

Is Rape a Long-Life Trial?

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ABSTRACT

Rape which is the ultimate violation of self is believed to be the beginning of a nightmare for the victim. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. ¹Justice Krishna Iyer has observed in the case of *Rafiq v. State* ²:” A murderer kills the body but a rapist kills the soul.” Victim of rape, by reporting the crime sets criminal law into motion but then goes into oblivion. This article intends to act as voice of victims of crime who are given insufficient justice by the court, rejected and abandoned by the society as it is against its pride and honour thereby making victims question their very existence. It has been observed herein that the Indian criminal justice system has always been accused oriented and not given victims the due importance they deserve. The actual victim is reduced to mere status of secondary victim and the society takes centre stage as primary victim. Rape has been defined under section 375 of Indian Penal Code, 1860. Section 376 of Indian Penal Code, 1860 gives punishment for the rape by imposing imprisonment and fine on the accused however, fails to mention the amount that should be just and reasonable for meeting medical expenses and rehabilitation of victim. This is in contrast to section 376D of Indian Penal Code, 1860 which deals with gang rape that provides for the just and reasonable fine as mentioned above. Section 357 of Code of Criminal Procedure Act, 1973 provides for orders to pay compensation. However, this section is so inadequate that it can't be applied to rape cases. Section 357 A of Code of Criminal Procedure Act, 1973 talks about Victim Compensation Scheme, but there is no uniformity in the compensation provided for rape cases. Finally, it is observed that our legal system and society has failed to aid victims in need. The ignominy attached to rape results in

¹Dinesh @ Buddha vs State of Rajasthan, AIR 2006

²1980 Cr.. L.J. 1344 SC

mental trauma, social condemnation and isolation even at times driving the victims to suicide. It is high time we realise the existence of dearth of rights of rape victims. Instead of discarding them, the society should provide a psychological heal and succour.

KEY WORDS: Rape, victim, injustice, compensation, rehabilitation

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INTRODUCTION

The term rape originates in the Latin *rapere* (supine stem *raptum*), "to snatch, to grab, to carry off".³This dehumanising act has been in existence as a blow to the supreme honor of women since time immemorial.

Rape is widely accepted as a ‘burning problem’. The Supreme Court of India has aptly described it as ‘deathless shame and the gravest crime against human dignity.’⁴

Aims & Objectives of study

The aim was to throw light on the issue of victimisation of rape victims in trials. Also to highlight the poor restoration, support systems for sufferers of this heinous crime. The objective was to critically analyse the current situation of rape victims and finally draw out suggestions to improve their conditions.

Historical Background of Victimology in reference to Rape

In the olden days, the Babylonian and Mosaic laws bore testimony to the historical concept of Rape that originated to protect the male interests in women akin to property rights, instead of safeguarding autonomy of women.

In India, during pre-Vedic and early Vedic age, men and women were treated substantially equal. The birth of a daughter was significantly welcomed in the family as an early thinker mentioned that ‘a talented and well behaved daughter may be better than a son.’⁵ Thus, this

³Keith Burgess-Jackson, *A Most Detestable Crime: New Philosophical Essays on Rape*, Oxford University Press, New York, 1999, p.16.

⁴ *Bodhisattwa Gautam v. Subhadra Chakraborty*, AIR 1996 SC 922

⁵Altekar AS, *The Position of Women in Hindu Civilization*, edn second, 1959, p.4.

concept of Rape was characterised from women's perception regarding it as the unlawful intrusion of sanctity of a female. Further, the victims were treated with kindness and accepted back by families after completion of certain purification rituals. The Matsyapurana⁶opined : 'It would be absurd to condemn a woman because she is overpowered and ravished; in such a case the assaulter alone is guilty and ought to be punished'. Thus it can be established that, despite chastity of woman being considered the most cherished possession, it didn't negate the significance of woman as a whole. Also, it was her choice, freedom and self that was being violated and consequently of the society. And those, who departed from the standard norm of protection of women faced hatred and severe punishment. This idea showed the hidden attitude of lawmakers towards this monstrous act. The society provided protection to women, not because she was weak and vulnerable but because she was an integral part of it. The criminal justice system during this period had the twin objective of imposing punishments on criminals and compensating victims as a measure of restorative justice.

