Legal Rights of Rape Victims in India: Need For Effective Implementation

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Abstract

Rape is a heinous offence that is violative of a victim's Fundamental Right to lead a life with dignity under Article 21 of the Constitution of India, 1950. Recognising the need to support rape victims in their journey for justice, the Indian Parliament has significantly amended the substantive and procedural criminal laws, especially in the last decade, to ensure that the victim's complaint is recorded without delay and she also gets the required medical, financial and legal support at every step of the justice delivery process. The statutory definition of rape has been expanded and stringent punishments, including death sentence, have been provided for certain categories of rape. Non registration of First Information Reports (FIRs) by police officers has been penalised, to combat the oft reported problems faced by rape victims in reporting the offence. Mandatory reporting has been introduced to break the conspiracy of silence around the rape of children. Provisions for interpreters and special educators have been made to assist the victims with disabilities through the justice delivery process. Victim compensation schemes have been evolved to ensure compensation to the victims, even in cases where the offender is not traced or is acquitted. Despite the legal recognition of their rights, rape victims in India often face various social and institutional barriers in their quest for justice. This paper outlines the legal provisions and leading judicial directives recognising the various rights of rape victims and emphasises the need for effective implementation of these rights, in order to ensure that rape victims are treated with sensitivity and dignity by the criminal justice system.

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INTRODUCTION

The prevalence of sexual violence against women remains a sad reality in India. To deal with this scourge, the Parliament of India has made significant amendments to the criminal laws in the last two decades and introduced various provisions aimed at making reporting and trial of rape cases more victim friendly. These efforts received a major impetus through the enactment of the Protection of Children from Sexual Offences Act, 2012,[1] the Criminal Law (Amendment) Act, 2013,[2] the Criminal Law (Amendment) Act, 2018[3] and the Protection of Children from Sexual Offences (Amendment) Act, 2019. These amendments have *inter alia* introduced provisions for mandatory registration of First Information Reports (FIRs) in rape cases, mandatory reporting of child rape cases, even when there is an apprehension of such abuse, right to first aid and medical treatment free of cost for rape victims, specific provision for medical examination of rape victims and recording of the statements of rape victims by women police officers. The victims' statements may also be recorded through audio-video electronic means. The amendments have also provided for the recording of statements of rape victims on an urgent basis by Judicial Magistrates, immediately after the commission of rape is reported to the police. In case of victims with mental or physical disabilities, provisions regarding assistance of interpreters or special educators in recording of statements have been introduced. This paper examines these amendments and other provisions dealing with relevance of sexual history of the victim, provisions dealing with victim compensation schemes, time bound investigations and trials, victims' right to appeal and the issue of disclosure of the identity of rape victims, especially through online forums. Some significant judicial interventions relating to these provisions are also examined in this paper.

PROVISIONS RELATING TO RAPE UNDER THE IPC

The 2013 Act amended four Central laws- the Indian Penal Code, 1860,[4] the Code of Criminal Procedure, 1973,[5] the Indian Evidence Act, 1872,[6] and the POCSO Act. The IPC was amended to expand the definition of rape in section 375 to include non-consensual

1 Hereinafter POCSO Act.
2 Hereinafter 2013 Act.
3 Hereinafter 2018 Act.
4 Hereinafter IPC.
5 Hereinafter CrPC.
6 Hereinafter IEA.

oral, anal and vaginal penetrative assault on a woman, as well as application of mouth to her private parts. Before the amendments, the definition of rape was limited to non-consensual penile-vaginal penetration only. But, the amended definition includes penetrative assault through the use of fingers and objects also. The offence of rape under the IPC remains gender specific post these amendments also. A victim of rape can only be a female human being of any age and the offender can only be a male human being of any age. [7] The age of consent was also raised from sixteen to eighteen years to bring it at par with the POCSO Act. A specific definition of consent for the purpose of section 375 was also added, in which consent was explained to include communication by the woman of willingness to participate in the specific sexual act through gestures or any form of non-verbal communication and it was clarified that the lack of physical resistance to the act of penetration alone does not signify consent.[8] The punishment prescribed for rape was also made more stringent with imprisonment ranging from seven years[9] up to remainder of the offender's natural life,[10] and even death in certain cases.[11] Higher punishment of imprisonment ranging from minimum ten years extending up to imprisonment for the offender's remaining natural life, and fine was provided for rape by persons in positions of power, trust and authority, custodial rape , or rape on a woman who was incapable of giving consent, or rape on a woman suffering from mental or physical disability and repeated rape.[12] In alleged rape cases covered under these clauses, a presumption of lack of consent is also raised, based on the victim's testimony, and the burden of proof is shifted to the accused to prove that the woman had given her consent to the sexual intercourse.[13] Infliction of an injury in the course of commission of rape which leads to the victim being in a persistent vegetative state was made punishable with imprisonment ranging from minimum twenty years and extending up to imprisonment for the offender's remaining natural life, or with death.[14] Seduction of a woman in custody through abuse of position of authority or a fiduciary relationship was made punishable with rigorous imprisonment

