

SOCIAL SECURITY AND VICTIMS OF RAPE: A COMPARATIVE PERSPECTIVE

Nainy Singh & Dinkar Gitte

A rape victim undergoes an unending traumatic experience irrespective of whether it is an attempted rape or a committed rape, reasons of which are not confined to sexual aspects alone. Harm extends beyond the physical body and the results could be fatal. Staggering social beliefs and faith in the people are common. No suitable legislation enumerates a standard protocol to mitigate these adverse effects and augment social acceptance. International instruments lack social security measures and merely obligate the nations to modify social and cultural patterns of conduct.

The conceptual vagueness accompanied with lack of protective measures has further aggravated victimization. Plethora of cases indicates scarcity of compensation and traumatic experience of victims owing to variant societal attitudes. No rehabilitation schemes are underway. From criminal law amendments to other legalese, our laws have enormously failed to answer the call for rape victim protection at all the stages of investigation. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to protect the women from sexual harassment at workplace. But the extension of similar policies to places beyond workplace is an imperative to ensure proper acceptance of rape victims in our current social order. Patriarchal norms exhibiting reluctance on the part of rape victims to report such crimes enhance further victimization. A national or state policy on social security measures encompassing employment opportunities, comprehensive counseling procedures and insurance policies with adequate monetary compensation is quintessential.

Introduction

Rape is the only crime where the victim becomes the accused owing to prevalent mores of the patriarchal society. Rape causes embarrassment, shamefulness, fear, humiliation and confusion. It is common for the victims to marry the rapists to regain lost self-respect and normalcy. Traumatic experience of the victim is often followed by prolonged segregation and isolation with many waiting until adulthood to disclose the abuse. This is peculiar to male child victims who are prone to the feelings of shame and secrecy leading to questioning of their own sexuality. Many victims

distort parts of their stories and misrepresent facts especially to conceal their own bad behavior such as taking drugs, alcohol, etc. Sometimes, the rapists may intentionally want victims to engage in such illegal behavior only to build a layer of protection for them should the victim report the crime.⁴⁷³ Victims of sexual assaults are prone to suffer in silence with severity and are most likely to contemplate suicide or depression, alcohol abuse and drug abuse. Sexual aspects of rape form the major cause of post traumatic experience. Almost all the rape victims suffer restlessness. Such assaults are immediate and often fail to give adequate time to the victim for necessary preparation and recovery. Victim being the victim of assailant's rage and aggression loses control and is forced to participate in the crime. Harm extends beyond the physical self to misjudged assumptions and beliefs concerning safety, competence and societal acceptance. Different victims have different reactions. A stressful and violent assault is generally accompanied by threatening emotions of significant loss and incapability of successful recovery. If the physical or emotional integrity is threatened, it is likely to perpetuate anxiety and depression. Anxiety is the short term effect while depression is the long lasting result of the trauma. Victim reactions may exhibit in different forms and phases though nature of the event has direct repercussions on the problem solving and healing abilities of the victim. Suicide forms another symptom of post-stress traumatic stress disorder.⁴⁷⁴ Stigmatizing cultures, strong customs and taboos augment suicidal thoughts and attempts. Among several backward countries including India, a raped female victim is referred to as 'unchaste' and 'damaged'. They suffer isolation and are disowned by family and friends. Consequences may also extend to subsequent bar on marriage, divorce, if already married or honor killing. This tendency is often referred to as secondary victimization. Moreover, it is a misnomer to characterize rape as necessarily involving physical force though death and physical injuries are common. Adverse consequences of rape include vaginal bleeding or infection, vaginal inflammation, unitary tract infections, HIV, pregnancy and other fatal diseases. Rape also exposes victims to increased risks of sexually transmitted diseases. Coercive vaginal penetration facilitates the entry of viruses leading to severe infections and variant psychological impacts ranging from anxiety and

⁴⁷³ Plethora of anti-rape organizations in the west are working in the direction of providing free educational and confidential services among the victims of sexual assaults comprising mainly of women and children. They are committed to development and dissemination of resources for the purposes of elimination of all forms of victimization primarily of women through massive support and intervention.

