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When Justice Reinforces Patriarchy: Reflections on Sentencing in Crimes against Women through the Aparna Bhat v. State of Madhya Pradesh Judgement

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Abstract

There have been numerous cases in recent times where a deeply patriarchal and sexist attitude has been portrayed in judicial orders and judgements. Judges have commented on women's character, referred rape cases to mediation, and set ridiculous bail conditions in cases of gender-based violence. Hearing the appeal in one such case where the bail condition was for the complainant to tie a Rakhi on the accused, the Supreme Court collectively addressed this critical issue of gender insensitivity that permeates the Indian judiciary in the landmark case of Aparna Bhat v. State of Madhya Pradesh in 2021. The Court not only dealt with the impugned bail order but also set guidelines for handling cases involving crimes against women. This article aims to critically examine the controversial bail order and the Supreme Court judgement that is bound to be an important precedent for cases of gender-based violence in the times to come.

Keywords: *Gender Bias, Gender-Sensitive Judiciary, Guidelines for Bail, Justice, Rakhi Bail Condition, Secondary Victimisation*

1.0 Introduction

In the infamous Mathura case of the 1970s, the Session judge labelled the victim "a shocking liar" who was "habituated to sexual intercourse" (Tukaram v. State of Maharashtra, 1979). In a gang rape case that took place in 1984, a trial court characterised the victim as "a girl of loose morals" or "such type of a girl" (State of Punjab v. Gurmit Singh, 1996). Decades later, in a 2020 rape case, the Karnataka High Court, while permitting bail, observed that the complainant's explanation of feeling tired and falling asleep after the alleged incident "is unbecoming of an Indian woman" and not in line with how "our women react when they are ravished" (Rakesh B. v. State of Karnataka, 2020). In 2021, the erstwhile Chief Justice of India asked a man accused of raping a minor whether he would marry her (LiveLaw.in, 2021). These examples and several more such instances, be it in the 1900s or 2020s, reflect a particular judicial attitude in the judgements of Indian courts in cases of sexual offences related to women, where archaic, stereotypical and sexist notions about women's behaviour continue to influence judgements in the courtrooms. In a country like India, where patriarchy runs as deep as its cultural and historical roots, this reflects a deeply entrenched cultural bias within the judicial system, where societal expectations and archaic beliefs often overshadow the victim's rights and trauma.

Central to such judgements are the remarks made by the judges during sentence pronouncement. These remarks display their personal opinions, recommendations, biases and stereotypes and often reflect their deep-seated gender bias and paternalistic attitude towards women. These elements of gender bias in the legal system influence judgements and jeopardise the impartiality and credibility of the legal system, which can

result in injustice and secondary victimisation of victims of sexual crimes (Atri, 2022). Therefore, there is a dire need for the judiciary to develop a sensitive approach in dealing with cases concerning offences against women.

The Hon'ble Supreme Court of India has undertaken this critical issue in the case of *Aparna Bhat v. State of Madhya Pradesh* (2021), where Justice A.M. Khanwilkar and Justice S. Ravindra Bhat have not only decided on a highly controversial bail order made by the Madhya Pradesh High Court in *Vikram v. State of Madhya Pradesh* (2020) but also addressed the "entrenched paternalistic and misogynistic attitudes" (Aparna Bhat v. State of Madhya Pradesh, 2021, para. 2) that are the genesis of such sexist orders and judgements when it comes to offences against women.

The objective of this article is to analyse the sentencing remarks made by the Madhya Pradesh High Court in the case of *Vikram* (2020) and the Supreme Court's response in the case of *Aparna Bhat* (2021). The analysis will scrutinise the broader implications of such judgements and explore how insensitive sentencing remarks undermine the seriousness of sexual offences and, in turn, reinforce harmful gender norms. Additionally, the article aims to evaluate the implications of such judgements on the societal perceptions of crimes against women.

