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# Rethinking Credibility and Justice in the State of Kerala v. Bishop Franco Mulakkal: Challenging the 'Ideal Rape Victim' Construct

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## Abstract

*'Judiciary' -the third pillar of democracy in India, the protector and preserver of the fundamental rights of the citizens. However, when the protector becomes the one who does not preserve the integrity and dignity of its citizens, what expectation can one have from society? Women in a country like India have faced many stereotypes as to how an ideal woman should behave. Time and again, the judges in the court have showcased the influence of such a stereotypical view while rendering judgments and deducing the parameters which define how an ideal victim of rape should behave. Such a misogynistic view leads to the normalization of rape culture, where we blame the victim and not holding the perpetrators responsible who are actually behind the commission of such an act. The remarks made in the judgment of the State of Kerala v. Bishop Franco Mulakkal by the sessions court are an example of judges holding the victim's behavior as not ideal according to the situation's demand. Hence, credibility was questioned on this ground. The article critically analyses the obiter dicta of the judgment made by the judges in this case.*

**Keywords:** *accused, credibility, judge, justice, testimony, victim.*

## 1.0 Introduction

In ancient India, the Brihaspati Smriti prescribed that 'defiled' and 'spoiled' victims of rape must be covered in ashes and confined to a guarded house for being 'enjoyed' against their will. The search for an ideal victim is still not over after decades. Even though India is said to have been progressing, leaving behind all its evil practices and placing women on the same par as men, this deeply rooted patriarchal society always blaming the victim (woman) for the crime is still seen in some of the cases brought before the court. (*Judiciary a Product of Patriarchal Order: Experts*, 2018)

The individual's caste, creed, class, religion, or region they belong to somehow defines who that person is; this also applies to the court judges. The cognitive bias we develop throughout life shapes our thought processes and how we see the world. Research shows that cognitive biases can unconsciously distort a judge's reasoning and thereby impact their decisions. (Olaborede & Meintjes-Van der Walt, 2020) India's adversarial system demands that a judge be a neutral party in the proceeding, but the truth is that their personal beliefs and background influence their decision. (Bornstein & Miller, 2009)

Before 1983, the courts considered the woman being habitual to sexual intercourse and not shouting for help or alarming the same served as consent for the rape. Moreover, since a woman is habitual to sexual intercourse, the presumption is that she will have sex with a random man after that also. Therefore, in many rape cases, the only thing the defense lawyer had to try and prove was the sexual history of the woman. The Criminal Law

Amendment Act of 1983 (Acts of Parliament) was passed resulting from the Mathura rape case (All India Reporter, 1979), where the court acquitted the accused based on the fact that the victim was habitual to sex and not shouting for help served as deciding factor of her consent in the rape. The act was much celebrated for it removed the admissibility of a woman's past sexual relationship as a deciding factor for rape.

However, even after amendments in the criminal law, the questions of women's character have been repeatedly discussed in deciding the case. The judgments made by the court serve as a source of law (precedents) for future cases, and judgments that demean a woman and question her virtue decide the future of victims of rape. Moreover, the court's search for the ideal victim in rape cases set a bar to justice. There have been a lot of instances where a biased view of the court is seen when a woman is involved in a past sexual relationship. One such case is of the *State of Kerala v. Bishop Franco Mulakkal*, the first one is where a nun, instead of the power dynamics and hierarchy, came out and alleged the one in power, the Bishop. However, there were repercussions of her act, which she feared after concealing the assault for years: character assassination by the church and the court.

## 2.0 Background of Case

The accused is a 'Bishop' of the Roman Catholic Diocese of Jalandhar, and the victim is the head 'nun' of the Congregation named as missionary of justice and was in charge of the Home where she and other sisters resided at Kuravilangad, Kerala. The victim accused the Bishop of multiple rapes in two years since 2014 under intimidation upon his visit to the Home where she resided. Even though the victim denied and resisted, the rape continued, and 13 times she was raped. The victim first complained to the church, but no action was taken against the Bishop. Instead, her character was questioned, and she faced the consequences of going against the person in the power hierarchy. She was removed from the post of head nun and reverted to an ordinary nun. There was a complaint made by the victim's cousin through a letter to the church, alleging the victim had an illicit relationship with her husband. On June 27, 2018, the victim complained about the accused to the police. Following her complaint, the registration of FIR and filing of the charge sheet brought the matter before the session court where the trial took place.

