

ABUSE FACED BY THE RAPE VICTIMS DURING TRIAL – DOES IT AMOUNTS TO PROTECTION

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Abstract

In most legal systems victims are considered as a mere complainant who initiates proceedings on criminal justice system to the injury suffered by them. In recent times India has seen several rape cases and in the most of the cases than the scars of crime, treatment of victims by police, society remains more dreadful than the crime . Human rights violation faced by rape victims starts right from investigation proceedings to post trial. Most of the victims investigations involves humiliations ,abuse and violation of their basic human rights. The rights that the victims deserve within criminal justice process is not given and not even considered at all. This led to arise of victimology which deals about understanding of victims and impact of crime and the magnitude of pain suffered by the victim. According to Art 21 every person has fundamental right to be treated with dignity and as per UN Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power says that victims should be treated with compassion and respect for their dignity must be protected.

In this paper I will deal with treatment given to rape victims and the problems faced by them and lack of awareness of the rights of victims and role of judicial process in protection and redress for victims of crime and to prevent human right violations faced by them by recommending measures which Government needs to provide victims with adequate help and support .

Key words: rape victim, humiliation , Abuses , victimology, UN Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power convention, Article 21, redressal of victims

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INTRODUCTION

Every Individual deserves to be treated with dignity, In a country like India where protection of women from heinous crime has been an emerging issue. Though there are several statutes enacted to protect women still rape crimes against women has not been decreased, After Nirbhaya case shook the whole world, several amendments and punishment has been introduced and enhanced . Human rights violation faced by rape victims starts right from investigation proceedings to post trial. Most of the victims investigations involves humiliations ,abuse and violation of their basic human rights. The rights that the victims deserve within criminal justice process is not given and not even considered at all. Victimology studies about Human rights violation faced by victim, the nature of investigations and treatment during prosecution of rape and sexual offence victims and aims to give utmost attention which must be given to ensure that victims dignity is protected without undermining women's equality before the law. This paper identifies the abuse and human rights violations faced by victims and makes detailed analysis on incorporation of human rights in protecting victims during and post trial.

RAPE

Rape is considered as one of the gruesome crime done against woman which involves brutal physical and mental injury thereby violating the honour of the woman and leaves a deep scar on woman. This act at times result in fatal conditions to victims and even the surviving victims face depression, emotional crisis and feels like corpse while she is alive. This is considered as serious crime against Right to live a dignified life enshrined to every individual under Article 21 of Constitution.

Generally the term 'Rape' is defined as unlawful sexual intercourse with women without her consent. Section 375 of IPC defines Rape as crime done against women in the absence of consent. In past few years India has recorded rape as one othe most occurred crims and it has now arisen as serious issue in India. As per statistics a new rape case is recorded for every 10 minutes, and the National Crime Records Bureau has showed that around 24,206 cases are registered in India in 2011 and in most of the cases children are mostly raped or abused either by their family

members or strangers , this disturbing issue which children face is often neglected by their family members due to society pressure.

RESEARCH PROBLEM

The problem with dealing the victims of rape crimes cannot be compressed into one section by merely punishing offender alone , victims are subjected to physical and mental agony during the proceedings , moreover the Indian Penal code has been amended several types to provide stringent punishments to offenders of rape . However, treatment given to victims and protection of victims post trial is not considered and its application of the existing laws for protecting the basic human rights of victims is not efficiently implemented. Protection of basic human rights of victims of all the crimes harmoniously poses several challenges as there are conflicting provision which do not deal exactly with protection of victims post trial. Further, in order to combat the upsurge these human rights violations faced by victims done Indian Penal Code 1860 and UN Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power says that victims should be treated with compassion and respect for their dignity must be protected.

This paper deals about the treatment given to victims at various stages of cases and the human rights violations faced by them during this proceedings . This study is undertaken in order to address and clarify the abovementioned concerns.

