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Deconstructing Sentencing Remarks in the Judgement of Crime Against Women: A Discourse in the Case of Abhishek Chauhan v State of M.P

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Abstract

Gender stereotyping in any form is antithetical to society. Judicial Stereotyping, especially in cases of gender-specific offences, is analogous to the final pillar crumbling. It is too unreal to accept but too real to ignore that language and comments in the court involving cases of gender-centric sexual violence have been scathing remarks, which the apex court also acknowledges. A solitary instance of such kind invites rhetorical questions that would lower the public's trust in the judiciary as an institution. The Indian judiciary has been the subject of criticism in several instances. In this article, we join the bandwagon of criticising another such remark observed in the case of Abhishek Chauhan v. State of MP. The author would dissect the remark and explore the hidden misogynistic tone in the orbiter dicta.

Keywords: *Gender Biasness, Judicial Stereotyping, Misogyny, Orbiter Dicta*

1.0 Introduction

Women's empowerment is not just a fallacy or some hashtag-driven topic sensationalised by netizens. Women's empowerment has been an evolving historical reality that has had a long and storied struggle. It must be narrated and inculcated in the memory muscle of every generation, such that it must be etched in the echoes of sacrifice. In a democratic nation, the three pillars, i.e., legislature, executive, and judiciary, are responsible for revolutionising society and ensuring women acquire a dignified status. The judiciary is the most scrutinised institution of all three pillars, and it is expected to promote and enforce women's rights in human society's conduct. The continuous struggle to aspire to an equal and dignified life for women, nothing on par with men in a patriarchal society, led to the fruition of woman-centric provisions in the Indian Constitution. The judiciary is specially empowered to reflect the spirit of feminist ideas enshrined in the preamble of the Constitution. Any action or conduct which in any way discriminates against women directly impinges upon feminist access to justice. A regrettable recent trend emerged and is evident through judges' scathing or scandalous remarks reflected as obiter dicta, which is nothing but a mirror imitation of patriarchal values prevalent in society. Amid rising sexual violence cases against women, the judiciary has handled them thoughtfully and diligently most of the time, although in the same voice, surprisingly, remarked in a deeply entrenched sexist tone. In exceptional cases, judges have treated sexual violence with multiple causes and coloured it with misogynistic tones. The 'languaculture' (Agar, 1994) observed in several judgments creates a ripple effect towards the existing misogynistic attitude and promotes the patriarchal discourse in Indian society. The author has extracted one such incident from the cycle of familiar cases, i.e. *Abhishek Chauhan v. State of M.P.* (High Court of Madhya Pradesh, 2021) judgement,

which has been the most talked about issue in the gallery of courts due to its regressive remarks. The orbiter dicta of the case has been the hot potato dissected to explore the extent to which conservatism and orthodoxy penetrated the legal structure.

1.1 Background of the Case

To cut a long story short, briefly talk about the facts that the applicant had filed a bail application under Section 439 of CrPC,1973 (Acts of Parliament, 1974). The applicant and prosecutrix were students who had been in a relationship for around two years since 2018. They had physical intimacy incidents during the relationship. Therefore, the prosecutrix alleged that an intimate connection was made based on a promise that the applicant would marry her in the future. In the turn of events, subsequently, the applicant told the prosecutrix about her fixation on marriage to another girl on an ill-fated day, dated 1st June 2021. From nowhere, out of the blue, the applicant's refusal to marry the prosecutrix made heaven fall on the innocent prosecutrix. With the emotions running down, she took a step towards self-dissolution by consuming phenyl the next day, but god had another plan; therefore, fortunately, she survived. The applicant was charged with rape provision under IPC, and POSCO was also invoked on the ground that he committed rape on the false pretext of marriage. The main issue, in this case, was whether sexual intercourse is done in a relationship between two people where one person gives consent or will based on the promise they would enter into a marriage relationship later on at any stage of life. Also, whether the consent given under the false pretext of marriage would amount to free consent and, therefore, it would not amount to rape. The court, while deciding the bail application, took several conditions into mind, such as the religion of the parties, the conservatism and orthodoxy of Indian society and the conduct of the prosecutrix when the news of the applicant's marriage with another girl was broken. The court dismissed the bail application considering the seriousness of the suicide attempt of the prosecutrix, which shows the unbearable mental agony the prosecutrix has gone through and the sudden end of the attachment involved in such a relationship. The court also held that the applicant cannot take his action on a lighter note, and every action has consequences. In addition, physical intimacy involves a greater sense of responsibility, considering the set of challenges that exist in a conservative society. While throwing light on conservatism prevalent in Indian society about the pre-marriage sex taboo, the court opined that the boy needs to be extra cautious while engaging in any physical relationship, as the girl has to bear the brunt and risk of unwanted pregnancy and that too outside wedlock. The boy can not shield his reckless move by playing to the gallery, shielding himself under consent.