⁴⁷⁴ The term 'Post-traumatic Stress Disorder' or PTSD was initially used for military veterans who experienced such disorders during combat. It was later extended to crime victims and is used to denote symptoms such as sleeping disorders, anxiety, anger, aggression, detachment and estrangement.

depression to low self-esteem. Rape victims often resort to self blame which eventually results in anger and isolation. Victim blaming emanates from social conditioning of the victim. In majority of the cases, for instance, victim is held responsible for wrong dressing or flirting. They are seen as provocateurs of sexual assault.⁴⁷⁵

Victim's compensatory rights

Victim compensation has been recognized as an integral part of the justice system by the international community. Right to compensation is an enforceable right in the form of an effective remedy under Universal Declaration of Human Rights, 1948⁴⁷⁶ and International Convention on Civil and Political Rights, 1966.⁴⁷⁷ The European Convention for the protection of Human rights, 1950⁴⁷⁸ and American Convention of Human Rights, 1969⁴⁷⁹ confers upon person benefits of compensation in case of incorrect sentencing. However, the right received much awaited recognition post Declaration of Basic Principles of Justice for victims of crime and Abuse of Power of 1985.⁴⁸⁰ United Nations Organization emphatically talked about the necessity for compensation in the Declaration of Basic Principles of Justice for victims of crimes and Abuse of Power and the Basic principles and guidelines on the right to remedy and reparation of victims of Gross violations of International Human Rights Law of 2005.⁴⁸¹ Federal law of United States have statutorily recognized the right to compensation enabling the victims to recover costs of medical care and lost wages. Crime Victims Compensation Act was passed by different states from time to time enabling the family members of the victims to be compensated for financial losses that were not covered by insurance, medical care, worker's compensation funds and other restitution payments. Crime Victims Compensation Commission has been established for award of payments for criminally injurious conduct. Ascertainment of damages is based upon law of torts and is not confined to

⁴⁷⁵ Victim blaming is prevalent in countries with greater division in equality of sexes.

⁴⁷⁶ Right to compensation is implicit in the form of an 'effective remedy' in instances of violation of human rights.

⁴⁷⁷ *International Covenant on Civil and Political Rights*, December 16, 1966, 999 UNTS 171.

⁴⁷⁸ *European Convention for the protection of Human rights*, November 4, 1950, 1496 UNTS 4.

⁴⁷⁹ *American Convention of Human Rights*, November 22, 1969, 1144 UNTS 4.

⁴⁸⁰ General Assembly resolution 40/34, Declaration of Basic Principles of Justice for victims of crime and Abuse of Power, A/RES/40/34 (29 November, 1985), available from <http://www.un.org/documents/ga/res/40/a40r034.htm>

⁴⁸¹ General Assembly resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, A/RES/60/147 (16 December, 2005), available from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf?OpenElement>

economic losses alone. Waiver of compensatory rights is possible in cases of non-reporting of crime within the stipulated period or victim's willful or contributory misconduct. Besides, crime victims compensation fund has been constituted under the assumed responsibilities and duties of federal treasury departments. Most of the cases require rapists to extend financial help in lieu of probation, parole or work-release privilege in addition to funded compensation. The legislature intends to encourage restorative payments through courts irrespective of state funds. The statute bars the creditors to proceed against the victims in consumer courts for recovery of debts.

The Violence against Women Act of 2013 is yet another legislation that evolved with the objective of mobilizing funds for prosecution and investigation of violent crimes against women. It envisages mandatory restitution by convicts and election of civil or criminal suit by prosecution. It has firmly established office on violence against women with the department of justice. Innovative aspects of this law is the importance given to the aftermath effects of sexual assault through various programs and services such as community violence protection programs, funding for victim assistance services consisting of rape crisis centre and hotlines for disabled victims. Besides, many non-profit organizations are working in the direction of victim rights to restoration through compensation and other protective strategies. These organizations have devised several programs and assistance networks ensuring that the immediate needs of victims are met. In England, compensation to rape victims is the prerogative of Criminal injuries compensation Board which was established in order to ameliorate the deplorable conditions of victims who could not approach the court to ventilate their rights.⁴⁸² Several other organizations assist in expanding government and police initiatives for protection of victims.