EXISTING LEGAL STATUTES

- Indian Penal Code, 1860(s.375,376)
- Constitution of India
- Indian Evidence Act,1872
- Protection of Children from Sexual offences 2012
- United Nations Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power

EXISTING LEGAL SITUATION

According to s.376 punishment for rape may extend upto 10 years after Nirbhayya case it has been enhanced to 20 yrs of imprisonment along with fine and over the time several amendments has

been made in dealing with these crimes , one such is in 1983 Amendment S.376(2) custodial rape, 376(A) marital rape were added . According to Criminal Law Amendment 1983 revealing the identity of a rape victim is considered as offence . After Nirbhaya case verdict , Supreme court directed that rape trials must end within 2 months as stipulated under law and also directed that the ictim of rape suffers from mental and pyschological trauma must be addreses and its the duty of state to protect and help them to move out of trauma in order to make them lead a dignified life.

LAW COMMISSION REPORTS

Some of the law commission reports which deals with rape are

42nd Law Commission Report

84TH Law Commission Report

154TH Law Commission Report recommended a shift in India's criminal justice system towards a victim-centric notion of justice.

172nd Law Commission Report made some recommendations regarding rape

1. Rape should be replaced with term sexual assault
2. Sexual assault on any part of body should be construed as rape
3. Rape should be gender neutral

RECOMMENDATIONS OF VERMA COMMITTEE (2013)

- Rape – to enhance punishment from 10yrs to Life Imprisonment
- Punishment for Gang Rape – to enhance punishment from 20 yrs to Life Imprisonment
- Rape and Murder - to enhance punishment from 20 yrs to Life Imprisonment
- Rape of Minor - to enhance punishment from Minimum 10 yrs to Life Imprisonment

SCOPE AND OBJECTIVE:

Scope:

The paper focuses on the human rights violations faced by rape victims and their family during and post trial , and the critical analysis of existing legal framework and the legal implications therein. Following this, the paper will discuss the need for emergence of new laws to deal with protection and rehabilitation of victims rights along with the existing statutes .

OBJECTIVE:

1. Treating victim in dignified manner is a paramount consideration while dealing these cases
2. Human Rights Violation of victims must be addressed and redressed effectively
3. Even after judgement its the duty of the state to protect the victims and their family
4. In the process of investigation victim must not abused or humiliated by discredit questions.
5. Internal medical examination should not involve 2 finger test banned by Supreme court
6. Need to enact a separate statute for victim protection and witness protection
7. To ensure that than the scars of crime victim must not be subjected to any mental or psychological trauma by officials dealing the case.
8. Victim compensation and victim rehabilitation must regulated and implemented in a proper manner.

RESEARCH QUESTIONS:

1. What are the challenges with regard to protection of victims in existing legislations ?
2. What are the treatment given to victims which violates their basic human rights in these cases?

HYPOTHESIS:

It is hypothesized that the Indian Penal Code 1860 pioneers in establishing legal standards for securing justice for victims by punishing offenders but it also needs provisions to deal with certain

crimes done against victims which abuses them psychologically or physically in the name of investigation.

VICTIMS OF RAPE

Than the scars of crime the problems faced by victims results in serious psychological impact .Though law serves punishment for offenders it fails to protect abuses faced by victims. The problem is rape victim is even more abused in process of investigations and during legal proceedings where unfair treatment is given in the form of investigation which involves questions which involves discredit or affects personal dignity of woman. Though law through statutes mandates to protect and treat woman with dignity but its still now in book but not in use while dealing victims of rape.

Only based on the complaint filed by the victim investigation begins and its utmost duty of state to protect victims in order to resolve the case as this requires courage of victims to go through several investigations at different stages of trial in order to acquire justice and at times than victim compensation victim protection is not given much importance . Most of victims withdraws the case in half way due to abuse and humiliations faced by them by the police officials, judiciary proceedings etc. This fear and trauma ultimately leads to violation of their basic human rights.

