

VICTIMISATION OF WOEMEN IN INDIA: A STUDY WITH REFERENCE TO RAPE OFFENCES

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ABSTRACT

Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration carried out against a person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority, or against a person who is incapable of giving valid consent, such as one who is unconscious, incapacitated, has an intellectual disability or is below the legal age of consent. In this article about victimisation of rape victim's i.e. secondary victimisation some topics of conversation have become taboo to talk about, having a stigma of shame and silence attached to them. Unmentioned in the list were rape and rape culture. A criminal justice system where we feel that we will get justice is so unjust nowadays in giving justice to the most. Regular cases of police officers being involved in the rape cases, re-victimisation of the rape victims by the court, medical practitioners compelled me to further go in deep regarding the problem and to find out the possible solution for the same. This article discusses the main problem today what every girl is facing is threat of being rape every time they go out from their homes and sometimes being raped by their own relatives in home only. It analyses the victim and victimisation meaning and the concept of re-victimisation of the rape victims. It contains the provisions contained in various statutes related to rape and a detailed description of the problems faced by the rape victims by the criminal justice system. This article even discusses the judicial attitude towards women while interpreting and applying laws. It makes an enquiry into the judicial attitude towards criminal law administration from the point of view of women. The study discloses that judiciary generally approaches the issue with obvious concern for women although in a few decisions the judiciary has adopted too technical and conservative stand with little concern for the requirement of gender justice.

INTRODUCTION

Rape is the most gruesome and barbaric act of violating bodily integrity and honour of a woman. It destroys the entire physical and mental composure and pushes the victim into a deep emotional crisis and reduces her to a living corpse. It is a crime against basic human rights one is entitled to and a clear violation of the Right to Life enshrined in Article 21¹ of our Constitution. Rape victims may turn to the legal, medical, and mental health systems for assistance, but there is a growing body of literature indicating that many survivors are denied help by these agencies. What help victims do receive often leaves them feeling re-victimized. These negative experiences have been termed "the second rape" or "secondary victimization." Secondary victimization refers to the victimization that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim. Institutionalized secondary victimization is most apparent within the criminal justice system. At times it may amount to a complete denial of human rights to victims from particular cultural groups, classes or a particular gender, through a refusal to recognize their experience as criminal victimization. It may result from intrusive or inappropriate conduct by police or other criminal justice personnel. More subtly, the whole process of criminal investigation and trial may cause secondary victimization, from investigation, through decisions on whether or not to prosecute, the trial itself

¹ <https://www.lawctopus.com/academike/article-21-of-the-constitution-of-india-right-to-life-and-personal-liberty/>

and the sentencing of the offender, to his or her eventual release. Secondary victimization through the process of criminal justice may occur because of difficulties in balancing the rights of the victim against the rights of the accused or the offender. More normally, however, it occurs because those responsible for ordering criminal justice processes and procedures do so without taking into account the perspective of the victim. Rape has been perceived as the most brutal crime against women that affects not only the physical being but also the psychological being of the victim. We know that several rape cases take place in our society but very few are reported. The most important reason for this is the prevalence of rape myths in our society which are false beliefs about rape and about those who are affected by it. A consideration of whether an individual was able to exercise sexual autonomy, by contrast, takes into account the overall dynamic and environment surrounding those sexual acts and how these had an impact on the victim's ability to make a genuine choice. Women's right to equality before the law is frequently violated in domestic criminal jurisdictions because their evidence is distrusted. Women, therefore, have been treated unequally in that their right to freedom from sexual coercion by a perpetrator is extremely limited. In domestic jurisdictions, rape and sexual assault laws have often put people in terms of a 'proposer' of sexual acts, and the 'acceptor' is deemed to consent to the act unless their resistance is made clear, especially by using physical resistance. This is contrary to an approach to the criminal law which incorporates the human right to equality. As stated in an intervention to the European Court of Human Rights in the case of *M.C. v Bulgaria*², "**The equality approach starts by examining not whether the woman said 'no', but whether she said 'yes'**". Rape³ matters. It destroys lives, as its traumatizing effects can linger long after the immediate pain and suffering. It is a form of gender inequality⁴, an injury to health, a crime, a violation of women's human rights and is costly to economy and society. Rape is one of the most serious forms of violence. It is the unwanted penetration of the body; with variations in definitions that concern whether absence of consent or use or threat of use of force is central, the object doing the penetration, and the orifice of the body being penetrated. The UN has a recommended definition for legislation, but there are currently some variations in the definition used in different legal regimes. There are further variations in the meaning in social science research and in popular understandings. There are many ingenious ways to address rape, to prevent it, to support victims.

