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Jurisprudential study of Section 228-A IPC: Does the Court fall within the Ambit of it?

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The dynamics and consequences of unveiling the identity of the victims are not unknown to humankind. Yet irrespective of having legislations such as section 228-A, Indian Penal Code (I.P.C.) the systems often fail the victim every time it reveals the identity. The article constructs a narrative of reality that allows a deeper perception of the social lives that are negotiated by law. It gives a holistic understanding of the intention behind inserting section 228-A and the reality it projects on the victims of sexual offences. The paper along with examining the multi-layered literature goes a step ahead to point out the major lacuna that essentially leaves Section 228-A a hollow piece of legislation. The work along with challenging Section 228-A (3) which paralyses the entire section, reinforces the approaches that can be employed to further the cause of justice without having to compromise on the victim's identity; for the major intention behind constructing a law is not to divorce anyone from their integrity rather advance efforts maintain the integrity and honour. The Article finally is a reminder that a law must not discount the purpose it was constructed for.

Keywords: *ipc, court, section 228.*

INTRODUCTION: GENESIS OF SECTION 228-A IPC

Goddesses are not only a component of Indian Mythology but the concept pervades the social mentality of Indians to the point that the young girl frequently alludes as a Goddess. Tragically, today we have reached a stage where a woman belongs to a class who is in a socially marginalized position. This position may not be overwhelmingly correct in the urban areas but is a stark reality as far as the rural areas are concerned. They face numerous social hurdles and obstacles. An irony of the situation is that women are poor victims facing subjugation by dint of those men with whom they at par have access to equal standing under the Constitution.

Fortunately, under the law of the land women are entitled to the right to life and liberty. The constitution guarantees the right to be treated equally. Their dignity must not be infringed upon or tempered. They are entitled to usher their lives with respect and dignity.

As a result, sexual assault on women is not only a crime against her, it is bound to be considered as a crime against society at large. It not only devastates the entire psyche of a victim but at the same time triggers a host of emotional turmoil. On learning of the sexual abuse, society often looks down on her with scorn and disgust and ruthlessly engages in victim-blaming. It is a sheer pity that when she needs the support, the most she is silenced.

In such an odd backdrop, if a woman chooses to report the crime, the system often fails her; she is treated with undue skepticisms, during an investigation by the police officers. The sensitisation of the Police forces has been at the centre of many reports and recommendations but is far from seeing the light of the day. The agony is further amplified in the Courtroom if the survivors of sexual crimes fail to conform to an idealized version of what is expected of a victim. She is mocked and barbarously cross-examined by the defense counsel. Few judges if not all sit as silent spectators of the act when her dignity is ripped off in the Courtroom. While one must understand the rights of the Accused including the right to cross-examine the victim/complainant, it becomes imperative to shield the victim/complainant from the

potential social ridicule and pressure that (unfortunately) more often than not comes along with such cases.

Showcasing extreme sensitivity, the Court in the case of Gurmit Singh¹ held that it is a right of defense to examine the prosecutrix. However, it must be practiced under the diameter of decency to respect a woman.

Taking into consideration some of the challenges in cases like these and the potential harassment that the victim/complainant stands to face, provisions like section 228(A) were inserted in the Indian Penal Code. The section bars the disclosure of the identity of victims of offences covered under section 376 (A to D).

Exposing the victim's identity adds to the pain as she faces difficulty in finding jobs and becoming independent and later getting married. More often than not the families are shunned and outcast and restoration of dignity in the majority of the cases take a length of time. These issues may not resonate with everyone in 2021, but they do exist are in fact rampant.

It is the wisdom of Parliament that insertion of section 228-A was made under the Indian Penal Code (I.P.C.) vide Amendment Act No. 43 of 1983. The provision forges the divulgence of the victim's identity of certain offences punishable but is not uniformly applicable to everybody. Under three circumstances the section becomes absolutely redundant. *Firstly*, when duty is being discharged in good faith by a cop. The officer can be in charge of the police station or an investigating officer. *Secondly*, when authorization has been made in writing by the victim to disclose the identity; and *lastly*, when written authorization has been made by the kin of the victim if she has passed away or unsound mind or is minor. All authorization has to be made to the welfare institution/organisation recognized either by the Central Government or State Government. Under subsection 3 of section 228-A through printing/publication of the judgement of any High Court or Supreme Court does not measure up to an offence but

¹ *State of Punjab v Ramdev Singh* (2004) 1 SCC 421

printing/publishing of Court proceedings without prior permission of the Court will tantamount to punishment.

