slight insertion of a man's private part is sufficient, and there is no need for complete penetration with repute of hymen and emission of semen. If there is little penetration of the penis, it will still fall under the legal definition of rape under the IPC.<sup>10</sup>

## II. Amendments in the Definition of Rape

The definition of rape has changed over time with changes in circumstances and society's needs. The definition of rape has undergone many changes since its enforcement. The first amendment was done through the landmark case *Tukaram v. State of Maharashtra*<sup>11</sup>. Which is also famous as the *Mathura rape case*<sup>12</sup>, in which the Supreme Court, through the Criminal Law Amendment Act 1983, added the concept of presumption of non-consensual provision in sec. 114(2)<sup>13</sup> of the Indian Evidence Act, which mentioned that when the rape is committed

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<sup>7</sup>For more details see, Bansi Dhar Gupta & Krishna Dutt Chavali, *New Section 375 Indian Penal Code (IPC) Confusion And Controversies*, vol.38 J Indian Academy Forensic Med. 80, 81 (2016) [https://www.researchgate.net/publication/301741183\\_New\\_Section\\_375\\_Indian\\_Penal\\_Code\\_IPC\\_Confusion\\_and\\_Controversies](https://www.researchgate.net/publication/301741183_New_Section_375_Indian_Penal_Code_IPC_Confusion_and_Controversies) (Last visited on Aug 4, 2022)

<sup>8</sup>Mehta, Siddharth, *Rape Law in India: Problems in Prosecution Due to Loopholes in the Law* (April 13, 2013). SSRN: <https://ssrn.com/abstract=2250448> (Last Visited on June 24, 2022)

<sup>9</sup>1994 SCC (6) 29.

<sup>10</sup> Indian Kanoon, <https://indiankanoon.org/doc/888009/> (Last Visited on June 24, 2022).

<sup>11</sup> *Tukaram v. State of Maharashtra*, AIR 1979 SC 185.

<sup>12</sup> A young orphan named Mathura, who works as a labourer and lives with her brother Gama, developed a relationship with Ashok and wanted to marry him. Gama lodged an FIR that Mathura had been kidnapped, and police officers named Ganpat and Tukaram called all the family members for investigation purposes, and they took Mathura into their custody, where at the police station they raped her. For more details, see Shaurya Aggarwal & Rahul Rathee, *Tukaram and ors. State Of Maharashtra*, Vol.3 IJMLH 1169,1170 (2020) <https://www.ijlmh.com/wp-content/uploads/Tukaram-and-ors.-V.-State-of-Maharashtra-Mathura-Rape-Case.pdf> (Last visited on July 24, 2022)

<sup>13</sup>Section 114A of the Indian Evidence Act says- In the prosecution rape case in Section 375 of the Indian Penal Code, 1860, where in the court sexual assault by the accused

with any woman and she says that she has not given any consent, the court shall presume the absence of consent in that case and the accused will be liable for the rape.<sup>14</sup>

Justice Verma committee was set up in 2013 after the brutal rape case in rape history known as **Nirbhaya rape case 2012**<sup>15</sup> to recommend for the improvement of current criminal legislative provisions related to punishment of rape and to provide the Amendments for the quicker disposal of the rape case.<sup>16</sup>

On the Justice Verma Committee's recommendation, many criminal amendments were introduced in IPC 1860, the Indian Evidence Act, and also into the procedural code, which were inserted through the Amendment Act 2013 after the famous Nirbhaya rape case. The committee has also provided many recommendations related to the judicial trial procedure, the first information report, the quick disposal of sexual assault cases, and strict punishment for rape accused.<sup>17</sup>

After modification through the Criminal Amendment Act, the definition of rape has become wider in the sense that now rape not only includes the penetration of the male reproductive organ, but if any object or any part of the body is

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person is proved and the question arises related to whether women give consent for sex or not, if women in evidence say that they didn't give consent for sex, then the court shall presume that she didn't give consent, which is an irrebuttable matter of question.

<sup>14</sup>India Times, <https://www.indiatimes.com/explainers/news/laws-against-rapes-in-india-555038.html> (Last Visited on June 25, 2022)

<sup>15</sup>On December 16, 2012, in Delhi, a female physiotherapy intern was gang raped and beaten by some rapists. This brutal rape incident generated international coverage, and the rape victim died of grave injuries after 13 days despite receiving medical treatment from India and Singapore. For more details see Mukesh & others vs. State for NCT of Delhi & Or's, (2017) 6 SCC 1

<sup>16</sup>Debarakation Halder, *a Brief Commentary on Verma Committee Report -D Halder-Revised*, Research Gate, Last visited on June 27, 2022, [https://www.researchgate.net/publication/255708270\\_A\\_brief\\_commentary\\_on\\_Verma\\_Committee\\_Report\\_-\\_D\\_Halder\\_-\\_Revised](https://www.researchgate.net/publication/255708270_A_brief_commentary_on_Verma_Committee_Report_-_D_Halder_-_Revised)

<sup>17</sup>Sasi Kumar Jayaraj, *Delhi Nirbhaya Case: A catalyst Episode for Change in Criminal Justice*, Research Gate, [https://www.researchgate.net/publication/342347180\\_Delhi\\_Nirbhaya\\_Case\\_A\\_Catalyst\\_Episode\\_for\\_Changes\\_in\\_Criminal\\_Justice\\_System/citation/download](https://www.researchgate.net/publication/342347180_Delhi_Nirbhaya_Case_A_Catalyst_Episode_for_Changes_in_Criminal_Justice_System/citation/download) (Last visited on Aug 5, 2022)

inserted into the reproductive part of a female, then it will also amount to rape. Through an amendment, a new section **376-A**<sup>18</sup> was also inserted in the IPC.<sup>19</sup>

Some changes were also inserted related to the aggregated forms of rape under the Indian Penal Code (like gang rape (Sec. 376D), rape by the person in authority (Sec. 376C), and custodial rape (Sec. 376C). If the rape victim is dead or in the persistent vegetative stage (Sec. 376A), then a minimum of 20 years or life imprisonment will be given to him.<sup>20</sup>

Again, the Kathua<sup>21</sup> and Unnao<sup>22</sup> rape cases are one of the heinous rape incidents that re-ignited the need for amendments in the recent legal provisions related to sexual assault.<sup>23</sup> After the incident, the Criminal Law Amendment Bill

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<sup>18</sup>Section 376-A of penal code When a person under some authority commits rape of a woman and during the commission of crime, he caused the victim death or left the victim in persistent vegetative state then the accused person shall be punished for the term of minimum 20 years which may be extent to life imprisonment or death also depending upon the gravity of the offence committed.

