

Reserved
A.F.R.

Writ Petition No.8210 (M/B) of 2015

“A” through her Father “F”

Versus

State Of U.P. Thru Prin. Secy., Med. & Health Ser. & Ors.

Hon'ble Shabihul Hasnain, J.
Hon'ble D. K. Upadhyaya, J.

(Delivered by Shabihul Hasnain, J.)

Considering the nature of issue engaging attention of this Court in this matter, the cause title of this case will now be read as under:-

“A” through her father “F”

Vs.

State of U.P. through Secretary,

Medical and Health Services and other.

Office to make necessary amendments.

This matter arises out of a petition filed by a minor rape victim through her father, who has been named “A” by this Court. Originally, she had prayed that his Court may direct the opposite parties to terminate the pregnancy of the petitioner forthwith. She had also prayed that the opposite parties be directed to conduct DNA test of the foetus for the purpose of evidence and the trial.

It is necessary to give factual matrix of the case and subsequent developments in brief to understand the matter in proper perspective. A named F. I. R. was lodged by the father of the victim against the accused (hereinafter they will be known as “F” for father and “M” for the accused. These names are being given by the Court to keep the identity of the victim, her family and the accused under cover). It is mentioned in the F.I.R. that “A” was raped on 17.2.2015. The age of the victim was about 13 years. The First Information Report was registered under Sections 376, 506 IPC and Section 3/4 of Prevention of Children from Sexual Offenses Act, 2012 on 8.7.2015 (case crime No., district and the location is not being given in the interest of justice). The F.I.R. was lodged with delay due to the reason that the poor child did not tell about the incident to her parents under threat extended by “M” that in case the matter is reported to the father they will

both be killed. The matter came to light when “A” complained of pain in the abdomen and was taken to the medical hospital by her sister.

After registration of the F.I.R., medical examination of the petitioner was conducted by the Doctor on 8.7.2015 itself. She was found to be pregnant for 21 weeks and two days. Her age was found to be 12 years. The statement of the victim was recorded under Section 161 and 164 Cr.P.C. She corroborated the version of the first information report. She narrated that on 17.2.2015 at about 11.30 p.m. when she was returning from Tilak ceremony, “M” caught hold of her and dragged her to the back of a temple and forcibly committed rape upon her, as a result of which she became pregnant. She has narrated that force was used and she was stopped from shouting by “M”. After investigation the police submitted charge sheet against “M” before the Magistrate on 18.3.2015 and “M” was sent to jail.

According to the mark-sheet of class V issued by a local school, her date of birth is 15.10.2001 which makes her 13 years of age on the date of occurrence. According to the radiological examination her age was found to be about 12 years on the date of the occurrence.

In paragraph 13 of the petition, it has been averred that application was moved for termination of pregnancy medically by competent authority i.e. Chief Medical Officer of the District. It is further mentioned that the application was moved before the Juvenile Justice Board of the District with the prayer to accord necessary permission. It has been categorically stated that permission was refused but we do not have any document to substantiate this statement. However, postal receipts have been attached wherein applications have been found to be sent to the Juvenile Justice Board as well as Chief Medical Officer of the District. We are not sure whether such application ever reached the authorities concerned and were on record or not? However, since no relief could be obtained by the petitioner, she approached this Court through the present petition on 3.9.2015.

The matter came up before this Court on 7.9.2015. The matter was argued passionately and it was submitted that unfortunately a minor girl has been subjected to horrendous and despicable act against her will. It was pleaded that on social, moral, physical and psychological basis it will be most appropriate that permission may be granted to the petitioner to abort the child scientifically. It was forcefully argued that if the pregnancy is

continued and child is to be born it would be a continued reminder of horrible incident in the life of a minor girl whose entire life is before her. If the pregnancy is allowed to be terminated it might be possible for the girl to forget the unfortunate incident by the passage of time otherwise instead of one, two lives will be spoiled.

Reliance was placed on a recent decision of Supreme Court in the matter of ***Chandra Kant Jayanti Lal Suther and another Vs. State of Gujrat*** passed on 28.7.2015 in Special Leave to Appeal (Crl.) No.(s) 6013/2015. Since the victim belongs to a small District adjoining Lucknow where medical facilities are not upto mark, this Court decided that the victim should be treated at Lucknow. So we directed King George's Medical University, Lucknow to constitute a team of three senior most teachers/ doctors of the concerning department to examine the petitioner. They were required to evaluate the seriousness as to the threat to her life and also about the impact of continued pregnancy on the mental health of the victim. It was directed that in case the aforesaid doctors form an opinion that termination of pregnancy is safely possible, they will perform necessary surgery/operation. This was to be done with the consent of victim's father for the same. In case of abortion, the authorities of the medical university were required to preserve the tissue from the foetus. It was further directed that Medical University shall take care of her stay as indoor patient and medical expenses shall be borne by the medical university to be reimbursed later by the State Government. The case was ordered to be listed on 15th September, 2015.

When the case was taken up on 15th September, 2015, a report from the medical university dated 10.9.2015 was placed before the Court which was sent in a sealed envelop. The relevant portion of the report sent by the medical university is being reproduced for appreciating the matter. The names of doctors etc. and other details are not being given for the purpose of maintaining secrecy about the identity of the girl.

“Committee members examined, evaluated and discussed the case thoroughly. Relevant investigations and Ultra Sonographic examinations were done and report is being sent on the basis of clinical and Sonographic examination and other investigations. She is a case of 7 and ½ months(30-32 weeks) pregnancy and is due for delivery in approximately 3rd week of November, 2015. At present apart from being a teenage pregnancy,

which even though itself is a higher risk factor but there is no other factor which may endanger the physical health of the girl. There is no threat to her life at the moment.

The team of doctors is of the opinion that pregnancy should be continued as the termination/discontinuation of pregnancy at this point of time will lead to delivery of life preterm baby. At the moment there is no indication of any surgery for delivery.

Patient should be provided ante-natal care for well being of the mother as well as fetus. No decision about time and mode of delivery would be taken at the appropriate time.

The patient is being advised and provided following treatment;

- Inj Tet boxoid 1 AMP/IML stat*
- Tab Iron 1x daily*
- calcium supplementation 500 mg. 1X BD for supplementation*

As discussed above, the girl is being admitted in Queen Marry's Hospital pending the direction and decision of the court for further action.”

On 15.9.2015 the medical report was taken on record. After the report of the medical university nothing remained to be adjudicated or decided by this Court. However, counsel for the petitioner made a fervent plea that the case may not be dismissed as infructuous on that date and he may be given a chance to study the report as well. It was submitted that he would like to address the Court further after going through the communication by the medical university. The Court fixed 23.9.2015 for this purpose.

On 23.9.2015 counsel for the petitioner submitted that the victim and her family members are devastated by the medical report. He submitted that the victim/would be mother, being minor, was not capable of looking after herself, what to say of the child to be born. At the same time, father of the victim is not willing to keep the would be born child with them at any cost. If forced they might abandon not only the would be born child but also the victim to her fate. The counsel also appealed to the Court to look into this matter from the point of view of Article 21 of the Constitution of India. He pleaded that not only the minor rape victim but also “would be born child” had a right to live a life of dignity and liberty. Right of the victim to live with dignity can never be doubted, at the same time, the “child to be born” would also become natural citizen of this country from the moment of his or her birth.

Article 5 of the Constitution of India reads as under:-

“5. Citizenship at the commencement of the Constitution:- At the

*commencement of this Constitution every person who has his domicile in the territory of India and
 (a) who was born in the territory of India; or
 (b) either of whose parents was born in the territory of India; or
 (c) who has been ordinarily resident in the territory of India for not less than five years preceding such commencement, shall be a citizen of India.”*

The counsel argued that even this child needs the protection of the Court. It was argued that the guarantees given in Article 21 of the Constitution of India should be procured for the victim and her child if not by the State then by the courts. It was pleaded that such hapless, helpless and innocent victim of brutality, abject poverty and insensitive attitude of the society deserves attention and consideration by the highest Court of the State. The court cannot shut its eyes towards the tragedy which has befallen upon a citizen of this country and is likely to fall on a would be citizen of this country on her/his arrival in this world. After hearing the arguments of the petitioner counsel this Court passed following order on 23.9.2015:-

“Medical report sent by the doctors of Medical College is taken on record.

