

## CRITICAL ANALYSIS ON RE- VICTIMIZATION OF RAPE VICTIMS

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### Abstract

*The victim constitutes the most important as well as the most aggrieved entity in any criminal justice system. The Indian Legislature and Judiciary have not defined 'Victim of Crime' anywhere in the statutes. In, India it is widely believed that victims do not have sufficient legal rights and protections and hence they are considered to be the marginalized and forgotten entity in the entire criminal justice administration.*

*Disclosure of a criminal incident by the victim to others sometimes constitutes a stress inducing experience in itself. The victim of sexual offenses require better psychological environment to make a new beginning in life. But, the Victim Assistance infrastructure is very poor in India and the government failure at rehabilitation of the most serious factor contributing to the pain and plight of the victim.*

*This paper proposes to examine the problems faced by the rape victims including the deprivation of their right to life and personal liberty. Forcefully undergoing uncomfortable procedures and inquiries both inside the court as well as from the people outside. Exploitation by Media and the people concerned by making her a public figure. Interference of various political parties into the matter or changing it as a political issue.*

*Ir-responsive behavior of the legal, medical and mental health systems for assistance depriving the victims from certain rehabilitative and after care treatment. These negative instances have been termed as Second Rape or Secondary Victimization. This psychological harm and inappropriate responses leaves the victim feeling re-victimized or re-raped.*

*This paper also notices the relevant Judicial Dicta that are sought to render victims the right to rehabilitation and suggests changes that are required in order to make the system respond effectively to the needs of victims of crime.*

**Keywords:** Rape, Rape Victims, Secondary Victimization, Victim Assistance

### INTRODUCTION

*"At the most uncharted moments in our lives we reach instinctively on the stock plots available to our generation, as trashy and clichéd as they may be. In the fifties it was love and marriage, or existentialism. Now, if you are a woman, there is another role readily available: that of sensitive female, pinched, leered at, assaulted daily by sexual advances, encroached upon, kept down, bruised by harsh reality. Among other things, feminism has given us this. A new stock plot ,a new identity spinning not around love, not marriage, not communes, not materialism this time, but passivity and victimhood. This is not we want , not even as a fantasy".<sup>1</sup>(Roiphe 1994, 172)*

The woman who is raped is a victim of another persons action and choices , actions and choices that she, as a victim, was incapable of thwarting. She cannot by her own individual will and rational choice, limit determinately the effects of this experience. It has been imposed on her without her consent, without her participation.

*“Ones a victim always a victim”.* This is the dictum of the majority.

A victim of rape is victimized repeatedly, initially in the hands of the police when a complaint is lodged or when investigation is ordered, Secondly, when the trial of the case starts, and lastly, which may never be the least, when the society behaves like a beast against the victims of rape. The net result is the defamation and degradation of the victims of rape in particular and the womanhood in general, which contingencies have to be faced by the victim throughout her remaining life, thus making her life meaningless. At any rate, it becomes impossible for the victim to forget the trauma and tragedy of rape, in as much as every existing protective procedures and legal provisions react as factors in the renewal of the incidents of rape continuously.<sup>2</sup>

### **RAPE VICTIM’S STORY<sup>3</sup>**

A survivor of a gruesome gang rape talked about her journey through the dark and daunting arcade of justice.

*“The judge, my father, my brother, my husband, my mother-in-law and the biraadari—they are collectively raping my head. Still, in the court room, while the trial was on, my clothes were put on display for all to see. For fifteen minutes I had to bear the mockery, and the gimmickery continued while I stood there weeping.*

The perpetrators murdered my soul. And so did the criminal justice system. They together have taken away the part of my life which I would never be able to get back. I feel more antagonized and bruised by the fact that, it was not me alone who suffered at the end of it, but my whole family.”

### **VICTIM’S RIGHTS IN INDIA: STAGE- WISE ANALYSIS**

In a country where a gang raped woman is sent to jail for going back on her statement in court, justice for sexual assault survivors is still a far cry. The existing law is not as effective as it ought to be and whatever be the legal measures available are practically engrafted with ambiguous language, permitting mere Compensation to the Traumatic Victims.

