

SECONDARY VICTIMIZATION OF RAPE VICTIMS WITH A SPECIAL REFERENCE TO GENDER EQUALITY: A CRITICAL STUDY

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Abstract: Gender equality is a concept which every civilized society ever dreamt of achieving. In subsequent to the same, several attempts were made at the national and international perspectives and to a greater extent are so far successful. However, in this pursuit, it is a stark reality that a lot more gaps still remains to be abridged. Hence, this paper discusses how the intersection of a range of positive and negative factors becomes dangerous to gender equality and contributes to existence of these gaps. Subsequently, this paper brings into light the secondary victimization of rape victims in India owing the dangerous intersection of various factors. This paper also emphasis on how a numerous number of intersections winds her up and makes her to lead a life filled with the bitterness of gender inequality and the need to introduce holistic approach to address the same. At this juncture, this paper points out how right based approach can be used as a generalized and successful solution which can in turn be used as a tool to abridge these gaps.

Keywords: Gender Equality, Intersectionality, Rape Victims, Secondary Victimization.

Introduction: Gender equality is a goal which every civilized modern society ever dreamt of achieving. Formerly, gender equality was looked upon as means for achieving socio-economic development. However, with the passage of time, this approach has received a progressive shift and now the improvement of women in health status and social, political and economic spheres are viewed as an end in itself [1]. Subsequently, it requires that the equality propagated must be right and proper for a sovereign democratic country and must be reflected as the freedom from unjust and unequal treatment [2]. Hence, incorporating this paradigm shift in the approach, several attempts were made both in the national and international sphere and to an extent are so far successful. As a matter of fact, today, equality does not mean and remain something just in academic sense; instead include both *de jure* and *de facto* equality [3].

Even though it is a truth that a lot have been improved owing to the obdurate efforts of the international and state level communities and bilateral and multi-lateral entities, yet it remains as realism that a lot more gaps still left to be abridged. It is particularly because gender inequalities are not the result of an individual factor, instead an accumulation of a series of positive and negative factors, which subsequently give rise to wide range of intersections dangerous to women [4].

Therefore, this paper in its Part I speak of these factors and discuss how its' dangerous intersection contributes to gender in equality. In Part II the paper deals with the deals with the dangerous intersection of such factors from the point of view of rape victims and in Part III it discusses how a right based approach could be used as a holistic remedy to address these dangerous intersections encountered by rape victims.

Intersecting factors and its Contribution to Gender Inequality: Human life is complex and multidimensional and can never be explained with aid of individual factors such as gender, race, etc. Instead, as the lives are multifaceted they are shaped by various other intersecting and interacting factors. It includes class, gender, caste prejudice, patriarchal norms, literacy, politics, economic deprivation, religion, family honour, social taboos, etc. While interplaying, *they interact and mutually transform one another* [5]. Hence, a woman who lives in a contemporary society, if experiences gender equality, it must be such that, the net result of all the abovesaid factors intersecting and intersecting is positive in nature and is in favour of her. However, if some of these factors begin to act unfavourably, these factors, while intersecting and interacting with gender and other positive or non-negative factors, has got the potential to transforms those factors into negative factors, thereby constituting a range of factors unfavorable for a woman. This in turn produces a negative effect and contributes to gender inequality. For example, imagine that a Dalit woman is working in a fairly reputed firm, and unfortunately, one day her superior belonging to higher caste, recognizing her as a Dalit, reduces her salary. If she tends to react, immediately other factors including gender bias, patriarchal norms, financial status, etc which at least remained non-negative, get activated and transform into a negative state and silences her. Consequently, caste based discrimination, when intersected with other factors, made those factors transformed into negative and thus she being a Dalit woman, is made to suffer the inequality as long as she works there. This is how the gender inequality often arises. In the contemporary society, gender inequality very seldom occurs for an individualistic reason that she is woman. But it often originates due to the

intersection and interaction of a range of factors which thereby renders the intersection subsequently dangerous [6]. Hence, it can be well construed that oppressions are always an intersection of two or more factors and moreover are interlinked [7]. Therefore, it has to be concluded that gender inequality is not a narrowed, streamlined, distinct concept; instead it subsumes all forms of inequalities in the form of class, race, patriarchy, caste, etc. and since it is interlocked and it cannot be solved alone [8].

