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the role of judiciary and government in their rehabilitation and protection in India

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ABSTRACT

Protection of women and children is the symbol of well society. Nothing is more horrifying than the sexual abuse of a child, nothing more reprehensible than a criminal system that subsequently victimizes the victim, police behaviour that adds terror to agony. Rape victims in India are least supported by the Indian Judiciary and by the legislature. Indian laws seem accused centric rather than victims. The schemes of compensation for their rehabilitation are inadequate. We have anti-rape laws applicable in India but its implementation is very poor. There is constant increment of rape offences in India. There is no proper protection of laws available to rape victims in their rehabilitation and protection. Indian judiciary itself many time hesitated in taking sexual assault as rape. The conviction rate in rape cases is very less. The protection to their relatives seems inadequate in both pre and post rape situation with rape victims. Assistance to victims of rape crime is of great significance because victims have suffered irreparable damage and harm due to rape crime.

In the present study, it is submitted here that a criminal justice system does not function in a vacuum. The system and the actors are the police, prosecutors, judges or lawyers, are all embedded in specific social, economic, political and cultural contexts. In India, class, caste, gender, religious and sexual identity and other disabilities greatly influence the working of the criminal justice system. Thus it is critical that the purpose, sincerity and significance of any proposed reforms of the criminal justice system be judged by the extent to which the process of drawing up the reforms was participatory and inclusive and the extent to which they address social vulnerability and disadvantage and enable the system to better protect the rights of those who most discriminated.

The Prevention of Children from Sexual Offences Act, framed by the parliament actually violate the provisions of Indian Penal Code in regard to the trial of rape cases by giving separate proceeding of sentencing policies. Reluctance of the police to register case flows from, apart from a desire to keep the workload within manageable limits, an anxiety to keep crime figures low. As there is always remains a tacit collusion between the police and the highest officials in the executive.

The role of the victim of a crime in our criminal justice system, which follows the common law colonial tradition, is restricted to that of witness in the prosecution of an offence. This stems from a negative perception of the victim of a crime as a person who has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights. The patriarchal outlook of 'police, public prosecutors defence counsels and judges' and their attempts at maintaining the status quo too are stumbling blocks for the victim.

The solution to this problem therefore requires a complete attitudinal change in the state and the police force. The public prosecutor is the criminal justice system gatekeeper. If the public prosecutors would not file a case or does not want to proceed, the cases will come to an end. For the same reason judges probation officers, corrections officers, defence counsels, court clerks, and all the vast array of criminal justice officials, aside from police, see only those crimes which the public prosecutors allows them to see.

There should be some survivor service centres to give a standard of care to the survivors of rape. Such initiative may combine the best possible initial case management by skilled officers with the best available victim care from the health service. The service can be comprehensive with on-going treatment, advice, and counselling and follow up by specialist and forensically trained doctors and nurses. The establishment of such survivor service centre across India would assists one standard of care for all victims. A rape victim needs support from all quarters—medical, financial and emotional. In many countries, in the last two-and a-half decades, steps have been taken to provide medical support through national health services, financial support through criminal injuries compensation board and Victim Support Schemes and emotional support through Rape Crisis Centres. In India, however, the state has not initiated any steps towards providing medical and emotional support services to the rape victims.