

MANODHAIRYA SCHEME: A Milestone Object and Feeble Mission in Maharashtra

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Abstract: Victimization is often traumatising and life changing event. Victims of crime suffer not only physical injury but also psychological, economic and other harms. Apart from punishing the offender, the state also shoulders the responsibility to rehabilitate the victim. The researcher, in this paper, discusses the theoretical perspectives of state's liability to pay compensation to the victims of violence and specifically in cases where women are victims, referring to the reports of J. Malimath Committee and J. Verma Committee, amendments in Code of Criminal Procedure, and also judicial contribution towards evolution and expansion of compensatory justice in India. The focus is on Manodhairya Scheme in Maharashtra, which creates provisions to provide compensation to the victims of rape, acid attacks and cases of child sexual abuse. This research paper is an outcome of information and experiences researcher gathered during her work as a member of Manodhairya Committee for Aurangabad District, in Maharashtra. Along with the objectives and reasons for the introduction of the scheme the researcher further studies implementation of the scheme, for which she refers to the statistical data of Maharashtra State and Aurangabad District.

Keywords: Acid Attack, Child Sexual Abuse, Compensation, Implementation, Rape, Rehabilitation, Victim.

1. Introduction

Since independence, India is marching towards development in many spheres, may it be education, research, or science and technology and also working hard towards improving standard of life. Though it is so, some challenges like violence against

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women and children remain insufficiently addressed. Women and children are physically and psychologically attacked, sexually abused, traumatised with acid attacks. A violent victimisation results in generating fear not only in the mind of victim but the fear is spread in the community as well. Victimisation is often a traumatising and life changing event.¹ Victims of crime suffer not only physical injury but also psychological, emotional, economic, social and other harms. In cases of acid attack or sexual assault the situation is worse.

Rape leaves a permanent scar on the personality of the child inhibiting growth and development. It instils a feeling of insecurity, fear, a brooding sense of shame and guilt for no fault of hers. It is therefore very much essential to handle the child victim with a measure of sensitivity from the initial stage of commission of crime so that the trauma is minimised.²

In furtherance with penalising the offender the state is duty bound to act towards rehabilitation and restoration of the victims. Hence providing assistance to these victims of violence such as financial support, counselling, medical and other support services becomes necessary action on the side of government. Various researchers have argued that the state has obligation to pay compensation to the victims of violence.

According to the English prison reformer Margery Fry,
 ... in our modern system of collective responsibility for sickness and injury, we have evolved a machinery for assuring compensation which could be extended to the injuries criminally caused, affording equal benefits to the man whose enemy pushed the ladder from under him at home ... the logical way of providing for criminally inflicted injuries to tax every adult citizen ... to cover risk to which each is exposed ...

¹Catherine Elizabeth Kekkonen. "Victim Services," in *21st Century Criminology, a Reference Handbook*, Vol.II, J. Mitchel Miller, ed., California: Sage Publication, 2009, 780.

²Rajashekharan Nair, *Gender Justice under Indian Criminal Justice System*, Kolkotta: Eastern Law House, 2011, 283.

the state which forbids one going armed in self defence cannot disown all responsibility for its occasional failure to protect.³

V. N. Rajan argues that since the state imprisons offenders thereby makes them unable to answer to their victims in terms of tort damages, the state has liability to the victims. The state achieves its purpose through enactments and promulgations of laws and enforces obedience to the laws by the exercise of power.⁴ Power is the capacity to produce the intended effect. If the intended effect cannot be produced in respect of any law, the state has to assume responsibility for the loss, pain or damage caused to any law abiding citizen by someone's disobedience of law. He further refers to the theory of the mercy of the government where the government pays the amount ex gratia, and also towards Welfare theory arising from the assumption that the government exists and functions for the people. Similar to the duty of the state towards the poor, the sick, the unemployed, etc. it has a duty towards victims of crime also.⁵

According to Bharat Das,

... the difficulty really arises because the requirement of the law that the compensation should be paid to the victim by the criminals is, as it were rather half hearted. This appears to be due to the fact that it is regarded that the proper forum for deciding about it is the civil court. But then most of the victims in our country are very poor and hardly even an action for compensation is instituted when the offender is convicted by the court.⁶

Even though some provisions pertaining to the compensation by the offender are added in the criminal law, it still remains a difficult task as the degree of proof in criminal court is higher than that of civil court.

³Margery Fry, *The Observer* (London) July 7, 1957, 8.

⁴V. N. Rajan, *Victimology in India*, New Delhi: Allied Publishers, 1981, 7.

⁵Rajan, *Victimology in India*, 122.

⁶Bharat B. Das, *Victim in the Criminal Justice System*, New Delhi: A. P. H. Publishing Corporation, 1997, 69.

