

Revisiting Laws Related to Media Reporting of Sexual Crimes

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Introduction

A truly democratic society is free from all bias and has transparency and accountability towards its citizens. In practicality, a democratic system has three pillars: – the legislative, judiciary, and executive. But another pillar rightly labelled as the most powerful entity in the world¹ - the media provides the citizens with details and data that ensure transparency of all the three pillars of democracy. It acts as a watchdog on all the three organs of the government and spreads awareness to ensure that nothing stays hidden from the people who are being governed. But as it is rightly said, with power comes great responsibilities. Therefore the media has an onerous responsibility towards the general public to protect and safeguard their interests and at the same time deliver actual facts and concrete pieces of evidence in their raw form rather than manipulating it and deceiving them. The reach and impact of media have raised many vital questions on several issues such as authentication of news, verification, and privacy of individuals². The recent instances where several politicians and media houses disclosed the identity of a rape victim, the media coverage of the 2018 Kathua rape case and the Muzaffarpur shelter home case has raised doubts on the credibility of the media. This has clearly pointed out one thing that there is a dire need to revisit the laws relating to media coverage of sexual crimes.

Position of laws in India

To protect the fundamental right of freedom of speech and expression enshrined in the Indian constitution, it is imperative that media is independent and free from any influence from the three organs. But cases of sensitive nature such as rape require an extraordinary amount of care, because

¹Diganth Raj Sehgal, *Media-The Fourth Pillar of Democracy*, Ipleaders (29th May, 2020), <https://blog.ipleaders.in/media-fourth-pillar-democracy/>.

²Arjun Harkauli, *Legal framework for Privacy of Minors*, The SCC Online Blog (23rd May, 2020), <https://www.sconline.com/blog/post/2020/05/23/legal-framework-for-privacy-of-minors/>.

there may be a social stigma attached that the victims may have to face afterwards³. Therefore the lawmakers did incorporate some provisions. Section 228A of the Indian Penal Code⁴ prohibits disclosure of the identity of victims of crimes of sexual nature. Section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act⁵, 2013 prohibits the public, press, or media from disclosing any form of information related to the case. Section 23 of the POCSO Act⁶, prohibits the press from revealing any detail that may lead to the disclosure of the victim's identity. Section 37⁷ of the same act mentions that a trial would take place 'in camera', which means without media presence. The Juvenile Justice Act 2015⁸ prohibits disclosing the identity of any minor involved including the victim and the accused. The Supreme Court in the *State Of Karnataka vs Puttaraja*⁹ explained the social object of Section 228A of IPC. It started using the word 'victim' instead of the real name to prevent social stigma and victimisation of the victims of sexual crimes. Apart from all these legal provisions, there exists an elaborate guideline titled '*Media Guidelines on Child Sexual Abuse*' prepared by the Press Council of India and the National Human Rights Commission. Despite all this, there are loopholes in the present system that continues this vicious cycle of victimisation.

The PoSH Act prohibits disclosing the victim's identity from people entrusted to carry out the investigation but does not bar independent journalists from publishing that news. For section 228A of the IPC, the courts have stated that if the disclosure of identity is at the request of a social welfare organization, then there is no bar.¹⁰ Apart from this, sometimes political power can also be misused to influence the family members' consent in revealing the victims' photos and names and use it to meet their own political agendas.

³ Ashish Bagga and Ors v State of Rajasthan and Ors , (2017) MANU, RH (India).

⁴ Indian Penal Code, 1860, § 228A, No. 45, Acts of Parliament, 1860 (India).

⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act , 2013 , § 16 , No. 14 , Acts of Parliament , 2013 (India).

⁶ Protection of Children from Sexual Offences Act, 2012, § 23 , No. 32 , Acts of Parliament , 2012 (India).

⁷ Protection of Children from Sexual Offences Act, 2012, § 37 , No. 32 , Acts of Parliament , 2012 (India).

⁸ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 , Acts of Parliament , 2016 (India).

⁹ State of Karnataka v. Puttaraja, (2003) 8 Supreme 364 (India) .

¹⁰ Megha Mehta , Mukta Joshi , Media can help sexual violence survivors get justice, but it needs to be more sensitive , The News Minute (5th July , 2018 , 5:00 PM), <https://www.thenewsminute.com/article/media-can-help-sexual-violence-survives-get-justice-it-needs-be-more-sensitive-84234>.

Suggestions and recommendations

It is unfortunate to note that despite stringent provisions, these laws are frequently broken. In 2018 the Supreme Court also mentioned a great need to look into guidelines for media reporting of sexual assault cases¹¹. The Rajasthan high court in the Ashish Bagga¹² case observed that although it accepts the fact that the victim and the victim's family may find it extremely unpleasant to find the victim's name in the public domain, still they would like to leave the matter of publication of the victim's name to the good sense of journalistic profession. Therefore it is pertinent to bring in some reforms that will act as deterrence for the media fraternity to avoid overstepping a line and protect the interests of the victims. Here are a few suggestions that I wish to propose.

