

REHABILITATIVE SENTENCING IN RAPE CASES: AN APPRAISAL OF TEKAN ALIAS TEKRAM V. STATE OF MADHYA PRADESH

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A. Introduction

*Tekan Alias Tekram Versus State Of Madhya Pradesh*¹ decided by the Hon'ble Supreme Court of India on February 11, 2016, is a unique and of its kind judgment, heralding a victorious jurisprudence for rape victims in particular, and believers of restorative and compensatory jurisprudence in general. Going out of its usual way, the Supreme Court ordered the state government to pay Rs 8000/- monthly compensation to the unfortunate blind victim of the rape for the rest of her life!

No better words than of Justice N Mathur can expound the predicament of rape victims. He ghastly notes "the crime of rape can be regarded as the highest torture inflicted upon virginity, youth, motherhood and womanhood itself. It causes not only physical torture to the body of the woman but adversely affects her mental, psychological and emotional sensitivity. Therefore, rape is the most hated crime against the very basic human right and violative of the woman's most fundamental right, namely the right to life. It is less a sexual offence than an act of aggression aimed at degrading and humiliating women."²

Neither the utmost concern for rape victims³ nor the exercise of restorative jurisdiction⁴ for them is new to Indian legal system. Courts have always been profuse in

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¹2016 SCC OnLine SC 131, Criminal Appeal No. 884 Of 2015, 11/02/2016, Justice M.Y. Eqbal Pronounced The Judgment of The Bench Comprising His Lordship And Hon'ble Mr. Justice Arun Mishra.

²Suo Moto vs State Of Rajasthan, RLW 2005 (2) Raj 1385, Para 12

³In *BodhisattwaGautam V. Subhra Chakraborty* AIR 1996 SC 922, the Supreme Court has held as under:

"Rape is not only a crime against the person of a woman (Victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her with derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article, 21"

In *State of Punjab Vs. Gurmit Singh* AIR 1996 SCC 1393, the Supreme Court expressing its concern as to the increase in the offence of rape held as under:

"Of late, crime against women in general and rape in particular is one the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very should of the helpless female."

The Apex Court in *Dinesh @ Buddha Vs. State of Rajasthan* (2006) 3 SCC 771, observed as under: "Sexual violence apart from being dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity -it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. Her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this court in *BodhisattwaGautam V. Subhra Chakraborty*, the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished

sentencing rape victims since the sentencing policy in rape cases must be of deterrence rather than reformative.⁵ At times, Supreme Court has read rape as a grossest violation of human rights demolishing the highest constitutional rights guaranteed by Article 21 of the constitution. Courts have even gone *suomoto* in exercising jurisdictions to do restorative and rehabilitative justice to the rape victims.⁶ In this case, the factual background under which this monthly compensation is awarded is worth noting.

A. Factual background:

A blind and an illiterate girl, (now 37 on the date of delivery of this judgment) was subjected to sexual intercourse on the promise of marriage. The accused in this case was a friend of prosecutrix brother. He often used to visit the home of prosecutrix since he was studying with the brother of prosecutrix. The story narrated on record is

“Because of the friendship, the accused used to visit the house of the prosecutrix and was in conversation with her. It is the case of the prosecution that when the prosecutrix used to remain alone in her house, the accused used to visit her and expressed her that he is in love with her. Further, the case of the prosecution is that about one year before the incident, the accused came to the house of the prosecutrix when she was alone. Thereafter, the accused had told her that he is in love with her and will marry her and wanted to commit sexual intercourse with her. The prosecutrix tried to avoid it since she was a blind girl, but the prosecutrix was told by the accused that he will marry her and will give her all support and, therefore, she submitted herself to the accused. Thereafter, the accused committed sexual intercourse with her. It is the case of the prosecution that whenever the prosecutrix remained alone in the house, the accused used to come and commit sexual intercourse with her. By such course of action,

fundamental right, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases need to be dealt with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised judge, in our opinion, is better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.”

⁴ See *Nilahati Behera v. State of Orissa* (1993) 2 SCC 746 *Chairman, Railway Board v. Chandrima Das*, (illustrative of new trend of using Constitutional jurisdiction to do justice to victims of crime. Substantial monetary compensations have been awarded against the instrumentalities of the State for failure to protect the rights of the victim.) *P. Rathinam v. Union of India*, 1989 Supp(2) SCC 716 (the Apex Court laid down the principle of interim compensation to be paid to the victim pending trial.) In *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490, (the Supreme Court held that the Court has the right to award interim compensation and the jurisdiction to pay interim compensation shall be treated to be part of the overall jurisdiction of the Courts trying the offence.

