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INVESTIGATION OF SEXUAL OFFENCES AGAINST WOMEN IN INDIA – A REVIEW OF LEGAL PROCEDURAL MANDATES AND DIRECTIVES

Dr. Nagarathna A

Abstract

While the number of reported cases of sexual offences against women in India is increasing, as per official records, including that of the recently published report of the NCRB, the number of cases that result in timely and successful investigation which is crucial for successful prosecution are very few. A victim of such offence often faces difficulties, including getting the FIR registered on time and getting the criminal process initiated. This not only affects the following criminal process, but also curtails her access to justice, including legal remedies available in the form of medical treatment, counselling and compensation. Additionally, criminal procedure code mandates compliance with certain procedures of law in the course of such a crime's investigation, including recording of FIR by a women officer, judicial recording of victim's statement, medical examination of victim, forensic analysis of evidence, etc.

Despite these legal provisions, compliance with such rules is hardly seen. To add to these legal mandates, Ministry of Home Affairs has come up with a few important directives, including the latest one in the month of October 2020. This paper makes an analysis of the abovementioned legal mandates and Government Directives in relation to investigation of sexual offences committed against women in India. The analysis also includes critical assessment of effectiveness of such provisions.

KEY WORDS: *Sexual offences, Rape, Cyber-Crimes, India, MHA Directives.*

INTRODUCTION

“Unfortunately, in our society, the victim of a sexual offence, especially a victim of rape, is treated worse than the perpetrator of the crime.”

Supreme Court of India.¹

Sexual offences against women continue to haunt with an alarming increase in the number of reported cases in India. Statistics of crimes reported as per National Crimes Records Bureau indicates an increase of over 7.30 % of cases in 2019, compared to the cases registered in 2018. It also shows that the crime rate registered per lakh women population has increased to 62.4 % in 2019, compared to 58.8 in 2018.² While 81.5 cases of the offence of rape have been investigated and chargesheeted, only 27.8 percent of the cases have led to conviction. Metropolitan city recorded a total of 45,485 cases of crime against women, registered during 2019, showing an increase of 7.8% over 2018 (42,180 cases).³ Rate of convictions in cases of rape in metropolitan cities were 22.4 % in 2019.⁴ According to the latest data released by the National Crime Records Bureau (NCRB), India recorded 88 rape cases every day in 2019.⁵ Statistics, hence, show an increase in the number of reported offences committed against women including sexual offences. However, the number of disposed cases are less compared to number of cases registered, thus raising questions about effectiveness of our regulatory approach.

1 *Nipun Saxena v. Union of India*, [2012] Writ Petition (Civil) No. 565 decided on 11 December, 2018.

2 <<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>> accessed 5 December 2020.

3 Ibid at page xix.

4 Ibid at page xxi.

5 Dipu Rai, ‘No country for women: India reported 88 rape cases every day in 2019,’ India today, [2020] September 30, quoting NCRB statistics <<https://www.indiatoday.in/diu/story/no-country-for-women-india-reported-88-rape-cases-every-day-in-2019-1727078-2020-09-30>> accessed 2 December 2020.

SUBSTANTIVE LAWS WIDENING THE HORIZON

Indian Penal Code, the substantive criminal law of India, has been time and again amended to widen its scope to deal with various sexual offences committed against women. Law in this regard has been widened to include various forms of sexual offences, specifically through the following provisions:

- Assault or use of criminal force to a women with intent to outrage her modesty, dealt with under Section 354 IPC.
- Sexual harassment under Section 354A
- Assault or use of criminal force to women with intent to disrobe her under section 354B
- Voyeurism under Section 354C
- Stalking under Section 354D
- Rape and its aggravated forms, dealt with under Section 375 to 376-E
- Word, gesture or act intended to insult the modesty of a woman under Section 509, Etc.

Additionally, with extended interpretation of existing statutory provisions, other sections relating to criminal intimidation, defamation, etc., may also be used to regulate said offences committed targeting a women. However, they are not gender specific legal provisions.