Gradual decline in women's status was a consequence of foreign invasions of Indian soil. The later Vedic Period adopted ideologies similar to that of the Western World where women were nothing more than a commodity under complete control of their male relatives and incursion of her body or soul was regarded as an improper breach of the owner's property rights. Where such philosophy was practiced, rape was no more considered a heinous crime but was a mere wrong done to a man and not against the woman. Once their chastity was lost, they were no longer pure and lost their worth in the eyes of the society. Sometimes the woman was blamed for the unfortunate occurrence, while at other times her character was looked upon with suspicion. But in every case, she was left alone to deal with her sorrows and pain as she was discarded by the society. The society closed its door forever to women who had been victims to this offence, they no more held honourable position in their families and society. Men of the society passed judgements about the aftermath of this act not for her welfare but so that the rest of the society doesn't become unchaste and impure. During this period, more importance was placed on punishment and no focus was given to the victims of offences.

Concept of Victimisation & Contemporary Jurisprudence

Victimology also known as Restorative Justice is a study of societal reactions to law breaking. For too long, the Indian criminal justice system has been Accused oriented instead of being Victim oriented. There are at least two victims for every crime committed: society, which

⁶Altekar AS, *The Position of Woman in Hindu Civilization*, edn second, 1959, p.308.

suffers violation of its laws, and the actual victim who suffers an injury to body or property. Society bearing the responsibility of restoring peace and maintaining the faith of people in its capacity to provide justice becomes the primary victim by occupying the centre stage. While, the 'principal affected' victim i.e. the second victim is reduced to a secondary status of a witness. Victim is the forgotten party in the Criminal justice system. While the entire focus is on the offender to protect his rights, punish him and bring his reformation, rehabilitation, the Victim is left to fend for herself. Justice fails to redress the wrong perpetrated by the offender on the victim and on the contrary aggravates injustice by focusing solely on the offender, sidelining the victim's needs and requirements. Thus victims have become increasingly dissatisfied with the criminal justice system which fails to provide them justice. To show their dissatisfaction they don't report crimes, fail to appear in court. This creates an impression in minds of public that judiciary is inefficient and unresponsive.

However, the nineties observed a new awakening wherein the judiciary realised that victim is an integral part of the criminal justice system and her cry for just must be adequately met, not just by punishing the accused but by compensating her and enabling her to start her life afresh.

In 1995⁷, a public interest litigation was filed to espouse the pathetic plight of four domestic servants who were raped in a moving train by some military personnel. The apex court highlighted the ordeals of the rape victims and the defects in criminal law system in vogue.

Legal Provisions in India with regard to this context

Section 375 of Indian Penal Code,1860 defines '**Rape**' as follows -

A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: -

First. -Against her will.

Secondly. -Without her consent.

Thirdly. -With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

⁷Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14

Fourthly. -With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. -With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. -With or without her consent, when she is under sixteen years of age.

Explanation. -Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. -Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.⁸

Section 376 of The Indian Penal Code,1860 provides for the **'Punishment for rape'**

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever-

(a) being a police officer commits rape-

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

⁸Pg. 147, The Indian Penal Code, 1860, Universal's Publication

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.-Where a women's is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2.-"women's or children's institution" means an institution, whether called and orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3.-"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.⁹

Section 357 of the Code of Criminal Procedure,1973 gives 'Order to pay compensation'

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons

⁹ Pg. 148, The Indian Code,1860, Universal's Publication

who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing 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.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.¹⁰

This section of code of criminal procedure 1973 is not adequate to be applied in rape cases. The trauma and physical conditions are worse than any sort of grievous injuries. There should be insertion of a specific section that provides compensation to rape victims and the amount should be adequate and just to help and recovery and rehabilitation of victim.