7 IPC, section 10 reads: The word "man" denotes a male human being of any age; the word "woman" denotes a female human being of any age.

8 *Id.,* section 375, Explanation reads: Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.
Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

9 *Id.,* section 376(1).

10 *Id.,* sections 376(2), 376A, 376D, 376E.

11 *Id.,* sections 376A, 376E.

12 *Id.*, section 376 (2).

13 IEA, section 114 A.

14 IPC, section 376A.

ranging from five years to ten years, and fine.[15]

PENETRATIVE SEXUAL ASSAULT UNDER THE POCSO ACT

The POCSO Act is a Central law that extends to the whole of India. It penalizes a wide range of sexual offences that are committed against children below the age of 18 years.[16] A child's consent to any sexual act is not valid. It provides for adoption of child friendly mechanisms throughout various stages of the legal process like reporting of the offence, investigation by concerned authorities and speedy trial of all offences under the Act.

The definition of "penetrative sexual assault" (PSA) under the POCSO Act is similar to the definition of rape under the IPC. However, the provisions included in the POCSO Act are gender neutral *qua* the victims and the offenders, unlike the gender specific provision in section 375, IPC. PSA is considered to be "aggravated penetrative sexual assault" (APSA) leading to higher punishment, if the act is committed by a person in position of power, trust or authority *vis a vis* the child or by a person related to the child through blood, adoption, by marriage or through foster care or someone who lived in the same household, or when it is committed on a child below twelve years of age.[17] Incest, repeated PSA, PSA leading to physical incapacitation or mental illness of the child, or PSA committed on a child by taking advantage of the mental and/or physical disability of the child, is also treated as APSA. [18] APSA invites enhanced punishment of minimum twenty years which may be extended up to imprisonment for the remaining natural life of the offender, or with death and with just and reasonable fine to meet the medical expenses and rehabilitation of the victim. [19]

The statutory provisions enacted under the POCSO Act are in addition to the existing laws and not in derogation of them. But in case there is any inconsistency, the POCSO Act will prevail over the existing law, to the extent of inconsistency.[20] For similar offences under the POCSO Act and the IPC the offender is punishable under the provision that provides for greater punishment.[21] There is a presumption of guilt and presumption of *mens rea* for offences that require a guilty mind under the POCSO Act and the burden to disprove guilt is

15 *Id.*, section 376C.

16 POCSO Act, section 2(1) (d).

17 *Id.*, section 5.

18 *Ibid*.

19 *Id*., section 6 as amended by the Protection of Children from Sexual Offences (Amendment) Act, 2019 effective from August 16, 2019.

20 *Id.,* section 42A.

21 *Id.,* section 42.

shifted to the accused.[22]

THE 2018 AMENDMENTS TO CRIMINAL LAWS

Despite the enactment of the POCSO Act in 2012 and the amendments to the criminal laws in 2013, rapes of women and children were being widely reported. Some of these cases triggered demands for more stringent and swifter punishment to child rapists, resulting in the promulgation of the Criminal Law (Amendment) Ordinance, 2018 on April 21, 2018 which was replaced by the Criminal Law (Amendment) Act, 2018 on August 11, 2018. The 2018 amendments further enhanced the minimum punishment for the offence of rape under the IPC to ten years.[23] Rape of girls under sixteen years of age was made punishable with imprisonment ranging from twenty years to remainder of the offender's natural life.[24] Gang rape on a woman under sixteen years of age was made punishable with imprisonment for the remainder of the offender's life.[25] Rape on girls under twelve years of age was made punishable with imprisonment ranging from twenty years to imprisonment for the remainder of the offender's natural life, or with death.[26] Gang rape of girls below twelve years of age was made punishable with imprisonment for the remainder of that person's natural life, or with death.[27]

