Women in India, in spite of a prohibitive and severe punitive approach of criminal law and untiring efforts of a host of women organisations and the National Commission for Women (NCW), constituted under the National Commission for Women Act, 1990, to liberate them from the hitherto unjust social, political and economic subjugation and suppression, are being sexually exploited, abused and assaulted.

During the recent years, unfortunately, crimes against women are on increase. Amongst all the crimes against woman, rape\(^1\) is the most heinous and inhuman act of sexual aggression and violence against a hapless woman. It not only amounts to a brutal attack on integrity and dignity of a woman but also unjustifiably disregards her legitimate control over her body. Invariably it shatters the foundations of the lives of the rape victims. It also impairs their capacity for personal relationship and alters their behaviour and values. "Raping a woman", according to Mr. L.K. Advani, the Union Home Minister, "is a much more

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1. Rape, as perceived under the Indian Penal Code, 1860 (I.P.C.), in essence, involves a coercive non-consensual (as well as consensual in a set of specified circumstances) sexual intercourse with a woman. [See S. 375, I.P.C.] A perpetrator is also subjected to severe punitive sanctions. [See S. 376 I.P.C.]
heinous crime than murder, (because) rape reduces a woman to a state of living corpse."

However, in nineties, the inadequacy of the criminal law to protect women who have been victims of rape or assaults on their modesty was highlighted and severely criticised. The Government of India, ultimately, on March 27, 1980 had to approach the Law Commission of India with a request to suggest, on top most priority basis, substantive as well as procedural reforms in law. In less than a month, on April 25, 1980, the Law Commission submitted its comprehensive Report to the Union Law Minister. Subsequently, in 1983 the Parliament passed the Criminal Law (Amendment) Act, 1983 to give effect to majority of the proposals of the Law Commission.

The Criminal Law (Amendment) Act of 1983, which came into effect in December 1983, inter alia, increased punishment for rape. It provides for mandatory minimum sentence of seven years imprisonment. It may be extended to a term of ten years or for life. However, it is permissible for a Court, for 'adequate and special reasons', to impose on a rape


4. The Criminal Law (Amendment) Act of 1983, among others, increased punishment for rape; distinguished gang rape and custodial rape and laid down stiffer penalties; distinguished rape on a pregnant woman and reversed the burden of proof in case of gang rape, custodial rape, and rape on a pregnant woman.
convict a lighter sentence of imprisonment for a term lesser than seven years.

However, a comparative glance, though painful and disgusting, at the pre and post-1983 Criminal Law Amendment Act (reported) incidences of rape in India\(^5\) eloquently demonstrates that the post-1983 criminal law has neither desisted rapists nor proved effective in combating rapes.

Mr. L.K. Advani and a few other members of Parliament, in the recent past, probably, recalling the unsatisfactory performance of the post-1983 criminal law system and realising the unimaginable trauma of degradation and humiliation of victims of rape and their immeasurable agony over acquittal of *de facto* rapists or on allowing them to go with comparatively lighter punishments, have suggested that the rapist be sentenced to death.

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5. For example, a number of rape cases reported in *Crime in India* (published by National Crime Records Bureau, Ministry of Home Affairs, Government of India) during the period of 1977-83 (seven years prior to the 1983 Criminal Law Amendment Act) and during the period of 1984-90 (Seven years after the 1983 Criminal Law Amendment Act came into force) reveals a disturbing trend in incidence of rapes in India. Rape cases reported during 1977-83 were: 4,058 (1977); 4,558 (1978); 4,300 (1979); 5,023 (1980); 5,409 (1981); 5,427 (1982), and 6,019 (1983). Cases of rape reported during 1984-90, on the other hand, were: 6,740 (1984); 7,289 (1985); 7,952 (1986); 8,559 (1987); 9,099 (1988); 9,752 (1989) and 10,068 (1990).

