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Ethical Medico-Legal approaches towards Rape Survivors

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A rape survivor is already inflicted with a state of mental and physical distress. But seeking medical help and taking recourse to appropriate legal help in the hope of getting justice becomes futile in a society where victim blaming persists even in this day and age. Instead of acknowledging the vulnerable mental and physical state of a rape survivor and approaching the situation with utmost care and reason, the very institutions that are responsible for providing healthcare and delivering justice sometimes tend to steer the victim towards dungeons of everlasting emotional trauma which may give rise to a post-traumatic stress disorder, depression, self-harm, substance abuse, etc. and a plethora of other problems. In this research paper, the author will go through the hurdles faced by rape survivors in seeking legal help, the defects persisting in the healthcare system and also briefly discuss ethical measures that are recommended by the Justice Verma Committee and other government departments to bring about a reformation in the existing laws, medical, legal and administrative procedures to ensure the better availability of required healthcare and means to seek justice for the rape victims.

Keywords: *ethical approach, medico-legal, rape survivors, physical distress.*

INTRODUCTION

Rape victims go through a lot of physical and mental minefields. Physical injuries can range from genital and non-genital injuries, even death in certain cases. Psychological consequences

can be different for different people based on the circumstances they have faced and can include a wide range of problems like rape trauma syndrome, post-traumatic stress disorder, depression, social phobias, anxiety, etc.¹ Apart from providing general healthcare, healthcare institutions can act as a connecting link between the victim and the services that may later be required by the victims like social welfare and legal aid.² But in many countries, the existing level of healthcare services provided is not consistent with the healthcare needs of the victims.³

Rape victims also find it difficult to get justice in India due to reasons like a lack of the required number of fast-track courts, rape crisis cells, adequate safety infrastructures, problems in registering FIRs, etc.⁴ Furthermore, many victims refrain from seeking legal help at all. A lot of unethical approaches still prevail in the medical and legal sphere which create barriers to rape survivors' access to medico-legal assistance.

HURDLES AGAINST SEEKING LEGAL HELP

Victims of sexual abuse face myriads of problems when it comes to approaching legal authorities for help. It could be due to many reasons, some of which are discussed below.

- **Societal Stigma**

In *State Of Maharashtra v Chandraprakash Kewal Chand Jain*,⁵ the western and Indian perceptions of the morality of women were distinguished. It was suggested that women are highly unlikely to bring fraudulent complaints regarding rape in a country like India as they would run the risk of being stigmatised and facing ostracism by society. There was also the added risk of loss of family honour. Further, women and girls would be reluctant to face

¹ 'Guidelines for medico-legal care for victims of sexual violence' (WHO, 2003) <<https://apps.who.int/iris/bitstream/handle/10665/42788/924154628X.pdf;jsessionid=FAB2060D0B14CA3C2BE53226AF8DE657?sequence=1>> accessed 09 December 2022

² *Ibid*

³ *Ibid*

⁴ Maninder Dabas, 'Here Are 12 Reasons Why It's Extremely Tough For Rape Victims To Get Justice In India' (*India Times*, 27 February 2018) <<https://www.indiatimes.com/news/with-only-722-fast-track-courts-against-the-required-1800-quick-justice-for-rapes-still-a-dream-in-india-339585.html>> accessed 09 December 2022

⁵ *State of Maharashtra v Chandraprakash Kewal Chand Jain* (1990) SC 658

interrogation by the court⁶. Thus, even in this case, where the judgement was in favour of the victim, we can see that the chastity of a woman is considered an indicator of her moral character and is also linked to her family honour.

A study conducted in Iran shows that the existing social stigma towards the loss of virginity and unwanted pregnancy after rape is the reason for the lack of society and family support towards rape victims which prevents them from accessing further help when seeking medical care resources.⁷ Several studies point out that the chances of victims reaching out for help decrease if there is a presence of societal taboo or stigma related to rape. And in a country like India, several such societal taboos and stigmas related to rape exist to this day.

- **Defects in the police system**

One of the prime reasons why sexual assault victims are reluctant towards seeking help is because police refuse to register complaints in the first place. In a report by Human Rights Watch⁸, it was found that complaints weren't registered by the police. The chances of the complaint not getting registered would increase if the victim belonged to a marginalised community and the perpetrator belonged to an upper caste. In some cases, the victims were even told to settle or compromise.

Another reason why victims do not seek help is because of the patriarchal mindset persisting among the police. In a sting operation conducted by Tehelka magazine in 2012, it was found that 17 out of 30 police officers that were interviewed held extremely insensitive and misogynistic attitudes towards rape victims. They held the belief that rape is a consequence of women

⁶ Geetanjali Gangoli, 'Controlling women's sexuality: Rape law in India' in N. Westmarland & G. Gangoli (eds), *International Approaches to Rape* (Policy Press 2011)

⁷ Shadab Shahali et al., 'Barriers to Healthcare Provision for Victims of Sexual Assault: A Grounded Theory Study' (2016) 18(3) *Iranian Red Crescent Medical Journal*

⁸ 'Everyone Blames Me' Barriers to Justice and Support Services for Sexual Assault Survivors in India (*Human Rights Watch*, 8 November 2013) <<https://www.hrw.org/report/2017/11/08/everyone-blames-me/barriers-justice-and-support-services-sexual-assault-survivors>> accessed 09 December 2022

wearing 'provocative clothing and therefore drawing attention towards themselves. The other defects include persisting underemployment in the police force and infrastructural defects⁹.