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT, 2019

Since rape is defined as a gender specific offence under the IPC, the enhanced punishments introduced by the 2018 Act could only be imposed in case of rape of girl children below the age of sixteen- or twelve-years age. Therefore, a need was felt to amend the POCSO Act also, to avoid the discrepancy that PSA on children of other genders would invite lesser punishment under the POCSO Act. So the Protection of Children from Sexual Offences (Amendment) Act, 2019 amended the POCSO Act and the minimum punishment for PSA was increased to imprisonment for ten years. Enhanced punishment ranging from imprisonment for twenty years to remainder of the convict's natural life was provided for

22 *Id.,* sections 29, 30.

23 IPC, section 376(1).

24 *Id.,* section 376(3).

25 *Id.,* section 376DA.

26 *Id.,* section 376AB.

27 *Id.,* section s. 376DB.

PSA on children below sixteen years of age.[28] APSA was made punishable with imprisonment ranging from minimum twenty years to remainder of the offender's natural life, or with death.[29] The 2019 Act also provided for imposition of "just and reasonable" fine to be paid to the victim of PSA/APSA to meet the victim's medical expenses and rehabilitation needs.[30]

LEGAL RIGHTS OF RAPE VICTIMS

Mandatory registration of FIR

The 2013 Act provided for mandatory registration of FIRs for sexual offences against women by "a woman police officer or any woman officer".[31] Non registration of FIRs was made punishable under section 166 A of the IPC. These amendments were intended to improve the reporting of sexual offences against women. It was also provided that, for victims with temporary or permanent mental or physical disabilities, the FIR should be recorded at their residence or at a convenient place of their choice, in the presence of an interpreter or a special educator and it should be videographed.[32] These amendments and the judgment by a five judge Constitution Bench of the Supreme Court in *Lalita Kumari* v. *Govt. of U.P.*,[33] where the Supreme Court held that the registration of an FIR is mandatory under section 154 of the CrPC, if the information given to the police discloses commission of a cognizable offence, have led to improved reporting of sexual offences including rape.

Mandatory Reporting Under the POCSO Act

The POCSO Act provides for mandatory reporting of offences under the Act. Every person who comes to *know about or apprehends* the commission of an offence under the Act is legally bound to report it.[34] Failure to report is punishable with imprisonment up to six months, or with fine, or with both.[35] A person in-charge of any company or an institution who fails to report the commission of an offence in respect of a subordinate under his control is punishable with enhanced punishment of imprisonment extending up to one year and with fine.[36] Making a false complaint is punishable, unless the complainant is a child, but people reporting in good

28 POCSO Act, section 4(2).
29 *Id.,* section 6(1).
30 *Id.,* sections 4(3), 6(2).
31 CrPC, section 154(1), proviso 1.
32 *Id*., section 154(1), proviso 2.
33 2013 (13) SCALE 559.
34 POCSO Act, section 19.
35 *Id.*, section 21(1).
36 *Id.*, section 21(2).

faith are protected. [37]

In *Shankar Kisanrao Khade* v. *State of Maharashtra*, [38] the Hon'ble Supreme Court issued extensive directions for reporting of sexual offences against children, including those under the POCSO Act. The Apex Court directed that in cases where the offender is a family member, then further action should be taken after due consultation with the mother or other female family members of the child, bearing the best interest and wellbeing of the child in mind.

Recording of the Statement of the Victim and Use of Interpreters and Special Educators

Section 164 of the CrPC was also amended by the 2013 Act to provide that the statement of a rape victim should be recorded by a Judicial Magistrate as soon as the commission of the offence is brought to the notice of the police.[39] For victims with temporary or permanent mental or physical disability, the Magistrate should take the assistance of an interpreter or a special educator in recording the statement and the same should also be videographed. This statement of the victim with disability shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the IEA and the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.[40] This beneficial provision, which is so far applicable only to victims with disability, is meant to protect the victim from the trauma of deposing again during trial and she can straightaway be cross examined on the basis of the statement duly recorded under section 164(5A), CrPC. The benefit of this provision is not available so far to other victims, including children. Such victims will have to depose again during trial, which most victims see as revisiting the trauma of rape.