Sympathizing with the plight of victims under Criminal Justice administration and taking advantage of the obligation to do complete justice under the Indian Constitution in defense of human rights, the Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate reliefs and remedies. Medical justice for the Bhagalpur blinded victims, rehabilitative justice to the communal violence victims and compensatory justice to the Union Carbide victims are examples of this liberal package of reliefs and remedies forged by the apex Court. The recent decisions in Nilahati Behera V. State of Orissa (1993) 2 SCC 746 and in Chairman, Railway Board V. Chandrima Das are illustrative of this new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the State for failure to protect the rights of the victim. These decisions have clearly acknowledged the need for compensating victims of violent crimes irrespective of the fact whether offenders are apprehended or punished. The principle invoked is the obligation of the State to protect basic rights and to deliver justice to victims of crimes fairly and quickly. It is time that the Criminal Justice System takes note of these principles of Indian Constitution and legislate on the subject suitably.⁷

The state compensation by developing special schemes is necessary especially in cases such as acid attacks where there is urgency of financial help and assistance, and in rape cases and child sexual abuses, where there is the least chance of victims filing civil suit for compensation as there is always threat of re-victimisation due to lengthy and cumbersome procedure, and public chewing the subject and posing many questions on her chastity and modesty.

⁷Justice Mallimath Committee Report 2003, 81 <http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf> (20.03.2016).

2. Feminist Thoughts on Victimisation of Women

Though victim of crime is a gender neutral term, in specific kinds of offences such as rape, sexual violence, acid attacks, marital violence, etc. women are victims. Feminist thinkers see the reason in women's secondary position in the society, and "treats gender equality issues as question about the distribution of power, about male supremacy and female subordination."⁸ Radical feminists see an existing social system especially one rooted in patriarchy, as crucial to the understanding of women's status. Marxist feminists observe capitalism as the most important social structure, one that places women at a societal disadvantage over men because they are even more economically marginalised than their male counterparts and socialist feminists point out that two of the most important social structural conditions capitalism and patriarchy place women at disadvantage. The third wave feminists focus on how gender, race and class intersect to put some women at greater disadvantage than others.⁹

Male expression of violence is often a way to exhibit control and power over women, either subconsciously or otherwise. Rape laws were in place mainly because women were considered property of men. Punishment was not for the benefit of women but to provide justice to those persons who 'owned' her. Society has continuously given off similar, albeit more subtle, messages. More contemporary messages centre on women as in need of control by and protection from men. This is but one way of placing women in disadvantaged positions that makes them more vulnerable to abuse at the hands of men.¹⁰

Women victims need financial assistance as well as support services for their rehabilitation. Julie Goldscheid & Debra J. Liebowitz express that States may cite victim compensation

⁸M. D. A. Freeman, *Lloyds's Introduction to Jurisprudence*, 8 ed., London: Sweet & Maxwell Publication, 2008, 1291-1292

⁹Janet T. Davidson and Meda Chesney Lind, "Gender and Crime," in *21st Century Criminology: A Reference Handbook*, vol.1, J. Mitchel Miller, ed., California: Sage Publication, 2009, 76-78.

¹⁰Bonnie S. Fisher and Bradford W. Reynolds "Victimisation," in *21st Century Criminology*, vol. 1, 83.

programs that can provide "redress," but strict eligibility rules, publicity, and requirements of law enforcement involvement may effectively render redress unavailable.¹¹

Feminist thinkers in India have contributed towards feminist jurisprudence. Manvinder Kaur and Amir Sultana assert, "the discrimination and violence that women are subjected to has its genesis in socio-cultural values that spring from the patriarchal ethos."¹² Radhika Kumarswami recognises that "the refusal to recognise women's economic independence and empowerment is one of the main reasons for the violence against women, accentuating thereby, their vulnerability and abuse."¹³ Goyal Aruna has analysed the situations of violence against women and expressed that

there can be no two opinions about the need for the stringent laws, sensitive judiciary, effective law and enforcement machinery and vigilant women's groups to deal with such atrocious crimes against women. But what is needed more than anything else is the thinking of our society that always blame women for the crime of which she is victim, not the perpetrator.¹⁴

It is argued in the report published by Majalis, a Bombay based N.G.O. religiously working for women's issues that

If a support is carefully designed, we are convinced that most victims will become survivors at the end of their trial and in addition, because of the support that is extended, they will be able to depose without fear in a clear and cogent manner and

¹¹Julie Goldscheid and Debra J. Liebowitz, "Due Diligence and Gender Violence: Parsing its Power and its Perils," *Cornell International Law Journal* 301 (2015), 316.

¹²Manvinder Kaur and Amir Sultana, *Gender Realities*, Chandigarh: Abhishek Publications, 2005, 130.