Philippines hold an extensive network for protection and assistance of rape victims. The parliamentarians of Philippines took concrete steps in victim protection and enacted comprehensive legislation comprising assistance networks which are not limited to sexual abuse and exploitation. Recognizing the adverse effects of rape endured by the victims and lack of services to redress their peculiar needs, the law seeks to provide financial resources, child care support, medical and legal assistance, employment and psychological counseling. The Rape

⁴⁸² Anonymity in cases of rape and sexual offences is given primacy by the Criminal Justice Act of 1988. Statutory rights in sexual assault cases are carved out from the Sexual Offences Act of 2003.

Victim Assistance Protection Act of 1998 has emerged immensely successful in terms of shaping a center based regime running parallel to government agencies and non-government organizations with potential resources to address the needs of crisis survivors.

Compensation policies in India

Indian rape law safeguards victim's privacy. Bar on disclosure of identity prevents further re-victimization by the local communities though infringements are witnessed on behalf of the government itself.⁴⁸³ The fear of being 'ousted' by the society ensures that the victim refrains from reporting the crime to the law enforcement agencies. Their privacy rights assume utmost importance owing to their vital role in identification of sex offenders. Regressive Indian society is infamous for imposing unfair, unscientific and degrading tests upon rape victims to evaluate if they have had a previous sexual experience seldom sexual security for rape victims.⁴⁸⁴ In the popular Madhyamgram rape case, a girl was repeatedly gang-raped twice in October 2013 and was set ablaze that resulted in her immediate death. Her parents had to make constant efforts and requests to the government which eventually led to the approval of compassionate employment in the government services followed by sanction of meager compensation of one lakh rupees. The Ministry referred to the compensation amount as "ex-gratia" payment.⁴⁸⁵ Conversely, Himachal Pradesh government recently approved a social security scheme for rape victims inclusive of financial assistance, shelter, counseling, medical aid, legal assistance, education and vocational training. Victims have now become entitled to restorative support services up to the maximum

⁴⁸³ Indian Supreme Court is pushing the Central Government to evolve social security schemes and other welfare measures for rape victims post gang rape of two girls in Betma in Indore District of Madhya Pradesh. The High Court had merely sanctioned Rupees two lakhs as compensation which was subsequently increased to rupees ten lakhs by the Apex Court in recognition of the fact that no monetary compensation can restore the dignity and confidence of a rape victim and that such a meager compensation is a mockery of Indian criminal justice system and a serious infraction of human rights. The Court also emphasized upon measures such as adequate compensation, insurance, employment and social security schemes for victims to ensure proper rehabilitation at least to some extent. See J. Venkatesan, *Rs.2 lakh for rape victims a mockery of system: SC*, THE HINDU (August 6, 2013), <http://www.thehindu.com/news/national/rs-2-lakh-for-rape-victims-a-mockery-of-system-sc/article4993008.ece>

⁴⁸⁴ Donald G. Mcneil Jr., *Rape: Rights group calls test to determine sexual activity a second assault in India*, THE NEW YORK TIMES (September 13, 2010), http://www.nytimes.com/2010/09/14/health/14glob.html?_r=0

⁴⁸⁵ Press Trust of India, *Bihar approves job for Bengal gang rape victim's father*, THE TIMES OF INDIA (January 21, 2014), <http://timesofindia.indiatimes.com/city/patna/Bihar-approves-job-for-Bengal-gang-rape-victims-father/articleshow/29170079.cms>

limit of seventy five lakh rupees.⁴⁸⁶ Compensation is, thus, meant to provide basic assistance and comfort to the victim when the lost dignity cannot be fully restored.