LEGAL PROCEDURAL MANDATES IN RELATION TO INVESTIGATION OF SEXUAL OFFENCES AGAINST WOMEN

Since sexual offences are regarded as serious offences, the law mandates compliance to certain procedural requirements, including investigation into such offences by State investigation agency. Almost all sexual offences including the ones mentioned above are declared as cognizable offences by laws, thereby mandating investigation of such cases by Police. According to Section 154 of

the Criminal Procedure Code, a Police Officer, upon receiving information about any cognizable offence, has a duty to register an FIR. However, many times, a woman victim of crime fails to get her case registered. At times, police refuse to register an FIR on grounds of lack of jurisdiction. In fact, such refusal, if is unjustified and unwarranted, is criminalised under Indian Penal Code. Supreme Court of India, in *Lalita Kumari v. Government of U.P. & Ors*,⁶ held that registration of First Information Report is mandatory under Section 154 of the Code of Criminal Procedure, if the information discloses commission of a cognizable offence. The Court further said that “the police officer cannot avoid his duty of registering offence if a cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by them discloses a cognizable offence.”⁷ Hence, when any information disclosing a cognizable offence is laid before the officer in charge of a police station, he has no option but to register the case on the basis thereof.⁸ Even lack of jurisdiction cannot be a ground to refuse to register FIR, and such refusal can be seen as ‘dereliction of duty’⁹ on the part of such officer. It is interesting to note that even in a recent case based on a petition filed before the Delhi High Court seeking inquiry into communal riots that had taken place in Delhi in February, Justice S. Muralidhar had remarked “the police should be guided by the judgment of the Constitution Bench of the Supreme Court in *Lalita Kumari v. Government of UP and Others* case and go strictly by the mandate of the law.”¹⁰ Further, according to Section 166A, Indian Penal Code, whenever a police officer receives information in relation to crimes of acid attack, outraging modesty of women, use of criminal force with intent to disrobe, trafficking, exploitation of a trafficked person, rape

6 W.P. (Crl) No; 68/2008

7 Ibid

8 *State of Haryana –v. Ch. Bhajan Lal*, AIR 1992 SC 604.

9 *State of Andhra Pradesh v. Punati Ramube*, 1993 Cr L J 3684 (SC).

10 [Apoorva Mandhani](https://theprint.in/theprint-essential/whats-lalita-kumari-case-sc-verdict-judge-muralidhar-held-up-as-model-for-delhi-police/372375/), ‘What’s Lalita Kumari Case? SC verdict judge Muralidhar held up as model for Delhi Police,’ *The Print*, 28 February, 2020, <<https://theprint.in/theprint-essential/whats-lalita-kumari-case-sc-verdict-judge-muralidhar-held-up-as-model-for-delhi-police/372375/>> accessed 2 November 2020.

including aggravated forms of Rape, Rape on Child, Gang Rape and Criminal Intimidation of a Woman, he is duty bound to register an FIR. Refusal to register an FIR in such cases is made punishable with imprisonment that can extend up to two years along with fine. Thus, this provision, inserted into IPC in 2013, has expressly made such refusal a punitive offence. In many cases, Courts have also, alternatively, suggested for registration of Zero FIR when police otherwise lack territorial jurisdiction, so that there is no delay in initiating investigation.

Despite all the above legal requirements including statutory requirements and judicial orders, many times, it is alleged that police refuse to register FIR, thus denying a victim's right to access to justice. According to a recent study conducted by the Commonwealth Human Rights Initiative and the Association for Advocacy and Legal Initiatives, in the State of Uttar Pradesh, rape 'survivors faced delay, derision, pressure, and severe harassment when they approach the police to report complaints and seek the registration of a First Information Report.'¹¹ Though victims have alternative legal options against such refusal to register an FIR, including that of taking up the matter to Superior Police Officers or of filing Criminal Complaints with the Magistrate, yet it is important to ensure that FIRs are registered on time. Such registration marks the initiation of investigation that involves collection of evidence. With every delay in registration of FIR, there are less chances of collection of admissible evidences. Thus, initiation of investigation on time is of great significance for succession investigation and prosecution of a criminal case. Delay in registration of a case might adversely affect criminal process as, with the passage of time, there might be likelihood of losing crucial evidences due to various reasons including fading of memory of witnesses, possibility of destruction of evidences, etc. In cases of sexual offences on women, it is more important to initiate timely investigation, considering the nature of sensitivity of such cases as well as the need of timely procurement of evidences including forensic evidences. It is, more so, important from the victim's perspective since, for her, registration of

11 'Barriers in accessing Justice - Commonwealth Human Rights Initiative' [2020] <<https://www.humanrightsinitiative.org/download/CHRI%20and%20AALI%20Barriers%20in%20accessing%20justice%20English.pdf>> accessed 5 November 2020.

