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JUDICIAL PREJUDICES RELATING TO RAPE: CONTEMPT OF COURT OR CONTEMPT OF LAW?”

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ABSTRACT

The right to criticize stems from the right to freedom of speech and expression as enshrined in the constitution under article 19(1)(a). In the present scenario, it has become very difficult to criticize the ruling institutions, so in light of this situation it is very much essential to have a look at some prejudicial judgements relating to Rape which altogether shook the conscience of the society. Of course, there have been many judgements that have served justice to the victims and resolved the pain of the raped ones. But at the same time, some pre occupied notions have indeed tarnished the judicial way or the judicial path of delivering justice. This article tries to have a perspective relating to the concept of some judgements which really feeds the horrific opinions held by even common people regarding harassments and how it can further deepen the vulgarity which is already there in the society. Right from Bail orders to a few judgements to analysis there needs to a parliamentary interference in the matter of wrong precedents. The questions of ‘time’ ‘place’ ‘person’ ‘cloth’ need to be analyzed in an altogether new perspective and not revolving around the victim but the blame must be on the accused. Some judgements which add to the prejudices must be declared void ab initio, as nothing is above ‘LAW’.

INTRODUCTION

In the light of increase in harassments in our society, some of the observations, some of the judgements are really creating a picture that something is wrong in the analysis of such a grave situation relating to rapes. It so happens that many people are hesitant to speak out against some observations made out due to the fear of contempt actions. But fair criticisms relating to Judicial orders and judgements are permissible. When one accuses the victim herself, when one accuses

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the timing of presence of the victim in one place, when one brings up the issues of past relations connecting it to rape, when one brings up the element of ‘character’, ‘morality’ in the issue of rape, it shows that we as a system are going backward. So, it is necessary to understand the different aspects of certain prejudicial orders which were passed and what was the outcome and what impact these observations, judgements will create on the future and present generations.

THE FAILURE TO ANALYZE THE CONCEPT OF RAPE LEGALLY

Very recently, one judgement ² delivered by the Allahabad High Court shook the sensibility of the conscience of the Human society. The observation containing the words “grabbing of a particular part of a female body and pajamas is not rape” literally came as a result of the age-old mentality which revolves around the fixed definition and perspective relating to rape as contained in the Indian Penal Code. But when we think out of the box, even oral remarks can constitute the offence of harassment today. The picturizing of females in certain cinemas is nothing short of promoting rape-culture. The above-mentioned judgement invited mass outrage and resulted in the Honorable Supreme Court taking a *Suo moto* cognizance against it and also putting a stay on the same judgement by a division bench comprising of Justices B R Gavai and A G Masih on 26th March, 2025.

In relation to this case itself, the National Human Rights commission member ‘Priyank Kanoongu’ said the ruling was unjust and urged the state government to immediately appeal it. ³ he opined, “The victim is only 11 years old. Under sections 29 and 30 of the POCSO Act. It is the responsibility of the defense to prove the accused innocent, therefore the burden of proving guilt

² ‘Akash vs. State of UP, 2025 SCC Online All 1476 (India) decided on 17th Mar, 2025, (Per Justice Ram Manohar Narayan Mishra) (India).

³ ‘Mathrubhumi.com news desk’ ‘HOW CAN WE EXPECT 11-YEAR-OLD TO RECREATE ENTIRE SCENE?’: NHRC Member on HC Ruling in rape case’ (20th Mar, 2025, 11:27 PM), <https://english.mathrubhumi.com/news/india/nhrc-member-priyank-kanoongu-on-allahabad-high-court-rape-remarks-3c85027d>.

does not lie with the prosecution” He also questioned how an 11-year-old could be expected to comprehend the definition of rape and attempted rape, highlighting the absurdity of the situation

Taking these things into consideration, one may wonder what might be the mentality working behind these observations and some judgements? So, is there a fixed method of women ‘reacting’ after rape? Is there a fixed methodology which defines a ‘harassed woman’ or is there a notion which is not ready to be broken by any modern out of the box approach as of today?

