

An open letter to the Hon'ble Chief Justice of India, Her Ladyship Justice R.Bhanumati, Her Ladyship Justice Indu Malhotra, Her Ladyship Justice Indira Banerjee calling for censuring comments made by Justice Krishna S. Dixit, Judge, Karnataka High Court while granting anticipatory bail in Rakesh versus State of Karnataka (Criminal Petition No.2437 of 2020) on June 22, 2020

I am an advocate practicing in the Supreme Court since the last 28 years. My practice has largely been about representing the under-privileged. Between 2005 and 2011, on my initiative, the Delhi Government had appointed my office to operate "Rape Crisis- a 24 hour multi disciplinary support service including helpline for rape victims in Delhi. Through this process, my office conducted over 1100 trials supporting the prosecution in various district courts in Delhi. This was followed by a detailed research for the Delhi High Court on the conduct of rape cases in trial courts in Delhi. The research findings were submitted confidentially to the High Court in 2010. In the recent past, I was appointed AC in the case of Muzaffarpur Shelter Home by the Hon'ble Supreme Court and appointed by the trial court in the same case to assist the CBI.

Working with victims/survivors of sexual assault, I have confronted various challenges with the police, doctors, executives, prosecutors and of course judges. I have seen that adult women who press charges against men with whom they have been in a relationship in the past, rarely get empathy from the system. However, over the years, one is repeatedly engaged with many judges in the trial court who display enormous sensitivity in conduct of the cases and ensure that the character slaying in the guise of cross-examination does not take place.

I am writing this letter under extreme duress and shock at the manner in which a high court judge has trivialized a heinous crime while granting anticipatory bail to the accused in a case of rape. I felt compelled to write this as the language used and the justification drawn for rejecting the plea of the state is outrageous.

Your Lordship and Ladyships are key custodians of the justice delivery system in the country and the institution you are in, has made huge strides following painstaking efforts by you and your predecessors to erase the ghosts of the Mathura case¹. At this stage I am quoting from one of the judgements passed by My Lord, the Chief Justice in ***Mohd. Iqbal v. State of Jharkhand, (2013) 14 SCC 481*** where sitting with Justice Chauhan His Lordship had observed,

"20. Rape cannot be treated only as a sexual crime but it should be viewed as a crime involving aggression which leads to the domination of the prosecutrix. In case of rape besides the psychological trauma, there is also social stigma to the victim. Majority of rapes are not sudden occurrences but are generally well planned as in this case. Social stigma has a devastating effect on rape victim. It is violation of her right of privacy. Such victims need physical, mental, psychological and social rehabilitation. Physically she must feel safe in the society, mentally she needs help to restore her lost self-esteem,

¹ Tukaram and another versus State of Maharashtra 1979 (2) SCC 143

psychologically she needs help to overcome her depression and socially, she needs to be accepted back in the social fold. Rape is blatant violation of women's bodily integrity."

In June 2020, a judge of Karnataka High Court, while granting anticipatory bail to an accused in a rape case records this:

" c) nothing is mentioned by the complainant as to why she went to her office at night i.e. 11.00PM; she has also not objected to consuming drinks with the Petitioner and allowing him to stay with her till morning: the explanation offered by the complainant that after the perpetration of the act she was tired and fell asleep, is unbecoming of an Indian woman; that is not the way our women react when they are ravished;"

Is there a protocol for rape victims to follow post the incident which is written in the law that I am not aware of? Are "Indian women" an exclusive class who have unmatched standards post being violated? Who are "our women"?

At the outset, I want to clarify that I am not commenting on the merits of the case or the order passed by the learned Judge. The parties who are concerned therein may take appropriate action as they are advised. I do not hold the brief for either side. I am writing this letter in my capacity as a woman, a lawyer who has provided legal aid to thousands of women and children who have been subjected to rape and other forms of sexual assault and as a stake holder in the justice delivery system. In my opinion, these observations reflect misogyny at its worst and since it is from a judge of a Constitutional court, not condemning it will amount to condoning.

As a practitioner, I get appalled when in the mofussil courts not too far from the Supreme Court, disparaging comments are made casually about the conduct of the victims when they are examined in the court in the course of a criminal trial. While one shudders each time this is encountered and beseeches the judge concerned to censure such conduct, what can one do when superior courts exercising supervisory jurisdiction over these courts exhibit these neanderthal opinions about women.

It is well documented that cases of sexual violence are generally under reported and research has shown that women and families do not seek redressal from the criminal justice system primarily to avoid the secondary trauma that they are subjected to in the process of a criminal trial. Reflecting on the trajectory of rape cases globally, it has been commented that preventing secondary trauma for victim-survivors contributes to assisting women victims of rape by enabling them to obtain justice whilst regaining a sense of dignity, autonomy and control². Though the jurisprudence to view the complainant-victim as a key stakeholder was recognized by the Supreme Court in 1995³, it is only since 2009⁴ that specific amendments were made to the

²Overview of the worldwide best practices for rape prevention and for assisting women victims of rape, European Parliament, 2013, <http://www.europarl.europa.eu/studies>

³ Delhi Domestic Working Women's Forum versus Union of India 1995 (1) SCC 14

⁴ Code of Criminal Procedure (Amendment) Act 2008, Act 5 of 2009;

Criminal Procedure Code for victim representation in the criminal trial. Till date, there is an unequal balance tilting towards the alleged perpetrator in all adult sexual violence criminal trials added to faulty investigation and largely insensitive police force.

In this background, with the volume of sexual assault cases one is confronted with against the dismal conviction rates⁵, comments such as the one mentioned above, will deter more women and their families from reporting these cases.

The case in question will meet its own fate depending on the nature of evidence presented. However, isn't there a need to ensure that the observations made therein do not remain for posterity?

I am humbly requesting your Lordship and Ladyships to intervene and issue an advisory to all the High Courts and the subordinate courts in the Country to refrain from commenting on the conduct of the victims, exercise restraint to ensure that their judgements do not reflect stereotypical notions that one may nurse about women, shun misogyny and strive towards enhancing the dignity of women while preserving the sanctity of the judiciary.

I know I am breaking protocol by writing this letter but am hopeful you would appreciate the situation which warranted this unorthodox approach.

Aparna Bhat.