

Protecting the identity of Rape Victims and the Exceptions to This Protection

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Abstract:

Protecting the anonymity of rape victims is crucial for upholding their dignity and mental health. The Bharatiya Nyaya Sanhita, 2023 (BNS), explicitly forbids revealing information that identifies victims of rape under Section 72(1), aiming to reduce their risk of trauma and societal stigma. Nonetheless, there are designated exceptions under Section 72(2), such as for investigative reasons or with the victim's approval, where disclosure may be permitted to balance the need for privacy with the pursuit of justice. Concerns arise regarding this section that permits law enforcement to disclose identities in "good faith," as it could lead to misuse. While revealing identities may facilitate investigations, it must be approached cautiously to prevent further harm to rape victims. This analysis evaluates the safeguards in place for protecting the identities of rape victims under the BNS while addressing the circumstances that allow exceptions, underscoring the necessity for enhanced protective measures in the form of oversight by senior police officers or the judiciary. However, distinguishing unintentional errors from intentional breaches of a rape victim's identity is essential for protecting a police officer committing mistake in good faith.

Keywords: Bharatiya Nyaya Sanhita, Rape Victim, Identity Protection, Good Faith, Privacy, Legal Exceptions, Oversight.

1. Introduction:

It is of the utmost importance to protect the dignity, privacy and emotional well-being of rape victims in order to protect their identity from unwanted exposure. Section 72(1) of the Bharatiya Nyaya Sanhita, 2023 (BNS) contains legal measures that prohibit the disclosure of victims' identities in order to alleviate the potential trauma and social stigma associated with such cases, emphasizing the need to prioritize the victim's welfare and treat the victim's situation with respect.

However, there are specific exceptions in Section 72(2) BNS that allow disclosure if it is necessary for an investigation, if there is a written order from the authorities or the express consent of the victim. The purpose of these exemptions is to find a middle ground between the protection of privacy and the needs of conducting investigations and serving the public interest. However, it is imperative that these contributions are used with care to avoid unintentional harm that could affect the victim's recovery and mental health.

2. Section 72 (1) BNS: Protecting the Identity of Rape Victims:

In situations related to violations under Section 64, Section 65, Section 66, Section 67, Section 68, Section 69, Section 70, or Section 71, according to Section 72(1) of the BNS, it is not allowed for any person to print or disclose the name or any information that could expose the identity of the victim. Those who

violate this regulation could be subject to consequences, which might include potential imprisonment for a maximum of two years and a monetary penalty. It is an offence that is both cognizable and bailable, and can be tried by any Magistrate. This relates to the corresponding sub-sections 228A (1) and 228(2) of the erstwhile Indian Penal Code of 1860.

3. Section 72(2) BNS - Exceptions:

Exceptions to Section 72(1) BNS are included in Section 72(2) BNS. Exceptions to the aforementioned rule include situations where the printing or publishing of the victim's name or identifying details is:

- A. Authorized by a written directive from the head of a police station or an investigating police officer, acting in good faith for investigative purposes;
- B. Carried out by the victim themselves or with the victim's written consent;
- C. In cases involving deceased victims, minors, or individuals with mental disabilities, actions taken by their next of kin or with the written consent of their next of kin. However, consent is considered valid only if it is given to the Chairman or Secretary of an officially recognized welfare institution or organization.

For the exception mentioned, a "recognized welfare institution or organization" denotes any social institution or organization formally acknowledged by the Central Government or a State Government in this regard.

The regulations specified in Section 72(2) BNS allow for the disclosure of a victim's identity, but this is only permitted with a written directive issued by the officer-in-charge of a police station or the police officer actively handling the case. This disclosure is allowed solely if it is performed in good faith and serves the specific purpose of aiding the investigation. This exception plays an essential role in striking a balance between the necessity of conducting thorough investigations and protecting the victim's privacy. It provides law enforcement with the flexibility needed to gather evidence while implementing necessary safeguards to uphold the dignity and confidentiality of victims.

The main requirement is that any disclosure must be made with the intention of furthering investigative purposes. This implies that disclosing the victim's identity should be necessary for expediting the investigation or resolving the case. "Good faith" entails that the police officer acts with sincere intentions, devoid of malice, negligence, or ulterior motives. The police officer must genuinely believe that revealing the victim's identity will aid in solving the crime.

To ensure transparency, the law requires a written order from either the responsible officer or the investigating officer. This documentation establishes a clear record of accountability, demonstrating that the decision to disclose the victim's identity is not random or unfounded.