RIGHTS OF VICTIM

- ❖ Right to be treated with dignity
- ❖ Right to attend criminal proceedings
- ❖ Right to be heard
- ❖ Right to protected from harassment
- ❖ Right to speedy trial

TREATMENT GIVEN TO VICTIMS

Both in national and international level the position of victim administration needs to improved as it only focuses on the offender its necessary to frame guidelines to protect the needs and interest of victims. In most of the cases justice is served at the cost of victims life. It is therefore important to to ensure that in the process of criminal administration victims right are not diluted. According to Declaration of Basic Principles every victims of crime must be enabled to obtain

redress through fair procedures and must be expeditious and inexpensive. Further every victim must be informed of their rights in seeking redressal.

TREATMENT OF VICTIMS BY POLICE

Generally in most of the rape cases human rights violation starts from police. As the starting point (i.e) registration of FIR . After filing FIR it is the duty of Police to take victim for medical examination within 24 hrs as per MoHFW guidelines to ensure the sensitivity towards victims based the pain or injury suffered by them. This medico legal certificate act as evidence. According to s,164 of Crpc once the accused is arrested his statement is recorded by the Magistrate in order to take cognizance of offence.

HUMAN RIGHTS VIOLATIONS OF RAPE VICTIMS AT PRE TRIAL STAGE

- ❖ Sometimes the victims complaint is not taken as serious which it needs to be
- ❖ In rape cases at times police doesn't file FIR based on the victims complaint
- ❖ Even after registering FIR , police do not give a copies to victim and at times the way the victims get treated involves verbal abuses which makes the victims to feel terrible than the pain caused by the offender
- ❖ MoHFW Guidelines must be adhered to collect evidence but the internal examination of victim continue without informed purpose at times without informed consent stating its a legal procedure.
- ❖ Police in the name of investigation take record of victims sexual history, regarding injuries in internal organs
- ❖ Absence of express injuries on bodies of victim makes the police resisting about the considering the rape case as a serious issue.
- ❖ Medical examination is done to collect evidence not to cure the pain suffered by victim
- ❖ Police generally do not counsel victims to make comfortable admission regarding the crime, rather than they blame victim which based on their looks, dressing style at times

even they make derogatory remarks which ultimately violates Art21 which states every individual has a right to be treated with dignity.

- ❖ After trial police fails to protect the victims and their family which ultimately acts as threat and at times offender who gets bail ultimately harms the victim family (UP MOLESTATION CASE FATHER OF VICTIM SHOT DEAD BY ACCUSED)
- ❖ If a rape survivor on upon whom the test was conducted by a doctor without her consent can file FIR against such doctor, charging him under section 375(d) IPC.

GUIDELINES TO ADHERED BY POLICE WHILE TREATING VICTIMS

- The first duty of Police while handling rape victim is to treat them with utmost respect.
- Victim initially contacts police or files complaint regarding the offence done against them.
- The way the police responds in treating victims create a major psychological impact on the attitude of victim
- Initial treatment given by the police during the investigation and before filing charge sheet creates a major impact in criminal justice system
- According to para.4 of the Declaration on Basic Principles provides guidelines for police conduct, and says that its the duty of police to ensure that victims are treated with compassion and respect for their dignity.
- In the name of investigation police officials must not question the dignity of women and especially with rape victims.
- Police must inform the victims regarding their rights , proceedings and must maintain the confidentiality of victims identity.
- According to S.32 at the dying declaration of rape victims recorded by police act as valid evidence against offender
- Victim and their family must be protect throughout the time of proceedings and must allow to express their views and considerations at appropriate stages of proceedings.
- The Police must provide proper victim assistance throughout the legal process

- The Police must inform the victim about the legislative process and possibilities of obtaining compensation and to punish offender
- After recording information given by the victim, victim should be given a complete report based on the things said by them and the injuries / losses suffered by the victim.
- The police must inform the victims regarding outcomes of their investigation and judicial process . This can be done only if they understand and treat victims rather than sensitizing it even more .
- This information and protection must be done by the police so that victims can voice out about the crimes done against them and this helps to achieve law and order and promotes confidence in criminal justice system.