Considering the facts and circumstances of the case and its ramification for the Society at large, we feel that this matter needs further consideration by this Court. Accordingly, the Court appoints Sri Jaideep Narain Mathur, Senior Advocate, to be assisted by counsel of his choice, to assist us in this matter so that proper order can be passed for the future of unfortunate girl. Further, let notice be issued to Avadh Bar Association through its President to allow any other Advocate, who wants to assist sincerely, earnestly and honestly in this matter. Issue notice to Member Secretary, State Legal Services Authority, Lucknow, also to assist in the matter.

List this case on 7.10.2015 as fresh.

It is further directed that the victim-petitioner shall not be relieved from the Medical College and shall be taken care of by them until further orders of this Court.

Order Date :- 23.9.2015 “

On 7.10.2015 the matter was heard for quite some time and following orders were passed:-

Heard Sri J. N. Mathur, Senior Advocate assisted by Sri Ravi Tilhari and Sri Madhav as amicus curiae at great length, Sri Mohsin Iqbal, learned counsel for the petitioner and Mrs. Bulbul Godiyal, learned Additional Advocate General for the State.

Mr. Mathur has submitted that so far as compensation is

concerned, the State Government has formulated a scheme known as Uttar Pradesh Victim Compensation Scheme. Section 2 (d) of the said scheme defines a victim as under:

"(d) "victim" means a person who himself has suffered a loss or injury as a result of crime and requires rehabilitation, and includes his dependent family members."

The Court expressed its anxiety as to whether this definition will also cover the 'would be born child' whose mother is refusing to bring him/her up in future. The father of the petitioner has already stated that he does not want anything to do with the child who is likely to be born. In this case the child becomes the 'second victim' in itself.

After arguments were heard the Court has formulated few questions and has sought assistance on these issues:-

What is the status of a would be born child out of a relationship which is based on denial from both the parties ? There was no consent between the biological father and mother of the child for his/her birth. There was no marriage and even live-in relations was not existing. In such a situation, what rights will accrue to a child who will be a citizen of this country from the moment of its birth in the State of India. Does he not have a right to live a life of liberty with dignity as guaranteed under Article 21 of the Constitution of India.

Can he claim legitimacy in society ? How is the society expected to treat the child ? Is the society not bound to respect the child simply as a citizen of this country and not a product of shame ? Can he claim rights through inheritance in the property of his rapist father ? Most important aspect is the responsibility of the State viz.-a.-viz. the unfortunate victim and the most unfortunate child. Is it not the responsibility of the State to protect the life and liberty of a girl who has been put to this trauma and hardship because the State failed to protect her ?

The Court showed its anxiety as to how this child has to be brought-up in view of the fact that the mother is denying to keep him/her with herself ? Can the child be given in valid adoption through legal methods ? Can the government be required to pay for the education and rehabilitation/well being of the child till he attains the age of majority independent of his/her mother's companionship ? Sri Mathur submitted that by a harmonious reading of Section 21 of the Guardians and Wards Act, Section 6 of Hindu Adoption and Maintenance Act, 1956 along with other legal and statutory provisions, a method can be put in place for a valid legal adoption of the would be born child. Mr. Mathur assured the Court that he will come back tomorrow with all the queries raised by the Court.

Mrs. Bulbul Godiyal, learned Additional Advocate General submitted that the State Government is not taking this case as an adversarial litigation. She assured that the government will come out with all possible help for the victim mother as well as would be born child.

List/put up this case tomorrow at 2 'O' clock for further hearing.

Order Date :- 7.10.2015”

On 8.10.2015 an amendment application along with an impleadment application were filed. By the impleadment application the following parties were added:-

“5. Principal Secretary, Women and Child Welfare, Civil Secretariat, Lucknow.

6. State Legal Services Authority

7. Child Welfare Committee, Lucknow.”

By the amendment application following prayers were added:-

“b(i). issue a writ, order or direction in the nature of mandamus commanding the opposite parties to grant compensation to the petitioner in the light of Section 357-A Cr.P.C. read with the Uttar Pradesh Victim Compensation Scheme, 2014, framed under section 357-A Cr.P.C.”

b(ii). issue a writ, order or direction in the nature of mandamus commanding the opposite parties to provide rehabilitation to the petitioner and to the petitioner's child to be born in the best interest of both the petitioner and child to be born.

b(iii). issue a writ, order or direction in the nature of mandamus commanding the opposite party no.7 i.e. Child Welfare Committee, Lucknow to take such steps for the care and protection of the child to be born to the petitioner and to allow the child to remain in a Children Home till he/she is taken in adoption by suitable person in accordance with law.”

Supplementary affidavit by the counsel for the petitioner and counter affidavit by the Chief Standing counsel were filed on 9.10.2015. Both these documents were taken on record. By the supplementary affidavit two facts were brought on record by way of paragraph No.s 3 and 4 of the supplementary affidavit which are reproduced as under:-

“3. That on 8.10.2015 at about 4.30 p.m., a penal of Lawyers, consisting with Mr. J. N. Mathur, Senior Advocate Mr. Madhav Chaturvedi, Advocate, Mr. R. N. Tilhari, Advocate, Mr. Kazim Ibrahim, Advocate and petitioner's counsel Mr. Mohsin Iqbal, Advocate, had gone to meet with the petitioner at King George

Medical University, Lucknow, to know about her willingness about the adoption of child, who is likely to be born within a month.

4. *That before the aforesaid Advocates, the petitioner has given her consent, saying that she is not mentally and physically capable to take the responsibility of upcoming child, as such she has no objection, if the child is given in adoption.”*

The matter was finally heard in great detail on 9.10.2015 and the the judgment was reserved.

Before the judgment could be pronounced, an application was moved on 28th October, 2015 by the *amicus curiae* informing the fact that contrary to the expectations of the medical doctors, who attended the victim, a girl child was delivered on 26th October, 2015. On the said application this Court, under the orders of Senior Judge, assembled on 28th October, 2015 and passed the following order:-

“This Bench has been constituted on the application moved by the Amicus Curie, Sri Jaideep Narain Mathur, Senior Advocate on account of some developments which have taken place since the date judgement was reserved in this matter. The application has been moved along with an affidavit informing the Court that though the expected date of delivery as declared by the doctor attending the victim was last week of November, 2015, however, the same was preponed and through surgical operation a girl child was born on 26.10.2015.

There is an affidavit by the Amicus Curie earlier making a statement to the effect that the victim and her parents had informed him personally that they do not want to keep with them the child born on account of the unfortunate incident. They have consented that provision for adoption may be resorted to for giving the child in adoption. This fact has been reiterated by learned counsel for petitioner as well.

It has been informed that the girl child born on 26.10.2015 was not well and has been kept in Neonatal Intensive Care Unit of the Pediatrics Department of K.G.M.U. She is likely to remain there till the doctors declare her fit to be moved out of the hospital. The Court directs that till doctors feel that the child as well as the mother need medical care, the Medical College will take the responsibility of their welfare, feeding, medicines and other facilities as has been done earlier.

List this case on 03.11.2015 at 3.00 p.m for pronouncement of judgement.

Order Date :- 28.10.2015”

At the very outset, we may record our appreciation that the State

Government did not contest this matter as an adversarial litigation. Mrs. Bulbul Godiyal, Additional Advocate General, on behalf and on the instructions of the State Government, informed the Court that the State Government will cooperate in the discussions as well as implementation of the directions given to the State Government. It is a remarkable departure in the history of such litigations as we have seen that in the judgments right from *Rudal Sah Vs. State of Bihar (1983) 4 SCC 141* upto the recent days the State has contested paying any compensation. It is further appreciated that a sum of Rs.3,00,000/- has already been released in favour of the victim by State Government though the judgment was still pending. Since there is no adversarial litigation, therefore, no argument and counter argument are required to be placed on record. Both the sides tried to place the laws, facts and possible solutions before the Court.

We may hasten to add that the observations, opinions and conclusions drawn in the following discussion will be only for the purpose of welfare of the victim and her child. It will not be used for affecting the trial of the accused which is an independent judicial exercise of a criminal court. We are only going by the facts that a minor has been forced into sexual intercourse. Since she is minor, her consent, if any, is meaningless. Further, her pregnancy cannot be denied and the birth of a child is also a fact not denied by any one. Since State has filed charge sheet for rape, they cannot take a stand otherwise. The trial court shall not be influenced by this judgment at all and decide the case on its own merit.

