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A COMPARATIVE OVERVIEW ON RIGHT TO PRIVACY OF HEINOUS CRIME VICTIMS

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ABSTRACT

This paper presents a comparative analysis of the right to privacy of victims of heinous crimes, with a focus on the affirmative actions taken in India and analogous measures in other countries. If heinous acts such as rape are made public, the victim's dignity and right to privacy are compromised. The law also penalises anyone who discloses the victims' identities to the public. The legal regulations governing such horrible acts around the world clearly state that the victims' identities must be protected. There are, however, exceptions to this provision, which stipulate that if the officer in charge, the victim, or the victim's next of kin provide written agreement, the victim's identity may be made public. The study examines the legal frameworks, policies, and practices in place to protect the privacy and dignity of victims, while also ensuring the pursuit of justice. By drawing comparisons with international standards and best practices, this research aims to identify areas of convergence and divergence and provide recommendations for strengthening the protection of victims' privacy rights in India and beyond.

Introduction:

"What's in a name?"¹

Shakespeare through one of his characters in a play says the quote and intends to convey that naming things is irrelevant. In its basic sense, the said phrase suggests that what really matters is the essential qualities of the substance and the fundamental characteristics of an entity but not the name by which it or a person is called. It is understood that the name may be a convenient concept for identification but the essence behind the same is the core of identity.

¹ William Shakespeare, *Romeo and Juliet*, Dover Publications, 2014

In another leg, this identity being pivotal to one's life, confers freedom of living, as a facet of life, expresses genuine desire to have it. In fact, the Supreme Court of India emphasizes that "Identity is equivalent to divinity"². Whereas, a 'victim', who has been characterised as a person 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 laws³, also has an identity upon which they bestow honour on it. In a patriarchal society, the repercussions and aftermath are not always in the favour of the victim. Most rape victims in any patriarchal society are looked upon in a denigrating way and there is a tendency to boycott them. This poses a key dilemma in the context of crimes involving rape and trafficking as to whether the victim's name should be made public due to public interest or kept secret to guarantee a fair trial. Apart from the issues of fair trial and media trials, this is likely one of the main obstacles keeping rape victims and their families from speaking out against this heinous crime. This is also the main factor in why the victims ultimately commit suicide. Furthermore, this is common in conservative families with rape victims because the goal is to marry the woman, but once she has experienced sexual assault or rape, it is seen as a bad omen.

The brain experiencing embarrassment and mental distress does not discriminate between modern and conservative societies. The victims facing harm to their reputations is par equal to of any developing societies but the way in which these injuries materialize differ from one and other.

Victims have a range of protection needs. The United Nations 1985 Declaration calls on States to implement measures to "minimize the inconvenience for victims" in the judicial and administrative process, to "protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation".⁴

Every single right comes with a corresponding obligation and here in this case, the victim has the right and control over their privacy, which is their right, and the State on the other hand has

² Navtej Singh Johar & Ors v. Union of India, AIR 2018 SC 4321

³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> (last visited on March 1, 2025)

⁴ Ibid

a duty to protect those rights so that their rights are not infringed.⁵

Affirmative Action in India:

Indian Law defines the term 'Victim' as an individual who has endured any loss or injury brought about by reason of the act or omission for which the blamed individual has been charged and the expression 'victim' includes his or her guardian or legal heir.⁶ The victim undergoes pain and suffering at different points of the event. The primary form of victimisation occurs when the victim directly suffers as a result of the perpetrator committing the crime. It is also important to take into account how society as a whole contributes to the victim and its family's denigration. The secondary victimisation occurs post the crime where the victim suffers injustice by the hands of the authorities who fail to protect the victims' rights. The protection of individual life, freedom, and property is without a doubt the primary goal of a criminal justice system. The goal of contemporary criminal law should be to punish and rehabilitate criminals in society while also speaking for the broader public and advocating for their needs and aspirations.⁷

Thus, the victim is granted certain rights under section 228A of the Indian Penal Code of 1860 which is then replaced by section 72 of the Bharatiya Nyaya Sanhita. It defends the victims' rights. Everyone is forbidden from printing or publishing the name of the victim of sexual offences. It is illegal to print or publish the name of the victim. If the victim has given permission to print or publish his or her name, it may do so in a newspaper or other print or electronic publication. According to the old section 228A of the Indian Penal Code, the victim must first give their consent before any photographs or other personal information about them may be published, the same is carried over to section 72 of the Bharatiya Nyaya Sanhita.

