



**Rehabilitation of The Victims of Rape in The Present Times: Did We Really
Come A Long Way?**

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ABSTRACT

The human history has witnessed the dominance of state being the primary party in criminal cases. As a result, the focus had always been on adequately punishing the accused and the loss suffered by the actual victim was neglected. With cases like Rudal Shah v. State of Bihar and Rattan Singh v. State of Punjab, the status of victims improved as the need to adequately compensate the victim was highlighted and various steps were taken simultaneously. In the same manner, some steps were taken to compensate and rehabilitate rape victims especially after the case of Nipun Saxena v. UoI. However, it is seen that providing compensation covers only a small aspect of a bigger picture. On the other hand, victims are being rehabilitated in the same society which directly or indirectly practices victim shaming affects their health, both mentally and physically, leading them to commit suicides. The question which arises here is how far we have really come when it comes to rehabilitation of victims of sexual offences when there exists a clear lag between the laws made to be implemented in the society and the society itself.

Keywords: Victim, Rape, Rudal Shah



INTRODUCTION:

It is an established fact that man is a social animal. Living in isolation is not one of his basic instincts. Therefore, he associates with people. This association keeps on growing and forms a society. Another established fact is that everyone cannot have identical or even similar interests. Interests vary from person to person and at some point of time, it becomes necessary to recognize which interest goes on in consonance with the general interest and which interest contradicts with them. Any harm committed to the body or property of any member of such society has been recognized as serious wrong.

Therefore, the society recognizes the acts and omissions that are in consonance with the interest of the society and the ones contradicting the same and have set norms for the conduct of human behaviour. In the ancient times, these norms existed in the form of religious obligations and regulated the behaviour of the members of the society. Today, we have an established legal system to regulate the conduct of the society as well as provide justice to the ones who have suffered losses.

However, the criminal justice system has not developed in the direction it ideally should have. All the acts that harmed any member of the society in the manner of impacting the society at large are termed as crimes. And those criminal acts that are recognized by the legal system and have predetermined punishment for them are called offences. The problem with its development was that it failed to lay emphasis on the victim as well as the offender. Instead, the focus was laid on creating deterrence in the society to prevent the commission of such offences.

Even in the ancient times, the society was regulated by religious norms. The anti-social acts were punished with severe punishments like the fire ordeal, water ordeal etc and the judgement was left on the Almighty. If the offender dies while performing such ordeal, it was considered as justice delivered to the victim. But the main intention of carrying out such ordeals was only to create fear in the minds of the members of such society to restrain from committing such acts. The problem with this system was that it never bothered as to what the victim actually wanted in the form of justice, i.e.; the actual victim and his interests were suppressed before the interest of the society.



Even the modern-day criminal justice system has been performing on the same notion. The Indian Legal System has been established and performed in a similar fashion for a very long time. It is only in the recent years that various changes were brought to this system and focus shifted to the actual victim as well as the offenders instead of the society.

The main focus of the criminal justice system has always been the society and inflicting a harsh punishment on the offender. This was the embodiment of the deterrence theory as well as the retributive theory. Then the focus shifted from the society to the offender. This included measures for the reformation and rehabilitation of the offenders. The focus shifted from retribution to improving and reforming the offender himself so that he refrains from involving himself in such activities, that is focus was laid on the reformation of the offender.

Even in the middle of this shift, the interests as well as the victim himself stood ignored. The system was such that the victim has been left with no or very little assistance. In other words, the invasion on his or her dignity did not create much of a concern to anybody. The significance of the actual victim was limited only to report the crime and initiate the proceedings. As quoted from Dipa Dube's *Victim Compensation Scheme in India: An analysis*, "Justice has failed to redress the wrong perpetrated by the offender on the victim"¹. As a result, the victim has remained a 'forgotten party' to the criminal justice system.

For a very long time, the role of justice was limited to providing punishment to the offender because the primary victim remained the society and the apt remedy remained the segregation of such person from it so that such activities are not motivated. It was only after the introduction of the concept of victimology that some focus was put on the interest of the victim as well. This question has been raised by the courts on various occasions. In the case of *Robtash v.State of Haryana*² the court questioned-

¹ Dipa Dube "Victim Compensation Scheme in India: An analysis", *International Journal of Criminal Justice Sciences*, Vol 13 Issue 2, July – December 2018.

