

IN THE HON'BLE SUPREME COURT OF INDIA

(EXTRA ORDINARY ORIGINAL JURISDICTION)

UNDER ARTICLE 32 OF CONSTITUTION OF INDIA

WRIT PETITION (CRIMINAL) NO._____OF 2020

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF :

Versus

1. UNION OF INDIA, Through Joint Secretary,
Ministry for Home Affairs, North Block, New Delhi –
110001
2. MINISTRY OF LAW & JUSTICE, Through its
Secretary, 4th floor, A-wing, Shastri Bhawan, New
Delhi – 110001
3. MINISTRY OF WOMEN & CHILD DEVELOPMENT,
through its Under Secretary, Shastri Bhavan, New
Delhi -110001

... Respondents

**WRIT PETITION UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA**

To,
Hon'ble The Chief Justice Of India
And His Other Companion Judges
Of The Hon'ble Supreme Court Of India

**The Humble Petition Of
The Petitioners above named:**

MOST RESPECTFULLY SHOWETH :

1. That the instant Public Interest Litigation(PIL) by way of Writ Petition under Article 32 of the Constitution of India has been preferred by the Petitioners, before this Hon'ble Court who is the guardian for protection of safety and security of all women and girls of our country from the fear of getting raped and murdered by such sick criminal-minded perpetrators who have left with no fear of law. The Petitioners seek kind indulgence of this Hon'ble Court towards the heart wrenching brutal gang-rape and murder of young girls, the recent being the horrific incident of gang-rape followed by murder of 19 year old in Hathras District at Uttar Pradesh. As the existing rape Laws are not implemented in its true spirit , the delay in lodging of FIR, delay in concluding trial, no protection to victims, no action against erring officials etc. still continues. The Petitioners by filing this petition have prayed for issuance of strict guidelines for

implementation of existing Rape-laws and has also suggested and formulated some major stringent changes to be brought in our criminal justice system in cases of rape with grievous injuries, gang-rape and rape/gang-rape with murder, so that such violent perpetrators think hundred times before committing such heinous acts with any women and drop their guilty mind in fear of its consequences.

That the Petitioners have also highlighted that how, despite of the guidelines being issued by this Court , general public at large including some news agencies are committing offence under Section 228A IPC by **disclosing the identity of Hathras Rape victim along her Photographs** on various social media platforms which is to be stopped immediately by respective Authorities. The Respondent must spread awareness regarding this issue so that the law is followed in letter and spirit

1A. That the Petitioner's-in-person have not approached the Respondents with respect to the subject matter of the present writ petition as the matter pertains to wider public interest which

requires the immediate intervention of this Hon'ble Court.

1B. That both the Petitioner's-in-person have not filed any similar petition before this Hon'ble Court or any other court.

PARTICULARS OF THE PETITIONERS:

3. That apart from practicing the noble profession of an Advocate, the Petitioner No.1 has been associated with Social Work from last 15 years also and running a campaign named 'FIGHT FOR YOUR RIGHT' where Petitioner No.1 conducts Legal

Awareness Programs for general public, educate young children about good and bad touch, conduct Awareness Programs on laws dealing with children and women and various other matters of social cause.

- 5.** That the Petitioners do not have any personal interest or any personal gain or private motive or any other implicit reason in filing this Petition and the same is being filed purely in public interest.

- 6.** That there is no civil, criminal, or any other revenue litigation pending or filed by or against the Petitioners which could have a legal nexus to the present public interest litigation.

7. That both the Petitioners are women and as per their work, they also meet and deals with number of women of all age and hence by filing this petition, they are raising the pain and plight of all such women who are living in fear of their safety. The Petitioners espouse the cause of safeguarding the rights of young girls and women of India who are deeply disturbed and anguished over the aforesaid brutal incidents of gang- rape followed by murder.

FACTS OF THE CASE.

