

Indian Courts need to be Gender Sensitised

BY HARSH MAHASETH AND ADITI MISHRA — FEBRUARY 2, 2021



A surprising order from MP High Court has asked an accused in a sexual harassment case to go to the victim's house on Raksha Bandhan so that she can tie a rakhi on him. This trivialises the condition of bail and led Attorney General KK Venugopal to tell a Supreme Court bench that there is a need to educate judges on gender sensitisation as orders "objectifying women is a gross trivialisation of the distress", write HARSH MAHASETH and ADITI MISHRA.

WOMEN in India have been discriminated against from birth. They are compelled to face many pressures and constraints daily to ensure personal growth, freedom and equality, to live a better and dignified life and help towards an equitable and safe society. Gender sensitisation can help dissipate many of the stereotypes. The patriarchal mindset prevalent in Indian culture is the root cause of sex discrimination. With urbanisation and education, this is now changing. However, there is still a long way to go. Owing to social conditioning and the incidence of strict gender equations, the unequal balance continues.

The Supreme Court recently addressed an issue of a Madhya Pradesh (MP) High Court judge allegedly **trivialising the condition of bail** to a molester. Attorney General KK Venugopal told the bench of Justices A.M. Khanwilkar, Dinesh Maheshwari and Sanjiv Khanna that there is a need to educate judges on gender sensitisation as orders "objectifying women is a gross trivialization of the distress".

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Further Abuse

Imposing a condition whereby the accused must go to the complainant's house during **Raksha Bandhan** and ask her to tie a rakhi around his wrist with the "promise to protect her to the best of her ability for all times to come" results in the survivor being further abused in her own house. The said bail condition amounted to a gross trivialisation of the trauma faced by the plaintiff in the present case as Raksha Bandhan is a guardianship festival between brothers and sisters.

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Courts should be mindful of the fact that it is difficult for a victim to lodge an FIR and bring a criminal case against the perpetrator in a case involving sexual assault. While such incidents are generally reported, research has shown that women and their families are reluctant to seek relief because they want to escape the secondary trauma that awaits them in the criminal trial process.

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In its order in **State of the M.P. v. Madanlal**, the MP High Court also erred in enforcing a condition that defeated the very aim of granting bail—ordering the accused to make contact with the victim. By enforcing this condition, the Court negated the very foundation of the prosecution case, which included the accused unlawful entry into the house.



Comply With Judicial Requirements

Any compromise in sexual offence cases has been strongly deprecated by the Supreme Court. Remarks made by the MP High Court should be declared unacceptable by courts as they can affect the victim and society at large. Judicial orders should comply with judicial requirements and measures should be taken to ensure this is not repeated.

The Supreme Court must direct the collection of data to determine the number of female judges in lower courts and tribunals and senior judges in all High Courts. More representation of women at all levels of the judiciary, including the Supreme Court, should be ensured. This initiative must come from the Supreme Court itself as the power of appointment lies almost exclusively with the Court's Collegium.

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If the judiciary is seen as a bastion of entrenched elitism, exclusivity and privilege, unaware of changes in society and the needs of the most disadvantaged, it will not be trusted. Indeed, if judges themselves act in a biased fashion, people will find it difficult to recognise the judiciary as the guarantor of law and human rights. That is why the participation of women is crucial to the judiciary's legitimacy.

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Immediate Intervention

The broad prevalence of orders such as those issued by the MP High Court and other such instances makes it clear that courts need immediate intervention. In cases involving sexual harassment, improving the role of women in the judiciary is of vital significance and can go a long way towards a more equitable and empathetic approach.

Changing a court's long-established demographics will allow it to see itself in a new light, eventually contributing to more modernisation and change. When the composition of a court becomes more complex, traditional procedures become less entrenched; therefore, the old techniques are no longer sufficient as they are mostly based on unstated codes of conduct, or simply inertia.

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Policies promoting gender equality in personal laws are essential to implement and enforce. The emphasis should be on what can be done, what is missing and the relentless attempt to measure the outcomes. Otherwise, this uproar will pass without any substantial improvement.

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Time for Review

A gender viewpoint increases the equity of adjudication, which eventually helps both men and women. It should be elucidated how laws and decisions may be focused on gender perceptions or how they can have a particular effect on women and men. Judges should aim to bring to adjudication a gender viewpoint. This can be an auspicious time for careful review, the implementation and compliance of revised codes of judicial conduct and the training of judges in accordance with clearly defined requirements. The appearance of fresh faces is always the most convincing stimulus to look at new things and make long-overdue improvements.



Source: Indian Express

Judicial independence is respected because it provides the space required for impartial judgement, but this is not guaranteed. Being sworn in as a judge does not magically insulate common people from prejudices and misunderstandings. We are also afflicted with unconscious or subconscious prejudices, as neurologists and psychologists have taught us.

Although there is no quick antidote to this issue with respect to the judiciary, diversifying the life experiences of those who adjudicate cases increases the possibility of checking perceptions and misunderstandings. This can be an auspicious time for careful review, implementing and complying revised codes of judicial conduct and training judges in accordance with clearly defined requirements.

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