

Guidelines Issued By Supreme Court For Orders In Sexual Offence Cases

March 24, 2021

In news : The Supreme Court of India issued a set of guidelines on how cases involving sexual assault should be handled by all courts

Key updates

- The Apex Court of the country set aside a judgment of the Madhya Pradesh High Court wherein it had asked a man, who was accused of sexual assault, to get a “rakhi” tied on his wrist by the victim as a prerequisite condition of bail.
- The judgment came after Supreme Court advocate Aparna Bhat and eight other women had challenged the July 2020 order of the Madhya Pradesh High Court, Bar and Bench reported.
- The court had directed the man accused of having outraged the modesty of a woman to present himself before the complainant so that she may tie a “rakhi” on his wrist to be eligible for bail.
- While setting aside the order, the bench of Justices AM Khanwilkar and Ravindra Bhat issued seven directions to be followed by lower courts while dealing with bail petitions in matters relating to crimes against women.

Key guidelines

The Court issued the following seven guidelines:

1. On Bail: Bail conditions should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from

any further harassment by the accused

2. **Protection of Victim:** Where circumstances exist for the court to believe that there might be a potential threat of harassment of the victim, or upon apprehension expressed, after calling for reports from the police, the nature of protection shall be separately considered and appropriate order made, in addition to a direction to the accused not to make any contact with the victim.
3. **Bail order:** In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and copy of the bail order made over to him/her within two days
4. **Avoid reflecting stereotypical notions about women:** Bail conditions and orders should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the CrPC. In other words, discussion about the dress, behavior, or past "conduct" or "morals" of the prosecutrix, should not enter the verdict granting bail
5. **Gender-related crimes:** The courts while adjudicating cases involving gender-related crimes, should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction
6. **Sensitivity:** Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments
7. **Maintain impartiality of the court:** Judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

Courts should avoid gender stereotypes such as examples given

below

Further, courts should desist from expressing any stereotype opinion, in words spoken during proceedings, or in the course of a judicial order, to the effect that

- Women are physically weak and need protection
- Women are incapable of or cannot take decisions on their own
- Men are the “head” of the household and should take all the decisions relating to family
- Women should be submissive and obedient according to our culture
- “Good” women are sexually chaste
- Motherhood is the duty and role of every woman, and assumptions to the effect that she wants to be a mother
- Women should be the ones in charge of their children, their upbringing and care
- Being alone at night or wearing certain clothes make women responsible for being attacked
- A woman consuming alcohol, smoking, etc. may justify unwelcome advances by men or “has asked for it”
- Women are emotional and often overreact or dramatize events, hence it is necessary to corroborate their testimony
- Testimonial evidence provided by women who are sexually active may be suspected when assessing “consent” in sexual offence cases; and
- Lack of evidence of physical harm in sexual offence case leads to an inference of consent by the woman

A Module on Gender sensitization

- The Supreme Court of India mandated that a module on gender sensitization be included, as part of the foundational training of every judge.
- It must aim at imparting techniques for judges to be more sensitive in hearing and deciding cases of sexual

assault, and eliminating entrenched social bias, especially misogyny.

- It should also emphasize the prominent role that judges are expected to play in society, as role models and thought leaders, in promoting equality and ensuring fairness, safety and security to all women who allege the perpetration of sexual offences against them.
- The use of language and appropriate words and phrases should be emphasized as part of this training.