² 2013 14 SCC 434



“Should Justice to the victims depend only on the punishment of the guilty? Should the victim have to wait to get justice till such time that handicaps the system which results in large scale acquittal of guilty, are removed?”

It is only after this shift in the focus that the criminal judicial system identified that justice is not merely delivered with the pronouncement of the punishment of the offender nor is limited to the society. Instead, justice will be considered to be delivered when it reaches to the person who suffered the actual loss in the form of loss of his dignity, property or had to undergo severe pain etc.

In *Dr. Jacob George v. State of Kerala*³, the court addressed the cry of the victims in the following manner-

“The victims have a right to get justice, to remedy the harm suffered as a result of the crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the state in a society governed by Rule of Law...”

Now when the horizons were broadened to identify the needs of the actual victims, it was important for the country to take measures by establishing mechanisms to go a step further and ensure that the loss suffered by the victim is reduced to the maximum extent. Although, it is difficult to make estimations in these cases especially if the wrong has been committed against the body of the victim. Moreover, in case of sexual offences, it becomes even more difficult to find out an apt remedy so that the victim regains her position in the society. In other words, the victim is rehabilitated in her own society with the same status as she enjoyed earlier. But this is next to impossible especially in a country like India where a large population seems to impose the responsibility of such offences on the shoulders of the victim itself because of the discriminatory attitude prevalent since time immemorial.

Among various sexual offences, the offence of rape stands to be one such offence that scars the present as well as the future of the victim. In fact, it scars the victim for life in such a manner that she, being the victim, is blamed by the society for the heinous act. Moreover, in various cases, the basic unit of society, i.e. the family of the victim itself

³ 1994 SCC (3) 430



refuses to accept her as a part of it. Similarly, she is forced to segregate from the same society she was an active part because of such incident. In this dimension of reality, it becomes important to find out the measures the state has taken to reduce the perpetual pain of the victim as well as the present condition and problems faced by the victims.

VICTIMS OF RAPE AND RESPONSE OF INDIAN SOCIETY

In today's world sexual offences see no gender or age. But women and children constantly remain on a higher risk, it remains the reality of every country in the world and India is no exception to it. Moreover, India is unfortunately recognized for its gender discrimination where males are put on a much higher pedestal than the females. Females are considered as a mere responsibility by their families while males are considered to be the future. Almost all the time, the demands of the males are considered much more important than the request of the females of the same family.

In such scenario, most of the wrongs committed by males are termed as mistakes and innumerable chances are given to them to overcome such behaviour. But it only acts as a motivating factor for them to continue committing wrongful acts because they know that they will not be punished and people will take in a mild manner.

On the other hand, people tend to be way stricter with slightest of the mistakes committed by the females in the society. In such scenario, the limits as well as domain of rights of individuals get diminished and in no time, people believe that their right extends to the body and property of others as well because there is no authority to prevent them from doing so.

These are one of the reasons which motivate sexual offences against women, i.e. the males are conditioned in a manner that they have a right over the female counterparts and there is no harm in doing so because the society will consider it as well as a mistake.

Coming specifically to the offence of rape, as grave as the offence is in itself, it remains equally neglected by the members of the society. The offence of rape has been recognised in the Indian Penal Code and the punishment has been provided as well. But the lack of victim sensitivity is reflected from it.



Firstly, the act of rape is motivated by various factors and when such acts are to be punished as well, the focus remains on punishing such offenders and that such acts are prevented in the society. But the focus has never been on the actual victim. Various attempts have been made to recognize the causes and reasons behind such a heinous offence, but these efforts are incomparable with the efforts made to improve the life conditions of the victim to lead a normal life.