¹³Radhika Kumarswami, "Human Security and Gender Violence," *Economic and Political Weekly*, Vol. XL, Nos. 44 & 45, Oct.29, 2005, 4729.

¹⁴Goyal Aruna, "Violence against Women: Theoretical Framework and Practical Implications," in *Violence against Women Issues and Perspectives*, New Delhi: Deep and Deep Publications, 2006, 33.

will not be cowed down by intimidating cross examination by defence lawyers and the formality of a court room.¹⁵

3. Victims' Rights Internationally

U.N. Declaration of 1985 includes Right to Access to Justice and Fair Treatment, Right to Restitution, Right to Assistance, and Right to Compensation as rights of victims of crime.¹⁶ The declaration provides that the compensation shall be payable to the victims who sustained significant bodily injury or impairment of physical or mental health as a result of crime. The same is to be recovered from offender and if it cannot be fully recoverable from the offender it should be given by the state for which the declaration suggests establishment of National fund for compensation of victims of crime. U.N. Handbook on "Justice for Victims"¹⁷ provides for victims assistance programme and the objectives of the same. Government and voluntary social service organisations should come forward to assist the victims of crime for restoration and rehabilitation.

Internationally, Violence against women has been recognised as a most fundamental violation of women's human rights. Convention on Elimination of all forms of Discrimination Against Women and Declaration on the Elimination of Violence against Women, 1993 expressly provide for the same. The united nations general assembly adopting the Declaration on Elimination of Violence against Women had affirmed that "violence against women constitutes a violation of rights and fundamental

¹⁵"Pursuing This Thing Called Justice, A Survivor Centric Approach towards Victims of Sexual Violence, Highlights of the Provisional Report," Majlis Legal Centre, 2015, 32 <aarambhindia.org/wp-content/uploads/2014/11/RAHAT-Highlights-final-report.pdf> (15.03.2016).

¹⁶See Article 8 to 17 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.

¹⁷UN Handbbok on "Justice for Victims," New York: International Crime Prevention, 1999 <https://www.unodc.org/pdf/criminal_justice/UNODC_Handbook_on_Justice_for_victims.pdf> (20.03.2016).

freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms." United Nations General Assembly resolution 2010 requires:

. . . taking effective measures to *prevent the victim's consent* from becoming an impediment to bringing perpetrators of violence against women and girls to justice, while ensuring that appropriate safeguards to protect the victim and adequate and comprehensive measures for the rehabilitation and reintegration of victims of violence into society are in place.¹⁸

4. Victims' Rights in India

Hon'ble Justice Krishna Iyer while expressing his concern about victims observed:

... the criminal law in India is not victim oriented and the sufferings of the victim often immeasurable are entirely overlooked in misplaced sympathy for the criminal. Though our modern criminal law is designed to punish as well as reform the criminals yet it overlooks the by-product of crime i.e. the victim.¹⁹

The Constitution of India though speaks of fundamental rights of the accused, the rights of victims are not specifically established. Justice Malimath Committee Report, 2003 suggested following major changes in the criminal law which focused on the rights of victims to compensation and support services.

Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation and protection against secondary victimization.

Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation by Parliament. The draft bill on the subject submitted to Government

¹⁸General Assembly Resolution 65/187,16(m), U.N. Doc. A/RES/65/187 (Dec. 21, 2010) <<http://daccessny.un.org/doc/UNDOC/GEN/N10/523/76/PDF/N1052376.pdf>> (16.02.2016).

¹⁹J. Krishna Iyer, *Access to Justice - a Case of Basic Change*, New Delhi: B.R. Pub. Corporation, 1993, 14.

in 1995 by the Indian Society of Victimology provides a tentative framework for consideration.

The Victim Compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn. It is the considered view of the Committee that criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognized by law and restitution for loss of life, limb and property are provided for in the system. The cost for providing it is not exorbitant as sometimes made out to be. With increase in quantum of fine recovered, diversion of funds generated by the justice system and soliciting public contribution, the proposed victim compensation fund can be mobilized least to meet the cost of compensating victims of violent crimes. Even if part of the assets confiscated and forfeited in organised crimes and financial frauds is also made part in the Fund and if it is managed efficiently, there will be no paucity of resources for this well conceived reform. In any case, dispensing justice to victims of crime cannot any longer be ignored on grounds of scarcity of resources.²⁰

The above recommendations of J. Mallimath committee to have victims compensation scheme were accepted & incorporated and S. 357 a was added in the Code of Criminal Procedure by way of amendment in the year 2008 as follows:

(1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State

²⁰Justice Mallimath Committee Report 2003, 271.

Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.²¹

Prior to this amendment provisions for the remedy of compensation was available to victims only under Probation of offender Act, Motor Vehicles Act, 1988 and hon'ble judiciary also has granted compensation to the victims using the Art 32, 136 and 142 of the constitution.

