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# "Women of Easy Virtue": Judicial Bias and the Undermining of Justice in Rape Cases

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## Abstract

*"I measure the progress of a community by the degree of progress which women have achieved"**--B. R. AMBEDKAR***

*The goal of this paper is to conduct a comprehensive critique of the language employed by the criminal courts in sentencing and, in particular, how the language illustrates biases that certain societal standards ascribe to victims and offenders in society, particularly violence against women. This paper, by investigating the Judges' comments, looks at the mention of women's issues as well as their impact on the sentence, and in doing so, highlights a certain incongruence between the law and feminism. Given a discourse analysis, the work attempts to trace certain judicial discourse patterns which tend to encourage stereotypical notions of gender which often undercut violence against women. The paper proposes a shift from the current judicial approach that focuses more on the offender and aims at the victims' needs instead and recommends that the judiciary should undergo training aimed at removing gender prejudice to promote public trust in the justice system and integrity within the judiciary. The paper also engages with ongoing debates concerning the proper conduct of the judiciary regarding women's position to examine the Musauddin Ahmed case in detail.*

**Keywords:** *Crime Against Women, Judicial Remarks, Rape, Victim's Character Assessment*

## 1.0 Introduction

The criminal justice system is essential to protecting people's rights and dignity, especially when it comes to sexual assault. However, justice is not only postponed but also twisted when patriarchal and regressive views impact judicial actors themselves. A profoundly ingrained cultural bias that still permeates judicial thinking is shown in the term "women of easy virtue," which is frequently used disparagingly to characterize women who are thought to be sexually promiscuous. The Supreme Court's use of such terminology and its effects on the credibility of the rape survivor have created severe issues regarding gendered prejudices within the judiciary, as this research critically explores the 2009 ruling in Musauddin Ahmed v. State of Assam.

This case is a powerful illustration of how judges may decide guilt or innocence based more on the victim's alleged "character" than on impartial legal criteria. In addition to stigmatizing survivors, these court tales reinforce negative preconceptions that go against the fundamental principles of justice. This study seeks to expose the unconscious prejudices that frequently remain unquestioned in rape decisions by examining the wording, logic, and wider jurisprudential ramifications of this ruling.

A straightforward but crucial demand at the centre of this investigation is that justice cannot be dependent on a survivor's alleged morality. Rape is not a moral issue; rather, it is a violation of bodily autonomy. However, survivors continue to face moral examination in Indian courts, with their sexual history and personalities frequently taking precedence over the actual act of abuse.

The paper also places the case in the perspective of feminist legal theory, which emphasizes the urgent need for a gender-sensitive approach in judicial decision-making and criticizes the law's role in upholding patriarchal norms (Smart, 1989). In the end, this investigation advances the larger conversation on institutional accountability, victim dignity, and legal change in the field of sexual violence jurisprudence.

## 2.0 Facts of the Case

The case revolves around the alleged abduction of a minor girl, Mira Begum, by the appellant Mussauddin Ahmed, alias Musa, who took her to a hotel and committed rape on her. Mira was working as a maidservant at the house of Abdul Hai Laskar and his wife, Hasmat Ara Begum. The appellant, a security guard, had known the victim since before. On 7.1.1995, Mira went to the zoo with Suleman, who was known to her. The appellant slapped Suleman and threatened to hand them over to the police. Suleman fled, and Mira was taken to the police station. She was then taken to a hotel where she was raped three times. Mira informed her employers and was taken to a person near Hazi Musafir Khana.

The police registered the FIR and conducted an investigation. Dr. Pratap Ch medically examined the prosecutrix. A Judicial Magistrate recorded Sarma and her statement under Section 164 of the Criminal Procedure Code.

