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Case Comment: The Overlooked Role of Women in Sexual Offences: Priya Patel v State of Madhya Pradesh & Anr

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INTRODUCTION

Sexual offenses are frequently presented in a gendered narrative that places women as the victims and males as the offenders. Although it is true that this viewpoint is consistent with the majority of cases that have been reported, it ignores a number of additional situations in which a woman may be the perpetrator or a man victim. India, one of the biggest democracies with an organic constitution, strives to give all citizens equal rights regardless of their gender, caste, creed, colour, or other characteristics. Nonetheless, gender parity is not fully provided by the rape legislation.

Under Sections 375¹ and 376² of the Indian Penal Code, only a man can be convicted for committing a rape, and a victim can only be a woman. It stems from the rationale that there is a physically attached to the definition of rape, and it is physically impossible for a woman to

¹ Indian Penal Code 1860, s 375

² Indian Penal Code 1860, s 376

commit the offence of rape. This results from the presumption that rape is an act of sex performed solely to satisfy the sexual desires of the perpetrators. However, there is a growing awareness that sexual assault is not only an act of lust and desire but also a manner of showing dominance or superiority of one caste, class, religion, or community over the other and is an act of power and humiliation.

The newly enacted BNS³ retains the provisions of the IPC on rape and sexual offence. It does not include the recommendations put forth by The Justice Verma Committee⁴ for making such offences gender-neutral. It is interesting to note that the Justice Verma Committee⁵ suggested a victim-neutral position while identifying the perpetrator as a male. The central question this paper seeks to address is whether a woman can be booked for sexual offences. Through **Priya Patel v State of M.P.**⁶, this paper assesses the liability or involvement of women in sexual offences.

FACTS OF THE CASE

Prosecutrix complained, alleging that she was travelling back via Utkal Express after attending a sports meet. When she arrived at her destination, the accused, Bhanu Pratap Patel (husband of the accused-appellant) met her at the railway station and informed her that her father had asked him to pick her up. As the prosecutrix was suffering from a fever, she went home with Bhanu Pratap Patel who committed rape on her.

While the commission of rape was happening, Bhanu Pratap's wife, the appellant, reached there. The prosecutrix requested her wife (the appellant) to save her. Rather than helping her, the appellant slapped the prosecutrix, shut the door, and departed from the scene of the occurrence.

An investigation was conducted and a charge sheet was submitted in response to the complaint that was made. While Bhanu Pratap Patel, the accused, was charged with offences punishable

³ Bhartiya Nyaya Sanhita 2023

⁴ Justice Verma Committee, *Report on Amendments to Criminal Law* (2013)

⁵ *Ibid.*

⁶ *Priya Patel v State of M.P* (2006) 1 SCC(CRI) 96

under Sections 323⁷ and 376⁸ of the IPC, the appellant, as mentioned above, was accused of committing acts punishable under IPC Section 323⁹ and Section 376(2)(g)¹⁰.

The revision filed before the High Court contested the legality of the charges that were brought against the appellant under section 376(2)(g)¹¹ of the IPC. It was contended that a woman cannot be accused of committing rape. The High Court observed that although a woman cannot commit the offence of rape if she aids another person in the commission of the act, the explanation I to 376(2)¹² takes effect, and she can be charged with “gang rape”

Aggrieved by the order passed by the Hon’ble High Court of Madhya Pradesh, a *special leave petition* was filed before the Supreme Court of India under Article 136¹³ of the Constitution, challenging the order. The Hon’ble Supreme Court granted the leave.

ISSUES OF THE CASE

The following are the key issues in the present case:

1. Whether a lady can be prosecuted for the commission of gang rape.
2. Whether the woman (accused-appellant) can be booked for the abetment of the crime under section 108¹⁴ of IPC.

ARGUMENTS

Arguments put forth by the appellant: Learned counsel for the appellant contended that the High Court had completely missed the essence of Sections 375¹⁵ and 376¹⁶ of IPC. It was submitted by the counsel for the appellant that a woman cannot commit rape under the

⁷ Indian Penal Code 1860, s 323

⁸ Indian Penal Code 1860, s 376

⁹ Indian Penal Code 1860, s 323

¹⁰ Indian Penal Code 1860, s 376(2)(g)

¹¹ *Ibid*

¹² Indian Penal Code 1860, s 376(2)

¹³ Constitution of India 1950, art 136

¹⁴ Indian Penal Code 1860, s 108

¹⁵ Indian Penal Code 1860, s 375

¹⁶ Indian Penal Code 1860, s 376

definition of section 365¹⁷ of the IPC; she can certainly not be booked for the offence of ‘gang rape’, and explanation I to section 376(2)¹⁸ has no application or/and relevance.