<sup>19</sup>Shazneen Limjerwala, *A Question of Answers: A Commentary on the Justice Verma Committee Report*, Vol. 74, IJSW, 74(3 & 4), 481-506, 499 (2013), <https://ijsw.tiss.edu/greenstone/collect/ijsw/index/assoc/HASH01d6/e54bf4c6.dir/doc.pdf> (Last Visited on July 2, 2022)

<sup>20</sup>Rachit Bansal, *Analysis of the Criminal (Amendment) Act, 2013*, Manu Patra, Mar 9, 2021, <https://articles.manupatra.com/article-details/Analysis-of-the-Criminal-Amendment-Act-2013> (Last visited on July 27, 2022)

<sup>21</sup> On 10<sup>th</sup> January, 2018 a minor girl is kidnapped, gang raped and also murder by 7-8 persons in a small temple, Rasana which is situated near Kathua village in Jammu and Kashmir. After 1 week the dead body of the little girl found in nearby forest on 17<sup>th</sup>, 2018. On June 2019, 5 accused were convicted and 1 accused is acquitted due to lack of evidence. For more details see [https://main.sci.gov.in/supremecourt/2020/21305/21305\\_2020\\_31\\_1501\\_24425\\_Judgment\\_27-Oct-2020.pdf](https://main.sci.gov.in/supremecourt/2020/21305/21305_2020_31_1501_24425_Judgment_27-Oct-2020.pdf) (Last visited on July 5, 2022)

<sup>22</sup>Unnao case refereed to the famous rape case of 17-year-old minor girl who belong to State of Uttar Pradesh raped by the BJP (MLA) named Kuldeep Singh Sengar on June 4, 2017. Due to public pressure case goes into the hands of CBI for investigation purposes. For more details see, <https://elegalix.allahabadhighcourt.in/elegalix/WebShowJudgment.do> last visited on July 5, 2022.

<sup>23</sup>Abhishek Gupta, *Decoding 'Deterrence': A Critique of The Criminal Law (Amendment) Act, 2018*, 1, e-ISSN-0976-1489, 136-155, 137, 2018, Available at <https://ssrn.com/abstract=3262255> (Last visited on June 20, 2022)

2018 was passed, through which the punishment for rape offenders was made more stringent and provisions of the death penalty were inserted for the accused who commits the rape of a child under 12 years of age.<sup>24</sup> Many other required amendments were also inserted in criminal procedural law and the Sexual Offence Act related to the protection of children with regard to the offences of rape and sexual assault.<sup>25</sup>

### III. Gravity of Punishment against Rape in Different Jurisdictions

Victims of rape bear both physical and invisible scars from the assault. It has a variety of negative effects on the victim's physical and mental health, leaving them to deal with trauma, despair, anxiety, difficulties with their reproductive and sexual health, injuries, and suicidal impulses. It offends the person's autonomy, agency, and integrity in regards to their bodies and their sexuality. The social context of the area where the rape takes place, as well as the level of support and care a victim can receive, moderate the damages and effects of rape. Rape has deep ideological and sociological roots and is frequently viewed as an innocent crime in patriarchal and sexist societies like those that are prevalent throughout much of the world. The evaluation, classification, and standard of treatment and counselling that a rape victim receives are impacted by this misunderstanding. According to Indian legislative provisions, rape crime is penalized with term of 10 years which may extent to life imprisonment depending upon the circumstances and facts of the case, and the sentence that is awarded by the court is rigorous as this crime is cognizable and non-bailable. Under certain conditions, if rape is done by a minor, then the penalty will be a term of minimum 20 years and maximum life imprisonment with a monetary fine that is imposed by the court on the accused as compensation to the victim.<sup>26</sup>

The famous **Nirbhaya rape case** was committed in a very brutal and shocking manner, due to which it falls under the rarest of rarest cases because of which the

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<sup>24</sup><https://prsindia.org/billtrack/the-criminal-law-amendment-bill-2018> (Last Visited on May 12, 2022)

<sup>25</sup>Gupta, *supra* note 20, at 140.

<sup>26</sup> Indian Penal code, section 376, No 45, Acts of the parliament (1860)

death penalty was awarded to the offenders.<sup>27</sup> In India, the maximum punishment for the rape victim is the death penalty in the rarest of rarest cases.<sup>28</sup>

In certain countries around the world, rape is considered a crime that is to be punished harshly. Rape is punishable by death in more than ten countries around the world. There are some countries, like North Korea, where the rapist is punished with a death sentence by firing squad. In Saudi Arabia, punishment is public beheading after administering the rapist with sedatives.<sup>29</sup>

In China, a person guilty of committing rape will be liable for 3 years' punishment, life imprisonment or the death penalty depending upon the gravity of the crime committed.<sup>30</sup> In the UK, punishment for a rape accused ranges from 4 years to 19 years, and the maximum term is life imprisonment, depending upon the facts of the case.<sup>31</sup>

#### IV. Human Rights Issues and Challenges Faced by Rape Survivors

Victim is defined in Section 2(wa)<sup>32</sup> of the criminal procedural code in India, which includes not only the person who has suffered but also their guardians or legal heirs. Article 1<sup>33</sup> of the UN Declaration of Basic Principles of Justice for

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<sup>27</sup>Eshita Baghel, *Analysis of Death Sentence in Nirbhaya Rape Case*, 5 ISSN. 2265, 2268 (2022), <https://www.ijlmh.com/wp-content/uploads/Analysis-of-Death-Sentence-in-Nirbhaya-Rape-Case.pdf> Last visited on July 7, 2022.