In an article written by Mr. N C Asthana, (a retired IPS Officer having served as Director General of police in Kerala) has written an article ⁴ on the judgement of Tarun Tejpal where the trial court of Goa acquitted the prime accused in a rape case. To quote some parts of the article,

“This article is not intended to be a critique of the judgment per se or an assessment of the evidence in the case, the state of Goa has already gone into appeal and thus there are two stages at which its legal validity can and hopefully will be examined”

“If this judgement illustrates anything, it is how regressive and stereotypical notions resulting from centuries of socio-cultural conditioning which lie buried deep in the collective subconscious- shape the so-called procedural aspects of the law”

“A key reason for acquittal in the judgement is that the survivor did not demonstrate the kind of behavior that a victim of sexual assault is supposed to show. The judge writes that the photos show the prosecutrix to be absolutely cheerful and with a smile on her face and not disturbed, reserved, terrified or traumatized in any manner”

⁴ by N. C Asthana, ‘The Wire’ ‘Tarun Tejpal judgment underlines How little the judiciary has learnt on Sexual Violence’ (28th May, 2021) <https://m.thewire.in/article/law/the-tarun-tejpal-judgement-undelines-how-little-the-judiciary-has-learnt-on-sexual-violence>

“Lawyers in India have repeatedly pointed to the flaws in such assumptions. For instance, Vrinda Grover writes, “to believe that there is a predictable way in which a rape victim will react is in itself a myth and falsity”

based on the perspective of the author of this said article portrays the plight of thousands of women who would have been harassed, exploited in the most vulgar way and also gives many examples of supreme court cases where it is stressed that ‘past conduct’, ‘place’ or ‘time’ must not be given any relevance in a rape case.

In another judgement delivered by the Honorable High Court of Karnataka ⁵ relating to a rape case, bail was granted to a rape accused stating that the complainant’s behavior to fall asleep after the assault was “Unbecoming of an Indian Woman”, which lead to a huge controversy where 17 organizations and 22 journalists, activists, and citizens had written a strongly worded open letter to then Justice who had authored this particular judgement.

In the judgement, the presiding officer had noted that the complainant’s explanation that she was tired and had fallen asleep after the sexual assault is “unbecoming of an Indian Woman; that is not the way our women react when they are ravished”

So, against this order, many prominent organizations expressed concerns regarding the effect this order would have on the society and the present generation, to quote a part of this letter ⁶ written by various organizations,

⁵ ‘Sri Rakesh B vs State of Karnataka’, criminal petition No. 2427 of 2020 (India), decided on 22nd Jun, 2020, (Per Justice Krishna Dixit) (India).

⁶ By Sanyuktha Dharmadhikari ‘The news minute’ ‘Narrow, patriarchal’: open letter criticizes Karnataka HC Judge’s observations on rape’ (26th Jun, 2020, 1:35 PM) <https://www.google.com/url?sa=t&source=web&rct=&opi=89978449&url=https://www.thenewsminute.com/karnataka/narrow-patriarchal-open-letter-critises-karnataka-hc-judge-observations-rape-127397&ved=2ahukewibqdgkjumOAxXP4jgGHdF-oh8QFnoECCMQAQ&usg=AOvVaw0sVvkWCRv7ZlywA82EgGF6>.

“The fact of the matter remains that despite all these efforts women who make decisions to live independently and make choices regarding their own lives, including their intimate lives are still viewed as women with ‘loose morals and character’”

In relation to this, apart from this letter, There was an application by the then state government of Karnataka against this part of the order, the court expunged the controversial remarks made against the rape survivor, and in the revised order the pressing officer said he deemed it appropriate to expunge the last four lines in Paragraph number 3(C) at page 4 of the judgement as sought in the application by the state government in the year 2020. So, in relation to this, many civic groups and advocate Aparna Bhat wrote to the Then Supreme Court’s Chief Justice S. A Bobde and Justice R Bhanumathi to issue an advisory to all courts to refrain from commenting on the conduct of victims on the conduct of victims of sexual offence.

Why is it that the victim is always blamed? It stems from a patriarchal mindset which always tries to put the blame on the abused and not the abuser. The blame put on clothes, time, place is always a manifestation of the deep-rooted prejudices which start from the house and unfortunately to even top-level institutions. Very recently, an incident took place where a young woman who happened to be a law student was allegedly raped in West Bengal, but the blame came upon were all targeting the place and timings of that woman present. And no logical thought came out questioning the presence of the rapists in that place.

In the month of August of the year 2020, the Indore Bench of the Madhya Pradesh High Court in a rape case granted Bail to a man accused of sexual harassment on the condition that he will request the complainant to tie a ‘Rakhi’ on him on Monday with a promise to protect her “to the best of his ability for all times to come”. But after objections relating to the bail order, the Honorable Supreme Court⁷ scrapped the High Court’s order. The court also issued directions for sensitization of Judges and Lawyers, agreeing to the petitioners’ views that it was “gross trivialization of the trauma suffered by the complainant”. Some of the directions issued by the Supreme Court in this case are as follows:

⁷ ‘Aparna Bhat vs state of Madhya Pradesh’ 2021, SCC Online SC 230 (India) decided on 18th Mar, 2021 (Per Justice A M Khanwilkar and Justice S Ravindra Bhat) (India).

