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**VICTIM ORIENTED APPROACH FOR SURVIVORS OF RAPE AND ACID
ATTACK IN INDIA**- Rishika Anand¹**Abstract**

The rights and the plight of the victims of crime are overlooked in the Indian adversarial mode of criminal law. Although the victims are the initiators of the criminal law machinery the system is accused centric, and their role is limited. The victims are not entitled to get information about the bail of the accused, the decision to prosecute the suspect and so on. Although the laws and procedures have been established over the past years for the compensation and rehabilitation of the victims, the system is still lacking in providing for proper rehabilitation of the victim. The Law Commission of India has made suggestions for the “victim impact assessment” by the public prosecutor in the matters of bail, but the legislative backing is still lacking. By this paper, the author aims at analysing the rights of the victims of rape and acid attacks in the country and compares it with the rights provided to victims in different jurisdictions, therefore establishing the requirement to attract and incorporate more legislative action in India for victims’ rights, while not compromising with the rights of the accused.

Keywords

Rape Survivors, Acid Attack survivors, Victim Compensation, Rehabilitation, Victim Impact Assessment

Introduction

The history of crimes dates to the very evolution of mankind. The primitive societies had their own norms and customs, which the people adhered to and the deterrence in the society was in the name of the God. Besides this, the theory of Retaliation by the people, seeking “an eye for an eye” and “a tooth for a tooth” was also prevalent. With the progress in the human civilization and the subsequent

¹Rishika Anand, B.B.A-LL.B(Hons.), NMIMS, School of Law- Indore, (2019-2024).

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<https://www.ijalr.in/>

awareness in the citizens for their rights, the crimes became wrongs against the whole society rather than against an individual.² In the contemporary society, the crimes are considered as an offence against the whole society and are punishable. The State brings the action against the accused on behalf of the victim and prosecutes the accused. To prevent the failure of justice, the accused is also conferred upon the rights, such as right to defend him and the right against self-incrimination, which are provided under the Constitution of India (Articles 20³, 21⁴ and 22⁵) and other statutes and provisions to ensure that the innocent is not punished.⁶

Nevertheless, in the current adversarial mode of the justice delivery system, the laws are more steadfast and inclined towards the punishments and rights of the perpetrator rather than the rights and welfare of the victim.⁷ The rights and plight of the victims in the Indian Judicial system are often neglected, belittled, reticulated, manipulated, or used for political, commercial, or personal vendettas and agendas. Their interests are often exploited and uncared for. In the adversarial system of justice delivery, the state is the guardian of the rights of its citizens and any unlawful act or omission is to be prosecuted by the State. However, this system has marginalized the role of the victims and has shifted the epicentre of the proceedings to the accused.

Rights of the Sexual Offences and Acid Attack survivors at the various stages of Justice delivery in India

The criminal law is set to motion by the FIR by the victim. The Section 154⁸ of the Cr.PC provides for the FIR in cognizable cases and the section 154(1)⁹ of the section provides for the registration of the FIR in cases of rape by a women officer, which was inserte by criminal Amendment Act of 2013 and subsequently amended in 2018. The police is duty bound to register the case in accordance to the information provided by the victim and the statements of the victim are to be recorded by a women police officer. The Supreme Court of India, in the case of *Delhi Domestic Working Women's Forum V. Union of India*¹⁰ laid down the guidelines for the trials of the cases of rape. These guidelines are as follows:

²Dr. Justice A.S. Anand, "Victims of Crime - the unseen side", (1998) 1 SCC (Jour) 3

³ The Constitution of India 1950, Art.20

⁴ The Constitution of India 1950, Art.21

⁵ The Constitution of India 1950, Art.22

⁶*Supra* note 3.

⁷ Ashish Jain, "Victim-Oriented Criminal Justice System: Need of The Hour", Vol. 44(3) *Indian Bar Review* 125 (2017).

