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Analyzing the rights provided to the Rape victim

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With India still dragging itself from the shackles of pile mount of rape cases, only a little emphasis is paid on the awareness of their legal rights. It has been 74 years since our independence but we still haven't made enough effort to highlight those imperative rights which are now camouflaged under the opaque sheet of other political, vague mainstream headlines. In India, rape survivors confront several obstacles to seeking justice and vital helpful schemes. Women and girls who underwent sexual assaults and other sexual viciousness have to face more embarrassment at police headquarters and clinics. Police are habitually reluctant to enlist their objections and witnesses get little protection. These barriers to justice and dignity are exacerbated by poor medical treatment, guidance, and legal assistance for victims throughout the court trial. Increasing sexual crimes in India is a red light for the government and thus, to effectively tackle the situation, two major steps have to be followed in coordination; first, to strictly inquire the reason for fewer conviction rates of these bracket of cases and to bring out an effective solution to it; second, to increase the awareness regarding the rights of the rape victims.

Keywords: *rape, investigation, sexual violence, conviction rates, section 375.*

INTRODUCTION

“The death penalty is a sweet political candy to hand out to fuming and distraught citizens, but it's much difficult to work on justice systems that guarantee swift, certain punishment for sexual assault than to limit the violent patriarchies that cause rape in the first place.”

- Karuna Nandy

The line perfectly sums up the dreadful situation we have in our country regarding the thought process of the general public. The root cause isn't being focused upon. Everyone thinks that executing the convict will give the victim justice but there is much more a society has to do to make the victim feel that she has been justified. There is no surprise in the fact that despite having the severe laws set up, particularly after the 2012 Nirbhaya case in Delhi, an offense of rape is committed every 16 minutes in India, as per the most recent records accessible with the National Crime Records Bureau.¹

The majority of cases under crime against women under IPC were registered under 'Cruelty by Husband or His Relatives' (30.0%) followed by 'Assault on Women with Intent to Outrage her Modesty' (23.0%), 'Kidnapping & Abduction of Women' (16.8%) and 'Rape' (7.5%). The crime rate registered per lakh women population is 56.5 in 2020 in comparison with 62.3 in 2019.² The figures make us realize that there is much more to evolve so that real justice can be served not only by the court but also by society.

ELUCIDATING AND ANALYSING THE RIGHTS OF A RAPE VICTIM

1) Right to file Zero FIR

Zero FIR is a novel concept in India. A zero FIR is a form of FIR that can be filed at any police station, irrespective of jurisdiction or where the incident or an offense occurred. The FIR after getting filed at the place where the crime has been committed is then transferred to the police station which holds its jurisdiction which further commences the investigation. The police at the place of crime cannot deny the filing of Zero FIR. It was instigated on the Justice Verma Committee's proposal, as an aftermath of the gruesome Nirbhaya gang rape in Delhi which enforced an obligation on the police to open an investigation with no defense of the absence of

¹ National Crime Records Bureau, *Crimes in India 2020, Vol 1, Chapter-3A Crime Against Women (States/UTs)* (NCRB 2021) 199

² *Ibid*

jurisdiction with the required police station.³ The IPC also provides the requisite punishment to the police officer who refutes any order given by the superior authority.

In *Lalita Kumari vs the State of UP*⁴, the court ruled that the registration of an FIR according to Section 154 of CrPC is mandatory if the information received from the police indicates the commission of a cognizable offense. A preliminary investigation is not allowed in such a situation.⁵ “The police officer has to register the FIR if the offense is discovered as cognizable. Action should be taken against police officers who do not file the FIR if the information received reveals a cognizable offense has taken place.” the court had observed.⁶

It was detailed that even if the information is recorded as FIR where the incident occurred and is outside the ambit of jurisdiction of the police station, they are still obliged to record the information and record it as Zero FIR and later transfer it to the police station that holds the original jurisdiction.⁷ Zero FIR holds an important position in cases that require quick reporting. A case related to rape gives precedence to fresh pieces of evidence thus the investigation process should be swift. The investigation only commences after an FIR is filed which takes time but in case of zero FIR, minimal time is wasted.

Despite it being an effective and efficient concept, India is yet behind to implement it on a large scale. The foremost reason is the lack of awareness, not only between people but between police too. There is a record of a plethora of FIRs being denied to get registered because of unawareness. Therefore, it is of high priority that the government issue seminar and conferences which informs the police about the nascent concept of zero FIR. It is an important right which several people also don't know about. The government in this case can take an innovative step by displaying an informative advertisement on the television. Various authors writing for reputed newspapers and magazines can also take up the topic to inform the general public about the right. These measures if taken effectively will sweep away the

³ J J S Verma Committee, Report of the Committee on Amendments to Criminal Law 2013

⁴ *Lalita Kumari v State of UP* (2014) 2 SCC 1

⁵ Code of Criminal Procedure 1973

⁶ *Lalita Kumari* (n 4)

⁷ *Kirti Vashisht v State & Ors* (1993) SC 2644

unawareness which is holding back the right to get claimed by many women who get abused daily.

2) Free medical treatment in any hospital

There is a lot of physical and mental trauma, a victim has to go through after a sexual assault. These serious and chronic situations can be limited if there is a system that incorporates a much faster treatment process that can be availed by any person irrespective of the socio-economic situation. The Criminal Procedure Code under Section 357C, therefore, provides victims the right to claim free medical treatment under any hospital, whether private or administered by the government.⁸ The code also under Section 164A incorporates the medical examination of rape or sexual assault victims within 24 hours of receiving the complaint.⁹

The Supreme Court ruled that permission must be granted by a competent individual who is not a minor or of unsound mind, and it must be based on the information supplied by the doctor. Furthermore, the victim shall be examined by a licensed medical practitioner.¹⁰ Therefore, the victim can get free medical aid in all hospitals, public or private. If any hospital denies the admission or charges any amount of fee then according to Section 166B of IPC, shall be punished with imprisonment for a term which may extend to one year or with fine or with both¹¹.