We will like to go about relevant aspects of this case in following manner:-

- (A) What are the social and legal ways to help the victim of rape in re-rehabilitating her psychologically, socially, economically and culturally ? What monetary help/compensation can be provided on a short term and long term basis ?
- (B) How can the second victim i.e. the child born out of this unfortunate biological relationship be given its due on her becoming natural citizen of this country by birth; How the rights under the constitution be procured for it?
- (C) Is there a valid legal system wherein the child can be adopted by a suitable family through various government agencies or

N.G.O.s ?

- (D) Does the child have any right of inheritance in the property of the accused ?
- (E) What are the rights of a rape victim viz-a-viz article 21 of the Constitution of India and what is the responsibility of the State in protecting the life and liberty of its citizens in general and women and children in particular ?
- (F) What is the responsibility of the society towards rape victims and their children ?

The concept of rehabilitation emanates from the concept of right to life. Hon'ble Supreme Court in number of cases has declared that right to life does not merely mean animal existence but means some thing more, namely, the right to live with human dignity. Rehabilitation in common parlance will mean to ensure all those facilities of life which were being enjoyed by the person who has been uprooted from a particular environment. Right to life has to be understood in its full import.

In the matter of ***Chairman, Railway Board Vs. Chandrima Das, (2002) 2 SCC 465***, the Supreme Court has observed:-

“32. The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948. [See: Article 3 quoted above]. The Fundamental Rights under the Constitution are almost in consonance with the Rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants of Civil and Political Rights and the Covenants of Economic, Social and Cultural Rights, to which India is a party having ratified them, as set out by this Court in *Kubic Darusz vs. Union of India & Ors. (1990) 1 SCC 568 = AIR 1990 SC 605*. That being so, since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country.

33. Let us now consider the meaning of the word "LIFE" interpreted by this Court from time to time. In *Kharak Singh vs. State of U.P., AIR 1963 SC 1295 = 1964 (1) SCR 332*, it was held that the term "life" indicates something more than mere animal existence. [See also : *State of Maharashtra vs. Chandrabhan Tale, AIR 1983 SC 803 = 1983 (3) SCR 337 = (1983) 3 SCC 387*]. The inhibitions contained in Article 21 against its deprivation extends even to those faculties by which life is enjoyed. In *Bandhua Mukti Morcha vs.*

U.O.O., AIR 1984 SC 802 = 1984 (2) SCR 67 = (1984) 3 SCC 161, it was held that the right to life under Article 21 means the right to live with dignity, free from exploitation. [See also: Maneka Gandhi vs. U.O.O., AIR 1978 SC 597 = 1978 (2) SCR 621 = (1978) 1 SCC 248 and Board of Trustees of the Port of Bombay vs. Dilip Kumar Raghvendra Nath Nadkarni, AIR 1983 SC 109 = 1983 (1) SCR 828 = (1983) 1 SCC 124].

The right to life has been explained in *Fancies Coralie Vs. Union Territory of India* (1981) 1 SCC 608 by the statement *(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.*

In the same case, Hon'ble P. N. Bhagwati, J. held as under:

“we think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

In the present case, the Court emphasizes on damages or injuries to the *“faculty of a person.”*

The *amicus curie* has informed this Court about his personal experience when he visited the hospital on the direction of this Court. He has made a statement at Bar that the condition of the girl was so bad that it brought tears in the eyes of Senior Advocate along with other persons in the hospital. She is barely 30 kilograms of weight, totally unable to understand what was happening around her, inconsolable and suffering of typically **“Rape Trauma Syndrome”**. This syndrome has been medically defined in a journal and we quote:-

“No person exposed to severe trauma is immune to suffering and the signs of that suffering are referred to as symptoms. When these symptoms can be grouped as a pattern over time, they are referred to as a syndrome. Once the pattern becomes entrenched or unlikely to change, and affect a person’s functioning in a permanent way it is referred to as a disorder and is regarded as a mental illness.

Rape Trauma Syndrome “RTS” is the medical term given to the response that survivors have to rape. It is very important to note

that RTS is the natural response of a psychologically healthy person to the trauma of rape so these symptoms do not constitute a mental disorder or illness.

The most powerful factor in determining psychological suffering or damage is the character of the traumatic event itself. Individual personality characteristics count for little in the face of overwhelming events. Physical harm or injuries are also not as great a factor since individuals with little or no physical harm may yet be severely affected by their exposure to a traumatic situation. Before looking at the effects of rape it is therefore important to first examine the character of the trauma that is rape.

Not only is there the element of surprise, the threat of death and the threat of injury, there is also the violation of the person that is synonymous with rape. This violation is physical, emotional and moral and associated with the closest human intimacy of sexual contact. The intention of the rapist is to profane this most private aspect of the person and render his victim utterly helpless. The character of the event is thus connected to the perpetrator's apparent need to terrorise, dominate and humiliate the victim. The victim is therefore most likely to see his actions as motivated by deliberate malice, a malice impossible for her to understand. Rape by its very nature is intentionally designed to produce psychological trauma. It is form of organised social violence comparable only to the combat of war, being but the private expression of the same force. We get nowhere in our understanding of Rape Trauma Syndrome if we think of rape as simply being unwanted sex. Where combat veterans suffer Post Traumatic Stress Disorder, rape survivors experience similar symptoms on a physical, behavioural and psychological level. Some of the symptoms are present immediately after the rape while other only appear at a later stage."

This Court along with the *amicus curie* and his team can only wish that the minor girl may come out of this trauma and lead a normal life. The Court will try whatever is legally possible to help a citizen; rather two citizens, both females, namely, mother and child live a life as envisaged by

the framers of the constitution by enacting Article 14 and 21 of the Constitution of India.

In Collins Dictionary of the English Language, the meaning or the word '**rehabilitate**' is given as under:-

“ to help a person (who is physically or mentally disabled or has just been released from prison) to readapt to society or a new job as by vocational guidance, retraining or therapy....”

By rehabilitation what is meant is not to provide shelter alone. The real purpose of rehabilitation can be achieved only if those who are sought to be rehabilitated are provided with shelter, food and other necessary amenities of life. It would be too much to contend, much less to accept, that providing medical facilities would not come within the concept of the word 'rehabilitation.'"
[Collectors of 24 Pargana and ors ..Vs..Lalit Mohan (1986) 2 SCC 138 Para 13]

While dealing with the matter of rehabilitation monetary compensation comes as the first and foremost requirement. Of course, it is not '*be all and end all*' of the matter but it is still a very important requirement. We will, therefore, first explore what monetary benefits can be given to the victim under existing laws. Other requirements can be discussed subsequently.

Right of a Victim to be compensated for the sufferings of the Offence is also recognized under the Code of Criminal Procedure. Section 357 Cri.P.C. provides for payment to any person of compensation for any loss or injury caused by the offence, out of the amount of fine where a Court imposes a sentence of fine or a sentence including the sentence of death of which fine forms a part and where a Court imposes a sentence of which fine does not form a part, the court may, when passing the judgment, order the accused person to pay by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

The Legislature by means of the Code of Criminal Procedure (Amendment) Act 5 of 2009 inserted new section 357-A which inter alia provides that every State Government in coordination with the Central

Government shall prepare a Scheme, called “**Victim Compensation Scheme**” for providing funds for the purpose of compensation to the victim or his dependents who has suffered loss and injury as the result of crime and who require rehabilitation.

Section 357-A (3) provides that 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. Sub-Section 2 provides that whenever a recommendation has been made by the court for compensation, the District Legal Services Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the Victim Compensation Scheme. Sub-Section (4) further provides that where the offender is not traced or identified but the victim is identified and where no trial takes place, the victim or his dependent may make an application to the State or the District Legal Service Authority for award of compensation. Under sub-section 5, the State and the District Legal Service Authority shall on receipt of recommendation on an application received under sub-section (1) after due enquiry, award adequate compensation by completing the enquiry within two months. Sub-section (6) further provides that the State or the District Legal Service Authority may, to alleviate the suffering of the victim, order for immediate first-aid facility or medical benefits to be made available to the victim free of cost or any other interim relief as such authority may deem fit.

In *Suresh Vs. State of Haryana 2015 (2) SCC 227*, Hon’ble Supreme Court has held that the object and purpose of the provision of Section 357-A, is to enable the Court to direct the State to pay compensation to the victim where the compensation under Section 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. It recognizes compensation as one of the methods of protection of the victim. Relying upon previous judgment in *Abdul Rashid Vs. Odisha*, reported in *2013 SCC OnLine Ori 493*, it was held that punishment of guilty is not the only step in providing justice to the victim. Victim expects a mechanism or rehabilitative measures including monetary

compensation. Such compensation has to be directed to be paid in public law remedy with reference to Article 21. In numerous cases, to do justice to the Victim, payment of monetary compensation as well as rehabilitation has been directed. It has also been held that expanding scope of Article 21 is not limited only to providing compensation when the State or its functionaries are guilty of an act of commission but also to rehabilitate the victim or his family where crime is committed by individual without any role of the State or its functionary.

