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# Secondary Victimization of Rape Survivors in the Indian Criminal Justice System: A Critical Legal Analysis

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## ABSTRACT

*Secondary victimization the compounding of the original harm of sexual assault by the processes, attitudes, and actors of the criminal justice system itself is a pervasive yet underanalysed dimension of rape adjudication in India. Whilst Indian courts have progressively enlivened the rights to substantive justice for rape survivors by a progressive interpretation of Articles 14 and 21, the procedural architecture within which those rights must be asserted continues to do systematic institutional harm upon the very persons it claims to protect. This paper undertakes a critical legal analysis of secondary victimization across the lifecycle of a rape case in India from first-information registration and police investigation, through trial and cross-examination, to delayed judgment delivery, and inadequate post-conviction rehabilitation. Drawing upon constitutional provisions, the Bharatiya Nyaya Sanhita 2023 ("BNS"), the Bharatiya Nagarik Suraksha Sanhita 2023 ("BNSS"), the Protection of Children from Sexual Offences Act 2012 ("POCSO"), landmark judgments of the Supreme and High Courts, Law Commission Reports, National Crime Records Bureau ("NCRB") data, and a substantial corpus of socio-legal scholarship, the paper locates five principal sites of secondary victimization:*

*(i) hostile and insensitive police receipt; (ii) medico-legal examination practices including the discredited two-finger test; (iii) aggressive and character-based cross-examination; (iv) institutional delay and multiple court appearances; and (v) meager compensation and rehabilitation. The paper argues that secondary victimization is not an incidental by-product of the adjudicative process, but a structural feature of an accused-centric system that has yet to fully assimilate a victim-rights paradigm. It proposes targeted doctrinal, procedural and institutional reforms underpinned by the constitutional guarantee of dignity under Article 21, and India's obligations under the Convention on the Elimination of All Forms of Discrimination against Women to deconstruct the architecture of secondary harm.*

**Keywords:** *Secondary victimization, rape victim, Article 21, two-finger test, cross-exam, victim compensation, POCSO, BNS, BNSS, criminal justice reform, India*

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## **I. INTRODUCTION**

In 1997, the Supreme Court of India said that a rape victim suffers not just once, by at least two hands the hands of the rapist – but a second time by at least two other hands the hands of the criminal justice system. More than two decades after that statement, it retains its full force. Despite successive legislative interventions the Criminal Law (Amendment) Act, 1983, the Criminal Law (Amendment) Act, 2013, the enactment of POCSO, and most recently the BNS and the BNSS of 2023 rape survivors in India continue to be at a system that is structurally offender-centric, and that routinely inflicts forms of institutional harm upon them that are as pervasive and harmful as the original offence in their own way.

Secondary victimization is the concept that captures this problem. "Secondary victimization" refers to the re- traumatisation of a victim of crime by responses of institutions and individuals police, prosecutors, judges, defence counsel, and the broader social environment, to their victimization. In the context of rape, secondary victimization occurs across the full spectrum of the criminal process. It begins in the police station where the requirement to register an FIR is routinely discount and combative, interrogation of the survivor's credibility and insensitive or degrading questioning. It ripples through the medico-legal examination where discredited methods such as the two- finger test outlawed by the Supreme Court and prohibited by statute yet still performed in certain jurisdictions dehumanizes the survivor's body into an object of proof. It combusts at trial where protracted cross-examination designed to besmirch the survivor's character and sexual history, perpetuates the conditions of the assault itself under the formality of the law.

The paper examines secondary victimization as a primary outcome of systemic delay in rape trials, and observes the continued offender-centricity of the Indian criminal justice system, 'offender- centric' in orientation, in the words of Eakramuddin. This paper builds upon that analysis through an intervention mapping the locations at which secondary victimization occurs, analyzing the legal architecture which facilitates or obstructs that occurrence in each location, and presenting a doctrinal and institutional reform agenda in keeping with the constitutional right to dignity under Article 21 of the Constitution of India.