⁸The Code of Criminal Procedure, 1973, §154

⁹*Id*

¹⁰ (1995) 1 SCC 14

- Legal representation should be provided to the victim by an advocate who is well acquainted. The advocate should explain to the victim the nature of proceedings, assist her with the proceedings as well as how to obtain help from agencies like medical assistance or medical examination.
- Legal representation should also be provided at the police station as the victim might be in a distressed state of mind.
- The victim is entitled to be made aware their right to a counsel before interrogation, by the police.
- The police station should keep a list of counsels ready who are willing to act in such cases.
- In all rape trials, the anonymity of the victim must be maintained.
- The court shall appoint the advocate to act on the Court, however to prevent the victim being interrogated without a legal representation, the advocate shall have the authority to act at police station before the leave of the court is obtained.

The Supreme Court in the case of *State of Punjab V. Gurmit Singh*¹¹ also held that the victims' anonymity will always be maintained in the trials of rape, i.e. the victims' name and address shall never be revealed, to prevent further "embarrassment". Section 375¹², of the IPC provides that the testimony of the rape victims can be taken on camera so that the victim does not have to bear the agony and distress of coming face to face with the culprit or any media persons and can testify comfortably¹³.

The Criminal Amendment Act of 2013 and subsequent amendment in 2018, introduced sections 375C¹⁴ and 168-A¹⁵ in the Cr.P.C which deal with the medical examination of the victims of rape. Section 375 C provides that the private and public medical institutes are duty bound to provide the victims of rape with the prescribed medical treatment, free of cost and inform the police regarding the incident. Failure in compliance with this section fastens the liability under section 166-B of I.P.C.¹⁶

¹¹ (1996) 2 SCC 384

¹² Indian Penal Code, 1860, § 375

¹³ *Sakshi v. Union of India*, 2004 (6 SCALE 15).

¹⁴ The Code of Criminal Procedure, 1973 § 375C

¹⁵ *Id.* § 168-A

¹⁶ Indian Penal Code, 1860, § 166B

The section 166-A provides for the manner in which the medical report of the victim is supposed to be prepared.¹⁷

In the case of *Lilu alias Rajesh Anr. V State of Haryana*¹⁸, the Supreme Court held the “two-finger test” to be “degrading and inhuman” and against the privacy, dignity and integrity of the rape survivors. The Ministry of Health and Family Welfare, Government of India had prepared “Guidelines & Protocols: Medicolegal care for survivors/victims of sexual violence”¹⁹. The Ministry of Women and Child Development has designed a Medical Kit for examination of the victim and the accused in cases of rape. The Union Government and the State Government have not provided this medical kit to all the Primary Health Centres or Community Health Centres. This Medico Forensic Kit is essential for collection of Medical/DNA evidence.²⁰

The case of *Laxmi vs. Union of India and Ors.*²¹, was a path breaking case concerning the acid attacks in India. In this writ petition, the petitioner an acid attack survivor from Delhi, prayed for a separate section for acid attacks in the Indian Penal Code, as the accused in this case easily got bail, while the victim suffered every-day. The petition also requested for the complete ban of the sale of acid in the states by the government, for the free treatment of the victims of acid attack and rehabilitation scheme for the survivors. This petition became successful by the way of the insertion of the Sections 326-A and 326-B in the Indian Penal Code²² by way of Criminal Amendment Act, 2013 following the infamous rape incident on December 16, 2012. The State of Haryana also filed an affidavit stating to provide for all the medical expenses of the acid attack survivors, which became a scheme in Haryana. The Supreme Court directed all the other states to investigate the scheme of Haryana and take their decisions. This decision also directed that the entire acid attack victim should be given a compensation of Rs. 3 Lakh and directed the states to indicate what steps they had taken for the allocation of funds for the compensation of victims, by the insertion of section 357A of the Indian Penal Code by *Criminal Amendment Act in 2009*²³. The Supreme Court in the case of *Parivartan Kendra v. Union of India and ors.*²⁴, held that the Rs. 3 Lakh is the minimum amount to be awarded to the acid attack survivors by the states and the union territories while, the court may also take into the view the disabilities, expenses and injuries suffered by the victim and award more amount.