Recently, quoting the Union Home Ministry, it was reported that 3832 women were raped in the country during January-April 1998, [See, *Times of India*, Mumbai, August 04, 1998, p.8]. The latest *Crime in India* indicates that incidence of rape cases during 1996 over 1995 reported an increase of 7.9 per cent. [vide, *Times of India*, Mumbai, September 19, 1998, p. 7].
However, harsh punishments to perpetrators of rape (as revealed by the post-1983 statistical scenario) or sending them to gallows alone, though they, to some extent, might console the victims of rape, their relatives and women's groups, would hardly arrest the dangerously increasing incidence of rapes. It is a matter of common experience that efficacy of deterrent punishment, *inter alia*, is based on full proof investigation; speedy disposal and certainty of punishment. In India administration of criminal justice unfortunately is bridled with faulty, inadvertent or advertent, investigation of rape cases; undue delay in disposal of rape cases, and poor conviction rates. Therefore, the suggested death penalty, like the prevailing mandatory seven years imprisonment and the permissible life imprisonment for rapists, in the present submission, would have a minimal impact.

Surprisingly, criminal and penal policy in vogue (as well as proposed) exhibits its insensitivity to the plight of rape victims and to their social, emotional as well as psychological rehabilitation. It also overlooks the pressing need to restore their untold trauma and humiliation experienced during the coercive sexual encounter. The Supreme Court of India aptly highlights such a pathetic plight of victims of rape in administration of criminal justice. Rape, according to it, does indeed pose a series of problems for the criminal justice system. "There are cries for harshest

6. Recent revelation came from the Home Ministry in Parliament shows that in 1995 out of 1,69,721 persons accused of rapes and molestations only 33,315 persons were convicted by the trial courts. And against 1,95,436 persons arrested for the same offence in 1996, only 32,362 of them were convicted. [See *Times of India*, Mumbai, August 04, 1998, p. 8].
penalties", it laments, "but often times such cries eclipse the real plight of the victim."  

The Apex Court, highlighting defects of the existing criminal law system vis-a-vis victims of rape and indicating a set of broad parameters in assisting victims of rape, inter alia, directed the NCW to devise, in consultation with the Union Government, a scheme for the payment of compensation to rape victims.

Against this backdrop, the present paper endeavours to highlight and evaluate the legislative scheme and judicial response to the right of victims of rape to live with dignity and to be compensated, by the State or the rapist or by both, for unlawful sexual attack and violence against them.

Compensating Victims of Crime: Legislative Policy

In India there is neither a comprehensive legislation nor a statutory scheme providing for compensation by state or offender to victims of crime. The state generally makes to the innocent victims of violence and major accidents, ex-gratia payment, which is not only ad hoc and discretionary, but also inadequate.

Indian criminal law system does not provide for institutionalised payment of compensation to the victim of a crime for any 'loss' or 'injury' — physical,

8. Id. at pp. 19-21.
mental, or psychological — caused to him/her by the offender. Interestingly, the Law Commission felt it 'unwise' to create a legal right in favour of the victim to join in the criminal proceedings as a third party to avoid mixing up of civil and criminal proceedings, a confusion of issues and prolongation of the trial. Similarly, it could not see any 'great advantage' in providing for 'duty to make amend for the harm caused' or 'payment of compensation to the victim of the offence' as an additional punishment. It favoured payment of compensation out of fine imposed on the offender.

However, Section 357 of the Criminal Procedure Code, 1973 (CrPC), inter alia, empowers a criminal court, in its discretion, to award compensation to any person for any 'loss' or 'injury' caused by an offence in those cases where 'fine' does or does not form part of the sentence imposed. And Section 421, CrPC, empowers the criminal court passing a sentence of fine, in its discretion, to recover this amount by attachment and sale of any movable property of the offender and/or as arrears of land revenue from his movable or immovable property or both. However, it is not empowered to adopt either of the methods when the offender has undergone the whole of the imprisonment awarded in default or payment of the fine except for special reasons to be recorded in writing or where it has made an order for payment of expenses or compensation out of the fine imposed under Section 357,


11. Id. at p. 53. However, Justice R.L. Narasimham, one of the members of the Commission, in his separate note, strongly pleaded for direct reparation from the offender by imposing a duty on him to amend the harm caused. (Id. at pp. 381-82).
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CrPC.\textsuperscript{12} In other words, undergoing of imprisonment in default of payment of fine does not operate as a discharge or satisfaction of the order of payment of fine if the court, for special reasons to be recorded, considers it necessary to recover the fine, and when the offender is ordered to pay expenses or compensation out of the fine imposed under Section 357, CrPC. By virtue of section 431, CrPC, Section 421, CrPC, along with its proviso, is equally applicable for recovery of a specified amount, which does not form part of the sentence ordered as compensation, under Section 357(3), CrPC.

