

Human Rights of Rape Victims

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Abstract: This paper explores the intersection of human rights and the lived realities of rape victims, emphasizing the urgent need for legal, social, and institutional reforms to uphold victims' dignity, justice, and recovery. It begins by examining the theoretical and historical foundations of human rights, tracing their evolution from ancient civilizations to contemporary international frameworks. Particular attention is given to how these rights apply to victims of rape, with an analysis of legal obligations and societal responsibilities to prevent sexual violence, prosecute offenders, and support survivors. Despite advancements in international law, challenges such as stigma, victim-blaming, inadequate access to justice, and cultural barriers persist. Through a comprehensive review of international treaties, declarations, and human rights instruments, this article underscores the moral and legal imperatives for states and societies to protect the rights of rape victims. It concludes by advocating for a holistic, rights-based approach centered on prevention, protection, prosecution, and empowerment.

Keyword: Human, Rights, Legal, Justice, Victims, Sexual violence

INTRODUCTION:

There has been a lot of theorizing on the topic of "what are human rights?" What the term "human rights" actually signifies is not ahistorical, conclusive, or widely recognized. To the degree that "the rhetoric of human rights is really a description of ideals – and a controversial set of ideals at that," different ideologies generate distinct interpretations of what human rights are. Early discussions of human rights were based on the distinction between legal and moral rights, a distinction that is still sometimes made today. Legal, or 'justiciable' rights are, quite simply, those that exist in and are enforceable under the law and are hence able to be tried in a court of justice. Conversely, 'moral' or 'natural' rights refer to those rights that, in their early days were based on religious beliefs; that which was perceived as being 'naturally right' in the eyes of God. The later basis for moral or natural rights moved away from religion to an entitlement that was derived from nature and, later still, the basic rights that an individual need to fully participate in civil society. The term 'legal rights' is generally used to describe the rights that individuals actually hold, whereas the terms 'moral' or 'natural rights' are used to describe the rights that a particular group of people argue they need to fully participate in society but are denied by the law. For example, women argued pre-1928 that they had the moral right to vote but it was not until 1928 that they actually held the legal right to vote on an equal basis to men. Individuals may therefore claim that they have a moral right to something without actually having the legal right to it, and legal rights may stem from what have previously been claimed as moral rights¹.

Human rights constitute a set of norms governing the treatment of individuals and groups by states and non-state actors on the basis of ethical principles regarding what society considers fundamental to a decent life.

¹ Marie Nicole Westmarland, *Rape and Human Rights: A Feminist Perspective* (2005), (Ph.D. Thesis, University of York, Department of Social Policy and Social Work).

These norms are incorporated into national and international legal systems, which specify mechanisms and procedures to hold the duty-bearers accountable and provide redress for alleged victims of human rights violations².

Human rights are rights inherent to all human beings. They define relationships between individuals and power structures, especially the State. Human rights delimit State power and, at the same time, require States to take positive measures ensuring an environment that enables all people to enjoy their human rights. History in the past 250 years has been shaped by the struggle to create such an environment. Starting with the French and American revolutions in the late eighteenth century, the idea of human rights has driven many revolutionary movements for empowerment and for control over the wielders of power, governments in particular. Human rights pertain to all aspects of life. Their exercise enables all individuals to shape and determine their own lives in liberty, equality and respect for human dignity. Human rights encompass civil, political, economic, social, and cultural rights, as well as the collective rights of people³.

Human rights are fundamental rights and freedoms that belong to every individual, regardless of nationality, ethnicity, gender, religion, or any other status. They are universal, inalienable, and inherent to all human beings by virtue of their humanity. Human rights are essential for the protection of human dignity, equality, and justice, and they form the foundation of freedom, peace, and sustainable development.

Principles of Human Rights:

1. *Universality*: Human rights apply to everyone, everywhere, without exception.
2. *Inalienability*: Human rights cannot be taken away or surrendered.
3. *Indivisibility*: All human rights are equally important; civil, political, economic, social, and cultural rights are interconnected.
4. *Equality and Non-Discrimination*: Everyone is entitled to human rights without discrimination.
5. *Accountability*: Governments and institutions have a duty to respect, protect, and fulfill human rights.

Categories of Human Rights:

- a) *Civil and Political Rights*⁴:
 - Right to life and liberty.
 - Freedom of speech, religion, and assembly.
 - Right to a fair trial and participation in government.
- b) *Economic, Social, and Cultural Rights*⁵:
 - Right to work, education, and healthcare.
 - Right to adequate living standards.
 - Right to participate in cultural life.

² Human Rights: A brief Introduction by Stephen P. Marks (Harvard University) available at chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://content.sph.harvard.edu/wwwhsph/sites/134/2016/07/Human-Rights-A-brief-intro-2016.pdf (visited on February 9, 2025).