2.0 The Case of Aparna Bhat v. State of Madhya Pradesh

The case of Aparna Bhat v. State of Madhya Pradesh (2021) begins with Justice Rohit Arya of the Madhya Pradesh High Court passing a widely criticised bail order in the case of Vikram v. State of Madhya Pradesh (2020). The facts of the case are that the accused person entered the complainant's residence at an unusual hour of 2:30 AM and grabbed her hand in an attempt to outrage her modesty. A case was registered, the investigation was carried out, and a charge sheet was filed with the accused being charged under Sections 452, 354A, 354, 323 and 506 of the Indian Penal Code, 1860. After two months in judicial custody, the accused was granted bail by the High Court with a bail condition that the accused was to visit the complainant on the occasion of *Raksha Bandhan* – a Hindu festival that honourAu: Please provide reference details.s the sister-brother relationship of love and protection – with *Rakhi* and sweets and request her to tie the *Rakhi* band to him as a symbolic vow of protection. Following the customary practices of *Raksha Bandhan*, he was also directed to give Rs. 11,000 to the complainant and ask for her blessings, and provide Rs. 5,000 to her son to buy clothes and sweets.

This ridiculous bail condition attracted widespread condemnation from the legal fraternity and the public. Subsequently, nine female advocates, led by Aparna Bhat, challenged the bail condition ordered by the Madhya Pradesh High Court through a Special Leave Petition submitted to the Apex Court (Upadhyay, 2020). The petitioners not only criticised the order for being a bad precedent but also requested the Supreme Court to issue guidelines to all the High Courts and Trial Courts to avoid making remarks or imposing conditions in cases of sexual assault and rape that "trivialise the trauma undergone by survivors and adversely affects their dignity" (Aparna Bhat v. State of Madhya Pradesh, 2021, para. 1).

2.1 Legal Provisions Involved

Sections 437(3)(c) and Section 438(2)(iv) of the Code of Criminal Procedure, 1973 (hereinafter 'CrPC'), which primarily deals with bail and anticipatory bail, gives courts the discretionary power to grant bail "in the interest of justice" and to impose "such other conditions as it considers necessary" and "as it may think fit". Section 439 of the CrPC further grants the High Court special powers to grant bail. Thus, the Court's authority to impose conditions for bail allows for broad interpretations.

2.2 Judgement

The Supreme Court set aside and expunged the controversial bail condition in the initial judgement. The court found this condition to be completely unacceptable, rightly stating that it transformed "a molester into a brother" (Aparna Bhat v. State of Madhya Pradesh, 2021, para. 33) by judicial order and eroded the seriousness of the offence. The court emphasised that acts that constitute offences under the law cannot be remedied through gestures like apologies, community service, or *Rakhi* tying. They stressed that imposing such bail conditions perpetuates harmful gender stereotypes and undermines the court's neutrality. The court also held that language that undermines the offence and derogates the survivor should be avoided.

The court also provided broader guidelines for handling cases related to sexual offences against women,

which provided guidelines concerning granting bail, as well as guidelines not to make prejudiced remarks regarding women. Guidelines included that the accused should not be directed or permitted to contact the victim, the complainant should be informed when the accused has been released on bail, bail orders and conditions should not have patriarchal undertones, courts should not suggest compromises like marriage or mediation, and judges should not use language that would undermine the victim's confidence or cause re-traumatisation. Furthermore, the courts were also directed not to make prejudiced remarks that suggest that women are weak and need protection, they are incapable of making their own decisions, men are the head of the family and decision makers, women should be submissive and obedient, "good" women are sexually chaste, motherhood is the duty of a woman, or pass any such victim-blaming comments against a woman in cases of sexual violence.

The court also called for mandatory gender sensitisation training for judges, public prosecutors, and lawyers to foster a greater understanding of the issues surrounding sexual offences and to provide legal professionals with the abilities and knowledge to handle such cases with sensitivity and impartiality.

3.0 Deconstructing Sentencing Remarks

In the case of *Vikram v. State of Madhya Pradesh* (2020), the High Court had exercised its discretionary powers while granting bail under section 439 of the CrPC. It is expected that in using such powers, the Court would exercise this discretion in a manner that upholds the law of the land and maintains the dignity of the victim, particularly in sensitive cases involving sexual offences against women. However, in this case, the Court's imposition of tying *Rakhi* as a bail condition is not in line with the legal provisions that empower the Court to impose conditions that it deems "necessary" in the interest of justice." Using a cultural festival to address a criminal case trivialises the gravity of the offence. In doing so, the Court has shifted the focus from justice to social harmony, thereby undermining the judicial process.