FIR may mark the beginning of her access to justice and other legal remedies. Such reporting is also necessary to claim compensation under concerned State's Victim Compensation Schemes and also to avail other remedies such as medical treatment, counselling, etc.

Though legal provisions do not prescribe any time limit for registration of FIR, it being the '*information received first in point of time*' must be reported and registered at the earliest. However, often delay from victim's side is also seen in getting an FIR registered, especially in cases of sexual offences. In such cases, courts are required to be more vigilant, but must also be sensitive to understand the reasons for such delay and condone such delay, instead of seeing it as an adverse ground to affect the prosecution case. The Supreme Court in *State of Punjab v. Gurmit Singh* had rightly observed, "*In sexual offences, delay in lodging the FIR can be due to variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged.such delay would not matter.*"¹² It is necessary to understand that for various reasons a victim might not come forward to register the case on time. The harsh reality is that many times cases of rape do not even get reported because of the false notions of so called 'honour' which the family of the victim wants to uphold.¹³ Hence, the concern should be addressed more empathetically.

Sexual offences are not just a matter of legal concern, but also involve sensitive and emotional aspects. Hence, legal process must take care of emotional stress the victim might undergo during the entire procedure, and it must ensure that the victim is not made to undergo unnecessary stress and trauma. In this regard, certain concerns must be taken care of in the process of registration of an FIR as well as during the investigation and trial. According to the recent amendment

12 1996 CRL J 172 SC.

13 *Nipun Saxena v. Union of India*, [2012] Writ Petition (Civil) No. 565, decided On 11 December, 2018.

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made to Section 154,¹⁴ information relating to sexual offences must be recorded by a woman police officer or any woman officer.¹⁵ Additionally, if the victim of such offence is a person with temporary or permanent mental or physical disability, such report must be recorded by a police officer at the residence of the informer or at a convenient place of such informer's choice and in the presence of an interpreter or a special educator. The law also requires video recording of such information. It is also important to note that this provision even insists on mandatory recording of such information by a Judicial Magistrate under Section 164.¹⁶

Further, even according to Section 157, in the course of investigation of a case of rape, such investigation must include “recording of statement of the victim at the residence of such victim or in the place of her choice and, as far as possible, by a woman police officer in the presence of her [victim's] parents or guardians or near relatives or social worker of the locality.”¹⁷ Interestingly and most importantly, such recorded statement becomes a valid piece of evidence during trial and can even be used as ‘*Statement in lieu of Examination in Chief*’ during trial.¹⁸

Recently, some Police Stations have started online portals for registration of complaints, and such complaints can be considered as an FIR. But, this approach has not been effectively utilised so far. In relation to cybercrimes against women and children, the Government of India has opened up a portal to “facilitate victims/complainants to report cybercrime complaints online,” and such complaints will then be dealt with by law enforcement agencies/ police based on the information available in the complaints.¹⁹ But, this portal can only be used for filing of complaints of cybercrime and not any other conventional crimes including rape and other sexual offences.

14 Proviso to Section 154, added through Amendment to Criminal Procedure Code in 2013.

15 Proviso to Section 154, added through Amendment to Criminal Procedure Code in 2018.

16 Proviso to Section 154 and Sub section 5A of Section 164

17 Also laid down under Section 164(5A) (a).

18 Section 164(5A)(b)

19 See for details <<https://cybercrime.gov.in/#>> accessed 3 December 2020.

MEDICAL EXAMINATION AND COLLECTION OF FORENSIC EVIDENCES

Rape and most of the sexual offences being crimes committed against the human body, they involve physical evidence and, hence, forensic examination of such evidence will be of crucial importance to a prosecution case. It is, at the same time, necessary to ensure that such forensic evidences are collected and analysed on time and with adherence to legal and forensic science requisites, so as to avoid loss of its evidentiary value.

