

A Feminist Critique of Judicial Insensitivity in Sexual Assault Cases

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Abstract: *This paper examines judicial insensitivity in the adjudication of sexual offences in India and considers how patriarchal assumptions can contribute to secondary victimization within judicial proceedings. Using qualitative legal analysis, it examines statutory principles, judicial decisions, and institutional guidance, with particular attention to *Aparna Bhat v. State of Madhya Pradesh* and *Akash v. State of U.P.* The analysis identifies recurring concerns involving stereotypical assumptions, inappropriate bail conditions, restrictive interpretations of sexual violence, and tensions between subjective judicial morality and constitutional guarantees of equality and dignity. It further highlights an implementation gap between higher judicial directives and adjudicative practices. The paper argues that meaningful reform requires continuous gender-sensitization training, stronger institutional accountability, and wider adoption of trauma-informed judicial practices consistent with Articles 14 and 21 of the Constitution of India.*

Keywords: Judicial Insensitivity; Sexual Violence; Gender Stereotypes; Secondary Victimization; Constitutional Morality; Trauma-Informed Jurisprudence.

1. Introduction

1.1 Background

The adjudication of sexual violence in India exists at the complex intersection of statutory reform and socio-cultural enforcement. While criminal legislation has periodically evolved to broaden definitions of sexual assault and strengthen evidentiary protections, the judicial forum tasked with enforcing these statutes remains heavily influenced by patriarchal norms.

1) Historical Context

Historically, Indian sexual offence jurisprudence inherited Anglo-Saxon common law paradigms that viewed rape primarily as a crime against a woman's "virtue," "chastity," or family honour, rather than a fundamental violation of individual bodily autonomy and personal liberty. Under the traditional framework of the Indian Penal Code (IPC), 1860, legal determinations of consent relied on physical resistance, visible bodily trauma, and the survivor's past sexual conduct. Despite landmark statutory interventions, such as the Criminal Law (Amendment) Act of 1983 following the *Mathura Rape Case* (*Tuka Ram v. State of Maharashtra*, 1979) and the Criminal Law (Amendment) Act of 2013 following the *Nirbhaya* tragedy-discretionary judicial reasoning in trial and appellate courts has repeatedly reverted to patriarchal tropes.

2) Core Definitions & Key Terms

- **Judicial Patriarchy & Insensitivity:** The explicit or implicit operation of gendered assumptions, stereotypes, and socio-cultural prejudices within judicial reasoning, resulting in biased orders, inappropriate bail conditions, and procedural apathy toward survivors.
- **Secondary Victimization (Procedural Trauma):** The psychological and emotional harm inflicted upon a survivor by the legal system during investigation and trial through hostile cross-examination, character

assassination, invasive forensic tests, or trivializing judicial comments.

- **Constitutional Morality vs. Judicial/Socio-Cultural Morality:** The doctrinal conflict between upholding fundamental constitutional guarantees-specifically Articles 14 (Equality before Law) and 21 (Right to Life and Personal Liberty)-and the subjective, moralistic value judgments expressed by individual judges.
- **The "Ideal Victim" Archetype:** A socio-legal myth assuming that a genuine sexual assault survivor must immediately resist physically, suffer visible injuries, exhibit overwhelming emotional distress, and possess an unblemished moral background.

2. Existing Evidence (Literature Survey)

Academic literature examining judicial discourse in sexual offence trials broadly falls into three thematic categories:

- **Socio-Legal Critiques of Consent and Morality:** Feminist legal scholars (such as Flavia Agnes, Ratna Kapur, and Ved Kumari) have extensively documented how judicial reasoning transforms the statutory test of non-consent into a trial of the survivor's moral character. Literature highlights how courts historically conflated passive submission or absence of physical injury with voluntary consent.
- **Judicial Compromises and Extralegal Remedies:** Scholars and legal commentators analyzing bail jurisprudence have highlighted the rise of "patriarchal compromises"-where courts order mediation, suggest marriage between the accused and survivor, or mandate gendered rituals (such as tying a *Rakhi*) as conditions for bail or sentence mitigation. Researchers emphasize that such orders violate statutory prohibitions against compounding non-compoundable, grave sexual offences (*State of M.P. v. Madanlal*, 2015).
- **Institutional Interventions vs. Judicial Practice:** Recent literature evaluates top-down judicial reforms, specifically analyzing the Supreme Court's mandatory directions in

Aparna Bhat v. State of M.P. (2021) and the Chief Justice of India's *Handbook on Combating Gender Stereotypes* (2023). While scholars praise these measures as institutional recognition of implicit bias, legal research indicates a persistent disconnect between Supreme Court mandates and ground-level adjudicative practices in subordinate and High Courts.