Furthermore, *Raksha Bandhan* is a revered Hindu festival with deep cultural roots and emotional value that signifies the pure connection between a sister and her brother, and the tying of the *Rakhi* is a testament to that bond. Therefore, directing the accused to request the complainant to tie a *Rakhi* on his wrist is a request to the complainant to accept the person who attempted to outrage her modesty as her brother. This not only undermines the trauma that she had to go through at the hands of the accused but also places her under unwarranted pressure to participate in a ritualistic gesture of forgiveness. The Court did not even consider whether the victim would want to tie *Rakhi* on the accused, and just blatantly added it as a bail condition. Such a direction is, thus, extremely disrespectful towards the complainant and the religious practice that conveys a universal attachment of love and affection between a sister and her brother and makes a mockery out of both the victim and the ritual.

Instead of addressing the actual issue, the Court has thus caused the secondary victimisation of the complainant by putting her in a position where she would have to face her aggressor and participate in a tradition where she would not only be symbolically forgiving her attacker but also accepting him as her brother. Engaging in such an act would certainly be emotionally and psychologically distressing for the victim and lead to her re-victimisation.

The High Court order also reflects an innate patriarchal view, through which women are not viewed as individuals but reduced to their familial roles as "daughters", "sisters," and "mothers." In this case, the Court subtly positioned the complainant as a "sister" and the accused as the "brother" who has the duty to protect her. Individuals approach the Criminal Justice System to get assistance and remedy with the hope for neutral and unbiased adjudication; however, the Court has shown a paternalistic attitude and reinforced patriarchal societal norms and the stereotype that women are weak beings, dependent on male protection, even if those very men are the ones whom she needs protection from.

This case is only one of many cases where judges have made such insensitive comments. In *Rakesh B. v. State of Karnataka* (2020), the Karnataka High Court, while granting bail to a man charged with rape, made observations about the survivor's conduct, questioning why she went to her office at night and did not object to consuming drinks with the petitioner and passed the remark that her explanation of being tired and falling asleep is "unbecoming of an Indian woman" and not how "our women react when they are ravished." Even in

Vikas Garg v. State of Haryana (2017), the High Court of Punjab, while granting bail to three individuals accused of gang rape, passed derogatory comments on the victim, referring to her "casual relationships", "promiscuous attitude", and "voyeuristic mind." Such comments imply that the survivor's actions somehow contributed to her victimisation, shifting the focus from the offence to morally policing the victim. It also reflects the victim-blaming attitude that permeates our society and reaches the judiciary. Such language is not only insensitive but also perpetuates harmful stereotypes that can deter survivors from reporting sexual assault.

In another case, *Mohan v.* State (2015), the Madras High Court referred a case involving the rape of a minor girl to mediation, observing that it was fit for an attempt at compromise. The Madras High Court suggested mediation again in *Samuvel v. State* (2015), where a minor had been raped and impregnated and justified mediation through the reason that the accused was willing to marry the victim. This approach is extremely problematic and shows the Court's insensitivity in disregarding the gravity of the offence. Prioritising a compromise over the achievement of justice for the survivor shows a neglectful attitude towards the victim's trauma. It undermines her as a passive party to be reconciled with instead of an individual deserving justice.

In a case under the Protection of Children from Sexual Offences (POCSO) Act, 2012, the Calcutta High Court in *Sopikul Sk. @Safikul Islam v State* (2020) granted bail to the accused because the victim had turned 18 years old, and the accused wanted to marry her. Likewise, the Orissa High Court granted interim bail to an accused in *Gyanaranjan Behera v. State of Odisha* (2020) so that he could marry the victim. Even in *Suraj Kushwah v. State of M.P.* (2020), the Madhya Pradesh High Court granted bail to the accused to let him marry the victim. Such decisions portray that the Criminal Justice System, on multiple occasions, has prioritised marriage to lessen the impact of the offence of rape over the physical and emotional well-being of the survivor, who may be pressured into marriage because of the societal stigma that comes with being a rape survivor.

3.1 The Societal Effect – Impact of Judicial Rulings on Society

The judges are not mere pawns of the Criminal Justice System for adjudicating disputes, but also serve as a moral compass that influences public opinions and societal norms. When judges pass judgements that demean women, reinforce outdated patriarchal notions or treat cases of crimes against women lightly, they send a very negative message to the public. Victims of sexual offences may not come forward and report crimes for fear that their experiences will not be taken seriously or that they will face further humiliation. The Courts' remarks on the victim's character, instead of focusing on the horrific act of the accused, can also be reflected in a society where, instead of condemning the crime and the person who commits such crimes, the onus is placed on the victim who is subjected to victim-blaming. Such judgements also reinforce archaic gender roles and undermine women's rights, dignity and autonomy. This can, in turn, slow societal efforts towards achieving gender equality.