³ Human Rights, Handbook for Parliamentarians N 26 available at chrome extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf (visited on February 8th, 2025).

⁴ These are a set of human rights that protect people from arbitrary actions by the state.

⁵ Economic, social, and cultural rights (ESCR) are human rights that guarantee the basic conditions people need to live with dignity and freedom. These rights include access to food, water, housing, education, health, and more.

c) *Collective Rights*⁶:

- Rights of indigenous peoples.
- Right to development and a healthy environment.

Historical Development:

The historical development of human rights is a long and complex journey, shaped by philosophical ideas, religious teachings, legal systems, and social movements. Below is an overview of key milestones and developments in the evolution of human rights:

Ancient Foundations:

1. *Code of Hammurabi*⁷ (c. 1754 BCE):

It is one of the earliest known legal codes, established in ancient Babylon which introduced principles of justice and fairness, though it was not universal or egalitarian.

2. *Cyrus Cylinder*⁸ (c. 539 BCE):

This is issued by Cyrus, the Great, first king of Persia after conquering Babylon. It is considered one of the first charters of human rights, promoting freedom of religion and abolishing slavery.

3. *Ancient Greece and Rome*⁹:

Greek philosophers like Socrates, Plato, and Aristotle explored concepts of justice, equality, and natural law. Also, Roman law introduced the ideas of citizenship and legal rights, though these were limited to certain groups.

4. *Religious Teachings*¹⁰:

Major religions, including Hinduism, Buddhism, Judaism, Christianity, and Islam, emphasized moral principles such as compassion, justice, and the dignity of individuals.

Medieval and Early Modern Developments

1. *Magna Carta* (1215):

A landmark document in England that limited the power of the monarchy and established the principle that everyone, including the king, is subject to the law and laid the groundwork for constitutional governance and individual rights.

2. *Islamic Golden Age* (8th–13th centuries):

Islamic scholars developed concepts of social justice, equality, and the rights of individuals under Islamic law (Sharia).

3. *Renaissance and Enlightenment* (14th–18th centuries):

⁶ Collective rights are human rights that protect groups of people who have been marginalized or disadvantaged. They are based on the traditions, culture, and practices of local communities and Indigenous people.

⁷ It has featured some progressive precepts such as minimum wage's law, innocent until proven guilty, fairness about graded punishment like an eye for an eye.

⁸ This also includes freedom of Religion, freedom from captivity, abolition of slavery and Racial equality. These are similar to the first four articles of Universal Declaration of Human Rights.

⁹ The concept of Human Rights in ancient Rome and Greece was based on the idea that people have natural rights that are protected by law. These ideas influenced the development of modern Human Rights. Socrates, Plato and Aristotle laid down the groundwork for modern human rights. it was closely tied to the doctrines of the Stoics, who held that human conduct should be judged according to, and brought into harmony with, the law of nature.

¹⁰ Religious teachings can guide people's moral and ethical beliefs, which can lead to more positive behavior. Some religious teachings emphasize treating others with respect, compassion, and kindness.

Thinkers like John Locke, Voltaire, and Jean-Jacques Rousseau advocated for natural rights, including life, liberty, and property. Locke's ideas heavily influenced modern democratic thought and the concept of inalienable rights.

18th and 19th Centuries: Revolutions and Declarations

1. American Revolution¹¹ (1776):

The U.S. Declaration of Independence proclaimed that "all men are created equal" and have the right to "life, liberty, and the pursuit of happiness."

2. French Revolution¹² (1789):

The Declaration of the Rights of Man and of the Citizen emphasized liberty, equality, and fraternity as fundamental principles.

3. Abolition of Slavery¹³:

The 19th century saw the abolition of the transatlantic slave trade and slavery in many parts of the world, driven by movements like the British abolitionist campaign and the U.S. Civil War.

4. Women's Rights Movements¹⁴:

The Seneca Falls Convention¹⁵ (1848) in the U.S. marked the beginning of the organized women's rights movement, advocating for suffrage and equality.

20th Century: Internationalization of Human Rights

1. League of Nations¹⁶ (1919):

It is established after World War I to promote peace and cooperation, though it lacked strong mechanisms for enforcing human rights.

2. Universal Declaration of Human Rights¹⁷ (1948):

It is Adopted by the United Nations in response to the atrocities of World War II. The first global document to outline fundamental human rights for all people, regardless of nationality, race, or gender.

