

Compensatory Jurisprudence and Violence Against Women

Abstract

Criminal law, law enforcement agencies, court procedures and the administration of criminal justice almost exclusively focus upon the offender. The law enforcing authorities investigate victim only as a means of finding the offender and securing criminal prosecution against him. The basic object of the Criminal Justice is to protect the society against crime and to punish the offender. However, Criminal Justice System does not show equal concern to the victims of crime, who suffers loss or injury.

The object of the punishment is not merely to shelter and reform the criminals but to safeguard the interests of the victims also. There is no comprehensive legislation providing for compensation by the State or by the offender to the victims of crime. The Criminal Procedure Code is the first and may be the oldest legislation in India to deal with the subject of compensation to the victims of crime.

It is suggested that compensation should be made an alternative mode of punishment under the Indian Penal Code. It should be made mandatory in the case of rape and the quantum of compensation should be in accordance with the injury received by the victim. The remedy should be made *inter alia* in the criminal justice system irrespective of the fact that a civil action could lie in the case.

Keyword: Violence, Right-Compensation-Justice-Policies.

Introduction

General

Violence against women, a manifestation of the historical unequal power relations between men and women, remains one of the primary obstacles to empowering women and achieving peace and security for all. Women have been systematically deprived of knowledge and skills that might help them to become better equipped to protect themselves against violence, including knowledge of the existing laws, religious texts, international injunctions on human rights and the demand made by other women for rights in their community and elsewhere.

[1] The violence against women shall be understood to encompass, but not be limited to, the following-

1. Physical, sexual and psychological violence occurring in the family.
2. Physical, sexual and psychological violence occurring within the general community.
3. Physical, sexual and psychological violence perpetrated or condoned by the State, whenever it occurs. [2]

Meaning

Violence against women has been clearly defined as a form of discrimination in numerous documents. The World Human Rights Conference in Vienna, first recognized gender based violence as a human rights violation in 1993. In the same year, United Nations Declaration, 1993, defined violence against women as total deprivation of liberty in public or private life [3]

Newspapers and periodicals of all hues in India often carry reports about violence against women. These include among others incidents of young brides being burnt for bringing 'insufficient' dowry, women dying in abnormal circumstances, domestic violence suffered by women on a regular basis. Deaths of women are extreme outcome of ill treatment, psychological abuse, or physical violence suffered by women. On the other hand rape and molestation of women and girls of young age in the form of physical and psychological abuse goes unreported. Very rarely do women themselves file police cases against the ill treatment meted out of them.

A few women who escape death end up in shelter homes, but the majority continues to live in marital union and endure abusive behavior. [4] Thus, it is evident that the social response is very poor in this regard. It is rather said that while we celebrate women right in all spheres, we show no concern for her honour and her dignity. It is a sorry reflection

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on the attitude of indifference of our society. [5]

Dimensions of Violence

Violence is perpetrated on women both inside and outside her home. Domestic violence, cruelty is the example of violence inside family; offences like eve teasing, murder, trafficking is mostly crimes, the one which shocks the conscience and shake its roots and is the most heinous is Rape.[6] It is the only crime perhaps where instead of getting sympathies, a victim is socially ostracized and morally degraded with a lifelong stigma on her dignity and character, the mental torture is deep and agony unbearable. It involves defilement and dishonour not only of the victim but to the whole family.

In such state, the victim tries to get justice by appealing to the courts, holding the provisions of the penal laws close to her heart and hoping against hope that justice will be rendered to her.[7]

The National Crime Record Bureau had termed rape "India's fastest growing crime" An analysis of data reported in 2012 shows that Madhya Pradesh reported the highest number of cases (3425) accounting for 13.73% of total such cases reported in country. Rajasthan and West Bengal reported 2049 and 2046 cases, respectively; followed by Uttar Pradesh (1963), Maharashtra (1839), Assam (1716), Odessa (1458) and Andhra Pradesh (1341) cases. The lowest number of cases was reported from Nagaland (21) and Sikkim (34).[8]

Women from all age groups have been victims of rape although it is women in the age group of 18-30 years, who may be more visible in the public sphere, continue to be most vulnerable to the crime of rape. The total percentage of rape victims in the age group 18-30 years was approximately more than 60%. Another significant and worrisome aspect of the data is that in many of the cases, the offenders were known to the victims.[9]

The offence of rape takes place in every 54 minutes, eve-teasing in every 51 minutes and dowry death every 1000 minutes.[10] These are just the reported cases in actual most of these molestations and rape cases go unreported in the sake of family's honour.