### **REPORTING AND INVESTIGATION: RIGHT OF ACCESS TO JUSTICE**

In the case of gang rape<sup>4</sup> in capital city of Delhi in December 2012 gave rise to public outcry for tightening the criminal law so as to instill its fear. The Central Government constituted a special Committee under the chairmanship of Justice JS Verma (Former CJI).

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<sup>1</sup>Primarily on the basis of recommendations of Justice Verma Committee, first certain amendments were incorporated in Criminal Laws (Indian Penal Code, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012) by an ordinance.

<sup>2</sup>Later, the Parliament enacted a formal legislation replacing the ordinance. Though the objective of these amendments was mainly focused on sexual offences, the reforms introduced by the Criminal Law (Amendment) Act, 2013, also have a bearing on the of the ‘Victim’.

<sup>3</sup>Victim Justice- A paradigm shift in the Criminal Justice system in India, Chapter IV- Voices of the Survivors of Crime, Page 5

<sup>4</sup>The case has been come to be known in media and social intercourse as the case of ‘Nirbhaya’ (the fearless one)

Coming on to the harsh reality, In India ,the police at the first point of the contract, for victims, with the justice machinery , projects themselves indeed mechanically , devoid of empathy and driven by utter apathy. The victim who is supposed to be a recipient of justice , stands dismissed at the very outset, as though fabricating . There is hardly a case where one can see medical examination being carried out with promptitude. It just goes on to show laxity in taking cognizance of the factum of commission of an offence. In Sexual offences particularly, one needs to be conscious to the need of immediately gathering of clinching evidence from the survivor. It is highly discouraging for the victims from pursuing the case and the biggest ordeal they face is when , despite reporting the matter on time, the investigation authorities sleep over the case.<sup>5</sup>

### **MEDICAL EXAMINATION OF VICTIMS OF SEXUAL ASSAULT**

Victims of sexual assault like any other form of violence, encounter disheveling physical and psychological consequences. Section 164-A, which provides for the medical examination of the victims of rape was introduced by the Amendment act , 2005. <sup>6</sup> The recommendatory efforts find their roots in the Supreme Courts directive In Sakshi v Union of India<sup>7</sup>. Medical examination of the victim of rape was fundamental for inclusion in the procedure, since its utility is not restricted to the gathering the evidence from the person of the victim, but also identifies the emergent need for medical assistance

The hospitals may have been staffed with competent doctors and medical personnel, yet that does no good to a victim, unless they are equipped adequately to cater and are trained enough to deal with genres of victimization and their peculiar needs. But at the same time, the practitioner needs to remember all along, that though evidence gathering is one objective of the examination, what is of an equal priority is the fact that the survivor yearns for a healing touch. The victim needs cure for the damage to, not just the body but also the mind and soul. Medical facilities could well serve to counsel the survivors out of at least the psychological trauma they constantly grapple with.

But what can be seen as a perfunctory effort, in the name of treatment and reducing the survivor to virtually an object, devoid of humane streak is a commonly noticeable trend. Rape survivors continue to be subjected to the already discarded highly probable practice of ‘two finger test’.

### **RIGHT FOR VICTIMS OF RAPE DURING TRIAL**

A trial, if it needs to be a fair one ,needs to address the triangulation of interests of the accused, the victim and the society all at once.

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<sup>5</sup> Victim Justice: A paradigm shift in Criminal Justice Systems in India, Chapter IV Voices of Survivors of Crime, Page 59

<sup>6</sup> Ministry of Health and Family Welfare, GOI, Forensic Medical Care for Victims of Sexual Assault, DHR Guidelines, 2013,  
<http://www.icmr.nic.in/dhr/1%20DHR%20medical%20forensic%20manual%20sexual%20Assault.pdf>.