Social Justice is the signature tune of the Indian Constitution,²² and it provides for the doctrine of protective discrimination.²³

²¹S. 357 (A) Cr.P.C, <https://www.unodc.org/tldb/pdf/India/Code_of_Criminal_Procedure_Amendment_Act_2009.pdf> (21.02.2016).

²²J. Krishna Iyer, "Foreword," *Social Engineering and Constitutional Protection of Weaker Sections in India*, Anirudh Prasad, New Delhi: Deep and Deep Publishers, 1980, 9.

²³See Art.15 (3) of the Constitution of India.

Though various special legislations are enacted for the protection and upliftment of women, violence against women is constantly on rise.²⁴

Justice Verma Committee which was constituted after Nirbhaya's Rape incidence, submitted its report of 644 pages on 23rd Jan 2013, taking note of national and international consensus, issues pertaining to crime against women and constitutionalism, and covers almost all spheres on crimes against women. The report proposed criminal law amendments, emergency response system, and protocol for the psychological interventions. While giving certain recommendations it is mentioned in the report that "The nation has to account for the tears of millions of women and other marginalized sections of the society which has been ignored owing to institutional apathy."²⁵

J. Verma committee recommended very important changes in the penal law of India such as adding special sections to define and penalise the offences of voluntarily causing grievous hurt through the use of acid, etc., attempting to throw acid, sexual assault and punishment for the sexual assault, assault or use of criminal force to woman with intent to disrobe her, voyeurism and stalking²⁶: the committee also proposed very important change to the definition of rape in S. 375 of Indian penal code, which includes penetration of any other objects in the vagina, anus or urethra of a person. With this change the committee recommended gender neutral law to the extent of victim of rape, also suggested enhancement of punishment to the extent of life imprisonment in case the incidence leads to causing death or leaving the victim in a permanent vegetative state, also suggested insertion of new provision such as rape of minor, gang rape followed by death etc.²⁷ The committee also suggested

²⁴See the National Crime Record Bureau reports from 1950 till 2015 <<http://ncrb.nic.in/>> (16.02.2016).

²⁵J. Verma Committee Report, 2013, 414 <<http://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece>> (20.3.2016).

²⁶Verma Committee Report, 2013, 436, 437.

²⁷Verma Committee Report, 442 - 445.

amendments in the procedural law and law of evidence.²⁸ The committee proposed emergency response system such as toll free numbers of ambulance police, emergency services, etc.,²⁹ also suggest special protocol for the psychological interventions where in the trained counsellor shall play a vital role to recover the victim from psychological trauma.³⁰

Based on this report many changes were introduced in Criminal law in the year 2013.³¹ However, we find that problem is not mitigating. If the state could not control crime against women, it is liable to pay compensation to women victims. Considering the nature, gravity, and increasing incidences of acid attacks after justice Verma committee report Criminal law was amended in the year 2013.

5. Role of Judiciary and Compensation to the Women Victims

In many judgements Hon'ble judiciary has directed the state to pay the compensation to the victims of crime. Some landmark judgements would stand very relevant here in this discourse where judiciary has made the state liable to pay compensation to the victims of acid attack,³² and victims of rape such as the case of Delhi domestic working women forum and Chandrima Das case.³³

It is reported before the Hon'ble Supreme Court recently in the case of Laxmi V.UOI³⁴ that total 309 acid attacks are said to have taken place in the year 2014 and while disposing of the case Hon'ble Court on 10 April 2015 gave directions pertaining to the compensation claim made by any acid attack victim, the matter

²⁸Verma Committee Report, 447 - 452.

²⁹Verma Committee Report, 463 - 464.

³⁰Verma Committee Report, 471.

³¹Criminal Law Amendment Act, 2013 <<http://indiacode.nic.in/acts-in-pdf/132013.pdf>> (20.02.2016).

³²See cases *Devanand vs State* 1987 (1) crimes 314, *Balu v. State* 26th Oct. 2006, *Jallahalli Police station vs Joseph Rodright* 22 Aug. 2006.

³³*Delhi Domestic Working Women Forum vs UOI*, AIR 1997 SC 610; *Chairman Railway Board vs Chandrima Das* AIR 2000 SC 988.

³⁴*Laxmi V.UOI* 2015 DGLS(Soft.) 290

will be taken up by the District Legal Services Authority, which will include the District Judge and such other co-opted persons who the District Judge feels will be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee. This body will function as the Criminal Injuries Compensation Board for all purposes.

Although all victims of crime must be protected and provided with the means of redressal, restoration and rehabilitation, the State owes duty especially for the upliftment of the weaker society. Hence in cases of rape, acid attacks and child sexual abuse, when compensation by the state is provided to the victims by the schemes like Manodhairya, it stands justified.

