

CORRECTIVE VOICE: THE HINDU EDITORIAL ON THE SUPREME COURT OF INDIA AND JUDICIAL PATRIARCHY

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

While recognising society's deep-rooted patriarchy and initiating a course correction in the way the judiciary itself views gender rights, the Supreme Court went back to Henrik Ibsen, a playwright known for his feisty women characters who break free of traditions of familial confines and notions of social propriety. Setting aside an absurd *rakhi*-for-bail order of the Madhya Pradesh High Court to a sexual offender, the Court issued a set of guidelines on March 18 to be followed by the judiciary while dealing with sexual crimes against women. The two-member Bench of Justices A.M. Khanwilkar and S. Ravindra Bhat used a quote from Ibsen to say that a woman 'cannot be herself' in an 'exclusively masculine society, with laws framed by men', and laid it down as a guiding force for all future judicial proclamations. The judiciary's corrective voice is a welcome step in the aftermath of CJI S.A. Bobde's reported remarks during a virtual hearing, when he asked an alleged rapist's lawyer to find out whether his client would marry the victim. He later said he had been misquoted. The Khanwilkar-Bhat Bench asked all courts to refrain from imposing marriage or mandate any compromise between a sex offender and his victim. Powerful men seem to be reiterating misogyny besides carelessly linking sexual crimes to women being alone at night or wearing clothes of their choice.

Leaning on the 'Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia', the Bench listed a host of avoidable stereotypes: women are physically weak; men are the head of the household and must make all the decisions related to family; women should be submissive and obedient. Women are battling society's ingrained prejudices, and the judgment acknowledges this bitter reality, saying gender violence is most often shrouded in a culture of silence. Pointing to the entrenched unequal power equations between men and women, including cultural and social norms, financial dependence, and poverty, it said data may not reflect the actual incidence of violence against women. It is not the first time the Supreme Court is clamping down against gender stereotyping. Justice D.Y. Chandrachud (*Secr., Ministry of Defence vs. Babita Puniya*) had argued against treating women in the Army any differently from their men counterparts for they worked as "equal citizens" in a common mission, and in *Anuj Garg*, the Court had called out the "notion of romantic paternalism" as an attempt to put women "in a cage". To break the silence on bias against women, everyone must take responsibility, especially institutions and those in important positions. The Court's reiteration on where it needs to stand on women's rights is a move in the right direction because the fight for gender equality is far from over.

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From the abrogation of the special status of Jammu and Kashmir, to the landmark Ayodhya verdict, 2019 proved to be an eventful year.

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