The appellant was found guilty of rape under Section 376 IPC and sentenced to ten years in prison. The appellant appealed to the High Court, which upheld the conviction but reduced the sentence to four years and fined him Rs. 1000/- in default. The appellant argued that the prosecutrix was 18 years old and the charge of rape cannot be proved. The appellant and Mira Begum were neighbours who met at a zoo and scolded each other. The appellant took the prosecutrix to Hotel Choudhury, where he committed rape on her. They remained there for the night and the next day left the hotel. The appellant left the prosecutrix near Musafirkhana and went away (All India Reporter, 2010)

## 3.0 *Obiter dicta*

The Investigating Officer failed to recover torn clothes and semen from the appellant, allowing the prosecution to obtain medical reports. The court couldn't understand why the prosecutrix could not have raised the alarm or informed anyone on the road without any allegation of threat or coercion. The prosecutrix appears to be a lady used to sexual intercourse and a dissolute lady. She had no objection to mixing up and having free movement with any of her known persons, for enjoyment. Thus, she appeared to be a woman of easy virtues. The prosecution failed to prove its case against the appellant beyond reasonable doubt, and the appeal is allowed. The High Court's and trial court's impugned judgment is set aside, and the appellant is acquitted of the charge under Section 376 IPC.

## 4.0 Interpretation of the Sentencing

This type of remark, which labels a woman as a "dissolute lady" or a "woman of easy virtues," is not justified from a legal, ethical, or societal standpoint.

When assessing the occurrence of sexual violence, there is no relevance to the sexual history of a woman. It does not matter whether the victim is 'used to sexual intercourse' or leads a liberated life, in terms of her right to accept or reject sexual advances or agree to sexual intercourse. Rape is such an act which simply assumes that there was no consent irrespective of the conduct or lifestyle of the victim before the assault.

In many legal systems, including India's, evidence of a victim's character or prior sexual history is inadmissible in rape trials. This is supported by Section 146 of the (Indian Evidence Act, 1872) which was amended to exclude questioning of the prosecutrix's moral character. The Supreme Court of India, in several cases, has emphasized that the moral character of the victim is irrelevant. For example, in *State of Punjab v. Gurmit Singh (1996)* (All India Reporter, 1996), the Court said that courts should not look at the victim's moral character to decide the credibility of her testimony. The assertion made in the above statement is indicative of the victim-blaming ideology where one justifies the accused by blaming the behaviour or lifestyle or the character of the victim instead. It claims that women who are "of easy virtue" or who have active sexual lives cannot in any way be seen as potential victims of rape, which is both wrong and hurtful.

Consent is central to determining whether rape occurred, not the victim's lifestyle. A woman has the right to say "no" at any point, and that right must be respected, regardless of

her past or personal choices. Victim-blaming attitudes deter women from reporting sexual crimes because they fear being judged or discredited based on their character rather than the facts of the case. This creates a chilling effect on the reporting of crimes and hampers justice.

One of the most prevalent misconceptions regarding sexual assault victims is centred upon women's virginity and status as 'good women.' The Supreme Court of India has, over the ages, shown a tendency to base its judgment in sexual offence cases on such ill-founded notions, as a lot of case laws demonstrate. A precise example of this can be found in the case of *Musauddin Ahmed v. State of Assam***,** whereupon allowing the appeal of the accused, the Supreme Court went ahead to question the 14-year-old victim by stating that she was "used to sexual intercourse," a "dissolute lady," and "a woman of easy virtues."

Equally, in *Tukaram v. State of Maharashtra (All India Reporter, 1979)***,** the apex court acquitted a police officer who had been accused of raping a minor. The court found in favour of the victim, calling her a liar and stating that it was improbable that a police officer could have managed all the police investigations without any lead. The court also stated that there was no proof of any kind of fear or intimidation and suggested that the little female victim was a victim of character derogation implicating submission. This marks the trend of outrageous rape judgments.