8. That as per the news reports, on 14.9.2020, a young girl aged 19 years was gang-raped and brutally assaulted by 4 men at Hathras District of Uttar Pradesh. The victim reportedly was dragged away by dupatta around her neck injuring her spinal cord in the process. She was left paralysed with severe spinal cord injury. The accused had also tried to strangulate her as she resisted the rape attempt and her tongue was also injured apart from other bodily injuries. After fighting for her life for two weeks, she succumbed to the injuries in Hospital at Delhi. The true copy of the News Report regarding this incident published in times of India on 29.9.2020 is attached herewith as **Annexure P-**

1.(Page-_____)

9. That when the entire nation was in shock by the horrific incident of Hathras gang rape and murder, yet another heart-wrenching incident of abduction followed by gang rape and murder of 22 year young lady was reported from Balrampur District of the same state. The victim had 10 serious injuries on her body due to the violent brutal gang-rape. The news Report in this regard published in Economic Times is attached herewith as **Annexure P-2.(Page-____)**. Not only this, two minors were also raped in Uttar Pradesh Bulandshahar and Azamgarh at the time when there was widespread outrage over the Hathras horror.

10. That the recent shocking gang rape and murder of a 19 year old girl in Hathras, Uttar Pradesh is not just another heinous crime; it will also be remembered as a classic example for the police- how not to handle a case like this. The police showed rank insensitivity in this case, and from the very beginning, strove to downplay its severity. They did not even arrest the perpetrators when the victim was battling for her life in the Hospital. Ultimately the unfortunate daughter of Hathras happened to be raped and murdered twice; first at

the hands of the criminals and second, at the hands of our police and failing legal system.

11. That it is also pertinent to state here that this Hon'ble Court has time and again held that the **identity of rape victim** should be preserved and no one should disclose the same. The legislature had also brought **Section 228A** in the Indian Penal Code penalising the act of Disclosure of identity of rape victims but despite of that, in utter disregard of this Hon'ble Court, many people including some news agencies are openly committing the crime under Section 228A IPC without any fear of law. Regarding the recent incident of Hathras, they are are **printing/publishing and disclosing the name of rape victim** along with her photographs on various social media platforms like Facebook, Twitter and YouTube etc. The Petitioners were shocked to see the identity of the rape victim being disclosed in public at large, despite of the act being penalised by the law. The Respondents have definitely failed to implement the law and their insensitivity is apparent. The Proof (screenshot) of such disclosure of identity of Hathras rape victim are there with the Petitioners and can be produced as and when asked by this Hon'ble Court.

12. That the above stated incidents reflect that we have failed the women of our country yet again. Young and precious human life has been lost in such inhumane manner. It is apparent that the perpetrators have no fear of law, albeit they are fulfilling their monstrous desires by playing upon the on the weaknesses of our criminal justice system. The barbaric manner in which these perpetrators have acted, shows that they had no fear of law and rather believe that nothing will be proved and that they will get away from the clutches of law, which is very disturbing.

13. That the unabated horrific acts of brutal rape with grievous injury and gang-rape, some also including the killing of the victim, continue at an alarming speed. In last few days the single state of U.P. has witnessed four rape incidents raising serious concerns and questions on our criminal justice system as well on the Administration. How many more Nirbhaya's we need, before we wake up. According to NCRB data, every 15 minutes a new rape case is reported. The Criminal Amendment Acts of 2013 and 2018 brought stringent punishments for such criminals but still they are having no fear of law because of non-

implementation of such laws. Hence such brutal rape cases, even more violent and cruel some, are increasing exponentially in the country even. And it is apparent that the current laws and justice system are incapable of deterring the culprits from committing such heinous crimes.

14. That it is also significant to state here that Law is not static and it must evolve as per the changing circumstances in the society. When the crime changes, the law must also change. There is a requisition of more stringent and effective laws to protect the dignity and life of every women of this country and the reforms and amendments to be brought are detailed in further paras.