- **Marital Rape**

Many women suffer from sexual violence in marriage. Police reporting is also particularly low in cases of marital rape. Marital rape is not considered a crime in India. According to a study, the susceptibility of adolescent wives to marital sexual violence is very high and adolescent girls also account for 24% of rape cases in the country.¹⁰

- **The fear of re-victimisation in courts**

In a society where the culture of victim blaming persists, the courts are no different. The sexual history of a rape survivor is taken into account while deciding whether the accused is guilty of committing rape or not. This leads to the revictimization of rape survivors by the criminal justice system. In the case of *Vikas Garg & Others v State of Haryana* (also known as the OP Jindal rape case) the Punjab and Haryana High Court granted bail to the accused and took a very narrow-minded and patriarchal view of the case by putting so-called labels like "promiscuous" on the victim's character. The court observed that "The entire crass sequence is reflective of a degenerative mindset of the youth breeding denigrating relationships mired in drugs, alcohol, casual sexual escapades, and a promiscuous and voyeuristic world."

In another case of *Rakesh B v State of Karnataka*¹¹, the Karnataka high court stated, "after the perpetration of the act she was tired and fell asleep, which is unbecoming of an Indian woman; that is not the way our women react when they are ravished." Such patriarchal judgements and insensitive remarks show that character assassination of the victims still takes place to this day in courts and this is one of the reasons why a victim is reluctant to seek legal help.

⁹ Kaithwas Manish & Neena Pandey, 'Incompetency and Challenges of Police in Rape Cases' (2018) 7(1) Social Work Chronicle

¹⁰ Anita Raj & Lotus McDougal, 'Sexual violence and rape in India' (2014) 383(9920) The Lancet <[https://doi.org/10.1016/S0140-6736\(14\)60435-9](https://doi.org/10.1016/S0140-6736(14)60435-9)> accessed 06 December 2022

¹¹ Sri Rakesh B v State Of Karnataka Criminal Petition No. 2427/2020

FLAWS IN THE HEALTHCARE SYSTEM

Rape survivors face some barriers in accessing proper healthcare due to certain flaws existing in the healthcare system. Some of them are summarised below –

- **Denial of Safe Abortion**

In a study conducted by CEHAT¹² (Centre for Enquiry into Health and Allied Themes), it was found that there were certain barriers towards providing abortion to victims. One of the reasons why women were denied abortion was because their pregnancy crossed the legal twenty weeks limit. The request for abortion pills in case of early detection of pregnancy was also refused. First-time abortions were also refused on the pretext that it would lead to secondary infertility. In several cases, the consent of the husband was insisted on by the health providers for conducting the abortion procedure even though the law only requires the consent of an adult married woman to conduct an abortion. This proved to be a grave issue for women who had suffered sexual violence within the bounds of marriage.

- **Two Finger Test**

The two-finger test involves physical scrutiny of a woman's vagina by a medical practitioner to gauge the looseness of the vaginal muscles and also to check whether the hymen is intact or not. In this test, a medical practitioner inserts two fingers inside the vaginal canal of a woman. The ease with which the two fingers glide into the vagina as well as the presence or absence of the hymen inside the vagina of a woman is considered to be an indicator of the sexual experience of a woman.

This test has no medical significance and is highly unscientific because the absence of the hymen and the looseness of the vaginal muscles can happen for a variety of reasons other than sex.¹³ One of the harrowing consequences of this unscientific test was found in the case of Tukaram

¹² Padma Bhate-Deosthali & Sangeeta Rege, 'Denial of Safe Abortion to Survivors of Rape in India' (2019) 21(2) Health and Human Rights

¹³ Arnav Gulati & Nidhi Gulati, 'Medico-legal dimensions of the two-finger test' (2022) 36(421)

and another v State of Maharashtra¹⁴. In this case, the court concluded that the victim had consented to sex based on the medical reports which were based on this test.

- **Problems with the collection of forensic evidence**

Forensic evidence collection is also difficult due to infrastructural facilities for evidence collection and the lack of coordination between the hospitals where medical examinations of the victims have taken place and the forensic labs. Furthermore, due to lack of every medical facility centred in one place leads to frequent movement of victims from one hospital or ward to another which creates a problem in evidence collection.¹⁵ In the case of State by Alur Police v Rangaswamy alias Narayanagowda & Ors,¹⁶ Forensic evidence collection is also difficult due to infrastructural facilities for evidence collection and the lack of coordination between the hospitals where medical examinations of the victims have taken place and the forensic labs. Furthermore, due to lack of every medical facility centred in one place leads to frequent movement of victims from one hospital or ward to another which creates a problem in evidence collection.

