

EXAMINING JUSTICE THROUGH THE LENS OF BAREILLY COURT

“TWIN PERSPECTIVES OF THE POCSO PICTURE”

Lately, the LiveLaw columns and newspaper articles have been dominated by the novel approach taken up by a court in Bareilly wherein, the ADJ Gyanendra Tripathi sentenced a girl to 1,653 days in jail along with Rs 5.9 lakh cash fine for fabricating evidence in POCSO case while booking her under section 195 of IPC¹.

The facts of the case were such that in 2019, Ajay Kumar alias Raghav was allegedly booked for kidnapping and raping his colleague's sister. The girl, then 15 years old, had told police as well as the court that she had been kidnapped and raped by Ajay. However later, she told the court that she had given the statement as she was pressured by her mother, who didn't like Ajay due to his proximity to her elder sister. Her husband told the court that he had asked to compromise in the case as he was fed up with the case trials and she changed her statement. And hence, the court after coming to a conclusion that an innocent man was punished for the offence of rape which accrued to him as physical, mental, emotional, social as well as financial loss of around ₹5,88,822 (as calculated according to wages set by the Uttar Pradesh government for an unskilled labourer for the time he spent in jail). Therefore, a jail term equivalent to what the accused had undergone for being convicted as a rapist under POCSO and a fine equivalent to his financial loss during such period was imposed upon the girl.

Now, let's dissect the judgement into the two broad perspectives of their potential repercussions-

[I] THE POSITIVE PERSPECTIVE

Only 3 per cent of cases under the Protection of Children from Sexual Offences (POCSO) Act resulted in convictions in 2022, reveals a study by the India Child Protection Fund. On an

¹<https://www.livelaw.in/news-updates/up-court-sentences-woman-1653-days-jail-false-rape-allegations-imposes-58-lakh-fine-257291>

average, only 28 POCSO cases were disposed of by each Fast Track Special court (FTSC) in 2022 even when the average expenditure for the disposal of each case was Rs 2.73 lakh. While, the pendency in several states is so high that in Maharashtra, it might take up till 2036 for a child to get justice in a POCSO case. By January this year, the state had 33,073 such cases pending in the fast-track courts. In Andhra Pradesh, a complainant will have to wait till 2034 as the state has 8,137 pending cases, while in Rajasthan and Jharkhand, it will take till 2033, with 8,921 and 4,408 cases, respectively². At the same time, specifically focusing on the situation in the state of Uttar Pradesh, concerning the Bareilly court, Uttar Pradesh has the highest pendency with more than three-fourths (77.77%) of the total POCSO cases filed between November 2012 and February³.

Seeing this situation, it is indeed a fact that there has been a gross misuse of the POCSO act for extracting personal benefits or taking revenge from people. The families of young boys are blackmailed after filing of a case under POCSO. It is now an instrument to get what one wants only by way of filing a fake case under POCSO.

Hence, seeing the abysmally low conviction rates, the ground reality of misuse of POCSO, already burdened judiciary, huge expenses on disposal of such cases, waste of time as well as human resource, there is indeed an urgent need to address this misuse. While taking this approach forward the Bareilly court in this case has shown great initiative, especially in a legal system of a country like India where the district courts are just supposed to follow the directions of the High courts and Supreme court and, are rarely known to take fresh firm standing on any socio-legal issue or any novel interpretation of the laws. The Bareilly court

²<https://www.deccanherald.com/india/over-243-lakh-pocso-cases-pending-in-fast-track-courts-till-jan-2023-3-conviction-rate-in-2022-report-2804200>

³<https://indianexpress.com/article/explained/explained-law/10-years-of-pocso-an-analysis-of-indias-landmark-child-abuse-law-8276030/>

has tried to deter people from filing fake cases by sentencing the applicants to imprisonment and imposing such a huge amount of fine. People now understand that they cannot escape unscathed after filing fraudulent cases and that they will have to bear the consequences of such deceitful actions.

[III] THE CRITICAL PERSPECTIVE

While the Bareilly court took this step in wake of deterring the reporting of false cases, the possible severe repercussion of this step is that along with deterring people from filing false cases it can also deter them from filing actual and real cases.