6. Manodhairya Scheme

The Government through the Notification published on 21st October 2013 introduced Manodhairya Scheme for providing financial assistance and other support services to victims of rape, acid attack and child sexual abuse and their heirs, which is made applicable for the cases on or after 2nd Oct, 2013. The Notification while explaining the reasons for introducing the scheme refers to the Hon'ble Supreme Court's judgement in two cases; namely, the Delhi Domestic Workers Forum V. UOI C.R.L 362/93 and Laxmi V.UOI 2013, where in the former case directions to prepare a scheme for the restoration and rehabilitation of rape victims and in the latter directions to the government to develop scheme for the victims of acid attack were issued.³⁵ The notification also refers to the enactment Protection of Children from Sexual offences Act 2012,³⁶ which talks about rehabilitation and restoration of a child who is a victim of sexual violence. So as to achieve milestone object to give effect to the directives of the

³⁵Laxmi vs Union of India 2013 (9) SCALE 291

³⁶Ministry of Law and Justice, "The Protection of Children from Sexual Offences, Act 2012," *The Gazette of India*, June 20, 2012 <<http://wcd.nic.in/sites/default/files/childprotection31072012.pdf> > (19.02.2016).

Supreme Court and the Protection of Children from Sexual Offences (POCSO) Act this scheme is introduced.

While providing the details, the scheme refers to rape U/S.375, 376 A,B,C,D,E and 376 (2) of the Indian Penal Code, Child Sexual abuse U/s. 3,4,5,6 of POCSO Act, 2012 and acid attack U/s 326 A & B. Clause 3 of the General Rules mentions that various services such as Residence counselling, psychiatric and medical care, Legal aid, education and professional training also would be provided to the victims.

According to Maharashtra Government Manodhairya Notification Dt. 22nd Oct. 2013, the following financial support could be awarded to victims of child sexual abuse, rape, and acid attack:

Case in which Assistance is Available	Minimum	Maximum
Child Sexual Abuse	Rs 2,00,000/-	Rs 3,00,000/-
Rape	Rs 2,00,000/-	Rs 3,00,000/-
Permanent disability or disfigurement of face due to acid attack	Rs 3,00,000/-	Rs 3,00,000/-
Other injury due to acid attack	Rs 50,000/-	Rs 50,000/-

The victims of acid attack must be given the amount once sanctioned immediately through cheque. In heinous and brutal rape cases maximum amount would be Rs 3,00,000/- and it is to be given immediately. In rape case, where the victim has been deceived as the accused promised to marry her, maximum amount payable is Rs 2,00,000/- and 50% is to be given immediately and 50% after filing of charge-sheet. Apart from the above amount further Rs 50,000/- can be given for medical travelling and other incidental expenses if the board thinks fit. It has been specifically mentioned that the victim who receives the financial help from the Women and Child Department under this scheme will not be entitled to claim remedies under any other departments.³⁷

³⁷It is expressed by the Women and Child Welfare Officer, Aurangabad that this limitation stands unjust as the objectives of both

The scheme provides for establishment of two committees i.e. District Criminal Injuries Relief and Rehabilitation Board herein after referred as Manodhairya Committee and the Trauma Team. The trauma team is to be constituted in each District. This trauma team shall consist of Women Counsellor, Medical Officer, Support Person and Police Officer. The trauma team members will be provided with necessary training and they will visit victim and family members immediately.

The District Criminal Injuries Relief and Rehabilitation Board shall consist of the District Collector, Rural Superintendent of Police and Urban Assistant Commissioner of Police nominated by Commissioner of Police, District Civil Surgeon, District Government Pleader, an expert working in the field of Women and Child empowerment within the District with the permission of the District Collector, and District Women and Child Development (DWCD) Officer.

For the purpose of sanctioning the financial help a detailed procedure is provided in the Notification. As soon as FIR is filed the concerned police officer within an hour should provide information in short either through email or SMS to the Collector, DWCD Officer, District government surgeon and police superintendent. After getting information from police the meeting of the board shall be arranged within 7 days from the receipt of the FIR. Immediately, medical assistance would be made available. During the proceedings the identity of the victim will be kept confidential. Within 15 days amount should be given. In certain situations the committee may extend the period. The decision given by the Board for grant of financial assistance shall be final. The responsibility of the implementation of the decision is on DWCD Officer, for which the officer has power to receive and disburse the amount. Once the Board decides to grant the financial assistance DWCD Officer will deposit the amount in the bank account. Where 75% of the sanctioned amount shall be kept in fixed deposit for three years and remaining 25% for the

the schemes are different. Hence it is desirable to keep it open under both the schemes.