15. That the most regrettable part about these shameful episodes is that Indian Society continues to display a remarkable degree of consistency in its brutality and sexual perversions. Nirbhaya, Kathua, Gudiya, Hathras and all such horrors confirm that legislations alone cannot help the “beast within the minds of the men”. Hence we need social moral reforms too. In fact the criminal justice system, indeed the law enforcing agencies need to work together with social moral organisations also because ultimately the goal both the institutions

look forward is prevention of crime in the society. Further the subject of moral education including sex education must be made mandatory in the schools so that they learn about the aspects of consent and to respect the dignity of Women.

16. Hence the Petitioners, themselves being young women and also advocating the rights of women, are aggrieved and deeply anguished by such horrific heart wrenching incidents. Further as the Petitioners are themselves dealing with such cases and are witness to all proceedings, they are also perturbed by non-implementation of the existing laws. **Even after Criminal Amendments of 2013 and 2018, the delay in lodging of FIR, delay in conclusion of trial, delay in appeals, no protection to victim and witnesses, lapses in investigation which gives benefit of doubt to the accused in such cases, no action against the erring officials continues till today. Because of this, the fear does not arise in such criminal minded people and they think they will get away easily by taking advantage of the weakness of law and its implementation.** The Petitioners humbly that the spine-chilling feeling and fear which the women of this country are going through

after watching such brutal incidents should be rather felt by the perpetrators before committing such crimes. The law must be so harsh for them that before committing such inhuman crimes they think a 100 times about the consequences they will have to face after commission of such acts. And such laws should not be only in books but also in implementation and not only for few highlighted cases but for every single case of brutal rapes with murder.

17. That in view of the abovesaid facts, the Petitioners would like to humbly suggest certain changes, amendments and reforms to be brought in the existing criminal justice system to make the laws for brutal rapes and murder even more stringent and deterrent, in order to counter the increasing menace of such barbaric inhumane incidents and succeed in bringing fear in the minds of such people that they cannot get away easily if they commit such crimes-

A. Stringent Provision for Bail in cases of brutal Rape, gang-rape, rape/gang-rape with murder- That there must be separate stringent provisions of Bail for the accused of offence of Rape with grievous injuries, gang-

rape and rape/gang-rape with murder, as it is in the case of offences triable under special enactments of NDPS and PMLA. In fact the offences of gang-rape and rape/gang-rape with murder are more heinous and gruesome crime, not only against an individual but against the society, still we have more stringent provisions of bail for economic offences under PMLA but not in such cases. These needs to be changed.

B. Reverse Onus- That as per the general principle of law, the prosecution has the duty to prove its case beyond reasonable doubt and the accused has to just prove his case on preponderance of probabilities. Further the benefit of doubt is available to the accused. But in cases under special enactments of POCSO, NDPS and PMLA , we have certain presumptions which in turn gives a reverse onus on the accused to prove his innocence. This was done keeping in mind the seriousness of those offences and their impact on the society. But it is high time that such provisions of reverse onus on the accused must also be made in cases of Rape with grievous injury, gang-rape and rape/gang-rape with murder. Like in POCSO , according

to Section 29 and 30 of the Act, there is presumption of culpability of the mental state of the accused until he proves otherwise and further the defence has to prove the innocence of accused beyond reasonable doubt and not on the basis of preponderance of probabilities. Such provision must be brought for cases of Rape with grievous injury, gang-rape and rape/gang-rape with murder also.

C. Right of Legal Representation for Victims

of such crimes- As per section 303 of Criminal Procedure Code, 1973 the accused is given right to choose a lawyer of his choice to defend his case but the same right is denied to the victim/complainant as per Section 301 of the same Code. This provision is not only against the Constitutional mandate but is also one of the major reason for lower conviction rate in the country as the prosecution cases are not represented properly, the benefit of which goes to the accused. The irony is that this embargo of Section 301 Cr.P.C. is only for cases at Session Trial and not for cases of Magistrate Trial. Further during Appeal of the same case before High Court and Supreme Court, there is no such bar for the complainant, but at the crucial important

stage of Trial, the victim/complainant is denied of this right. At least in case of rape victims this embargo of Section 301 Cr.P.C. must be removed and rape victims must be given equal right to choose the lawyer of their choice having all the powers as that of defence lawyer of accused.