¹⁷ The Code of Criminal Procedure, 1973 § 166-A

¹⁸ 2013 14 SCC 643

¹⁹ Ministry of Health and Family Welfare, Guidelines and Protocols: Medicolegal care for survivors/victims of sexual Violence <https://main.mohfw.gov.in/sites/default/files/953522324.pdf>

²⁰ In Re: Assessment of The Criminal Justice System in Response To Sexual Offences v. Union of India, 2019 SCC 1654

²¹ (2014) 4 SCC 427

²² Criminal Amendment Act, 2013

²³ Criminal Amendment Act, 2009

²⁴ (2016) 3 SCC 571

The Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes²⁵ aims at providing compensation and rehabilitation to the victims of rape and other crimes such as acid attacks. The State and District legal Services authority is entitled to determine the compensation to be awarded to the victim and their dependants²⁶. A number of factors are considered by the SLA and DLA before awarding compensation.²⁷ These factors include, among others severity of the mental and physical injuries suffered by the victim, expenditure likely to be incurred on the medical treatment on physical and mental health, loss of any educational opportunity due to the offence, loss of employment due to the offence, relationship with the offender (if any), the sexually transmitted disease or termination of pregnancy due to the offence, financial conditions of the victim against whom the crime has been committed²⁸

Plights of a 'Victim' in Indian Judicial System

As the state is the prosecutor, the law promulgates that only the counsel chosen by the state can plead the case on behalf of the victim. The counsel appointed by the victim can act as an assistant to the state appointed public prosecutor, only after the due permission from the court and can decide on the conduct of the trials in a limited capacity. Furthermore, the prosecution may also seek withdrawal from the case, without informing the victim. The victim, after the closure of the evidence can also submit written arguments after the permission from the court.²⁹

There are no statutory provisions which enable the victim to be a party to the proceedings and play an active role in establishing the guilt of the accused.³⁰ In the views of Justice P.V. Reddy, the state is the prosecutor in the criminal cases as the criminal offences are against the society at large and the State is duty bound to protect its citizens. If the victim is made the party to the prosecution, it may happen that the process of fair prosecution become frustrated due to the desperation and instinct of the victim to seek revenge.³¹ Apart from these discrepancies, the victims also face many obstacles in the investigation also. In India, investigation of the crime is the police matter and the victim plays no role in the process unless police deem it to be necessary. Faulty investigations are a major problem in the

²⁵ Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 <https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018>

²⁶ *Id.*, § 3(1)

²⁷ *Id.*, § 8

²⁸ *Id.*, §8(11)

²⁹ The Code of Criminal Procedure, 1973 § 301(2)

³⁰ P.V. Reddy, Role of Victims, 18 Student Bar Review, National Law School of India, Bangalore 4(2006)

³¹ *Id.*

country as in many cases the filing of the charge sheet is delayed, which pushes the trials further.³² As the legal Maxim goes “Justice delayed is Justice denied”, this delay erodes the faith of the society in the Criminal Justice System and the Rule of Law.

The victims must be given a more operational role in the justice delivery system as “the idealist prosecutor is a distant dream and impartial and dedicated police officers are far, and a few make a good case for the victim, giving them certain though limited role from the stage of investigation till the completion of the trial”.³³