It is, thus, evident that the legislative response to compensating victims of crime is not impressive. The legislative scheme of award and payment of compensation to victims of crime neither mandates court to compensate the victims (including rape victims) nor creates any legal right to be compensated in favour of victims of crime. It entirely leaves it to the sweet will of a criminal court to compensate victims of crime and to initiate and move legal machinery to recover the fine, out of which compensation is ordered, or the specified amount of compensation from the offender to pay it to the victims of the offence.

Compensating Victims of Crime: Judicial Response

It is also worth noting that courts in India have hardly invoked their statutory (discretionary) powers to compensate victims of crime. The Law Commission of India had not only admitted the fact that courts in India are 'not particularly liberal' in utilising these

\textsuperscript{12} S. 421 (1) (a) r.w.cl. (3).
provisions, but also observed: "it is regrettable that our courts do not exercise their statutory powers under this Section as freely and liberally as could be desired". A survey of the available empirical studies, though scanty, also reveals very rare use of the legal provisions in awarding compensation and inadequacy of the compensation awarded. The Supreme Court of India, when called upon to decide legality and propriety of compensation awarded under Section 357, CrPC, by the Punjab and Haryana High Court, carried the same impression and appealed to all courts in India to exercise their powers liberally to meet the ends of justice in a better way. Referring to, and commenting on, sub-section 3 of Section 357, the Court observed:

"It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgement of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by action of accused. It may be noted that this power of courts to award compensation is not

14. Supra n. 11 at p. 52.
ancillary to other sentences but it is in addition thereto. *This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system.* It is a measure of responding appropriately to crime as well as reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes".16

The court also failed to see any reason for the courts not directing compensation if the accused is in a position to pay it to the entitled injured persons. It, however, cautioned the courts not to award 'unduly excessive' compensation17 and to first calculate the amount to be awarded and then impose a fine higher than the compensation.18 The Apex Court also asserted that the requirement of social justice demands that heavy fine should be imposed in lieu of reduction of sentence to compensate the victims of crime.19

Right to Live with Human Dignity vis-a-vis Victims of rape: Constitutional Paradigm and Judicial Perspective

The Preamble to the Constitution of India assures, among other things, 'dignity of the individual'. Article 21 of the Constitution guarantees the right to

life and personal liberty to individuals and mandates the State not to, except according to procedure established by law, deprive a person of his right. It reads: "No person shall be deprived of his life or personal liberty except according to procedure established by law."

The Supreme Court of India, through its inimitable judicial activism, added to the fundamental right to life and personal liberty a variety of positive dimensions and significant humanitarian contours basically to enhance the dignity and quality of the guaranteed right to life and to make 'life' something more than 'mere animal existence'. It, as early as in 1981, speaking through Bhagwati, J., delving into proper meaning and content of the fundamental right to life and stressing the need to interpret it in a broad and expansive spirit with a view to enhancing the dignity of an individual, observed:

"... the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. Every limb or faculty through which life is enjoyed is thus protected by Article 21. Any act which damages or injures or interferes with the use of, any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21... the right to life includes the right to live with human dignity and all that goes along with it, ... . Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live...."\(^{20}\)

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\(^{20}\) Francis Coralie Mullin v. Administrator, Union Territory of Delhi, A.I.R. 1981 S.C. 746 at pp. 752-753.
On more occasions than one it, believing that human dignity is the basic factor amongst the human rights jurisprudence reflected in the Constitution of India and without it all human rights are meaningless, has also echoed and reasserted that right to life and personal liberty guaranteed under Article 21 not only assures every one the right to live with human dignity but also includes all those aspects of life that make a life meaningful, complete and worth living.21 According to it, the right to live with human dignity is the fundamental right of every citizen and the State is under the constitutional duty to provide at least minimum conditions ensuring human dignity.22

Against this backdrop, it is evident that Article 21 guarantees a rape victim, who has been subjected to a non-consensual sexual encounter and a sexual violence, the right to live with dignity. Therefore, an unlawful intruder to her right to privacy and sanctity of her womanhood not only gives a serious blow to her supreme honour but also offends her self-esteem and interferes with the use of her body.