This provision plays a major role to hide the identity of the victim. If the victims' identity is not kept secret, their social life will be extremely challenging. It also aids in safeguarding the victims' family. The Indian penal code's section 228A does not apply when the victim's name is published in the ruling of the illustrious Supreme Court or High Court of India. The issue that needed to be addressed was that the victims' name was mentioned in the judgments of the

⁵ Sucheta Dasgupta, To name the rape survivor or not? How IPC's Section 228A is often misread, *The Wire*, 2018

⁶ The Criminal Procedure Code, 1973, s. 2(wa) and The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 2(y).

⁷ Stalin Arnold and Arnav Khanna, A Critical Analysis of the Right to Privacy of Victims in Heinous Offences, 4 (2) *IJLMH* Page 2589 - 2598 (2021)

Trial Court and High Court, which was against section 228A of the Indian penal code. The Supreme Court then emphasised that when stating that the courts should use every effort to avoid disclosing the victims' identity.⁸

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.⁹ The Indian Judiciary in many similar aspects have upheld the right to privacy of victims. In the case of *Nipun Saxena v. Union of India*¹⁰, the Court noted two ideal points that the identities of adult victims of rape and child victims of sexual abuse need to be protected so that they are not subjected to unnecessary ridicule, social ostracism and harassment, and issues related to non-disclosure of the victims' name and identity fall within this scope under the POCSO (Protection of Children from Sexual Offences) Act, 2012. The Court further stated that "victim of a sexual offence, especially a victim of rape, is treated worse than the perpetrator of the crime." and issued directions that "no person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large".

In the case of *Bhupinder Sharma v. State of Himachal Pradesh*¹¹, the Supreme Court clearly refusing to propose the name of the victim and keeping in view the social objects of dispensing social victimisation or shunning of the victims of heinous crime section 228A has been enacted and suggested the use of the word 'victim' instead of the name in the course of judgments. Further, in the case of *State of Karnataka v. Puttaraja*¹², the Supreme Court had reinforced that the restriction under 228A IPC was intended to ensure that the disclosure of identity of the victim involved in certain types of offences is punishable, thereby protecting the divinity as to say that of the victims.

Safeguards in the United Kingdom:

Similar to that of India, in the United Kingdom, it is illegal to publish any detail likely to identify someone as being such a victim/alleged victim. The transmission of indecent images of the child victim of sexual exploitation are also prohibited. The police might give some

⁸ *State of Punjab v. Ramdev Singh*, (2004) 1 SCC 421

⁹ *Justice K. S. Puttaswamy (Retd.) & Anr. vs. Union Of India & Ors.*, (2017) 10 SCC 1

¹⁰ (2019) 2 SCC 703

¹¹ 2003 INSC 495

¹² 2003 (8) 2 SCC 364

information about the crime to the media to help with the investigation with victim's permission. Further, under the Police, Crime, Sentencing and Courts (PCSC) Act, it is illegal for police to place "undue pressure" on a victim to agree to their phone being searched. Victims must be told what information is being sought and what "reasonable" line of inquiry officers are pursuing so that they can provide informed consent.¹³ The landmark case of Osborne v. R.¹⁴ is a landmark case which cannot be overlooked while discussing this topic as it dealt with the application of the Sexual Offences (Amendment) Act, 1992 regarding the victim privacy in such heinous offenses.

