

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 - 6433)

VOLUME 2 ISSUE 6
(April 2022)

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Website – www.ijlra.com



IJLRA

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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PRIVACY OF RAPE VICTIMS: INADEQUATE PROTECTION FROM THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Regardless matter whether the culprit is the state or a private individual, India has mostly overlooked the protection of victims' rights. Reprehensible crimes against women, such as rape, not only jeopardize the victim's dignity, but also their private rights if their name is made public. The legal rules pertaining to rape in India explicitly state that the identity of the rape victim must be safeguarded, and the law also imposes fines on anybody who discloses the victim's identify to the public. There are exceptions to this rule, which state that if the officer in charge, the victim, or the victim's next of family members give their consent in writing, the identity of the rape victim can be made public, which can lead to arbitrary and entirely discretionary decisions being made by them, which may be against the victim's best interests. The concept of preserving the public's interests when they collide with the rights of private persons should not apply here, because the public may desire to know the identity. The grief caused on a victim of a horrific act is so tremendous that if the victim's identify is also made public, she suffers even more injury since her right to privacy and dignity are violated. The victim's interests should take precedence, and the officer-in-charge's the victim's next of kin's view should not be taken into account until the victim expressly consents to their identify being revealed. The author of this article will concentrate on the rights of rape victims and their right to privacy, as well as different legal declarations to back up their claims and also highlights the media's exposure of rape victims' identities and analyses the century-long conflict between an individual's right to privacy and the freedom of the press.

"You're not a victim for sharing your story. You are a survivor setting the world on fire with your truth. And you never know who needs your light, your warmth, and raging courage." — Alex Elle

KEYWORDS: Identity, Heinous crimes, Victims, Dignity, Privacy

INTRODUCTION

Rape victims are treated differently than other crime victims. Even though the victim is completely innocent, victims of sexual offences are frequently considered as the abettor, if not perpetrator, of the crime in our culture. Rather than empathizing with the victim, they begin to criticise the victim. During the investigation and prosecution of crimes in India, victims confront enormous, and often insurmountable, obstacles. The act of submitting a complaint itself is difficult in and of itself. Human and civil rights campaigners have traditionally focused on the rights of the accused while advocating for criminal justice reform, should address the impact of crimes on victims to the same level. When governmental officials fail to pursue perpetrators, as is frequently the case, victims are left with the choice of either suffering injustice silently or seeking personal revenge by taking the law into their own hands. Ironically, the "guilty guy" is kept, fed, clothed, warmed, illuminated, and amused in a model cell at the expense of national, using funds collected from the victim's taxes. No wonder, when it comes to even the most delicate matters, such as dealing with rape cases or their victims, there exist regulations but no explanations for the disparities in standards followed in various circumstances..

Crimes against women have increased in recent years, resulting in women being victims of increasingly more serious and terrible crimes, all of which have a negative impact on women, both physically and mentally, as well as society as a whole. When the individual involved is an alleged victim of rape, a crime recently described as "one of the more sensitive and polarizing problems of our times," the clash between privacy and the press becomes even more evident. While proponents of disclosure argue that keeping the victims' identities hidden intensifies the shame associated with rape, opponents argue that it is precisely this stigma that warrants treating rape and its victims differently.

VICTIM:

Any person who, individually or collectively, has suffered any mental, physical, emotional, economic, or substantial impairment of their fundamental rights as a result of acts or omissions that violate criminal laws operative within member states, including those laws prescribing criminal abuse of power. The word 'victim' is defined in section 2(wa) of the Criminal Procedure Code of 1973 as an individual who has suffered any loss or harm as a result of the conduct or omission for which the accused individual has been prosecuted, and includes his or her guardian or legal heir. At various moments during the incident, the victim experiences agony and suffering.