According to the Times of India Article, on an average 106 women are raped every single day⁴ and various reasons are attributed to it, including judging the character of women by the clothes she wears and the heavy makeup they apply, it has been recognized that the initiatives cannot be implemented properly unless the reasons are analysed properly. It is because the one of the realities of the Indian society happens to be the fact that the offence of rape happens to be an offence of reflecting power and display of a superior position. Most of the time, the rapists attempt to kill the victim so that the act cannot be proved at all. However, the article recognizes another bizarre reality, i.e. the victims of rape are always on the verge of victimisation again and again. Even though, we fail to recognize the plight of the victims of rape and sexual assault.

According to the website HelpGuide⁵, the legal system has failed to identify the trauma a woman goes through after being a victim of rape. As quoted from their article, “Recovering from Rape and Sexual Trauma”⁶:

“The impact of sexual violence goes far beyond any physical injuries. The trauma of being raped or sexually assaulted can be shattering, leaving you feeling scared, ashamed, and alone or plagued by nightmares, flashbacks, and other unpleasant memories. The world doesn’t feel like a safe place anymore. You no longer trust others. You don’t even trust yourself. You may question your judgment, your self-worth, and even your sanity. You may blame yourself for what happened or believe that you’re “dirty” or “damaged goods.” Relationships

⁴ <https://timesofindia.indiatimes.com/blogs/legally-speaking/what-causes-rapes/>

⁵ HelpGuide is a non-profit mental health and wellness website that helps various victims undergoing trauma due to numerous reasons. It is a highly focused group having deep expertise in psychology, research and health.

⁶ Recovering from Rape and Sexual Trauma, available at: <https://www.helpguide.org/articles/ptsd-trauma/recovering-from-rape-and-sexual-trauma.htm#>



feel dangerous, intimacy impossible. And on top of that, like many rape survivors, you may struggle with PTSD, anxiety, and depression.”

These are some issues that have remained untouched by the authorities when it comes to the welfare of the victims. It still remains questionable what kind of rehabilitation may be provided to the victims of rape when the society itself is not ready to accept the victims of rape in the mainstream. That is to say, the victims of rape are not seen to be at an equal footing with other women as well. Moreover, the victims are reminded of the heinous offence committed every now and then by men as well as women.

Apart from the rude behaviour, the victims are constantly reminded of what they could have done to prevent it from happening to them, but they couldn't, so they are partly at fault. However, no one tries to understand the plight of the victim when they say their mind froze or they couldn't think properly as to what to do. Instead, the shame is shifted on the victim itself.

Further, the response of the society is so poor that the victims are conditioned to prepare for flashbacks and traumatizing memories because the society is bound to repeatedly ask and remind them about the trauma. However, it becomes their responsibility not to get triggered by such memories and control their reactions. Basically, the society stigmatizes them when they are brought back to the society, forcing them to be isolated in order to escape the triggers. In other words, the society creates such situation that leads to the victim to outcast herself. And if they want to become an active member of the society or even be a part of the society, then the first step that is left for them is to break the established thoughts and mindset of the society. In other words, they have to fight against the social norms to be a part of such society.

The question here arises whether this is the society that the victims deserve to be rehabilitated in the first place. Because the efforts of the state extend to the rape victims in the form of compensation and rehabilitation so that the victims to the same society which keeps on questioning the chastity of such victim, the question stands whether justice is being done to the victims in the first place? Here comes the question of what the state has done in order to provide justice to the victims of rape when the guilt is proved.



As of today, we as citizens are more aware what rape is yet the support is provided only until the guilt is proved. The future of the victim remains uncertain. Therefore, the state has come up with compensation as a mode of rehabilitation for the victims.

REHABILITATION MECHANISM:

Victim Compensation Scheme is a relatively new idea in the Indian Justice system. This idea was brought in with the development in the field of victimology where the victim was recognized as the primary sufferer because of the offence committed against him. Although victim compensation was a part of Code of Criminal Procedure, 1898, it became more victims centric after the independence. Although, it was necessary to realise the idea of justice enshrined in the Preamble of the Constitution, to the victim, it was recognized as a part of Article 21 in the case of *Rudal Shah v. State of Bihar*⁷. The Supreme Court in this case opined that-

“Art 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of relief from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of **Art 21 secured is to mullet its violators in the payment of monetary compensation.**”

Further, in *Rattan Singh v. State of Punjab*⁸, Justice Krishna Iyer identified that:

“It is a weakness of our jurisprudence that the victims of the crime, and the distress of the dependants of the prisoner, do not attract the attention of the law. Indeed, victim reparation is still the vanishing point of our criminal law. This is a deficiency in the system which must be rectified by the Legislature. We can only draw attention in this matter.”