SECONDARY VICTIMISATION OR RE-VICTIMISATION

VICTIM

The term victim is define in various subjects to understand the term victimization we need to know who are considered as victim, in what manner they are considered to be victim:-

As per dictionary meaning **victim** is:

² (39272/98) [2003] ECHR 646 (4 December 2003).

³ <https://en.wikipedia.org/wiki/Rape>

⁴ https://en.wikipedia.org/wiki/Gender_inequality_in_India

1. A person who suffers from a destructive or injurious action or agency
2. A person who is deceived or cheated, as by his or her own emotion or ignorance, by the dishonesty of other or by some impersonal agency
3. A person or animal sacrificed or regarded as sacrificed

As per Criminal Procedure Code 1973 section 2(wa):

“**Victim**” means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir.

As per United nations⁵ general assembly declaration of basic principles of justice for victim and abuse of power 1985:-

Article 1 -define “**victim**” means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws prescribing criminal abuse of power.

Article 2 - who may be considered as victim the term “victim” also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victim in distress or to prevent victimization.

VICTIMISATION

Victimization is the outcome of deliberate action taken by a person or institution to exploit, oppress, or harm another, or to destroy or illegally obtain another’s property or possessions. The Latin word **victima** means “**sacrificial animal,**” but the term victim has evolved to include a variety of targets, including oneself, another individual, a household, a business, the state, or the environment. The act committed by the offender is usually a violation of a criminal or civil statute but does not necessarily have to violate a law. Harm can include psychological/emotional damage, physical or sexual injury, or economic loss. Victimology is the scientific study of victims. Victimologists focus on a range of victim-related issues, including estimating the extent of different types of victimization, explaining why victimization occurs to whom or what, the effects and consequences of victimization, and examining victims’ rights within the legal system. Different domains of victimization are also of interest. Victimology is characterized as an interdisciplinary field—academics, practitioners, and advocates worldwide from the fields of criminology, economics, forensic

⁵ United nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power available at www.un.org/documents/ga/res/40/a40r034.htm (visited on 2.2.2018).

sciences, law, political science, public health, psychology, social work, sociology, nursing, and medicine focus on victims' plight.

As per dictionary meaning

Victimization is defined as causing someone to be treated unfairly or made to feel as if he is in a bad position. When you treat someone poorly and make him feel adversity, this is an example of victimization.

TYPES OF Victimization⁶

- **Primary victimization:** - The victimization which is caused by direct result of crime taken place between offender and victim during the commission of the offence and also with any after effect resulted from crime i.e. something which is of cause and effect relationship like offence is of cause and impact of offence upon victim is of effect. This impact is of any kind it may be physical effect, financial effect, and it may be psychological and emotional effects upon victim, all of which can adversely affect their quality of life.

Secondary victimization: - It is also known as post crime victimization or double victimization. It is a form of victimization, which is not direct result of crime but through the victim's reaction to the offence by change in self-perception or through the neglecting kind of response by the institutions and individuals. Secondary victimization through the process of criminal justice system may occur because of difficulties in balancing the rights of the victim against the right of the accused. Re-victimisation⁷, also called secondary victimization, happens when providers subjugate the needs and psychological boundaries of rape victims to organisational needs, which leaves the victim feeling violated. Re-victimization is associated with higher distress and certain psychiatric disorders. People who were re-victimized show difficulty in interpersonal relationships, coping, self-representations, and affect regulation and exhibit greater self-blame and shame. This could possibly, in the medium term, lead to disordered eating, sleep problems, depression and difficulties in establishing trusting relationships with important others. In the long term serious psychological disorders could develop such as Post Traumatic Stress Disorder (PTSD), Rape Trauma Syndrome (RTS), General Anxiety Disorder, panic attacks and phobias.

LEGAL PROVISIONS SUPPORTING RAPE VICTIMS

1. A victim of rape may choose a place of her choice for recording of her statement:-

section 157 (1) of Cr.P.C which reads as follows:—"Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality."

