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Rights of a Rape Victim

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ABSTRACT

India ranks third amongst the countries where maximum number of rapes happen, just behind the United States of America and Brazil.

According to National Crime Records Bureau Data around 34,000 rapes happened in 2018 alone, that means one a woman was raped every 15 minutes and the conviction rate was 27% and it is believed that 54% of cases are still not reported. According to a study by the United Nations, only 11% rape cases in India are reported.

In this scenario it is very important to be legally aware about the 6 rights of rape victim: Right to Zero FIR, Free medical treatment even in any private hospital, No two-finger test during medical examination, Harassment free and time-bound Police Investigation, Trial with full dignity, speed and protection, and Right to compensation.

I. RIGHT TO ZERO FIR

Suppose a girl was raped in Lucknow, but she can even file an FIR at Patna, it is the job of Patna's respective police station to send the FIR back to Lucknow.

This concept has its roots back to the Justice Verma committee which was formed at the aftermath of Nirbhaya Case. No police officer can deny the request of a Zero FIR due to lack of investigation; the Zero FIR has to be filed first. This ruling was evolved by the Constitution Bench of the Hon'ble Supreme Court in the case of Lalita Kumari vs. Government of U.P 2014 2(1) SCC 1.

The FIR has to be done in accordance with Section 154 of Cr.PC. The Police officer who denies to file the zero fire will be punished in accordance with Section 166A of the IPC, he can get the punishment of Rigorous Imprisonment anywhere between 6 Months – 2 Years and/or Fine.

This concept was further recognized in the case of Kirti Vashist v. State and Ors, Date of Order – 29/11/2017.

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II. FREE MEDICAL TREATMENT EVEN IN ANY PRIVATE HOSPITAL

According to Section 357C of Code of Criminal Procedure - *All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.*

If the hospital denies treatment, or demands money then according to Section 166B of IPC he/she will be punished.

III. RIGHT TO SAY NO TWO-FINGER TEST DURING MEDICAL EXAMINATION

While medically examining any women no doctor shall conduct 2 finger test according to Section 164A of Code of Criminal Procedure, all the details regarding the making of reports are discussed in this section and the Hon'ble Apex court supported this section in the case of Lillu Alias Rajesh and Another vs. State of Haryana 2013 (14) SCC 643, and the Supreme Court herein held that this 2 finger test violates the right to privacy and dignity of the rape survivors, and hence it is illegal.

The guidelines issued by the Ministry of Health facilitated the distribution of Medico-Forensic kit to all the hospitals for the sample collection of DNA and other things and the report will consist of only the name and address, age, description of material taken for the DNA testing, marks of injury, if any, general mental condition and any other relevant material. Any male doctor examining such rape victim will have to get a consent for the same.

The Chhattisgarh Government has made it clear that only lady doctors will examine the rape victim.

IV. RIGHT TO HARASSMENT FREE AND TIME-BOUND POLICE INVESTIGATION

A woman police officer shall come to the house of the rape survivor, if not the house then any place which the rape survivor desires (Sec 157 of Cr.PC), the atmosphere shall be friendly and there has to be the presence of the friends and family of the rape survivor, NGO or lawyers. The statement of the rape survivor will be recorded according to Section 164 (5-A) of Cr.PC. The lady magistrate has to record the rape survivor's account of events in her personal chambers and not in an open court, this will be considered as the examination-in-chief also.

V. RIGHT TO TRIAL WITH FULL DIGNITY, SPEED AND PROTECTION

According to Section 26(a), the trial will be presided by a lady judge, as far as practicable. No question regarding the sexual history will be asked or any other question which shall amount to character assassination of the rape survivor (Section 53A of the Indian Evidence Act). According to Section 372 (2) in cases of rape proceeding shall be in front of a camera (in-camera-proceedings)

As per Section 327(3) of Cr.PC, come what may, the court proceedings shall not be published.

To initiate speedy trial the police, according to Section 173(1A) shall complete the investigation within two month from the date on which the information was recorded, and the court also has to conclude the proceedings within two months as per Section 309(1) of Cr.PC.

There has been a mention of the creation for a trial program as per Section 230 of Cr.PC:

Case law – State of Kerala vs. Rasheed (AIR 2019 SC 721):

Herein, the Hon'ble Apex Court held that no one can threaten the witnesses or the rape survivor herself, police officers have to take the survivor from her home to the court and vice versa, and the rape survivor will stay in special waiting room to avoid any confrontation with the accused. Questions are the asked with dignity.

Case law – Mahender Chawla vs. UOI, Date of order – 5/12/2018.

Herein, it was held that the witness, if he desires not to give his testimony in front of anyone or have his identity protected then he shall by the way of an application iterate these facts and a different name for him shall be issued and his original identity will be protected. In case of any threat, the police officer will be responsible for providing protection.

VI. RIGHT TO COMPENSATION

Regarding this, a new provision has been added in the Code of Criminal Procedure i.e. Section 357A (Victim Compensation Scheme). These provisions were added in accordance with the guidelines laid down by the Hon'ble Supreme Court in the case of Nipun Saxena vs. UOI.

This scheme is known as Compensation scheme for women victims. This scheme was presented before the Hon'ble Apex Court on 11/5/2018, Supreme Court accepted the scheme and ordered all the states including the Union Territories to implement the same. Minimum 4 lacs and Maximum 7 lacs compensation is to be awarded to rape victims according to this

scheme. The court if it feels that the amount is inadequate, can even order to increase the compensation amount.

In the case of *Serina Mondal vs. The State of West Bengal and Ors.* 2018 SCC CAL 4238:

Herein, it was held that the compensation awarded under Section 357A of the Cr.PC is awarded to the rape victim because her Fundamental Right to Life and Personal Liberty was violated under Article 21 was violated.

It is the duty of the state to maintain law and order and to protect its citizens, and the state failed its duty that is why the rape happened in the first place. Hence, the state has to give compensation.

In the case of *Manohar Singh vs. State of Rajasthan & Ors.* 2015 (3) SCC 449:

Herein, the Hon'ble Supreme Court held that, "Compensation can be given even if crime goes unpunished for want of adequate evidence."

Factors that should be included in the application for the demand of compensation:

- Severity of mental and physical harm,
- Expenditure likely to be incurred in the medical treatment,
- Loss of education opportunity,
- Loss of employment,
- Was this a single isolated incident or a continuous harassment over a period of time,
- Whether the victim has become pregnant,
- Whether victim has contracted any sexually transmitted disease,
- The financial condition of the victim,
- The disability suffered,
- In case of death of victim, the dependents are entitled to compensation.

VII. CONCLUSION

It appears that people have not understood the proposition of law as to compensation to rape victim even after having lost the case. Many a time, a rape victim may not be able to produce the quality and standard of proof of rape beyond a reasonable doubt. In criminal proceedings standard of evidence has to be beyond doubt to convict an accused. If court so feels that the victim is sufferer, the court can grant her compensation. This compensation is not payable by

the boy but by the government for infringement of her fundamental right to life which includes living with dignity. We need to understand this, the state has a moral and legal duty to protect its citizen's life, and whenever these heinous crimes happen, it reflects the negligence on the part of the state, the fact that state failed its duty to maintain law and order.