Thus, its need was identified by the Judiciary in 1980s itself but it gained statutory effect when this idea was inserted as a chapter in the 2009 Amendment of the Code of Criminal Procedure, 1973. The object of the Victim Compensation scheme was to “provide funds for compensation to the victims or their dependents, who have suffered loss or injury as

⁷ 1983 AIR 1086

⁸ 1980 AIR 84



a result of the crime and who require rehabilitation”. This scheme was brought into being in order to provide financial support to the victims and the family of the victims who have suffered huge losses and the financial status of the offender is not such to justify the loss.

The criteria for such compensations are left under the discretion of the State Legal Services Authority. However, the essential criteria include the gravity of the offence, the age of the victim, the injury suffered by the victim, if physical injury is suffered then the medical expenses incurred, relation of the victim and the offender etc.

The compensation for rape has been included in the Central Welfare Fund Scheme of 2015 which is also governed by Section 357 A of the CrPC, 1973. It not only includes the victims of rape but also include the victims of acid attack, human trafficking as well as other sexual offences. As for the victims of rape, they are eligible to be compensated with a minimum amount of 3 lakhs.

In 2018, the National Legal Services Authority also launched a compensation scheme named as “**Compensation Scheme for Women Victims/ Survivors of Sexual Assault/ other crimes-2018**”.⁹ This Scheme was a result of the Committee formed to prepare model rules for victim compensation as a result of the famous *Nipun Saxena v. Union of India*. The Committee prepared and submitted the Scheme before the Supreme Court and it was accepted.

This scheme enables the victim as well as her dependents to claim compensation from the government for the loss suffered by the victim. Section 4 of the Scheme lays down the eligibility criteria to claim compensation. The Section does not deprive the victim from claiming compensation from other schemes as well. In other words, the victim can claim compensation from other schemes as well and still be eligible to claim compensation under this scheme. But the amount under this scheme will be decided only after considering the compensation provided under other schemes.

Section 8 lays down the factors that are to be considered while awarding compensation to the victim. These factors are enumerated as follows-

⁹ Compensation Scheme for Women Victims/ Survivors of Sexual Assault/ other crimes – 2018 Available at- <https://nalsa.gov.in/acts-rules/guidelines/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018>



- 1) Gravity of the offence and severity of mental or physical harm or injury suffered by the victim¹⁰;
- 2) Expenditure incurred or likely to be incurred on the medical treatment for physical and/or mental health including counselling of the victim, funeral, travelling during investigation/ inquiry/ trial¹¹;
- 3) Loss of educational opportunity as a consequence of the offence, including absence from school/college due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason¹²;
- 4) Loss of employment as a result of the offence, including absence from place of employment due to mental trauma, bodily injury, medical treatment, investigation and trial of the offence, or any other reason¹³;
- 5) The relationship of the victim to the offender, if any¹⁴;
- 6) Whether the abuse was a single isolated incidence or whether the abuse took place over a period of time¹⁵;
- 7) Whether victim became pregnant as a result of the offence, whether she had to undergo Medical Termination of Pregnancy (MTP)/ give birth to a child, including rehabilitation needs of such child¹⁶;
- 8) Whether the victim contracted a sexually transmitted disease (STD) as a result of the offence¹⁷;
- 9) Whether the victim contracted human immunodeficiency virus (HIV) as a result of the offence¹⁸;
- 10) Any disability suffered by the victim as a result of the offence¹⁹;
- 11) Financial condition of the victim against whom the offence has been committed so as to determine her need for rehabilitation and re-integration needs of the victim²⁰.