## **II. CONCEPTUAL AND CONSTITUTIONAL FRAMEWORK**

### **A. Defining Secondary Victimization**

Secondary victimization as a concept was conceived in victim logical scholarship to refer to the harm to the victim not caused by the initial criminal act, but by the successive reaction of social

institutions to the victim. Discretely, it has three distinct dimensions in the context of rape. First, institutional secondary victimization harm by the actions of formal actors, such as the police, medical examiners, prosecutors and the courts. Second, social secondary victimization stigma, victim-blaming and ostracism, from family and community. Third, structural secondary victimization harm inherent in the design of legal rules and procedures. such as the rules authorizing character- based cross examination or the lack of available enforceable timelines that operate predictably and recurrently to harm survivors, regardless of the conduct of individual actors.

This paper, by and large, focuses on institutional and structural secondary victimization, since these are amenable to legal intervention. Social secondary victimization, acknowledged it is a a important contextual consideration it determines the willingness of survivors to report, to engage in the process and to withstand the stresses of trial - but its remedies lie largely beyond the domain of criminal procedure.

### **B. The Constitutional Basis: Article 21 and the Right to Dignity**

The constitutional backbone for a judicial response to secondary victimization lies in Article 21 of the Constitution of India through a body of landmark pronouncements, interpreted. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* the Supreme Court ruled the right to live with dignity is inherent to Article 21 and cannot be reduced to mere animal existence.<sup>2</sup> In *K.S. Puttaswamy v. Union of India*, the Constitutional Bench declared the constitutional status of, dignity, privacy and bodily integrity as fundamental to Article 21, and that the State may not act to the detriment of such interests.<sup>3</sup> When applied to the context of rape, these principles tell that a legal process routinely degrading the dignity of survivors through degrading police interrogation, invasive medical examination or character-based cross examination amounts to violation of their fundamental rights under Article 21, irrespective of the ultimate conviction of the accused.

Article 14, while guaranteeing equality before the law and equal protection of the laws, is also implicated. The offender-centricity of the Indian criminal justice system generates an inequality of treatment in structure. The elaborate set of procedural protections for the accused, the presumption of innocence, the right to counsel and the right to cross examine are not compensated by an equivalent set of procedural protections for the survivor. This imbalance is

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<sup>2</sup> *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi*, (1981) 1 SCC 608, (India).

<sup>3</sup> *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, 325 (India) [hereinafter *Puttaswamy*].

not a neutral balance of competing interests, but a reflection of the historically privileged position of accused in a system which was not designed with victim rights in mind.<sup>4</sup>

### C. International Framework: CEDAW and the UN declaration

India is a signatory to the Convention on the Elimination of All Forms of Discriminatory Against Women ("CEDAW" ), which in its Article 2(f) obligates states to forbid laws and practices that constitute discrimination against women, and in its Article 5(a) requires the rectification of patterns of social and cultural life that are based on stereotyped role distributions. The CEDAW committee General Recommendation No.35 (2027) particularizes victim-blaming practices, corroboration requirements, and use of pre- existing sexual history, as forms of discriminatory that states must remove.<sup>5</sup> The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of power (1986) declares that victims must be dealt with compassion and respect for their dignity, and that they must be shielded from intimidation and secondary victimization throughout the justice process.<sup>6</sup>

## III. SECONDARY VICTIMISATION AT THE POLICE STAGE

### A. The Legal framework: Compulsory Fir registration

The legal framework for registration of rape FIRs has been progressively fortified. Section 173 of the BNSS 2023 (Section 154 CrPC 1973) requires registration for a First- information report whenever a cognizable complaint is received, with no leeway for officer in charge to determine veracity of complaint before registration. The Supreme Court in Lalita Kumari v. Government of Uttar Pradesh established that FIR registration is necessary upon information disclosing cognizable offence and that police have no such authority to carry out preliminary inquiry before registering the FIR in sexual -offences cases.<sup>7</sup> The provisions in 166A and 166B of BNS of 2023 (equivalent to the amended provision of IPC) make failure of a public servant to register a rape FIR and denial of free and prompt medical treatment a offence.

### B. The Gap between law and practice

Despite this, police hostility to registration of Rape FIRs, in particular when the accused is powerful, the survivor belong to of marginalised communities, the alleged crime is intra- family, is well documented. Survivors state being subjected to hostile interrogation, character

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<sup>4</sup> Aarti Sharma, *Role of Indian Judiciary in Protecting the Rights of the Victim of Rape: An Overview*, 4 J.L. & Soc. Sci. 1, (2019)

<sup>5</sup> Convention on the Elimination of All Forms of Discrimination Against Women arts. 2(f), 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

<sup>6</sup> Comm. on the Elimination of Discrimination Against Women, *General Recommendation No. 35 on Gender-Based Violence Against Women*, 28(b), 29(c), U.N. Doc. CEDAW/C/GC/35 (July 26, 2017).