Arguments put forth by the respondent: In contrast, the state's counsel supported the MP High Court's ruling. Additionally, it was contended that even if, for the sake of argument, it is conceded that the appellant cannot be prosecuted for committing an offence punishable under Section 376(2)(g)¹⁹, she can undoubtedly be tried for committing the offence of abetment.

OBSERVATION & JUDGEMENT

It is evident from a brief read of section 375²⁰ of the IPC that only men are capable of committing rape. Certain extreme rape cases, such as sexual assault committed by a person in a position of trust or by a person of authority or by a near relative, fall under specific categories listed in Section 376(2)²¹ that carry more severe penalties. One such category includes ‘gang rape’. Subsection (2)(g)²² deals with the gang rape clause. According to the language of sub-section (2)(g)²³, whoever is found guilty of gang rape will be subject to punishment. The explanation only makes it clear that when one or more persons acting in furtherance of their ‘*common intention*’ rape a woman, each such person shall be ‘*deemed to*’ have perpetrated gang rape within sub-section (2)(g)²⁴. That cannot make a woman guilty of the commission of rape.

The Supreme Court ruled that rape can only be committed by males, based on Section 375²⁵ of the Indian Penal Code. However, Section 376(2)(g) states that if one or more persons act in furtherance of their common intention to rape, they must be deemed to have committed rape. This rule is based on common intention, which refers to pre-planned arrangements or prior meetings of minds. It is conceptually inconceivable as women are not physically capable of

¹⁷ Indian Penal Code 1860, s 365

¹⁸ Indian Penal Code 1860, s 376(2)

¹⁹ Indian Penal Code 1860, s 376(2)(g)

²⁰ Indian Penal Code 1860, s 375

²¹ Indian Penal Code 1860, s 376(2)(g)

²² *Ibid*

²³ *Ibid*

²⁴ Indian Penal Code 1860, s 376(2)(g)

²⁵ Indian Penal Code 1860, s 375

committing rape. Thus, the hon'ble supreme court *opined* that a woman cannot be held liable for gang rape.

For the residual issue of abetment, the court believed that as this aspect was not dealt with in trial or high court, if in law it is permissible and the fact supports such course to be taken, to follow the due process established by law, it is for the concerned court to act by the law. Thus, the court had no opinion on the said issue.

ANALYSIS

The term *common intention* has been dealt with in *section 34*²⁶ of the IPC. Common intention refers to action taken together and inherently requires a pre-arranged plan, a meeting of minds and some involvement in the action.

*Ashok Kumar v State of Haryana*²⁷ dwells on the explanation I to section 376(2)(g)²⁸. The court observed that it may not be necessary to produce evidence of the complete act of rape as the provision embodies a principle of joint liability, and the essence of that liability is the existence of common intention. A similar view was taken in *Bhupinder Sharma v State of Himachal Pradesh*²⁹ concerning rape, and common intention which cannot be ascribed to a woman because she is not physically capable of committing rape. Thus a woman cannot be booked for the commission of rape.

In the *State of Rajasthan v Hemraj & Anr*,³⁰ the Supreme Court ruled that a woman present for gang rape cannot be held guilty of rape since she did not have the same intention. According to sections 375 and 376 of the IPC, only men are capable of committing rape; thus, women cannot be found guilty of the offence of gang rape.

²⁶ Indian Penal Code 1860, s 34

²⁷ *Ashok Kumar v State of Haryana* (2003) 2 SCC 143

²⁸ Indian Penal Code 1860, s 376(2)(g)

²⁹ *Bhupinder Sharma v State of Himachal Pradesh* (2003) 8 SCC 511

³⁰ *State of Rajasthan v Hemraj & Anr* (2009) 12 SCC 403

The learned counsel for the state, while supporting the High Court's decision, submitted that while a woman cannot commit rape, she can facilitate it. According to the explanation I of section 376(2)³¹ IPC, a woman shall be prosecuted for a gang rape if she facilitated it.

Judicial assessments of Indian rape laws reflect a more conventional skill set, wherein rape is not only viewed as an assault on a woman's body but also on her decency, virginity, and dignity.