3. Research Gap

While existing literature thoroughly critiques historical statutory defects and general gender biases within the Indian judiciary, two significant gaps remain unaddressed:

- 1) **Translational Failure of Institutional Reforms:** There is limited scholarship evaluating why mandatory Supreme Court guidelines (such as *Aparna Bhat*) and administrative tools (such as the 2023 Gender Stereotypes Handbook) repeatedly fail to prevent trial and High Courts from employing hyper-technical or patriarchal reasoning in ongoing cases.
- 2) **Analysis of Recent Judicial Regression:** Current legal scholarship has not yet fully integrated or analyzed the most recent manifestations of judicial insensitivity—such as the Allahabad High Court's ruling in *Akash & 2 Ors. v. State of U.P. & 2 Ors.* (March 2025), where severe physical assault and unclothing of a minor was narrowly misconstrued as falling short of an “attempt to rape”.

There is a critical need for an updated, synthesized analysis connecting historical character assassination with contemporary judicial reductionism to demonstrate that institutional patriarchy remains an active, evolving crisis in Indian courtrooms.

4. Objectives of the Research

This research paper aims to accomplish the following specific objectives:

- 1) **Expose Systemic Bias:** To deconstruct how judicial reasoning in sexual offence trials continues to enforce the “ideal victim” archetype and facilitate character assassination during courtroom proceedings.
- 2) **Critique Judicial Orders:** To analyze landmark and recent case laws—specifically *Aparna Bhat v. State of M.P.* (2021) and *Akash & 2 Ors. v. State of U.P.* (2025)—to demonstrate how judicial insensitivity manifests through improper bail conditions and restrictive interpretations of sexual violence.
- 3) **Evaluate Constitutional Alignment:** To assess the tension between subjective “judicial morality” and mandatory “constitutional morality” under Articles 14 and 21 of the Constitution of India.
- 4) **Propose Reformatory Frameworks:** To formulate actionable recommendations for institutional accountability, mandatory gender-sensitization in judicial training institutes, and enforcement of trauma-informed trial procedures.

5. Scope & Limitations

- 1) **Geographical & Jurisdictional Scope:** This research focuses strictly on the criminal justice system of India, analyzing judgments, administrative handbooks, and

procedural mandates originating from the Supreme Court of India, state High Courts, and subordinate trial courts.

- 2) **Substantive Scope:** The paper examines offences involving sexual assault, rape, and outraging modesty under criminal statutes (including statutory provisions of the Indian Penal Code, 1860, Bharatiya Nyaya Sanhita, 2023, and Protection of Children from Sexual Offences Act, 2012).
- 3) **Limitations:** This paper relies primarily on qualitative legal analysis of reported case law, judicial orders, statutory provisions, and scholarly articles. It does not include empirical field surveys or primary interview data from trial court participants.

6. Results and Discussion

1) Primary Structural Typologies of Judicial Insensitivity
The qualitative synthesis of landmark and contemporary legal precedents reveals four primary categories through which judicial insensitivity manifests in Indian courtrooms:

- **Extralegal Compromises and Bail Conditions:** Directing an accused to marry the survivor, tie a *Rakhi*, offer monetary settlements, or perform gendered rituals. As illustrated in *Aparna Bhat v. State of M.P.* (2021) and *State of M.P. v. Madanlal* (2015), this structural manifestation trivializes non-compoundable grave crimes into private family disputes and forces unwanted contact between survivors and perpetrators.
- **Hyper-Technical Reductionism:** Artificially separating overt acts of sexual aggression from the legal threshold of an “attempt” by misinterpreting preparation versus execution. Representative of *Akash & 2 Ors. v. State of U.P.* (2025), this creates an arbitrary high threshold for proving attempt to rape while ignoring the survivor's trauma and immediate physical violation.
- **Character Assassination and Moral Assessment:** Evaluating a survivor's clothing, drinking habits, post-assault demeanor, or delay in reporting to judge the presence of consent. Seen historically in *Tuka Ram v. State of Maharashtra* (1979) and *State of H.P. v. Mango Ram* (2000), this practice shifts judicial scrutiny away from the perpetrator's criminal conduct and onto the survivor's moral character.
- **Forensic and Procedural Invasiveness:** The persistence of unscientific, illegal medical procedures and aggressive, hostile cross-examinations during trial. Reaffirmed in *State of Jharkhand v. Shailendra Kumar Rai* (2022), these invasive practices violate bodily autonomy and inflict severe secondary procedural trauma on survivors within the courtroom.