These provisions of Sections 357 & 357-A received attention of the Hon'ble Supreme Court in many decisions including *Ankush Shivaji Gaikwad Vs. State of Maharashtra* (2013) 6 SCC 770, Gang rape ordered by Village Kangaroopur in West Bengal in re (2014) 4 SCC 786; *Mohd. Haroon Vs. Union of India* (2014) 5 SCC 252 and *Laxmi Vs. Union of India* (2014) 4 SCC 427. All these judgments recognize compensation as one of the most effective protections for the victims as held in the case of *Suresh (supra)*.

In exercise of its powers under Section 357-A Cr. P.C. the State of U.P. has framed "*The Uttar Pradesh Victim Compensation Scheme 2014*" for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of crime and who require rehabilitation.

Para 2 (d) of the Scheme defines Victim as follows:

"victim means a person who himself has suffered loss or injury as a result of crime and requires rehabilitation and includes his dependent family members."

We may add here that this definition of victim should also include the child born out of illegal act of sexual abuse with minor. The new born child is a victim in the sense that she/he is forced to live a life of shame and stigma without his/her fault. She/he is brought in this world destined to suffer because while the father refuses to lend his name to the child, the mother abandons her/him for social reasons. Injury to reputation is a violation of right to live with dignity. The child is the victim of circumstances. She/he definitely suffers injury of being left in this world to fend for himself without any support. She/he requires rehabilitation, therefore, we have termed the child born on 26.10.2015 as a second victim in our discussion.

Para 4 of the Scheme provides for the eligibility of a victim for the grant of compensation. Para 5 lays down the procedure for grant of compensation. Sub para (5), provides that the quantum of compensation to be awarded to the Victim or his dependent shall not exceed the maximum limit as per schedule 1. Sub-para (6) provides that the amount of compensation decided under the Scheme shall be disbursed to the victim or his dependents as the case may be from the funds namely '**victim compensation fund**' established under Para 3. It also makes provision for interim and final assistance. Such financial assistance shall be remitted in the Bank Account of the applicant i.e. Victim or the dependent as the case may be. However, in cases where the person affected is a minor, the amount shall be remitted to the bank account of the parent or guardian after the concerned authority i.e. District Legal Services Authority is satisfied about proper utilization of the compensation amount. Para 6 lays down the principles governing the determination of assistance to the affected person.

Under the aforesaid Scheme of 2014, as per schedule 1, the maximum limit of compensation which may be provided to the victim of rape is Rs. 2 Lac. Besides, for loss or injury causing severe mental agony to the victim of the crime, maximum of Rs. 1 lac can also be awarded under this head. Further, in view of paragraph 5(4) of the scheme keeping in view the particular vulnerability and special need of the affected person in certain cases the State/ District Legal Services Authority, as the case may be will have the power to provide additional assistance of Rs.25,000/- subject to a maximum of Rs. 1,00,000/- in the case where (a) the affected person is a minor girl requiring specialized treatment and care.

Rule 7 of the Protection of Children from Sexual Offences Rules, 2012 framed under Protection of Children from Sexual Offences Act, 2012 also provides for grant of compensation, interim and final, to the victims on the recommendation of the special courts constituted under the Act under the circumstances mentioned therein.

Any useful discussion on the issue of life and liberty and the responsibility of the State will not be complete without referring to some more paragraphs from the case of ***Chairman, Railway Board Vs. Chandrima Das (supra)*** wherein Hon'ble Supreme Court while dealing with the matter

of human rights has referred to the domestic as well as international concept of human rights as under:-

“20. We will come to the question of Domestic Jurisprudence a little later as we intend to first consider the principles and objects behind Universal Declaration of Human Rights, 1948, as adopted and proclaimed by the United Nations General Assembly Resolution of 10th December, 1948. The preamble, inter alia, sets out as under:

"Whereas recognition of the INHERENT DIGNITY and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Whereas it is essential to promote the development of friendly relations between nations.

Whereas the people of the United Nations have in the Charter affirmed their faith in fundamental human rights, IN THE DIGNITY AND WORTH OF THE HUMAN PERSON AND IN THE EQUAL RIGHTS OF MEN AND WOMEN and have determined to promote social progress and better standards of life in larger freedom. Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge."

21. Thereafter, the Declaration sets out, inter alia, in various Articles, the following:

"Article 1--All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2--Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, NATIONAL OR SOCIAL ORIGIN, PROPERTY, BIRTH OR OTHER STATUS.

Furthermore, NO DISTINCTION SHALL BE MADE ON THE BASIS OF THE POLITICAL, JURISDICTIONAL OR INTERNATIONAL STATUS OF THE COUNTRY OR TERRITORY to which a person belongs, whether it be independent, trust,

non-self governing or under any other limitation of sovereignty.

Article 3--Everyone has the right to life, liberty and security of person.

Article 5--No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7--All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 9--No one shall be subjected to arbitrary arrest, detention or exile."

22. *Apart from the above, the General Assembly, also while adopting the Declaration on the Elimination of Violence against Women, by its Resolution dated 20th December, 1993, observed in Article 1 that, "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." In Article 2, it was specified that, "violence against women shall be understood to encompass, but not be limited to:*

(a) Physical, sexual and psychological violence occurring in the family including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs."

23. *In Article 3, it was specified that "women are entitled to the equal enjoyment and protection of all human rights, which would include, inter alia,:*

(a) the right to life, (b) the right to equality, and

(c) the right to liberty and security of person.

24. *The International Covenants and Declarations as adopted by the United Nations have to be respected by all signatory States and the meaning given to the above words in those Declarations and Covenants have to be such as would help in effective implementation of those Rights. The applicability of the Universal Declaration of Human Rights and principles thereof may have to be*

read, if need be, into the domestic jurisprudence.

25. *Lord Diplock in Salomon v. Commissioners of Customs and Excise [1996] 3 All ER 871 said that there is a, prima facie, presumption that Parliament does not intend to act in breach of international law, including specific treaty obligations. So also, Lord Bridge in Brind v. Secretary of State for the Home Department [1991] 1 All ER 720, observed that it was well settled that, in construing any provision in domestic legislation which was ambiguous in the sense that it was capable of a meaning which either conforms to or conflicts with the International Convention, the courts would presume that Parliament intended to legislate in conformity with the Convention and not in conflict with it.*

26. *The domestic application of international human rights and norms was considered by the Judicial Colloquia (Judges and Lawyers) at Bangalore in 1988. It was later affirmed by the Colloquia that it was the vital duty of an independent judiciary to interpret and apply national constitutions in the light of those principles. Further Colloquia were convened in 1994 at Zimbabwe, in 1996 at Hong Kong and in 1997 at Guyana and in all those Colloquia, the question of domestic application of international and regional human rights specially in relation to women, was considered. The Zimbabwe Declaration 1994, inter alia, stated :*

"Judges and lawyers have duty to familiarise themselves with the growing international jurisprudence of human rights and particularly with the expanding material on the protection and promotion of the human rights of women."

But this situation may not really arise in our country.

27. *Our Constitution guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948, to its citizens and other persons. The chapter dealing with the Fundamental Rights is contained in Part III of the Constitution. The purpose of this Part is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority, may come to form the Govt. at the Centre or in the State."*

The power to grant compensation to the victim for violation of fundamental rights especially right to life and personal liberty under Article 226 of the Constitution of India is well recognized and independent of the provisions of Sections 357 and 357-A Cri. P.C. or/and any scheme framed in pursuance to or independent thereof. These provisions and the Victim Compensation Scheme may at best be considered as the State recognizing its

duty to compensate the victim of offence to some extent, as the cases like the present one no compensation would be adequate to compensate the victim. It may also be considered as the State recognizing its liability to pay the victim, for its fault in protecting the rights of the individual by providing safety and security against commission of crime. Commission of offence, even where it is only against an individual, has its effect on the society. The offence of rape, like many other offences, is against the society. The State has the responsibility to punish the wrong doer/the guilty and on its failure, also to see that the victim of offence is not only compensated by the State for the loss and injury suffered but also for rehabilitation of the Victim irrespective of the fact whether the offender is convicted or acquitted and also in those cases where the offender could not be identified and no trial takes place but the victim is identified.