RECOMMENDATIONS FOR A BETTER ACCESS TO MEDICO-LEGAL HELP

The Justice Verma Committee, which was constituted in 2013 after the heinous gang rape incident that took place in Delhi on December 2012, sought to look into the existing lacunae in the rape laws, medico-legal procedures, police system, etc. and came out with a detailed report. A summary of the recommended reforms is provided below-

- **Changes in the existing rape laws**

The committee has recommended categorising any type of non-consensual sexual contact as sexual assault even whether it is penetrative or not. The offence should be punishable with 5 years of imprisonment, or with a fine, or both. The committee has also recommended life

¹⁴ *Tuka Ram & Anr v State of Maharashtra* (1979) SCR (1) 810

¹⁵ Dr. Indrajit Khandekar & Khushali Mahajan 'THE DISMAL STATE OF MEDICO-LEGAL SERVICES FOR RAPE VICTIMS IN INDIA' (2020) 6(170) < <http://rsrr.in/wp-content/uploads/2020/08/THE-DISMAL-STATE-OF-MEDICO-LEGAL.pdf> > accessed 10 December 2022

¹⁶ *State by Alur Police v Rangaswamy alias Narayanagowda & Ors* (2003) Cri LJ 607

imprisonment for rape. The committee has also recommended the punishment of any form of verbal sexual assault for a term of 1-year imprisonment or fine or both. The Committee noticed that there was an absence of the proper definition of the word 'trafficking' in the Immoral Trafficking Prevention Act, of 1956. It recommended an amendment in the provisions of the IPC on slavery to criminalise trafficking by threat, force, or inducement. The Committee has recommended that the terms 'harm' and 'health' be defined comprehensively under the Juvenile Justice Act, 2000 to include mental and physical harm and health, respectively, of the juvenile.

- **Changes in medical examination of rape victims**

The committee has emphasized providing urgent healthcare to the victim before the completion of legal formalities. The rendering of unqualified service to sexual assault victims or refusal to provide healthcare by medical professionals is punishable. There should be a presence of a female gynaecologist and a certified counsellor at the health centre. The committee has also stressed the fact that whether rape has occurred or not is to be determined by the law and medical professionals should refrain from making any comments on the same based on the medical report. Furthermore, the two-finger test is recommended to be discontinued.

- **Police reforms**

The committee has recommended the separation of investigating police from the law and order police for speedy investigation. The committee also recommended constituting a Police Complaints Authority at the district level and state levels to look into complaints against police officers. For proper management of rape cases, the committee recommended the following-

- Upon receipt of the complaint, the duty officer must inform the "Rape Crises Cell". The Rape Crises Cell must provide legal assistance in filing FIRs and counselling to the complainant.
- Every individual should be able to register an FIR at any police station irrespective of the place in which the crime took place and also register the complaint online.
- The police should also be incentivised. Police personnel should be trained to deal with sexual offences properly.

- Police welfare should be facilitated for better police performance.

Other reforms

The committee recommended that the Representative of People Act, 1951 should be amended to disqualify any candidate convicted of committing sexual offence from contesting elections. The committee also recommended adult literacy programs for gender empowerment. Apart from this, The Ministry of Health and family welfare has released detailed guidelines on medico-legal care for victims of sexual assault. The guidelines include a holistic approach to look into every aspect of victims' health. Both the physical and mental health of the victim should be taken into account and a proper interface should be established with the police, public prosecutors, and judiciary.

CONCLUSION

The fact that laws are being reformed and new policy decisions are being taken shows that the problems faced by rape survivors are being addressed and deliberated thoroughly. But proper implementation of those recommendations is still lacking. The Justice Verma committee suggested rigorous punishment for rape. Yet Rape incidents have only increased since then. The Justice Verma committee also prescribed protocols for professional medical examination and banned the two-finger test. In the Bhanwari Devi rape case, where a social worker who had campaigned against child marriage was gang raped in Rajasthan, the judge passed obnoxious comments about her and suggested that the rapists, an uncle, and his nephews, could not have committed such a crime.¹⁷

While focusing on institutional reforms, adequate measures should also be taken to improve counselling services for the victims, especially in socially and economically backward areas of the country where social stigmas against rape victims are more commonplace than in metropolitan cities. In a study, it has been found that there is a direct correlation between

¹⁷ 'Sexual crimes: Why is Centre not implementing Verma panel's proposals?' (*Hindustan Times*, 27 July 2016) <<https://www.hindustantimes.com/analysis/sexual-crimes-why-is-centre-not-implementing-verma-panel-s-proposals/story-IDstZTSdnt5mQgicp3FmaP.html>> accessed 10 December 2022

emotional support and the coping mechanism of a survivor. This positive effect may be attributed to the supportive environment created by the emotional assistance that the victims receive and it also helps to create an appropriate response to trauma.¹⁸

¹⁸ Lindsay M Orchowski & Amy S Untied, Christine A Gidycz, 'Social reactions to disclosure of sexual victimization and adjustment among survivors of sexual assault' (2013) 28(10) *Journal of interpersonal violence* <<https://doi.org/10.1177/0886260512471085>> accessed 10 December 2022