Further, in Northern Ireland, the new Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 provides for anonymity for 25 years after their death will apply to all living victims or complainants of sexual offences regardless of when the sexual offence took place; where a sexual offence case is tried on indictment in the Crown Court, only certain persons are allowed to remain in the court, this exclusion was further to the appeal court in certain instances.¹⁵

Crime Victims' Rights in USA:

In the United States of America, the Crime Victims' Rights Act (CVRA), enacted within the framework of the Justice for All Act of 2004, establishes the rights of crime victims in federal criminal justice proceedings, provides mechanisms for victims to enforce those rights, and gives victims and prosecutors standing to assert victims' rights. Thereby, the criminal justice system in the United States of America provides various rights exclusive to the victims; especially in the privacy sphere, where the fear of harassment or retaliation from offenders who may learn their names and find out where they live through public records or court testimony deters victims from seeking justice is immense. This also includes witness protection programs.¹⁶

Victims have the right to protect the privacy of personal information, such as their name or identity, address, phone number, and place of employment contained in criminal justice

¹³ After a crime: your rights, available at: <https://www.gov.uk/your-rights-after-crime> (last visited on March 7, 2025)

¹⁴ [2024] EWCA Crim 1720

¹⁵ Victim Charter, available at: <https://www.justice-ni.gov.uk/publications/victim-charter> (last visited on March 7, 2025)

¹⁶ The Crime Victims' Rights Act of 2004 and the Federal Courts Federal Judicial Center, available at: <https://www.uscourts.gov/sites/default/files/cvra0001.pdf> (last visited on March 8, 2025)

documents, compensation records, and court testimony, as well as contact information provided for notification purposes. Thus, enhancing the safety of the victim which may be at stake if this personal information is made public. Some states in the US extend this protection to witnesses or the immediate family members of the victim. Certain special victim populations, such as children, victims of sexual assault, domestic violence, stalking, or human trafficking, the elderly, and other vulnerable adults have additional confidentiality rights that address their unique privacy concerns.

The following are the broad types of statutory safeguards for a victim's right to privacy in relation to data found in criminal justice records: 1) prohibition against compelling testimony relating to personal information in open court; 2) exclusion or limited disclosure of victim identifying information in criminal justice records, including law enforcement reports, court materials, and prosecution documents; and 3) protection from release of addresses and/or phone numbers provided for notice purposes.¹⁷

The Canadian Victims Bill of Rights:

Between the constitutional heritage of the United States and the common law tradition of Britain and other Commonwealth nations like Australia and New Zealand stands Canada. Legislative changes are made in commonwealth jurisdictions without a system of constitutional rights. Legislation has changed the traditional view that privacy was not a legitimate justification for excluding something from openness. Changes to the Criminal Code of Canada that deal with victim anonymity, as well as privacy and secrecy in sexual assault procedures, can therefore be found elsewhere, albeit with regional variances.

The Canadian Victims Bill of Rights, which came into effect in 2015, is a federal law that outlines the rights of victims of crime in Canada. It includes several provisions related to privacy, such as: Right to Information, where the victims have the right to information about the criminal justice system, including information about the progress of the case and the offender's release from custody; Right to Protection, where the victims have the right to have their security and privacy considered throughout the criminal justice process; and exclusive Right to Privacy where victims have the right to have their privacy considered by criminal

¹⁷ About Victims' Rights, available at: <https://www.victimlaw.org/victimlaw/pages/victimsRight.jsp> (last visited on March 8, 2025)

justice professionals and to request that their identity be protected in court proceedings.¹⁸

The Canadian courts can issue various orders to protect the privacy of victims, including: Publication Bans, where Courts can issue publication bans to prohibit the publication of information that could identify a victim or witness; Sealing Orders, where the Courts may order that certain court records or documents be sealed to prevent public access to sensitive information; Testimonial Aids, where the victims, especially vulnerable or traumatized ones, may be allowed to testify behind screens or via closed-circuit television to protect their privacy. One good example would be when victims of sexual offences, the victim of any offence (not just sexual offences) who is a minor must be informed of their right to apply, and the court must grant the request when it is made. This procedure was modified for certain offences like voyeurism, child pornography, etc., are now mandatory without the need for an application, and. In order to preserve the security of a victim or witness, a similar innovation was finally adopted in 2015: the option to testify under a pseudonym.¹⁹

The Privacy laws in Canada, such as the federal Personal Information Protection and Electronic Documents Act (PIPEDA) and provincial privacy laws, govern the collection, use, and disclosure of personal information, including that of victims.²⁰

Further, the victims have the opportunity to provide victim impact statements to the court during sentencing hearings. These statements allow victims to express the impact of the crime on their lives while maintaining their privacy. And in certain cases, victims or witnesses may apply for non-disclosure orders to protect their personal information from being shared with the accused or the public.

