

EVIDENCE OF HOW LITTLE THE JUDICIARY HAS LEARNT

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

The Bharatiya Janata Party (BJP)-led government in Goa has [rightly filed an appeal in the High Court](#) against the judgment of the Additional Sessions Judge [acquitting a former editor of a news magazine, Tarun Tejpal](#), of charges of the rape of an employee in November 2013. He was tried under sections introduced into the law after the Nirbhaya case, including one denoting that he was in a position of power, authority and trust over the young woman concerned.

We should not let ourselves be distracted either by the argument that this is a case of “political vendetta” since Mr. Tejpal was known as a BJP critic or by the utter hypocrisy of the BJP when it comes to its double standards in dealing with cases of rape.

Tarun Tejpal case - a timeline

The young woman survivor is no pawn of those who may have political motives. Throughout these years she has fought a very tough battle.

In the [527-page judgment](#), in spite of all the efforts to suppress it, it is her voice we hear, a voice which speaks with honesty and courage, a voice of a young woman conflicted and torn — sexually assaulted by a man, her boss whom she considered a father figure, the father in fact of her very close friend; confused as to what her course of action should be since so many relationships were at stake; angry, sad, and yet trying to act “normally” to fulfil her responsibilities at work — a voice which perhaps unintentionally also reveals the horrendous nature of the sexualisation of women made possible at a workplace by not just the accused boss but by women too in positions of authority and the normalisation of such a process by them.

The judgment transforms the accused into the victim and it is the young woman who becomes the accused. It says “(Prosecutrix) neither demonstrates any kind of normative behaviour on her own part – that as a prosecutrix of sexual assault might plausibly show” (p.457).

Tarun Tejpal case | Judgment says ‘victim’s narrative is of extreme implausibility’

This pushes us back to 1979 when a rape survivor had to prove through physical marks on her body that she had not consented. In this 2021 judgment, in a similar approach, since the survivor did not fit into the court’s preconceived ideas of a rape survivor’s behaviour, she is considered a liar. It would appear that four decades of women’s struggles which forced changes in law, in case law, and in approaches to victims of rape, have no relevance for this judgment.

Case law gives weightage to the statement of a victim of rape with the proviso of it being “credible and sterling”. The judgment gives a new and dangerous interpretation to this. It poses the question, “who is a sterling witness?” And then accepts every highly objectionable charge of the defence to prove the witness (prosecutrix) is not “sterling”.

To this end, in total violation of various laws, the full personal details of the survivor, her name and that of her family, her WhatsApp messages, her personal mails, her photographs and her relationships are laid out bare in the judgment in the most ferocious aggression on her right to privacy and which have no relevance to the charge of rape. In sharp contrast, there is a blanket

of protection given by the court to the accused. Not a mention of his back story. Even his telling WhatsApp message referring to “fingertips”, a clear reference of what he had done to the survivor, is brushed aside.

Tarun Tejpal case | HC directs sessions court to remove anything that reveals identity of woman

She on the other hand is subjected to a barbaric and cruel cross-examination recorded in the judgment on intimate details of her life and her friendships. Even while upholding the objections of the prosecution on some issues under Section 53A in the Indian Evidence Act, which rules out reference to past sexual history, the judgment defends this stating “some of the messages shown were not for purpose of proving immoral character or consent but to prove suppressing of relevant facts by the prosecutrix”. This is nothing but a licence for the character assassin’s knife.

The most telling evidence against the accused is his own “personal apology”, the draft of an “official apology” and the conversations recorded by the survivor with the senior woman officer negotiating on behalf of the accused clearly showing that there was no ulterior motive behind the complaint. The judgment records the accused as stating in his apology, “Yes, you did say at one point that I was your boss and I did reply ‘that makes it easier’... again ‘I had no idea that I had been even remotely non-consensual’ and then ‘anything furtive with my daughter’s best friend’”, are words that match what the survivor had said in her accusation — that she asked him to stop but he continued.

But in an extraordinary and unprecedented interpretation, the judgment holds that the apology and the statements made by the accused were “not sent voluntarily but that it was due... to the pressure and intimidation by prosecutrix to act swiftly and also the inducement that the matter would be closed.” In this way, the boss accused of rape is converted into a victim by “manipulation and calculating nature” of the prosecutrix and his statement is taken as being “not voluntary and against his wishes”. The sympathy towards the accused leaps out in paragraph after paragraph of the judgment. Sample this: “Accused was absolutely repulsed with the accusation made by the prosecutrix”; “accused asserted his claim that it was only drunken banter”; “accused consistently claiming to be a bunch of lies”, In contrast, the comment against the survivor: “she twists and manipulates the truth”.

Every witness who gave evidence that the survivor shared her traumatic experience with them within hours of the incident — proving that it was no afterthought — is brushed aside on grounds that they are her friends, and therefore biased while the statements of the accused’s own sister and another female colleague known to be close to him, are accepted as being true.

Tarun Tejpal case | Judge tried the woman, say activists

Even the right of a survivor to approach activists and lawyers for their help — the most natural course of action for any rape survivor — is criminalised in this judgment. Senior members of the Bar such as Indira Jaisingh are put in the dock as probable advisers for “doctoring” and also “of adding to incidents”.

The judge in this case was a woman which once again underlines that it is not biology but ideology which determines one’s view of social reality. This judgment will find its place in history as an example of the worst kind of victim blaming and shaming to benefit the accused, a man old enough to be her father, powerful as her boss. The sooner it is overturned the better. Otherwise if this becomes the precedent, no working woman will dare to speak out against sexual abuse and violence at the workplace.

Brinda Karat is a member of the CPI(M) Polit Bureau and a former Rajya Sabha Member of

Parliament

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