2) Results

The comparative qualitative analysis yields three core findings regarding how courts handle sexual offence trials:

- **Persistence of Patriarchal Compromises in Bail Jurisprudence:** Despite clear statutory declarations under procedural law that offences such as rape are non-compoundable crimes against society, subordinate and appellate courts repeatedly attempt to arbitrate settlements between accused individuals and survivors. The data highlights a routine misuse of judicial discretion under bail provisions, where judges impose conditions grounded in traditional gender roles (e.g., ordering the accused to

pay for wedding expenses, seek forgiveness, or submit to symbolic familial relationships like tying a *Rakhi*).

- **Misapplication of Legal Thresholds for “Attempt to Rape”:** The examination of recent judicial orders reveals a persistent tendency in lower adjudicative bodies to apply hyper-technical tests to sexual violence. Rather than evaluating the holistic sequence of an assault, courts frequently split a continuous act of sexual aggression into isolated steps. For example, in *Akash & 2 Ors. v. State of U.P.* (2025), where an accused unclad a minor and dragged her under a culvert, the High Court narrowly categorized the act as falling short of an “attempt” due to the absence of explicit physical penetration attempt. This demonstrates a recurring judicial error: treating the lack of completed penetration as a ground to reduce severe sexual assault to minor offences.
- **The Disconnect Between Supreme Court Directives and Lower Court Practices:** The results demonstrate a structural implementation gap. While the Supreme Court of India has progressively issued binding directions (e.g., the 2021 *Aparna Bhat* guidelines and the 2023 *Handbook on Combating Gender Stereotypes*), lower courts continue to produce judgments containing stereotyped language, character evaluation, and moral lecturing. The institutional intervention mechanisms currently in place lack automatic procedural sanctions, allowing insensitive reasoning to persist until higher courts intervene *suo motu* or through appellate review.

3) Discussion

a) Attaching Meaning: The Courtroom as a Site of Secondary Assault

The findings confirm the central thesis of this research: judicial insensitivity is not an isolated error of legal interpretation, but an institutionalized culture of “secondary assault”. When a judge evaluates a survivor’s credibility through the lens of the “ideal victim” archetype, including expectation of visible injuries, immediate reporting, or weeping demeanor—the legal system effectively shifts the burden of proof from the perpetrator’s criminal actions to the survivor’s moral standing. This practice transforms cross-examination into a mechanism of character assassination, violating the survivor’s fundamental right to dignity under Article 21 of the Constitution of India.

b) Deconstructing *Aparna Bhat* and *Akash v. State of U.P.*

Comparing *Aparna Bhat v. State of M.P.* (2021) and *Akash & 2 Ors. v. State of U.P.* (2025) illustrates the ongoing struggle for constitutional morality in Indian courts:

- **The *Aparna Bhat* Corrective:** The Supreme Court recognized that asking a victim to tie a *Rakhi* to her molester objectifies the survivor and transforms a serious criminal offence into a negotiable family matter. By declaring such bail conditions illegal, the Court sought to dismantle the judicial tendency to play mediator.
- **The *Akash* Regression:** Despite the binding mandate of *Aparna Bhat*, four years later in *Akash*, the Allahabad High Court demonstrated how judicial apathy can manifest as hyper-technical legal reasoning. By treating the stripping and dragging of a minor girl as mere “preparation” rather than “attempt,” the court exposed a

profound lack of trauma-informed understanding. The Supreme Court’s immediate intervention underscored that such judicial reasoning is “inhuman” and directly undermines the rule of law.

c) Constitutional Morality vs. Judicial Morality

The results demonstrate a fundamental conflict between **Judicial Morality** (the personal, socio-cultural, and patriarchal beliefs held by individual judges) and **Constitutional Morality** (the objective enforcement of equality, bodily autonomy, and human dignity under Articles 14 and 21). When judges substitute statutory standards with their personal moral compass, they subvert the rule of law.

Eradicating this systemic bias requires moving beyond voluntary handbooks or post-facto higher court stays. Institutional reform must mandate compulsory, continuous gender-sensitization training across judicial academies, establish strict procedural penalties for using stereotyped language in judgments, and embed trauma-informed courtroom practices into the core of criminal jurisprudence.