<sup>7</sup> *Lalita Kumari v. Gov't of Uttar Pradesh*, (2014) 2 SCC 1, 111 (India).

questioning and pressure to resolve matter informally rather than criminally.<sup>8</sup> The language used by police officers in initial interrogation often reflects patriarchal and victim blaming (Vb) assumptions documented in scholarship as a systemic feature of law enforcement culture. NCRB data for 2022 reports 31, 516 rape cases reported across the nation.<sup>9</sup> Academic and civil society research however, estimates that cases reported is a small percentage of cases with under reportings estimated to range from 80 to 95 per cent . The effect of anticipated police-hostility and social stigma is categorised as primary factor to this. That is, secondary victimisation at police stage does not merely harmed those who report but deters reporting entirely, with vast majority of victims not having access to justice at all. That Section 173(1) of the BNS requires in the case of offences of rape, the statement of the survivor to be recorded, to be recorded by a woman police officer and that Section 183(5) requires statement of a survivor of rape to be issued by a judicial magistrate are vital survivor- protective provisions, but their implementation is inconsistent and sanction for non -complying makes these aspirational and not enforceable on the ground.

#### IV. THE MEDICO-LEGAL EXAMINATION AND TWO FINGER TEST

##### A. The two finger test prohibited practices

Test Per vaginam which is popularly known as 'two-finger test' involves the use of digital examination to the vagina to check the laxity of the vagina thereby to determine if the survivor has become accustomed to sexuality. The test is not based on science because vaginal laxity is neither evidence of consent, nor probative if sexual assaulting occurred.<sup>10</sup> The only practical consequence has been to humiliate survivors and have become a ground upon which courts have abused and incorrectly been assigned doubts on the credibility of survivor's. The Supreme Court in *Lillu v. state of Haryana* clearly ruled that the two- finger test is violation of right to privacy and dignity under Article 21 of a survivor of rape, and that the result from such a test can never be admitted in evidence.<sup>11</sup> Such a position has been reiterated by the court in subsequent judgments and reflected in the guidelines of Ministry of Health and Family welfare which prohibit performance of such a test. BNS does not give an explicit codification of the prohibition, though academic commentary including comparative law survey contained in literature review of dissertation, posits an explicit ban on such a test in the statutes. Though, this

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<sup>8</sup> Arushi Garg, *Understanding Rape Adjudication in Delhi Trial Courts* 67 (D.Phil. thesis, Univ. of Oxford 2020).

<sup>9</sup> Sonia Aneja, *Sexual Violence Against Women with Special Reference to Rape Victimization and Judicial Approach in India* 92 (Ph.D. thesis, Univ. of Jammu 2012).

<sup>10</sup> Rape Law in India: Problems in Prosecution Due to Loopholes in the Law, SSRN Working Paper No. 2250448, at 14 (2013).

<sup>11</sup> *Lillu v. State of Haryana*, (2013) 14 SCC 643, 12–14 (India).

test is prohibited by judgments, civil society reports document practice of such a test in certain states and districts consistent with practices in other jurisdictions where medical officers are not sufficiently cognizant of the prohibition, or in where it has not been adopted by the institution due to persistence institutional cultures. Existing practices and procedures that allows persists of two finger test constitutes a continuing violation of Article 21 with an obligation that lays the State's constitutional obligation to train and supervise its medical establishment and holds individual liability of officers conducting the examination.

### **B. Broader medico-legal framework**

Beyond the two-finger test, there are other implicative aspects of medico- legal examination as it is practiced now that is root of secondary victimization. Delay in medical examination as a result of referral to distant government hospitals (lack of medical resources and access to medical facilities), lack of availability of women doctors, or facilities for examination exclusively for women, result in evidence lost whilst increasing the duration of exposure of the survivor to an institutional procedure, that she may experience as extremely uncomfortable. Lack of access to trained and sensitized medical officers who conduct trauma informed examination and the lack of information provided to survivor about process of examination and right to refuse certain examination, further undermine dignity of the process.