Some of the most prominent factors present especially on grass root level of Indian society are-

- The social stigma with regards to sexual offences.
- The pride & prestige factor.
- The lack of financial resources.
- Blackmailing and out of court monetary settlement.
- Forceful change of witness & victim statements.

Further elaborating, a question herein needs to be addressed that why did the lawmakers not include such provisions of counter punishment under the POCSO act itself?

The answer herein, is that they did not give space to any such provision even after knowing about the possible misuse of the POCSO act owing to the above-mentioned list of factors.

In numerous guidelines and observations, the High courts as well as the Supreme court have said that there should be strict follow-up of some rules like that of non-disclosure of the victim's identity etc⁴. All these steps are taken with due caution only for the sake of protection

⁴<https://www.livelaw.in/supreme-court/identity-of-pocso-victim-cannot-be-disclosed-supreme-court-calls-for-sensitization-of-judicial-and-police-officers-in-west-bengal-254502>

of the victim from possible harassment. The social stigma attached to the victims of sexual offences which if known to the society at large makes the marriage of the victim girls extremely difficult as no one wants such victims as their partners or daughter-in-law. Also, in rural India people still with very passionate feelings follow the ideologies like that of their daughters or sisters being their pride and if any such incident of sexual offence happens to them, all of their social prestige and pride goes into vain. The victim girls are considered the culprits in such cases. Hence, owing to these factors people in most cases avoid reporting it to the police to save their social reputation as well as for the sake of their daughter's marriage etc.

People also avoid police & court as going there is often considered as a harm to social repute. They do not possess that much of financial resources to fight a case and rather prefer to spend that amount of money in their daughter's (or any female victim) wedding.

Hence, the counter-punishment can aggravate and intensify the role of such factors & deeply-ingrained mindset of the people while the imposition of such hefty sums would actually deter people from knocking the court's doors in wake of already present financial crunch.

The other relevant angle to this is related to this case particularly that is the fact that after a period of 4 years the alleged victim girl changed her statement and told the court that Ajay was innocent⁵. Now, here there is also a great possibility that the victim either voluntarily changed her statement for money or was forcefully made to change her statement in exchange of money. One fact also needs to be noted that different reasons were provided for the sudden change in statement by the family members wherein, the girl herself told the court she had given the statement as she was pressured by her mother, who didn't like Ajay due to his proximity to her elder sister while, her husband told the court he had asked to compromise in

⁵<https://timesofindia.indiatimes.com/city/bareilly/woman-gets-1653-days-in-jail-after-man-does-time-in-false-rape-case/articleshow/109865000.cms>

the case as he was fed up with the case trials and hence, she changed her statement. This further leads to a confusion as to whether the victim had actually given the initial statement in affirmation because of being pressurized by her mother or she did actually go through all of it but now, because of her in-law's pressure including her husband who does not seem to be much interest in getting justice by his statement, she had to change her statement. The acceptance of money for this could also have been due to family pressure to accept the money, change her statement and close the case. Here, the court had itself said that the victim had changed the statement in favour of the accused for money.

Hence, in this case it becomes imperative for the court to recognize the possible circumstances under which a minor teenage girl makes a statement and changes it later when the negative attitude of her family is in front of the court.

It is absolutely unfair that the alleged offender , Ajay had to spend a significant amount of time in jail while facing loss of mental & physical health as well as his financial resources and also had to face a stigma of being in jail for an offence like rape however, it is equally unfair to sentence the alleged victim girl to imprisonment and impose a hefty amount of fine without having regard to the actual circumstances of the case and the true wrongdoer behind any such misinterpretations. The victim girl was just 15 years old when she had made that statement, an age where she might not even have an idea as to what exactly rape constitutes of and might have miscommunicated things to her mother who after adding her own things to it, took her to police station. Even after 4 years her age is 19 years and she is married, she might now in most probability be getting pressurized from her in-laws to change statement in favour of money which is substantiated by the fact that there was no change of statement till three years and immediately after some time of marriage, the girl changed her statement. There is also a possibility that the wedding took place on the condition of her changing her statement and closing the case. Everyone knows what is the independence level of a minor female or a female who has just turned 19 and got married. Hence, in this case even if one has to punish

the misrepresentations made in the court, it should be her parents and not the girl as she was just 15 years old when she made her first statement. Otherwise, looking at the various possible scenarios, all the people behind such misrepresentations and change of statement will now have a good life including the alleged offender, except the teen girl who might not even have any say in all of these series of events.