Dealing with gender inequality through this perspective, it can be identified that, there exists several dangerous intersections and interactions which poses serious threats to the goal of gender equality. However, in the pursuit of ensuring gender equality, government, civil society and other bilateral and multi-lateral entities, knowingly or unknowingly or for some reason or the other, often leave out a range of intersections. It may be argued that, taking separately, there are numerous such intersections and it is hard to deal with all of them [9]. But it is to be bore in mind that though each of these intersections “*tend to affect fewer people globally, but for those who are affected, these social divisions are crucial, hence, rendering them visible needs to be an important political project*” [10].” Hence, if the global aim is comprehensive gender equality it must at least, address all the crucial social divisions [11]. Therefore, in such a circumstance, it is pertinent to point out one such neglected but crucial social division, which is often, marginalized owing to the multiplicity of dangerous social intersections, that is, the rape victims.

Gender Inequalities faced by Rape Victims: Rape-it is always a matter of concern. It makes a woman to sacrifice *what is dearest to her* [12]. *When a woman is ravished what is inflicted is not merely physical injury, but “the deep sense of some deathless shame”* [13]. Therefore, it traumatizes her and it hampers her life. It is a crime, an injury to health, a violation of woman’s right, a form of gender equality and hence is costly to the society [14].

Every society agrees to the same and is much concerned in booking the accused and sending him to the gallows. Well and good, but, what about the fate of the victim? Every instance of ravishment has a traumatizing pain and effect and it continues to linger her as long as she is alive. But, after initial turn out, the society, the government and all other entities tend to draw in their horns and it is left for the victim to suffer. It is to be noted in particular that it is the real point where another phase of gender inequality really begins, owing to a dangerous intersection of numerous negative factors. It is during the post-ravishment period she suffers the pain mostly, both physically and mentally- as a woman and a victim of a heinous crime. Once the right of a woman is violated

in such a manner and falls into a distress, it is the responsibility of the state to bring her back to life. However, in reality is the responsibility gets reduced to certain welfare remedies alone and that too at their mercy.

A rape victim suffers from gender equality not only because she is victim, instead as a consequence of various intersecting factors. As a result of the same, the saga of post-ravishment gender inequality begins immediately following the rape.

Thinking of why so many threatening intersections exist in Indian community as compared to the others, it can be construed that it is the very nature of the Indian society, which constitutes to the same. Speaking about the nature of Indian society, it is traditional bonded surrounded by conservative values [15]. Consequently once an injustice is caused to a woman, it translates into range of inequities. When a woman is raped the series of such inequities begins right from home and spreads though the public followed by horrific medical examinations, frightening examination and cross-examination by police, outside pressure, long pending legal struggle, absence of proper rehabilitation facilities coupled with social taboos, pre-conceived notions of honour and patriarchal norms and ultimately makes her life undignified and extremely miserable [16]. Therefore, the tale of gender inequalities suffered by an Indian woman during post-ravishment period can be categorized and understood in three phases- pre-litigation phase, litigation phase and post-litigation phase

Pre-litigation Phase: Initiating a complaint under Sec. 376 of Indian Penal Code (hereinafter referred to as IPC) and to seek justice for the same is not an easy task as far as an unprivileged Indian woman is concerned. The intersection of patriarchal norms, social taboos, family honour, etc., to the inequity of rape is capable of rendering a series of hardship for the victim.

Firstly, Indian society is a society which gives a lot more important to the chastity of a girl. As a result of that, the victim, if particularly belonging to traditional bound society, in most cases will be extremely reluctant, to admit that a mishap has happened to her [17]. This intersection of chastity with present state of affairs, unlike in the case of any victim of any other offence, in turn, makes the rape victim to bear the inequity in her mind for the entire lifetime.