Recently, on December 15th, 1995 the Apex Court, in consonance with its hitherto widest possible humanitarian and humanised approach to Article 21;


its unquestionable stand that right to life is something more than a mere animal existence and it includes the right to live with human dignity, probably for the first time, has recognised that a non-consensual sexual assault on a woman goes against the hitherto judicially articulated and acknowledged basic tenets of Article 21 and violates her right to live with dignity. Expressing its displeasure over the fact that the rape laws in vogue in India do not exhibit respect to, and recognition of, honour and the right to live with dignity of a woman, the Court observed:

"Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society... Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women."  

It is pertinent to note that the Supreme Court of India, exercising its powers under Article 32 of the Constitution of India, which enables a person, as a
matter of right, to move the Supreme Court for the enforcement of his fundamental rights and mandates the Supreme Court to issue an appropriate direction, order or writ, for the enforcement of the fundamental rights guaranteed in Part III of the Constitution, and according a paramount constitutional significance to Article 21, has forged a new tool and has devised a strategy unknown prior to 1983 to Public Law in India, by awarding compensation for violation of the right to life and personal liberty. It, by liberalising the doctrine of locus standi, also allows a public spirited individual or organisation to move it for the enforcement of a Fundamental Right of a person or a class of persons who on account of his/her poverty, disability or social or economically disadvantaged position is/are unable to seek relief from the Supreme Court.

In Delhi Domestic Working Women's Forum v. Union of India & Ors, a public interest litigation expounding the pathetic plight of four domestic servants who were raped in a moving train, the Apex Court, on October 19th, 1994, highlighting ordeals of victims of rape and defects in the present criminal law system.

Article 226, inter alia, also empowers the High Court of a State to issue an appropriate direction, order or writ against 'any person, authority or government' for the enforcement of the fundamental rights.


26. Supra n. 2. Hereinafter referred to as the DDWWF.
vis-a-vis victims of rape, outlined a set of broad parameters to assist them.\(^27\) Relying heavily upon Article 38(1) of the Constitution,\(^28\) which directs the State, *inter alia*, to strive to promote social order assuring socio-eco-political justice, and drawing inspiration from the Criminal Justice Act, 1991 of the United Kingdom, dealing with an institutionalised payment of compensation to victims of crime including rape, stressed the need to set up a Criminal Injuries Compensation Board (CICB) to compensate victims of rape. It also directed the NCW to formulate such a scheme within six months from the date of judgement (i.e. October 19th, 1994) and the Union of India to examine it and to take necessary steps for its implementation. The Apex Court also emphasised that courts in India should award compensation to rape victims on conviction of the offender and also by the proposed CICB even if the offender is acquitted.

However, NCW, for reasons best known to it, has not yet shown any positive response to the judicial direction.

Nevertheless, the Supreme Court of India, on December 15th, 1995, in *Bodhisattwa Gautam v. Subhra Chakraborty*,\(^29\) understandably, in the absence of a comprehensive compensation scheme, relying on the *DDWWF* and exercising its inherent powers

\(^{27}\) *Id.* at pp. 19-20.

\(^{28}\) *Art. 38(1):* reads "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all institutions of the national life...."

\(^{29}\) (1996) 1 S.C.C. 490 (503). Hereinafter referred to as the BOGA.
(presumably under 142 of the Constitution of India) to do complete justice, *suo motu* gave effect to the right of a rape victim to claim compensation from the offender for violation of her constitutional right to live with human dignity. It, accordingly directed Bodhisatwa Gautam to pay to Subhra Chakraborty a sum of Rs.1000 every month as interim compensation during the pendency of the criminal trial and also to pay arrears of compensation at the same rate from the inception of the complaint filed by the victim.