TREATMENT OF VICTIMS IN CRIMINAL PROCEEDINGS

In the trial stage of the legal process it is necessary to ensure the privacy of victim . The victim , is positioned as a witness along with other witnesses in the trial, to be examined for ascertaining whether the evidence is sufficient to establish accused guilty. The deposition of the victim involves examination, cross examination and re examination . Judge is the only person with the authority to restrain any action or word that is hostile, intimidating or disrespectful towards the victim.

The Public Prosecutor represents the state during the trial, and hence presents the account of the victim before the court. The Public Prosecutor conducts the examination-in-chief of the victim (plaintiff) , and is also responsible for ensuring that the Defence Counsel **does not ask objectionable questions** to make the experience hostile for the victim as they had access to support services of any other kind to ease them into the legal processes.

In State of Punjab v.Gurmit Singh and sakhiv in order to protect victim from the accused as well as general public , it is directed that that its the duty of the Presiding officer to ease victim during her testimony. To instill confidence in the justice system, the judge should make sure that victims are given proper notice of the trial proceedings and that their views are adequately conveyed to the court.

In **State of Punjab v. Union of India**, court has laid down certain guidelines that in sensitive case all the trials must be conducted in in cameral proceedings while recording testimony of victim.

NEED FOR SHIELDING OF VICTIM

In most of rape cases the accused is mostly known to victim and even during trial accused or his associates harms victim in order to withdraw case by threatening the victim and their family. Even in court premises victims are under the threat of assault by offender or his family. At times victim needs to be protected even from the questions raised by the defence counsel during trial which humiliates or violates the basic rights of a women.

In the case of **Sakshi v. Union of India** court laid down guidelines stating questions in the cross-examination to be routed to the prosecutrix through the Presiding Officer, to prevent harassment and intimidation by the Defence Counsel.

Though there are provisions to protect the victim from the accused in court, offenders associates have easy access outside the court premises which requires protection of victim even outside court. This is necessary to enable victims to actively participate in legal process to achieve justice

HUMAN RIGHTS VIOLATIONS FACED BY THE VICTIM DURING TRIAL

- ❖ Court fails to protect the privacy of rape victims and their families .
- ❖ Mass media intervention in sensitizing the rape victims at times act as harmful to victims.
- ❖ The defence questions are bitter, often sexually explicit, intended to imply lack of resistance to imply consent.
- ❖ Victims also face enormous human rights violation during trial process, in the name of examination, medical examination, cross examination and post trial trauma in merging with society.

- ❖ The disclosure of rape issues make the rape victims exposed to judgemental calls, abuses and impulsive and indecent reactions from neighbours and society. Most of the victims leave their home and relocate in order to avoid these issues . On examining the condition of victims, it is evident that several victims has relocated from their homes to avoid societal pressure and mental agony.
- ❖ None of the victims were aware about their right to avail compensation under state victim compensation.

COMMON PROBLEMS FACED BY VICTIMS

- ❖ Fast track courts and speedy trial are mandated in statute but in rape cases it is difficult to implement in practice.
- ❖ There is no victim or witness protection scheme to protect them outside the court.
- ❖ The defence question inevitably involves sexually implicit questions
- ❖ There is no awareness regarding the rights available to victims under law
- ❖ Time scope given to close the rape cases is extending for years and years

HUMAN RIGHTS VIOLATIONS FACED BY VICTIMS WHICH ARE NOT CONSIDERED AS ISSUE

- ❖ It is essential to conduct examination at the earliest after the crime, so that the significant evidence (such as semen, scratches, hair etc) is not lost from the body of the complainant.. In most of rape cases than the assault, disclosure of incident brings more trauma to victim as well as their family members , so most of victims do not have courage to disclose silence and to make complaint.
- ❖ Clothes of the victim collected during the medical examination, and is forwarded for a forensic analysis to ascertain traces of DNA to identify the accused.

