

## Consent key factor in defining sexual assault, says Delhi HC

Is a 'yes' or 'no' from a woman to a sexual act really a 'yes' or 'no'? The Delhi High Court asks.

The High Court discusses the various "models" of sexual consent in the modern world. The debate is part of an 82-page judgment which acquits film-maker Mahmood Farooqui in a rape case giving him the benefit of the doubt that he might have misread the 'no' of the woman as a 'yes'.

In normal parlance, consent would mean voluntary agreement of a woman to engage in sexual activity without being abused or exploited by coercion or threats, Justice Ashutosh Kumar, who authored the verdict, observes.

### **'Affirmative model'**

The consent can be revoked any moment. "Thus, sexual consent would be the key factor in defining sexual assault as any sexual activity without consent would be rape," the judgment says.

On the "various models of sexual consent", the judge starts with the "traditional and the most accepted" one, which is the "affirmative model" where a "yes is yes and no is no."

But the judgment goes on to tackle a situation where a woman's affirmative consent or positive denial is not asserted, but conveyed in an "underlying/dormant" fashion, leading to a "confusion in the mind of the other." The court says there are "differences between how men and women initiate and reciprocate sexual consent."

### **Gender equality**

"The normal construct is that man is the initiator of sexual interaction. He performs the active part whereas a woman is, by and large, non-verbal. Thus, gender relations influence sexual consent," Justice Kumar notes. But this may not be true in the case of modern society where gender equality is the "buzzword", Justice Kumar adds.

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