However, it is very interesting to note that facts of the *BOGA* case, as outlined in the reported decision, disclose that the petitioner was *not at all charged for rape*. He was charged under ss. 312 (causing miscarriage); 493 (cohabiting with the girl deceitfully inducing a belief of lawful marriage); 496 (fraudulent marriage ceremony); 420 (cheating) and 498-A (subjecting his wife to cruelty) of the Indian Penal Code. It is, therefore, difficult to appreciate the judicial propriety in delving into rape laws and awarding interim compensation with arrears in the absence of an appropriate compensation scheme to assist victims of rape and to wipe out tears of unfortunate victims.

A commentator, doubting the judicial propriety of the *BOGA* case, rightly opined that the instant case, in the absence of qualitative discussion and argumentation, does hardly command a desired effect, acceptability and respectability.³⁰

It is equally pertinent to note that recently the Gurajat High Court in *Mukeshbhai Nanubhai Patel*
v. State of Gujarat, a 1997 case identical to the BOGA, refused to rely upon the BOGA case as a precedent even though Article 141 of the Constitution mandates it to follow the 'law declared by the Supreme Court of India'. Accordingly, it, on March 5th, 1997, quashed an order of one of its subordinate courts directing the accused of rape (petitioner) to pay Rs. 700 per month to the prosecutrix (alleged victim of rape) as interim compensation. Justifying its refusal to follow the BOGA principle the High Court observed:

"It may be noticed that it [BOGA] was not a case of rape, but of offences relating to marriage under Sections 312, 493, 496, 498-A, causing miscarriage, cheating etc. but the Court incidentally considered the plight of the victim of rape and laid down parameters... . It may further be noticed that the direction for maintenance does not form part of the said parameters. Thus, for awarding interim maintenance to victim of rape, the positive suggestion of the Court is for setting up of a Criminal Injuries Compensation Board. ... The Court also directed the Government to prepare a scheme within a period of six months. The direction were given by the Apex Court as back as on 15.12.1995. It is unfortunate that the State Government has not yet prepared the scheme. Thus, unless such a scheme is prepared and a Board is constituted, there is no provision under the Code of Criminal Procedure for awarding interim maintenance against the accused during the trial".32

31. 1998 Cri.L.J. 194. Hereinafter referred to as the MUNA.
32. Id. at pp. 195-196. Emphasis supplied.
Probably referring to the provisions of Article 141 of the Constitution, it observed:

"In the peculiar facts of Bodhisattwa's case, the Apex Court, in exercise of powers under Article 142 of the Constitution of India gave direction for interim maintenance. The Supreme Court in its plenary power under Article 142 of the Constitution of India can make any decree or order as may be found by it to be necessary for doing complete justice in any case or matter pending before it. Thus, when the Supreme Court in exercise of power under Article 142, pass an order that cannot be relied upon as precedent, unless the Apex Court so directs".33

A careful reading of the judicial opinions and deliberations on the right to live with dignity of victims of rape and their right to be compensated reflected in the DDWF, the BOGA and the MUNA does not reveal any articulated judicial law making. These cases, on the contrary, unfortunately, confuse the issues and exhibit judicial inconsistency and contradictions. The DDWWF, in the light of article 38(1) of the Constitution, pleads for a CICB and directs the NCW to prepare, in consultation with the Central Government, within six months from the date of its judgement (19.10.94) a scheme to compensate victims of rape. Neither the Government nor the NCW, for reasons best known to them, have shown any positive response to the court's directive as yet. Both of them have preferred to exhibit their contemptuous silence and inaction. Similarly, the Apex Court, like in other numerous PIL directives, demonstrates its judicial, rather hapless, tolerance to the executive apathy and

33. Id. at p. 196.
insensitivity to its directives and orders. It, in the BOGA, on the other hand, in its over judicial enthusiasm and activism, read in the DDWWF the jurisdiction and power of a court trying an offence of rape to award, in the absence of either CICB or a compensatory scheme, compensation as well as an interim compensation. It, therefore, awarded an interim compensation (along with arrears) during pendency of a criminal trial, even though the accused was not charged for committing rape. The Gujarat High Court in the MUNA case, in the absence of convincing judicial reasoning in the BOGA, refused to read the right of a rape victim to be compensated and quashed an order of a lower court awarding an interim compensation.