Rights During Police Investigation

There are some other general provisions relating to police investigation that can also be beneficial for rape victims. As per the CrPC, a woman or a mentally or physically disabled person can only be questioned by the police during investigation at their residence.[41] It is also specifically provided that a rape victim's statement should be recorded at her residence or in the place of her choice and as far as practicable by a woman police officer, in the presence of her parents

37 *Id.*, section 22 and section 19(7).
38 (2013) 5 SCC 546.
39 Cr.P.C., section 164 (5A)(a).
40 *Id.,* section 164 (5A)(b).
41 *Id.,* section 160(1), proviso.

or guardian or near relatives or social worker of the locality.[42] If a mentally or physically disabled person has to identify an arrested person, then the process of identification has to be undertaken under the supervision of a Judicial Magistrate who should take appropriate steps to ensure that such person identifies the person arrested with the help of methods that the concerned person is comfortable with and the entire identification process should also be videographed.[43]

Right to Medical Examination

Medical examination of a rape victim can yield crucial evidence relating to the offence, especially in cases where there is immediate reporting of the case. If there is delayed reporting, crucial evidence may be lost, or its quality may be affected. The CrPC mandates that a rape victim should be medically examined within twenty four hours of reporting of the offence.[44] The medical examination can only be conducted with the consent of the victim, or with the consent of a person who is competent to give such consent on behalf of the victim, and the fact that such consent was taken should be recorded in the doctor's report.[45]A detailed report has to be prepared by the doctor specifying the details of the victim, marks of injury, if any, and the material collected for DNA profiling.[46] The doctor should state the reasons for the conclusions made. [47] The report is submitted in the court along with the chargesheet.[48] The unscientific "two finger test", which was often used to malign the victim's character, has been declared by the Supreme Court as violative of the victim's right to privacy, physical and mental integrity and dignity.[49] Therefore, such a test has no relevance in a rape case.

Since crucial evidence related to rape may also be found on the person of the accused, section 53A of the CrPC provides for medical examination of a person accused of rape at the request of the police. Even reasonable force may be used for conducting such examination, if required. The medical report of the accused is also submitted in court along with the chargesheet.

42 *Id.*, section 157(1), second proviso.
43 *Id.*, section 54A.
44 *Id.*, section 164A.
45 *Id.*, section 164A (4).
46 *Id.*, section 164A (2).
47 *Id.*, section 164A (3).
48 *Id.*, section 164A (6).
49 *Lillu* v. *State of Haryana*, (2013) 14 SCC 643.

Time Bound Investigation and Trial

Immediate reporting and swift investigation in rape cases can improve the chances of conviction. Accordingly, section 173(1A) of the CrPC was amended in 2009 to provide that investigation into rape of a child "may be completed within three months" of reporting of the offence.[50] The provision was further amended in 2018 to provide that "investigation into rape cases shall be completed within two months".

Section 309 CrPC was amended in the year 2013 to provide that inquiry or trial in rape cases "*shall, as far as possible*, be completed within two months from the date of filing of the charge sheet".[51] In 2018, the section was made more stringent by providing that inquiry or trial in rape cases "*shall* be completed within two months from the date of filing of the chargesheet".

The POCSO Act provides for a Court of Session in every district to be designated as a Special Court to try the offences under the Act.[52] The POCSO Act also provides that the Special POCSO Court "shall complete the trial, *as far as possible*, within a period of one year from the date of taking cognizance of the offence".[53] The Act further mandates State Governments to appoint Special Public Prosecutors for the Special Court for conducting cases only under the POCSO Act.[54] Under the POCSO Act, the evidence of the child has to be recorded within a period of thirty days from the date of cognizance being taken by the Court.[55] Reasons have to be recorded for delay, if any, in doing so.

Right to In Camera Trial

Criminal trials are generally held in open courts accessible to public.[56] However, inquiry into and trial of rape cases should be conducted in camera and as far as possible, by a woman Judge.[57] No one can print or publish any matter in relation to the in-camera proceedings, without the prior permission of the Court.[58] The ban on such printing or publication in rape cases may be lifted, if confidentiality of name and address of the parties

50 CrPC, section 173(1A).
51 *Id*., section 09, proviso.
52 POCSO Act, section 28(1).
53 *Id.*, section 35(2).
54 *Id.*, section 32(1).
55 *Id.*, section 35(1).
56 CrPC, section 327(1).
57 *Id.*, section 327(2).
58 *Id.*, section 327(3).

is maintained.[59]