<sup>28</sup> Legal Service India, <https://www.legalserviceindia.com/legal/article-2133-case-study-nirbhaya-reforms-introduced-in-rape-laws.html> (last visited on June 27, 2022).

<sup>29</sup>Adv Aneeta, *Punishment for Rape in Different Countries*, Pathlegal, <https://www.pathlegal.in/Punishment-For-Rape-In-Different-Countries-blog-2387582%20> (Last visited May 18, 2022).

<sup>30</sup> China Justice Observer, <https://www.chinajusticeobserver.com/a/is-rape-a-civil-or-criminal-offence-in-china> (accessed on May 26, 2022).

<sup>31</sup> Stuart Miller, <https://www.stuartmillersolicitors.co.uk/sentences/sentence-for-rape/> (Last visited on July 26, 2022).

<sup>32</sup> Section- 2 (wa) of criminal code says a person who suffer any loss/injury which is the result of any act of the accused person then that person who suffered will be treated as victim of crime and also their dependents like guardian or legal heirs will also be included in this definition.

<sup>33</sup>According to the WHO definition "Victims" is considered a person who has some fundamental right under some legal provisions/act and accused person infringed that fundament right of the victim by causing some kind of loss/injury to him like physical, emotional harm, social etc through his act/omission. For more detail

Victims of Crime and Abuse of Power, 1985, also defines “victim” as a person who has suffered any kind of harm or injury.<sup>34</sup> Normally the society is standing behind the victim to support him in any kind of situation against the accused person, but there are some crucial crimes for which a victim needs that ‘much needed’ support and attention from the society and other institutions also, but sometimes the society and other organisations fail to garner that support.<sup>35</sup>

In the **Nipun Saxena case**<sup>36</sup>, it is observed that in our society, if rape is committed, the rape victim is treated worse than the perpetrator of the crime. As there is no fault of the rape victim, society, instead of showing empathy, treats her as “untouchable”. In some cases, family members of the victim refuse to accept the victim back into their family.<sup>37</sup>

When any crime is committed with any person, police officers are the main source available to victims to register their grievance, and their supportive behaviour helps the victims in seeking justice, but the main problem arises when the victim faces challenges in registering the First Information Report (F.I.R.) and proving that rape was actually committed with her or not.<sup>38</sup>

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see <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>(Accessed on July 8,2022).

<sup>34</sup> Directorate Of Public Prosecutions, <http://www.dppodisha.nic.in/?q=node/17> (Last Visited on June 24, 2022).

<sup>35</sup> Rebecca Cambell, *Community Response to Rape: Victims Experience With the Legal, Medical and Mental Health System*, Vol 26 AJCP 355, 360, 1998, [https://www.researchgate.net/publication/13559783\\_The\\_Community\\_Response\\_to\\_Rape\\_Victims%27\\_Experiences\\_with\\_the\\_Legal\\_Medical\\_and\\_Mental\\_Health\\_Systems](https://www.researchgate.net/publication/13559783_The_Community_Response_to_Rape_Victims%27_Experiences_with_the_Legal_Medical_and_Mental_Health_Systems)( Last visited on July 18, 2022).

<sup>36</sup> A minor girl was raped by her maternal uncle, she got pregnant as a result of rape and in 2022 she given birth to a child although the accused is convicted but question arises here is related to the rape victim identity. For more details see <https://indiankanoon.org/doc/53672964/> (last visited on July 27,2022).

<sup>37</sup>Patna High Court, <http://patnahighcourt.gov.in/bslsa/pdf/Publication/116.pdf> (Last visited June 12,2022).

<sup>38</sup>Radha R Sharma, Rupali Pardasani & Sharda Nandram, *The Problem of Rape in India: A Multi-dimensional Analysis*, vol. 7 IJMPB 1,8 (2014),[https://www.researchgate.net/publication/261637776\\_The\\_Problem\\_of\\_Rape\\_in\\_India\\_A\\_Multi-dimensional\\_Analysis](https://www.researchgate.net/publication/261637776_The_Problem_of_Rape_in_India_A_Multi-dimensional_Analysis)(Last visited May 31, 2022).

An 82-page report related to justice and services for sexual assault in India shows that the rape victims are facing humiliation at all levels of judicial procedure, starting from the incident, trail, FIR, police station, medical examination by the public or private doctor, and the final disposal of the case. Police officers don't want to register the complaint, and victims and witnesses are not given timely protection. The offender of a rape crime gets the sentence of jail term as mentioned under the law, and in most cases, the victim gets the compensation amount that is prescribed by the law. However, the life of the rape victim in this civilised society after the incident becomes very difficult day by day.<sup>39</sup>

Rape is a non-billable offence under the Indian legal system, but the accused person easily gets bail due to a lack of evidence, and in some cases, police officers, lawyers, and politicians provide shelter to the offender. In many cases, a rape victim does not feel comfortable talking about what happened to her, and it is seen that 6% of the adolescent victim tries to commit suicide because of crime.<sup>40</sup> Even during cross-examination in a judicial trial, the victim is subjected to humiliation in front of the court by an advocate asking immoral and character-based questions, but nobody can raise their voice against it as it is a part of judicial procedure that needs to be followed.<sup>41</sup>

Victims of rape are frequently humiliated by many supportive agencies; even doctors humiliate the rape victim by doing the "two-finger test," which is not even necessary as per Supreme Court directives.<sup>42</sup> Rape victims should not be re-traumatized by doing needless tests, whose practice is against their dignity and also infringes on their mental and physical health.<sup>43</sup>

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<sup>39</sup><https://www.humanrightsinitiative.org/download/CHRI%20and%20AALI%20Barrier%20in%20accessing%20justice%20English.pdf>(last visited May 15, 2022).