⁵ In *State Of Andhra Pradesh vs Bodem Sundara Rao*, 1995 SCC (6) 230 justice Anand, A.S. J. noted that “In recent years, we have noticed that crime against women are on the rise. These crimes are affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the Legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's crime for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. See also *State of Andhra Pradesh v. Gangula Satya Murthy, J.T.* 1996(10) SC 550, *State of Maharashtra v. Rajendra Jawanmal Gandhi*, AIR 1997 SC 3986.

⁶ In *Suo Moto V. State Of Rajasthan*, RLW 2005 (2) Raj 1385, the court took *suomoto* cognizance of rape on a foreign lady tourist by reading regional Newspapers. Read detailed jurisprudence on *suomoto* jurisdiction, victim compensation, victimology, role of fast track courts in dealing with rape cases, in camera proceedings, inherent powers of the Apex courts and witness protections etc., in this judgment.

when the prosecutrix became pregnant, the prosecutrix told the accused to marry her. At that point of time, the accused stopped visiting the house of the prosecutrix. Subsequent to it, the incident was disclosed to the father of the prosecutrix who called the meeting of the Panchayat in the Village. In the Panchayat, the accused was also called. It is the case of the prosecution that in the Panchayat, the accused admitted the fact that he had committed sexual intercourse with the prosecutrix but refused to marry her and left the Panchayat. It was the specific case of prosecution that though the prosecutrix was blind, she could recognize the accused person by his voice and by touch. It reveals that the matter was investigated by the police and the prosecutrix was also subjected to medical examination and finally a charge-sheet was filed under Section 376 IPC.”⁷

Accordingly, the accused was convicted under Section 376 IPC and was sentenced to 7 years rigorous imprisonment. On appeal high court confirmed the sentence and hence an appeal was preferred to Supreme Court.

B. Question of compensation

The court accepted the finding of the lower courts and seized with only the question of compensation to be paid to the victim. During the course of hearing the court directed the State of Chhattisgarh to file a copy of the Victim Compensation Scheme applicable in the State of Chhattisgarh and to inquire about the financial status of the victim, her brothers and also of the accused-appellant. Accordingly the financial profile of victim, accused and brothers of victim were placed before the court which revealed a discouragingly low status. Victim was found to be living all alone from the brothers and the only help was a BPL card which entitles her 35kg rice per month at the rate of Rs.1/- per kg plus free salt and a pension of Rs.300/- per month from the State being a person with disability.⁸ The state submitted that for the rehabilitation of the victim the Home Secretary, Department of Home has taken decision to keep the victim in Nari Niketan, to provide her food, clothes and shelter and the monthly pension of Rs.300/- throughout her life. For the said rehabilitation programme, the State has to incur about Rs.8,000/- to Rs.10,000/- per month.

Victim Compensation Scheme under Section 357-A, Cr.P.C notified by the State of Chhattisgarh was placed before the court. The scheme provides 50,000/- for Rape of Minor, 25,000/- for rape, 20,000/- for Rehabilitation.

Finding the scheme framed by the State of Chhattisgarh to be unsatisfactory, the court surveyed⁹ the schemes framed by other states in respect of similar crimes. As many as 25 schemes prepared on similar crimes by states and union territories were surveyed by the court to note that surprisingly as low as 20,000/- to 10,00,000/- compensation schemes have been developed for the same crimes! The court observed that

“Perusal of the aforesaid victim compensation schemes of different States and the Union Territories, it is clear that no uniform practice is being followed in providing compensation to the rape victim for the offence and for her rehabilitation. This practice of giving different amount ranging from Rs.20,

⁷Supra 1, Para 4

⁸Supra 1, Para 9

⁹Supra 1, Para 11 in which court took note of position in 25 states and union territories

000/- to Rs.10, 00,000/- as compensation for the offence of rape under section 357A needs to be introspected by all the States and the Union Territories. They should consider and formulate a uniform scheme specially for the rape victims in the light of the scheme framed in the State of Goa which has decided to give compensation up to Rs.10,00,000/-.”¹⁰

C. Tailor made justice

In the presence of above facts, and dismal compensation scheme framed by the State of Chhattisgarh, the court was seized with what compensation to be awarded and how. The court observed that

“The victim, being in a vulnerable position and who is not being taken care of by anyone and having no family to support her either emotionally or economically, we are not ordering the respondent-State to give her any lump sum amount as compensation for rehabilitation as she is not in a position to keep and manage the lump sum amount. From the records, it is evident that no one is taking care of her and she is living alone in her Village. Accordingly, we in the special facts of this case are directing the respondent-State to pay Rs.8,000/- per month till her life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/-. By this, the State will not be required to pay any lump sum amount to the victim and this will also be in the interest of the victim.”¹¹

Though the court did not directly subscribe to the scheme framed by Goa state where Rs 10,000,00/- compensation is payable in respect of rapes, the fact that the scheme was highlighted in bold letters in the survey of schemes and applauded by the court here and there in the judgment itself indicates that, judiciary was judiciously underlining the scheme of Goa as a model scheme to be adopted by every state. This is precisely what the court expressed in its concluding part. In the typical facts before the court, in fact, the court awarded the compensation of Rs.10,00,000/- to the victims but for the inability of the victim to manage the funds, the court awarded Rs.8,000/- per month till her life time, treating the same to be an interest fetched on a fixed deposit of Rs.10,00,000/-.

