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VICTIM, NOT A HEADLINE: THE RIGHT OF PRIVACY BEHIND

SECTION 72 BNS

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INTRODUCTION

The dignity and privacy of victims of sexual offences are often infringed upon in the name of public curiosity. The rape and trafficking cases are increasing day by day and the main question arises whether the identity of victim should fall into the public domain or be kept anonymous. Sensational journalism has become a tool to disseminate the identity and to increase social stigma and victimization. The victims suffer from the actions of conservative families, media trials, and the public due to the aftereffects which are not always in their advocacy. The families care for their honour and prestige, which led to the non-reporting of such cases. Hence, the constitutional right of privacy is enumerated in the provision of Section 72 of Bharatiya Nyaya Sanhita (BNS), where disclosure of the victim's identity by any person is a punishable offence.¹ The offence penalizes the offender for a term that may extend to two years if he publishes the name or any matter in print or electronic form that may reveal the identity of the victim.

CASE STUDIES OF IDENTITY DISCLOSURE

There are several infamous instances where the identity of the victim is being disclosed through the dissemination of photos, names, and other information on social media or other printing platforms. This blog has highlighted a few major reported cases. The recent case of R.G. Kar Medical College and Hospital Rape Case, the Supreme Court directed Wikipedia to remove the name and photograph of the victim from its pages in the interests of maintaining the dignity and privacy of the deceased. The victim was also tagged as 'Nirbhaya 2' post 2012 Delhi Gang Rape Case on social media, and YouTubers also revealed her identity through videos. On the

¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 72 (India).

other hand, in the Nirbhaya Case, the name of the victim was not disclosed and referred to by pseudonyms for three years. The YouTuber influencers and other portals have also leaked the name and details of victim's family in Hathras Gang Rape Case that led to make her identity known and further harassment in public. Then, the Delhi High Court in the matter of Kathua Rape Victim directed media houses to apologize and pay compensatory amount to J&K Victim Compensation Fund.

JUDICIAL OUTLOOK TOWARDS PRIVACY OF IDENTITY

The judiciary plays a pivotal role through judicial pronouncements in upholding the dignity of the victim. In *Nipun Saxena v. Union of India*², the court held that the victims of sexual offences have a right of privacy and their identity should not be subjected to harassment and hostile discrimination in public at large. The bench stated that...

“Victim of a sexual offence, especially a victim of rape, is treated worse than the perpetrator of the crime.”

In *Premiya @ Prem Prakash v. State of Rajasthan*³, the court held that judicial officers should thwart from mentioning the identity in the judgments. The notion of secondary victimization also begins to act with the non-consensual disclosures but this provision ensures the interpretive evolution of the right of privacy. Therefore, the court in the case of *Jagjeet Singh v. Ashish Mishra @ Monu*⁴ pointed out that...

“Trial of rape cases in camera should be the rule and an open trial in such cases an exception.”

In *Dr. Irfan Ansari v. State of Jharkhand*⁵, the High Court ruled that bar on disclosing the identity in media shall also apply to WhatsApp Groups. The actions of offenders are a denial of women's dignity and right to enjoy fundamental liberties. The Investigating Agency must also require express leave of the court before disclosing of the identity in any media. Such disclosures are an irreversible situation and no individual can curb post-circumstantial effects.

² (2019) 2 SCC 703.

³ (2008) 10 SCC 81.

⁴ 2022 SCC Online SC 453.

⁵ Cr. Revision No. 1254 of 2022.

Hence, the gag order is one of the judicial tools, besides legislation, to forbid parties involved from spreading such sensitive information in public to ensure privacy, confidentiality, and a fair trial.

CONCLUSION AND SUGGESTIONS

This section also corresponds to Section 228A of the Indian Penal Code (IPC), which was amended by the Criminal Amendment Act, 1983.⁶ It is a cognizable, bailable, and non-compoundable offence. The protection of the identity of victims of sexual offences is not just obligated by legal regime but it is an ethical duty. The principle of ‘Ignorantia juris non excusat’ should prevail in case the defence takes the excuse of ignorance of the law. The regulation of digital media is also a toothless weapon, as the provision has been mostly violated on such platforms. Media itself and other platforms should mention the disclaimer that they have obtained consent from the victim or her next of kin regarding the revelation of identity or other related documents. It will establish accountability on the part of such institutions and also such individuals who are in possession of information that they must require permission from the concerned person before taking such a step. As Barbara Boxer said, “More than anything, I think as our country matures, we recognize that women deserve to be treated with respect and dignity”.⁷ Let’s respect the dignity of victims, whether men or women, as human beings, not as headlines. The legislators have also limited the scope of Section 72 to rape cases under the provision but its paramount importance should extend to murder, suicide and dowry death to maintain and protect the moral rights.

⁶ Indian Penal Code § 228A (1860) (India), inserted by The Criminal Law (Amendment) Act, No. 43 of 1983, § 6 (India).

⁷ *AZQuotes*, <https://www.azquotes.com/quote/713497> (last visited July 7, 2025).