- The Supreme Court in *Nipun Saxena v. Union of India*¹³ observed that our society treats victims of sexual crimes worse than the perpetrators. It is the responsibility of the media to not sensationalize cases, and that adult rape victims and children who have been the target should not face any kind of harassment or social exclusion¹⁴. Similarly in *Sampurna Behura v. Union of India*¹⁵ The Supreme court observed that repeated interviews and questions to the victims in shelter homes are not conducive for their welfare and that the media house should refrain from publishing images of the victims even in blurred form.¹⁶ Considering the sensitive nature and the deteriorating effect it can have on the future prospects of the victims, the imprisonment period both in the IPC and POSCO Act should be extended to a minimum of 6 years.

¹¹PTI , Guidelines for media reporting in sexual assault cases needs to be looked into in great detail: SC , The Hindu (30th November , 2018 , 8:11 PM), <https://www.thehindu.com/news/national/guidelines-for-media-reporting-in-sexual-assault-cases-needs-to-be-looked-into-in-great-detail-sc/article25636048.ece>.

¹² Bagga, *supra note 3*.

¹³ Nipun Saxena v. Union of India, (2018) SCC OnLine SC 2772 (India).

¹⁴Devika Sharma, *SC issues directions for protection of identity of victims of rape and sexual offences; need for victim friendly trial stressed upon*, The SCC Online Blog (12th December, 2018), <https://www.scconline.com/blog/post/2018/12/12/sc-issues-directions-for-protection-of-identity-of-victims-of-rape-and-sexual-offences-need-for-victim-friendly-trial-stressed-upon/>.

¹⁵ Sampurna Behura v. Union of India, (2018) 9 SCC 555 (India).

¹⁶ Saba, *2018 SCC Vol. 9 November 14, 2018 Part 4*, The SCC Online Blog (17th November, 2018), <https://www.scconline.com/blog/post/2018/11/17/2018-scc-vol-9-november-14-2018-part-4/>.

- While reporting cases of this nature, some editors tend to ignore the importance of withholding identity based on the notion that in small cities and towns, the people are already aware of the details of the victims. They fail to understand that in today's online world, the news can be accessed by anyone¹⁷ Therefore media houses should have a mandatory training course to sensitize the personnel with such types of crimes and how they need to be reported.
- It is essential to check that the loophole in the PoSH Act is not exploited. In high profile cases, any independent journalist's disclosure of the victim's identity can prove detrimental to the victim. The Bombay High Court observed that there is no elaborate guideline regarding the reportage of POSH cases and therefore passed an order establishing guidelines for media in relation to publication, access, hearings, public access and recording¹⁸.
- In *Rama Kushwah vs The State Of Madhya Pradesh*¹⁹, the court declined to quash the proceeding against a nurse who had the images of the victim saved in her gallery and prima facie it was established that she has disclosed the identity. Therefore, a mechanism should be evolved to protect victims' privacy, especially in medical facilities where they have undergone or are undergoing treatment.
- In *Satya Pal Anand Vs. State of Madhya Pradesh*²⁰, the supreme court took serious notice that the trial court judge had disclosed the identity of two rape victims. Although there are exceptions where the courts can disclose the identity but in *Lalit Yadav Vs. State of Chhattisgarh*²¹, the court observed that every attempt should be made to conceal the identity of the victim. In *State of Punjab v. Ramdev Singh*²², the court observed In situations of crime against women, a socially sensitive judge is a stronger legislative armour than elaborate sections of criminal laws with complicated procedures. Therefore the judges need to be mindful of the social stigma that sexual offences carry and should

¹⁷ *Dealing with Specific Kinds of Crime*, A guide for journalists who report on crime and crime victims, <http://www.mediacrimevictimguide.com/covering.html#b>.

¹⁸ P vs A& Ors, Suit No. 142 of 2021.

¹⁹ *Rama Kushwah vs The State of Madhya Pradesh*, M.Cr.C.No.8668/2020 (India).

²⁰ *Satya Pal Anand Vs. State of Madhya Pradesh*, (2014) 4 SCC 800 (India).

²¹ *Lalit Yadav Vs. State of Chhattisgarh*, (2018) 3 Crimes 463 (SC) (India).

²² *State of Punjab v. Ramdev Singh*, (2004)1 SCC 421 (India).

refrain from publishing the names in their judgements which can later be used by the media houses to report the incident.

Way Forward

Some writers believe that the concealment of facts and identity adds to the social stigma surrounding sexual crimes, but it is really not humane to subject the victims to brave the stigma to fight it.²³ Balance is a critical element of our society. The media does contribute to reducing the perception among victims and perpetrators that the victims are alone and helpless²⁴. Still, it is also essential that reporting such crimes does not violate their right to privacy. From the side of the media fraternity, there is an urgent need to strictly adhere to the ethics of reporting, and there is an extensive scope of amendments needed in laws to protect the victims and their identities.

²³ Mehta, *supra note* 10.

²⁴ *SEXUAL ASSAULT AND THE MEDIA*, Media Kit on Sexual Assault, <https://www.inspq.qc.ca/en/sexual-assault/media/sexual-assault-and-media>.