<sup>40</sup>Ram Jilola, From Rape to Sexual Assault: Legal Provisions and Mental Health Implications, Vol.31 INDJSP 9,16(2015), [https://www.researchgate.net/publication/281536078\\_From\\_rape\\_to\\_sexual\\_assault\\_Legal\\_provisions\\_and\\_mental\\_health\\_implications](https://www.researchgate.net/publication/281536078_From_rape_to_sexual_assault_Legal_provisions_and_mental_health_implications) (Last visited on Aug 3,2022)

<sup>41</sup>Supra note 34

<sup>42</sup>Namita Jain & Aditi Tyagi, *State of Rape Victims in India*, Vol 19 ilk online 6241,

<sup>43</sup>Nisreen Khambati, India's Two finger Test After Rape violates women And should be eliminated from medical practices, Vol 348 BMJ 1,1 (2014), [https://www.researchgate.net/publication/262421796\\_India%27s\\_two\\_finger\\_test\\_after](https://www.researchgate.net/publication/262421796_India%27s_two_finger_test_after)

A rape survivor faces numerous problems in accessing justice, including community pressure to drop the case and insufficient legal aid. If the rape victim belongs to a lower caste or SC or ST, then the problems are worse.<sup>44</sup> Rape victims experience fear, humiliation, nightmares, shame, and anger after the incident, which may lead to short-term psychological symptoms shown by them.<sup>45</sup> In most rape cases, there is no timely medical treatment given to the rape victim due to a lack of evidence or the attitude of government institutions responsible for providing help to the victim. This failure leads the rape victim to remain in traumatic circumstances for life, leaving no hope for rehabilitation.<sup>46</sup>

The judicial system is already loaded with lots of cases, due to which the rape judgement takes a long time to come. Rape cases also get delayed due to poor investigation processes and delays in trial procedures.<sup>47</sup>

## V. Best Practices around the World

Statutory laws for rape have been drafted, in which the term 'rape' is defined as well as the punishment for such an offence. In more than half of the states, statutory rape is a felony only if one of the participants is at least several years older than the other; if the two persons are relatively close in age but one of them is underage, some states will not recognize it as a crime or may only treat it as a

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\_rape\_violates\_women\_and\_should\_be\_eliminated\_from\_medical\_practice (Last visited on July 8, 2022)

<sup>44</sup><https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/CSOs/162-india-2.pdf>

(Last visited on June 1, 2022)

<sup>45</sup>Yuvraj Dilip Patil, *Medico-legal System in Sexual assault in India*, Vol.2 JKMISSU 151, 151 (2013)

[https://www.researchgate.net/publication/297235039\\_MedicoLegal\\_System\\_in\\_Sexual\\_Assault\\_Cases\\_in\\_India](https://www.researchgate.net/publication/297235039_MedicoLegal_System_in_Sexual_Assault_Cases_in_India) (Last visited on June 3, 2022)

<sup>46</sup>Purnima S. Tripathi, Rehabilitation concerns, *Frontline* (April 11,2003) <https://frontline.thehindu.com/social-issues/article30216340.ece> (Last visited June 3, 2022)

<sup>47</sup>Kushi Masarani, Mohmad Abiali Lokhndwala & Dhaval M Chudasama, *Human Rights Law and Practice Rape Culture :A Violence Against Women Running Through Ages*, Vol 4 JHRLP

37,41(2021),[https://www.researchgate.net/publication/357767879\\_Human\\_Rights\\_Law\\_and\\_Practice\\_Rape\\_Culture\\_A\\_Violence\\_against\\_Women\\_Running\\_Through\\_Ages](https://www.researchgate.net/publication/357767879_Human_Rights_Law_and_Practice_Rape_Culture_A_Violence_against_Women_Running_Through_Ages)(Last visited on June 22,2022)

misdemeanor. However, not all states have close-in-age laws.<sup>48</sup> The punishment for any sort of rape is typically a significant prison sentence, the length of which is determined by your state's laws. In addition, a convicted defendant is usually required to register as a sex offender for the rest of his or her life.

Rape is one of the most heinous and serious crimes all over the world and takes place in every part of the countries.<sup>49</sup> Botswana (92.93), Australia (91.92), Lesotho (82.68), and South Africa (72.10) are countries where rape cases have been highest around the world.<sup>50</sup>

For the past five years, the CEDAW Committee of the United Nations has asked a number of European nations to update their rape laws to conform to international norms, particularly the Istanbul Convention, and to explain rape in terms of the absence of consent. In the US, there is the SACT Team, which provides emergency shelter and housing to rape victims along with education, training, and support.

In the United States, there is the Violence Against Women Act (VAWA), which was passed in 1994 by Congress, and amendments were made according to the needs of society. The main aim of this act is to eliminate all kinds of violence against women in society. The VAWA Fund is there, from which funds are allocated to the state or local government and non-profit organisations that are focused on ending violence against women.<sup>51</sup>

For the rape victims, they provide training to the police system on how to counsel the victim and help them reach justice. Various other organizations are also funded by the VAMA, which helps the rape victim access the education system

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<sup>48</sup> FindLaw, "Rape Crimes Defined, Common Defenses and Rape Penalties", <https://criminal.findlaw.com/criminal-charges/rape.html> (last visited on November 9, 2021)

<sup>49</sup> Indian Law Portal, <https://indianlawportal.co.in/mukesh-v-state-for-nct-of-delhi/> (Last visited June 27, 2022).