<sup>7</sup> AIR2004 SC 3566

**The Supreme Court in *Zahira Habibullah Sheikh v. State of Gujarat*<sup>9</sup> made the following key observations on Victim Justice:**

*“There has to be a delicate judicial balancing of competing interests, of the Accused, the public and to a great extent that of the victim....Broader public and societal interest require, that the victims of the crime who are not ordinarily parties to prosecution and the interests of the state represented by their prosecuting agencies do not suffer..”*

Court-rooms, where the judge is expected to be in complete charge of the proceedings. There are clear and unequivocal prohibitions in the law against demeaning and scandalous questioning. Despite that the live ambience in courts is quite appalling and different. Survivor’s misery is openly mocked at and eyebrows are raised over the nuances of the incident. This, more often than not goes to the extent of stripping off the victim’s privacy and respect. This is made worse when Prosecutors begin to act for cross purposes. They could be seen as working in the most dissociated manner. Not the least in touch with victim’s case they proceed with the case, without taking the victim on board. The right to avail the services of a private counsel is hardly conveyed to the victims.<sup>10</sup>

**VICTIM’S RIGHT TO DIGNITY, COMFORT, CONFIDENTIALITY AND PROTECTION**

In *Delhi Domestic Working women’s Forum v. Union of India*<sup>11</sup> the Supreme Court had asserted the need to safeguard the anonymity of the Victim of Rape, essentially from the insulting of victims from the potential retaliatory attacks by the accused and also from Secondary Victimization by the society.

In *State of Punjab v Gurmeet Singh*<sup>12</sup>, the Supreme Court highlighted that the in-camera trials would aid to make the Victims of crime a little more comfortable, with the not so familiar and possibly overbearing (for the victim) court room ambience.

But the harsh reality is that their desire to address the court on the impact of the criminal act on them and their family, all goes in vain. They wish to be heard as ‘victims’ and not merely as ‘witnesses’. They are not kept apprised and updated on the status of the case and introduction of crucial pleas by the adversary in the court, such as bail applications, in which the victim has the significant stake. Protection to survivors in the course of the trial or subsequently, nowhere can be seen to be figuring up in the priority list of the state.<sup>13</sup>

Such Judicially recognized stages, which demand the interest of the victim to be significantly considered, highlight the fact that such concerns are well acknowledged and accepted as addressable by the Indian Justice system. However, nowhere do they mention that the Victim must be given a due notification of the proceedings or that they ought to be heard with promptitude at such stages.

<sup>8</sup> (2006) 3 SCC 374

<sup>9</sup> In the Original Petition before Hon’ble Supreme Court, grievances had been raised by the writ petitioner (Zahira Sheikh), herself a Victim, about witnesses being influenced by intimidation. In that case the Court had called for an enquiry.

<sup>10</sup> Supra, Note 3

<sup>11</sup> (1995) 1 SCC 14

<sup>12</sup> (1996) 2 SCC 384

<sup>13</sup> Supra, Note 3

## VICTIM ASSISTANCE: AN ATTEMPT AT CONVERGENCE OF EXISTING SERVICE

If any of the ground realities about the sufferings sustained. It is not just the isolated incident for which the victim needs to be recompensed. The offender and/or the state cannot wish away all the monetary drainage that follows, so long as it could be directly linked to the crime and its consequences.

India, can further opt for providing an effective mechanism to the rape victims by adopting Successful models of Victim Assistance from around the globe. Here are some of the examples

### JAPANESE MODEL

#### *Protection of Victims Crime act, 2004*

This law while seeking to restore the sense of Dignity in treatment for the victims to meet the individual needs of the victims as per the nature of injury suffered , the cause thereof and the circumstances peculiar to each case,<sup>14</sup> the idea being that the Victim be supported until their lives are brought back to normalcy.

### VICTIM AND THE INVESTIGATING AUTHORITIES

Police in Japan investigates a crime only when the Victim files what is commonly known as the 'Damage Report'.<sup>15</sup> They have a unique mechanism of a **Liaison Officer** who acts as a nexus *inter se* the team deep into the investigative endeavors and the victims, so that the victim could seek information as and when they desire from these officers specially appointed to keep the victims comfortable and secure .<sup>16</sup>

Unlike India , the Japanese model has a very distinctive feature , especially as regards the police, whereby it is the police which is obliged to pay for the expenses for the victims of Sexual crimes to seek medical aid and get examined.