## 3.0 Decision of the Court

After hearing both parties, the sessions court concluded that the victim's solitary testimony could not hold the accused accountable since there were many inconsistencies. Before her companion sisters, she stated that the accused asked her to fulfill her sexual desires; in her FIR and before the doctor, she only mentioned the sexual assault and not any penile penetration. Then, before the court, she mentioned sexual intercourse thirteen times. The prosecution also failed to prove the reason for her inconsistencies. The victim's claim of being reluctant to disclose such facts still does not suffice as a proper explanation. The court termed the victim's allegations as "embellishments" and "exaggerations." The court relied upon the Supreme Court verdict, which held that "when it is not feasible to separate truth from falsehood when grain and chaff are inextricably mixed up, the only available course is to discard the evidence in toto." The court questioned the act of the victim, stating that the victim showed no sign of vengeance toward the accused—who shared the same car after the assault. The remark portrays skepticism the judge had toward the conduct of the victim, analyzing it as inconsistent with someone who had faced trauma. Also, while such trauma delays complaint filing, the judgment interprets it as inconsistent and lacking Genuity. How come there is no eyewitness? Why no one heard her scream when the rape happened 13 times? Court pointed out that there was ventilation in the room; someone would have heard the screams or seen her coming out of the room. The court also found merit in the defense claim that the accused had rivals in the church, which might result from such rivalry. Based on such observations, the court acquitted the accused. The reasoning aligns with stereotypical thinking about women that women make false allegations for personal gain.

## 4.0 Critical Analysis

After examining the 289-page judgment, the observations made by the judge in the victim's account exhibit his pre-determined stereotypical attitude toward women. Even though no explicit comments were made toward the victim, several doubts regarding her moral conduct are seen, and the remarks made imply the victim's deviation from the judge's preconceived notion of the ideal/usual

victim. The speculations were made about what the victim should and could have done in such a situation. The court has put the victim on trial and the judgment looks like one of the charge sheets against the victim.

## 5.0 Theoretical Explanation

The following theories further make the comprehensive analysis:

### 5.1 Secondary Victimization

When the victim faces further Victimization after the commission of a crime due to stigmatization, insensitive remarks, questioning of her character, and many such other acts which cause harm additional to the former crime; in cases of rape, such suffering is also called as "second rape."

The remarks of the judgment cause secondary Victimization of the victim in this case; the social stigma is already there as the victim here is a nun, and her oath of chastity plays an important role here, but the court questioned her conduct, which leads to significant suffering, questioning the credibility of the victim.

### 5.2 Feminist Philosophy of Law

Feminist Philosophy of law recognizes the effect of Patriarchy on women and girls who deviate away from the traditional notion of gender roles. Often, laws reflect bias and its influence on the lives and rights of those already facing discrimination—the intersectionality of sexuality and law.

The court's view on the preconceived conduct of a victim of a rape is what society expects of an ideal victim to behave. The court questioned the delay in filing the report, neglecting the interplay of gender and the social stigma it carries, fear of shame, which might lead a woman (victim) to take time to gain courage and file the report.

## 6.0 Critiquing the Court's Approach to Contentious Issues

### 6.1 Credibility of the Victim's Testimony

In rape cases, the testimony of the victim is given a lot more weightage, and the judge in this case, due to minor inconsistencies, rejected the entire testimony of the victim. The main inconsistency, according to the judge, was that she did not mention the penile penetration time before mentioning it before the Magistrate. Its decision was based on the Supreme Court's judgment in Jayaseelan, where the court distinguished between normal and material discrepancies in the witness's evidence. Normal discrepancies are minor errors that are unavoidable even though the witness is honest. Due to the lapse of time, the memory gets a little hazy, and mental shock, and horror (Nyaaya, 2022) at the time of occurrence of the crime. Material discrepancies are the ones that affect credibility if the victim wants to change his/her statement entirely and speak utterly differently from what he/she spoke before. However, in this case, the victim did not change her statement; instead, she failed to mention penile penetration before the police officer and doctor, as she was not comfortable and did not have faith in the police officer recording her statement. Also, the court seemed to question her not being able to tell about being raped in front of sisters or any other witness and only termed it as sexual assault, sexual desires, and sharing a bed. We are well versed in the fact that nuns take a chastity oath, and virginity holds great importance in the convent. The nun might be ashamed of the stigma of being unchaste or fear of removal from the convent. Also, the expectation from a layperson that too from a nun is well-known for the difference in words such as rape, sexual assault, and sexual desires is absurd. Hence, her failure is a normal discrepancy that can occur during testimonies, and the court cannot use it to question credibility. The court applied "*Falsus in Uno, Falsu in Omnibus*" ("false in one thing, false in everything"), implying that if a witness lies about one detail, the whole testimony can be disregarded. At the same time, the court clearly stated in *Ranbir v. State of Punjab* (Supreme Court Cases, 1973) that this principle is not applicable in India. If one part of the testimony by the victim seems untrue, the court considers the parts that seem trustworthy after assessing the whole testimony. The apex court in State of Punjab vs Hari Singh & Anr. has also recognized that human testimony cannot be perfect; it is rare. (Supreme Court Cases, 1974)

