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# A Critical Analysis of the Right to Privacy of Victims in Heinous Offences

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## ABSTRACT

*Heinous crimes like rape on women not only affect the dignity of the victim but also their privacy rights if their identity is disclosed to the public. The legal provisions relating to rape in India clearly provide that the identity of the rape victim must be protected and the law also imposes penalties on the person who makes the identity of the victim known to the public. However, there are exceptions to this, which states that if the officer in-charge, the victim or the next of kin of the victim gives their consent in writing, the identity of the rape victim can be made public which can result in arbitrary and complete discretionary decisions taken by them, which may go against the interests of the victim in question. The idea behind protecting the interests of the public when it is conflicting with the interests of the private individuals should not be applicable here, as the public might want to know the identity. The pain that is inflicted on a victim of a heinous crime is so much that if the identity too is disclosed to the public, the victim suffers a greater harm as her right to privacy along with her dignity gets violated.*

*The interests of the victim should be given paramount importance and unless the victim himself or herself does not clearly consent to their identity being disclosed, the opinion of the officer-in-charge or the next of kin of the victim should not be taken into consideration.*

*The authors in this paper will focus on the rights of the victims of heinous crimes and their right to privacy and shall also take the help of various judicial pronouncements, which will substantiate the above.*

## I. INTRODUCTION

The crimes against women have shown a surge in the recent past which has led to women being victims of even more graver and heinous crimes which have a really bad impact on the women, both physically as well as emotionally on herself and the society as a whole. The word 'Heinous' is nowhere explicitly defined in the Indian Penal Code. However, the word has been interpreted by the courts in a series of judgements. It can be defined as those crimes which have

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an impact on the collective conscience of the society. It is not possible to have a straight jacket formula to classify these crimes, but the cases which come under the 'rarest of rare' are considered to be heinous crimes. Heinous crimes against women are the most disgraceful atrocities that are committed against women. Crimes such as acid attacks and rapes can be considered as the highest level of torture which is inflicted upon the youth, motherhood, and womanhood itself. It has to be understood that these crimes not only have a physical impact on the victim but also impacts psychologically, mentally and emotionally. But it has to be seen that these impacts are not short lived but have a long term effect where the identity of the victim has to be protected. There comes a constant tussle in between the victim's right to privacy and the right of the public to know about the incidents which could have an impact on the interests of the public. It is not denied that the public holds the right to know, however, an individual's right should also at times prevail over the public's right. Privacy is a very essential element to many victims who have been subjected to such atrocities; moreover, privacy becomes so important that many victims refrain from even accessing critical medical services fearing that their privacy might be breached. The society as a whole is so repressive and defeatist towards the victim, rather than being sympathetic to the situation, it starts downgrading and blaming the victim.

## **II. THE RIGHT OF PRIVACY OF VICTIMS**

The right to privacy is essential to every person and more so when the person is a victim of a heinous crime. The need for privacy in such cases is so vital that many victims often prefer to not consult a specialist or an authority as their identity may be revealed which would further the pain and trauma that they are already going through. Victims often do not talk about their problems to authorities without getting assurance that their identity will not be revealed. To encourage access to treatment when required, the Government has made systems of rules and guidelines that help secure the information and the identity of the victim from getting exploited by the professional the victim is consulting. Feminists lawyering and Feminists approach is the utmost necessity of the present time, where the victim attains complete justice only when her modesty, sufferings as well as her privacy is not invaded. Feminists approach can be understood as an approach where the situation and privacy is given weightage and also the due process is followed which is required to ensure that the victims gets justice. The approach takes into account the protections which involve limited access to the victim's personal information, where the victim has all the right and control over the release of information and prevents the victim from re-victimization during the criminal proceedings. The fear and anxiety over who might have the access to files, pre-sentence reports, and victim's statements may result in

guarded or protected participation by victims which would be detrimental to the whole proceeding. The Feminist approach acts as a safeguard to all these fearful processes. Now it has to be understood that every individual has a right which is conferred on them and there is connectivity in some way or the other to other jural postulates. A right may be defined as an interest which is recognised, conserved and also is enforceable by law. Also, each and every right has a corresponding duty. Here in this case the victim has the right and control over her privacy, which is her right and the State, on the other hand has a duty to protect those rights so that her rights are not infringed. Rights and duties always go hand in hand and cannot exist without the other. It is the duty of the state to enforce and implement it in the policy and decision making.<sup>3</sup>