Section 357A of The Code of Criminal Procedure,1973 deals with **Victim Compensation Scheme** –

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

¹⁰Pg. 196, The Code of Criminal Procedure,1973, Universal's Publication

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

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

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

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

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."]¹¹

Nonetheless, no uniform victim compensation scheme has been brought in support of Rape victims.

Grievances of victims

Punishment sentence ranges from one to ten years. On an average most convicts escape with three to four years of rigorous imprisonment and a very small fine. Influential accused may even expiate by paying huge amounts of money. Complaints are handled roughly and not given due attention as needed. Victims are often humiliated by the police during investigation. Rape trials are observed as a traumatic experience that are negative and destructive. The victims often state that they consider the ordeal to be even worse than rape itself. There exists: Lack of prompt medical assistance, legal assistance and protection when there is a threat of revictimisation. Many a times, court fails to keep victim informed about the case. The law is

¹¹ Pg. 200, The Code of Criminal Procedure, 1973, Universal's Publication

also inadequate as it doesn't allow victims to participate in prosecution in a criminal case constituted on police report. Justice is not provided efficiently by proving the point of 'justice delayed is justice denied.'

Judicial Approach towards the issue

Over a period of time there has been significant change in judicial approach towards rape victims. Judiciary has definitely played its part not just by a general shift in attitude but by actually laying down guidelines in several cases. In earlier times there have been cases which have shown blatant insensitivity of judges towards victims but now judiciary's attitude has improved and they are now more sympathetic to victim and sensitive to trauma that victim is going through.

In the case *Tukaram v. State of Maharashtra*¹², also known as Mathura case in which two police constables were accused of raping a girl. She alleged that the constables when she was in police station and then forced her to have sexual intercourse with them one by one in a part of the police station itself. Supreme Court's decision which acquitted both the accused, going along with the finding of the trial court judge that Mathura had consented to the sexual intercourse with the two accused and hence she was a willing party and there was no rape was criticised by many. The court rejected such potent contentions as that the fact that Mathura did not know any of the constables from before was sufficient proof that she was not a willing party to sexual intercourse. The decision is full of preposterous holdings.

In the case *Phul Singh v. State of Haryana*¹³, the court reduced the sentence for a person convicted for the rape of a cousin's wife from 4 years rigorous imprisonment to 2 years. Krishna Iyer, J., while opining that "ordinarily rape is a violation with violence of the private person of a woman – an outrage of all canons", seems somehow to think that it becomes a little less of an outrage when committed by a 22-year-old man with a wife and kids. Reasoning given for shortening the sentence was that the man was very young and had a whole life ahead of him, and so it would be unfair to impose a sentence of 4 years on him.

In the *Madhukar* case¹⁴, a police constable was alleged to have committed an attempt to rape a woman named Banubi. It was contended by the defence that the woman Banubi was a woman of *easy virtue*, and therefore her testimony cannot be relied on. And that in any case it would be a fatal mistake to jeopardize the service and the future of a government employee based on

¹² AIR 1957 SC 185

¹³ AIR 1980 SC 249

¹⁴ *State of Maharashtra v. MadhukarMardikar*, AIR 1991 SC 207

the word of an unchaste woman. The Supreme Court brushed aside these conditions while holding that, “Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her person as and when he wishes.”

In *Madan Gopal* case¹⁵, the case is about a medical practitioner habitually raping small girls aged in their very early teens or before that after inviting them to his house to play with his niece who was of the same age group. The Supreme Court held that it was not necessary to look for extraordinary corroboration for the story of the victim, and that unless and until such story was rendered unbelievable or improbable due to the existence of certain factors, there could be a conviction based on the same. The judges did not let a shaky medical opinion deter them from delivering justice. Hence this case did not turn out to be one where the accused gets off at some technicality. The court held that the opinion of the medical expert was merely advisory in nature, and that rape being a legal and not a medical condition, such opinion could in no case be binding on the court. The court went on to set aside the order of the high court and gave rigorous punishment of 7 years to the accused along with imposing a fine of Rs. 25000.