D. Separate Legislation - That as we have separate legislation (POCSO) to deal with sexual offences against children, likewise there must be a separate legislation to deal with offences of Rape with grievous injury, Gang-rape and rape/gang-rape with murder also. Such offences are the most heinous crimes and keeping in consideration the exponential increase in such violent cruel some crime, a separate legislation must be brought like that of POCSO.

E. Time Bound Trial and Hearing of Appeal-
After Nirbhaya, the idea of Fast Track Courts for such cases was brought. Even the Criminal Law Amendment Act of 2018 brought changes in Section 173 and 309 Cr.P.C., which says that the trial in such cases should be preferably completed within 2 months period but as per the ground report and data available, this has not been implemented. The

Amendment to Section 309 is not followed in spirit by the Courts below. Further the idea of Fast Track Courts only at the Trial Level and not at the Appellate stage serves no good purpose. Hence the cases of rape with grievous injury, gang-rape and rape/gang-rape with murder must be dealt by Fast Track Courts not only at the Trial Stage but also at Appellate Stage and the implementation of the same must be looked into by the High Courts of the concerned States.

F. **One Single Right To Appeal**- That as per the existing law, the accused in cases of rape with injury, gang-rape, rape/ gang-rape with murder have right of appeal first before the High Court, then before this Court , first in SLP, then Review, then curative and mercy petitions before the President as per the case. This must change now. The accused of such crimes should have one single right to appeal, either in High Court or in Supreme Court. What we have seen in case of Nirbhaya is the classic example, where the victim got justice after delay of 7 long years as the accused persons in the name of their right to appeal misused the provisions of law.

G. Punishment for erring Police Officials- The lower conviction rate is highly attributed to the lapses made by investigating agency, the benefit of which goes to the accused. Such erring officials, in case of rape with grievous injury, gang-rape and rape/gang-rape with murder must be punished apart from the departmental proceedings. Specific provision for this should be brought, penalising their act so that they also have fear and conduct fair and proper investigation.

H. Awareness in regard to Section-228A of IPC- That in spite of the guidelines issued by this Court for protection of identity of rape victims and Section 228A IPC been brought by the Legislature, still there is no awareness regarding the same in general Public and as a result of that, even today number of people including some media channels also are disclosing/ printing/ publishing the identity of rape victims along with the photographs on various social media platforms. The Respondents should spread awareness regarding this and must publish Advertisements and Disclaimers informing the public at large that doing such act is a

criminal offence and that they can be punished for the same. Further the respondents must ensure that the guidelines issued by this Court in this regard are properly implemented.

I. Gender Sensitization along with Moral Education and Sex education as compulsory subject in schools from the initial stage- Last but not the least, the laws alone cannot change this scenario and hence it is important that the subject of Gender Sensitization be made a compulsory subject in schools from the very beginning to impart Moral Education and Sex Education so that they learn about the aspect of consent and to respect the dignity of the women.

GROUND

18. That the Petitioners have filed this petition considering the collective pain and plight of all the women, seeking kind indulgence of this Hon'ble Court to protect them and have suggested the above changes/amendments in the laws for brutal rape crimes on the following grounds:

A. BECAUSE The Criminal Amendment Acts of 2013 and 2018 are not proving to be deterrent

and the brutal cases of rape with grievous injury, gang-rape and rape/gang-rape with murder are increasing exponentially in the country.

