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A Discourse on the Case of Pranjal Shukla v. State of Uttar Pradesh (2024) Allahabad High Court

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Abstract

Judges are respected for their wisdom and legal eminence. They can hear convincing arguments from both sides without being wavered by their persuasion. They are adjudicators and interpreters of the law. Unlike laypeople, they do not give in to speculation but confine their judgment to facts, evidence and the letters of the law. Nevertheless, it would be inaccurate to depict them as completely impartial. They have their own biases. These biases may be reflected through their remarks and comments, which sometimes form part of their judgment. Judges, unlike lawyers, have a higher responsibility of being judicious in giving their opinion. This responsibility is even higher when they are dealing with cases of sexual offences against women. They must take precautions and not let their prejudices take over them. This is a serious issue as these remarks can have a damaging impact on the society. Thus, the judges must follow self-restraint when delivering judgments in such cases and keep in mind that they do not digress from the confines of the law.

Keywords: *Domestic Violence, Marital Rape, Obiter Dictum, Sentencing Remarks, Unnatural Sex*

1.0 Introduction

"*We may try to see things as objectively as we please, but we can never see them with any eyes except our own.*"

— Benjamin Cardozo, *The Nature of Judicial Process*

Judges are expected to be impartial and neutral third parties who adjudicate disputes between parties. However, judges, too, are human. They have their own opinions and are not free from biases. These biases may sometimes creep into their judgments. Sometimes, judges may pass remarks that blatantly reflect their biases and are undiplomatic. These remarks may hurt people's sentiments and be uncalled for. They may have no connection to the case at hand at all. They bear no legal backing. Such remarks, even *obiter dicta*, in a judgment can have damaging consequences in the minds of the people affected by the judgment or people who are simply readers of the judgment. Moreover, judgments are often followed as precedents and form part of literature for legal scholars. Such statements could hurt the emerging generation of judicial officers, lawyers and legal academicians. In India, there is an alarming uprise in the number of cases where judges have made sexist remarks or remarks which are prejudiced against a certain section of the society. Such remarks must be looked down upon, and such judges should be admonished by their seniors. One such remark was given by Justice Anish Kumar Gupta in the case Pranjal Shukla v. State of Uttar Pradesh (Allahabad High Court, 2024), where he stated that a man could demand his sexual urges only from his wife and vice-versa while deciding on the non-fulfilment of demands of unnatural sex made by the husband to the wife. In this paper, the importance of the remarks of a judge in the *obiter dictum*, as well as the remark itself, has been deconstructed.

2.0 A Brief Background of the Case

2.1. Abstraction of the facts

Meesha Shukla, one of the complainants, is the wife of the accused, Pranjal Shukla. Before their marriage, no dowry was demanded. However, the in-laws of the wife were not happy with the dowry and other gifts received at the wedding. They compelled her to give articles worth Rs. 15,00,000/- to Rs. 20,00,000/- along with cash. Even after meeting these demands, her husband abused and assaulted her. He used to drink alcohol, watch pornography and demand his wife to perform unnatural sexual activities with him. He used to be naked around her and perform masturbation. On raising objections to these actions, the wife was strangled by the husband. He attempted to kill her. She told her in-laws about all these incidents, but they never paid any attention. The husband went to Singapore to work. The wife also insisted on going with him, but the in-laws did not let her go and asked her to live in Mumbai with them unless she fulfilled all their demands. When she could not meet the demands, they sent her back to her paternal home in Noida. After living there for 8-9 months, she went to Singapore with her husband. She found out that he was consuming alcohol and drugs. He started abusing her again, so she took up a new job. Her entire salary was used by her husband. When her father visited them in Singapore to request him to stop abusing his daughter, the husband threatened to kill her. In pursuance of this, an FIR was registered against the accused on 23rd July 2018. Thereby, the case was referred for mediation. However, the mediation failed as the wife and her father refused to cooperate. The father requested the Ministry of Foreign Affairs to freeze the passport of the accused and also notified the place of employment of the accused to send him back to India. In the instant case, the accused has applied to quash the chargesheet filed against him.

2.2. Ratio decidendi of the Case

The Court held that in the FIR, a specific allegation was made about the demand for dowry. No particular incident has been referred to, nor has any allegation been made against any particular person. The entire FIR is based on the non-fulfilment of the sexual demands made by the husband to the wife. No injury has been sustained by the wife. Therefore, it is not a case within the purview of Section 498-A of the IPC. It is a concocted story on the part of the complainants. Thus, the application filed by the accused is allowed, and the chargesheet against him is quashed.

2.3. Analysis of the Judgment

The charges in the FIR broadly dealt with cruelty by the husband and his relatives, outraging the modesty of a woman, criminal intimidation and hurt. There were no specific incidents or dates mentioned in the FIR, nor were specific persons named who committed these offences. The Court relied on the decision given in Geeta Mehrotra v. State of Uttar Pradesh (Supreme Court Cases, 2012), where the Court mentioned specifically that in matrimonial disputes, there is a tendency to drag to Court all the family and relatives. However, it should be kept in mind that just casually mentioning the names of the relatives would not be sufficient for the Court to take cognisance against them.