3. International Human Rights Law¹⁸:

¹¹ The American Revolution was a period of political and social change that emphasized the rights of individuals and the importance of democracy. The American Revolution's political philosophy was based on the idea that all people are naturally equal and have the right to life, liberty, and the pursuit of happiness. The Declaration of Independence, signed in 1776, is considered a landmark in the history of human rights. It established the idea that all people are created equal and have the right to life, liberty, and the pursuit of happiness.

¹² The French Revolution advanced human rights by establishing the Declaration of the Rights of Man and of the Citizen, which granted people the right to freedom of expression, freedom of thought, and freedom of association. The Declaration also established the principle of equality before the law and the separation of powers.

¹³ The abolition of slavery is a core principle of human rights, and is explicitly stated in the Universal Declaration of Human Rights.

¹⁴ Women's rights are a part of human rights law, and they include the right to be free from discrimination, violence, and slavery. Women's rights also include the right to be educated, own property, vote, and earn a fair wage.

¹⁵ The Seneca Falls Convention was the first women's rights convention in the United States. It took place on July 19–20, 1848 at the Wesleyan Chapel in Seneca Falls, New York. The convention launched the women's suffrage movement.

¹⁶ The League of Nations was the first international organization, and its Covenant included some provisions related to human rights. The League's goals included preventing war, resolving disputes peacefully, and promoting international cooperation.

¹⁷ The Universal Declaration of Human Rights (UDHR) is a document that outlines the fundamental rights and freedoms that all people are entitled to. The UN General Assembly adopted the UDHR on December 10, 1948.

¹⁸ International human rights law lays down obligations which States are bound to respect. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were adopted in 1966, creating legally binding obligations for states.

4. *Decolonization and Civil Rights Movements*¹⁹:

The mid-20th century saw the end of colonial rule in Africa and Asia, with newly independent nations asserting their rights to self-determination. Civil rights movements, such as the U.S. Civil Rights Movement led by figures like Martin Luther King Jr., fought against racial segregation and discrimination.

21st Century: Contemporary Challenges and Progress

1. *Globalization and Technology*:

Advances in technology have enabled greater awareness of human rights abuses but also raised concerns about privacy and surveillance.

2. *Environmental Rights*:

The recognition of the right to a healthy environment has gained prominence in response to climate change and environmental degradation.

3. *LGBTQ+ Rights*:

Significant progress has been made in recognizing the rights of LGBTQ+ individuals, though challenges remain in many parts of the world.

4. *International Criminal Court (ICC)*:

Established in 2002 to prosecute individuals for genocide, war crimes, and crimes against humanity.

Human rights and Rape Victims:

The concept of human rights is deeply intertwined with the protection and support of rape victims. Human rights are universal principles that ensure the dignity, equality, and well-being of all individuals. When it comes to rape victims, human rights frameworks emphasize the right to safety, justice, and recovery. Below is an exploration of how human rights apply to rape victims and the responsibilities of states and societies in addressing this issue.

1. *Right to Life and Security*:

Every individual has the right to live free from violence and fear. Rape is a severe violation of this right, as it inflicts physical, emotional, and psychological harm. The States have an obligation to prevent sexual violence and protect individuals from such crimes.

2. *Right to Equality and Non-Discrimination*:

Rape victims, regardless of gender, age, or background, are entitled to equal protection under the law. Moreover, discriminatory attitudes or practices that blame victims or deny them justice violate their human rights.

3. *Right to Justice*:

The victims have the right to access legal remedies and hold perpetrators accountable. This includes the right to a fair trial, legal representation, and protection from retaliation.

4. *Right to Health*:

The rape victims have the right to access comprehensive healthcare, including medical treatment, psychological support, and sexual and reproductive health services. The states must ensure that

¹⁹ Decolonization is the process where one country becomes independent from its historically colonial rulers. In this case, Africans were fighting to gain freedom and independence from European colonial rule. The civil rights movement in the United States and Africa's decolonization mirrored each other.

healthcare providers are trained to handle cases of sexual violence with sensitivity and confidentiality.

5. **Right to Privacy:**

Victims have the right to privacy and confidentiality throughout legal and medical processes. Public disclosure of a victim's identity or personal details without consent is a violation of their rights.

6. **Right to Freedom from Torture and Inhuman Treatment:**

Rape is recognized as a form of torture and inhuman treatment under international human rights law. States must take measures to prevent such acts and provide redress to victims.

Challenges Faced by Rape Victims:

1. *Stigma and Victim-Blaming:*

Societal stigma often silences victims and discourages them from seeking help or reporting the crime. Victim-blaming attitudes shift responsibility from the perpetrator to the victim, further violating their rights.

2. *Lack of Access to Justice:*

In many cases, legal systems fail to prosecute perpetrators effectively due to inadequate laws, corruption, or biases. Victims may face re-traumatization during legal proceedings.