<sup>50</sup> World Population Review, <https://worldpopulationreview.com/country-rankings/rape-statistics-by-country> (Last visited on June 4, 2022).

<sup>51</sup> Lynn Hecht Schafran & Jillian Weinberger, *International Approaches to Rape*, 215, (Nicole Westmarland & Geetanjali Gangoli, 2011) Available at <https://academic.oup.com/policy-press-scholarship-online/book/21114/chapter/180716420> (Last visited on Aug 1, 2022).

and medical treatment. There are special sex offence courts to dispose of the case on a priority basis.<sup>52</sup>

## VI. Rehabilitation of Rape Victims

According to the World Health Organization, "rehabilitation means " a series of interventions aiming to improve functioning and minimize disability in people with health issues who interact with their surroundings.<sup>53</sup>

Fundamental rights that are incorporated in our constitution also include the right to life with human dignity<sup>54</sup> and equality<sup>55</sup> , and they implicitly include protection from sexual harassment. The fine levied must also be fair and reasonable to cover the victim's medical and rehabilitation costs. The victim is responsible for paying the fine. <sup>56</sup>

The Supreme Court in many cases like *Rudal Shah v. State of Bihar*<sup>57</sup> and *Bhim Singh v. State of Jammu & Kashmir*<sup>58</sup> held that compensation is a basic right that should be available to any victim of crime and is also mentioned under the constitutional provisions of our country. If there is a violation of a fundamental right of any person, then compensation as a constitutional remedy will be available to the victim. <sup>59</sup>

Sexual assault is not an offence against women only; it affects the whole society in a very disastrous manner because it damages a woman's entire psychology and puts her in a state of extreme emotional distress. Her willpower is what allows her to rehabilitate herself in a culture that mocks and scorns her. As protection of the citizens is the basis duty of any state, if competent authority fails to protect the fundamental rights of any person, then the victim will be

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<sup>52</sup>Lynn Hecht Schafran & Jillian Weinberger, supra note 52, at 220.

<sup>53</sup> World Health Organization, <https://www.who.int/news-room/fact-sheets/detail/rehabilitation>, (Last visited 20 March,2022).

<sup>54</sup> Constitution of India, Article 21.

<sup>55</sup>*Id.* Article 14.

<sup>56</sup>Directorate Of Public Prosecutions Odisha, <http://www.dppodisha.nic.in/?q=node/17> (Last visited on June 24, 2022).

<sup>57</sup>1983 AIR 1086, 1983 SCR (3) 508.

<sup>58</sup>AIR 1986 SC 494.

<sup>59</sup>Indian Legal Solution,<https://indianlegalsolution.com/rudul-sah-vs-state-of-bihar-1983/>(Last visited June 4,2022).

empowered to get compensation from the responsible government.<sup>60</sup> Rape is one of the most prominent crimes against women, which scars both the present and future lives of the victim, and according to a National Crime Bureau report, the conviction rate of the accused is abysmally low.<sup>61</sup>

Many rape survivors show courage and determination to overcome the trauma what they faced off but instead of getting support from our government system and civilized society they become the forgotten and neglected part during the whole trail. Rape survivors needs help of variety of institutions to overcome the physical, mental and psychological, emotional trauma of crime. Compensation is not adequate enough to heal the victim's pain but it helps the victim in getting some solace and financial relief.<sup>62</sup>

For the purpose of this paper a survey was conducted upon 15 people in authority and NGOs to get an idea on rehabilitation of rape victims. The present study is a combination of different methods of research methodology. Firstly, an elaborator method is adopted to study the existing legal framework necessary to this study. Both primary and secondary sources are referred to while conducting the research. The doctrinal research method is to be used to analyze and understand the problems faced by rape victims. This will primarily be done by studying various case laws and relevant judgements. Other public documents, journals, law commission reports, NCRB data, articles, books, newspaper articles, and reporting available both online and offline have been relied upon to facilitate answers to the research problem. Also, empirical research has been adopted to collect primary data to understand the procedures followed in the rehabilitation of a rape victim.

The study has shown the following findings related to the process of rehabilitation for rape victims: The rehabilitation process involves all the

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<sup>60</sup>Shri Bodhisattwa Gautama vs. Miss Shubhra Chakraborty, AIR 1996 SCC (1) 490.

<sup>61</sup> Prakriti Ambasht, *Rehabilitation of the Victims of Rape in the Present Times: Did we Really Come A Long Way?*, Vol. II, Lex Forti 1, 3, <https://lexforti.com/legal-news/wp-content/uploads/2021/02/Rehabilitation-of-victim-Prakriti-Ambasht.pdf> (Last visited on July 8,2022).

<sup>62</sup>Advait Tambe & Garima Pal, *Blikis Yakub Rasool v. State of Gujarat: An Analysis of the Victim Compensation Scheme in India*, ILI Law Review, <https://ili.ac.in/pdf/18.pdf> (Last visited on July 8,2022).

stakeholders involved with the victim, from the incident to the trial process and even after judgement in the case. Be it medical practitioners, police personnel, lawyers, NGOs, or society itself.

1. The data shows that due to the stringent and zero tolerance policy for crime against women, 13 out of 15 cases were reported when they came to the attention of the concerned police station.

\*Some cases still go unreported due to various reasons, including family pressure, societal status, irresponsible behaviour of police personnel in some cases, and fear of the accused person or persons.