It's important to note that while there are strong protections for victim privacy in Canada, there are also considerations of open court principles and the right to a fair trial.²¹ Balancing these rights can sometimes be complex, and courts aim to strike an appropriate balance between

¹⁸ The Canadian Victims Bill of Rights, available at: <https://www.victimfirst.gc.ca/serv/vrc-dvc.html> (last visited on March 8, 2025)

¹⁹ SS. 486.4 – 486.6 of Criminal Code (R.S.C., 1985, c. C-46)

²⁰ The Personal Information Protection and Electronic Documents Act (PIPEDA), available at: <https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/> (last visited on March 8, 2025)

²¹ Victim Privacy and the Open Court Principle, available at: https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr03_vic1/p6.html (last visited on March 8, 2025)

privacy rights and the principles of justice.

Privacy Laws for Victims in Australia:

In Australia, the privacy of victims of crimes is protected by various legal provisions at both the federal and state/territory levels. These provisions are designed to safeguard the personal information and well-being of individuals who have been victimized. While privacy laws in Australia primarily focus on the protection of personal information, there are specific legal provisions and guidelines that address victim privacy in the context of criminal justice.

Privacy laws in Australia, such as the Privacy Act 1988²² (at the federal level) and similar laws in each state and territory, regulate the handling of personal information by government agencies and private sector organizations. These laws set out principles and standards for the collection, use, and disclosure of personal information, which can include information about victims.

Similar to that of in Canada, in many Australian jurisdictions, victims have the opportunity to prepare victim impact statements, which can be presented to the court during sentencing proceedings. These statements allow victims to describe the impact of the crime on their lives while maintaining their privacy.

In cases where a victim may be at risk due to their involvement in a criminal matter, witness protection programs may be available. These programs include measures to protect the identity and privacy of individuals who are assisting law enforcement. In cases involving institutional child sexual abuse, the National Redress Scheme provides compensation and support to survivors. The scheme includes provisions to protect the privacy of survivors.²³

Likewise in other Common-law Countries, Courts in Australia can issue suppression orders or non-publication orders to protect the privacy of victims, witnesses, or other parties involved in legal proceedings. These orders can prohibit the publication of information that could identify individuals.

²² Privacy, available at: <https://www.ag.gov.au/rights-and-protections/privacy> (last visited on March 9, 2025)

²³ About the National Redress Scheme, available at: <https://www.nationalredress.gov.au/about/about-scheme> (last visited on March 9, 2025)

Conclusion:

Every person has the right to a life that is worthy of respect, which includes the right to one in which their privacy is not arbitrarily invaded. Victims of heinous crimes like rape and sexual assault experience trauma and pain, which may last for the rest of their life. Women are particularly affected by such horrible situations because, despite the fact that they are the victims of these crimes, their honour and dignity have been shattered. Therefore, if their identify is revealed by the police or media authorities without their consent, it would only increase their anguish, shame, and grief.

The reason why so many heinous acts go unreported is because victims of sexual abuse have always been treated differently where victims of rape have been stigmatised for their behaviour. The State must ensure that their right to privacy is safeguarded if it is to be guaranteed that victims of crimes have confidence in those in positions of authority and come forward to report crimes without fear of having their identities revealed. The authorities who reveal the identities and personal information of victims without first receiving consent from those victims should face severe penalties. While publicising the case may be vital to inform the public about the seriousness of the crimes that occur in the nation, the same can be accomplished without revealing the victims' identity. What's in a name if identity is not divinity?

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