

Centring Women's Experience

The recent court verdict is a legal recognition of "gendered power imbalance."

Sneha Visakha writes:

The trial court verdict in the criminal defamation case filed against Priya Ramani by M J Akbar has been discussed widely for its line of reasoning and relevance, especially in the context of the #MeToo movement. The case pertained to Sections 499 and 500 of the Indian Penal Code, under which Ramani was accused of criminal defamation, the basis of which was a *Vogue* article she wrote titled "To the Harvey Weinsteins of the World," and a subsequent tweet identifying Akbar in the initial sections of the article.

In the process of acquitting Ramani, the judge opined that a woman speaking up about sexual violence cannot be punished since "the right of reputation cannot be protected at the cost of the right of life and dignity of woman" as guaranteed under Articles 21 and 14 of the Constitution of India. This is an extremely important pronouncement with significant moral implications for the legal recognition of gendered power imbalances in the country.

At the outset, it must be noted that defamation laws have been used to pursue SLAPPS (Strategic Litigation Against Public Participation), where parties with superior resources use the high cost of litigation to perpetrate a "chilling effect" on parties with lower resources from engaging in public discourse. In the context of allegations of sexual harassment, criminal defamation has been the tool of choice for powerful men in different countries to file cases against the victims of sexual harassment who may have named them, especially in the aftermath of #MeToo. This turns the tables on the victims, putting them on the stand and requiring them to defend themselves at the threat of criminal punishment, including imprisonment. Other countries, including England, have long since abolished criminal defamation from their statute books.

In order to recognise the importance of this judicial pronouncement that refuses to place a man's reputation above a woman's right to life and dignity, one must examine the history and evolution of criminal jurisprudence on crimes against women. It is essential to contend with the discursive subject (one that is formed and produced in different discourses, especially the criminal justice discourse on sexual abuse) of the "lying woman." Sociologists and feminist legal scholars, in their research, trace the way criminal trials medicalise consent and falsity in cases of sexual violence that have contributed to construct this discursive figure.

The basis for this is rooted in colonial history, with British laws being imposed in India along with their common assumptions around sexual violence that most such complaints are false, and

women's bodies must bear marks of stiff resistance to evidence any violation. Therefore, medical jurisprudence enabled the colonial state to "circumvent oral testimony of the woman to locate truth in her body," despite and often to spite her own account. As feminist legal scholars point out, contemporary discussions of trauma reside alongside deeply sexist, casteist, and colonial constructions of the lying, colonised female subject in the Indian criminal jurisprudence.

The complicity of the medical and legal establishments in constructing "falsity" as the normative position in criminal jurisprudence creates a situation where sexual violence becomes a moral problem that taints the victim significantly more than the perpetrator. The perpetrator instead becomes an upstanding man of stellar reputation who cannot be besmirched. This ideology is deeply entrenched. Even in this case, Ramani, in the tweet central to this case, states that she did not name Akbar earlier because, "he did not *do* anything, lots of women have worse stories about this predator." This did not mean that the suspected offender did not sexually harass her, but it is emblematic of the normalisation of violence against women and the way women are systematically taught to minimise the harm that is perpetuated against them, because it could have been so much worse.

The moral foundation of the status quo is one that allows a culture of harm against women to flourish with impunity, irrespective of the law. Feminist legal scholars point at how law continues to perceive and treat women, the way men perceive and treat women. Their charge is that objectivity and neutrality of the law are a guise for male bias in the system, and hence they advocate for a critical feminist approach to legal interpretation and application that seeks to centre women's experiences.

In holding that a woman's right to life and dignity trump a man's right to reputation, the judge in this case has certainly delivered an order that shifts the moral compass to where it should rightfully be. However, this case is a win insofar as the system did not see fit to punish a victim of sexual harassment with imprisonment or fine for speaking her truth. At the same time, it is also as an indictment of the androcentric criminal justice system that this is a cause for celebration.

Sneha Visakha (sneha.visakha@vidhilegalpolicy.in) is with the Vidhi Centre for Legal Policy, Bengaluru.