3. Medical practises for collecting evidence about the incident sometimes cause humiliation to the victim, like the “two-finger test”. Also, harassment by medical practitioners has been noticed in some cases, which hinders the rehabilitation process and causes mental agony for the victim.
4. Compensation provided to the victim as per state laws sometimes takes so long after the incident that it becomes irrelevant to the victim. Victim Compensation schemes need some amendments that ensure that the system or government machinery is more accountable for providing necessary compensation within a reasonable time to the victim.
5. The study also shows that in 10 out of 15 cases, the victim falls into the trap of sex workers or traffickers during the rehabilitation process, which could be due to various reasons like neglect from the family and society, no justice in the case, and irresponsible behaviour of personnel handling the case<sup>63</sup>.
6. Help from social workers and NGOs becomes more significant as the study has shown that those victims who are involved with some NGO’s contributing to some social work and also doing some constructive work

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<sup>63</sup> Upadhyay N.K. *Bride Trafficking in India: Aspects, Causes and Potential Solutions*, BRICS LAW JOURNAL. 2021;8(3):67-92. <https://doi.org/10.21684/2412-2343-2021-8-3-67-92>

exhibit more confidence in the rehabilitation process and overcome the mental trauma over a period of time.

### **A. Rehabilitation and Compensation to the Rape Victims in India**

There are some laws in our system that act as deterrents for crimes against the state. In today's era, every country is facing any kind of criminal wrong within its territorial jurisdiction and has its own procedure to punish the accused person and compensate the victim for the damages.

The victim has the right to get appropriate compensation, rehabilitation, and repair for the harm she suffered as a result of the crime.<sup>64</sup>

In the Indian context, the order to pay compensation for any loss or injury to any victim is mentioned in Sec. 357<sup>65</sup> of Criminal Procedural Law, in which courts grant compensation to the victims of any offence or act on the basis of the successful conviction of the accused only. But after the 2008 amendment, a new section 357-A<sup>66</sup> was inserted on the recommendation of the report<sup>67</sup> to immediately help the rape victims in case of any loss or injury as a result of any crime. This section mainly deals with the compensation provision in cases of sexual assault.<sup>68</sup>

According to Section 357, compensation is given when the monetary amount given under Section 357 is inadequate, and also when the accused person is not identified or traced but the victim of crime is identified, then the victim or their

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<sup>64</sup>Mukesh Yadav, *Compensation and Rehabilitation of Rape Survivor A Constitutional Right*, Research Gate, [https://www.researchgate.net/publication/266087692\\_Compensation\\_and\\_Rehabilitation\\_of\\_Rape\\_Survivors\\_A\\_Constitutional\\_Right](https://www.researchgate.net/publication/266087692_Compensation_and_Rehabilitation_of_Rape_Survivors_A_Constitutional_Right) (Last visited on July 14, 2022).

<sup>65</sup>Sec-357 Order to pay compensation for more details visit [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_5\\_23\\_000010\\_197402\\_1517807320555&orderno=400](https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_000010_197402_1517807320555&orderno=400)( Last Visited on July 14,2022).

<sup>66</sup>Sec-357 A-Victim compensation scheme for more details [https://districts.ecourts.gov.in/sites/default/files/Code%20of%20Criminal%20Procedure\\_0\\_0.pdf](https://districts.ecourts.gov.in/sites/default/files/Code%20of%20Criminal%20Procedure_0_0.pdf)(Last visited on July 29,2022).

<sup>67</sup> 154<sup>th</sup> Law commission report (1996).

<sup>68</sup> Shaveta Gagneja, *Victim Emancipation Through Compensation: A Study with Special Reference to Sec 357 of Crpc*, vol. 5/25 SRJIS 7000, 7009 (2018), <https://oaji.net/articles/2017/1201-1529143749.pdf> Last visited on July 10, 2022).

dependents can apply with an application to the appropriate authority for rehabilitation amount.<sup>69</sup>

Under Sec. 357 of the Cr.P.C., there is no duty of the court to provide compensation to the victim, but liability is upon the accused after successful conviction only, which was the major flaw. But after the insertion of Sec. 357-A under the Cr.P.C., now the state is liable to pay compensation to the victim or their dependents, which is a very progressive step by the government to reduce the difficulties faced by the victims.<sup>70</sup>

Under Section 357-A, the state government is required to prepare the mandatory victim compensation scheme for the victims and their dependents, through which the victim can claim compensation for any loss or injury due to crime.

### **B. Procedure for Granting Compensation to the Rape Victim**

There are two procedures to claim the compensation amount. First, the victim can access the concerned territorial court by registering the F.I.R. or complaint, and then the court will order the concerned competent authority to pay the plaintiff the quantum of damages according to the gravity and injury caused to the victims as a result of the accused act. Secondly, if the rape accused is not identified, the victim and their dependents can still directly apply to the district legal service authority for the compensation amount through the application mode to the concerned authority.<sup>71</sup>

After the recommendation by the competent judiciary or application by the victim or their dependents, the DLSA or SLSA, after due inquiry, grants the compensation amount to the victim within the ambit of 2 months, which is the

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<sup>69</sup>Criminal Manual, 2018, sec-357-A, no.22, Act of Parliament, 2018, (India).

<sup>70</sup> Vineet Dwivedi & Madhavi Khandelwal, *Rights of Rape Victims in India*, vol.4 IJMLH 1302, 1303 (2021), Available at <https://www.ijlmh.com/paper/rights-of-rape-victims-in-india/> (Last visited on July 10, 2022).