Although reformative justice is emphasised to rehabilitate and reform offenders rather than punish them severely, such an approach is inappropriate for offences involving sexual violence against women. If Courts suggest unreasonable solutions between a victim and her harasser instead of passing strict sentences, it normalises and diminishes the gravity of such offences, and it could lead to offenders being more daring in their commission of crimes. The nature of such offences demands a strong legal response to provide justice to the victim and serve as a deterrent for potential offenders.

Furthermore, if the public loses faith in the judiciary's capability to render justice, they may turn to extra-judicial methods to achieve it, which may give rise to vigilantism, the practice of citizens taking the law into their own hands. This may result in violence, weaken the rule of law, and cause chaos in society.

3.2 The Supreme Court's Perspective

The Supreme Court in *Aparna Bhat v. State of Madhya Pradesh* (2021) has holistically addressed these "entrenched paternalistic and misogynistic attitudes" (Aparna Bhat v. State of Madhya Pradesh, 2021, para. 2) that manifest themselves in the orders and judgements of the Court. The Court recognised how gender-based violence is "shrouded in a culture of silence" (Aparna Bhat v. State of Madhya Pradesh, 2021, para. 21) and is fostered by a deeply patriarchal society that tries to limit women to specific stereotypes and resorts to victim-blaming in cases of sexual offences against women. The Court, thus, expressed concern over the prevalence of

stereotypical and misogynistic attitudes in judicial orders and judgements and criticised the use of language that minimises offences against women and trivialises the experiences of survivors. It condemned the imposition of bail conditions that could reduce the gravity of the offence and expose the victim to secondary trauma, and provided guidelines for the kind of bail conditions that should not be imposed. The Court also highlighted the responsibility that the judges bear in avoiding harmful gender stereotypes and cautioned them against "gender stereotyping" and "judicial stereotyping", which occurs when judges assign characteristics to individuals based solely on their belonging to a social group, such as women.

The Apex Court also advocated for greater gender sensitivity within the judicial system and called for training programmes to help judges and lawyers become aware of gender bias and develop greater sensitivity when handling cases of sexual violence. The court noted that language can be a powerful tool and that the words used by judges can significantly impact the perception of justice. The court called for judges to choose their words carefully to ensure that their language does not traumatise or undermine the confidence of survivors.

The court recognised the role of judges as leaders and role models in society and emphasised that judges have a responsibility to promote equality and ensure the safety and security of women who allege sexual offences. The court called for judges to be aware of their influence and to use their position to advocate for a more just and equitable society, particularly for women.

The judgement primarily focuses on the role of the judiciary in ensuring fair treatment of sexual violence survivors. Nonetheless, it could have elaborated on how other important actors in the Criminal Justice System, such as police officers, prosecution and defence advocates, can contribute towards a gender-sensitive and just legal process. While the *Aparna Bhat* judgement provides extensive guidelines and recommendations, the judgement fails to discuss effective mechanisms for accountability if the judges do not adhere to the guidelines provided by the Apex Court in the judgement. It also does not provide specific methods for implementation. Therefore, the impact of the judgement would have been stronger if the guidelines had been supported by proper implementation and accountability mechanisms to ensure the guidelines were followed and a noticeable change was made.

4.0 Concluding Remarks

A victim is victimised not once when the crime is committed but time and again by the Criminal Justice Administration that fails to address their needs (Sharma, 2017). While perpetuating patriarchal notions, passing demeaning comments on a woman's character or trivialising the severity of sexual offences, the judiciary has increased the troubles of an already troubled victim of sexual violence.

However, it is equally important to remember the judiciary's initiatives to safeguard and empower women. Be it in the decriminalisation of adultery or the abolishment of the triple talaq, the Supreme Court has strived to move towards gender equality. *Aparna Bhat v. State of Madhya Pradesh* is another case in which the Supreme Court addressed an important issue that plagues the Indian judiciary. The Supreme Court took a step towards betterment and acknowledged the presence of patriarchal and misogynistic attitudes and harmful gender stereotypes in the orders and judgements made by the court and set guidelines for the Courts to avoid such lapse of judgement. This case serves as a reminder of the judiciary's role in establishing social standards and administering justice.

Thus, to guarantee justice for all, the legal system must move toward a more impartial, sympathetic, and legally sound approach. However, in a country like India, the war against patriarchy is an ongoing effort that requires continuous introspection and reforms, not only in the judiciary but also in society at large.

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