Amount of compensation is to be determined by the court depending upon the facts and circumstances of the case; the nature of the crime and the justness of the claim. It must be reasonable depending upon the relevant factors. In *Suresh Vs. State of Hariyana (supra)* it was held that the gravity of offence and need of the victim are some of the guiding factors apart from such other factors as may be found relevant in the facts and circumstances of individual cases.

Thus we see that there is a statutory right of compensation available to the petitioner and she may avail of the same. But we sadly observe that such compensation may be too little and come too late in the life of a victim and thus be of no immediate use for her. We need not give any direction in this regard. The mechanism will take its own course.

Additional Advocate General Mrs. Bulbul Godiyal has submitted that apart from victim compensation scheme, as discussed above, the State Government has notified *Uttar Pradesh Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015* (hereinafter referred to as *Samman Kosh Rules*). This has been notified on 6.2.2015. She has also informed that Rs.3 lakhs have been issued and the petitioner has been given this amount under this Samman Kosh Rules itself.

The Court appreciates the notification of these Rules which are quite exhaustive. Under this scheme “**U.P. State Women's Empowerment**

Mission” has been constituted vide a G.O.dated January 7, 2015. Under this mission, a “**State Monitoring Committee**” has been constituted which is to be chaired by the Chief Secretary through a Government Order dated 7.1.2015. Further a “**District Steering Committee**” under the Chairmanship of the District Magistrate has also been established as per the G.O.dated 16.1.2015. Three annexures have been appended to these Rules.

Annexure-1 : Facilities provided under the fund for victims of Crimes against women.

Annexure-2 : Deals with eligibility.

Annexure-3 : Public contributions to the fund.

Clause 10 of these Rules speaks of a '**Sanctioning Authority**', powers of which are quoted below

(a) The District Steering Committee is the Sanctioning Authority for reliefs from the Fund which are mentioned in Annexure-1 & 2, upto a limit of Rs.10 lakhs only. For reliefs amounting to more than Rs.10 lakhs, the recommendations would be submitted online, for approval of the State Monitoring Committee.

(b) The Sanctioning Authority for projects listed in Annexure-3 is the State Monitoring Committee.

Clause 12 of these Rules reads as under :

Process flow with respect to cases defined in Annexure-1:

For funding under Annexure 1, no application is required to be made.

(a) Process for payment of compensation :

(1) Authorised District Police Officer will feed online the FIR and other details of the Victim and digitally sign the record.

(2) Such signed record will then be automatically displayed, both in the inbox of the Designated Signatory of the District Steering Committee, as well as in the inbox of the Authorised Medical Officer.

(3) The Authorised Medical Officer will then feed the medical report online and digitally sign the record. Such completed record will be forwarded online to the District Steering Committee for approval.

(4) The Designated signatory will obtain the approval of the Chairman of the District Steering Committee in the prescribed format, downloadable from the website, along with signatures of the District Superintendent of Police.

(5) The same would be scanned, uploaded on the website and forwarded with the recommendation for payment, under the digital signatures of the Designated Signatory, to the FMU.

(6) *On the basis of records recommended by the District Steering Committee, the demand will be generated through Web Portal by FMU. Accordingly, the fund will be transferred through PFMS Systems directly to the account of the beneficiaries, information of which would also be given to the District Steering Committee and S.P. of the district.*

(b) *Process for availing of medical facilities :*

(1) *Victims of violence (as per part A list in Annexure-1) may approach any Government Hospital/Government Medical College/State Medical Autonomous bodies/State Medical Universities for initial treatment. To facilitate such treatment, wherever investigations are not available in the Government Hospitals/Government Medical Colleges but available in the Private Sector, procedures laid down in Annexure-1 will be followed.*

(2) *Referral medical treatment, if required, can only be availed on specific recommendation of treating Doctor, certified by Chief Medical Superintendent of District Hospital/Medical Superintendent of Government Medical College/Institution.*

(3) *If a beneficiary is required to be treated at any identified Government. Referral Hospital (as in Annexure-1)/accredited Private Hospital under these Rules, then the details of the Referral Form, containing clear recommendation regarding requirement of such treatment, will be entered in the Web Portal by the 1lk0 efgyk ,oa cky fodkl -3 Authorised Medical Officer of the District Hospital/District Medical College (format of Referral Form for Annexure-1, will be issued by the Department of Medical Health/Medical Education.) A copy of Referral Form will be given to the beneficiary to facilitate identification.*

(4) *The digitally signed medical report along with the Referral Form, will be displayed in the inbox of the Referral Hospital/Institution, along with details of the beneficiary.*

(5) *When the beneficiary approaches the Referral Centre, the copy of Referral Form should be produced for easy identification.*

(6) *To ensure cashless treatment to the beneficiary, the Referral Centre would raise a bill in her name for those medical treatments which are not available free in the Centre, on the basis of the treatment given to her.*

(7) *The Authorised Medical Officer of the Referral Central will digitally sign the medical reports of the beneficiary and forward it online to the FMU.*

(8) *On receipt of records from Referral Hospital, the demand will be generated through Web Portal by FMU. Accordingly, the fund will be transferred through PFMS System directly to the account of the Referral Hospitals.*

(9) *Alternatively, as cashless treatment is to be provided to the*

beneficiaries, Imprest Money, if required, would be provided, on the basis of specific requirement raised by the Department of Medical Health and Department of Medical Education.

(10) In such case, the details of beneficiaries treated and the expenditure against treatment of each would be mandatorily displayed in the Fund web portal, by the Referral Centre.

(11) Detailed procedures for payment would be drawn up by Department of Women's Welfare, in consultation with Department of Medical Health and Department of Medical Education.

(12) The responsibility of submitting the names of Authorised Medical Officers, for each identified Referral Medical Institution/Hospital/Medical College, as well as the District Government Hospitals and their contact details will lie with the Department of Medical Health and the Department of Medical Education. This information is essential to provide login and digital signatures for Authorised Medical Officers to enable their access to the Web Portal of the Fund.

c) Process for availing of educational facilities :

(1) In case the victims/minor children of victims require educational assistance, which is not available free under any Government programme, online application would be made to the District Steering Committee, which upon satisfaction of the genuineness of the case, will recommend the case to the FMU, in prescribed format, for payment of the required assistance. Accordingly, the demand will be generated through Web Portal by FMU and the fund will be transferred through PFMS System directly to the account of the Educational Institutions.

Clause 13 of these Rules reads as under :

Process flow with respect to cases defined in Annexure-2:

For funding related to Annexure 2, eligible persons under this category may avail of Medical/ Educational assistance from the Fund with ID proof, bearing photograph, of being a Social Pensioner/any other approved category:

(a) Process for availing of medical facilities the process :

To avail of the facilities, the beneficiary would first show the ID proof, bearing photograph, of being a social pensioner/any other approved category, at the time of registration in the Registration counter of the hospital. The rest of the process would be the same as in 12 b above.

(b) *Process for availing of educational facilities:*

Applications will be made online in prescribed format in instances where beneficiaries require educational assistance, which is not available free under any Government Programme. Process will be the same as in '12-c' above.

Thus we see that the 'Victim Compensation Scheme 2014' as well as 'Rani Laxmi Bai Mahila Samman Kosh Rules, 2015' are two systems where some monetary respite to the victim is available. We, however, feel that the question of Rehabilitation of the minor victim and her baby girl still remains to be answered satisfactorily. We will now consider the laws, guidelines and the process for adoption as a first measure.

In *Lakshmi Kant Pandey Vs. Union of India, 1994 (2) SCC 244* the Hon'ble Supreme Court held that every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course be that of the family of his biological parents. But if for any reason it is not possible for the biological parents or other near relative to look after the child or the child is abandoned and it is either not possible to trace the parents or the parents are not willing to take care of the child, the next best alternative would be to find adoptive parents for the child so that the child can grow up under the loving care and attention of the adoptive parents. The adoptive parents would be the next best substitute for the biological parents.

Before proceeding further, it is relevant to mention that the petitioner (a minor girl of 13 years) in the affidavits filed in the writ petition has stated that she is not mentally and physically capable to take the responsibility of the upcoming child and she has no objection if the child is given in adoption. In paragraphs 5, 7 and 8 it has been stated that the petitioner's father, due to financial constraints and social issues on account of the unfortunate incident which occurred to the petitioner, is also not ready to take the responsibility of the newly born child. It has also been stated that the child after birth, may be handed over to such person/NGO, social Institution, who are interested to adopt the child for her welfare. The same stand was taken by the petitioner and her parents when the Amicus Curie personally met the petitioner with her parents. The petitioner has given birth to the child on 26.10.2015. The stand of the petitioner and her parents is still the same as informed by the learned Counsel for the petitioner.