<sup>71</sup> Akshat Meharia, *Enactment and Implementation of Section 357A of Criminal Code of Procedure in Relation to the Plight of the Victims*, Vol 3 IJMLN 90 ,91 (2020), [https://www.researchgate.net/publication/344465347\\_Enactment\\_and\\_Implementation\\_of\\_Section\\_357A\\_of\\_the\\_Criminal\\_Procedure\\_Code\\_in\\_Relation\\_to\\_the\\_Pligh\\_of\\_the\\_Victims](https://www.researchgate.net/publication/344465347_Enactment_and_Implementation_of_Section_357A_of_the_Criminal_Procedure_Code_in_Relation_to_the_Pligh_of_the_Victims) (Last visited on July 18, 2022).

statutory period <sup>72</sup>, except Arunachal Pradesh, which decides the compensation claim within the period of 1 month. <sup>73</sup>

### C. Compensation to Rape Victims under Schemes by the States

There are women victim compensation funds in almost every district or union territory, which are maintained by the appropriate state government, and an amount is provided from them to the victim of crime by the SALSAs/DALSAs <sup>74</sup>. Every state has a different scheme according to their requirements and conditions in their territorial jurisdiction, but the central government, through Section 357-A of the Cr.P.C., makes it obligatory for every state to set up the victim compensation scheme at their level. <sup>75</sup>

The SLSA or DLSA is the competent authority to provide rehabilitation or compensation to the rape victim. If the offence is committed, the authority will order the provision of immediate medical services to the rape victim, which is necessary for her recovery. If any interim relief is required, then that will be awarded to the victim on the certification given by the police officer who is not below the police station in charge. The monetary compensation can be provided to the rape victim by the *suo moto* action taken by the competent authority if they feel that interim relief is required to rehabilitate the victim. <sup>76</sup> According to the Central Women Victim Compensation Scheme, the minimum amount of compensation for the rape victim is Rs. 4 lakh and the maximum is Rs. 7 lakh. When the offence falls under the gang rape category, the amount will be between 5 lakh and 10 lakh. <sup>77</sup>

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<sup>72</sup> Justice M.R. Mallick, Criminal Manual, 174(2018).

<sup>73</sup>For more details see <https://thc.nic.in/Central%20Governmental%20Schemes/Arunachal%20Pradesh%20Victim%20Compensation%20Scheme%202011.pdf> (last visited on July 19, 2022).

<sup>74</sup>Section 9, Legal Services Authorities Act, 1987(Act 39 of 1987).

<sup>75</sup>G.V. Mahesh Nath, *Victim Compensation: Understanding the Law to Sensitize Stakeholders*, SSRN, (June 25, 2020) available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3635598](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3635598) (Last visited on July 18, 2022).

<sup>76</sup> Ministry of Women & Child development, [https://wcd.nic.in/sites/default/files/Final%20VC%20Scheme\\_0.pdf](https://wcd.nic.in/sites/default/files/Final%20VC%20Scheme_0.pdf) (last visited on July 19, 2022).

<sup>77</sup> *Ibid* p.10

There are 7 union territories and 29 states in our country, and every state has its own victim compensation scheme for the victim of crime. Some states like Delhi, Arunachal Pradesh, Karnataka, and Chhattisgarh were the first to adopt the scheme in 2011, whereas other states like Goa, Assam, and Himachal Pradesh adopted the scheme in 2012.<sup>78</sup>

All the states didn't have a uniform victim compensation scheme, but they had different compensation policies according to state guidelines. The amount of compensation is determined by the state and is determined by the gravity of the offence or the injury or loss caused to the victim of crime. Goa (10 lakh)<sup>79</sup>, Delhi and Orissa<sup>80</sup>, and Chhattisgarh<sup>81</sup> all fixed the amount for rape as minimum 4 lakh and maximum 7 lakh, but if there is a gang rape case, the minimum amount fixed is 5 lakh and the maximum is 10 lakh.<sup>82</sup>

As per Supreme Court guidelines, the minimum amount for the rape victim is fixed at Rs. 4 lakhs and the maximum is Rs. 7 lakhs. If the case is gang rape, then the amount fixed is Rs. 5 lakhs and the maximum is Rs. 10 lakh.<sup>83</sup>

#### **D. Nirbhaya Scheme**

Under the Nirbhaya scheme, the government has set up the Nirbhaya fund to enhance the security and safety of women in India. The "One Stop Centre" scheme has been launched under the Nirbhaya scheme in every district across the country since 2015 and aims to facilitate rape survivors with integrated

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<sup>78</sup> Deepa Dube, *Victim Compensation Schemes in India: An Analysis*, Vol 13 IJCJS 339, 343 (2018), <https://ijcjs.com/pdfs/DubeVol13Issue2IJCJS.pdf> (Last visited on July 19, 2022).

<sup>79</sup>For more details see <https://indianlawwatch.com/practice/law-relating-to-victim-compensation/>(last visited July 19, 2022).

<sup>80</sup>For more details see <http://odishapoliceidcb.gov.in/sites/default/files/VICTIM%20Compensation%20Scheme%20Amendment%2C%202018.pdf> (Last visited July 19, 2022).

<sup>81</sup>For more details see [http://cgslsa.gov.in/SCHEME/VCS\\_2018\\_NOTIFICATION\\_FOR\\_WOMEN\\_VICTIM\\_S.pdf](http://cgslsa.gov.in/SCHEME/VCS_2018_NOTIFICATION_FOR_WOMEN_VICTIM_S.pdf) (Last visited on July 19,2022).

<sup>82</sup>For more details see <http://dlsa.org/legal-aid-wing/victim-compensation-section/> (Last visited on July 19, 2022).

<sup>83</sup> Times of India, <https://timesofindia.indiatimes.com/india/minimum-compensation-for-rape-4-lakh-rules-sc/articleshow/65694248.cms>(Last visited on July 19, 2022).

services. They provide free legal aid and medical facilities; temporary shelter; psychological counselling; and police assistance. So far, there are 704 one-stop centres across the country that have given assistance to the 3 lakh rape victims and survivors.<sup>84</sup>

State and union territories get funds from the Nirbhaya Fund Scheme, because of which they are able to help the victims and support them in getting justice for the harm they suffered. The ministry of women and children implemented the scheme "Umbrella" under the guidance of One Stop Centre, in which they assist the survivors by providing integrated services like medical support, economic support, and emotional support that help in the victim's rehabilitation.