Naturally, no one set of rules can be uniformly applied in the state for there are duties that need to be discharged. Nevertheless, making an exception for the rule which serves no better purpose than crumbling the very tenets for which rules were constructed is futile.

Mostly, it is the convoluted nature of an exception that tends to complicate things and shred the very reason for which the legislation was assembled.

The lawmakers need to get the depth of the problem to understand the purpose of composing a law and make sure that the codification of law behoof those who are in a dire need of it.

Time has proved that subsection (3) is toneless in nature and instead of echoing the purpose, i.e., protecting the victim, it has done more harm than good. Making an exception for learned judges to write the name of the victim in Court's judgements/orders and allowing media to reproduce such documents has muddled the intent of section 228-A.

Section 228-A was inserted with a keenness to protect the victim. However, subsection 3 of section 228-A, is one of the grounds for an exception. It allows the Media to print or publish the Judgements of Courts. This gives them a fair amount of opportunity and liberty to disclose the identity of the victim. Permitting the media to cite the Judgements which explicitly state the name of not just the victim but also her whereabouts and the name of her family members breaches the entire concept of identity protection. This has defeated the very purpose with which the section was introduced in the code.

The provision was specifically intended to ensure that the victim is not exposed to further agony by the consequent social victimization or ostracism pursuant to disclosure of her identity.²

² *Aju Varghese v State of Kerala* 2018 (5) KHC 50

The Court's role while dealing in matters to establish the guilt or give the woman the justice she deserves. Not mentioning the name of the victim by no means will become an impediment in the justice delivery system.

Undeniably, the law was designed to safeguard her from stigmas of psychological torment and mental anguish that are consequential to the regrettable sexual assault incidence. On the contrary, subsection 3 rather than lending a hand to the victim in troubled times, push her further in the wet ground.

PRINTING/PUBLISHING CIRCUMFERENCE OF MEDIA

From the outset, a comprehensive provision and numerous judgements have been laid down by various Courts to protect the victim. Yet it is a pervasive apathy that few media houses have paid little or no heed to honour the dignity and identity of the victim.

While consciously choosing to sensationalise a matter, the media houses often turn a blind eye to the amount of damage they cause the victim. Instead of directly using the name of the victim they indirectly go on to cite the judgement which does the same harm as it would be done while doing it directly.

The Apex Court has chastised the News Broadcasting Standards Authority (NBSA) and the Press Council of India (PCI) for treating press houses in a devil-may-care manner. The Court has raised its voice several times and called out Media regulating bodies on account of failure to take bold steps against media houses for disobeying the law by divulging intricate details of the victim.

The Bench while delivering an order in **“Bihar Shelter Home Rape Case”** accentuated that there is no system in place to ensure that legislative provisions and rules that lead to falsified news are implemented and enforced. Therefore, for the purpose of dispensing a balanced look,

the Court entreated all media regulating bodies to succour. The Court also asserted that the print and electronic media be responsible in the matter of reporting the incidents.³

APPLICABILITY ON THE COURT

With every passing day crime against society in general and women, in particular, has spiked. It is nothing but ironic that while we championing women's rights the society exhibits little or no regard for her honour.

It is a sorrowful picture that rape is more than just a physical attack; it is ultimately detrimental to the victim's entire psyche. We must bear in mind, that a wrongdoer besides invading a victim's dignity, invariably inflicts harm on the physical and mental well-being. Thus, the Courts have a significant deal of duty. They must approach such instances with extreme sensitivity.

Not once but many a time, the Honourable Supreme Court while penning down the judgement has consciously made a choice not to write down the name of the victim to protect the identity.