From the above cases we can conclude that the sensitivity of judiciary has increased and they are giving more importance to the women’s dignity and endeavour to punish those who do anything which is against women’s dignity.

Judiciary has a very vital role to play in such cases because judiciary is responsible for providing justice to all in society. Hence, such cases related to women require a lot of sensitivity in judicial system.

Previously women were questioned and judges never objected such questions which questioned her character but now the scenario has changed and judges do object such questions which question character on a victim and such questions are condemned in courts now.

Conclusion

The rape victims continue to be a discarded section of the society in India, not receiving an iota of compassion and sympathy. All this while they have been subjected to the all-pervasive evils of humankind. The state and its machinery has also failed miserably in providing justice, care

¹⁵*Madan Gopal Kakkar v. Naval Dubey*, JT 1992 (3) SC 270

and protection to the victims of such brutality. The legislation in its current form has proved to be ineffective and inefficient in being the saviour.

Some of the pointers to act upon could be: A list of basic facilities to be provided for guaranteeing minimum care and protection should be formulated. Criminal Injuries Compensation Board should be established as suggested by Supreme Court under Article 38(1) of the Constitution.¹⁶ ; Rape results in infliction of wounds on body and soul. It is a traumatic experience which requires years to recover psychologically. Recovery from such deep-seated mental and physical problems involve huge monetary costs. The state must grant adequate compensation to the victims. The Victim Compensation Scheme stated under Section 357A of Code of Criminal Procedure should provide for payment of Compensation uniformly and transparently. Immediacy in payment of compensation is a must by the concerned authorities once established through medical reports and/or otherwise that such alleged crime has been committed. In *Bodhisattwa Gautam v. Subhra Chakraborty*¹⁷, it was observed that Right of rape victim to receive compensation flows from Article 21 of the Constitution. Every court has jurisdiction to grant compensation not only on the final stage of trial but also to award interim compensation at any interlocutory stage of trial; Provision and reduction of different punishments depending on differences under law and facts of case makes it discriminatory and cumbersome. The proviso to Section 376, Indian Penal Code has given discretion to the courts to award lesser sentence than minimum prescribed for rape when there exists 'special and adequate reasons' so that injustice might not be done to an accused in a particular case.¹⁸ Death penalty can be provided only in the rarest of the rare cases, thus these conscienceless criminals should be sentenced to life imprisonment so as to provide a strict deterrent ; Crisis interventions, Counselling programs, Rehabilitation from the beginning i.e. just after commission of the heinous crime and not after trial ; a community of all those rape victims who feel they have been discarded by society and need support, sense of belongingness can come together to help each other during this phase; allow participation of victim in a criminal case, fix time duration to provide justice and such cases should be dealt in fast track courts so as to deliver quicker justice thereby promoting reporting of crimes ; Government for the purpose of rehabilitation should provide for quotas and reservations for rape victims.

¹⁶Delhi Domestic Working Women's Forum v. Union of India, (1995) 1 SCC 14

¹⁷ AIR 1996 SC 922

¹⁸ State of Madhya Pradesh v. Balu, (2005) 1 SCC 108

Rape shatters the entire social fabric, destroys the poise of milieu and ruins the harmony of the atmosphere. ¹⁹Rape destroys the foundation of lives of the victims. It overshadows the happiness of entire life. To maintain respect for law and belief in justice in eyes of public, laws of rape demand amendments as reputation once tarnished can't be compensated in any form. Therefore, it needs a strict deterrent than compensation. The justice system needs to be more sensitive towards the apathy of the rape victims. It's time that all the instrumentalities collectively rise to create a watershed and restore the social equilibrium.

¹⁹Dr DubeDipa , Lexis Nexis Butterworths,(A Division of Reed Elsevier India Pvt Ltd), Rape Laws in India, New Delhi, India 2008, p.1.