expenditure to be given to the victim or guardian of the victim. In case of Acid attack cases 25% to be kept in fixed deposit and 75% for the expenditure to be given to the victim/guardian. If the victim is a minor, 75% shall be deposited in fixed deposit in minor's account till the victim attains 18 years of age and 25% can be utilised for the benefit of the child. In the case of minor's the fixed deposit cannot be withdrawn for minimum three years. However, with the permission of the committee the amount can be withdrawn for education or medical purpose of the child. The interest over the Fixed Deposit amount would be deposited in the victims/guardian's account every month. It is also worth to mention about recent verdict that compensation payable under section 357A of CrPC by the State Government shall be in addition to the payment of fine to victim under section 326A or 376D of IPC.³⁸

Apart from granting the amount for the financial assistance, the board also is expected to work in coordination with Government Institutions and NGOs for making available services to the victims such as counselling, residence, medical care, education, professional training, psychiatric and other services,³⁹ and also for helping the victims getting job or initiating business and also is authorised to take any other necessary decision.

When the scheme was introduced there were many apprehensions in the mind of all stakeholders. A Commissioner of Police, two months after the notification of the scheme, after a speech on the human rights day, during an informal conversation, expecting his answer to be off the record, replied to a question pertaining to the Manodhairya scheme, "So much of poverty and hunger is there in our country ... can't predict what will happen with this scheme."⁴⁰ His expression shows the mind and prejudices of people involved. Many, like the Commissioner of Police, raise questions regarding the misuse of the provisions. This is true about any law. Even false murder charges also are

³⁸Suo Motu Writ Petition (Criminal) no. 24 of 2014.

³⁹See clause VII of the government Notification, dated 22 Oct. 2013.

⁴⁰He answered in Hindi: *Itna bhuk our garibi hai is deshme kya pata kya hoga is manodhairyaka.*

levied but for that we cannot suspect every case as false case. The fact is that whenever some legal provisions for the weaker sections are made, many those who hold positions in the society has an apprehension of misuse. Hence it is not very surprising, when people expressed the apprehension of misuse of the scheme for women victims. During the work as member of the Manodhairya Committee while reading the FIR and statements of the victim the researcher has not come across any false cases.

6. Performance of the Manodhairya Scheme in Maharashtra

Since three years the scheme is working, the information available from Women and Child Welfare Department Maharashtra as reported in Economic Survey, 2657 victims are benefited with financial help under the scheme till March 2016.

Year	Outlay	Expenditure	Beneficiaries
2013-2014	Rs 5,10,00,000/-	Rs 5,40,00,000/-	830
2014-2015	Rs 15,10,00,000/-	Rs 15,10,00,000/-	1317
2015-2016	Rs 21,89,00,000/-	Rs 15.28,00,000/-	510

Further the government of Maharashtra on Affidavit before the Hon'ble High Court, Bombay provides that since enforcement till February 2015 total 1206 rape cases, 1711 sexual abuse of children cases were reported. Financial assistance is sanctioned in 927 rape cases, 1295 cases of sexual abuse of children, and six acid attack cases. The affidavit also explains the ways through which awareness about the scheme is created through advertisements in radio, television, and other media, information to the victim is provided immediately by the investigating police officer.⁴¹

The following table shows the data of Aurangabad District till May 2016, according to the information collected from Women and Child Department, Aurangabad.

⁴¹"Mumbai Acid Attack Victim to Undergo Surgery, Mah. Govt. to Gear Expense," *Yuva sai sagar*, an online news channel, 30 April. 2016 <<http://www.yuvasaisagar.com/tag/maharashtra/page/22>> (8.4. 2016).

No. of cases reached since inception of the scheme	178
No. of cases in which the board has rejected the financial help	21
Number of pending cases	5
No. of cases in which the board has sanctioned the financial help	153
No. of cases in which financial help actually is handed over	48

Though sanctioned, Rs. 1,09,00,000/ is yet to be distributed to the victims.

It appears from the information in the table I that since inception of the scheme till 2016 huge fiscal provisions are made; however, the table II shows that many victims are not benefitted from the scheme. Financial crunches is one of the main hurdles in actually handing over the sanctioned amount. According to the information gathered through interview with the DWCD Officer, Aurangabad victims often shift the place of residence after the incident and the address is not known to the officials and the same is not communicated by the investigating authority. Inadequacies in infrastructure, conveyance and lack of transport arrangements for reaching to victim are also some of the hurdles. According to the office of the Superintendent of Police delays in receiving reports from rural police and medical officials are also problems. The chairperson of the committee expressed during the interview⁴² that every member in the committee must act with sensitivity and must carry ready hand information required for the respective cases to be finalised in the meeting. Often the necessary information in majority of cases is not ready with the concerned officials and cases are postponed to the next meeting, causing unnecessary delay.