The protections given to the victims can be divided into two forms, i.e. confidentiality and privilege. To best serve the interests of the victims of heinous crimes and ensure that their identity is protected, the professionals who work with these victims ought to comprehend the interchange between confidentiality and privilege and the various degrees of protection they give. Victims of crimes have a significant part in the criminal justice framework, yet his/her welfare isn't given enough attention by the State. The victims of crimes are almost an overlooked element in the criminal framework even though it is the victim who starts the entire proceedings by offering information to the State authorities without which the whole framework could fall. Yet at the same time, the role of the victim in the general process is not given enough importance to. The term 'Victim' is defined in Criminal Procedure Code, 1973 section 2(wa) as an individual who has endured any loss or injury brought about by reason of the act or omission for which the blamed individual has been charged and the expression 'victim' includes his or her guardian or legal heir. The victim undergoes pain and suffering at different points of the event. The primary victimization is when the victim directly suffers because of the commission of the crime by the offender. It is also to be taken into consideration as to how the society itself becomes one of the essential parts in demeaning the victim and its family.<sup>4</sup>

The secondary victimization occurs post the crime where the victim suffers injustice by the hands of the authorities who fail to protect the victim's rights. The essential objective of a criminal justice framework is without a doubt the assurance of individual life, freedom, and property. The modern criminal law should speak on behalf of the general public representing

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<sup>3</sup> Sucheta Dasgupta, *To name the rape survivor or not? How IPC's Section 228A is often misread*, The Wire, 2018

<sup>4</sup> Ibid

their desires and needs and at the same time punishing and reforming the criminals in the society. However, in this entire process, it fails to take into consideration the true needs and interests of the victims in its entirety. This doesn't stop there, because the very nature of our criminal justice system is inclined on defaming the victim, where the ones in the most noble profession try to character assassinate the victim. The jurisprudence of our criminal framework follows its foundations in the reformatory theory of punishment, which intends to accomplish societal balance by giving justice to the victims and punishing the offenders. The Indian Criminal laws which mainly are in the Indian Penal Code and the Code of Criminal Procedure has various provisions that protect the rights of the victims like right to fair trial, right to defense etc. Since the majority of the cases in the country take years to come to an end, it results in the increase in the pain and agony that is already suffered by the victim.<sup>5</sup>

### III. THE ROLE OF JUDICIARY

The unanimous judgment given by the constitution bench of the Apex Court in the case of Justice K.S. Puttaswamy (Retd) v. Union of India<sup>6</sup> is an emphatic victory for privacy. Although the judgment was the outcome of the petition challenging the controversial Indian biometric scheme Aadhar, it made a lot of impact on other issues also which were related to privacy. The judgment endorsement of accepting the right to privacy as a fundamental right marks a momentous occasion in the constitutional history of India which declared: "*The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.*" The fact cannot be however ignored that no matter how resounding the judgment is, the implementation is very arduous, which even becomes more difficult to implement when it comes to cases where heinous crimes have occurred. To have a very sensitive approach and a very feministic approach becomes really difficult also when there lacks proper understanding of the very issue and also proper understanding to deal with such cases. However, the courts have repeatedly highlighted the importance for maintaining the privacy of the victims. The Supreme Court in the case of Nipun Saxena v Union of India<sup>7</sup> and others has clearly stated that the name and identity of the victims of heinous crimes like rape and sexual assault should not be disclosed and this is applicable to the victims who are no longer alive as well. This particular step was taken by the Judiciary keeping in mind the mentality of the Indian society which still treats

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<sup>5</sup> Cherif Bassiouni, *International Recognition of Victim's Rights*, Human Rights Law Review, Vol 6, Issue 2, 2006, pp. 203-279

<sup>6</sup> WRIT PETITION (CIVIL) NO. 494 OF 2012

<sup>7</sup> WRIT PETITION (CIVIL) NO. 565 OF 2012

victims as untouchables, which makes the victim feel that they were at fault which further increases their pain and suffering. The Court has clearly stated that the right of disclosing the identity lies only with the victim and only he or she can disclose their identity provided that she is a major and has not been coerced into revealing her identity. The court likewise said that no one, other than the victim should have a say with respect to the choice of disclosing her identity. The courts have equally recognized these facts and have acted on it in a swift manner. The Hon'ble court in the case of *Bhupinder Sharma vs State Of Himachal Pradesh*<sup>8</sup>, clearly refusing to propose the name of the victim and keeping in view the social objects of dispensing social victimization or shunning of the victims of heinous crime Section 228A has been enacted and suggested the use of the word 'victim' instead of the name in the course of judgments. Also, the Hon'ble Kerala High Court in the case of *Aju Varghese v. The State of Kerala*<sup>9</sup> highlighted as to how the society has a duty to support the victim of heinous crimes and to help the victim get their lives back on track. The provision was specifically implemented to ensure that the victim is not exposed to further psychological and sociological agony.