⁶ <https://www.csosa.gov/supervision/victimservices/victim-type.aspx>

⁷ <https://www.ncbi.nlm.nih.gov/pubmed/24219731>

2. The investigation in relation to rape of a child is time bound:-

Section 173 (1), (1A) of Cr.P.C mandates that "the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station."; Similarly, in sub-section (2) of section 173 of Cr.P.C, clause (h) the words as reads as follows :—" whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376B, 376C, 376 D or 376E of the Indian Penal Code (45 of 1860).".

3. Name of rape victim will no longer be disclosed:-

The names of rape victims will no longer be disclosed in judgments: - The Hon'ble Apex Court had taken note of this and ordered that victims' names should be left out of judgments. Section 228A of the Indian Penal Code, 1860 makes it an offence to publish the names or disclose the identities of victims of rape.

4. Usage of audio and video electronic means to record statement/confession of victim:-

To state explicitly, in view of new amendment, provisos in section 161 (3) of Cr.P.C provide the investigation agency to record statement of victim by audio- video electronic means. The relevant proviso reads as infra:-"Provided that statement made under this sub-section may also be recorded by audio video e

5. In Camera Proceedings:-

A proviso, in section 327 (2) of Cr.P.C says that in camera trial shall be conducted as far as practicable by a woman Judge or Magistrate."; further, sub-section (3), proviso says that the ban on printing or publication of trial proceedings in relation to an offence of rape may be lifted, subject to maintaining confidentiality of name and address of the parties.".

LOOPHOLES AND BARRIERS TO JUSTICE AND SUPPORT SERVICES FOR SEXUAL ASSAULT SURVIVERS

Stigma, Victim-Blaming, and the Awareness Deficit

Even though the growing trend of registered criminal complaints for rape shows that the culture of silence is shifting, still far too many in India are afraid to report sexual violence because of a combination of factors: fear of being stigmatized, shamed, retribution from family and friends, and a criminal justice system that offers little protection to victims or witnesses. Since 2013, there have been efforts by central and state governments to spread greater awareness of the issue and deal with it more sensitively⁸. However, the tendency to blame the victim persists, with questions often raised, including by those in authority such as politicians, police, and even judges, about their clothing, sexual history, or behaviour.

Lack of Victim Support Services

⁸ <http://indianexpress.com/article/india/india-others/full-text-prime-minister-narendra-modis-speech-on-68th-independence-day/>

India does not provide any government support services where women, men, and children can report sexual or other forms of violence against them and seek support to make decisions about whether to file criminal complaints, and cope with its ramifications. Many women are afraid to report rape because they fear they will not be believed, not just by the police but also by their family members. Often, women face the stigma as much at home as outside. Especially in cases of child sexual abuse, where the abuser is often a family member, it is extremely difficult for children to report the abuse in the absence of strong support⁹.

Preventing Gender-Based Violence and Sexual Offenses against Children

Some Indian civil society organizations have taken a lead in the last few years to make public spaces safer for girls and women¹⁰. Safety audits take several factors into account, including lighting, ability to walk with ease, diversity of genders occupying that space, and whether there is easy access to security or police¹¹.

Criminal Penalties against Police

The law criminalizes police failure to register a rape complaint.¹² Police Dereliction in Resisting, Delaying, or Refusing to File FIRs Human Rights Watch found numerous examples in the states in which we conducted research where, despite clear legal obligations, the police were apathetic or put pressure on the victim's family to settle the case, especially where the alleged perpetrator was from a powerful community.

Informal Khap Panchayats

Unofficial village caste councils, called Khap Panchayats, in several north Indian states such as Haryana, Uttar Pradesh, Punjab, and Rajasthan operate as moral police, wielding control over society, including women's behaviour¹³. They are known to issue edicts condemning couples for marrying outside their caste or religion and condemn marriages within a kinship group (gotra), considered incestuous even though there is no biological connection.

Inadequate Responses to Sexual Harassment

⁹ Human Rights Watch, *Breaking the Silence: Child Sexual Abuse in India*, February 2013, <https://www.hrw.org/report/2013/02/07/breaking-silence/child-sexual-abuse-india>.

¹⁰ See, for example, Safe Delhi Campaign, Jagori, <http://www.safedelhi.in/womens-safety-audit.html> (accessed 20.3. 2018)

¹¹ <http://safetipin.com/blog/1/what-is-a-safety-audit/> (accessed May 29, 2017).

¹² Indian Penal Code, section 166A, introduced by the Criminal Law Amendment Act, 2013; POCSO Act, s. 21.