- ❖ The purpose of seizing the clothes is to secure evidence, it is futile to seize the clothes of the surviving victim if they did not wear same clothes, she wore at the time of the incident.
- ❖ At time delay in filing FIR that too 2 weeks after the incident makes the conditions of victims in tragic manner and there are instances where the hospital usually seizes the clothes of the complainant and in fact, in one case the Presiding Officer reprimanded the activity of the hospital staff during the trial for non-application of mind on this account.
- ❖ **The 2-finger test has now been prohibited by a Supreme Court decision**, and is accordingly not mentioned in the new proforma. The test leads to inferences about the sexual history of the complainant and leads to unnecessary commenting on the condition and tears to the hymen which is considered as absurd and inadmissible in rape cases by law. From infant to old age people nowadays everybody both male and female are subjected to rape issues when compared females are highly affected.
- ❖ Recordings of this nature function as evidence to question the character of the complainant, thereby eclipses the issue of consent.
- ❖ The MoHFW Guidelines stipulates that injuries of the survivor must be noted in order to calculate severity of the crime.
- ❖ The Hon'ble Supreme Court in several cases has held that absence of resistance from victim doesn't amount to acceptance to sexual intercourse.

JUDICIARY ON THE ISSUE OF 'TWO-FINGER' TEST

This is commonly known as virginity test where doctors inspect victim's hymen to verify whether victim claim of rape is true or not. But after Nirbhaya Gang Rape case several amendments were brought both in Indian Penal Code and Juvenile Justice Care and Protection Act

2015, along with guidelines were also given to medical practitioners who handle rape or sexual harassment cases that it's their duty to give medical as well as psychological support to victim.

- The two-finger test is conducted by the doctors to determine if the woman is raped or not.
- This procedure of examination of woman's hymen by involves inserting 2 fingers in victim's vagina to determine the laxity in order to decide whether the victim is habituated to sex or not.
- In **Lilly@ Rajesh and Vs. State of Haryana**, case the Supreme Court stated that the two-finger test conducted on rape victim violated her right to privacy, physical and mental integrity and dignity.
- This Test is considered as character assassination of victim which outrages the modesty of woman.
- It's to be understood that woman's hymen can be torn even as result of physical activities (Ex: sports athletes, martial arts, horse riding) also .
- These are the examples that victim's are subjected to several human rights violations like violation of right to privacy, character assassination, threat to her life outside court etc.

Human Rights Protection needed by Rape victims

- State must ensure that their privacy is not infringed at any cost
- In the name of medical examination they must not be subjected to two finger test as it is already banned by supreme court , still there is no awareness about this ban among medical practitioners.
- Human Rights Watch has already recommended the Indian Government to ban this test as it violates the dignity of victim
- Than Victim compensation of Rape victims, victim protection scheme is necessary
- Victim rehabilitation centre is necessary to support them psychologically.
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985 says that victims are eligible for legal recourse which must be implemented effectively in order get the faith in criminal justice system.

- Its necessary that observation home or hospitals should ensure that victims are not subjected inhuman nature of treatment which affects the health of victim.

Conclusion

In rape cases all we want is punishment for offender but at the same time we as society must learn ourselves to show some empathy in understanding the mental agony faced by rape victims. Human rights violation faced by any person is considered as serious offence as the heart of our Constitution Article 21 states that every person has right to be treated with dignity throughout their life . But in the case of rape victims their basic human rights are violated throughout their lifetime. At times victims family also face human rights violation, abuse, inhumane treatment, social anxiety. Apart from legislations it is the society which needs to protect every rape victims , rather than throwing them out and scolding them based on chastity and guilt its the society which needs to help these victims to overcome and lead a stronger life. Tearing of tissue doesn't make them sinful, society or legislation which remains silent to their cries and treats them in ill manner will be considered as most sinful. The principle of justice involves the wrong to be punished and right ones to be remedied for their loss. Thus its duty of state to prevent ,protect and redress human rights violations faced by the victim so that this brings faith on criminal justice system so that other victims rather them suffering from painwill voice out to prevent such crimes in future.

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