RIGHT OF PRIVACY OF RAPE VICTIMS

A rape victim is viewed as a "pariah" and is shunned by society. Even her family has refused to let her back into their fold on several occasions. The unpleasant fact is that many incidents of rape go unreported because of misguided concepts of so-called "honor" that the victim's family want to protect. In the Delhi Gang Rape Case, a similar controversy developed when the parents of the murdered victim came forward and revealed the victim's identify. "Our daughter was not at fault," they said. The offenders should be the ones to keep their names hidden." This comment prompted the society to take a bold and long-awaited position. Our approach to sexual offences and victim support has been humorously misconceived, which has been the misery of most people and non-governmental organizations. The family of the victim took on the old and conventional model of society, which requires a dramatic makeover in the form of removing the taboo on revealing the victim's name.¹ The real issue is that our culture has been unable to decide whether it should favor the victim's name being revealed or kept hidden. While the first encourages excellent thinking in a changing culture, the latter has proven crucial in safeguarding victims from post-offense horrors and merciless mockery, according to the government. The Criminal Law Amendment Act, 1983 included Section 228A to the Indian Penal Code to prohibit social persecution or ostracism of sexual offender victims. The suggested concept was to protect the victim from society's post-offense horrors, which included scorn and a decline in marriage chances. In response to the societal stigma of victims following a crime, the legislature enacted Sec.228A, which prohibits anybody from revealing the identity of the victim of such an offence. While it is undeniable that news organizations and media outlets are wary of such legislation, there have been cases where it has been violated.

Following are the different rights:

- The right to be treated with fairness, dignity, sensitivity, and respect;
- The right to attend and be present at criminal justice proceedings;
- The right to be heard in the criminal justice process, including the right to confer with the prosecutor and submit a victim impact statement at sentencing, parole, and other similar proceedings;

¹ A.S. Anand, Victims of Crime — The Unseen Side, (1998) 1 S.C.C. (Jour) 13, 3-13

- The right to be informed of proceedings and events in the criminal justice process, including the release or escape of the offender, legal rights and remedies, and available benefits and services, and access to records, referrals, and other information;
- The right to protection from intimidation and harassment;
- The right to restitution from the offender;
- The right to privacy;
- The right to apply for crime victim compensation;
- The right to a speedy trial and other proceedings free from unreasonable delay;
- The right to enforcement of these rights and access to other available remedies.

WHY MOST RAPE CASES GO UNREPORTED:

- Victims of rape do not report the incident to law enforcement officials so that it can be prosecuted for a variety of reasons, including the victim's shame and a desire not to make the shame that has befallen him known to others, or the victim's fear of being killed if he reports the incident to the police.
- The victims' growth and mental health, as well as the law enforcement procedure itself, have an impact on the victims' feelings
- The publication of a rape victim's identity violates the victim's right to privacy and exposes the victim to a number of social and psychological issues.
- Lack of properly and timely action
- Lack of support system



JUDICIARY AND VICTIMS

Rape impacts a significant number of people and it effects the victim physically, socially, financially, or emotionally, and this has to be addressed as soon as possible by ensuring that they

have easy access to justice. Despite the fact that victims of crime have typically received support and help from their family, tribe, or community, they have mostly been neglected by the criminal justice system. It would be incorrect to claim that the topic of victims' rights has received no consideration from the courts or policymakers. The Law Commission of India, as well as special committees such as the Malimath Committee on Criminal Justice Reforms, have stressed concerns such as witness protection, victim recompense, and victim involvement in police investigations. Regretfully, progress in the area of effective legislation has been slow. The Criminal Procedure Code covers the position of victims in Indian criminal procedures in a couple of its clauses. Nonetheless, these rules are insufficient to meet the wide range of issues that crime victims experience.

²Only in recent decades has the impact of victimization on crime-affected individuals drew the attention of criminal law jurisdictions around the world, who were convinced that victims needed to be treated with compassion and that their dignity and fundamental rights needed to be protected and preserved. Nevertheless, it should be noted that, despite the courts' meticulous degree of caution, there have been cases of victim names being revealed as a result of court decisions. In their judgments, some benches of the Higher and Lower Judiciary have rashly revealed the names of sexual assault victims. These decisions were extensively shared and publicized by websites, magazines, and other written material, much to the chagrin of the victims. The courts, on the other hand, have handily determined that the provisions of S.228A of the Indian Penal Code do not apply to Judicial officers who are working in good faith while issuing judgements. Even the deceased are treated with respect. They are unable to be "identified and humiliated." The Supreme Court made this statement today as it addressed the problem of rape victims' identities being revealed, including the eight-year-old girl who was raped and brutally killed recently in Kathua, Jammu & Kashmir.

MEDIA AND VICTIMS PRIVACY

Privacy is at the heart of every debate about rape coverage in the media, from whether or not to name the victim to how to treat the accused's right to be believed innocent.³ The way the media

² N.R. Madhava Menon, *Victim's rights and criminal justice reforms*, The Hindu, Mar. 27, 2006, available at <http://www.thehindu.com/2006/03/27/stories/2006032703131000.htm>.