This exception achieves a balance between safeguarding privacy and addressing the practical requirements of criminal investigations. Under certain circumstances, disclosing the victim's identity may be crucial to the investigation, such as when public awareness or testimony about the victim is needed to obtain essential evidence.

4. Police Officer's Bonafide Plea for Mistakenly Revealing Rape Victim's Name:

If any police officer accidentally reveals the identity of a rape victim to the media, it is crucial for the officer to provide a thoughtful explanation to mitigate potential legal consequences while still taking responsibility. The officer's response should be credible, acknowledge the mistake, and demonstrate a commitment to transparency in order to counter any perceptions of negligence or malicious intent.

Here are several potential justifications a police officer might use in such a situation:

Unintentional disclosure during a complex investigation: The officer might argue that the victim's identity was inadvertently disclosed during a press conference or media briefing intended to share information relevant to a complex investigation. They could explain that the situation was intricate and required public involvement to locate a suspect or gather more evidence, resulting in the unintended disclosure of the victim's identity among a large amount of information. They can assert that their goal was to keep the public informed about the case without intending to violate the victim's privacy.

Good faith and absence of malicious intent: The officer could emphasize that the mistake was made in good faith, with no intent to harm the victim. By highlighting this, the officer affirms there was no deliberate effort to violate the law or the victim's privacy. Additionally, they may argue that they faced significant pressure to meet the demands of the investigation and media coverage, resulting in an oversight regarding the victim's identification in a high-stress scenario. The officer could further support their defence by indicating their prior experience in managing sensitive cases and that this particular incident was an unfortunate lapse in their duty.

Insufficient training or briefing: Another possible defence could involve claiming inadequate training on handling sensitive information during media interactions. The officer may state that they were not adequately equipped with the necessary protocols concerning the protection of a victim's identity or did not fully understand the boundaries of what could be disclosed. In such a situation, the officer might assert that a lack of clarity contributed to the inadvertent exposure.

Promptly rectifying the mistake: The officer could argue that upon realizing the mistake, they took swift action to address it and requested the media to retract the published information. By showing that they acted quickly to mitigate any potential harm, the officer can demonstrate accountability and a commitment to safeguarding the victim's privacy even post-error. This illustrates awareness of the gravity of the situation and actions taken to avert further consequences. Such immediate responses convey a sense of responsibility and concern for the victim, potentially lessening the severity of any penalties for the disclosure.

Full Cooperation with the Internal Investigation: The officer should commit to fully cooperating with any internal investigation initiated in response to the mistake. This involves acknowledging the error and working openly with supervisors and investigators, demonstrating a readiness to be accountable and to learn from the incident. This reflects respect for the victim's rights, the law, and the professional standards of the police force, potentially reducing the legal or disciplinary consequences faced by the officer. By acting in good faith, without malicious intent, and promptly taking corrective action, the officer can establish a strong defense while still being responsible for their actions.

5. Vague Definition of Good Faith:

One significant feature of Section 72(2) of the BNS is its definition of "good faith." Intended to assist officials in making informed decisions regarding disclosures, this term's ambiguity may lead to varied interpretations. To improve understanding, it would be advantageous to establish clear criteria or guidelines that define what "good faith" entails. This approach could empower officials to base their decisions on explicit principles, thereby diminishing the chances of misinterpretation.

Moreover, a more systematic method for monitoring "good faith" actions would be beneficial. By implementing a regular review system for disclosure decisions, officials can ensure their choices align with the directive's intent. Such oversight would bolster accountability and provide officers with a

framework for evaluating their actions, thus minimizing the risk of disclosures influenced by media attention or external pressures.

In sensitive cases involving victims of sexual assault, domestic violence, or human trafficking, it is essential to consider the potential consequences of good faith disclosures. Fostering a culture that prioritizes victim welfare may encourage viewing disclosures as a last resort. Training programs highlighting the ramifications of such actions can help officials understand the importance of discretion and sensitivity in working with vulnerable individuals.

While the directive mandates a written order prior to any publication, there is room for clearer guidance on the decision-making process of officers. Crafting a detailed procedural framework outlining the steps for evaluating a disclosure could enhance both transparency and consistency in decision-making. This framework might also recommend collaboration with legal or victim advocacy resources to further inform the process.

Finally, requiring judicial or superior police officer approval before disclosing a victim's identity could facilitate more objective judgment. In an age where information spreads rapidly through digital platforms, an additional layer of oversight can safeguard victims' privacy and ensure that disclosures are both appropriate and necessary. By adopting these strategies, officials will be better prepared to handle the complexities of disclosure while respecting the integrity of investigations and the rights of victims.