According to Section 164A of the Criminal Procedure Code, if the case under investigation is that of rape or attempt to rape, if the victim consents, she shall be subjected to medical examination. Such victim must be sent for medical examination within 24 hours from the time of receipt of information of such offence. According to the provision, such medical examination must be conducted without any unnecessary delay, and a detailed report along with the conclusion arrived at, with reasons for such conclusion, must be prepared by the Medical Practitioner. Such report must be annexed to the Charge Sheet. Section 357C Criminal Procedure Code makes it mandatory on the part of all hospitals, public or private, to provide first aid or medical treatment free of cost to the victims of acid attack, rape and aggravated forms of rape and to, also, immediately inform the police of such incidents.

As indicated earlier, since forensic examination is an integral part of crime investigation, especially in cases of sexual offence and cyber-crimes, it is important to conduct such forensic examination in a manner approved by the law, so as to get admissibility of such evidences. The Ministry of Home Affairs on 9th January, 2019, issued guidelines for strengthening of DNA Testing, Cyber-forensic and mobile laboratory facilities for DNA sample collection, preservation and examination in State Forensic Science Laboratories under Nirbhaya Fund Scheme.²⁰ The guidelines recognise the relevance of use of forensic science in cases of sexual assault and insist on the States having

20 <<http://dfs.nic.in/pdfs/FSL%20Guidelines%20MHA.pdf>> accessed 8 December 2020.

suitable forensic capabilities to be able to provide forensic service during crime investigations. These guidelines recognise the need for strengthening State forensic labs for forensic testing facilities, as they are crucial to ensure ‘speedy and efficient investigations in cases of sexual assaults.’ States were called to seek for financial assistance under Nirbhaya Fund Scheme to strengthen their forensic facilities.

MHA’s recent advisory dated 5th October, 2020, on ‘Sexual Assault Evidence Collection Kits, Use in Investigation’ states that ‘as part of several measures for ensuring timeliness and application of scientific method in investigation,’ the ‘guidelines for collection, handling and preservation of forensic evidence in sexual assault cases’ notified by the Directorate of Forensic Science Services of the MHA must be adhered to by the investigation agencies.²¹ The Ministry has also distributed the kits to all States and Union Territories and emphasises that ‘in sexual assault, collection and preservation of evidence from the scene of crime is critical and is, inter-alia, important not only for timely and efficient investigation, but also for conviction.’ It, hence, highlights for the usage of these Kits by the investigating agencies. Recognising the importance of State Forensic Science Laboratories and in order to strengthen them, the Government of India has also enhanced the financial assistance for the same vide its letter dated 10th September, 2019.²²

MEDICAL EXAMINATION OF AN ACCUSED

Apart from subjecting the victim of rape and other sexual assault offences to medical examination, it is important to also conduct medical examination upon the accused since it might be helpful in procuring evidences essential for the prosecution of such offences. An accused’s medical examination is prescribed through Section 53A of the Criminal Procedure Code, according to which even “force as is reasonably necessary” may be used, for the purpose of conducting

21 <https://www.mha.gov.in/sites/default/files/Advisory_05102020_SexualAssaultEvidenceCollectionKits_15102020.PDF> accessed 8 December 2020.

22 <https://www.mha.gov.in/sites/default/files/Advisory10092019HSDOonFSL_15102020.pdf> accessed 8 December 2020.

such medical examination of a person arrested on a charge of committing an offence of rape or attempt to rape. This report should also be annexed to the Charge Sheet by the Investigation Officer.

MEDICAL TREATMENT AND COUNSELLING OF VICTIM

In addition to medical examination of a victim, it is also important to extend medical services in form of treatment and counselling to the victim on time. Hence, access to justice in the real sense also includes access to medical service. Law must more clearly identify this object, too. Even though law mandates taking of consent of the victim for medical examination, same shall not be construed as denial of consent for medical treatment.²³ The findings of a study conducted by monitoring 16 cases of rape in Delhi indicated that in most of the cases, the medical procedures emphasised only those processes that are relevant for the collection of evidence to feed into the trial, and there was negligence in granting continued medical attention to the victim, including her treatment of injuries incurred during the assault, and counselling.²⁴ Thus, it is necessary to bring a law to make it mandatory to provide necessary counselling to victims, along with medical treatment and examination. In fact, the Protection of Sexual Offences against Children Act, 2012, provides for such an approach in cases of sexual offences committed against children.