3) No two-finger test during the medical examination

The Two-Finger Test is used to determine if a woman's hymen is free of blemishes. It is predicated on the idea that the hymen may only rupture when a woman engages in sexual intercourse. The main aim of this test was to check the status of the sexual activeness of the victim so as to conclude if the consent was provided by the victim or not. The aim clearly

⁸ Code of Criminal Procedure 1973

⁹ *Ibid*

¹⁰ *Samira Kohli v Prabha Manchanda Dr & Anr* (2008) CPJ 56 (SC)

¹¹ Indian Penal Code 1860

violates Section 53A of the Indian Evidence Act which states that the past sexual experience of the victim is not relevant where the issue of consent is in question.¹²

The Supreme Court decided that the two-finger test is not scientifically backed up and violates women's rights to privacy, physical, psychological integrity, and dignity.¹³ The same contention of unawareness persists in this case too but to uplift the situation and further safeguard the victim's dignity and privacy, it is again vital to spread awareness about the future non-usage of the two-finger test. As stated before, the government has to take larger strides and that can be through television advertisements or newspapers.

4) Trial with full dignity, speed, and protection

Indian judicial system has always been plagued by the shackles of sluggishness. It is one of the main reasons why people are losing their hope of securing justice through the courts. When talking about the cases of sexual violence, providing a trial with full dignity, privacy, speed, and protection comes on top. Thus, to limit the mental trauma a victim of sexual violence has to go through, CrPC provides many imperative procedural processes which can smoothen the justice delivery, protection, and privacy of the victim.

- The victim has a right to have his or her testimony recorded at her place of residence or a location of her choice in the presence of her parents or guardian.¹⁴ This right will secure the victim's right to time-bound investigation and will ensure full dignity.
- A woman judge will preside over the case dealing with rape and sexual assault. The judge presiding will therefore have the original jurisdiction regarding these particular cases which will eventually help the victim in proceeding with her case with dignity and privacy.¹⁵
- Further, the offenses regarding rape and sexual assault will be conducted on camera, which at either party's discretion can be open to a particular person.¹⁶ It ensures the

¹² Indian Evidence Act 1872

¹³ *Lillu v State of Haryana* (2013) 14 SCC 643

¹⁴ Code of Criminal Procedure 1973

¹⁵ *Ibid*

¹⁶ *Ibid*

privacy of the victim by not involving the general public which may further put a mental and social strain on the victim to proceed with the case

As highlighted before that the lackluster nature of the judicial system and inconsistency of maintaining the dignity of the victim is a huge obstacle in justice delivery and the main factors are that contribute to it are huge vacancies of judges, an inadequate number of staff in courts, less percentage of woman judges in the court and lack of fast-track courts specified for rape and sexual violence cases. It doesn't require a hard thought to know the solutions as all are pretty much camouflaged in the factors stated above. Appointing a larger number of judges by relieving down the criteria needed to hold the post, introducing reservation for women in Judiciary, implementation of fast-track courts throughout every district will ensure quick justice delivery with dignity.

5) Right to compensation

Rape is one of the most heinous crimes against mankind and the victim goes through an enormous amount of psychological and social trauma. No amount of money can put a full stop to that trauma but as Justice Krishna Iyer, quoted that victimology, a thriving branch of human criminal justice, must find its implementation not through barbarism, but through the obligatory reparation of the harm done by the perpetrator, not by causing the perpetrator more pain but by reducing the loss of forlorn.¹⁷

In the Indian laws and statutes, The Code of criminal procedure issues the implementation of schemes related to compensation funds for rape and sexual assault victims by each state.¹⁸ In *Manohar Singh vs State of Rajasthan and Ors*,¹⁹ it was averred that appropriate compensation for the victim should be determined taking into account the relevant factors such as:

- the severity of the act and the level of physical or mental damage or injury to the victim and the expenses incurred for its treatment.

¹⁷ *Maru Ram v Union of India* (1981) 1 SCC 107

¹⁸ Code of Criminal Procedure 1973

¹⁹ *Manohar Singh v State of Rajasthan & Ors* (2015) SC 1124

- Loss of education or job as a result of the offense, including absenteeism from school/university due to psychological trauma, injury, medical treatment, investigation, or for other reasons;
- Duration of abuse and disability due to offense
- The economic situation of the victim

While punishing the accused is one aspect, it is about determining adequate compensation for the victim. Sometimes there is no evidence in this regard. Compensation is paid in accordance with Sections 357 and 357A. While, according to Section 357, the defendant's financial capacity must be taken into account, Section 357A, according to which compensation comes from state resources, is to be used to offset the claim for fair compensation. It is the most effective course of action that can be taken to respond to the crime that has been committed and is a huge stride taken for the betterment of our criminal justice system.

However, there is a lack of monitoring or administrative body in the states which have introduced the victim compensation schemes. When a scheme of such importance is implemented, a particular body needs to record the funds and allocation for its efficient working as it denies any scope of the cumbersome process which many of our country's innate systems have already been plagued with. Also, it keeps the funds secure from various corruption tactics and ensures the correct usage. A specific section in the scheme itself should mention the formation of the District and State level monitoring body.

CONCLUSION

The country was hushed on this particular issue for a long time despite the laws which protected and provided important rights to the victim because the core issue of awareness was rooted deep down below the other mainstream social interests. If a woman is assaulted and she is not self-aware about her precious rights, there is a major chance that she will not approach the court for justice. It happens on a large scale which lowers down the trust in the judicial system.