3. *Inadequate Support Services:*

Many victims lack access to essential services such as healthcare, counseling, and shelters. Marginalized groups, including refugees, LGBTQ+ individuals, and people with disabilities, often face additional barriers.

4. *Cultural and Institutional Barriers:*

In some societies, cultural norms or institutional practices may perpetuate gender inequality and normalize sexual violence.

International Human Rights Frameworks:

1. *Universal Declaration of Human Rights*²⁰ (1948):

Article 3 guarantees the right to life, liberty, and security, which includes protection from sexual violence.

2. *Convention on the Elimination of All Forms of Discrimination Against Women*²¹ (CEDAW, 1979):

Requires states to address gender-based violence, including rape, and ensure justice and support for victims.

3. *International Covenant on Civil and Political Rights*²² (ICCPR, 1966):

Prohibits torture and inhuman treatment, which includes rape and sexual violence.

4. *Rome Statute of the International Criminal Court*²³ (1998):

²⁰ The UDHR is a document that defines fundamental human rights that should be protected universally. It was proclaimed by the United Nations in 1948. Rape and other sexual violence are human rights violations that attack a victim's physical and mental health, sexual autonomy, and personal security. The UDHR protects victims from violence against women, which is a prevalent human right abuse globally. The UDHR protects victims from discrimination, which includes discrimination based on sex or gender identity. The UDHR protects victims from arbitrary detention, forced labor, and forced marriage.

²¹ The Committee on the Elimination of Discrimination against Women (CEDAW) is a United Nations body that monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. CEDAW has made recommendations to protect women from violence, including sexual violence, and to provide support services for victims.

²² The ICCPR is a key international human rights treaty, providing a range of protections for civil and political rights. The ICCPR, together with the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights, are considered the International Bill of Human Rights.

Recognizes rape and sexual violence as war crimes, crimes against humanity, and acts of genocide.

5. *UN Declaration on the Elimination of Violence Against Women*²⁴ (1993):

Specifically addresses sexual violence and calls for measures to prevent and respond to such crimes.

Responsibilities of States and Societies:

1. *Prevention:*

- Implement laws and policies to prevent sexual violence and promote gender equality.
- Conduct awareness campaigns to challenge harmful stereotypes and attitudes.

2. *Protection:*

- Ensure the safety of victims through measures such as restraining orders, shelters, and crisis hotlines.
- Train law enforcement and judicial officials to handle cases of sexual violence with sensitivity and professionalism.

3. *Prosecution:*

- Strengthen legal frameworks to ensure perpetrators are held accountable.
- Provide victims with legal aid and support throughout the judicial process.

4. *Support and Recovery:*

- Offer comprehensive healthcare, counseling, and rehabilitation services to victims.
- Create safe spaces for victims to share their experiences and access support networks.

5. *Empowerment:*

- Promote education and economic opportunities for women and marginalized groups to reduce vulnerability to violence.
- Encourage survivors to participate in advocacy and policy making to address systemic issues.

CONCLUSION:

Human rights are fundamental to ensuring the dignity, safety, and justice of all individuals, including rape victims. Sexual violence, such as rape, is a grave violation of human rights, infringing on the victim's right to life, security, equality, and freedom from torture. Addressing the needs of rape victims requires a comprehensive approach rooted in human rights principles, including prevention, protection, prosecution, and support. States and societies have a moral and legal obligation to:

1. Prevent sexual violence through education, awareness, and the promotion of gender equality.
2. Protect victims by ensuring their safety and providing access to justice without fear of stigma or retaliation.
3. Prosecute perpetrators effectively, ensuring accountability and deterring future crimes.
4. Support victims with access to healthcare, counseling, and rehabilitation services to aid their recovery and reintegration into society.

Despite progress in international human rights frameworks and legal systems, challenges such as stigma, victim-blaming, and inadequate support services persist. Overcoming these barriers requires sustained efforts to challenge harmful cultural norms, strengthen legal protections, and empower survivors. Ultimately, upholding the human rights of rape victims is not only a legal obligation but also a moral

²³ The Rome Statute of the International Criminal Court (ICC) protects victims of rape and other sexual violence through its definition of crimes, its victim participation rights, and its policy on gender-based crimes.

²⁴ The United Nations' Declaration on the Elimination of Violence Against Women was adopted in December 1993. It recognizes that violence against women violates their rights and fundamental freedoms. The declaration calls on states and the international community to work together to end violence against women. The Declaration defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."

imperative. By prioritizing their dignity, safety, and recovery, societies can foster a culture of respect, equality, and justice for all. Human rights provide the foundation for a world where every individual can live free from violence and fear, and where survivors of sexual violence are treated with the compassion and respect they deserve.

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