The Court, concerning the cruelty catered to the wife by the husband, showed a very callous attitude and did not address the issue with the due attention that was required. The Court stated that the husband could only get his sexual desires fulfilled by the wife and not seek such pleasure outside the wedlock as it would not be accepted by society. This remark was totally uncalled for and could be seen as a licence given to the husbands to demand from their wives sexual favours, which the wife has not consented to. Since marital rape is not decriminalised in India, the decision to prosecute the husband for outraging the modesty of the wife seems to be as per law. However, the statements of Justice Anish Kumar Gupta may be perceived in a negative light that the law allows spouses to have full control over their spouses' bodies, and they can demand sexual favours from them any time they want. This would pave the way for more domestic violence and marital rape cases, the latter still being considered legal in India.

3.0 Sentencing Remark and its Interpretation

3.1 Sentencing remark in the obiter dicta

In the instant case, Justice Anish Kumar Gupta had stated the following in para 10 of the judgment:

"*If a man would not demand sexual favour from his own wife and vice-versa, where they will go to satisfy their physical, sexual urges in a morally civilised society?* (sic)"

This statement is problematic for many reasons. India is a country where domestic violence, cruelty due to dowry demands, dowry deaths and marital rape cases happen in huge numbers. The offences related to marriage are skyrocketing not only in rural areas but also in urban areas. The lives of such women are in constant misery and pain. In such cases, the only hope is in the law and the justice system. This does not negate the fact that the laws are also abused by women to exact vengeance on their in-laws. In matrimonial disputes, many false cases have also been reported. The Apex Court, in Lalita Kumari v. Govt. of UP (All India Reporter, 2014), deemed it necessary that a preliminary inquiry be held by the police before filing an FIR regarding matrimonial disputes. However, Justice Gupta could have been more sensitive about the issue regardless of the facts and evidence of the instant case.

It is common knowledge that *obiter dicta* is not legally binding, but the *ratio decidendi* is. This does not mean that the *obiter dictum* has no significance in the judgment whatsoever. Judges are the highest officers of the Court. Their actions, inactions, words, gestures, and opinions have a bearing on the framing of the societal perception of law and justice. Since Court proceedings in India are streamed live now, judges must be more cautious of what they say even though it may not affect the decision.

Recently, the Supreme Court admonished Justice V. Srishananda of the Karnataka HC as he referred to a locality in Bengaluru as "Pakistan" (Supreme Court, 2024). He also passed a sexist remark against a female lawyer during the Court proceedings. The video of the judge's remark went viral on social media. This case highlights the fact that if a mere passing remark of a judge can trigger such a reaction from the masses that the Apex Court has to take *sue moto* cognisance of the same, how much more an *obiter dictum* would affect which is part of the judgment. Thus, Justice Gupta should have been more cautious about the statement he made about the demands of sexual favours by the husband from the wife, regardless of whether it aligns with the law or the decision based on the merits of facts and evidence of the instant case.

3.2 Deconstruction of the Remark

The remark in question depicts a sorry picture of the orthodox reality of Indian society about marriage and bodily autonomy. Simply stating that a man can demand sexual urges from his wife and vice-versa would imply that if a person has violent urges, be they sexual or non-sexual, they can get them satisfied by their spouses. It brings up a question — does marriage give a license to violate the body of one's spouse? Justice Gupta also talks about a "morally civilised society" which would refuse to accept sexual intercourse out of wedlock. What kind of morals and civilisation does the society have to allow rape within the confines of a marriage? It would be nothing more than sheer hypocrisy for society to license a grievous offence such as rape in the name of the sanctity of marriage but despise consensual sexual relationships between two adults. Also, the same society recognises divorce as a mode of dissolution of the very institution of marriage.

Marital rape has always been the bone of contention in the Indian law. On the one hand, we have the sanctity of marriage as an institution and, on the other hand, the bodily autonomy of a person, whether man or woman. Courts have always tried to balance both these interests but always leaned towards institutional interests rather than personal choices. The closest that the Supreme Court came to deciding on this issue was in *Independent Thought v. Union of India* (All India Reporter, 2017), where it criminalised marital rape against girls below 18 years of age.