COMPENSATION TO THE VICTIM IN THE COURSE OF INVESTIGATION:

For a long time now, Indian Criminal Justice System has been ‘accused centric’ with the object of punishing the accused. In order to ensure fair criminal process,

23 Central Forensic Science Laboratory, Directorate of Forensic Science Services, Ministry of Home Affairs, Chandigarh: ‘Guidelines for Forensic Medical Examination in Sexual Assault Cases’ [2018] <https://www.mha.gov.in/sites/default/files/womensafetyDivMedicalOfficers_06082018_0.pdf> accessed 8 December 2020.

24 Partners for Law in Development, Towards Victim Friendly Responses and Procedures for Prosecuting Rape: A Study of Pre-Trial and Trial Stages of Rape Prosecutions in Delhi, Jan 2014 – March 2015, <<https://doj.gov.in/sites/default/files/PLD%20report.pdf>> accessed 8 December 2020.

certain procedural safeguards are provided to the accused through constitutional law provisions and criminal procedure rules. But, recently, we see a shift in this approach towards recognising certain rights of the victims. Commission of crime is a violation of right to life of a victim, and hence such shift is justified. It is hence necessary to ensure that the victim does not continue to be a 'forgotten party' in the justice delivery system. Providing compensation to the victim, in many cases, is crucial to ensure 'justice' to the victim, in a real sense.

Section 357A, Criminal Procedure Code, requires every State Government to prepare a Victim Compensation Scheme in coordination with the Central Government. In addition, Section 357B Criminal Procedure Code further clarifies that the compensation payable to the victim of acid attack under Section 326A of IPC and of sexual offences punishable under Section 376AB, 376D, 376DA and 376DB, IPC shall be in addition to the payment of fine to the victim. In fact, Section 326A IPC provides that the amount of fine to be imposed upon the convict should be 'just and reasonable, to meet the medical expenses of the treatment of the victim,' and that such fine should be paid to the victim, thus shifting the focus of criminal law from being merely punitive to compensatory in nature, especially in cases of crimes against women. Similar are the provisions under Sections 376AB, 376D, 376DA and 376DB, IPC.

Grant of compensation need not wait for the completion of the criminal trial process. In fact, in most of the cases, a victim might need financial assistance for her medical treatment and rehabilitation, thus necessitating interim compensation. Earlier, Courts, *suo moto* or upon an application made by the victim, used to grant compensation to victims of crime in justifiable cases.²⁵ With the setting up of the Victim Compensation Scheme, a victim can now get compensation much before the commencement of criminal trial through legal services authorities. The report titled, 'Compensation Scheme for Women Victims or Survivors of Sexual Assault / other Crimes,' submitted by

25 Note that under Section 357, Criminal Procedure Code, in case of any crime, upon conviction, the Court while imposing the sentence of fine can grant compensation to the victim from the amount of fine imposed. However, this is within the discretionary power of the court and not obligatory.

the National Legal Services Authority, New Delhi,²⁶ to the Supreme Court in April 2018 suggested that there must be a mandatory reporting of FIRs before seeking compensation for offences against women, especially relating to acid attack and sexual assaults. Necessary relief, including compensation, should then be awarded by the State or District Legal Services Authority. Hence, timely registration of FIR becomes crucial for this reason as well.

TIME FRAME TO COMPLETE INVESTIGATION

Generally, there is no time limit prescribed for completion of investigation of a crime. However, Section 167 of the Criminal Procedure Code indirectly prescribes the time limit of 90 days for offences punishable with imprisonment for a term of not less than 10 years or with life imprisonment or with death sentence, and of 60 days in other cases. The duration of 90 or 60 days must be calculated from the date of first remand order issued by a Magistrate, if the accused is arrested and committed to custody. However, non-compliance with this time frame will not *per se* affect the criminal process but becomes a ground to release such accused from the custody on default bail under Section 167. But, in relation to the offence of rape, in 2009 an amendment was brought into the Code, thus fixing a time frame for completion of investigation. According to this amendment, currently as per Section 173(1A), it is essential to complete investigation of the offence of rape within two months from the date of registration of FIR.