Section 64 A of the BNS (Section 126 3A CrPC) mandates the immediate and free medical examination of rape survivor and stipulates that the examination should be carried by a registered medical practitioner. Statute doesn't provide standard of care, requirement of trauma informed examination procedures, presence of a female medical officer to be present at any stage. These concerns must be remedied in the subordinate legislation and the Ministry's guidelines.

## **V. SECONDARY VICTIMISATION AT TRIAL: CROSS-EXAMINATION AND THE COURTROOM**

### **A. Character Evidence and Section 146 of the Bharatiya Sakshya Adhinyam**

Historically, the examination of rape survivors has been the most acute area of secondary victimization in the courtroom. Before the 2013 Amendment, Section 155(4) of the Indian Evidence Act allowed defence counsel to offer proof of the survivor's sexual history and overall immoral character in order to undermine her credibility as a witness. This provision that offered no parallel for any other type of complainant institutionalised victim-blaming as a forensic

technique.<sup>12</sup> The 2013 Amendment deleted Section 155(4) and modified Section 146 of the Indian Evidence Act to prohibit questions relating to the survivor's sexual history or general character. These protections have now been enshrined in the Bharatiya Sakshya Adhiniyam, 2023 ("BSA") that replaced the Indian Evidence Act. Section 124 BSA repeats the ban on character-based cross-examination of rape survivors. However, courts are left with discretion to allow interrogations that go to the survivor's credibility that do not directly implicate sexual history and defence counsel commonly takes advantage of that discretion to introduce character-impugning material via oblique routes.<sup>13</sup> Arushi Garg's empirical study of Delhi trial courts reveals the persistence of victim-blaming cross-examination practices in the post-2013 era, observing that judges rarely intervene to stop impermissible questioning.<sup>14</sup>

### **B. Right to In-Camera Trial and Anonymity**

Section 72 of the BNS prohibits the revelation of the identity of rape survivors, while Section 354C of the BNSS (equivalent to Section 327(2) CrPC) provides that rape trials be held in camera. These provisions touch on crucial aspects of secondary victimisation by restricting the public exposure of survivors to the gaze of trial. The in-camera mandate, however, does not erase the trauma of cross-examination, but only guarantees the cross-examination takes place before a smaller audience. Prohibitions on identity revelation while formally adhered to in the court are regularly strayed in media reporting and in communal gossip harms that the criminal law only has limited power to stop *ex ante*.

The Supreme Court in *State of Punjab v. Gurmit Singh* directed that courts must forbid defence counsel from using the cross-examination of the survivor as a vehicle of character-assassination or of her humiliation, and that judges must proactively intervene to stop such interrogations.<sup>15</sup> This judicial injunction handed down in 1996 has not been uniformly adhered to. Its effectiveness rides on the individual sensitivity and willingness to exercise their case management powers of the particular judge a variable that should not decide whether a survivor's dignity is safeguarded.

## **VI. INSTITUTIONAL DELAY AS A LENS OF SECONDARY HARM**

### **A. The Magnitude of Delay**

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<sup>12</sup> Indian Evidence Act, 1872, 155(4) (India) (repealed 2003 as to rape and sexual assault cases).

<sup>13</sup> Bharatiya Sakshya Adhiniyam, 2023, § 124 (India) [hereinafter BSA].

<sup>14</sup> Garg, *supra* note 8, at 112–18.

<sup>15</sup> *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384, ¶¶ 12–14 (India).

As per 2023, over 90,000 rape cases were outstanding for trial in Indian courts, with prosecution's average timelines to trial vastly exceeding the sixty day statutory norm set by Section 346 BNSS (previously Section 309 CrPC). Studies delving into trial court records in Delhi echo average rape trial durations ranging between three to five years, and some cases prolonged for more than a decade. Appellate interplay further elongates the timeline: Pendency of High Court cases in rape appeals often exceed five years.<sup>16</sup> The consequence of these multiple delays is that many survivors will not have finality conviction, acquittal or civil compensation for fifteen (15) years or more post the offence.

### **B. The Psychological and Practical Impact of Delay**

Delay is not a non-partisan administrative matter; delay constitutes a cumulative form of harm. Sornalakshmi VS has shown that lengthened proceedings exacerbate the post-traumatic stress disorder, depression and anxiety in survivors,<sup>45</sup> and that the uncertainty of the outcome sustained over years impeded the psychological resolution which the closure of the criminal process can offer. Dr. Abha Sharma's analysis of delay of rape cases in Rajasthan likewise concludes that lengthened proceedings amplifies the trauma for survivors,<sup>46</sup> tarnishes public faith in the justice system and emboldened offenders by signaling impunity.