Secondly, it is the intersection with the family which contributes to the gender inequality. If the victim, overpowering the first hurdle, admits and reveals to her family that she is raped what happens is that except for a few progressive families, it will be hard for them to believe that one of their girls was ravished and will consider it, as an instance of

dishonour for the family and tries to cover up the atrocity. If she is unmarried, they genuinely apprehend that any revelation about the same would tarnish the reputation of the girl and family and therefore, would seriously affect the marriage prospectus [18]. Thus again, she is made to suffer inequality for the sake of family honour and hence is made to live in injustice.

Thirdly, if she is raped by a rich and powerful in the society, the fear of being taunted, if complained, further makes her to hide the trauma inside her [19]. At this instance, it is the intersection of her present state of affairs with the political disadvantage and family honour which forces her to suffer the injustice. Fourthly, anyhow, if she is motivated by the illusory 'women friendly legal system' and if decides to reveal the mishap, rather than treating her with compassion and understanding, the first tendency of the society is to shun the victim and to treat her as a sinner [20]. There are even cases where the victim was even treated as a *promiscuous or in some way responsible for the incident regardless of her innocence* [21]. These instances bring into light the real truth that, notwithstanding incidents after incidents, the Indian society bounded by its patriarchal norms has not become mature enough to grasp the real trauma and the human right violations which is the rape inflicts upon her. It is thus, the society waits to respond till the media projects the incident as brutal and shocking. On the other side, it is disgusting to note that even after noticing [22] that no other victim of any other crime need to fight with such trauma like a rape victim, in praxis government is nothing to curb the dangerous intersection of the abovesaid factors in this phase.

Litigation Phase: Despite serious alterations with regard to litigation phase, still the cases of gender inequalities arising at this stage is far graver. At this phase, much more factors intersect with the aforesaid factors and make the intersection far more serious. In most of the cases under Sec. 376 IPC, the first phase of victim's interaction with the legal system begins by means of medical examination [23]. If the victim is so adamant that the accused must be convicted, the irony is that the victim needs to approach the medical team as such bearing every evidences of rape even without taking a bath. It is because, the instances alarmingly points that for a conviction it is mandatory that some evidence of rape, like in the form of hair of the accused, spermatozoa, the fresh wound, etc., must be present and it must corroborate with oral evidence [24]. That means, victim is not even given a chance to take a break and to come back to normal life, if she intends to send the accused behind the bars.

When it comes to stage of charging FIRs and interrogation, she enters into a next phase of gender

inequality. Even though it is a cognizable offence, it is not necessary for a police officer to mandatorily register a case [25]. It depends on the mercy of the police officer and who the accused is. For example, in a recent incident in Kerala, where the accused was an influenced leader of the ruling party, when the victim approached the police station, the Sub-Inspector of Police, demeaned her as much as he could, asked her vulgar questions, and threw her out the station, without even registering a case. Followed by the same, the MLA of ruling party, in press conference, disclosed her name, and bluntly leveled baseless allegations against her [26], a typical instance of dangerous intersection of political influence with gender, broadening the ambit of gender inequality. It was only when some of the social workers brought it into the attention of national media did the police registered an FIR [27]. If this is the plight of a young educated woman in the state with highest literacy rate, political maturity, strong opposition and woman liberation, what would be state of an unprivileged victim residing in the outskirts of a least literate, goonda ruled state? Definitely it would be beyond the state of imagination. Even though Supreme Court in *State of U.P v. Chhoteylal* [28] and *Prakash Singh & Ors v. Union of India & Ors* [29] repeatedly raised serious concerns about the intersection of gender based violation and political interference, yet it is at the mercy of the respective governments and nothing has been done progressively in this line.

Coming on the trial phase, a lot have been improved owing to a series of directions given by the Apex Court, various High Courts and the guidelines provided by Justice Verma Commission in its Report. But still, the outside pressure continues to threaten the veracity of statements made by the witness and even the victim. Though need for a witness protection program is vital at this stage to curb the inequality generated as a result of intersection of various factors, in spite of repeated recommendations, [30] yet it remains at the mercy of the government.