As this scheme is made effective from 2nd Oct. 2013, and is not having retrospective application, the incidence of rape, acid attack or child sexual molestation if has occurred before this date but the

⁴²The Interview of Smt. Mutha, Additional Collector, who was presiding over in the meeting of Manodhairya was conducted personally by the researcher.

trauma if continues the scheme is not applicable to them which does not seem to be just. In the case of Arti Thakur the same issue came before the judiciary and on 19th march 2015 the Bombay high court directed Maharashtra government to pay compensation amount required for the surgery due to acid attack in the year 2012.⁴³

Within a month of the launch of scheme the state government had decided to develop a software considering that DWCD staff would keep a tab of cases and compensation online so as to make available District wise statistical and graphical information that would be beneficial to Right To Information activists, those who are working for the support services, and also for the research scholars. For the development of this software budgetary allocation of Rs. 4,05,00,000/- crore was made out of which since last two years Rs. 80,00,000/- is paid each year. However, this software shows only the total number of beneficiaries in the state. Another important issue is for the online data to be made available scanned copy of FIR needs to be uploaded, and in majority of the offices of the DWCD either scanners are not available or employees are not technically trained; hence for scanning the FIR services from outside are hired which poses great threat to confidentiality of the identity of the victim.⁴⁴ Hence providing adequate infrastructure and training the employees are very necessary so as to implement the scheme in true spirit.

There are no provisions in the Government Notification on the rehabilitation of victim and guardian if necessary; hence no decision can be taken. No clear guidelines are given on handover 100% amount to the legal heirs, if it is a case of deceased victim. According to DWCD Officer,

People have applied for withdrawal of amount in FD but the amount can't be withdrawn for the construction of house, for

⁴³<<http://www.dnaindia.com/mumbai/report-bombay-high-court-orders-maharashtra-government-to-pay-for-surgery-of-acid-attack-victim-2070262>> (15.02.2016).

⁴⁴"Manodhairya Online Facility Fails to Click," *The Golden Sparrow*, 2 April 2016, <https://issuu.com/thegoldensparrow/docs/tgs_broad_sheet_pages_april_02_pdf> (28.04.2016).

the purpose of shelter, or for the capital amount for business as is requested by the victim or relatives due to the lack of clear provisions. Amount also can't be withdrawn for rehabilitation of blood relatives or guardians.⁴⁵

However, there are clear provisions in the Notification pertaining to the conditions in which the amount can be withdrawn. The question of rehabilitation of legal heirs will come only when during the lifetime of deceased victim, the heirs were dependant on her. In other cases providing financial help for initiation of business is not the objective of the scheme. May be it is poverty and unemployment due to which such other applications claiming the financial help are reaching to the DWCD Officer.

Apart from financial provisions in the scheme, constituting Trauma Team for providing counselling and other services for rehabilitation and restoration are almost neglected. Though the Notification specified that separate guidelines would be issued for the trauma team, such guidelines were not yet issued by the government; hence no trauma team is constituted and no question of giving any training to anybody for providing such services. Even the Manodhairya committee also is expected to work in coordination with the government institutions and NGOs for providing the above referred services. However, very meagre services are provided by the committee. For formulating the scheme apart from monitory assistance and for providing other necessary services "Standard Operating Procedure and Guidelines"⁴⁶ provided in the report of Rahat an initiative by Majalis which gives five points formula of immediate response, help, insuring protocols and safety, explain and inform, and court may be referred.

7. Some of the Most Heinous Cases

A girl aged 15 years was sold for the purpose of marriage. After the marriage, the husband and in laws treated her with physical,

⁴⁵The Aurangabad DWCD Welfare officer was interviewed by the researcher on 23rd June 2016.

⁴⁶"Pursuing This Thing Called Justice".

mental, psychological, and sexual cruelty. She was compelled to eat animal excreta and to have sex with the pet dog at their house that too in-front of in-laws. She was confined in a room for six months. Later she was rescued by the local group of Women activist group Sajag. Financial assistance of Rs 3,00,000/- was granted by the Manodhairya committee and temporary shelter also was provided by the Women and Child department. Providing monetary relief, though necessary, is not sufficient for the rehabilitation and restoration of the victim. Change of mindset of society is of immense important. This case is an example for how women are looked and treated as commodity, which can be sold in market, who are believed to have no feelings and human emotions.

In another case a school girl aged 13 years was raped by the headmaster, and the news was flashed in the media. People compelled to close the school for almost three days. The case reached after 15 days of the incidence before the Manodhairya committee. During the meeting some members of the committee expressed that it was allegedly false case and the girl suffered from some psychological problem and there is no need of payment of any monetary relief. The questions are: "Whether it would be ethical for the committee member to express and rely on hearsay? Whether the committee has any right to deny the financial help on such grounds?" The researcher strongly feels that such prejudices hamper the process of justice.