In view of the above it is relevant to refer to certain legal provisions and the Schemes relating to adoption.

The Hindu Adoption and Maintenance Act 1956:

Section 5 provides that the adoption shall be regulated by Chapter 2 of the Act. It provides that no adoption shall be made after the commencement of the Act by or to a Hindu except in accordance with the provisions contained in that chapter and any adoption made in contravention of such provisions shall be void.

Section 5 (2) provides that an adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

Section 6 provides for the requisites of a valid adoption. Those requisites are (1) the person adopted has the capacity and also the right, to take in adoption; (2) the person giving in adoption has the capacity to do so; (3) the person adopted is capable of being taken in adoption; and (4) the adoption is made in compliance with the other conditions mentioned in chapter II.

Section 9 provides about the persons capable of giving in adoption. Sub-Section (1) provides that *“No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption”*. Sub-Section (2) provides that *“subject to the provisions of sub-section (4) the father or the mother if alive shall have equal right to give a son or daughter in adoption, provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. Sub-Section (4) provides for the circumstances under which guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself. Those circumstances are where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known.*

Section 9 (5) Explanation (ia) defines ‘guardian’ to mean a person having the care of the person of a child or of both his person and property and includes (a) a guardian appointed by the Will of the child’s father or mother and (b) a guardian appointed or declared by a court.

Section 10 provides for the persons who may be adopted. It provides that “No person shall be capable of being taken in adoption unless the following conditions are fulfilled namely (i) he or she is a Hindu (ii) he or she has not already been adopted (iii) he or she has not been married, unless there is a custom or usage, applicable to the parties which permits persons who are married being taken in adoption; and (iv) he or she has not completed the age of 15 years unless there is a custom or usage applicable to the parties which permits persons who have completed the age of 15 years being taken in adoption.

Section 11 lays down certain conditions which must be complied with in every adoption for a valid adoption. Section 12 provides for the adoption and Section 15 provides that No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth. Section 16 (1) raises presumption as to registered document relating to adoption and it is relevant to mention that sub-section (2) inserted in the State of Uttar Pradesh provides that in case of an adoption made on or after 1.1.1977 no court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of child in adoption, except through a document recording an adoption made and signed by the person giving and the person taking the child in adoption and registered under any law for the time being in force.

Thus the child may be given in adoption by the father or the mother, with the consent of the other, where taking of such consent is possible. A guardian, having the care of the child, is also competent to give the child in adoption under the circumstances mentioned under section 9 (4), one of which is that the child has been abandoned by the father or/and mother.

A question that arises is as to whether a minor mother has the capacity to give her child in adoption. For this purpose it is relevant to refer to the provisions of **The Hindu Minority and Guardianship Act, 1956**

Section-4: Definitions:

In this Act,-

- (a) “minor” means a person who has not completed the age of eighteen years.
- (b) “guardian” means a person having the care of the person of a minor or of his property, or of both his person and property, and includes –
 - (i). a natural guardian,

- (ii). a guardian appointed by the will of the minor's father or mother,
- (iii) a guardian appointed or declared by a court, and
- (iv) a person empowered to act as such by or under any enactment relating to any court of wards;
- (c). "natural guardian" means any of the guardians mentioned in Section 6.

Section-6: Natural guardians of a Hindu minor:-

The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are –

- (a) in the case of a boy or an unmarried girl- the father, *and after him the mother*; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
- (b). in the case of an illegitimate boy or an illegitimate unmarried girl the mother, and after her, the father;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this Section-

- (a). if he has ceased to be a Hindu, or
- (b). if he has completely and finally renounced the world by becoming a hermit (vanaparastha) or ascetic (yati or sanyasi)

Explanation:- In this section, the expression "father" and "mother" do not include a step-father and a step-mother.

In view of the above provisions, it has been submitted by the *amicus curiae* that in the case of an illegitimate boy or an illegitimate unmarried girl the mother is the natural guardian. Expression 'Illegitimate' refers to a child born not out of a marriage wed-lock.

Thus, the petitioner is the natural guardian of her child under section 6 (ia). She may also be covered under clause (a) in view of the fact that it provides 'mother to be the natural guardian after father. The expression 'after' as interpreted in the case of ***Githa Hariharan Vs. Reserve Bank of India AIR, 1999 SC 1149*** means

‘in the absence of’ and the word ‘absence’ refers to father’s absence from the care of minor’s person or property for any reason whatsoever. Otherwise if ‘after’ is read to mean a disqualification of a mother to act as guardian during life time of the father the same would violate one of the basic principles of the our Constitution i.e. gender equality.

Section 21 of the Guardian and Wards Act also provides as under:-

Section-21 Capacity of minors to act as guardians:

“A minor is incompetent to act as guardian of any minor except his own wife or child or where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.”

Thus the minor mother is competent to act as guardian of her child. She has the capacity to give the child in adoption.

In the present case the petitioner by means of the affidavits expressed her willingness that the child may be given in adoption and neither she nor her parents are ready to take care of the child for the reasons disclosed in the affidavits.

The Juvenile Justice (Care and Protection of the Children) Act, 2000 has been enacted for Juveniles in conflict with law and children in need of care and protection.

Section 2 (aa) defines “adoption” to mean the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship;

Clause (j) defines “guardian in relation to a child” to mean his natural guardian or any other person having the actual charge or control over the child and recognized by the competent authority as a guardian in course of proceedings before that authority;

Chapter III deals with “child in need of care and protection”.

Section 2(d) defines “Child in need of care and protection.” Section 2(d) is quoted below:

Section-2(d) “child in need of care and protection” means a child, -

- (i) who is found without any home or settled place or abode and without any

ostensible means of subsistence,

- [(ia) who is found begging, or who is either a street child or a working child]
- (ii) who resides with a person (whether a guardian of the child or not) and such person –
 - (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
 - (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- (iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- (v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered] him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,
- (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- (viii) who is being or is likely to be abused for unconscionable gains,
- (ix) who is victim of any armed conflict, civil commotion or natural calamity;

The newly born child of the victim is clearly a child in need of care and protection as per Section 2(d) (iv) and Section 2(d) (v).

Section 29 provides for **Child Welfare Committee**, which reads as under:-

- (1) The State Government may, (within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette constitute for every district), one or more child Welfare Committees for exercising the powers and

discharge the duties conferred on such Committee in relation to child in need of care and protection under this Act.

(2). The Committee shall consist of a chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3). The qualifications of the chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4). The appointment of any member of the Committee may be terminated after holding inquiry, by the State Government, if-

(i). he has been found guilty of misuse of power vested under this Act;

(ii). he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii). he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three fourth of the sitting in a year.

(5) The Committee shall function as a bench of magistrates and shall have the powers conferred by the Code of Criminal procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a judicial Magistrate of the first class.

Chapter IV deals with rehabilitation and Social Reintegration

Section 40 provides for the Process of rehabilitation and social reintegration which reads as under:-

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization.

Section 41(2) provides that the adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.

Section 42 provides that foster care may be used for temporary placement of those

infants who are ultimately to be given for adoption.

The Central Government, Ministry of Child & Women Development, in pursuance of the powers conferred by Section 41 (3) of the Juvenile Justice (Care & Protection of Children) Act, 2000, has notified the “**Guidelines Governing Adoption of Children, 2015**”, to provide for the Regulation of adoption of orphan, abandoned or surrendered children.

The expressions orphan, abandoned and surrendered have been defined under the Guidelines 2015 which are as under:-

Para 2 (2) defines abandoned as under:-

“abandoned’ means an unaccompanied and deserted child as declared abandoned by the Child Welfare Committee after due inquiry;

Para 2 (23) defines of Orphan as under:

“Orphan” means a child (i) who is without parents or legal guardian; or (ii) whose parents or legal guardian is not willing to take, or capable of taking care of the child;

Para 2 (33) defines surrenders child as follows:-

“Surrendered child” means a child who in the opinion of the child welfare committee is relinquished on account of physical emotional and social factors beyond the control of the parent or legal guardian;

The newly born child is a ‘child in need of care and protection’ and falls within the expression ‘Surrendered or orphan child’. The necessary directions for her rehabilitation including adoption are thus required to be issued to the competent authority under the JJ Act read with the Guidelines 2015 in the welfare of the child.