Furthermore, the Madhya Pradesh High Court *in* Dilip Singh v. State of Madhya Pradesh (2001) held that the victim ought to have behaved like a wild animal towards the appellant, and the mere fact that she did not resist, is nothing but proof of consent. These and other arbitrary definitions have led to the Courts creating an unconscious victim's guide that compels victims to behave in a particular manner. It is a cultural narrative that has taken root to make self-doubt in rape survivors, which is to make it impossible for them to regard the action against them as a crime unless it fits the criteria of what rape is in the institution's books. These and many other out-of-date and ideological extrapolations make the majority of the rape cases in India neglected or off the record. The truth, however, is that Courts have managed to make women portray themselves as a victim of distress so that they could show that they indeed refused to have sexual intercourse with the aggressor and which made them eligible to be "raped." The consequence is that the feminine psyche has internalized many such narratives, which marginalize most of the victim's experiences, forcing them to recontextualize rape as a 'misunderstanding' or 'in their imagination'. Rape myths are prejudiced, and generalized and result in distorted views regarding rape, its victims, and its offenders. Courts assess a victim's testimony against the various descriptions of rape that she can provide and explain in their decisions how an ideal woman ought to behave after a sexual assault. Nevertheless, in most cases, Courts become prescriptive, telling instead of asking how a woman ought to behave in the aftermath of a sexual assault.

Sexism and misogyny are a systemic weed to the Judiciary, as it is to many other institutions. A 2018 study conducted by the National Law University Delhi (Duggal, 2018) analyzed 50 cases of rape that were heard before the Supreme Court. It was discovered that judges often have a stereotypical perception of rape victims. It also found that a female judge on the Bench can result in a sharp decline in sexist comments.(Tannvi & Narayana, 2022)

The 'Good Indian Woman' Narrative: Judgements often reveal an idea that women from Western cultures are more likely to lie about rape, whereas Indian women would not lie about it because they are bound by tradition and the stigma of rape. As the text puts it, "Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society, as in some of the Western or European countries. Our standards of decency and morality are not the same as in those countries. Courts must also realize that ordinarily a woman, more so a young girl, will not stake her reputation by levying a false charge concerning her chastity." The text further writes: "No woman of honour will accuse another of rape, since she sacrifices thereby what is dearest to her." (Gangoli, 2011)

Judgments sometimes characterize rape as a "crime of passion" rather than a violent assault. According to the latest data from the National Crime Records Bureau, India reported 31,516 rape cases in 2022, meaning an average of about 86 rape cases every day (Crime in India 2022). This number is dramatically larger than in 1971 when an estimated 7 rapes were reported every day; this represents a nearly 700 percent increase over five decades.

Despite all these legal reforms targeting sexual violence, the conviction rate for rape has remained relatively low (Patel, 2024). The rate of conviction during the period from 2018 to 2022 varied between 27% and 28%. This would mean that the increase in the number of reported cases is not correspondingly matched by an increase in the proportion of convictions.

It is worth noting that the increase in reported cases could be due to a variety of factors, including increased willingness on the part of survivors to report incidents and improved recording mechanisms by law enforcement agencies. The persistently low conviction rates indicate that there are challenges within the judicial system that prevent it from effectively addressing and deterring sexual violence.

## 5.0 Critical Analysis

Rape is a horrible crime that violates a person's bodily autonomy, dignity and plagues society all over the world. According to the 2021 annual report of the National Crime Records Bureau (NCRB), 31,677 rape cases were registered across the country, and it is the fourth most common crime against women in India (NCRB, 2021). Sex as a tool of exploitation and suppression is rampant in today's day and age. No matter how stringent the law became post-2013 Criminal Law Amendment, it is a fact that crime against women is at an all-time high. Irrespective of age the tool of rape is used to oppress and suppress women. As long as so much weight is tied to the purity and sanctity of a woman's chastity, as long as she is referred to as 'khuli tijori' (open safe), as long as a woman passed a certain 'time' out on the roads is immoral, and as long as men take it upon themselves to teach women what their place is, feminist jurisprudence will struggle. (Rohilla, 2022)

The observation of judicial comments regarding the character of a woman, her conduct, or her behaviour in a certain situation: how she 'ought to' behave, demonstrates that such attitudes are deeply rooted within the society. It can further be argued that such remarks not only diminish the dignity of the survivors but also reinforce the idea of women being the cause of the crimes committed against them.

