

# SC Guidelines on Handling Cases of Sexual Crimes by the Judiciary

March 26, 2021

On 18 March 2021, the Supreme Court issued new guidelines for judges and lawyers of lower courts to follow while dealing with cases of crimes against women. These new guidelines stand as a beacon of hope for victims of sexual assault, molestation, and harassment as it directs the judicial system to be less patriarchal, misogynist, more sensitive and just.

**In news:** Corrective voice: On Supreme Court and judicial patriarchy

**Placing it in syllabus:** Society

**Dimensions**

- MP High Court judgement and problems
- SC guidelines
- Importance of the guidelines
- SC and Gender Justice : Highlights of some important rulings

## **Content:**

MP High Court judgement and problems:

- Order of the Madhya Pradesh High Court had released a man, accused of molestation, on the condition he would get a rakhi tied by the complainant.
- On 30 July 2020, in the case of Vikram vs The State of Madhya Pradesh, the MP High Court granted anticipatory bail to a man fearing arrest in a rape case.
- While granting him protection from arrest, the court directed the accused to ask the victim to tie him a rakhi so that “he can vow to protect her like a

brother”.

- The judgement was criticised as Judicial Stereotyping and Gender Stereotyping that discriminates against women or denies them equal access to justice.
- Public-spirited activists approached the Supreme Court challenging the “dangerous precedent” set by this bail order.
- They argued that such directions by a court of law trivialise the trauma undergone by survivors and “adversely affect their dignity”.

## **Supreme Court’s Guidelines:**

In its judgment, the Supreme Court passed seven key directions for courts to follow when bail orders are dictated.

- 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.
- 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.
- In all cases where bail is granted, the complainant should immediately be informed that the accused has been granted bail and a copy of the bail order made over to him/her within two days.
- 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, behaviour, or past “conduct” or “morals” of the prosecutrix, should not enter the verdict granting bail.

- 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 power and jurisdiction.
- Sensitivity should be displayed at all times by judges, who should ensure that there is no traumatisation of the prosecutrix, during the proceedings, or anything said during the arguments.
- 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.

Finally, the bench listed “patriarchal” and “stereotypical” examples of statements that courts should refrain from using/expressing. These include:

- 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 the family.
- Women should be “the ones in charge of their children, their upbringing and care”.
- Women should be “submissive” and “obedient” according to our culture.
- 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”.
- Lack of evidence of physical harm in a sexual offence case leads to an “inference of consent by the woman”.

## **Importance of the guidelines:**

### ***Remedy for Judicial Stereotyping:***

- The guidelines provide remedy to the problem of judicial stereotyping of survivors of sexual violence,
- The court recognised that due to their incapability of challenging harmful stereotypes, judges can often perpetuate such prejudices in legal proceedings.

### ***Ending The 'Boys Will Be Boys' Attitude***

- The Supreme Court didn't shy away from pointing out how the patriarchal and misogynistic mindset in the judiciary, both explicit and latent, sometimes trivialise the trauma caused to survivors of sexual violence.
- Such attitudes, the court observed, not only trivialises different kinds of acts that fall within the rubric of sexual violence but also romanticises them.

### ***'Reinforcement of stereotypes' as Unfair***

- The court amply clarified that reinforcement of stereotypes in judicial orders through considerations that are extraneous to the case would impact the concept of fairness.

### ***Inclusive and Considerate Toward Women:***

- judgment is a welcome step towards making the criminal justice system more inclusive and considerate towards the unique lived experience of women.
- It is a timely reminder of how judicial reasoning ought to be.

### ***Step Towards Gender Sensitization***

- In order to address the problem of judicial misogyny from a reformatory point of view, the court recommended gender sensitisation for judges as well as public

prosecutors.

## **SC and Gender Justice : Highlights of some important rulings:**

### ***Vishaka v. State of Rajasthan***

- The PIL action sought guidelines for the elimination of sexual abuse at the workplace.
- By a broad interpretation of the Constitution, it was held that sexual harassment was a clear violation of rights provided under Articles 14, 19 and 21.
- Relying on CEDAW, an international instrument to which India is a signatory, the court laid down the historic Vishaka Guidelines.
- These guidelines were later converted verbatim into The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 which is the most gifted piece of law acting as the saviour of working women.
- This case is a remarkable example of judicial activism where the honourable court took appropriate measures for a healthy work environment.

### ***Gaurav Jain v. Union of India***

- A PIL was filed before the Apex Court to provide clarity on provisions for the upliftment of prostitutes.
- The two-judge bench of SC quoted the Fundamental Rights and deliberated that education and training be given to the fallen women and their children so that they may also lead a dignified life which they are worthy of.
- It was realised that they needed to be rescued, and ordered to set up a rehabilitative home for them.
- The society was called out to make amends and curb trafficking in women.

### ***Suchita Srivastava v. Chandigarh Administration***

- The Supreme Court noted that every woman has a right to make reproductive choices, i.e. to decide whether to carry pregnancy in full-term or to abort the foetus.
- She is free to participate in sexual activity or even refuse it.
- This decision added a new dimension of 'bodily integrity' to Article 21 of the Constitution.

### ***Laxmi v. Union of India***

- In light of increasing acid attacks and easy availability of acid, the Supreme Court was called out to issue directives for the prevention of such incidents by imposing restrictions on the sale of acids.
- The Court instructed the governments, at both levels, to chalk out a plan and prohibit the unauthorised sale of acids across the nation.
- It also went ahead to declare that all victims shall be provided compensation and rehabilitation by the respective governments.
- This decision paved the way for the legislature to introspect and enforce harsher punishments for offenders committing such horrendous crimes.

### ***Shayara Bano v. Union of India***

- The inhuman Islamic practise of Talaq-e-biddat, wherein men could irrevocably divorce their wives by uttering the word 'talaq' thrice, was adjudged unconstitutional by a 5-judge bench of Supreme Court.
- This practice was derogatory to the dignity and equality of women as it violated Article 14, 12, 21 and 25 of our Constitution.
- This celebrated judgment emboldened the movement towards gender equality by its subtle indication of the religious dogma prevalent across several religions.

### ***Indian Young Lawyers Association v. State of Kerala***

- A Constitutional bench of SC lifted the age-old ban on entry of women between the ages of 10-50, inside the Sabrimala temple where Lord Ayyappa is worshipped.
- The long-awaited judgement was pronounced amid protests in the state of Kerala.
- Devotion and faith must not be subjected to gender discrimination, as analysed by the honourable judges.
- Stereotyping menstruating women in the present times would permit the religious patriarchy to flourish.
- The restriction on entry was a violation of the right to worship of woman, as assured by Article 14 and 25 of the Constitution.
- This decision advanced gender justice and equality in the most significant manner.

### ***Joseph Shine v. Union of India***

- The constitutional validity of Section 497 of I.P.C. was challenged in this PIL filed under Art.32.
- The section was argued to be gender discriminatory as it only criminalised adultery committed by men and not women.
- The concept of 'gender-neutral' laws was found to be absent in the aforementioned provision.
- The Apex Court went ahead to decriminalise it as it was destroying the dignity of women.
- It was observed by the judges that such provisions which place a woman subordinate to a man, in marriage or otherwise, must be done away with in order to advance equality.

**Mould your thought:** SC guidelines on handling Sexual Crimes Cases is a welcome step towards making the criminal justice system more inclusive and considerate towards women. Comment.

### ***Approach to the answer:***

- Introduction

- Discuss the MP High Court judgement briefly
- Discuss the problems in such judgements
- Discuss the guidelines by SC
- Mention how these guidelines are inclusive and fair towards women
- Conclusion