It is relevant to note that after the judgment in the case of **Lakshmi Kant Pandey Vs. Union of India, 1994 (2) SCC 244** law relating to adoption has been remarkably developed which has been elaborately discussed in a latest pronouncement of the Hon’ble Supreme Court in **Shabnam Hashmi Vs. Union of India and others, 2014 (4) SCC 1**, which is quoted hereunder:

“4. The decision of this Court in Lakshmi Kant Pandey is a high watermark in the development of the law relating to adoption. Dealing with inter country adoptions, elaborate guidelines had been laid down by this Court to protect and further the interest of the child. A regulatory body i.e. Central Adoption Resource Agency (For short “CARA”) was

recommended for creation and accordingly set up by the Government of India in the year 1989. Since then, the said body has been playing a pivotal role, laying down norms both substantive and procedural, in the matter of inter as well as intra country adoptions. The said norms have received statutory recognition on being notified by the Central Government under Rule 33 (2) of the Juvenile Justice (Care and protection of Children) Rules, 2007 and are today in force throughout the country, having also been adopted and notified by several States under the Rules framed by the States in exercise of the rule making power under Section 68 of the JJ Act, 2000.

5. *A brief outline of the statutory developments in the sphere concerned may now be sketched. In stark contrast to the provisions of the JJ Act, 2000 in force as on date, the Juvenile Justice Act, 1986 (hereinafter for short the JJ Act, 1986) deal with only neglected and delinquent juveniles while the provision of the 1986 Act dealing with delinquent juveniles are relevant for the present, all that was contemplated for a “neglected juvenile” is custody in a Javenile Home or an order placing such a juvenile under the care of a parent guardian or other person who was willing to ensure his good board . The JJ Act, 20000 introduced a separate chapter i.e. Chapter IV under the head “Rehabilitation and Social reintegration”: for a child in need of care and protection. Such rehabilitation and social reintegration was to be carried out alternatively by adoption or foster care or sponsorship or by sending the child to an after care organization Section 41 contemplates adoption through it makes it clear that the primary responsibility for providing care and JJ Act, 2000, deals with alternative methods of rehabilitation, namely, foster care sponsorship and being looked after by an after care organization.*

6. *The JJ Act, 2000, however, did not define “adoption” and it is only by the Amendment of 2006 that the meaning thereof came to be expressed in the following terms:*

“2, (aa) “adoption” means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.”

7. *In fact Section 41 of the JJ Act 2000 was substantially amended in*

2006 and for the first time the responsibility of giving in adoption was cast upon the court which was defined by the JJ Rules, 2007 to mean a civil court having jurisdiction in matters of adoption and guardianship including the Court of the District Judge, Family Courts and the City Civil Court (Rule 33(5)). Substantial changes were made in the other sub sections of Section 41 of the JJ Act, 200. CARA as an institution received statutory recognition and so did the guidelines framed by it and notified by the Central Government (Section 41(3)).

8. In exercise of the rule-making power vested by Section 68 of the JJ Act, 2000, The JJ Rules 2007 have been enacted. Chapter V of the said Rules deals with rehabilitation and social reintegration. Under Rule 33(2) guidelines issued by CARA, as notified by the Central Government under Section 41 (3) of the JJ Act, 2000 were made applicable to all matters relating to adoption. It appears that pursuant to the JJ Rules 2007 and in exercise of the rule making power vested by the JJ Act, 2000 most of the State have followed suit and adopted the guidelines issued by CARA making the same applicable in the matter of adoption within the territorial boundaries of the State concerned.

9. Rule 33(3) and 33(4) of the JJ Rules contain elaborate provisions regulating pre-adoption procedure i.e. for declaring a child legally free for adoption the Rules also provide for foster care (including pre-adoption foster care) of such children who cannot be placed in adoption and lays down criteria for selection of families for foster care, for sponsorship and for being looked after by an after care organization. Whatever the Rules do not provide for, are supplemented by the CARA Guidelines of 2011 which additionally provide measures for post-adoption follow up and maintenance of date of adoptions.”

It will be useful to quote Article 19, 20, 21(a) and 39 of the Convention on the Rights of the Child, 1989 adopted by Resolution 44/25 of the General Assembly of the United Nations on 20th November, 1989:-.

“Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;....

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

With this discussion the Court is satisfied that a valid legal system is available to allow the girl child to be given in adoption and we propose to direct accordingly.

One of the questions which this Court was also proposing to consider

is the question relating to rights of inheritance of the newly born child in the property of her father. It may be noted here that no meaningful argument was put forward in this regard. Reference was however made to the definition clause of Hindu Succession Act, 1956, but that is not enough to deal with the subject.

We may observe here that in the matter relating to inheritance, the manner of birth of a person is irrelevant; the rights of inheritance of a person are governed by the Personal law to which the person is subject irrespective of the manner of birth of the person. It is irrelevant as to whether the newly born child of a rape victim is born out of consensual sex or otherwise. It is thus noted that the rights of inheritance of the newly born child would be governed by her Personal Law and for that purpose she would be treated as an illegitimate child of her biological father.

Notwithstanding the aforesaid observations, it is relevant to note that firstly this question does not really need a judicial pronouncement in the present case for the reason that if the newly born child is given in adoption, she will not have any rights of inheritance in the property of her biological father. Secondly, even if the child is not taken in adoption by any one, no directions of the Court would be required and she would inherit the property of her biological father by operation of the personal law by which she is governed. Thirdly, any direction to inherit property of her father would be fraught with grave consequences in the event the father starts claiming some special reproach privileges over the minor like rights of visitation or custody. In the present circumstances, we feel that this is not desirable. Further, since the criminal trial is yet to commence against the alleged biological father, there is a possibility that a direction relating to inheritance in his property may be used by the accused in some form as his defence or even otherwise during his trial.

There is yet another aspect of this matter. The rights of inheritance in the property of a biological parent is a complex Personal Law right which is guided by either legislation or custom. It may not be possible to judicially lay down any norm or principle for inheritance by a minor who is born as a result of rape. Such attempt by the Court would amount to legislation by judicial pronouncement and would operate as precedent in times to come. It

would not therefore be desirable to venture into this field and accordingly we leave it open for the appropriate legislature to deal with this complex social issue.

This view is supported by the observations of the Hon'ble Supreme Court in the matter of ***Shabnam Hashmi v. Union of India and others.***

“16..... While it is correct that the dimensions and perspectives of the meaning and content of the fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a fundamental, in our considered view, will have to await a dissipation of the conflicting thought processes in this of practices and belief prevailing in the country. The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view.....We hardly need to reiterate the well settled principles of judicial restraint, the fundamental of which requires the Court not to deal with issues of Constitutional interpretation unless such an exercise is but unavoidable.”

Amicus curiae Sri Jaideep Narain Mathur has also informed that a number of N.G.Os, which are dealing with welfare of women and children in general, have approached him to offer help and assistance in this matter. Though they have not been able to move formal impleadment applications in the petition but they have assured all assistance of counselling to the victim from time to time, taking her to their organization for a change of scene from the home, making friendly gestures towards the girl to help her, overcome the shock and the rejection of the society in general. They have also offered that they will help in adoption process wherever the need be. They have submitted that they are the organizations which have done a lot of work for the benefit of women who have been rendered homeless by their in-laws or husbands, the women who have suffered domestic violence along with their children. They have also worked in riot affected areas and have sufficient experience in understanding the psyche of such victims. If the Court permits they are willing to lend their help to the best of their ability. The Court

welcomes the offer of such organizations.

We will request the *amicus curiae* Sri Jaideep Narain Mathur to remain in touch with the family of the victim and in case of need, be their friend, philosopher and guide. He may also guide these N.G.Os in helping the victim and the family in a manner which is suitable, appropriate and permissible in the interest of the mother and the child. He will ensure that the N.G.Os will not use the victim or the child for publicity purpose. The *amicus curiae* is not only a designated Senior Advocate, a former Additional Advocate General of this Court and respected member of the Bar but also a 3rd generation lawyer and a prominent citizen of this city. We can trust his wisdom and intention to ensure the welfare of the child and mother.

In the peculiar circumstances of this case, Sri Mathur may move appropriate application for any direction if he so feels. We permit him in the interest of justice, to ensure that commitment of Article 21 of the Constitution towards these two helpless and hapless citizen of this country, is fulfilled. We thus allow that an application will be permissible in this case despite the fact that this matter is being finally decided by this judgment. In routine matters decision of Sri Mathur will be final. He will act as an officer of the Court even after judgment is pronounced.