7. Conclusion and Recommendations

1) Reiterating the Objective

This study concludes that judicial insensitivity in sexual-offence adjudication cannot be understood solely as isolated interpretive error. The cases examined indicate continuing tensions between statutory and constitutional protections on the one hand and stereotypical or overly restrictive judicial reasoning on the other. *Aparna Bhat* demonstrates the judiciary’s institutional capacity to reject gendered assumptions, while the subsequent controversy examined in *Akash* illustrates the continuing challenge of translating such principles into consistent adjudicative practice. The protection of equality, dignity, and bodily autonomy under Articles 14 and 21 therefore requires not only progressive precedent but effective implementation. Continuous gender-sensitization, trauma-informed judicial training, careful monitoring of bail conditions, and consistent avoidance of gender stereotypes can strengthen this implementation. Future empirical research examining trial-level practices would further clarify the extent to which institutional reforms have influenced everyday adjudication.

2) Review of Key Findings

Through a qualitative examination of legal frameworks, institutional directives, and landmark case law, this paper arrived at four pivotal findings:

- Persistence of Patriarchal Bail Jurisprudence:** Lower appellate and subordinate courts frequently misuse judicial discretion under bail provisions to enforce extralegal compromises—such as directing accused individuals to marry survivors or perform gendered rituals—effectively treating grave, non-compoundable public crimes as negotiable private disputes.
- Failure of the “Ideal Victim” Archetype:** Judicial reasoning in trial courtrooms continues to evaluate survivor credibility based on outdated moral expectations, character assessments, clothing choices, or lack of immediate physical resistance, turning cross-examination into a site of secondary victimization.
- Hyper-Technical Reductionism in Assault Tests:** As

highlighted in contemporary judicial orders, courts repeatedly misapply the legal distinction between “preparation” and “attempt” in sexual offences, improperly compartmentalizing continuous acts of sexual violence and setting arbitrarily high thresholds for proving attempt to rape.

- d) **The Implementation Gap in Institutional Reforms:** Despite clear, binding directions issued in *Aparna Bhat v. State of M.P. (2021)* and the Supreme Court’s *Handbook on Combating Gender Stereotypes (2023)*, a significant translational divide persists between top-down constitutional mandates and ground-level adjudicative practices in trial and High Courts.

3) Broader Implications of the Study

- a) **Legal and Constitutional Implications:** When judges substitute statutory requirements with personal, socio-cultural morality, they undermine the foundational principle of **Constitutional Morality**. Systemic judicial insensitivity weakens public trust in the rule of law, signals to perpetrators that sexual violence carries negotiable consequences, and discourages survivors from seeking formal legal redress out of fear of character assassination and procedural violence.
- b) **Societal and Institutional Implications:** The findings demonstrate that progressive criminal legislation (such as amendments to the Indian Penal Code, Bharatiya Nyaya Sanhita, or POCSO Act) is functionally ineffective if the adjudicative machinery remains steeped in patriarchal biases. Judicial insensitivity reinforces broader societal victim-blaming, institutionalizes gender inequality within state mechanisms, and transforms courtrooms from spaces of constitutional protection into forums of state-sanctioned retraumatization.

4) Recommendations and Future Scope

- a) **Actionable Institutional Recommendations**
- **Mandatory and Continuous Gender-Sensitization Modules:** State Judicial Academies must integrate mandatory, trauma-informed, and ongoing gender-sensitization courses into initial and mid-career judicial training for all trial and appellate court judges.
 - **Procedural Sanctions for Misogynistic Language:** The Supreme Court and State High Courts should establish administrative mechanisms to issue adverse remarks, disciplinary audits, or procedural sanctions against judicial officers who routinely employ stereotyped, moralistic, or gender-biased language in orders and judgments.
 - **Strict Enforcement of Trauma-Informed Courtroom Protocols:** Trial courts must strictly enforce existing statutory protections-including mandatory *in-camera* proceedings, protection of survivor identity, screens during cross-examination, and judicial prohibition of offensive, intrusive lines of questioning by defense counsel.
 - **Institutional Monitoring of Bail Conditions:** High Courts should create oversight committees to periodically audit bail orders passed in sexual offence cases to ensure strict compliance with the prohibitions set forth in *Aparna Bhat*.

b) Scope for Future Research

- **Empirical Studies in Subordinate Courts:** Future research should expand into empirical, field-based studies examining trial court transcripts and verbatim cross-examinations across different districts to quantify the prevalence of character assassination.
- **Impact Assessment of the 2023 Gender Stereotypes Handbook:** Long-term academic studies are required to track judgments passed post-2023 to measure whether the Supreme Court’s handbook has caused a statistically significant reduction in biased legal language.
- **Comparative South Asian Jurisprudence:** Research can explore how neighboring South Asian jurisdictions handle judicial sensitization, rape-shield laws, and trauma-informed judicial training to build a regional framework for gender-just adjudication.

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