It is crucial to differentiate between unintentional errors in revealing a rape victim's identity - stemming from slips of the tongue or the influence of public and media pressure - and intentional or malicious acts that compromise a victim's anonymity. Understanding this distinction is vital to ensure sensitive handling of such cases and to protect the dignity and privacy of survivors.

6. Literature Review:

Safeguarding the identities of rape survivors is vital from both legal and ethical standpoints, aimed at preserving their privacy, dignity, and mental health. Legal systems globally acknowledge the potential damage that can arise from disclosing a victim's identity, which may lead to trauma, stigma, and societal rejection. Nevertheless, specific exceptions exist that permit the revelation of this identity under certain circumstances, often for investigative or legal purposes. This literature review explores the significance of protecting the identities of rape survivors while critically analysing the legal exceptions that permit such disclosures.

The protection of rape survivors' identities is a universally accepted principle designed to prevent secondary victimization. Secondary victimization occurs when survivors face additional harm due to social stigma, discrimination, or public exposure following their traumatic experience (Jordan, 2013). Legal frameworks, such as India's 2023 Bharatiya Nyaya Sanhita, stress the importance of maintaining the confidentiality of survivors' identities. Specifically, Section 72(1) of the BNS prohibits the disclosure of any information that could identify victims of sexual offences and imposes severe penalties for violations.

In a similar vein, other jurisdictions, including the UK's Criminal Justice Act 1988, mandate anonymity for victims of sexual crimes from the moment charges are filed. This measure aims to shield victims from further trauma, embarrassment, and social ostracism (Williams & Stanko, 2016). Such protections serve not merely as legal formalities, but as essential incentives for victims to come forward and report crimes without the fear of exposure.

Although the protection of rape survivors' identities is critical, legal systems acknowledge that there are

occasions when disclosing the victim's identity may be warranted. Section 72(2) of India's Bharatiya Nyaya Sanhita, 2023, lists specific exceptions under which disclosure is permissible, such as for investigatory purposes, with the victim's consent, or through a written directive from the supervising police officer. These exceptions illustrate a thoughtful balance between safeguarding the privacy of the victim and facilitating the judicial process (Kumar & Singh, 2022).

During investigations that seek assistance from the public - like identifying a perpetrator or gathering evidence - law enforcement may disclose the victim's identity. However, such actions must be handled with extreme caution to prevent unnecessary exposure or harm to the victim. The "good faith" clause in the BNS emphasizes that any disclosures should be made sincerely and aimed solely at advancing the investigation, rather than for media sensationalism or political gain (Sharma, 2023).

An additional vital exception noted in Section 72(2)(b) allows for victims to provide written consent for the disclosure of their identity. This provision empowers survivors by granting them control over their own narratives. Some survivors opt to reveal their identities to raise awareness or spotlight broader societal issues, such as inadequate legal responses to sexual violence (Jain, 2020). This exception reflects an evolving understanding that victims should have autonomy over how they publicly engage regarding their cases.

However, legal experts caution that consent must be given voluntarily, be informed, and free from external pressures. In cases that attract significant media attention, victims may feel compelled to waive their anonymity due to societal pressures or promises of justice. Safeguarding the consent process from coercion is crucial in upholding the dignity of the victim (Singh & Saini, 2021).

7. Challenges and Criticisms of Exceptions:

Despite the necessity of exceptions to the confidentiality rule, they pose significant challenges. One prevalent criticism revolves around the subjectivity of the "good faith" provision, which permits law enforcement to disclose a victim's identity if deemed necessary for investigative purposes. This ambiguous criterion can lead to misuse, where officers justify revealing a victim's identity without fully considering the potential repercussions (Kapur, 2021).

For minors or vulnerable populations, well-meaning disclosures could inflict substantial harm. The international community faces similar dilemmas, with human rights advocates calling for more robust safeguards and monitoring mechanisms to mitigate the risk of misuse. In India, suggestions for judicial oversight have emerged as a means to ensure that disclosures are reasonable and truly necessary (Mehta, 2019).

8. International Perspectives:

Efforts to protect the identity of rape victims reflect a global trend, although legal frameworks vary from country to country. In Australia, the Evidence Act 1995 contains provisions restricting disclosure of the identity of rape victims, with exceptions for public interest or investigative purposes (Brown, 2018). While anonymity laws are not as strictly enforced in the United States, the media usually refrains from publishing the names of victims without express consent.