- (1) The orders which come from the side of courts must not in any way create a contract between the accused and the victim. It must be made sure that no trouble should be created by the accused against the victim.
- (2) 'Khatri and Ors vs state of Bihar and Ors' AIR (1981) 1 SCC 627, (India) decided on 19th Dec, 1980, (Per Justice P N Bhagawathi, Justice P N Sen) (India).
- (3) The bail orders and conditions must be in compliance with only the code of criminal procedure and not linked to any prejudicial opinions and also, no connection should be made out between the victim's cloth, conduct or past behaviors while reaching out a decision
- (4) The orders of bail granted to the accused must be informed to the victim within two days of granting of bail and the bail order must be handed out to the victim.

A RAY OF HOPE: A FEW PRECEDENTS FOR THE BETTERMENT OF THE SYSTEM

- Taking these guidelines into consideration and some of the prejudicial orders which have come from some benches of the country, there is a need to look at some of the progressive judgements also which shaped the lawn for highest amount of punishment for the accused. In the light of conviction of a former Member of parliament named 'Prajwal Revanna'⁸ on 2nd august 2025, there needs to be an analysis of some judgements which gave a hope for the common people especially the rape victims. Some of the parts of the observations contained in a few judgements are:

⁸ 'BAR AND BENCH' 'Prajwal Revanna sentenced to life imprisonment in rape case' (2nd Aug, 2025, 4:29 PM)
<https://www.barandbench.com/news/litigation/prajwal-revanna-sentenced-to-life-imprisonment-in-rape-case>.

- In the case of ‘Bharwada Bhoginbhai Hirijbhai’⁹ the Supreme court observed with a question as to “Why the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubts, disbelief or suspicion? To do so, is to justify the charge of male chauvinism in a male dominated society”
- In the case of ‘Chandraprakash Kewal Chand Jain’¹⁰, the Supreme Court had pointed out that the position held by a person in authority was bound to affect the behavior of the victim. It must be kept in mind that a person in authority need not always be a government official- a private employer also, who wield the power of hiring or firing the victim at will must be considered a person in authority.

Considering these cases, it is also important to note that certain prejudices which are being discussed regarding amongst common people get carried to even certain political institutions and the same prejudices are poured out in the assembly of certain states of our country. Fali S Nariman, a noted Indian Jurist and a senior advocate to the Supreme Court of India, in his book¹¹ discusses about the effects of punishment and the future consequences. To quote a part of the writing:

“MANDATORY TERMS OF IMPRISONMENT FOR CERTAIN OFFENCES IS NOT THE ANSWER”

“It is naively assumed that mandatory terms of imprisonment for abhorrent or anti-social crimes act as a deterrent. In my opinion, not always. In fact, this often has a counterproductive effect. In food adulteration cases, for instance even when it is proved that the accused are storing articles below the prescribed standard quality, magistrates tend to acquit- simply because the law mandates

⁹ ‘Bharwada Bhoginbhai Hirijbhai vs State of Gujarat’, AIR 1983 SCC 753 (India) decided on 24th May, 1983 (Per justice M P Thakkar and Justice A. P Sen) (India).

¹⁰ ‘State of Maharashtra vs Chandraprakash Kewal Chand Jain’ AIR 1990 SC 658 (India) decided on 18th Jan, 1990 (Per Justice A .M Ahmadi and Justice M Fathima Beevi) (India)

¹¹ Fali S Nariman “India’s Legal System: Can it be saved?” 86,88 (1st ed.2006, Revised ed. 2017)

a sentence of six- or twelve-months' imprisonment on conviction, which they find extremely harsh.”

“It has been said by those in favor of stricter punishment (for sexual offences) that the higher reporting rates of the most under reports of crimes is itself testimony to the law's success. The Justice Verma committee had noted that it was only when the public began to respect women's choices that sexual violence would abate. It hasn't abated yet- not in the major cities”

CONCLUSION

Fair criticism of judgements relating to rape and harassment must be given room in the society so that activists and common people do not fear to express their opinions. According to section 5 of the 'Contempt of Court Act' of 1971, “Fair criticism of judicial act not contempt” – a person shall not be held guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided”. So, in light of this definition, the shoulders of the institutions must be broad enough to tolerate fair dissent. Criticisms within the four walls of free speech as enshrined under the Constitution of India are to be entertained as dissent is a sign of democratic setup.