Meantime, if the victim gets pregnant in consequence to the rape and if it is past twenty weeks, another gender inequality sprouts as the Medical Termination of Pregnancy Act under Sec. 3 does not permits the termination of pregnancy howsoever great the physical and mental trauma caused to the victim, which can never be regarded as a just law [31]. Then it is left to the decision of the court based on justice, equity and good conscience of the court which seldom favours the victim. That means, if pregnancy is not terminated within twenty weeks it is for the victim to bear the additional effect of another's pleasure.

Most alarmingly, is pertinent to note that the patriarchal mindset of the courts still persists and is

well reflected in judgments and conviction phases. Firstly, though the Hon'ble Supreme Court of India has repeatedly warned that corroboration of the victim's testimony with the material evidence need not be looked upon except in rare of rarest cases where the malicious intention of the complainant is proved by the accused [32], it seems that none of the courts below it, has given a due consideration to those direction and often acquits the accused for want of corroboration. It is pathetic that her words are not even given an attention which is at least given to that of the victims of other crime and *puts her par with the accomplice* [33]. It is a dire truth that in such a country bound by patriarchy no women will put a dignity at stake and file a complaint unless she is that much traumatized [34], yet it is an the irony is that courts often fail to realize the same.

Secondly, delay in filing FIR often turns out to unfavourable for her. Despite Justice Verma Commission Report and repeating warnings of Apex Court, [35] instances shows that the accused as in other crimes is acquitted on the ground of delay in FIR [36]. It is sad that the courts did not bother to understand that the agony of the victim and treats her with compassion and understanding.

Thirdly, even though it is well prescribed in the penal provision that mere penetration and not ejaculation is necessary for conviction, [37] cases after cases shows that accused are acquitted for want of evidence in the form of spermatozoa [38]. These are just some of the unequal treatment faced by the victim even from the court of law due to the intersection of gender and patriarchal norms. It is sad that even judiciary is not free from it and it is the net result of such unhealthy intersection which is reflected in the poor conviction of 26. 33% in rape cases as per statics of NCRB [39]. Therefore, it is to be concluded that the concept of gender equality, first of all must need to be made clear to the bearers of justice.

Post Litigation Phase: This is the phase where accumulation and net result of all the abovesaid intersection comes into play and there is barely left anything for her to fight with the various forms of gender inequalities with arises every now and then.

A detailed research could easily reveal that the incidents of gender inequality, multiply during this phase, are due of the dearth of proper rehabilitation facilities. The rehabilitation facilities lack mainly because both the government and civil society wrongly perceives the justice for rape victim as the conviction of the accused. Hence, the focus of these entities shifts from ensuring the rehabilitation of the rape victim to ensuring the conviction of the accused. Consequently, years after independence, literally there is neither any effective socio- economic rehabilitation planning nor any rehabilitation measure available for the victim in any form. That is

why out of 10,000s of new rape victims every year [40], a very few, which can be numbered in fingers, could manage to get an environment feasible for rehabilitation and could come back to public sphere once again. Though there has been a direction from Hon'ble Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India and others* [40] to constitute Criminal Injuries Relief and Rehabilitation Board and Criminal Injuries Compensation Board at District, State and National level, in line with Art. 38(1) of Constitution of India, yet it remains as a dead letter in most of the states and in states which have constituted, it remains inactive. Hence, other than the optional compensation [42] decreed by the courts at the time of compensation, seldom does the victim get financial assistance to mitigate the harm caused her by means of a heinous crime. Therefore, hardly the victim could come back to live with former enthusiasm and could lead a dignified life. Consequently, she gets prone to various gender inequalities which sprouts every now and then and could end up in a state of life over burned by gender inequality. In a country like India, rape serious affects her marriage prospectus. Furthermore, any revelation of her identity makes it guarantee that she would not be able to secure a stable means of livelihood. If she is having a child which was born out of the rape and if the accused is out from jail owing to his political influence, her trauma reaches its perfection and the gender inequality attains its completion.