Surprisingly, recently in August 1997 the Apex Court missed a unique opportunity to clarify and refine the judicial articulation of the right of a rape victim to live with dignity and to be compensated. In Vishaka & Others v. State of Rajasthan, the Court, inter alia, was called upon by certain social activists and NGOs to enforce the fundamental right to life and personal liberty of a working woman, who was an alleged victim of a brutal gang rape and of wilful delay in investigation and prosecution of the suspected rapists. The petitioners, among others, urged the Supreme Court, by exercising its jurisdiction under Article 32 of the Constitution, 'to direct' the Union of India to appoint, in consultation with women's groups and individuals as well as lawyers, a committee headed by the NCW 'to prepare and submit guidelines for the

prevention of sexual harassment and abuse of women' to it (the Union of India). The petitioners also prayed for an appropriate writ, order or direction against the State of Rajasthan directing it to pay rupees 10 lakhs to the alleged victim of gang rape.36

Curiously enough, the Apex Court on August 13th, 1997, speaking through Verma, the then Chief Justice of India, admitting that the immediate cause for the filing of (this) writ petition was an incident of alleged brutal gang rape of a social worker in a village of Rajasthan and reiterating that 'right to life means life with dignity', brushed aside the issue of the payment of compensation to the alleged victim of gang rape. It simply observed that 'that incident (alleged brutal gang rape) is the subject-matter of a separate criminal action and no further mention of it, by us is necessary'.37 It has not paid any attention to either the DDWWF and the BOGA or to the therein judicially recognised right of a rape victim to be compensated for violation of her fundamental right to live with dignity.

Nevertheless, contrary to the petitioners' pray for setting up a Committee headed by the NCW to prepare and submit guidelines on sexual harassment and abuse of women, it took upon itself not only the task of preparing a comprehensive set of 'guidelines and norms' with a view to protecting women from sexual harassment and to making their fundamental rights meaningful but also, unlike its hitherto judicial law making process, directed that these guidelines be treated as 'the law declared by the Supreme Court

37. Supra n. 35 at p. 3012. Emphasis supplied.
under Article 141 of the Constitution'. The Court read into, and placed heavy reliance on, the relevant International Conventions, Resolutions and Norms to construe the fundamental rights of a woman guaranteed under Articles 14, 15, 19 (1)(g) and 21 of the Constitution and also to assume, in the absence of a domestic law, the legislative power 'to fill the legislative vacuum'. It felt (and rightly so) that relevant International Conventions not inconsistent with the fundamental rights and in harmony with their spirit can be used to read the constitutional guarantees and to enlarge their (fundamental rights) meaning and content.

Surprisingly, the Supreme Court in the Vishaka, for no convincing reasons, in the absence of a compensation scheme and the proposed CICB, has neither pursued the same line of judicial reasoning nor peeped into the Charter of United Nations and the International Bill of Human Rights [comprising the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); and the Optional Protocol to the International Covenant on Civil and Political Rights (OPICCPR)] to prepare a set of guidelines and norms and to devise an appropriate mechanism for the payment of compensation to 'fill the legislative vacuum' in the field of the payment of compensation to victims of rape. For devising an institutionalised compensatory mechanism to wipe out tears from the eyes of rape victims, the Apex Court could have also relied upon the Protection of Human Rights Act, 1993, which acknowledging that the human rights embodied in the

ICCPR and the ICESCR are substantially protected in the Constitution of India, strives for better protection of human rights in India.

The central theme and concern of the International Bill of Human Rights and the Protection of Human Rights Act, in ultimate analysis, is the right to live with human dignity. The Charter of United Nations not only exhibits reaffirmed faith of the international community in fundamental human rights and human dignity but it also obliges every State to promote universal respect for, and observance of, human rights. And the UDHR, the ICCPR and the ICESCR, among other things, recognise that inherent dignity is the foundation of freedom and justice. The Protection of Human Rights Act, 1993 also defines the term 'human rights' to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the ICCPR and the ICESCR and enforceable by Courts in India.\(^\text{39}\)

It is, thus, difficult to comprehend the judicial deliberations on, and the inconsistent judicial approaches to, the right to live with dignity of a victim of rape and her right to be compensated for infringement of her fundamental right exhibited in the \textit{DDWWF} (1994), the \textit{BOGA} (1995) and the \textit{Vishaka} (1997). In the \textit{DDWWF} the Court, directed the NCW, against its will, to frame an appropriate scheme, of course in consultation with the Central Government, to compensate victims of rape. While the same court in the \textit{BOGA}, rejecting a Special Leave Petition, on its own, awarded interim compensation (along with arrears) to the rape victim, even though the petitioner,