OTHER GOVERNMENT INITIATIVES

With the unfortunate Delhi gang rape incident of 16th December, 2012, that had shocked the entire country and the world, a need was felt to extend additional protective measures to women, especially at public places. The Government, to comprehensively deal with the issue of women's protection,

26 National Legal Services Authority, New Delhi: 'NALSA's Compensation for Women Victim's /Survivors of Sexual Assault / other Crimes (2018) <<https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018>> accessed 9 December, 2020.

created a fund called the ‘Nirbhaya Fund.’ The setting up of this fund was an important and essential step taken towards adding efficiency to the criminal process as well. It has allocation of funds for emergency response support system, central victim compensation fund, cyber-crime prevention against women and children, setting up of one stop centre scheme, mahila police volunteers and universalisation of women helpline scheme.²⁷ But, though the fund was instituted in 2013, its disbursement gathered pace only from 2015.²⁸ It is also criticised for having not been completely utilised by States. Recently, the 31 Member Standing Committee on Human Resource Development in its Report titled, ‘Issues related to Safety of Women’ presented to Parliament stated that, ‘the total apportioned amount under the Nirbhaya Fund currently stood at Rs 7436.66 Crore for 32 different projects or schemes across the country.’²⁹

The One Stop Centres that came up through Nirbhaya fund have proved to be of great significance in India. The Union Minister for State, in his response to parliament, has stated that the One Stop Centre Scheme, which got initiated from 1st April, 2015, provides for ‘integrated services, such as medical aid, police assistance, legal counselling, court case management, psycho-social counselling and temporary shelter to women affected by violence,’ and that there are about 728 such Centres approved by the Government for the entire country.³⁰

27 Ambika Pandit, ‘Nearly 90% of Nirbhaya Fund lying unused: Govt data,’ TNN (Dec 8, 2019) <https://timesofindia.indiatimes.com/india/nearly-90-of-nirbhaya-fund-lying-unused-govt-data/articleshow/72421059.cms>>accessed 8 December, 2020.

28 Ibid.

29 Fatima Khan, ‘Only 36% of Nirbhaya fund used since 2013, panel tells House hours before convicts’ hanging’ [March 20, 2020] <https://theprint.in/india/governance/only-36-of-nirbhaya-fund-used-since-2013-panel-tells-house-hours-before-convicts-hanging/384866/> accessed 1 December, 2020.

30 ‘595 One-stop centres to help women victims of crimes,’ Deccan Herald (November 19, 2019) <<https://www.deccanherald.com/national/595-one-stop-centres-to-help-women-victims-of-crimes-777673.html>>accessed 8 November, 2020.

The Ministry of Women and Child Development, Government of India,³¹ has designed a set of Standard Operating Procedures [SoPs] to be used by functionaries of the One Stop Centres, so as to guide the manner in which appropriate services are provided to the women victims of sexual offences. This SoPs adopts a ‘victim-centric approach’ which it defines as the one that involves “systematic focus on the needs and concerns of a victim, to ensure the compassionate and sensitive delivery of services in a non-judgmental manner. It seeks to minimize re-traumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process.”³²

In addition to the above, following measures have been taken by the Ministry of Home Affairs to prevent as well as regulate crimes against women and include the following³³:

- a) Legal changes brought in through the Criminal Law (Amendment) Act 2013 that has now expressly recognised various crimes as offences under IPC, including acid attack on women, sexual harassment, stalking, etc. Parallel procedural provisions have also undergone changes, so as to ensure better criminal law process in such cases.

Additional changes were also bought in to the laws, through the recent Criminal Law (Amendment) Act 2018.

- b) Setting up of Emergency Response Support System with the aim of providing a single and internationally recognized number (112) based system for all emergencies as the helpline.
- c) First formal initiative towards profiling of accused involved in the commission of sexual offences commenced with the launch of the

31 Detailed Reference Material on Standard Operating Procedures for One Stop Centre for Centre Administration, Case Worker, Doctor / health Worker, Doctor/health Worker, Police Facilitator Officer, Legal Aid Lawyer: [2017] <http://sakhi.gov.in/assets/site/main/resource_directory/1565612340_OSC%20SoP_07%20Feb%202019.pdf>accessed 1 December, 2020.

