

RIGHTS OF A RAPE VICTIM: A LEGAL ANALYSIS

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INTRODUCTION

Rape is one of the worst and most heinous offence that occurs in our society for a long period. The word rape means as per the dictionary is a violation or attack of a girl against her will. However, the rape would not be happened by the two girls because of physical concerns and after the incident, she is traumatized and it is incredibly complicated for a girl to be discovered of this trauma. In India, this is known as a cognizable offence and there are several legal provisions in statutes for this concern. In Section 375 (1) of IPC, the word rape is lawfully explained and also defines its penalty. According to the section, whenever a man is committing sexual intercourse or penetrates a girl without her will or consent then it would be rape. However, the meaning of Penetration is that merely the slightest touch of the penis to the vagina would rape. According to UN Crime Trends Survey 2010, the U.S. recorded 85,593 cases of rape in that year followed by Brazil with 41,180 rape cases. In 2010, a total of 22,172 rape cases were registered in India.¹ In 2018, according to the National Crime Records Bureau's Annual report that rape cases were filed in India around 94000 which says in every 15 minutes one rape has occurred in India and the conviction rate is 27%, and 54% of cases are unrecorded yet.²

THERE ARE SIX IMPORTANT RIGHTS OF A RAPE VICTIM

1. Right to Zero FIR - The meaning of zero FIR is much more relatable to the concept of FIR. It denotes that an FIR has been registered instead of the place where the crime occurred. In such a circumstance, the police officer would not be refused to register the FIR to say that they have no jurisdiction to take it. Thereafter, the FIR would be transmitted to the police station where the actual jurisdiction of the committed offence and investigation would be commenced. This concept was mainly introduced to be added in the Criminal Law

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¹ The Hindu, India in rape cases, second in murder in the world, available at: <https://www.thehindu.com/news/national/india-is-third-in-rape-cases-second-in-murder-in-the-world/article6242011.ece> (last visited on 06.04.2022).

² "Crime in India Report 2018", National Crime Records Bureau, p. XV, available at: <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf> (last visited on 05.04.2022).

Amendment by Justice Verma's Committee report after the occurrence of the Nirbhaya Rape Case. In the case of *Kirti Vashist vs State and Ors*,³ the Hon'ble Delhi High Court held that a victim has the right to file an FIR in any police station even beyond the jurisdiction of the police station and such an FIR would be registered by the police officer without any inquiry and delay. On the other side, In the case of *Lalita Kumari vs. State of U.P. and Ors*,⁴ the five judges bench of the Hon'ble Supreme Court laid down that under Section 154 of the Code of Criminal Procedure the registration of an FIR is mandatory and no preliminary inquiry is permissible and it is a duty of a police officer that he would not avoid his duty from registering an FIR even if any police officer who does not abide his duty then reasonable action must be taken against such an erring officer.

2. ***Right to free medical treatment in any private hospital*** - Section 357C of the Code of Criminal Procedure confers that every hospital either public or private would not charge any fees for the medical treatment of a rape victim whether it is controlled by any State Government or Central Government, any local bodies or any other individual. They have to immediately provide medical treatment or first aid based on free expense. On the other side, section 166B of the Indian Penal Code provides that if any hospital either public or private sought fees regarding the medical treatment of a rape victim then they would be punished with imprisonment up to one year or with a fine or both.
3. ***No two-finger test during the medical examination*** - The Hon'ble Supreme Court laid down that the two-finger test is a violation of the right to privacy of a rape victim and said the government to confer adequate medical treatments to ensure the sexual victim. According to Section 164A of Cr.P.C. where the provision confers that during the investigation of a rape attempt to commit then it would be examined by a registered medical practitioner or a medical expert with the consent of such rape victim and without delay examine and prepare a report of the examination such as name and address of the victim and of the individual by whom she was taken, the exact age of the victim, the explanation of material taken from the individual of the victim for DNA profiling if there are any marks of injury on the person of the victim, other reasonable details, etc. Thereafter, the report would record the consent of the victim or the person who is competent to confer such consent on the behalf of the victim to obtain the examination, the actual time of beginning would also be noted in the report of examination. After that, without delay the registered

³ CRL. M.C. 5933 of 2019.