B. Because the existing laws are not properly implemented at ground level in each and every case of brutal rape.

C. Because there is a need for urgent intervention by this Hon'ble court as even after stricter punishments being done by amendments in the laws of rape, no fear is coming in the minds of such criminal-minded people. Because they think that they will get away easily even after committing such heinous and cruel acts by taking advantage of the latches in the law such as delay in investigation, trials and appeals, faulty investigation, abscond on bail etc.

D. Because the petitioners have hope only from this Hon'ble Court that the women of this country shall feel safe and not live in fear that one day she may become a victim of such monster-type people roaming around.

E. Because the petitioners have hope only from this Hon'ble Court that the laws and the procedures and their implementation will be

made such under the guidance of this Hon'ble Court that those criminal minded people will deter from committing such acts in the fear of the consequences they will have to face if they commit those acts.

F. Because there are some existing laches in our criminal justice system due to which the perpetrators think that they will get away easily, which needs to be fixed and for which some changes and suggestions have been detailed above in Para 17.

19. That there is a need for intervention by this Hon'ble Court and criminal justice administration and its constituents, for shaping concerted, persistent and clear national response, displaying Zero Tolerance for such abhorrent and horrifying behaviour towards our women. It is high time that there must be deterrent effect of laws and their effective enforcement, to prosecute such offenders of cases of brutal rape, gang-rape and rape/gang-rape with murder, which appears to be missing in the scheme of criminal justice administration.

20. Hence the present petition in public interest is being filed under article 32 of Constitution of India, 1950.

21. That the Petitioners herein state that there is no efficacious alternate remedy available to the Petitioners, save and except the filing of this instant petition and the reliefs herein, if granted, would redress the grievances of the Petitioners.

22. That the Petitioners craves leave of this Court to add/amend/alter the petition if required and to rely on any document pertaining to the subject matter of this Petition as and when necessary.

PRAYER

THE PETITIONER THEREFORE PRAYS,

That in the light of facts and circumstances as stated above, it is most respectfully prayed that your Lordships may graciously be pleased to:

A. Issue Writ, order or Direction to the Respondents to bring certain reforms and amendments in the law to make it more stringent and deterrent in cases of rape with grievous injury, gang-rape and rape/gang-rape with murder by -:

- a. By making stringent provisions of bail for such accused as are in the case of offences under special Enactments like POCSO, PMLA and NDPS;
- b. By giving rape victims the right to appoint lawyer of their choice having all powers like that of a defence lawyer by making amendment in Section-301 Cr.P.C.;
- c. By bringing separate legislation like that of POCSO to deal with cases of rape with grievous injury, gang-rape and rape/gang-rape with death;
- d. By making and implementing the provision of Fast Track Court for such cases not only at the Trial level but also at Appellate Stage and to implement the Amendment made in section 173 and 309 Cr.P.C in 2018 in its right perspective ;
- e. By changing the provision of right to appeal of accused in such heinous cases, by giving them only one opportunity of right to Appeal

either in High Court or in Supreme Court;

- f. By bringing the provision of reverse onus on the accused in such rape cases as it is in cases of POCSO under Section 29 and 30 of the Act;
- g. By making stringent provisions for punishment to police officials for intentionally making lapses in investigation by not following the law in such cases;

B. Issue strict guidelines and directions for proper implementation of the existing Rape-laws including the proposed suggestions detailed in Para 17 of this Petition along with strict action to be taken against non-implementation of such laws;

C. Issue Writ, order or Direction to the Respondents for proper implementation of guidelines already issued by this Court in regard to protection of identity of rape victims along with making people aware about the guidelines of this Court as well as Section 228A IPC by way of Advertisements and Disclaimers;

D. Issue Writ, Order or Direction to the Respondents for introducing a compulsory subject on Gender Sensitization, moral and sex education in curriculum of school;.

E. Pass any other order or orders as this Hon'ble Court may deem fit in facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS SHALL ALWAYS BE GRATEFUL.

Dated this 1st Day of October 2020

Filed by :