Monetary Compensation ; A Smart Trick

Compensation for rape is not a new idea. Courts have ordered for compensation to be paid under provisions contained in the statutes. Several State Governments too have found it convenient to pay sums depending upon the extent of the public outrage and media exposure. The Ministry of Women and Child Welfare has also launched a country wide scheme and has offered to reimburse the State Government the cost they incur in its implementation.

Here, we have to recall the experience with Prevention of Atrocities Act, 1989 for S.C. and S.T. Tribal and dalit victims of rape were required to produce a certificate of their tribal/dalit status for receiving a compensation of Rs. 25,000. Getting the certificate in itself became a profit making proposition for brokers and poverty also induces many to file false cases thus, defeating the imbibed spirit of provision. [11]

The law also appears to assume unfortunately that standards of dignity which are

committed outside the four walls of home and foeticide, infanticide, harassment, sexual assault and rape can have both the dimensions. Sexual offences are prevalent since long time in India. In the penal laws of all county, sexual offences against women occupy a significant place and out of all the different for a women from a well off family and for dalit women. So, a dalit woman's compensation money for rape can be shared by the rapist under the Act. The compensation is paid if the victim belongs to either a Schedule caste or a Schedule Tribe and the rapist does not. The law does not specify what happens if the women is from a Schedule Tribe and the man is from a Schedule Caste or vice versa. Even before the Act was passed in 1989, since 1978 in Uttar Pradesh women from SC and ST was paid compensation of Rs. 5000 for rape. [12]

Inadequacy of Laws

In spite of a number of laws to safeguard the interest of women, the women in our country continue to suffer due to lack of awareness of their rights, literacy, oppressive practices and customs. [13] Though, the movement towards the huge change in rape laws initiated after Nirbhya's Case, but it seems to be not as effective as presumed by the legislators.

In this situation, crime against women has to be waged by adopting a multiple approach and involving various sections of the society through systematic campaigns and various awareness programmes. Special support along with legal protection, safeguards, cooperation by investigating agencies and people in prosecuting the criminals and desired reforms in criminal justice system, including judges' sympathetic attitude towards victims of sexual assault are necessary to eradicate crime against women.

Poor Investigation

Criminal justice is the application or study of laws regarding criminal behavior. Justice refers not only to the fair trial accorded to the citizens of most countries, but also to the just retribution for victims of a crime.[14] It is well known that success of a case depends on the proper investigation by police agencies whereas investigative incompetence leads to diminished conviction rate. Lawyers say that reasons for relatively high conviction rates for crimes like murder or housebreaking is that witnesses can be found or, sometimes, invented by investigators.

The whole investigation system revolves around a witness in these cases, which is not possible in crimes like rape. For over five decades now, the Supreme Court has held that the testimony of rape victims does not have to be corroborated even forensic evidence for a conviction to be won. Moreover, it is lot for a perpetrator to create reasonable doubt in the mind of judge. This in turn reduces to chance of victim's getting justice. [15]

In 2000, a national survey in the United Kingdom concluded that 4.9% of all women had experienced at least one rape or sexual assault. In Ireland, Sweden and Germany, separate studies suggested that far higher numbers of women had been attacked, ranging from 25% to 34%. No similar nationwide survey data is available in India, though a 2007 government study found that 53% of children

polled reported having experienced "one and more forms of sexual abuse." [16] The Ncrb figures also show one important reason why victims have an incentive to remain silent as the rapists are the close members of family.

Conclusions

In, human society based on relationship, the setup of criminal justice demands means to satisfy the victim loss. Though, money cannot buy back the lost happiness but financial redress is a better and more rehabilitative process than imprisonment. While analyzing the existing legal provisions in India for providing justice to victims of crime shows that there is a long way to go. The experience at the international level, including the experience of the United States shows that there is a lot needs to be done at the macro level. But at the micro level certain immediate and possible measures may be taken to help the victims of crime in India.

Thus, monetary compensation to the rape victims is never considered in lieu of losing the honour rather it is for what she actually lost due to criminal act and for the expenses actually incurred. It is being observed that instead of commenting on this aspect perception of victim what she thinks is necessary for her rehabilitation and direction her life has to take. Ideally, court should along with punishing the perpetrator of crime award a strong rehabilitation package for the victim.

Compensation should be made an alternative mode of punishment under the Indian Penal Code. It should be made mandatory in the case of rape and the quantum of compensation should be in accordance with the injury received by the victim.

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