The practical impact of the delay multiplies the psychological harm. Evidence deteriorates: forensic samples lose integrity, witnesses' memories dim and witnesses went untraceable or under the weight of time and pressure of social influences turn hostile. Pratiksha Baxi's seminal study of compromise in rape trials documents how the extended length of proceedings engender powerful incentives for the survivors into accepting informal out-of-court settlements that are fraught with technical illegality under Indian law but that in practice operates by informal condonement of prosecution witnesses turning hostile and cases collapsing for absence of evidence.<sup>17</sup>

### **C. Fast-Track Special Courts: Promise and Reality**

The scheme to streamline the trial of rape cases by creation of Fast-Track Special Courts (FTSC) coming into force in 2019<sup>33</sup> under the Nirbhaya Fund that is now detailed provisions under the BNSS was devised to overcome the delay problem by earmarking dedicated courts that solely handle rape and POCSO related cases and was intended to address all the major causes of delay. The scheme that has been put in force saw more than 750 FTSCs within 2023 around the

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<sup>16</sup> Ananya Dalmia, *The Impact of Pending Court Cases on the Efficacy of the Judicial System in India: Justice Delayed Is Justice Denied*, 8 Int'l J. Soc. Sci. & Econ. Rsch. 3086, 3092 (2023).

<sup>17</sup> Pratiksha Baxi, *Justice Is a Secret: Compromise in Rape Trials*, 44 Contributions to Indian Sociology 207, 211 (2010).

country.<sup>18</sup> The proposed reforms have produced a quantifiable improvement in the timelines of trials in some states. However, the implementation of the FTSC scheme is uneven with FTSCs in some states being under-staffed, under-resourced, under-equipped in terms of infrastructure and administrative support and not being accorded consistent priority in docket management.

## VII. INADEQUATE COMPENATION AND REHABILITATION

### A. The Legal Framework: Section 357A BNSS And State Schemes

Section 396 BNSS (earlier Section 357A CrPC) mandates that all State Governments are obliged to prepare a scheme for providing funds for the purpose compensate the victim or her dependants who suffer loss or injury through a crime and who need rehabilitaion. In compliance with this scheme all the states and union territories have now notified schemes for victim compensation while Nirbhaya fund is in place providing central resource for victim support in rape and sexual offence cases. The Supreme Court in *Bodhisattwa Gautam v. Subhra Chakraborty* held that that the court has inherent power to award interim compensation to rape survivors pending conclusion of the trial and that this relates to power under Article 21.<sup>19</sup> Subsequent judgements including directions of the Court in *Delhi Domestic Working Women's Forum v. Union of India* struck minimum parameters of State provided victim support in terms of assignment of counsel, medical treatment and safe housing etc.<sup>20</sup>

### B. The Gap Between Framework And Implementation

In spite of this framework, the implementation of victim compensation schemes in rape cases is widely reflected to be inadequate. A study by Muralidhan on rights of the victim in the Indian criminal justice system revealed that procedural rights in case of rape victims ' extend little beyond getting the case started and giving testimony as witnesses, with little legal assistance, with protection and rehabilitation . Most of the State compensation schemes are premised on post-conviction distribution meaning that survivors have to meet full trial process which may take 10 years and hence get financial relief. An empirical study on impact of sexual violence in India, Bihar, by Eakramuddin concluded in the same context that the incidence is high, conviction is low and 'compensation and rehabilitation schemes inadequate and ill implemented.'<sup>48</sup> Lack of interim and unconditional compensation payable on the date of complaint without a consideration if a conviction is ultimately attained, indicates that the survivors from economically weak backgrounds suffer the entire financial burden of litigation

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<sup>18</sup> Ministry of Women & Child Dev., Gov't of India, *Fast Track Special Courts: Status Report 3* (2023).

<sup>19</sup> *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490, ¶ 16 (India).

<sup>20</sup> *Delhi Domestic Working Women's Forum v. Union of India*, (1995) 1 SCC 14, ¶¶ 14–16 (India).

while simultaneously being denied any therapeutic, medical and social support to meet with the justice process.