Judges make sexist and hurtful comments that can affect the outcome of the cases in a serious way. These comments often work to distract from the crime in question and instead analyze the victim's character, actions, or history concerning other individuals. In this way, it makes sure that other victims do not come out in the open while at the same time belittling the importance of the judicial process in rape cases.

It is necessary to hold the judiciary accountable especially when judges make such inappropriate utterances as in derogatory remarks. Such comments undermine not only the justice dispensed in the courtroom but also the general public's faith in the processes of the courts.

Sometimes men who hold traditional gender imbalances viewpoints may find derogatory statements relatable as they can justify them or view them as broadly accepted. Such reinforcement can continue the narrative that harmful statements and attitudes are okay and work against allowing people to embrace progressive views.

In his *Concept of Law* (1961), HLA Hart argued that in a legal system, judges take upon themselves the obligations to apply valid legal norms, even where others might reasonably deem them catastrophically wrong to feel that way. As such, public opinion is shaped by judgments; it is seldom the case that judgments are impacted by public opinion. (Garg, 2022) Sexist remarks in judgments can be grounds for public indignation, and social media has transformed popular outcry into a powerful tool for rectifying public errors.

In instances of sexual assault, the tendencies to stereotype the victims arise in terms of so-called "respectability" and "femininity", except the "good woman" who is reproached for the rape, even if she appeared dressed provocatively.

Feminism is a struggle for power for women. Feminists do not hate men but are against patriarchy, male domination and the maleness of men, which led men to treat women as their property. (Bansal & Pathania, n.d.)

As it seems to the designs of Meadham Kirchhoff support, feminism advocates a breaking down of such oppressive bifurcations. There is power in the definition of femininity, as long as it is defined on one's own, which emphasizes the belief of feminists that women who have been sexually assaulted ought not to be blamed for the attack. The empowerment comes from reclaiming femininity on one's terms—an idea that speaks to the feminist fight against victim-blaming in cases of sexual violence.

Meadham Kirchhoff's fashion design aimed to counteract the tendency towards objectifying women's bodies and this is consistent with the feminist movement that also fights against sexual violence including rape. In contrast to the prevalent cultural stereotype of women as docile, consumable beings contained in a box, Kirchhoff's images depict women as complex, rebellious, and uncontrollable. Furthermore, this attitude echoes feminist struggles against rape culture, which comprises the social order that accepts, promotes, and encourages sexual violence while claiming that women are to blame for being 'grabbed' since their bodies are at hand for men.

The justice delivery system requires radical changes to eliminate and deal with the inherent tendencies that

encourage hostile and abusive comments and or practices. Changes should incorporate detailed standards on how judges are expected to conduct themselves as well as how to deal with situations when a judge is out of line in making statements. There must be establishment of a legal framework that recognizes the complexities of sexual violence and emphasizes the need for a more equitable judicial process. Further, there is a need for reforms that include gender sensitivity training for judges and stricter protocols to ensure that judicial commentary does not further traumatize victims. It is important and necessary that all the sponsored training programs stress the understanding of sexuality in terms of trauma and violence and the social environment within which the victims operate. Adding the necessary tools to their arsenal will help judges to understand, empathize and work towards the genuine protection of survivors' rights within the legal system. Judges are expected to refrain from addressing issues that may perpetuate negative docking such as stereotypes and deal with only legal issues such as consent, coercion, and evidence presented.

An intersectional analysis within the judicial system examines how cross-cutting social identities like gender, caste, class, and religion create complex webs of discrimination or privilege, specifically in sexual violence cases. In India, these intersections highly influence judicial attitudes, victim narratives, and outcomes. Here is an exploration using live examples.