¹³ Local politicians and police are often sympathetic or turn a blind eye to the councils' edicts, implicitly supporting the violence. Supreme Court of India, *Arumugam Servai v. State of Tamil Nadu*, 2011 (2), SCC 405, April 19, 2011, <https://indiankanoon.org/doc/1337458/>

The Indian Penal Code was amended to introduce new offenses of sexual harassment, voyeurism, and stalking. Anecdotal evidence from Delhi and Mumbai suggests that these offenses are underreported to the police, and even where reported, the police fail to register FIRs or properly investigate these crimes.

Lack of Attention to Therapeutic Care and Counselling

Health providers have a dual role when it comes to responding to sexual violence. Apart from collecting forensic evidence for use during any criminal investigation and prosecution, they must provide therapeutic care to survivors—including addressing their sexual, reproductive, and mental health problems. The 2014 Guidelines detail how the doctor should provide treatment, including for sexually transmitted infections, provide emergency contraception, assess risks of HIV, and if needed, provide post exposure prophylaxis.

Lack of Access to Effective Legal Assistance

In 1994, the Supreme Court ruled that rape victims should be provided legal assistance at police stations. The court also ordered all police stations to keep a list of advocates willing to provide legal assistance in such cases where victims do not have a lawyer¹⁴.

JUDICIAL APPROACH

Most infamously in the case of **Tuka Ram v. State of Maharashtra**¹⁵ the Supreme Court observed that, ‘no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false.’ Though Tuka Ram has not been expressly overruled, the Court in other cases has not equated the presence of injury marks to the proof of consent.

In **State of Punjab v. Gurmit Singh**¹⁶, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character.

The Supreme Court has in the case of **State of Maharashtra v. Madhukar N. Mardikar**¹⁷, held that “the unchastely of a woman does not make her open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate her person against her wish. She is equally entitled to the protection of law. Therefore merely because she is of easy virtue, her evidence cannot be thrown overboard.”

¹⁴ *Supreme Court of India, Delhi Domestic Working Women’s Forum v. Union of India and Ors.*, 1995 SCC (1) 14, Oct. 19, 1994, available at [https://indiankanoon.org/doc/1765970/\(accessed23.3.2018\)](https://indiankanoon.org/doc/1765970/(accessed23.3.2018)).

¹⁵ 1979 AIR 185, 1979 SCR (1) 810

¹⁶ 1996 AIR 1393, 1996 SCC (2) 384

¹⁷ AIR 1991 SC 207, 1991 (61) FLR 688, JT 1990 (4) SC 169, (1991) IILLJ 269 SC, 1990 (2) SCALE 849, (1991) 1 SCC 57, 1991 (1) UJ 109 SC

In **State Of Punjab v. Gurmit Singh & Ors**¹⁸, “The expression that the inquiry into and trial of rape “shall be conducted in camera” as occurring in sub- section (2) of Section 327 Cr. P.C. is not only significant but very important. It casts a duty on the Court to conduct the trial of rape cases etc. invariably “in camera”. The Courts are obliged to act in furtherance of the intention expressed by the Legislature and not to ignore its mandate and must invariably take recourse to the provisions of Section 327 (2) and (3) Cr. P.C. and hold the trial of rape cases in camera.”

CONCLUSION

The working of the police force and the judiciary needs careful looking into. There is need for gender sensitive training and education across all ranks of police personnel. These values and principles instilled during the training will have to be sustained by the organisational culture. Senior police officers have to be careful when making unflattering remarks on rape victims and disrespecting women because their subordinates are influenced by them and reiterate the same line of thinking in turn. Measures for increasing the percentage of women police officers could be helpful as the rape victim would maybe find it easier to open up to a woman officer. These women officers should be trained in supportive and sympathetic investigation techniques to make the whole process comfortable and non hostile for the victims. There is no nationwide policy or guidelines to govern the medical treatment and collection of forensic evidence in rape cases. The collection and compilation of forensic evidence into medical reports is of key importance. Senior police officers have to be careful when making unflattering remarks on rape victims and disrespecting women because their subordinates are influenced by them and reiterate the same line of thinking in. These women officers should be trained in supportive and sympathetic investigation techniques to make the whole process comfortable and non hostile for the victims.

¹⁸ 1996 AIR 1393, 1996 SCC (2) 384