Rights During Deposition and Cross Examination

Generally, all evidence taken during trial has to be taken in the presence of the accused or his lawyer.[60] However, it may be traumatic for a rape victim to depose in the presence of the accused. Moreover, the cross examination of rape victims is often used by defense lawyers as a means of unsettling the victim and for impeaching her credit as a witness. To address these concerns, the 2013 amendments provided that while recording the evidence of rape victims below eighteen years of age, the court may take suitable measures to ensure that the victim is not confronted by the accused, but the court has to also ensure the right of the accused to cross-examine.[61] Even under the POCSO Act, the Court has to ensure that the accused is not directly visible to the child at the time of recording of the evidence, but the accused should be in a position to hear the statement of the child and communicate with his/her advocate.[62] This can be achieved with the help of technological aids like video conferencing, or even by utilizing other mechanisms like single visibility mirrors or curtains or any such device. [63] The Supreme Court has also for long held that while every latitude should be given to the accused to test the veracity of the victim's version through cross-examination, the trial judge must effectively control the recording of evidence in the court and ensure that cross-examination does not turn into a situation of harassment and/or humiliation for the rape victim.[64]

Irrelevance of Past Sexual History

Past sexual history of the woman is now irrelevant in a trial for rape. After the 2013 amendments, in a prosecution for rape, evidence of the victim's character or of her previous/ prior sexual experience with *any* person is not relevant as far as the issue of consent is concerned.[65] In a prosecution for rape or attempted rape, it is also not permissible to call attention to evidence or to put specific questions in the cross-examination of the victim that are suggestive of her general immoral character, or prior sexual experience, with *any* person for the purpose of proving consent.[66]

59 *Id.*, section 327(3), proviso.
60 *Id.*, section 273.
61 *Id.*, section 273, proviso.
62 POCSO Act, section 36(1).
63 *Id.,* section 36(2). See also *Sakshi* v. *Union of India*, AIR 2004 SC 3566.
64 See *State of Punjab v. Gurmit Singh,* (1996) 2 SCC 384.
65 IEA, section 53A.
66 *Id.,* section 146, proviso.

Right to File Appeal

The proviso to section 372 CrPC confers upon the victim, the right to prefer an appeal against the:

(a) Acquittal of the accused person;

(b) Conviction of the accused person for a lesser offence; and

(c) Imposition of inadequate compensation.

The CrPC also provides that appeals against sentence in rape cases by a convict or the state shall be disposed of within a period of six months from the date of filing of such appeal.[67]

Right to Non-Disclosure of Identity

Section 228A IPC makes revealing of identity of a rape victim a punishable offence. The section is not applicable to judgments of the courts. But, the Supreme Court has for a long time insisted that the name of the victim should not be indicated even in judgments of the courts.[68]

Section 23 of the POCSO Act also penalizes disclosure of a child victim's identity, including his/her name, address, photograph, or any other information like family details, school, neighborhood or any other identity marker, which may lead to disclosure of the identity in media reports. Under the POCSO Act, onus lies on the Special Court to ensure that the identity of the child victim is not revealed without its permission during investigation or trial.[69]

In *Nipun Saxena* v. *Union of India*,[70] the Hon'ble Supreme Court of India referred to section 228A, IPC and section 327, CrPC, 1973 which excludes cases of rape and gang rape from the existing category of cases to be tried in open Court, and issued the following directions:

"1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.

67 CrPC, sections 374(4), 377(4).

68 See *State of Punjab v. Gurmit Singh,* (1996) 2 SCC 384.

69 POCSO Act, section 33(7).

70 (2019) 2 SCC 703.

2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.

3. FIRs relating to rape and under the POCSO shall not be put in the public domain.

4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.

5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinized in the public domain.

6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

7. An application by the next of kin to authorize disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A(2)(c) of IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A(2)(c) and lays down a criteria as per our directions for identifying such social welfare institutions or organizations.

8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

9. All the States/Union Territories were requested to set up at least one 'one stop centre' in every district within one year."[71]

However, despite such extensive directions, identities of victims, including children, is often disclosed, especially in social media, after which it becomes almost impossible to control that disclosure. This defeats the purpose of the beneficial provisions and directions of the Apex Court. Greater awareness needs to be generated amongst people that such disclosure is violative of the rights of the victims and is also a punishable offence.

71 *Id.*, at p. 723, para 50.