In Scandinavian countries such as Sweden, transparency laws allow greater access to court records that can reveal the identities of victims. However, social norms and media ethics generally favour the protection of victims, despite legal options for disclosure (Johansson, 2015).

9. Court Judgments:

The case involving the rape and murder of a 31-year-old postgraduate doctor at a Medical College and Hospital was under examination by the Supreme Court of India. On August 20, the court issued an order to remove the doctor's name, images, and videos from all social media platforms. The court remarked, "Images and video clips depicting the deceased's body are being shared on social media. We mandate that all photographs and video clips featuring the deceased's name be taken down from every social media platform immediately. The Chief Justice DY Chandrachud, JB Pardiwal, and Manoj Misra emphasized that revealing the person's identity goes against the Supreme Court's previous ruling in the Nipun Saxena case.

In the matter of Nipun Saxena v. Union of India (2018), the Supreme Court of India has ruled that the identity of rape victims must be strictly protected, except with the express consent of the victim or her family. He stressed the enforcement of Section 228A of the Indian Penal Code (now Section 72 of the BNS), which criminalises such disclosure and allows exceptions only in cases of written consent or public interest. In the same case, the confidentiality of victims has been ensured by the court through established protocols for the media and law enforcement. In cases related to rape and POCSO, the Supreme Court has prohibited the police from making first information reports (FIRs) public. Additionally, the Court has mandated that the identities of the victims remain confidential when documents related to these cases are disclosed.

In *X and Y v. the Netherlands* (1985), the European Court of Human Rights (ECtHR) found that the Dutch legal system failed to protect a mentally disabled rape victim because her father could not initiate criminal proceedings on her behalf due to legal restrictions. The court ruled that this violated Article 8 of the European Convention on Human Rights, which guarantees the right to private and family life, which extends to a person's physical and moral integrity. This landmark decision highlighted the state's duty to ensure that legal systems protect vulnerable victims of sexual violence and prevent further harm, focusing on the failure to provide effective remedies rather than simply protecting privacy.

The case of *A v. Croatia* (2010), the ECtHR dealt with the issue of a rape victim whose personal information was not adequately protected during the trial, resulting in additional emotional distress. The court found that Croatia violated the victim's right to privacy under Article 8 of the European Convention on Human Rights, which protects the right to respect for private and family life. The decision emphasized the need for states to take adequate steps to ensure that victims, especially of sensitive crimes such as sexual violence, are protected from unnecessary public exposure during court proceedings. The court emphasized that failure to protect the victim's privacy could lead to secondary victimization, which occurs when the legal process itself causes further harm or trauma to the victim.

In the 1999 case of *R v. Chief Constable of North Wales Police, ex parte AB*, the United Kingdom House of Lords reviewed the issue of revealing the names of convicted sex offenders. The court's ruling emphasized the importance of protecting the anonymity of offenders, unless there is a compelling need to disclose the information for public safety or interest. The judgment emphasized the importance of protecting the privacy of perpetrators. The anonymity of rape victims is governed by separate laws, such as the Sexual Offenses (Amendment) Act 1976 in the UK, which protects the identity of victims.

The Supreme Court of Canada, in the case of *A.B. v. Bragg Communications Inc.* (2012), stressed the importance of safeguarding the anonymity of sexual assault victims, particularly minors, to uphold their dignity and privacy. The court ruled that while the public has a right to information, exceptions should be

made to prevent harm from unnecessary disclosure, reinforce the importance of anonymity to avoid further trauma, and set a significant legal precedent in Canada.

10. Conclusion:

Section 72(2)(a) of the BNS is crucial for law enforcement as it allows police to reveal a victim's identity when necessary for active investigations. However, the subjective interpretation of "good faith" raises concerns about potential misinterpretation and misuse of this power. Moreover, the absence of clear protections for victims could lead to unintended harm during an already traumatic period. It is essential to protect the identities of rape victims for both legal and ethical reasons, as additional trauma can deeply affect them. Legal systems must find a balance between safeguarding privacy and allowing necessary disclosures for justice. Section 72(2)(b) highlights exceptions for investigative reasons or with victim consent, emphasizing this need for equilibrium. To prevent misuse, it is essential to establish strict guidelines and oversight to ensure that the police use this authority wisely and only when absolutely necessary. Furthermore, it is essential to excuse mistakes made by police officers that arise from good intentions or as a result of media or public pressure and scrutiny.

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