¹⁰ Section 8, Compensation Scheme for Women Victims/ Survivors of Sexual Assault/ other crimes-2018 available at- <https://nalsa.gov.in/acts-rules/guidelines/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018>

¹¹ *Ibid*

¹² *Ibid*

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Supra note 16*

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

²⁰ *Ibid*



- 12) In case of death, the age of deceased, her monthly income, number of dependents, life expectancy, future promotional/growth prospects etc²¹.
- 13) Or any other factor which the SLSA/DLSA may consider just and sufficient.

According to the annexure enclosed in the Scheme, the minimum limit for compensation in cases of rape is Rs 4,00,000 while the upper limit is Rs 7,00,000. On the other hand, in cases of gang rape, the minimum amount to be provided for compensation is Rs. 5,00,000 while the maximum limit is Rs. 10,00,000. It can be seen that it is an honest attempt made by the state to relieve the sorrow and plight of the rape victims in India by ensuring them basic monetary relief.

CONCLUSION

It can be seen that the state has taken certain initiatives to improve the life of the victims by providing them some sought of monetary relief. Compensation is the basic mechanism for the rehabilitation of such victims in the society so that they can sustain themselves financially. The question that arises here is whether such an honest attempt is sufficient or not.

In my opinion, it is insufficient. I put forward this view because I feel that the providing compensation covers just a small aspect of the bigger picture. This relief is provided to the victim when the matter is registered and successfully tried before the court of law. However, we see a fluctuation in the number of cases being reported every year. Moreover, there exist numerous victims who do not prefer to bring these incidences to light because their society doesn't allow them to do the same. In other words, they are forced to contain their pain and agony as if nothing happened, or if happened also, it happened because of their fault.

So the first problem here is not having conducive system in which the victim can confidently bring such matters into light. Another reason why the women restrain from filing the cases is the fact that the executive powers, basically the police force colludes with the offenders in small towns and villages which again restricts them from bringing the matter into light.

²¹ *Ibid*



Further, there exist fundamental problem with the basic structure of the society, i.e. the position of women. The fact that she is always the dependent one, she has to always confirm that she is being accepted by the people around her. In other words, they fear being abandoned by their own family members. This is one of the main reasons why marital rape was confined to the four walls of the bedroom for a very long time. It was because the women feared of being abandoned by their own husband and then by their society.

But these problems exist before the Judiciary is involved. What happens when the Judiciary punishes the offender and provides the victim with compensation? Is it sufficient for her rehabilitation? When it comes to this point, I most humbly put forward my views on it and I feel that it is far from what justice essentially means.

I am mentioning so because we fail to realise the basic fact, that is, even after compensation, such women are rehabilitated in the same society which they fear disclosing the fact of being raped because the society will judge them. Even after being awarded the compensation, the lives of these women are never the same. The society, including some family members as well keep reminding them of the trauma- physical and mental that they went through because of the incident. For example, if the girl was unmarried, the family keeps reminding her of the fact that no one will marry her. Apart from the issue of marriage, the victim is constantly reminded of what her life could have been, had she not been raped. These are certain things that people don't even realise could act as triggers and force the victim to take harsh steps against herself.

It is a harsh reality that gender bias has always been a part of our society that victim shaming has become a part of our day to day life. And this is supported by males as well as those females who have been conditioned in such a manner over the years that they would be the first ones to prove the innocence of the offenders and guilt of the victim. For example, the offence of rape might have been committed by the offenders when they were not in their senses but it surely would have happened because the dressing sense of such woman was improper, the woman had a mobile phone or surely because of the fact that she was roaming out of the house in the evening. Moreover, the victims of rape are on the higher risk of being sexually assaulted because the society questions her chastity after such incidences.



These are just certain examples as to what are the odds that can be assumed by the society. And unfortunately, the victims are again pushed to be a part of the same society. These are the examples of true incidences. If the victims are rehabilitated to be the part of the same society, then it defeats the whole idea of rehabilitation.

However, the journey of the focus from the society to the victim is commendable and I feel that compensating the victim brings us near to the idea of justice because the ultimate loss is suffered by the victim and as long as attempts are made to relieve their pain in any form, we are on the right path.

Reference: <https://lexforti.com/legal-news/>