\(^\text{39}\) See S. 2 (1) (d) and (f).
at no stage of his trial, was charged for rape. And the Court in the Vishaka felt it unnecessary to deal with the alleged brutal gang rape and the rape victim's right to be compensated for 'the incident' was 'the subject-matter of a separate criminal action', even though the incident of rape, as admitted by the court itself, was 'the immediate cause for filing the writ petition' and the petitioners prayed for an appropriate direction for the payment of compensation to the rape victim.

Further, the deliberations and judicial activism reflected in these cases unfortunately have neither culminated in making the right to live with dignity of victims of rape more meaningful nor theorising their right to be compensated by the rapist(s) or the State. These judicial pronouncements have also failed to render any justice to the victims of rape who or on whose behalf the compensation was sought in the respective cases. Hence, the right to live with dignity and to be compensated of a rape victim, despite the judicial sensitivity to victim of rape and their plight and acclaimed judicial articulation of the right to live guaranteed in Article 21, is governed by the pre-DDWWF legislative framework.

Conclusion

The Legislature, Judiciary, Government, and NGOs from other jurisdictions have been showing their immense sensitivity and concerted efforts to recompensate victims of rape and to wipe out their tears. The practice of requiring an offender (and/or the State) to pay his victim for the harm he caused has been at the heart of criminal jurisprudence of overseas nations.  

However, administration of penal justice in vogue in India, which makes every possible effort to 'reform' and 'treat' offenders for their effective and meaningful re-socialisation and re-assimilation in the social mainstream from which they deviated, does not display equal concern to victims of rape and their right to live with human dignity. The fragmentary compensatory legislative scheme outlined in the Criminal Procedure Code, 1973 becomes more ineffective when courts in India, exercising their judicial discretion, show their unconvincing reluctance to invoke those legislative provisions to compensate victims of rape.

Recently, the Supreme Court of India in the DDWWF, probably realising the legislative and judicial apathy to victims of rape, not only read in Article 21 of the Constitution of India the right of a rape victim to live with human dignity and to seek compensation for the deprivation of her dignity but also directed the NCW, in consultation with the Central Government, to formulate a compensatory scheme for victims of rape on the lines of British Criminal Injuries Compensation Scheme to enable victims of rape in India to seek compensation from the offender and the State. But unfortunately both, the NCW and the Central Government, have yet to inject the directive and noble sentiments of the Apex Court in our criminal justice system. Curiously, the Supreme Court also, for the arguments advanced in preceding paras, missed a unique opportunity in the Vishaka to fill in the legislative vacuum in the area of compensating victims of rape. Once again it has become evident that merely judicial directives, howsoever acclaimed and laudable they might be, are hardly capable to render justice in the absence of equally responsive executive response to these judicial
directives. The DDWWF and the Vishaka, therefore, did either ameliorate the immeasurable plight of the victims of sexual violence (mentioned in these judicial pronouncements) or upheld their right to live with human dignity in true sense of the hitherto official articulation and spirit of Article 21. They also hardly create any inroads in the legislative and judicial apathy and insensitivity to the right of victims of rape to live with human dignity.

Undoubtedly, it is high time for the Legislature and the NCW to be sensitive to victims of rape and to act upon the directive of the Supreme Court of India. Such a move is imperative not only to make our criminal justice system at par with that of other civilised states but also to make sure that rape victims in India are treated with respect and are allowed to live with human dignity in consonance with the constitutional guarantee and mandate. A suitable legislation, therefore, be enacted at the earliest to provide for compensation to the victims of rape defining primarily the criteria for eligibility for seeking compensation from the offender and/or the state; mode of assessment of compensation and the composition, powers and responsibilities of the proposed CICB. The emerging human rights jurisprudence at home and abroad requires all public authorities to act not merely compatible with the global perception of the right to live with human dignity but also resort to all the possible means and strategies to strengthen and ensure the fundamental right to life and liberty of a rape victim.