It will not be out of place to ponder why, despite innumerable pronouncements of the Indian judiciary regarding rape, as well as scheme for compensation, do we find that upto mark legislation has not come forward **on the question of rehabilitation**. One reason for this lack of legislation is perhaps the fact that no study has ever been undertaken by any study group or research centre. Cases of rape and sexual violence against women and children are increasing throughout India inspite of post 'Nirbhaya' amendments in criminal law in 2013 and enactments of other legal statutes, we feel that law fixing only an amount of compensation is not enough. Perhaps, whole picture has never been comprehended by the legislative machineries. There is no data bank on various aspects of rape, rape victims, behaviors of children born out of rape, choice of victim to live with the child or to abandon it, the number of abandoned children and so on and so forth. It would help the legislature in bringing up proper legislation for rehabilitation of children born out of rape as well as the rape victims. We find that in developed countries, studies are and have been made on the basis

of data collected throughout the length and breadth of their countries. These things have become fairly simple with the advent of computers and electronic instruments. This data can also bring a complete and a clearer picture before the society. **The society may then rise to the need for proper legislation for rehabilitation.**

One, Shauna R. Prewitt in her Article 'Giving Birth to a "Rapist's Child" : A Discussion and Analysis of the Limited Legal Protections Afforded to Women Who Become Mothers Through Rape' published in Georgetown Law Journal 'Vol.98:827, has made the following observations which we find very relevant in the present context and we quote :

“Pregnancy from rape occurs with “significant frequency”. Of the estimated 12% of adult women in the United States that have experienced at least one rape in their lifetime, 4.7% of these rapes result in pregnancy. Therefore, based on a 1990 study estimating that 683,000 women over the age of eighteen were raped in that year, conceivably 32,000 rape-related pregnancies occur annually. A separate study conducted in 2000 estimated that, given the decline in the incidence of rape, 25,000 pregnancies following the rape of adult women occur annually.

It is difficult to determine with certainty the outcome of the approximately 25,000 to 32,000 rape-related pregnancies that occur in the United States each year. One study found that 50% placed their infants for adoptions, and 32.3% of raped women kept their infants. Another study, conducted in a separate year, found markedly different results, concluding that 26% of women pregnant through rape underwent abortions. Of the 73% of women who carried their pregnancies to term, 36% placed their infants for adoption, and 64% of women raised the children they conceived through rape.”

We do not claim that Indian society can be compared to any other society in the world. The reactions of rape victims, children born out of rape and the society in general is definitely going to be different from one country to another because of its cultural, educational, economic and other factors. At the same time, data can help in making the picture clearer to the

citizens of the country like India.

Awareness about such social evils is also right of the people of India.

We, therefore, put on record our anxiety and request that the government may conduct or cause to be conducted a socio-psychological study based on appropriate survey on the number of rapes, number of children born out of rape, number of abandoned children, reactions of the victims, ways and means to counter the trauma of rape and the choice of the rape victims as to what are their expectations for rehabilitation and other related and ancillary issues.

In view of the discussions made above, the scheme of compensation and various provisions available in different Statutes for adoption and the arguments of *amicus curiae* along with a number of other public spirited lawyers, we feel that the ends of justice will be met by issuing following directions to the opposite parties:-

(1) We direct and allow the Child Welfare Committee of District Lucknow to take over the cause of adoption of the child born to “A” on 26th October, 2015, who is presently in the care of Paediatrics Department of King George's Medical University, Lucknow. The Department shall handover the child as and when the doctors find that the child is medically fit to be handed over to the committee. The committee shall, thereafter, act in the manner provided in the judgment. The Member Secretary of the State Legal Services Authority in consultation with the *amicus curiae* shall supervise the process of adoption.

(2) As soon as “A” regains her mental balance and equilibrium, she will be allowed admission in a proper class in an appropriate school. The first and foremost preference should be given to any Kasturba Gandhi Girls' School. These are residential schools in which girls are allowed to stay and taken care of completely. They are given food, shelter, books, uniforms and material for recreation also. If “A” or her parents approach the authorities of Kasturba Gandhi Residential School of her choice, admission should be allowed to her. If an application is made to the Basic Shiksha Adhikari of the District it shall be his duty to ensure admission of “A” in one of the best run schools of Kasturba Gandhi Residential

Schools of the District.

- (3) If “A” chooses not to go to residential school then a Government Girls' Inter College of her choice will allow her admission without insisting on any entrance examination or the criteria of selection on merit basis. The State Government should ensure that education is provided free of costs to “A”. She will be allowed full freeship of fees and other charges whatsoever.
- (4) It shall be the duty of the Principal of the college concerned to ensure that the teachers of the college, staff and the students do not discriminate her in any manner. All possible mental, moral and psychological help should be given by the teachers to help her gain strength to face the challenges of life. The principal should also ensure that the past life of “A” is not propagated and she is treated as another normal student of the school.
- (5) If “A” wants to continue her studies after 10+2 Standard (Intermediate), admission should be given to her in any government degree college with full free ship of fee. This will continue till graduation.
- (6) In addition to payment of Rs.3,00,000/- as compensation under Rani Lakshmi Bai Mahila Samman Kosh Rules, 2015, the State Government shall make a fixed deposit of a sum of Rs.10,00,000/- (Rupees Ten lacs) in favour of “A” in any nationalized bank which will be given to her only when she reaches the age of 21 years. The District Magistrate of the District where the family of “A” chooses to live henceforth will ensure that bank account is opened in the name of “A” in any nationalized bank, chosen by her father. It is made clear that at the maturity of the aforesaid fixed deposit, only “A” will be entitled to get the money.
- (7) Superintendent of Police of the District where “A” and her family choose to reside will ensure the safety, security and dignity of the family. No one from the society should be allowed to degrade, discriminate or excommunicate the victim or her family on the ground of unfortunate

incident of rape.

(8) If “A” applies for any apprenticeship in any available scheme or in any vocational course of any Government department or any other instrumentality of the State, preference should be given to her in such matters.

(9) After attaining the age of majority, some suitable job be also provided to her according to her ability / qualifications. Such security of job is the surest way of bringing her up in the main stream once again. When occasion arises the petitioner shall have the liberty of moving an application to the Chief Secretary of the State to ensure that a suitable job is provided to her.

(10) The N.G.O.s or any other agency which wants to help the victim and her family in any manner, will be welcome to do so and earn the appreciation of this Court as well as of the society in general.

Before parting we would like to observe that there are questions and solutions which are not in the realm of the Courts. The Courts have their own limitations. All solutions and answers cannot be given by the courts. There are certain social problems and issues which have to be answered by the society itself. It is for the society to decide as to how it wants to treat a rape victim. We should remember that rape is a crime beyond the control of a victim. This tragedy can strike any family. It is not something for which the victim has to be blamed. The whole society should come forward in defence and help of the poor traumatized victim of rape. The society will have to learn to manage their response towards a victim without forgetting that tragedy can befall on one's own head. When women are respected and promoted by the society as a whole only then a society can be called truly free and liberated. The question of rehabilitation of a rape victim can best be answered by the people and the masses and not by the courts alone. We, therefore, leave this question of rehabilitation of “A” open to the masses whose love and affection can save two normal lives from becoming two negative characters of the

society in future. They should be accepted; not haunted by the society. The Court has played its role within the parameters of law. Now it is the turn of the seekers of justice from the courts i.e. people of India to see and show their response to the victims of their society.

Lastly, we record our deep appreciation for the assistance provided by *amicus curiae* Sri Jaideep Narain Mathur, Senior Advocate and Sri Ravi Nath Tilhari, who have put in a lot of work in this regard. We also record our appreciation to his other colleague Sri Madhav Chaturvedi. President of the Oudh Bar Association Sri H.G.S.Parihar, Senior Advocate and Sri Gaurav Mehrotra, have also addressed the Court and placed number of judgments before it. None of these counsel have accepted any remuneration for this work. The Court is pleased to note that *at least* this section of the society has started feeling its responsibility towards good cause of helping people in need. Sri Mohsin Iqbal, counsel for petitioner and Mrs. Bulbul Godiyal, Additional Advocate General have also worked very hard and deserve appreciation from the Court, which we hereby accord.

Let a copy of this judgment and order be placed before the Chief Secretary, State of U.P. for necessary action.

Order Date: 03.11.2015.
Irfan/RKM.