### 6.2 Illicit Relationship of the Victim

Further, the judge's inordinate attention to the complaint made by the cousin of the victim accusing her of having an illicit relationship with her husband, even though these

both are different cases, represent the judge's idea behind the relevancy of the victim's past sexual relationship, which could make her accusations against accused turns false. Even after the cousin withdrew her allegations of an illicit relationship, the judge was adamant in pointing out that since she is a teacher and her husband is a supreme court lawyer, why would she make such a fuss? Hence, it has to be assessed. The judge also took note of the defense, which indicated that in the medical examination, it was revealed that there was a broken hymen of the victim, which casts doubt on her illicit relationship. Even if there is a possibility of the victim's illicit relationship, it does not make her allegation less believable of her being raped by the Bishop. The main question here was whether the Bishop sexually assaulted the victim(nun) and not the moral character of the nun. The justice system in India prohibit consideration of a woman's past sexual relationship as relevant in rape. (Acts of Parliament, 1872) Why here it was given so much importance is a question of the law. Moreover, the judge was very much interested in determining whether the victim was involved in any illicit relationship, but it rejected the accused's past behavior toward another sister having any relevance in the current case. This shows the deeply rooted patriarchy, where a woman's character is questioned, and in the same situation, the man is excluded.

### 6.3 Victim Shows no Sign of Vengeance

The judge highlighted that on several occasions, the victim's reaction toward the accused was questionable as she showed no sign of vengeance. Instead, she acted very normally with no signs of vengeance. She attended all the functions where the accused was the Chief guest. The fact that after the sexual assault, she shared the same car with the accused. Even through emails, her replies were very informal and friendly, showing no conversation after having assaults. The judge questioned the relationship between the victim and the accused, as she had a close relationship and they were on the same committee, and how she would have reacted in such a situation if she was a victim of rape. This signifies the mindset of the judge, who has a preoccupied perception of how an ideal victim would act in such a situation.

### 6.4 Absence of Witnesses and Screams not Heard

The judge raised questions about how her screams were not heard even though there was ventilation open and a lot of rooms were on the same floor and above. Further, the victim, in her testimony, stated that after the first assault, she did not dress fully and carried her stuff, and rushed out of the room; how such incidents occurred, and no single witness was there and the victim's contention that there were vacant rooms in that floor and no one was residing there, the claim of the victim being raped on 13 occasions in two years it is unbelievable that no one was even present on the same floor. The judge was adamant in proving that the case was a false allegation.

### 6.5 Ignorance of Relevant Facts

The flaw in feigning ignorance of the power roleplay or the fiduciary relationship between the Bishop and the nun might be the reason for the nun's actions. The section 376C under IPC (Acts of Parliament, 1860) and 68 under BNS (Acts of Parliament, 1860) also include rape by a person in authority. Then why did the court deny the possibility of a power dynamic in the case beforehand? In the end, the judge found merit in the defense theory that since the Bishop (accused) had many rivals in the church due to him being the youngest Bishop ordained at the age of 44, the victim might be the scapegoat used to damage the accused's reputation (Varma & Vishwanath, 2022).

## 7.0 Concluding Remarks

The judgment is again an instance of whenever a woman raises her voice against sexual violence, the fingers are raised back at her, questioning her character, but that is not expected from the system that imparts justice to raise such questions. The question of illicit relationship was a different case altogether, and the Criminal Amendment Act of 1983 disregarded holding past sexual relationships of the victim as being relevant in deciding the consent and truth behind the occurrence of rape. This showcases the ingrained 'rape myth' and the traditional notion of how an ideal prosecutrix should be to be believed that she was raped without her consent or that she is not falsely accusing for her gains. It is through this theory that the trial court could rationalize the presumption of a victim being at fault when raped. The pervading legal system in India that contributes to the development of rape myths is a situation where prejudice is very deeply seated. The judgment would serve as a precedent again, and a victim would be denied justice for not being a woman of moral conduct. Does being an immoral woman give the right to the perpetrators to commit a crime or make the allegations false? Our country has still not moved

on from blaming a woman for rape or questioning her character to the decision-making. Although false cases are on the rise, we cannot view each case on the pretext that it is of a false nature and try to find points that lead to it being false. The court needs to hear the victim's side with an open mind, assuming the possibility of it being true, not with the mind searching for flaws to conclude it is false. Justice Ravindra Bhat in *Aparna Bhat v. State of Madhya Pradesh* concluded that "…courts should desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order, to the effect that testimonial evidence provided by women who are sexually active may be suspected when assessing consent in sexual offense cases." (All India Reporter, 2021) Hence, the acquittal of Bishop and the findings of the session court are questionable on the grounds of what Justice Ravindra Bhat said. The judgment also urged the need of the time, gender sensitization of judges, prosecutors, and lawyers as a part of their foundational training. Also, their appropriate usage of words and phrases should be trained. They are part of the mechanism of imparting justice. They are the role models of society, and if they have such a stereotypical view, then society would never change. The victims would continue to fear the criminal justice system, which puts them on trial first, rather than the perpetrator, causing secondary victimization, which is equivalent to crime, decrementing the healing process of the victim.

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