Right Based Approach As A Remedy: From the discussion so far, it can concluded with absolute precision that victims of rape in every phase of their life afterwards are made to linger with the pain and suffering imparted to them by one the most heinous crime. But neither the society nor the state could bring in a proper holistic approach to tackle the same. One could easily argue that since the intersections are too much, such that hardly could they curb it. But, does that answer provides with a right framework to re-introduce the concept of gender equality to the rape victims? Doesn't a rape victim is entitled to get a feasible environment to get off from the sufferings and re-experience the sweetness of gender equality? Aren't they entitled to get justice and lead a life with dignity? The answer to those latter questions can only be in affirmative. Hence, it is essential for the state and for the society to devise an effective generalized system for the same, an aid with which each and every dangerous intersection could be tackled. With respect to the current scenario, it can be identified that in most of the circumstances discussed above the core policies intending to bring back the victim to the mainstream of the society are either absent or remains as a gratuitous allowances and hence does not give rise to any mandatory obligations and hence are not holistic.

It is there does the importance of right based approach comes in.

Right based approach is an approach which was mandated by the United Nations to be reflected in all policies and programs [43]. The highlighting feature of this approach is that it gives rise to legitimate claims and imposes mandatory obligations upon the state, unlike any other approach [44]. Applying this approach to all the three phases of post-ravishment period, it brings into light an inherent responsibility embedded with the state to seek out human right violations, initiate litigations, shun unnecessary intersections, ensure justice to the victim both by convicting the accused and bringing back victim once again to the mainstream of the society and to enjoy the sweetness of gender equality and it also becomes the legitimate right of the victim. The only declaration that facilitates a way for the same is the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 [45] Sadly, none of the member states have paved an attention neither to the Declaration nor to the subsequent guidelines issued in the form of Various Handbooks [46]. Except this, no other international obligations specifically recognize the rights of a rape victim [47]. Therefore, lending a deaf ear to this convention is like facilitating the secondary victimization of rape victims [48]. Hence, the first step in this approach is to comprehensively re-recognize these rights of rape victims internationally by including subsequent development and to pressurize the member state to incorporate these rights into their legislation. Secondly, once these rights are recognized the security and dignity of the rape victim becomes an explicit duty of the state and becomes the right of the victim. This right not only confers with civil and political right but also guarantees every welfare and protection in the form of socio-economic rights. This in turn balances the individual and state interest and *place the individual within the context of family and community, rather than as an entity that is isolated and antagonistic to the community* [49]. Subsequently, any violation to the same can spurs up moral responses from the civil society Also being a violation of international commitment it can takes the instance to the international platform, thereby avoiding a series of unfavourable intersections and making it difficult for intermediary players to take undue advantage over the victim. In response, it provides for an enabling environment in which human rights can be demanded and enjoyed without any fear of violation and mandates an environment which prevents discrimination, poverty and exclusion

[50]. Thus, a holistic approach [51] for addressing complex problems can be formulated, as a result of which victims can once again be brought to a normal life which they enjoyed before.

Conclusion: Gender inequality seldom arises for a single reason. It often sprouts due to the intersection of a range of factors governing the life and its interaction while interplaying renders it dangerous. Some of such disgusting, complex and crucial interaction often arises in the life of rape victim and continues to linger her throughout the lifetime. During the pre-litigation phase, she is subjected gender inequality owing to the intersection of patriarchal norms, family honour and social taboos with her present state of affairs. In the litigation phase, she even suffers inequality from the hands of state due to the intersection with political interference, outside pressure, patriarchal norms, and stringency of unfavourable laws. In the post-litigation phase she is made to experience gender inequality both from state and other entities owing to dearth of proper rehabilitation means through which she could avoid the intersection of unfavourable factors. In short, a numerous number of intersections winds her up and makes her to lead a life filled with the bitterness of gender inequality. There may be numerous intersections contributing to this state of affairs but if the global aim is to achieve a comprehensive gender equality it is essential to address each and every such intersection by suggesting a generalized solution which can be used as tool for tackling each and every dangerous intersection. It is at this juncture, does the right based approach can be accepted as a generalized solution for the same. This approach makes it the duty of the state to protect social, economical, civil and political rights of the victim and to bring her back to normal life free from these unwanted intersections and renders it as her right. This in turn can provide new wings to her distorted life. Therefore, hope that this holistic approach with the aid of other powerful entities may wipe out the tears of all the lingering rape victims.

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