Karnataka HC's Remarks - Rape Myths and Stereotypes

What is the issue?

- A single bench of the Karnataka High Court recently granted anticipatory bail to a man accused of rape.
- The reasons given and the remarks made by the court highlight the grave shortfalls and insensitivities in the justice system.

What were the judge's remarks?

- Justice Krishna S. Dixit of the Karnataka high court made the following remarks:
  - nothing is mentioned by the complainant as to why she went to her office at night that is, 11.00 pm
  - she has also not objected to consuming drinks with the petitioner and allowing him to stay with her till morning
  - the explanation offered by the complainant that after the perpetration of the act she was tired and fell asleep , is unbecoming of an Indian woman
  - that is not the way our women react when they are ravished
- He then went on to grant anticipatory bail to the accused.
- One of the reasons - the seriousness of the offence alone cannot be a ground for depriving a citizen (accused) of her/his liberty.

What are the contentions?

- The Judge's observation on the seriousness of the offence is true.
- But, the Court ought to have considered that, in cases of rape, the issue in granting bail is not just seriousness of the offence.
- It is rather the very real possibility of intimidation of the complainant.
- This would prevent her from being an effective witness in the trial.
- Also, the Court based its reasoning in unsubstantiated, damaging inferences drawn from the behaviour of the complainant.
- The contentious remarks were subsequently removed on an application made by the state.
- However, the continued and frequent use of these rape myths and stereotypes deserves discussion.

What are the prevailing rape myths and stereotypes?

- Rape myths or stereotypes are widely held, false and prejudicial notions about rape, rapists, and the survivors of rape.
- The underlying assumption here is that 'genuine' victims/survivors of rape can be recognised by some common patterns of behaviour they exhibit.
- To begin with, they are expected not to put themselves in situations which, it is believed, might lead to rape.
- These are the situations that include anything that is seen as a social taboo for women.
- These may include drinking, partying, or indeed, as stated by the defence in the infamous Nirbhaya case, simply being out at night.
- The implication here is that willingness to participate in such activities is equivalent to consent to sex.
- Otherwise, engaging in social taboo is tantamount to inviting rape.
- Another common stereotype is that 'genuine' victims/survivors physically resist their assailants or shout for help.
- In Mahmood Farooqui v. NCT of Delhi (2017), the Delhi HC had held that the complainant's 'feeble no', even when spoken, would not be sufficient evidence of lack of consent.
- The above case also repeated the widely held belief of Courts that where the victim/survivor had a past sexual history with the accused, her consent would be assumed.
- And so, any 'unwillingness' or 'hesitation' on her part would be disregarded.

What is the grave concern with these notions?

- These prevailing rape myths and stereotypes shift the burden onto the victim.
- The greatest evil thus is that they put the victim, rather than the accused and society, on trial.
- The focus shifts from whether the accused committed the offence or not to whether the victim/survivor's behaviour met standards demanded by patriarchy.
- The focus is on the narrative that the victim/survivor could have avoided the rape, or indeed, asked for it.
- The blame is thus conveniently shifted from large-scale social and systemic failures to the victim/survivor herself.

What does the law specify?

- The rape law for adults in India was amended in 2013.
- The Criminal Law (Amendment) Act in 2013 widened the definition of rape and made punishment more stringent.
- It specifically states that failure to resist cannot be taken as evidence of

consent.

- In fact, consent, whether verbal or non-verbal, has been defined to mean 'unequivocal voluntary agreement'.
- The following cannot and should not be equated with consent to sex -
    i. passive submission (which may arise out of fear or deep-rooted social conditioning)
    ii. acquiescence to non-sexual acts such as drinking together
- The Amendment also laid down that consent would mean willingness to participate in a 'specific' sexual act.
- Therefore, consent given for a particular sexual liaison cannot be read as ongoing consent, given in perpetuity.

What does this suggest of the justice system?

- The reliance on rape myths and stereotypes is painfully common in the Indian criminal justice system.
- Rape myths and stereotypes reflect the deeply entrenched patriarchal biases of those in India's criminal justice system and the society at large.
- Those tasked with implementing the legislation continue to put the victim/survivor on trial.
- This defeats the very purpose of making the legislation progressive or 'victim-centric'.
- When used in judgments, they become a permanent part of the legal record.
- As precedent, they create a chilling effect for all future victims/survivors of rape.
- This makes the criminal justice system even more unapproachable than it is.

What is the way forward?

- It is impossible and unjust to have a universal script against which the behaviour of individual victims/survivors is assessed.
- Each person and each circumstance in cases of rape is distinct.
- India has abysmally low rates of reporting for sexual offences, and even lower rates of conviction.
- Given this, the continued reliance on such stereotypes is worrying.
- Expecting the survivors of rape to come forward knowing that they would be doubted every step of the way is highly unfair.
- The present case calls for urgent and renewed efforts towards sensitisation.
- The need of the hour is to make sensitivity in handling sexual offences part of India's judicial structure.

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