Justice Krishna Iyer in *Rafiq v State of UP*³² observed that "*when a woman is enraptured in rape, what is forced is not just physical wound, but the deep perception of some deathless guilt or humiliation.*"

The United States Court of Appeals in *People v Liberta*³³ stated that rape is not just a sexual act without the consent of one party, but it is a violent act that violates the bodily autonomy of the victim and causes severe, long-lasting physical and mental harm.

With spreading consciousness, it is visible that sexual aggression is not just an act of lust, but it is an act of ascendancy over one's caste, creed, gender, group, etc., and to implement power over another to cause disgrace. Although rape is commonly perceived as a physical act, it is important to understand that the crime involves much more than just a physical violation; it also involves severe psychological suffering. Even though it may not be possible for a woman to physically commit rape, she can surely play an integral component in assisting or facilitating the act. Her involvement, whether by force, participation, or abetment, contributes to the victim's suffering from extreme mental agony, rendering her ethically and legally responsible for the crime's wider effects.

In *Sudhanshu Shekhar Sahoo v State of Orrisa*³⁴, the court stated that circumstances vary for each case and various psychic factors, social conditions and people's lifestyles may fluctuate. These varied circumstances can influence a person's mindset. In the present case, the facts

³¹ Indian Penal Code 1860, s 376(2)(g)

³² *Rafiq v State of U.P* (1981) 1 SCR 402

³³ *People v Liberta* [1984] 64 N.Y.2d 152

³⁴ *Sudhanshu Shekhar Sahoo v State of Orrisa* (2002) 10 SCC 743

corroborate that the accused aided in the commission of rape, which is sufficient for constituting “*common intention*” under section 34³⁵ of IPC.

Furthermore, it was argued that even if it is agreed for the sake of argument that the appellant cannot be punished for committing an offence under Section 376(2)(g)³⁶, it is clear from the facts that she can undoubtedly be prosecuted for committing the crime of abetment under section 108³⁷ of IPC. In *R v Robinson*³⁸ stated, “*A woman can be convicted as an aider or abettor to the offence of rape*”.

CONCLUSION

Although the Supreme Court's decision was lawful when it came to applying the law as it was before the 2013 amendment, it was not as sound when it came to interpreting the law after the amendment. After the 2013 revision, gang rape was defined as a separate crime under Section 376D³⁹ and the word “person” was used in its definition. Men and women are included in the definition of “person” under the Indian Penal Code⁴⁰. Consequently, women who engage in gang rape may still be held accountable under the post-amendment legal system, and this more expansive interpretation needs to be appropriately acknowledged.

In light of the amended provisions, the Allahabad High Court in *Suneeta Panday v State of UP*⁴¹ has noted that although a woman cannot commit the crime of rape, she may be punished for “gang rape” under *Section 376D* of the IPC if she assists a group of individuals in carrying out sexual activity.

With due respect, the Supreme Court had fallen short in the interpretation of the law in *Priya Patel v State of Madhya Pradesh*⁴² and established a wrong precedent to be followed. The High

³⁵ Indian Penal Code 1860, s 34

³⁶ Indian Penal Code 1860, s 376(2)(g)

³⁷ Indian Penal Code 1860, s 108

³⁸ *R v Robinson* [2011] EWCA Crim 1916

³⁹ Indian Penal Code 1860, s 376D

⁴⁰ Indian Penal Code 1860

⁴¹ *Suneeta Panday v State of U.P.* (2023) LiveLaw (AB) 57

⁴² *Priya Patel v State of M.P.* (2006) 1 SCC (Cri) 96

Court of Meghalaya⁴³ and the Hon'ble Court in *Kamaljit Kaur v the state of Punjab*⁴⁴ granted bail to a woman accused of gang rape by following the case of *Priya Patel* as a precedent.

Additionally, The *Law Commission's 172nd report*⁴⁵ suggested that the statute against rape should be gender-neutral for both the victim and the perpetrator. The *Justice Verma committee's*⁴⁶ report suggested a gender-neutral law for the victim and a gender-specific statute for the perpetrator. But none of them was included in the legislation, and the position regarding gender neutrality in rape laws remains the same in the newly enacted law, i.e. Bharatiya Nyaya Sanhita⁴⁷.

⁴³ *Sopiwara Begum v State of Meghalaya* (2024) 1 GLT 474

⁴⁴ *Kamaljit Kaur v State of Punjab* (2024) PHHC 024358

⁴⁵ Law Commission, *Review of Rape Laws* (Law Com No 172, 2000)

⁴⁶ Justice Verma Committee, *Report on Amendments to Criminal Law* (2013)

⁴⁷ Bharatiya Nyaya Sanhita 2023