

OPEN LETTER TO HON'BLE JUSTICE KRISHNA S. DIXIT, HIGH COURT OF KARNATAKA AT BENGALURU

Your Lordship,

We the undersigned are taking the liberty of writing to you as Indian citizens and women's rights activists in regard to a decision rendered by the Hon'ble High Court of Karnataka in Crl P No. 2427/2020 in Sri. Rakesh B. V State of Karnataka dated 22/06/2020.

The articulation of this order has deeply disturbed and disappointed those of us who have been working over the past decades to uproot the discriminatory structures of patriarchy deeply embedded into all our social and political systems including the judiciary. The fact of the matter remains that despite all these efforts women who make decisions to live independently and make choices regarding their own lives, including their intimate/ sexual lives are still viewed as women with "loose morals and character". It is one of the many aspects of the patriarchal Indian society that women live with on a daily basis.

We regret to state that it is this very narrow, patriarchal and prejudiced view of women that is seen in the order dated 22/06/2020.

While granting bail, the order mentions the complainant's claim of having slept "after the perpetration of the act" because she was tired was "unbecoming of an Indian woman". "That is not the way our women react when they are ravished," the order laments after making some more unbelievable statements related to the conduct of the woman in which it is indicated that by accompanying the accused to a hotel and not objecting to have "drink with the accused" she in fact is responsible for the assault committed on her person.

We understand that it is within the right of any accused, be he a rapist or murderer to seek bail and whether to grant bail or not is a matter of judicial discretion. However, it is unacceptable that in the process of doing so, instead of looking at the legal merits of granting bail, a woman's conduct has been judged on moralistic and misogynistic grounds that have nothing to do with the law. By doing so we believe that the Order has totally violated constitutional values apart from betraying a nineteenth century Victorian morality that has no place in these times.

Concerned more about the liberty of the rape accused and his health if he is incarcerated in times of the COVID 19 pandemic, it appears that the Order has pre-empted and prejudiced the investigation and trial virtually dismissing the allegations of rape indicating that there is no prima facie evidence based the character assassination of the victim.

Further using term like "ravished" instead of the legal term "sexual assault", blaming the woman for the delay in filing her complaint, although she did it the next morning and casting aspersions on the character of the woman on account of her behavior is part of a continuing historical narrative which has legitimised different forms of violence be it domestic, sexual or economic and granted social if not legal impunity to the perpetrators of this violence.

Reading the order takes us back more than four decades to 1979, when the well respected Jurists and teachers of law Prof Upendra Baxi and Lotika Sarkar among others "took the liberty" of writing an open letter to the Chief Justice of India to focus judicial attention and public debate over a decision rendered by the Supreme Court on September 15, 1978 on the "Mathura case" Mathura was a 15 year old tribal girl, who was gang raped by two policemen within the precincts of a police station in Gadchiroli district Maharashtra in 1972.

The Supreme Court had upheld the Sessions Court order which acquitted the Accused, questioning the "moral" integrity of the 15 year old who they claimed had been "habituated to sexual intercourse" based on little or no evidence save the deeply patriarchal mindsets of the judges and the investigation processes.

This order reflects the same patriarchal, classist and casteist mindset that wrote the Rameeza Bi and Bhanwari Devi judgements in the eighties and nineties. Those were also challenged nationwide and finally led to the recommendations of the Justice Verma Committee brought out in January 2013 after the gang rape and murder of Jyothi Singh in the infamous Nirbhaya case. It has taken long and hard fought struggles to bring about progressive changes in the Criminal Law Amendment Act related to sexual violence. Changes that attempt to put in place a jurisprudence and practice of the law that is more in compliance with gender just constitutional commitments rather than regressive and discriminatory social practices and attitudes.

It is indeed a matter of shame that such an order coming from within the portals of the Karnataka High Court sets the Indian judiciary and the struggle of women's rights movements back by decades.

Your Lordship will be aware that the Justice Verma Committee's report states: "Attitudinal changes to correct the aberration of gender bias have to be brought about in the institutions of governance to improve the work culture, and in civil society to improve the social norms for realizing the constitutional promise of 'equality' in all spheres for the womenfolk." We draw your attention to Article 15 and 15(1) of the Constitution that assures the equality of women and children and also of Article 51A(e) which states that it shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.

We do not accept that guardians of law and order and the Constitution become guardians of women's morality and behaviour, claiming us as "our women" violating our own fundamental right to choose and express our emotions, thoughts, anxieties, fears, opinions in our own way and of our own volition. We will not accept that we are told time and again that "we ask for it" every time we choose to protest the violation of our bodies and our persona. We do not accept victim blaming and victim shaming when we are "punished" for "unladylike" behavior like socialising with men, being out late at night or drinking alcohol. And we can not accept when judicial officers abandon their role as Judges with constitutional obligation and responsibilities but instead express opinions that justify the worst of patriarchal norms and practices.

We call upon you and the higher echelons of the judiciary to take suitable action to self correct this blatant violation of women's rights and dignity apart from the violation of the Constitution. We call upon you to expunge these toxic and misogynistic statements from the order and deliver one that is based on law and not on prejudice. We call upon you to prove that the judiciary infact does stand by the women and all concerned citizens of India in their struggle to build a more equitable, just and democratic society that shows zero tolerance to violence against women and all marginalised genders.

Thanking you,

Yours sincerely

Organisations

1. Stree Jagruthi Samithi
2. Mahila Munnade
3. Gamana Mahila Samuha
4. AIPWA (All India Progressive Women's Association)
5. Sadhana Mahila Sangha

6. PUCL Karnataka
7. AIPF
8. AICCTU
9. Swaraj Abhiyan
10. Karnataka Janarogya Chaluvalli
11. Naavu Bharateeyaru
12. Karnataka Janashakthi
13. Forward Trust
14. Open Space
15. Blank Noise
16. HID Forum
17. Fraternity Movement

Individuals

1. Ramachandra Guha, Historian, Author
2. Arundhati Nag Managing Trustee and Artistic Advisor, Ranga Shankara
3. Dr. Vijaya, Journalist
4. Dr. K. Sharifa
5. Dr E Rati Rao
6. M.D Pallavi, Singer, Actor, Filmmaker
7. Sharda Ugra, Journalist
8. Raghu Karnad, Journalist
9. Ammu Joseph, Journalist and author, Bangalore
10. Tejaswini Niranjana, Writer and Academic
11. Nisha Susan, Writer
12. Laxmi Murthy, Journalist
13. Leo Saldanha, Environment Support Group
14. Anita Cheria, Open Space
15. Kaveri Medappa, Researcher
16. Sudha Nagavarapu, Researcher-Activist
17. Cavery Bopaiah, Economist
18. Jasmeen Patheja, Blank Noise #INeverAskForIt
19. Nandini, Malarvizhi, ActionAid Association
20. Jhansi, Slum Mahila Sanghatane
21. Avani Chokshi, Advocate
22. Swathi Seshadri, Researcher and activist