The victims of crimes are also subjected to the miseries such as financial loss or economic crisis, physical injury or ailment, mental trauma which leads to a series of conditions like depression, anxiety, self-blame, panic attacks, sleep disorders, social withdrawal, feeling isolated and alienated. While they are struggling to overcome the feelings of hopelessness, frustration and difficulty to come to terms with the incident, they might also be subjected to the social stigma and condemnation because of the societal notion of the victim blaming, i.e. the victim contributing to their own tragedy and misery³⁴. Focusing specifically on the survivors of acid attack and rape survivors, they often face extreme adversities. The acid attack is the most heinous form of attack on the victim which not only affects them physically but can also cause death and cause extreme trauma and mental trauma and identity crisis.³⁵ The victims are seldom aware about their right for compensation under Victim Compensation Scheme, and more often the compensation provided by the Courts or the Legal Services Authorities is not adequate to meet for the expenses that the victims face for the multiple surgeries and the expensive procedures that they go through. Although the survivors of acid attack are entitled to receive immediate medical attention and free treatment in any private or public hospital³⁶, they seldom receive the attention that they require and are left unattended, which causes further burn damages to them. In the case of *Parivartan Kendra v Union of India*³⁷, the victims were two sisters who belonged to a Dalit family in Bihar. After the attack they were taken to the Patna medical College and Hospital where they were sent off to buy their own medicine and treatments just because they were Dalits. They received Rs.2,42,000 from the Bihar Government for their treatment but the family had already spent more than Rs. 5 Lakhs by then from personal expenses. The Patna hospital also waited for more than

³²Subhradipta Sarkar, The Quest for Victims' Justice in India, (Vol. 2, Issue 2) <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1115&context=hrbrief>

³³ The Law Commission of India, Report 239th, <https://lawcommissionofindia.nic.in/reports/report239.pdf>

³⁴Karmen, Andrew, *Crime Victims, An Introduction to Victimology*, (Cengage Publications, 10th Edition).

³⁵ J. Verma Committee Report, 2013 <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary#:~:text=Background%3A%20On%20December%2023%2C%202012,committing%20sexual%20assault%20against%20women.>

³⁶*Id.*

³⁷*Supra* note 24

one month for the grafting surgeries of the elder sister and they were allegedly not performed well due to their caste. They were left on their own and only received proper treatment in Delhi, after a long duration of time.

Cross Jurisdiction Comparison of Victim Rights

The progressive countries like The United Kingdom, Canada, The United States of America, Australia and New Zealand recognized the emphasis of the Victim's rights, long after the Second World War, as an outcome of the studies of certain progressive thinkers and activist. This is when these countries deviated from the systems evolved from the Anglo-Saxon pattern and started focusing on the needs of the victims also, rather than only focusing on the corrective needs and rights of the accused.

Canada-Manitoba enacted the *Justice for Victims of Crime Act, 1986*. New Zealand has also enacted *Victim of Offences Act, 1987*. In the United Kingdom, *Criminal Justice Act, 1988* has made fresh provisions for payment of compensation by the *Criminal Injuries Compensation Board*. Australia has also enacted a legislation based on the U.N. Declaration of 1985. *Victims of Crime Act* became a part of Federal Law in the United States in 1984.³⁸

➤ **United Kingdom**

In the year 1988, The United Kingdom enacted the *Criminal Justice Act 1988*³⁹, which provided for "The Criminal Injuries Compensation Scheme"⁴⁰ for the victims acts of crime and provided directions to the Victim Compensation Board. It also provides anonymity to the victims of sexual offences by the prohibiting the publication of "woman's name nor her address nor a still or moving picture of her during her lifetime" in England and Wales by a "written publication" or a "cable programme". The picture in this section refers to "likeness however produced"⁴¹.

This scheme discusses the eligibility of the victim to apply for compensation, types and limits of compensation among other compensation related provisions. The *Code of practice for Victims of Crime 2014*⁴², is the statutory provision in the United Kingdom which provides for the support, services,

³⁸Supra Note 3.

³⁹ Criminal Justice Act, 1988.