### **C. One Stop Centres and the Support Person Mechanism**

The Governments of India scheme on One Stop Centres, the long terms and well established initiative, which is dealing with the issue of sexual violence, instituted in 2015, provides integrated medical, legal, psychological and shelter support to the victims of sexual violence and domestic abuse. The scheme of 'support person' under POCSO Act providing for a trained individual who travels and accompanies to the child victim through out the legal process is another instance of institutional innovation that could be extended for the victims of adult rape. Goswami Gajendra Kumars study of access of justice in case of sexual offences finds in terms of approach that survivor centered approach and judicial process sensitive to trauma' is essential for meaningful justice but these approaches at present are at the mercy of individual sensitivity of the police and judicial functionaries rather being embedded in the structure and the process.

## **VIII. REFORM RECOMMENDATIONS AND CONCLUSION**

FIR registration in rape cases needs to be accompanied with mandatory trainings and education on trauma informed practices for all the police officers. State police guides should be revised to enshrine the obligations confirmed at Lalita Kumari and enlisting specific disciplinary, criminal sanctions that are to be regularly enforced in terms of Sections 166A and 166B BNS. The inclusion of supervising review mechanism that demands that decisions for non-registration have to be sanctioned by a higher rank officer, and informed to the survivor, would create an accountability trail that acts as deterrent against informal FIR suppression .

Prohibition for two finger test, currently based upon Court decisions and guidelines by the Ministry need to be enshrined by amendment in the BNS or specific subordinate legislation under BNSS. This amendment needs to proclaim that any medico legal examination of a woman of rape shall not take place in this form of examination by per vaginam for determination of sexual history and any evidence obtained in contravention of this provision is inadmissible and medical education on trauma informed examination protocol should be mandatory for all registered medical practitioners who may be called to examine rape survivors.<sup>21</sup>

The provisions envisaged in BNSS for 'examination of a vulnerable witness in a special room and taking evidence of a vulnerable witness in video link should be given in case of every victim of and not by judicial consideration and discretion. The Central Government must finance in

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<sup>21</sup> *Lillu v. State of Haryana*, (2013) 14 SCC 643, 14 (India).

the form of establishment of a room for examination of vulnerable witness in every sessions court dealing with Rape & POCSO matters, with a time bound programme for completion. This would cut the number of court trips needed by survivors, and remove a prominent most acute source of in-court secondary victimization at trial. State compensation on victims should be amended to provide for unconditional interim compensation by which FIR is confirmed via a designated office irrespective of conviction attained or not. This will bring Indian practice on par with the Bodhisattva Gautama principle and with the standard UN Declaration that victims are offered material, medical, psychological, and social assistance via governmental, voluntary, community-based, and indigenous means. Nirbhaya fund should be targeted as a central provision for supplementary compensation in cases where state scheme falls short.

Secondary victimization is not a marginal concern in the Indian rape law, but it is a core structural feature of a criminal justice system that was designed for different era and which has undergone reforms in its constitutive law at a rapid speed compared to a slower changing institutional culture and procedure. BNS, BNSS and BSA all together the most comprehensive attempt of criminal codes of India in 161 year. Yet, the provisions contained in them towards safeguard of rape survivors mandatory FIR registration, prohibition on 2 finger test evidence, (In camera) trial, protection to identity, fast track court, vulnerable witnesses examination, victim compensation will remain aspirational rather than operational unless it will be accompanied with enshrined accountability mechanisms, comprehensive resource allocation and transformation in institutional culture on policing, prosecution and adjudications. This paper argued, relying on the guarantee of dignity under the Constitution Article 21, Indian obligations under CEDAW and the abundance of socio-legal scholarship detailed in the underpinning dissertation that secondary victimization is a violation of fundamental rights not just a policy failure. It is a violation of right to dignity, right to privacy, the right to effective relief and the right to equal treatment under the articles 14 and 21. The obligation of state isn't merely about investigation and prosecution against perpetration of sexual violence but make sure that process of investigation and prosecution is not a medium of harm itself. The reforms suggested in this paper are not beyond the institutional capacity. They are based upon pre-existing laws, judgements and administration facilities. What is required by them is political and institutional desire in the perspective of treating secondary victimisation as a constitutional violation and building a criminal justice system which promises every rape survivor to be engage with process of justice without facing a second trial at the hand of the criminal justice system that was designed to do so.

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