#### IV. THE ROLE OF MEDIA

The role of the media is very important as very often, such cases are made to sensationalize to get a bigger audience, which results in the violation of the interests and the rights of the victims. The media has the right to report such matters and carry out their work in the way they think is best. However, no right is absolute, and therefore they also have an obligation towards the victim whose story they are reporting, to not disclose her identity. Moreover, the media has to be mindful and should do its job in a sensible manner keeping in mind the best interest of the victims and their family at the same time. Irresponsible behavior by the media is evidently seen when there are media trials and the picture or the family background of the victim is shown in public domain without even asking the permission of the said victim. This has become worse with the evolution of online media and social media handles. The Supreme Court has gone on to say that the offense of assault under the Indian Penal Code (IPC) and offenses under the Protection of Children from Sexual Offenses (POCSO) Act will not be placed in public domain as the future and well being of the victims will get hampered. However, the guidelines are never followed, as the media houses are more inclined on getting higher ratings than respecting the privacy of the victim and its family. No individual can print or distribute in print, electronic, or on social media the identity of the victim of heinous crimes or even in a remote way disclose

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<sup>8</sup> Appeal (crl.) 1265 of 2002

<sup>9</sup> Crl.MC.No. 5247 of 2017

any information which can result in the victim being identified by the public.<sup>10</sup>

However, the entire blame cannot be put on the other aspects when the main problem lies in Indian laws itself that say that the representatives of the victims can allow the authorities or the media officials to disclose the identity of the victim. Section 228A of the Indian Penal Code clearly states that the identity of the victim can be disclosed by the next of kin of the victim, if the victim is deceased or is of unsound mind. In a country like India, the victim's identity, if disclosed in any circumstances will further the discrimination and humiliation that he or she would have already been going through. Section 228A of the Indian Penal Code clearly lists the circumstances under which the authorities can disclose the name of the victim of such heinous crimes. The right to disclose the identity of the victim should vest with the victims themselves alone, and not with the families of the victims. The victims have the right to privacy where they can ensure that their identities are not disclosed to the public by the authorities. Therefore, this makes the Government responsible to protect their right to privacy, and they should disclose the identity of the victim only if the victims themselves have explicitly consented to their identity being revealed.

## V. CONCLUSION

Every individual has the right to live a dignified life which includes the right to live a life where their privacy is not arbitrarily interfered with. The victims of heinous crimes like rape and sexual assault leave people especially women in trauma and pain, which may stay with them for the rest of their lives. Such gruesome incidents affect women to such a great extent, as even though they are victims of these crimes, it is their honor and dignity that has been shredded apart. Therefore to disclose their identity without their permission by the police or media authorities will further their suffering, pain and humiliation and the trauma that they have already endured. It is imperative that the victim's identity should not be disclosed and the Section 228A (2)(c) of the Indian Penal Code which gives certain exceptions where the victim's identity can be disclosed, that is if the victim is dead or of unsound mind, then the victim's next of kin has the right to disclose the identity of the victim, which is completely wrong as the victim will be the one who will suffer the most if the identity is disclosed and therefore the final decision to disclose the identity should be left with the victims themselves. The current provision needs to be amended where such powers are not given to family members of the victims to decide what is best for the victim as it could always go against the interests of the

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<sup>10</sup> Garima Rathi and Shubham Bhargava, *Victim of Sexual Assault and importance of Media*, Journal of Legal Studies and Research, Vol 2, Issue 2, 2016

victim. The reason why so many heinous acts go unreported is because victims of sexual abuse have always been treated differently where victims of rape have been stigmatised for their behavior. To ensure that victims of crimes trust the people in authority and come forward to report crimes that they were subjected to, without the fear of their identity getting disclosed, the State must ensure that their right to privacy is protected. The professionals must inform the victim that they have the right to privacy where their identity will not be revealed to the public. At the same time, the victim should not be given a false sense of security that their identity and personal information will not be revealed to illegally procure information and statements from the victim. There should be stringent punishment to the authorities who disclose the identity and personal information of the victims without taking prior permission from the said victim, and laws should be made which curd the arbitrary powers that can be exercised the police officials who can act according to their own discretion which could be detrimental to the interests of the victims. While publicity of the case may be necessary to educate the public about the severity of the crimes that take place in the country, the same can be done without disclosing the identity of the victim.

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