

## Victim Characterisation in Sexual Offences

*Rizwan*, accused of raping a minor girl, was allowed bail by the Allahabad High Court on the basis of a medical examination report indicating that the victim was habitual to sex. Upon appeal, the Supreme Court, in *Abdul Sattar v The State of Uttar Pradesh & Anr.* clarified that characterisation of the victim's sex life and them being habitual to sex is no defence to the offence of rape. Similar legal questions have been considered in cases such as *State of Maharashtra v. Madhurkar Narayan Mardikar*<sup>1</sup> where the court opined that even a woman of easy virtue is entitled to privacy and protection of law and that it is not open to any and every person to violate her person as and when they wish.

Several judicial pronouncements and reforms in criminal provisions have been brought in since *Tukaram*<sup>2</sup> but judges have repeatedly indulged in victim blaming and have decided cases sympathetically based on a supposed 'immoral character' of the victim. This victim blaming which has almost become a heuristic in decisions of lower courts, and surprisingly in the High Court in this instance, takes different forms; judges consider whether the victim is habitual to sex, whether the victim was dressed or acted 'provocatively' or the character of the victim (whether they are frequent to alcohol or drugs). None of these grounds have a nexus with the fact that the alleged sexual act was done without the consent of the victim.

The abolition of the two finger test was one of the first steps towards removing this bias from judicial consideration. In *Tukaram*, the sessions court considered that the victim was habitual to sex and painted the picture of a promiscuous woman so as to buttress its decision. The court described Mathura as a "shocking liar" whose testimony is "riddled with falsehood and improbabilities" and proceeded to further discredit her statements based on this characterisation.

In the interim bail order of *Vikas Garg v State of Haryana, Karan v State of Haryana, Hardik v State of Haryana*<sup>3</sup>, the court considered the following factors in granting bail to the three accused; (a) that upon suggestion from the accused, the victim accepted purchasing a sex toy, (b) condoms were found in her hostel room, (c) she smoked cigarettes and consumed marijuana. The court then went on to say that the entire incident was merely a "misadventure stemming from a promiscuous attitude and voyeuristic mind". Not only does the court spend a majority of the judgement describing the promiscuity of the victim and degrading her moral fabric but the court uses some of these arguments to discredit her stance that she did not consent to the sexual acts.

These cases highlight the misogynist bias that judges have when deciding cases of rape and other sexual offences. Such practices, of assassinating the character of the victim by making her seem promiscuous or 'immoral' as it were, should be done away with. The moral fabric of society in the ruins of patriarchy make it impossible to rule out such biases entirely but judgements such as the one seen in *Abdul Sattar* and also *State of Maharashtra v. Madhurkar Narayan Mardikar* attract paramount importance in directing society and the judiciary to a more holistic and less misogynist frame of mind.

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<sup>1</sup> (1991) 1 SCC 57

<sup>2</sup> AIR1979SC185, 1978CriLJ1864, (1979)2SCC143, (1979)SCC(Cri)381, [1979]1SCR810

<sup>3</sup> Cr. M. No.23962 of 2017 in Cr.A.No.S-2396-SB of 2017