**The Hathras Rape Case (2020):** In this case, a young Dalit woman was gang-raped by upper-caste men in Uttar Pradesh. The systemic bias was evident not only in the perpetrators' sense of impunity but also in how authorities and the judiciary initially handled the case. The rushed cremation of the victim without family consent and statements downplaying the crime showcased caste-based discrimination. Public protests and media attention eventually led to a Special Investigation Team (SIT) and trial. (Biswas, 2020)

This case brought to light how caste hierarchies intersect with gender, with Dalit women being disproportionately targeted for sexual violence. Courts must consider these layers of vulnerability instead of looking at the crime as merely gendered.

**Bilkis Bano Case (2002):** During the Gujarat riots, Bilkis Bano, a Muslim woman, was gang-raped, and her family was massacred. It took years for justice, and even that was affected by communal bias during the investigation and the initial handling of the case. The 2022 premature release of the convicted perpetrators under a remission policy sparked outrage, underscoring systemic bias against minorities. (Vora, 2023)

Religious identity often compounds the trauma of sexual violence and alienates the victim in society at the same time as judicial insensitivity.

## 6.0 Examining the Musauddin Ahmed Case through Criminological Theories

From the viewpoint of criminology, the above-mentioned case can be easily addressed to analyze how the happening of gender-based violence comes about within perpetuation and the legal responses that ensue. With these, criminological theories will be presented, pointing out how society and institutions work concerning crime.

### 6.1 Rape Culture Theory

The theory of rape culture highlights how societal norms can normalize or downplay sexual violence. The judgment, in this case, reflects rape culture by focusing on the victim's behaviour instead of the perpetrator's criminal actions. By implying that the victim's past or character somehow lessens the severity of the crime, the judgment reinforces harmful myths that excuse or justify sexual violence. This theory also illustrates how comments made in court can strengthen societal attitudes, leading to an environment where victims hesitate to report crimes. Rape culture flourishes in contexts where institutions, including the judicial system, do not challenge patriarchal narratives. Tackling this issue requires systemic changes to ensure that judgments align with the principles of justice and equality.

### 6.2 Social Learning Theory

Social learning theory, introduced by Albert Bandura, suggests that people learn behaviours and social norms by observing and imitating others. The attitudes and comments made by judges, as illustrated in the Musauddin Ahmed case, significantly influence how society views sexual violence. When courts use language that blames victims or downplays the seriousness of these crimes, they contribute to normalizing such views, which in turn perpetuates cycles of violence and discrimination.

The court's comments in this instance convey a troubling message, reinforcing the notion that victims are to blame for what happens to them. This not only sustains

harmful stereotypes but also discourages survivors from pursuing justice, thus fostering a culture of silence surrounding sexual violence.

## 7.0 Conclusion

In the positive development of any society, judges contribute by giving reasoned determinations and decisions that do not reflect any individual's opinions. They cannot afford to engage in deals within a system which encourages an impunity mentality. Justice that recognizes and promotes constitutional values cannot be overemphasized in building women's power, as it restores hope in the justice system to victims of violence. Notwithstanding the long history of feminist movements and women advancing in different sectors, Indian Courts have completely failed to appreciate the gravity of the situations revolving around crimes and injustices against women.

It is high time that courts stop regarding women as second-class citizens. In his book, *Nature of the Judicial Process* (Cardozo & Kaufman, 2010), Justice Cardozo expresses this clearly, when he says that as a judge, his duty is to objectify the law, not based on his own perspectives and aspirations, but on those of the men and women of his time. In India, the fight for gender equality is not only confined to households and politics but extends to the courtrooms as well Benjamin (1921).

Where representations of women in the judiciary are low and with a patriarchal judiciary, gender-biased pronouncements will increasingly permeate. For such inclusiveness to be embraced, adequate measures should be put in place to ensure that there are sufficient women on the Bench and that they are not denied chances at any given time, having the presence of a female judge within the Bench is associated with a decline in sexist remarks. Also, Remarks of Hon'ble judges and several judgments bearing such gender stereotypes draw attention to the importance of gender sensitivity training for the judiciary right from the level of trial courts up to the Supreme Court. Certain harmful gender stereotypes and gender role beliefs must also be understood by the judges so that sexual assault victims are not deprived of justice, because of such biases present in the judges.

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