Presence of Informant at the Time of Bail Hearing

After the 2018 amendments to the CrPC, in cases of rape or gang rape of girls below sixteen or twelve years of age, before granting bail to the accused person(s), the High Courts and the Courts of Session are required to give notice of the application for bail to the Public Prosecutor within fifteen days from the date of receipt of such application.[72] The presence of the informant or an authorized person has also been made mandatory at the time of scheduled hearing of the bail application in such cases. [73]

In *Miss G* v. *State of NCT of Delhi*,[74] the Delhi High Court set aside the order of the trial court that granted interim bail to the accused in a rape case involving a minor victim, without giving a hearing or any notice to the girl and held that the non-issuance of notice to the complainants or informants or victims is not just a procedural lapse, but is also antithetical to the indisputable legislative mandate.

Right to Compensation

Criminal courts can order compensation to victims of crimes under section 357, CrPC. Victims can also claim compensation from State Governments under Victim Compensation Schemes framed under section 357A Cr.P.C., which was introduced in the CrPC in the year 2009. While the compensation under section 357 CrPC is dependent on the conviction of the accused, the compensation under section 357A, CrPC can also be granted in cases where the offender is not traced, or the accused is acquitted or discharged. The 2013 and the 2018 amendments have also provided in the IPC that the fine imposed on the convicts in cases of gang rape and rape of girls under sixteen or twelve years of age should be paid to the victim and such fine should be just and reasonable in order to meet the medical expenses as well as rehabilitation of the victim.[75] The compensation payable by the State Government under section 357A is in addition to the payment of fine to the victim under these provisions.[76]

Pursuant to the directions of the Supreme Court of India in *Nipun Saxena* v. *Union of India*,[77] the National Legal Services Authority (NALSA) had finalized the "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes" under which a victim of gang rape is entitled to a minimum compensation of five lakh rupees and up to a maximum

72 CrPC, section 439 (1), second proviso.

73 *Id.*, section 439 (1A).

74 CRL.M.C. 1474/2020 & CRL.M.As. 6330/2020, 6705/2020.

75 IPC, sections 376(3), 376D, 376AB, 376DA, 376DB.

76 CrPC, section 357B.

77 WP (C) No. 565 of 2012.

of ten lakh rupees.[78] Similarly, in case of rape and unnatural sexual assault, the victim can be given a minimum of four lakh rupees and a maximum of seven lakh rupees as compensation.

Under the POCSO Act also, the Special Court can order payment of compensation to the child victim for any physical or mental trauma caused to the child or for immediate rehabilitation of the child.[79] The POCSO Courts can also grant compensation on their own or it can be granted on an application filed by the child or on the one filed on his/her behalf under Rule 9 of the Protection of Children from Sexual Offences Rules, 2020, which came into force on March 9, 2020. These Rules were formulated by the Central Government under section 45 of the POCSO Act. The Courts can order such compensation irrespective of whether the accused is convicted, acquitted, discharged or goes untraced or unidentified if the child has suffered loss or injury as a result of the offence in the opinion of the Special Court.[80] The compensation awarded by the Special Court is to be paid by the State Government from the Victims Compensation Fund or other such scheme or fund as established by the Special Court for providing compensation and for rehabilitation of victims under section 357A of the CrPC and, in absence of such a fund or scheme, by the State Government.[81] The compensation should be paid within 30 days of receipt of the court's order.[82]

Right to Legal Services

Right of access to justice under article 39 A of the Constitution, and the principle of fair trial mandate the right to legal aid to the victims of crimes.[83] Under the CrPC, private lawyers can assist and work under the directions of the Public Prosecutor and even submit written arguments, with the permission of the court.[84] Subject to this provision, under the POCSO Act, the family or a guardian of the victim child has the right to use the services of a legal counsel of their choice. If they are unable to pay for or engage a lawyer, the Legal Services Authority should provide a lawyer to them.[85] Victims are also entitled to legal services through the National, State and District Legal Services Authorities established under

78 *Available at*: https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018 (Last visited April 25, 2021)

79 The POCSO Act, section 33(8).

80 The Protection of Children from Sexual Offences Rules, 2020, Rule 9 cl (2).

81 *Id.,* Rule 9 cl (4).

82 *Id.,* Rule 9 cl (5).

83 The Constitution of India, 1950, article 39A reads: "The state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability."

84 CrPC, section 301(2).

85 POCSO Act, section 40.

the Legal Services Authorities Act, 1987.