### THE DUTCH MODEL

Popularly referred to as *Vaillant Guidelines* <sup>17</sup>, these instruct the police to record the crimes with utmost care and make an official record of the pertinent information concerning the Victim and the interactions inter-se the police and the Victims. The Prosecutor on the other hand is expected to address a letter based invite to the Victim and the interactions inter-se the police and the victims.

The Victims have been given the right to inspect the case file , which is crucial to the case, in the Dutch Procedure as it contains not just the crime reporting by the Victim, but also the Investigative activities of the Police Officials, records of statements made by the accused and witnesses, expert evidence etc. Under the Dutch Procedure if there is a lapse, if there is a lapse in making payment at the Offenders behest, the state is to pay the remainder

<sup>14</sup> *Protection of Victims of Crime Act, Article 3 para 2 (2004)*

<sup>15</sup> *Time period for filing a damage report is now 10 years for Rape Victims*

<sup>16</sup> *Shigenori Matsui, Justice for the Accused or justice for the Victims? 73,*

*http://blog.hawaii.edu/aplpj/files.*<sup>17</sup> *M.S. Groenhuijsen. Legal reform on behalf of Victims of Crime: The Primacy of the Dutch legislature in changing the environment, http://ssrn.com/abstract=1698123*

## DEVELOPMENTS IN SPECIALIST SUPPORT FOR VICTIMS OF RAPE IN THE UK<sup>18</sup>

In, the UK, all jurisdictions have recognized the need to increase access to support and health services for rape victims, including dedicated support services such as rape crisis centres(RCCs) and Sexual Assault Referral Centres and the development of specialist supports and the advocacy roles.

It is within the context of these developments and the appreciation of the Criminal Justice response to Rape, that the Support to report pilot advocacy service was launched in Scotland.

## SUPPORT TO REPORT (S2R)<sup>19</sup>

S2R was launched as a new model of 24- hour advocacy support to assist rape victims at the initial stage of reporting to police. Its objective is to improve the support available to victims of rape, to improve their experience of the criminal justice process and reduce levels of rape attrition.

It is initially designed to be offered by the police to those reporting rape with an On- call advocacy worker called to attend within an hour. However, in response to Victim needs , the service quickly evolved to encompass support delivered before, during and after reporting to police.

The main benefits as described by the Victims were:

- Provision of support and advice about how to cope with Criminal Justice process rather than just information about it;
- Reassurance provided by someone who understands but is independent of the process;
- Assistance in Understanding the Rape Victim's reactions to the process;
- Having support when unable to disclose or rely upon family and friends;
- Having someone to liaise with the police and prosecutor fiscal; and
- Having a consistent point of contact throughout the Criminal Justice process

It is apparent that the expansion of the Pilots services remits beyond reporting to the police and extends beyond conclusion of contact with the Criminal Justice System.

## CONCLUSION

As a traumatic, violent, embodied experience, rape thus does not merely attack the victim's sexuality, or her sense of safety, or her physical being. It does all of this and more. It destabilizes the personhood of the victim and the victim's inter subjectivity at the most fundamental level.

To demand that the victim revert to her previous being –that she simply rise above the experience – implicitly denies the overwhelming effect of such an attack . This is not to say that it is impossible to recover from an experience of rape or that one's reconstructed self is utterly determined by such experience. The extent of the rapists influence is broad, but not infinite. It is however, to say that the reconstructed self will irrevocably be marked by this experience. the victims relationship with her family and friends may almost certainly be strained, may erode entirely, or may ultimately be strengthened; the paranoia, depression, and physical scars of the attack may fade, or they may linger. But the self that emerges from the process of healing will always be qualitatively and profoundly different from the self that existed prior to the assault. To know oneself as not only rapable, but as



raped, is to become a different self.<sup>20</sup>

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<sup>18</sup> Blank K, Lesur M and Logar R (2014) Women against Violence Europe report 2014: Specialized Women's Support Services and New Tools for Combating Gender- Based Violence in Europe. Vienna, Austria: WAVENetwork

<sup>19</sup> Brindley S and Burman M (2012) meeting the challenge? Responding to rape in Scotland.

<sup>20</sup> Rethinking Rape- Ann J. Cahill, Rape as embodied experience; page 137