⁴⁰Criminal Justice Act, 1988, §108

⁴¹ Criminal Justice Act, 1988, §158

⁴²The Code of practice for Victims of Crime, 2015. Available at : https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF (last visited September 13, 2020).

and information the victims of crimes are entitled to get from the government agencies in England and Wales such as the police and Crown Prosecution Service.⁴³ This provision provides for rights for victims, some of which are:

- The Victim is entitled to be informed by the police within 5 days about the accused's arrest; interviewed under caution; released without charge; released on police bail, or if police bail conditions are changed or cancelled.⁴⁴ If the victim has suffered a serious crime (including sexual offence and grievous hurt) or the victim is sensitive to targeting or intimidation, then this information is entitled to be given within a day.⁴⁵
- The victim is entitled to be identified whether they need the support from a support group services⁴⁶ and their details are supposed to be sent by the police within 2 working days of the crime being reported. The victim should be informed about the same and they should deny passing on their details to support services. However, in the case of sexual offences or domestic violence, the police need to take explicit consent of the victim before passing on their details. The victim is also entitled to receive the details of the support service to get their help anytime⁴⁷.
- The victim is entitled to discuss with the police, the period and the frequency of case updates, and if the police decides not to investigate the case, the reasons for the same are to be explained to the victim within 5 days.⁴⁸ If the investigation is concluded and no person has been charged, the victim is entitled to receive the explanation for the same and further advice. Furthermore, the victim being advised on the investigation being concluded without charge, they should be consulted whether they wish to be informed if the investigation is re-opened.⁴⁹
- During a police interview, the victim can be accompanied by a person of their choice, unless a "reasoned decision" has been made to contrary, the interviews should be conducted without unjust delay and their numbers should be limited to those that are strictly necessary for purpose of investigation.⁵⁰ The victims of sexual offences or any other gender-based offence could be

⁴³ Ministry of Justice, "The support you should get if you are a victim of crime" Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/264850/easyread-victims-code.pdf (last visited September 13, 2020).

⁴⁴ The Code of practice for Victims of Crime, 2015, Part A, § 1.5

⁴⁵ *Id.*, § 1.6

⁴⁶ The Code of practice for Victims of Crime, 2015, Part A, § 1.2 "Victim support services are organisations which offer victims of crime help and support to help them cope and recover after a crime."

⁴⁷ *Id.* §1.4

⁴⁸ *Id.*, § 1.1

⁴⁹ *Id.* § 1.10

⁵⁰ *Id.*, §1.8

offered the opportunity to have the same-sex person conduct the interviews (unless doing so would prejudice the proper handling of investigation). The interviews (if possible), would be conducted by the same person and would be conducted in a premise adapted for that purpose.

- Minimum medical examinations, which are necessary for criminal proceeding to be conducted and be informed for the pre-trial therapy and counselling where appropriate.
- The Scheme also provides for “Victim Personal Statement (VPS)” which the Court of law considers as evidence if the accused is found guilty. In the VPs, the victim explains their plight in their own words, thus explaining what they suffered mentally, physically and financially.⁵¹ This gives the Criminal Justice system, an insight of the actual sufferings of the victim and helps in identifying their magnitude and impact.⁵² The sufferings of the victim are also considered by the court before giving the judgement, by the degree it finds necessary. The victim may decide whether they want their VPS read aloud or shown in the court. However, the bench considers it if the accused is found guilty, regardless.⁵³
- The victim should also be informed if the police takes the decision to prosecute the suspect, to give the suspect out of court disposal, by way of a caution etc., or not to prosecute the suspect⁵⁴. If they are displeased with the police’s or CPS’ decision to not prosecute the suspect, they may seek review under the National Police Chiefs Council (N.P.C.C.) and CPS Victims’ Right to Review schemes.⁵⁵ The victim should also be informed of the date, time and location of the hearing⁵⁶. All this information should reach to the victim within 5 working days of the suspect being charged and in case of the victim of a serious crime, persistently targeted or vulnerable or intimidated, within 1 working day.⁵⁷ The information and reasons should also be given if the charge against the suspect is discontinued, substantially altered or proceeded on another, the proceeding are discontinued or the CPS offers no evidence in the proceedings⁵⁸ and the victim can move for a review under Victims’ Right to Review Scheme against this.⁵⁹
- This scheme also provides for Restorative Justice while the ongoing proceeding or as a part of the sentence after trial. This process brings together the perpetrator and the victim together.