32 Ibid, quoting from ‘Standards for providing services to survivors of sexual assault’ [1998] <<http://www.njdcj.org/standar2.htm>>

33 <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1595696>>accessed 8th December, 2020.

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‘National Database on Sexual Offenders’ (NDSO) on 20th September, 2018.

- d) An online analytic tool called ‘Investigation Tracking System for Sexual Offences’ was launched on 19th February, 2019, to help investigation of such cases.

CONCERNS SPECIFIC TO CYBER CRIMES AGAINST WOMEN

Indian Penal Code today is widened enough to take care of certain forms of sexual offences committed with the use of cyber technology, such as online sexual harassment,³⁴ Voyeurism,³⁵ Stalking including Cyber Stalking,³⁶ Pornography and Obscenity. The Information Technology Act of 2000 also specifically deals with the offence of cyber obscenity, cyber pornography and child pornography under Section 67, 67A and 67B, respectively. Additionally, Protection of Children from Sexual Offences Act of 2012 also has provisions to address concerns of online safety of children. While POCSO provides for certain procedural rules that can favour the prosecution case, no such approach is adopted under IT Act of Criminal Procedure Code. POCSO provides for presumption based liability in some cases, especially the ones that provide for presumption of mensrea in cases with proof of actus reus.³⁷ No such presumption, nor procedural rule, exists in relation to other cyber-crimes committed against women under IPC or IT Act.

Better regulation of cyber-crimes requires proper identification, collection and analysis of digital evidence. But, lack of expertise and infrastructure, essential to make such forensic analysis of digital evidences, hampers effective crime investigation and prosecution. Hence, establishing new, or upgrading existing, cyber forensic labs are important. The Government of India, realising this need, has set up Cyber Crime Forensic Labs across States. It even funds training

34 Section 354A, IPC

35 Section 354C, IPC & 66E of Information Technology Act 2000.

36 Section 354D, IPC

37 Section 29 and 30, POCSO Act 2012.

programs of investigating officers, judicial officers and public prosecutors, so as to strengthen the stakeholders' hand in this field. However, due to other problems, including relating to jurisdiction issues on cyber space, lack of coordination by Internet Intermediaries, etc., effective combatting of such crimes is not taking place in the country. The Supreme Court of India in the case of *Re Prajwala* Letter dated 18.2.2015³⁸ has issued several directives relating to regulation of cyber-crimes, especially the ones that victimise women and children.

REALITY CHECK

Criminal laws of India, both substantive as well as procedural, have undergone various amendments so as to give better protection to women against sexual offences. Changes to make the initiation and continuation of criminal processes, including investigation process, have also been brought in. But, in spite of these legal changes, even today a victim of crime finds it hard to get access to justice. The Commonwealth Human Rights Initiative and the Association for Advocacy and Legal Initiatives' Study on 'Barriers in accessing Justice'³⁹ found that the survivors of offences such as rape, even today face problems of delayed registration of FIR or refusal to register FIR, non-compliance to the statutory requirement of women police officers recording such FIRs and police disbelieving the victims. The Report also states that Dalit survivors of sexual violence face more discrimination in the criminal justice process and that victims even face pressure and intimidation by police, thereby forcing them to look for remedies outside the legal system. Most often, victims are unaware of legal provisions and other remedies available under the law.

There are also concerns for victims and witness safety, leading to their hostile

38 *SMW (Crl.) No (S). 3/2015* <https://sci.gov.in/supremecourt/2015/6818/6818_2015_Order_22-Oct-2018.pdf> 15 September 2019.

39 *Barriers in accessing Justice*, Commonwealth Human Rights Initiative [2020] <<https://www.humanrightsinitiative.org/download/CHRI%20and%20AALI%20Barriers%20in%20accessing%20justice%20English.pdf>> accessed 5 November, 2020.

approach towards the justice delivery system. In many cases, the criminal process continues for years, thereby demotivating such victims and witnesses from continuing to fight for justice. It was reported that more than 32,500 cases of rape were registered with the police in 2017 with about 90 a day and that Indian courts had disposed of only about 18,300 cases related to rape that year, leaving more than 127,800 cases pending at the end of 2017.⁴⁰ The scenario is almost the same, even today.