⁴ [AIR 2014] SCC 1.

medical practitioner would forward the report to the investigating officer then he shall forward it to the Magistrate under Section 173 Cr.P.C. clause (a) sub-section (5). In the case of *Lillu alias Rajesh vs State of Haryana*⁵ the Hon'ble Supreme Court laid down that the Two finger test and its interpretation is infringing the right to privacy and dignity of a rape victim therefore, it would be illegal. However, a doctor is to test concerning the injury is in private parts or not. Whether the offence occurred by the victim or not? Is there any current sexual activity that occurred or not? But we have to remember that no doctor has the right to test regarding the prior sexual activity of the rape victim.

4. ***Harassment free and time-bound police investigation*** - According to Section 154 (1) of Cr.P.C. the information of the rape victim would be recorded by a woman police officer or any woman officer and the place would be determined as per the convenience of the victim and the atmosphere shall be friendly in the presence of her parents and guardian. Thereafter, the statement of recording would be entitled to the Magistrate as per Section 164 (5-A) of the Cr.P.C. and a woman police officer would bring the sufferer to court and the statement can be recorded in the chamber of the Magistrate. The objective of committing the same is to test whether the declaration reported by the police is valid or not. Moreover, if the victim is mentally and physically disabled to communicate then an analyzer educator's social interpretation has to be present at the time and the statement of the victim shall be videography.
5. ***Trail with full dignity, speed, and protection*** - According to Section 26(a) of Cr.P.C. the trial would be tried by a woman judge as far as practicable and no question shall be asked to the victim which terminates her character. No question can be asked of the victim about her previous sex history which is irrelevant as per Section 53A of the Indian Evidence Act. Section 327(3) of Cr.P.C. provides that nothing can be printed and published where any proceedings are held under sub-section (2) of the section without the previous permission of the Court and complete the investigation within two months from the date on which information has been recorded by the police officer as per Section 173(1-A) of the Cr.P.C. and trial shall be completed within two months from the date of filing the charge sheet in Court as per Section 309(1) of the Code of Criminal Procedure. In the case of *Mahender Chawla vs Union of India* (AIR 2018) Hon'ble Supreme Court explained a thorough guideline for the protection of witnesses that if a witness doesn't seek to disclose his/her name or originality in the court then he/she can submit an application to the court and the

⁵ [AIR 2013] SSC 641.

court would entertain the witness of an individual with another name and the actual identity would be protected confidential.

6. Right to get Compensation - The Government has introduced a *Central Victim Compensation Fund (CVCF) Scheme* to enable support to victims of rape. Until now 24 States and 7 UTs have recognized the Victim Compensation Scheme.⁶ According to section 357A, sub-section (1) of Cr.P.C. “every State Government in coordination with the Central Government shall prepare a scheme for conferring funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who requires rehabilitation.” In *Nipun Saxena v. Union of India*⁷ National Legal Service Authority introduced this Compensation Scheme. Further, in *Serina Mondal Alias Piyada v. The State of West Bengal*,⁸ the compensation is given to the victim because the State is unable to safeguard her Fundamental Right which is conferred by the Constitution of India u/a 21. The Hon’ble Supreme Court allegedly stated that the victim is entitled to get compensation even if the accused is not convicted by the Court due to substantial evidence.

CONCLUSION

Due to this worst and most heinous offence, many people suffered their whole life and they are scared of getting slandered. However, if you believe in a straight manner that bringing an action is better than walking back due to society's impact. However, it is most crucial to know that our government laid down the laws for protecting and ensuring the proper investigation in favour of a rape victim. Regardless, the more valuable thing is to keep in our mind that the heinous crimes can eradicate a woman's entire life and from day by day as we are going towards an educated society where we can be sought to maintain dignity and respect our moral values. It is our moral obligation as human beings that we must maintain law and order in a society where every woman can live without any fear of living for getting raped.

⁶ *National Legal Services Authority, Compensation Scheme for Women Victims/Survivors of Sexual Assault/ other Crimes*, 2018, available at: https://wcd.nic.in/sites/default/files/Final%20VC%20Scheme_0.pdf (last visited on 06.04.2022).

⁷ WP (c) no 565/2012.

⁸ [AIR 2018] SCC Online Cal 4238.