⁵¹*Id.* §1.12

⁵²*Id.* §1.15

⁵³*Id.* §1.14

⁵⁴*Id.* § 2.1

⁵⁵*Id.* § 2.2

⁵⁶*Id.* §2.3

⁵⁷*Id.* §2.4

⁵⁸*Id.* §2.8

⁵⁹*Id.* , § 2.9

This helps the accused realize the impact of the offence they committed on the victim's life and face the consequences of their act. It is voluntary on the part of the victim to participate in this session and they may choose to do it when they feel right. This process is led by the facilitator who makes sure that the victim is ready for this process and that the quality standards are delivered.

➤ **The United Nations' Declaration of Basic Principles of Justice for Victims of Crime**

The United Nations declares and provides for certain rights for the 'Victims of crime' irrespective of any discrimination against the sex, colour, age, language, nationality, religion, political opinion, cultural beliefs or practices, ethnicity or social class, birth, family, wealth and disability of the person⁶⁰. These are as follows:

- Right of 'Access to justice and fair treatment' - The dignity of the victim must be respected and the judicial and administrative mechanism for redressal of the violation of the right of the victim should be made accessible, affordable and fair. The needs of the victims should be understood, and the relief should be provided without any unnecessary delay.
- Right to 'Restitution'- the offenders should make fair restitutions to the victims for any losses that incurred to the victim. The government should make provisions for such restitution.
- Right of 'Compensation'- Victims should be compensated for any physical harm, injury, impairment of mental health suffered by them because of the act of crime. The dependents of the victim should be compensated if the victim has died as a result of such victimization.
- Right to 'Assistance'- The victim should be assisted with the material, medical, psychological and social requirements. The health and social services should be made affordable to them and the health, police and judicial departments should be synthesised according to the needs of the victim.⁶¹

Conclusion

The Indian Jurisprudence in context of the rights of the victims of acid attack and rape has evolved significantly. However, the system is still not ideal due to the lacunae in the laws and deficiency in the rights of the victims. The Criminal Amendment Act of 2013 based on the recommendation of Justice

⁶⁰ The United Nations' Declaration of Basic Principles of Justice for Victims of Crime, Part 41 (A)

⁶¹ *Id.*

Verma Committee brought many milestone changes in the rights of the rape and acid attack victims and the laws are evolving gradually. However, there is still a gap in the provisions and the implementation. The Malimath Committee stated that there are two types of rights for a victim – the right of the victim to be compensated for the offence, the right of the victim to participate in the proceedings. The right of the victim to participate in the criminal proceedings is necessary to restore the faith in the system. Thus, the victim should be an active part of the process from the beginning of the proceedings to the very end. The Supreme Court of India has prescribed an amount of Rs. 3 Lakhs as the minimum compensation for the acid attack survivors. However, Government of India being a welfare state and it should provide enough compensation for the rehabilitation of the victim. Many cases of non-compliance with the existing measures of victims' rights is one of the greatest setbacks, besides the victims not being made aware of their rights. The victim compensation scheme provides for compensation considering the lost job/ education of the victim, but does not effectively provides for such opportunity of job and education of the victim.

The United Nations' Declaration of rights for the victims of crime, mentions the sensitization of the system to the needs of the victim. This can be incorporated in the Indian context by proper training of the police to handle the sensitive cases of rape and acid attack, reducing legal vigilante, proper training of the judicial system and providing rights to the victim to be entitled to get the information regarding the bail, hearing dates, changes in the conditions of bail or prosecution and change in the societal mentality. The Victim impact assessment, as suggested by the Law Commission of India, in its 269th Report should be drafted into legislation. The UK system of Victim Personal Statement (VPS) should also be considered while sentencing by the courts if the accused is found guilty to consider all the sufferings the victim has undergone. The restorative justice system should also be made a part of the punishment of the victim at the willingness of the victim.

The Indian Justice system has evolved and has provided for many welcoming steps in favour of the victim but the sense of security in victim and their families can be installed only when the victim is heard and their benefits and concerns are recognised in the system. Therefore, victim-oriented approach is required to administer justice more effectively.