Right to Free Treatment

The 2013 Act introduced section 357C in the CrPC which mandates that all hospitals, public or private, should provide free treatment to rape victims and report the offence to the police. Noncompliance with the provision will make the person in charge of the hospital punishable with imprisonment up to one year or with fine or with both.[86]

Medical Termination of Pregnancy Resulting from Rape

Rape often leads to unwanted pregnancy. A rape victim has the right to retain or terminate such pregnancy. It is part of her "right to make reproductive choices" as an aspect of personal liberty under Article 21 of the Constitution of India. [87] Section 3 of the Medical Termination of Pregnancy Act, 1971[88] allowed termination of pregnancy up to the gestation period of twelve weeks, if one doctor is of the opinion that the continuation of the pregnancy would pose a risk to the life of the pregnant woman, or "of grave injury to her physical or mental health"; or in case of serious physical or mental abnormalities in the fetus.[89] For a pregnancy of over twelve weeks and up to twenty weeks, the opinion of minimum two doctors was required. According to the MTP Act, in case of pregnancy allegedly caused by rape, "the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman".[90] Consent of the pregnant woman is a mandatory requirement for termination of pregnancy under the MTP Act.[91] Written consent of guardian is required for medical termination of pregnancy of a woman below eighteen years of age, or a mentally ill person.[92]

The Medical Termination of Pregnancy (Amendment) Act, 2021 has increased the time period within which an abortion is legally allowed to 20 weeks on one doctor's advice and for a pregnancy exceeding 20 weeks and up to 24 weeks, on two doctors' advice for *inter alia* victims of rape.[93] Medical boards set up under the amended MTP Act by States and Union Territories may decide if pregnancy may be terminated after 24 weeks in cases of serious

86 IPC, section 166B.

87 *Suchita Srivastava* v. *Chandigarh Administration*, (2009) 9 SCC 1.

88 Hereinafter, MTP Act.

89 MTP Act, section 3(2).

90 *Id*., section 3(2), explanation 1.

91 *Id*., section 3(4) (b).

92 *Id*., section 3(4) (a).

93 *Id*., section 3(2) as amended by the Medical Termination of Pregnancy (Amendment) Act, 2021.

foetal abnormalities.[94] The amended MTP Act also prohibits and penalises unauthorised disclosure of the identity of a woman whose pregnancy has been terminated under the Act.[95]

CONCLUSION

A perusal of the statutory provisions relating to the rights of rape victims shows that many rights of the victims have been recognized by the Legislature. The Constitutional Courts have also issued beneficial directions in many cases, in order to ensure adequate protection of the rights of the victims and to prevent their re-victimization during the investigation and trial of rape cases. However, the ground realities reveal that the implementation of these provisions and directions is plagued by various problems like delay in investigation, non-availability of adequate number of women police officers, delay in appointment of Special Public Prosecutors as well as setting up of POCSO Courts which is also leading to a huge pendency even in cases of child rape.[96] Lack of adequate number of forensic laboratories and vulnerable witness court rooms, award of compensation in negligible number of cases are other problem areas that need immediate attention.[97] Despite the Legislative prohibition and judicial directions relating to protection of identity of rape victims, their identity is often disclosed by people on social media. Despite the Supreme Court's declaration of the two-finger test as unconstitutional,[98] references to it can still be found even in cases of child victims.[99] It is imperative that urgent steps should be taken by all stakeholders to remove the roadblocks that affect the effective implementation of the beneficial provisions and directions of the courts that are meant to ensure that the victims are treated with dignity by the criminal justice delivery system. Without such implementation, these provisions and directions will remain mere paper tigers and rights of rape victims will remain an elusive dream.

94 *Id*., section 3(2B) inserted by the Medical Termination of Pregnancy (Amendment) Act, 2021.

95 *Id*., section 5A inserted by the Medical Termination of Pregnancy (Amendment) Act, 2021.

96 *In Re Alarming Rise in the Number of Reported Child Rape Incidents*, Suo Moto W.P. (Crl.) No. 1 of 2019.

97 *Ibid*.

98 *Lillu* v. *State of Haryana*, (2013) 14 SCC 643.

99 See *Varun Kumar* v. *State of Himachal Pradesh*, MANU/HP/1220/2015; *Gurmukh Singh* v. *State of H.P.*, MANU/HP/0357/2016.