Even in relation to cybercrimes against women, there is a huge hurdle faced by victims in getting cases registered. Also, since cyber space provides anonymity and, also, raises other technical challenges, not many cases lead to successful investigation and prosecution.

MHA'S DIRECTIONS REITERATING NEED TO COMPLY WITH LEGAL MANDATES

Ministry of Home Affairs has many a time issued directions requiring investigation agencies to comply with legal mandates in relation to crime investigation, especially with regard to crimes against women. The MHA's earlier directions issued on 12th May, 2015, had required for mandatory registration of crimes committed against women. It even insisted on ensuring that the victim does not face harassment from any State or public or private agencies in this entire process. States were asked to, also, immediately implement the Crime and Criminal Tracking Network System [CCTNS] project which, in fact, has a module on database of offenders. This directive also insisted for creation of Cyber Cells to effectively tackle cyber-crimes committed against women and children, including Cyber Pornography. The Ministry's advisories issued on 22nd April, 2013, and on 26th August, 2014, had even insisted on an increase in the number of women staff in the police force.

40 Reuters Staff, Statistics on rape in India and some well-known cases, <<https://in.reuters.com/article/us-india-rape-factbox/statistics-on-rape-in-india-and-some-well-known-cases-idUSKBN1YA0UV>>accessed 9 November, 2020.

Further, in continuation of the strategies adopted from time to time by Government of India in combatting crimes against women, the recent advisory issued by the Ministry of Home Affairs on 10th October, 2020, on “Compulsory Registration of FIR u/s 154 Cr. P. C when the information makes out a cognizable offence” is noteworthy. The circular, while it calls for necessary legal action by police in cases of crimes committed against women which are ‘cognizable’ in nature in general, further mandates compliance to specific legal procedures in cases of sexual offences committed against women in particular. Most importantly, the advisory mandates and reiterates the need for:

- Registration of FIR,
- Completion of investigation within prescribed period,
- Medical examination of victims of rape and sexual assault,
- Adoption of forensic scientific process in collection of evidences in cases of sexual assault.

CONCLUSION

From Mathura to Hathras, and from Nirbhaya to Disha, each incident of violent sexual offence on a woman has raised questions about the efficiency of our legal approach adopted in regulation of such offences in India. Many of these incidents have also led to legal changes in the country. Yet, even today, a victim of sexual offence faces problems in accessing justice.

A victim’s right to justice in a legal system often depends upon the legal process that facilitates her ‘accesses’ to justice delivery mechanism. Laws must ensure timely legal remedies to victims, including immediate initiation of criminal process. In India, registration of the First Information Report marks such an initiation, especially in cases of crimes that are ‘cognizable’ in nature. Most of the sexual offences committed against women are regarded as cognizable offences, thus involving state law enforcement agencies in the criminal justice

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process. Indian courts have time and again insisted on mandatory recording of FIR in cases of cognizable offences. From Punati Ramulu to Lalitha Kumar and till date, courts have directed for mandatory registration and investigation of cognizable offences. Timely initiation as well as completion of criminal process is crucial to ensure that the victim does not withdraw herself from the legal process.

States must also adopt a comprehensive approach in regulating sexual offences against women, with a combination of preventive, punitive, rehabilitative as well as compensatory approach. This requires a deviation from the traditional approach that Indian Criminal justice administration system has adopted for a long time, which focused more on accused's concerns rather than on victim's needs.

In this scenario, compliance with legal mandates and adherence to the MHA's advisories, including the recent one of October 2020, becomes crucial, so as to ensure that women victims of sexual offences are no more subjected to further victimisation. These directives, however, should not just remain as mere directions on paper, but must be implemented in its true spirit so as to achieve the intended objectives. But, mere amendments to laws and directions from authorities may not be helpful in completely doing justice. Most importantly, a change in the attitude of stakeholders involved in the implementation of these laws and directives is also essential.