2.0 Critical Analysis

The bail dismissal order of the MP High Court in *Abhishek Chauhan v. State of M.P.* had, against all reason, embraced the folly once feared. It is worth criticism and has ignited the diabolical jurisprudence of judgment writing in the Indian judiciary. Hon'ble Justice Subodh Abhyankar, sitting on the ivory tower mincing the gender stereotype ideas in sophisticated language, opines that "*India is a conservative society, it has not yet reached such level (advance or lower) of civilization where unmarried girls, regardless of their religion, indulge in carnal activities with boys just for the fun of it, unless some future promise/ assurance of marriage backs the same*." The judge designated the Indian society as a conservative society, which in itself is a very disgraceful and unfortunate comment. Furthermore, the judge undermines the civilisation through hesitancy in considering it a lower or advanced civilisation based on the girl's choice of entering into a relationship of any kind other than a marital one. Visualisation of any boy and girl relationship only through the lens of sexual engagement is a mockery of emotion and attachment of bonding involved. Physical intimacy between two consenting persons who are in a love affair should not be misunderstood as a lustful engagement. A romantic relationship can affect sexual intercourse or not; it is the bodily autonomy of a person and their choice. It is not always the pleasure which lures anyone to engage in physical intimacy, especially in a love relationship.

2.1 Physical Intimacy and Marital Ties

Another scandalous inference of the remark, which reflects the deep-rooted sexism and misogynist frame of mind of society, even by the person sitting on the judicial chair, is that physical intimacy happened on the assurance of marriage. Marriage is seen as a license to engage in sexual intimacy, and consent has no role to play once marital ties are invoked. This same viewpoint has

been shared in *Pranjal Shukla v. State of UP*, where the judiciary controversially remarked that the husband had a license to satisfy sexual urges from the wife, and there was no other person to whom the sexual favour could be asked. The linkage of marital ties with physical intimacy gives rise to another assumption that marital ties are only seen as a tool of procreation. The debate surrounding the recognition of other non-traditional familial relationships has been reignited and reflected in public discourse through this marital and sexual hyphenation. Pre-marital sex need not be associated with any misogynistic label, and gender stereotypes must cease to exist. In *S Khusboo v. Kannaimal*, the apex court held that no law does not prohibits premarital sex and living in a relationship; therefore, criminalisation of such nontraditional domestic partnerships must not be criminalised. The same view was reiterated in *X v. Principal Secretary*· where the court acknowledged that the evolution of society has demanded the legal normalisation of such a relationship. Further, in *Deepika Singh v. Central Administrative Tribunal,* the apex court accepted the newly developed atypical familial structure where an 'unmarried partnership' needs to be protected by law. Debunking the causal effect relation between marriage and procreation, the Apex Court in the Navtej Singh Johar case observed that "*With the passage of time and evolution of the society, procreation is not the only reason for which people choose to come together, have live-in relationships, perform coitus or even marry. They do so for a whole lot of reasons, including emotional companionship. Homer Clark writes: But the fact is that the most significant function of marriage today seems to be that it furnishes emotional satisfactions to be found in no other relationships. For many, it is the refuge from the coldness and impersonality of contemporary existence.*" Justice Subodh Abhyankar ignored emotional companionship altogether and only visualised it through the lens of physical intimacy in any relationship bonded by anything other than marital ties.