In *Om Prakash*⁴, Apex Court expressed disinclination to mentioning the victim's name. Alongside, it also referred to the *State of Karnataka v. Puttaraja*⁵, where the Court highlighted that whoever publishes or prints a case that discloses the identity of the victim of an offence that is alleged or proved under section 376, 376-A, 376-B, 376-C, 376-D such a person can be punished under section 228-A. Although, there is no bar on publishing and printing of Supreme Court and High Court's Judgement yet "keeping in the view the social object of preventing social victimisation or ostracism of the victim of a sexual offence"⁶ it would be pertinent if in judgements irrespective of any Court the Judges must refrain from mentioning

³ *Nivedita Jha v State of Bihar* 2018 SCC OnLine SC 1616

⁴ *Om Prakash v State of UP* AIR 1960 SC 409

⁵ *State of Karnataka v Puttaraja* 2004 (1) SCC 475

⁶ *Prakash* (n 4)

the name of the victim. The same position has also been reaffirmed in the *State of Punjab v. Ramdev Singh*⁷.

The Courts should refrain from revealing the identity of the prosecutrix and anonymity must be preserved as much as practicable the bench remarked in *Gurmit Singh*.⁸ It was further noted that “in the present case, the trial Court has repeatedly used the name of the victim in its order under appeal when it could have just referred to her as the prosecutrix.”

The Courts of this country were established not to ransack people of the rights that are guaranteed to them rather to restore the rights of the sufferer. Mentioning the name of the victim in the Orders of Court does nothing but directly or indirectly infringe their right to live with dignity. When Courts choose to disclose the identity of a sexual abuse victim in judgement it offers the media a fair chance to print and publish the Judgement openly which rips a woman’s soul.

Apace Apex Court, the High Court of Patna has directed all Courts subordinate to it, to safeguard the identity of the victim and not indict it in Order/Judgement, unless such disclosures become imperative, for the reasons recorded in writing by the Special Courts.⁹

Lately, the Bombay High Court Bench headed by Justice SC Gupte directed the Lower Court to redact with all the details of the victim’s identity in the Judgement. Nevertheless, it is not the first time that the superior Court took note of it. In the past, the Supreme Court while upholding the sentence granted by the High Court, paid its due attention to the fact that not only the trial Court but also the High Court has revealed the named the victim all through.

The Bench of J. Uday Umesh Lalit and J. Abhay Manohar Sapre held that possible attempts must be made by all Courts to abstain from divulging the victim’s identity in terms of said section 228-A. While dismissing the matter beforehand the bench thereby directed the High Court Registry to present the appeal record before the Judge for the purpose of making all

⁷ *State of Punjab* (n 1)

⁸ *State of Punjab v Gurmit Singh* (1996) 2 SCC 384

⁹ *Nagendra Kumar v State of Bihar* 2021 SCC OnLine Pat 611

such appropriate amendments in the record including passing appropriate practice directions to the state trial Courts and comply with the spirit of section 228-A of I.P.C.¹⁰

CONCLUSION

A Country's civilization is recognized for respecting its women. It is essential for the present generation to be aware and make generations to come aware of the need to treat women with respect and dignity in order for humanism to survive conceptually. The intent behind law on the point of whether or not and when or not the identity of the victim should be disclosed is absolutely concrete in nature. It unquestionably seeks to fulfill the stated social objective and incorporates an ingredient of public interest. The consideration of whether or not the revelation was intentional in nature or was made without consciousness of law is irrelevant.

Hence, the intent behind the provision of section 228-A IPC that limits mentioning an accused name is comprehensive and cannot be relaxed. Nevertheless, the loopholes in the 288A cannot be overlooked. Subsection (3) of section 228-A is a sham as it is dismantling the intention to protect the honour of women. It is important to amend or abrogate it as the machinery of the state finds appropriate, to safeguard the identity of the victim and leaving no foundations to peel a victim's identity. The Parliament could step in by making the desired amendments or the Courts could very well look within to plug this loophole. The Media houses can also be more careful and sensitive by adopting self-limiting measures like making sure that they take out the names from the Judgement that they publish. One must be conscious and appreciative of the intent and need behind a provision like 228-A and not just look to comply with the technicalities of it. Though one cannot fathom how necessarily mentioning the name of the complainant/victim in a judgement could be a sine qua non for dispensing justice, however, should the Courts believe that dispensing with the same would be detrimental to the justice delivery mechanism, the Courts can always make it a point to release 'redacted' versions of the judgement for publication. Simple steps, that should have been taken long ago, can make sure that there are no gaps in the law and that the intention behind the insertion of section 228-A prevails.

¹⁰ *Lalit Yadav v State of Chhattisgarh* AIR 2018 SCC Online SC 680