Our criminal justice system, in general, does not prioritize compensatory rights seldom bring other social security measures and reforms in the forefront. Our constitution mandates establishment of a welfare state while crimes are the product of failure of state machinery. It is incumbent on the state machinery to constitute funds for victim compensation in conformity with the prevalent rates of crime. The irony with such a compensation mechanism is that the state gets to decide the priorities in compensation. State has the sole discretion to direct its economic resources towards fulfillment of the legitimate interests of the victim. The compensatory policy in India neither casts any legal obligation on the judge to award compensation nor makes it imperative to record suitable reasons for not doing so. Release of funds for compensation remains the discretion of the judge without any responsibility of the state for the loss or injury suffered by the victim. Such discretion has emerged as the vanishing point of victim compensation laws in India. It becomes inevitable to expand the contours of discretionary powers and obligate the judiciary to award adequate compensation by converting it into a statutory right so that it does not remain dependent upon ineffective institutional mechanisms of recovery in the current criminal justice system. Though plethora of funds was established in the past yet they failed tremendously in extending the required assistance for restoring the normalcy in the life of the rape victim. Dispensation of funds could not be successful due to lackadaisical attitudes of the bureaucracy and the government. Such obliviousness has degraded the quality of life of many victims who heaped massive hopes of a new beginning free of stress and full of peace.

Victim must not be forgotten for reasons of absence in the state versus accused trial. Status of victim has been reduced to a mere witness with no significant rights of appeal even in cases of heinous crimes such as rape. State assumes the discretion to proceed or withdraw from the prosecution. This is in derogation with the very essence of victimology as many cases go unreported. Such lack of apathy or other political motivations by state investigative agencies represent poor state of affairs in the criminal administration of justice. The Apex Court, however,

⁴⁸⁶ Express News Service, *Himachal cabinet approves social security for rape victims*, THE INDIAN EXPRESS (September 19, 2012), <http://archive.indianexpress.com/news/himachal-cabinet-approves-social-security-for-rape-victims/1004772/>

introduced novel methods, devices and schemes for giving true meaning and purpose to the fundamental freedoms enshrined in the Indian constitution for rehabilitation of rape victims. Plethora of decisions taken by Supreme Court are inclined in awarding adequate compensation to the victims as and when cases arise either through Public Interest Litigation or otherwise. Ignorance and lack of resources remain major obstacles in delivery of justice and protection of human rights. The General Assembly of the United Nations recommended compensatory payments to be made by the state where other sources are unavailable. Owing to deplorable affairs in compensating the victims of rape, the state has rather emerged as a mute spectator in addressing victim needs of psychological help, medical therapies and better employment opportunities. Survivors of rape who are courageous and determined end up dilapidated owing to lack of focused provisions to aid in normalization of life. From the last three decades, National Commission for Women have constantly failed to implement schemes for Relief and Rehabilitation of victims of rape for the probable reasons of scarcity of funds by both Central and State governments.⁴⁸⁷ Reasons for such circumstance perhaps emerge from the delays in release of funds by the central government to the state governments. Shockingly, the stance of the government remains unaltered despite inclusion of protective provisions in the criminal procedural laws of the country. Once a First information Report is lodged, for instance, it becomes mandatory to forward interim compensation to the rape victim.⁴⁸⁸

Another major concern of rape is the unwanted pregnancy. The law excludes few instances from being qualified as 'rape' including penetration of foreign objects where pregnancy remains an unforeseen event. Similarly, rape is not committed where the rapist chooses to wear condoms or the female victim is incapable of becoming pregnant owing to medical reasons or age related reasons. Despite alteration in the definition of rape under section 376 of the Indian Penal Code in 2013, no concrete endeavors have been made in the direction of victim protection. Justice J.S.