2.2 Igniting the Taboo of Interfaith Relationships

It is an undeniable truth that love and marriage are inherent personal experiences which cannot be fixed within any boundaries. Therefore, it is unreasonable and worth criticism when any judicial officer believes that if two people of different religions are in a relationship, then marital ties between them are next to impossible. In the dismissal order of the bail application, the court, while interpreting the false pretext of marriage, remarked that as both parties were of different religions, they allured the prosecutrix to have a physical relationship on false promise. Prima facie, the court remarked, looked like a harsh reality, but the tone and binding strength provided to such harsh reality make the remarks questionable from the viewpoint of a prudent man. Any intellectual judicial officer can avoid disclosing the party's religion and their involvement in determining the probability of marriage in the future. The court presumed that the case could be bracketed under the false pretext of marriage solely because the couple belonged to different faiths. This, in a way, promotes the interfaith marriage sanction, which is politically aggravated through the passing of several controversial legislations, such as the Uttar Pradesh Prohibition of Unlawful Conversion of Religion (Amendment) Act 2024 (Acts of Parliament, 2021). The right to choose a partner is a personal choice that can be exercised irrespective of caste, creed, race and religion. The law and society had no authority to impose moral or legal sanctions on interfaith couples.

It is not the first instance where the judiciary has observed certain misogyny obiter dicta, which is nothing but derived from the roots of deep-seated paternalism, which is antithetical to the spirit of constitutional values. It isn't easy to pinpoint the exact reason behind these scandalising orbiter dicta remarks. However, certain factors can be attributed to this. One such factor is a gender imbalance in the judicial structure (Rawat & Chaudhary, 2021). This means that gender sensibilities have to be dealt with regarding gender diversification in the chair. Crime against women involves a certain gender-specific complexity which needs to be addressed through the woman jurist. The litigation population, as well as jurists, is highly dominated by the male gender, and accused of sexual violence against women are dealt with in highly male-dominated environments. Therefore, the prosecutrix is represented by the state on paper, but the question remains unchanged as to whether she is adequately represented or not. The argument is presented and heard, but whether it does justice to the gravity of the traumatisation that the prosecutrix has suffered, these first things need to be done before delving into the complexity of the bigger problem.

The scandalising remarks presented in the form of obiter dicta have no precedent-binding strength legally,

although they had a tremendous social impact, which can not be doubted. Once the judgment is delivered, it is a public document and rightly expressed by a division bench of the apex court consisting of DY Chandrachud and M.R.Shah JJ that *"judges speak through their judgment and order" (Salimbhai Hamidbhai Memon v. Niteshkumar Maganbhai Patel, AIR 2021 SC 4109).* Judges must ensure that judgment affects society in a forward step and that society's regressive mindset does not influence it. Judges sitting on the chair must keep their societal influence outside the courtroom to the extent possible.

3.0 Conclusion

The Ghost of the Christmas Past made its eerie return. The haunting cycle of repetition of judicial misogyny has claimed another victim. This case highlights the complexities of balancing the accused's rights with the justice system's needs and the victim's well-being. While protecting/enforcing the rights of the accused, it feels like the court has overlooked the repercussions on the victim and society. For any criminal system to work efficiently, it is vital to balance the rights of both the victim and the accused. The judges should not be too hasty and must consider the consequences before making such adverse remarks. Of all the three pillars of democracy, the judiciary is regarded as one of the most intellectual branches, which bears the burden of checking and balancing the other two branches of democracy. The apex court had acknowledged the importance of legal language and, therefore, took a progressive step by releasing a handbook to reduce the gender stereotype words and phrases. The handbook would humanise the language, and as language is an outward expression of inner consciousness, the judicial consciousness could be changed with language change.

Language is the outward medium of emotion inflicted on humans. As a concluding remark, gender sensibilities come with gender itself. The diversification of judges is the need of the hour. It would be a very far-fetched argument that the reservation of women is a fitting resolution to the issue; however, the author argues that women as judicial officers are a remedy, not a cure-all. However, the debate must be settled with a positive solution and not be ignored callously. Also, there is a pressing need to scrutinise the judicial demeanour, which is heavily influenced by different factors such as gender, sex, caste, religion, etc. Political discourse must be kept aloof from judicial ideology and conscience; therefore, the public must have some recourse to exercise their rights impartially and be unbiased.

The author would like to conclude the paper by quoting feminist legal author Lucinda Finley verbatim: *"Language matters. Law matters. Legal language matters."*

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