A school girl aged 11 years was brutally raped by her rickshaw driver. Manodhairya Committee granted compensation. Though this case was over for the Manodhairya financial help, later the researcher came to know from the reliable source that the victim girl was compelled to take TC from the school where she was studying for no fault on her side. The researcher feels the need of counselling of authorities of such educational institutions as treatment to the victim shows how she is revictimised by the systems.

A 12 year old girl was raped by her father when they all were sleeping on the terrace. After the incidence immediately she told her misery to her mother but the reply from mother was "keep

quite; don't tell it to anybody .. you will have less trouble in physical relation after your marriage." Providing other support services, educating masses and counselling mothers also is crucially needed. This incidence further reminds daughters are not safe even in homes.

In a widely discussed case by media, where a lady advocate alleged of being raped by her senior advocate came before the committee quite late - may be after a month of filing of FIR. The detailed statement of the lady was annexed with the copy of FIR where in the name of the pleader also reflected though not as culprit but as the friend of accused, who was in the committee and discussing about her consensual relation. It would have been ethical for that committee member not to sit during the discussion in that case. However, he continued in the meeting. Previous inferences prejudices of the committee member must not hamper the process. Though presumption of occurrence of rape is placed in Indian evidence Act, 1872 by way of amendment, the society has not changed the mindset.

The charge of rape was one though easily to be made difficult to be proved, and harder to be defended by the party accused. Therefore the standards of proofs of rape were made higher than those relating to other crimes. The definition of a crime usually required prosecution to show what the defendant had exerted actual force, and that the victim had offered physical resistance. The victims testimony often had to be corroborated by the evidence from other sources The defence was usually allowed to bring in the victim's sexual past with a view to impugning the credibility of her claim that she had not consented.⁴⁷

In an exceptionally surprising case a wife, who is Muslim by faith, filed FIR against husband U/s 376, who is living separately from her husband for the reason of his cruelty. She also has filed case under PWDV, Act 2005 and also under S.498-A of IPC. According to the law it is a rape, only if the violence occurred when they are living separately by judicial separation. Muslim

⁴⁷Igor Primorac, "Radical Feminism on Rape," Jerusalem: The Hebrew University, 1998 <<http://hrcak.srce.hr/file/31856>> (20.2.2016).

personal law i.e. Dissolution of Muslim Marriage Act, 1939 does not provide any provision for judicial separation and if her husband forces her for the sexual relations it will not constitute rape. She is not entitled to claim financial remedy under Manodhairya Scheme. Apart from the need of Uniform civil code, the researcher is reminded with the report submitted by J. Verma committee which has expressed deep concern for such issues,

The IPC differentiates between rape within marriage and outside marriage. Under the IPC sexual intercourse without consent is prohibited. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. The Committee recommended that the exception to marital rape should be removed. Marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant."⁴⁸

8. Conclusion

The women's human right jurisprudence is developing in India. Women's rights activists and academicians have started writing on the issues of women very effectively. Justice Mallimath committee and Justice Verma committee reports also have added valuable suggestions to curb the growing menace of violence against women. It is further a positive step that the government has acted upon the reports and necessary changes are incorporated in the criminal law.

The introduction of Manodhairya scheme is certainly a step towards protection of human rights of victims of violence. Positive aspects of the scheme are the heterogeneity of Manodhairya committee, planning for arranging the Meetings of the committee twice in a month or as and when needed, non

⁴⁸PRS India.org, "Justice Verma Committee Report Summary" <<http://www.prsindia.org/parliamenttrack/report-summaries/justice-verma-committee-report-summary-2628/>> (26.1.2016).

disclosure of the identity of the victim in consonance with the criminal justice policy.

However, the researcher has found during the studies that there is a scope for better implementation of the scheme which was initiated with milestone objective. This scheme would stand path breaking and very effective if properly trained trauma teams and counsellors as are mentioned in the scheme are actually constituted, adequate infrastructure and amount for the financial assistance is advanced with the DWCD. More sensitivity is expected from the Manodhairya committee members if they attend meetings with the ready hand necessary information in respective cases the decisions by the committee may be expedited. Laying down detailed procedure for the working of the committee along with role and responsibilities of member from each category also needs to be provided. Speeding up the procedure for conduct of meeting, and handing over the amount to the victim is essential. The researcher also feels that on the lines of American pattern Joint victim Impact panel for victim's rehabilitation in place of trauma team is desirable. Implementation of Law, Policy and schemes in its true spirit is needed. Public awareness, sensitization programmes, pressure groups and hard efforts are to be placed for inculcating human values in the coming generations.