³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, U.N. Doc. A/RES/40/34 (Nov. 29, 1985).

reports crime has been a source of much controversy. It has been suggested that dramatic reporting of the most unique and awful crimes perpetuates prevalent beliefs and preconceptions, as well as raising fear of crime, particularly among people who are statistically least likely to become victims. Media attention is frequently perceived as a sort of secondary victimisation, making people feel harassed, defenceless, and powerless. To be mentioned in the media in connection with a sex crime, whether as a victim or as the perpetrator. Being accused is being subjected to a ruthless examination of one's past, present, and future. The media is currently expected to probe the lives and personality of every woman who has been the victim of a well-known sex crime. The media's coverage of rape should be overhauled immediately since it is now causing far more harm than good to victims and the public's comprehension of the crime.⁴ The most important message to the media is to stop concentrating on the private lives and personalities of rape survivors and instead focus on the far more difficult and important topic of why rape, incest, sexual assault, and harassment occur in the first place. Another recurring issue is a lack of regard for the dignity and privacy of individuals. Personal facts that are unrelated to the crime yet make for good writing are sometimes printed in newspapers. The rapidity with which the news media covers a story may sometimes be upsetting. People have claimed that information was supplied to the media before all of the family had been contacted, or that facts were given to newspapers or television in a situation that the family was unaware of.⁵ The Indian Constitution recognizes the right to privacy as a basic right. It is protected under the Constitution's right to freedom (Article 19) and right to life (Article 21). The right to freedom of speech and expression is guaranteed to all citizens under Article 19(1) (a). The media has the right to disseminate any material because of the right to freedom of speech and expression. The State may impose reasonable restrictions on the exercise of the right in the interests of the state's sovereignty and integrity, security, friendly relations with foreign states, public order, decency, or morality, or in the case of contempt of court, defamation, or incitement to commit an offence.

MEDICAL CARE IS FREE IN ANY PRIVATE HOSPITAL

According to Section 357C of the Code of Criminal Procedure, "all hospitals, public or private, whether run by the Central Government, the State Government, local bodies, or any other person,

⁴ Bajpai, G.S. (2006). Psycho-social consequences of victimization in rape. *International Perspectives in Victimology*, Vol. 2, No. 1. pp. 67-81.

⁵ Chockalingam, K. (1985a). Problems of victims of crime and their families, in *Readings in Victimology*, (Ed.) Raviraj Publications. Chennai: India, pp.73-90.

shall immediately provide first-aid or medical treatment, free of charge, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, or section 376E of the Indian Penal Code, and if the hospital refuses to treat you or demands money, then they will be prosecuted under Section 166B of the Indian Penal Code.

SUGGESTION

The author claims that while the state is responsible for safeguarding its citizens, it is also responsible for providing social justice to victims. Despite India's substantial gains in criminal investigations and prosecution, the sufferings of rape victims are mostly unnoticed. In many cases, victims' pain has been relieved only through the efforts of humanitarian groups and human rights commissions, and this is especially true in cases of high-profile crimes. The suggestion to overcome this issue

- Victims of Crime should Have Their Own Law
- Empowerment of Women

CONCLUSION

Every individual has the right to live a decent life, which includes the right to privacy that is not infringed upon arbitrarily. Victims of horrible crimes such as rape and sexual assault are left traumatized and in anguish, which can last a lifetime. Women are particularly affected by such heinous acts, because their honor and dignity have been shattered, despite the fact that they are the victims of these atrocities. As a result, revealing their name without their consent to the police or the media would exacerbate their suffering, agony, and humiliation, as well as the trauma they have already experienced.

The victim's identity must not be revealed, and Section 228A (2) (c) of the Indian Penal Code allows for certain exceptions where the victim's identity may be revealed, such as if the victim is deceased or mentally ill, in which case the victim's next of kin has the right to reveal the victim's identity, which is completely incorrect because the victim will suffer the most if the identity is revealed, and therefore the final decision must be made by the victim. The existing clause, which does not provide family members of victims the ability to decide what is best for the victim, has to be altered. The victim must be informed that they have a right to privacy, and that their identity will not be divulged to the public. At the same time, the victim should not be lulled into believing that their identity and personal information are safe.