Recently, a petition was filed before the Supreme Court, where Section 63 of the Bharatiya Nyaya Sanhita, 2023, has been challenged on grounds of unconstitutionality. It deals with marital rape. The affidavit filed by the Union of India stated that to criminalise non-consensual sexual acts committed within a marriage would cause "serious disturbances" within the institution of marriage. (Bureau, 2024)

Earlier this year, a similar case came before the Madhya Pradesh High Court, where Justice Dwivedi ruled that there can be no charge of Section 377 of IPC made against a husband for demanding unnatural sex from his wife. He gave a legalistic point of view to support his decision. He stated that though Section 377 does not talk about persons excepted from this offence, the marital rape exception can be derived from Section 375 itself(High Court of Madhya Pradesh, 2023). Section 375 talks of penetration of all forms

and not just penile-vaginal intercourse. The receiving end can be any body part of the woman, as the penetrating object can be a body part of the man or any other object as well. Thus, it covers within itself "unnatural sex" within the meaning of Section 377 and by extension, the marital rape exception applies to Section 377 also.

3.2.1 Justifications given against criminalisation of marital rape in India

The oft-quoted justification given in favour of marital rape is that criminalising it would destroy the institution of marriage. This creates a paradoxical situation within the penal law itself. When assaulting a wife, criminally intimidating her, and wrongfully confining are offences within the penal law, how is it logical to decriminalise the act which follows these offences — rape of the wife? (Klarefeld, 2011; Habibi, 2008) Another argument in favour of marital rape is put forward: the procreation of children. This could partially be logical in the context of penile-vaginal intercourse. Yet, it does not explain the decriminalisation of non-consensual unnatural sex. (Ryder and Kuzmenka, 1991). One might even argue that offences such as marital rape would be difficult to prove in Court as it happens within the confines of four walls(Schelong, 1994). This argument can be easily refuted as domestic violence is also an offence that happens within the confines of one's home. So are sexual harassment and other offences against women. They happen in secrecy. This is the reason that Section 114A of the Indian Evidence Act was introduced to allow the Court to presume there was so consent if the prosecutrix in a rape case states that she did give her consent, provided the intercourse between the accused and the prosecutrix is proved.

In *RIT Foundation v. Union of India* (Supreme Court, 2015), Justice Hari Shankar stated that marital rape does not fall within the definition of rape as the spouses have already consented to having sexual intercourse once they entered into marriage. There is a "legitimate expectation of sex" in a marriage. By this logic, non-consensual sex between live-in partners should also be considered legal as there, too, exists a "legitimate expectation of sex".

3.2.2 (Ir)relevance of the marital rape exception in the current scenario

Marital rape violates Article 14 of the Constitution as it creates an unintelligible differentia between married women raped by their husbands and all other women. Rape is rape, irrespective of the marital status of the woman or the relationship of the rapist with the woman. It also violates Article 21 as it breaches the woman's right to sexual autonomy(Yadav, 2022). The marital rape exception was derived from the patriarchal notion, which treated the wife as the property of the husband. However, long gone are those days. In *Joseph Shine v. Union of India* (All India Reporter, 2018), the Supreme Court categorically stated that wives are not chattels of the husband while striking down Section 497. Society is progressing day by day. To hold on to such obsolete and redundant laws would only stop society from progressing. We live in a country that has decriminalised obsolete provisions like Section 377 and 497 and criminalised rape of married girls below 18 years of age. In these times, not recognising marital rape as a separate offence would hamper societal progress to a huge extent. The social reformers have fought tooth and nail for women's education, widow remarriage and a ban on *Sati* and child marriage in a period when India was still colonised and was fighting for its freedom. Now that India has emerged as a superpower and made its presence felt in the global forum, these redundant laws will still hold us back from reaching our destined goals. Violence within the four walls of the home cannot be accepted by the relationship between the victim and the offender. The Legislature needs to recognise the need of the hour and reform the laws at the soonest as the flimsy arguments given by the Union against criminalisation of marital rape hold no water.

4.0 Concluding Remarks

Judges are persons of legal eminence. Their knowledge and perspective are taken in the highest regard. Thus, their words and actions, whether inside a courtroom or outside, play a major role in framing the societal perception of legal institutions. This is why judges have a very strict code of conduct. However, no judge can be completely impartial or unbiased. Their biases are reflected in their judgments no matter how well they try to hide them. This is perfectly understandable(Bastian, 2024). Nonetheless, they have to be extremely cautious in how their remarks, no matter how casually they meant it, would affect society at large. It can be interpreted in many ways and perceived negatively. Callous remarks of judges, especially against women, can have a damaging impact on society and may

act as an informal precedent for their juniors to follow. This is why the Supreme Court had taken the initiative to publish a handbook which has entailed a list of expressions which promote gender stereotypes and how judges should replace them with alternative language. The handbook also contains the existing stereotypes and the corresponding reality to ensure that the Courts may not engage in the promotion of gender stereotypes (Supreme Court of India, 2023). Sexist remarks from judges are never welcome. We live in times where news travels faster than a wildfire and court proceedings are streamed live. Judges, in such cases, need more room to make mistakes. Thus, before making any remark against the vulnerable classes of society, judges must think twice. They should set their personal biases aside and think as the interpreter of the law.

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