The point to be highlighted here is the court is not ready to be bound by the schemes framed by the states providing low or lesser compensations. Courts are providing tailor made remedies to suit the rehabilitative needs of the victims.

D. The ratio and the obiter:

The court ordered as under

19. In the result, we dismiss the appeal having no merit and issue the following directions:-

- 1) All the States and Union Territories shall make all endeavour to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women as required under the law taking into consideration the scheme framed by the State of Goa for rape victim compensation;

¹⁰Supra 1, Para 13

¹¹Supra 1, Para 18

2) So far as this case is concerned, the respondent-State shall pay a sum of Rs.8,000/- per month as victim compensation to the victim who is physically handicapped, i.e. blind, till her life time.¹²

Though the first direction appears to be ratio, it is not in the sense that, the court has asked to “make all endeavour to formulate a uniform scheme for providing victim compensation”. States have always been pleading their limited resources as constraint in formulating the schemes. Same thing has happened in acid Victim rehabilitation schemes. In spite of directions from the Supreme Court to provide minimum 3,00,000/ compensations to acid victims, states have framed discriminatory schemes providing as low as 25,000/ compensation.¹³ The court had to reprimand the states to formulate uniform schemes. It is hoped that the direction in this judgment will not meet the same fate. Conversely, even if the directions are not followed in terms of framing of the schemes, courts have gone miles ahead in providing victim compensation. Courts have refused to be bound by the monetary limits in the schemes framed by the executives.¹⁴ In recent acid attack case, the court has provided ten lacs Compensation though states have fixed the quantum at Rs 3,00,000 at the highest end.

E. Concluding observations

The readers of constitution law would perceive this judgment as a ‘ratio’ on the basis of constitutional scheme in which judicial directions are to be equally respected as law of the land. Further, judicial activism has always patched the legislative gap through directions, though the language employed may be polite and requesting. Irrespective of terming the direction as ratio or obiter, there is every reason to celebrate this judgment as a progressive interpretation. This type of shouldering the responsibility of victims of crime is a new chapter in the victim compensation jurisprudence in India. Further developments are awaited.

Interestingly the second direction to pay “a sum of Rs.8,000/- per month as victim compensation to the victim who is physically handicapped, i.e. blind, till her life time” does not come with a revision clause whereby this amount may be revised. However, judicial process provides ample scope for revision petitions where this amount can be revised to match inflation at any point of time.

Though the court had an ample opportunity to rule schemes framed by states as discriminatory, arbitrary and violative of equality clause, for reasons known to the courts, it restrained from doing so. From the perspective of the victims the schemes are betrayals.

¹²Supra 1, Para 19 and order for compliance

¹³In Laxmi versus Union of India W.P (CRL.)NO.129 OF 2006 by order dated APRIL 10, 2015 available at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=42588> assessed on 17 March, 2016, the Court *inter alia* held, thus:-

“10. ... we find that despite the directions given by this Court in Laxmi v. Union of India (2014) 4 SCC 427], the minimum compensation of Rs. 3,00,000/- (Rupees three lakhs only) per acid attack victim has not been fixed in some of the States/Union Territories. In our opinion, it will be appropriate if the Member Secretary of the State Legal Services Authority takes up the issue with the State Government so that the orders passed by this Court are complied with and a minimum of Rs. 3, 00,000/- (Rupees three lakhs only) is made available to each victim of acid attack.”

¹⁴ In Parivartan Kendra V. Union of India and Others (<http://indiankanoon.org/doc/16029001/>) the supreme court awarded ten lacs compensation to the duo who suffered acid attack. The court itself clarified that Rs. 3,00,000/ compensation fixed in the earlier case is the minimum and there is nothing in that case or in any schemes framed by the states which binds the state or court to award more than that in peculiar cases and circumstances.

Victims are victims and therefore, if the place (state) of offence were to decide the quantum of compensation for similar crimes, it would be fraud on fundamental rights. States must, therefore follow a uniform schemes for rehabilitation of victims failing which writ remedy would excessively pressed for.