#### **E. Medical Aid to the Rape Victims**

As per Section 27<sup>85</sup> of the POSCO Act, if the rape victim is a minor, then a medical examination will be conducted by the registered medical practitioner (RMP) employed in any government hospital. In the absence of a RMP, any other RMP who falls under Section 164-A<sup>86</sup> of the Cr.P.C. needs to conduct the examination with the consent of the victim or their guardian only.<sup>87</sup>

In a legislative system like the criminal procedural code provided in Sec. 357-C<sup>88</sup>, in which the government makes mandatory provisions for the free medical treatment of rape victims or survivors by the government hospital or the private hospital without any delay. Immediate medical treatment shall be given to the rape victim related to the injury caused, pregnancy, psychological counselling,

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<sup>84</sup>PIB Delhi, *Nirbhaya Scheme*, Ministry of Women and Child Development, Aug 06, 2021, 5.11 PM <https://www.pib.gov.in/PressReleasePage.aspx?PRID=1743231> (Last accessed on July 19, 2022).

<sup>85</sup> B.L. Chaudhary & Raghvendra Kr, *Medical Examination of Child of sexual assault under the protection of child from sexual offences (POSCO), Act 2012*, <https://www.ipinnovative.com/journal-article-file/5781> (Last visited on July 29, 2022).

<sup>86</sup> For more details see <https://devgan.in/crpc/section/164A/> (Last visited on July 20, 2022)

<sup>87</sup> Ministry of Home Affairs Government of India [https://www.mha.gov.in/sites/default/files/womensafetyDivMedicalOfficers\\_06082018\\_0.pdf](https://www.mha.gov.in/sites/default/files/womensafetyDivMedicalOfficers_06082018_0.pdf) (Last visited on July 29, 2022)

<sup>88</sup> Indian Law Info, <https://www.indianlawsinfo.com/home/section/1230/section-357c-in-the-code-of-criminal-procedure/treatment-of-victims> (Last visited on July 29, 2022)

and emergency contraception.<sup>89</sup> The mental trauma suffered by the rape victim could be reduced if the examiner assured the victim that the medical examination would be conducted after getting consent from the victim and by providing relevant information related to the medical examination.<sup>90</sup>

#### **F. Guidelines and Protocol on Medical Examination by the Government**

The health department in the central government sets the norms for the medical examination of the rape victim, in which the consent, privacy, dignity, and psychological concerns of the rape victim are taken care of while conducting the medical examination.<sup>91</sup> All the required medical services would be provided to the victims without any discrimination on the basis of sex, colour, caste, language, occupation, etc., and if any examiner refuses to provide the medical services to any victim, he will be liable under Sec. 166-c of the IPC. In this case, irrelevant medical examinations and insensitive tests were barred by the government because they were related to the past sex history of the victim.<sup>92</sup>

#### **G. Manodhariya Scheme for Rape Victims by the Maharashtra State**

For the psychological trauma that has been faced by the rape victims and acid attack survivors, the Maharashtra government took initiative by launching the Manodhariya scheme, in which they provide financial assistance of 1 lakh rupees, and in special rape cases, an amount of 10 lakh rupees is given to the survivors on the basis of the circumstances of the case. They also provide a

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<sup>89</sup>Mohd Kaleen Khan, *Doctors and Medico Legal Examination of Victims of Rape Assault*, Vol. 3 IJFP 136, 138 (2015), [https://www.researchgate.net/publication/277721825\\_Doctors\\_and\\_Medico\\_Legal\\_Examination\\_of\\_Victims\\_of\\_Sexual\\_Offenses](https://www.researchgate.net/publication/277721825_Doctors_and_Medico_Legal_Examination_of_Victims_of_Sexual_Offenses) (Last visited on July 29, 2022)

<sup>90</sup>Amrita Pitre, *Caring for Survivors of Sexual Assault*, vol 3 IJME 90, 90 (2006), [https://www.researchgate.net/publication/316210710\\_Caring\\_for\\_survivors\\_of\\_sexual\\_assault](https://www.researchgate.net/publication/316210710_Caring_for_survivors_of_sexual_assault) (Last visited on July 29, 2022)

<sup>91</sup>Ministry of Health and Family Welfare Government of India, <https://main.mohfw.gov.in/sites/default/files/953522324.pdf> (Last visited on July 21, 2022)

<sup>92</sup>*Id.*

medical facility, free legal aid, and psychological support to the rape victims, because of which the survivors and their dependents can heal their pain.<sup>93</sup>

## VII. Conclusion and Suggestions

Rape is a very heinous and barbarous offence that affects not only the physical conditions but also the economic, social, and mental conditions of the rape victim and also tears apart the present and future lives of a person. This offence should be handled by all organisations in a very effective manner so that we can reduce the number of cases, which are increasing tremendously all over the world. The strongest step should be taken by the government related to the misuse of the position by the authority and for the offenders who commit this heinous crime. Gender sensitization workshop programmes should be conducted by various organisations like universities, colleges, schools, NGO's, and the government to spread awareness about the equality of women and how they can help sexual abuse survivors.

Some important steps should be taken by our legislative system and society to reduce the crime rate in our system and help the victim.

1. Rehabilitation procedures should also involve mandatory mental therapy because we need to heal the victim in both physical and mental ways.
2. Our civilised society should be more attentive towards the crime, and they all should adopt sympathetic behaviour towards the victim.
3. The legislation must take some steps to remove the loophole in our trial procedure and judgement in such cases.
4. In society, social values should be taken care of in such a way that they never boycott the rape survivors; instead, they support the victims for justice.
5. The judicial system should provide interim relief and other necessary services as soon as possible to the rape victim.
6. Lastly, in our society, we should provide training to our young generation so that they can handle rape victims with a sympathetic and empathic attitude.

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<sup>93</sup>Women And Child Development department, Government of Maharashtra, <http://aarambhindia.org/wp-content/uploads/2017/08/Manodhairya-New-GR-English-Translation.pdf> (Last visited on July 29, 2022)