⁴⁸⁷ Courts are questioning the Indian government's inability and insensitivity in constituting funds for rehabilitation of rape victims. See Rosy Sequeira, *High court to state: Where is your sensitivity to victims of rape*, THE TIMES OF INDIA (JULY 23, 2013), <http://timesofindia.indiatimes.com/city/mumbai/High-court-to-state-Where-is-your-sensitivity-to-victims-of-rape/articleshow/21255602.cms?referral=PM>

⁴⁸⁸ Indian legislature resorted to an innovative approach through introduction of series of amendments in the year 2008 in the Criminal Procedure Code that regulates the procedural aspects of crime within the criminal justice system. These amendments ordained completion of rape trials within the span of two years, appointment of women judges and examination of victim only in the presence of her parents or social worker. It assumed the goal of victim justice but turned futile as the penultimate discretion for awarding compensation rests with the judge. Some scholars also refer to it as the vanishing point of Indian victim compensation law.

Verma report following the Delhi Gang Rape case pays no heed to victim rehabilitation.⁴⁸⁹ Even the Law Commission of India has not been proactive in stressing over the need to establish institutional mechanisms to foster recovery of lost respect and dignity of rape victims.

No mechanism for monetary compensation is contemplated under the Indian Penal Code. Compensation is not a 'right' and may depend upon the acquittal or conviction of the accused. A comprehensive legislation or a statutory scheme for compensation is quintessential to fill the legislative vacuum of rights to compensation. Prerequisites of a comprehensive rehabilitation scheme are physical and psychological therapies, free long-term counseling, social security, education and employment opportunities and adequate compensation. Such support systems exist only on paper and emerge as a gross violation of human rights though few instances of relief do exist due to the proactive role of the judiciary. It is inevitable for the legislature to recognize this right as directly emanating from right to life and liberty enshrined in article 21 of the constitution.

⁴⁹⁰ Law enforcement agencies and the judiciary need to take initiatives in forwarding timely assistance to victims. Priority of improvement in the plight of rape victims must not be compromised by reason of extenuating circumstances. The authorities should have a broader vision in rendering maximum benefits to the rape victim and not to get swapped by minor discrepancies in the witness testimonies. Constant support becomes mandatory for reducing shame and guilt of the victim. Thus, social security measures should encompass comprehensive counseling procedures and medical therapies aimed at efficient rehabilitation of victim.

Conclusion

Victim rights have always been debatable though significant contributions in the development of protective strategies is owed to the field of victimology. These developments in conjunction with profound research on victim impact have resulted in crisis interventions such as counseling procedures, court services and self-protection programmes. Victims need to be assured that they

⁴⁸⁹A medical student was brutally gang-raped in a moving bus on the fateful night of 16th December, 2012 in New Delhi that triggered massive protests and demonstrations in the country for imposing death penalty on the culprits. None of the police officers on the spot were willing to register first information reports owing to jurisdictional issues. The victim died at the hospital in Singapore. The whole nation vehemently sought death penalty for culprits as a direct punishment for offence of rape.

⁴⁹⁰Supreme Court directed establishment of Criminal injuries compensation Board for awarding compensation based upon specific parameters such as pain, trauma and shock experiences, loss of earnings due to unwanted pregnancy, medical expenses, and expenses for child birth. However, the Board still remains non-existent. See *Delhi Domestic Working Women's Forum v Union of India*, (1995) 1 SCC 14 (Supreme Court).

possess enormous strength and capabilities to overcome the undesirable consequences of rape and lead normal lives with all probabilities. Variant victim responses suggest expressions of fear, anguish, anxiety, confusion and shock. While some are likely to isolate or withdraw themselves yet others seem to carry on with their lives normally as if nothing had happened. At this point of time, it becomes crucial for victims to assume control in taking decisions as and when it deems necessary. Victims need to be made aware of the significance of reporting such crimes to the police and that the blame and responsibilities of the abuse lies solely on the abuser. Indian government should underline the need to formulate compensatory boards as existing in the west. Sexual assault referral centers may be established with trained counselors and doctors. The law enforcement machinery should undertake strategic interventions in terms of arranging advisors for sexual violence and starting rape helpline for immediate and confidential reporting of crime. Victim support in its essence means revering their decisions and choices thereby ensuring inviolate physical and emotional integrity.