One other factor to be considered herein, is the fact that in criminal proceedings, the case from the side of victim is fought in the name of state. Hence, if any such misrepresentation is made leading to liability under legal provisions like section 195 IPC, the state can't be allowed to altogether ward off its liability.

[III] THE LEGAL LOOKOUT

Section 195 of the Indian Penal Code states:

“Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital but punishable with imprisonment for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.”

However, in this case, the victim girl was sentenced to 4.5 years of imprisonment and fined Rs 5.9 lakh, which mirrors the punishment the alleged offender would have faced. This implies that the alleged offender's crime was not severe enough to warrant life imprisonment or a term of seven years or more, which is a prerequisite for the application of Section 195 IPC. Therefore, the applicability of Section 195 in this judgment is technically flawed.

Furthermore, courts rely not only on statements but also heavily on medical evidence, especially in criminal cases. Two significant issues arise here. First, if the medical reports were fabricated at the time of the accused's conviction and later, when the victim recanted, the

court discovered this misrepresentation and charged her under Section 195 IPC, why did it overlook the procedural irregularities in evidence collection, medical tests, and not charge the doctors, medical staff, and public authorities involved? These adults should have been held accountable for tampering with medical evidence, rather than solely blaming the victim.

Second, even if evidence was fabricated, it is likely that the actual culprits were the girl's mother or family members, as a 15-year-old girl could not have fabricated evidence to such an extent on her own. If the court believed her statement that Ajay was innocent, it should also have considered her claim that her mother, who disliked Ajay due to his relationship with her elder sister, pressured her. Therefore, her mother should have been charged with fabricating evidence. Even in the unlikely scenario that a 15-year-old could independently file an FIR, give a court statement, fabricate evidence, and later recant while misleading her family, officials, and the court, it must be noted that she was a juvenile at the time. Thus, the court could not sentence her to more than four years of imprisonment plus a fine.

Additionally, if the legal stance on false evidence were applied consistently, many acquittal cases—some of which likely involved fabricated evidence or misrepresentation—would also result in punishment for the complainants. However, in our legal system, mere misrepresentation is typically insufficient to sentence the complainant to imprisonment due to various factors.

[IV] CONCLUSION

The objective of this analysis is not to argue that the Bareilly court's decision was incorrect, but to illuminate the various perspectives involved in such a bold ruling. This analysis clearly demonstrates the potential for significant adverse effects from such a decision, highlighting how justice for one party can result in injustice for another. It is essential to consider the intentions of the lawmakers behind the POCSO Act and their deliberate exclusion of such

stringent measures when making impactful decisions. Critics might argue that if someone is truly innocent, they should not fear imprisonment or fines for false cases.

However, in the context of sexual offences, especially those involving minors, where no adults are present at the crime scene and the child may not fully comprehend sexual activities or recognize when it constitutes assault, harassment, or rape, there can be numerous interpretations or misinterpretations that distort the actual events. Family members might manipulate the details for their benefit or pressure the child to make specific statements. Punishing the innocent child in such cases is entirely unjust. If an accused can be wrongly punished, then it is equally possible for a victim in a false case to be unfairly punished, given the multiple stakeholders involved and the child's limited understanding of the offence.

Therefore, it is imperative that no innocent person is punished, regardless of the direction of the case. Alternatives to counter-punishing the minor girl should include investigating procedural flaws and the reasons behind her sudden change of statement. The real culprits should be punished, not the girl. While deterrence is necessary to prevent the misuse of POCSO, proper guidelines for counter-punishment should be established rather than implementing it abruptly. The fact that the victim was a minor during her initial statement must be duly considered.

Effective investigation and procedural processes will significantly reduce the occurrence of false cases. Nonetheless, the Bareilly court's decision is laudable, commendable, and historic, especially given its status as a district court. This ruling should inspire other grassroots level courts to take similar initiatives, thereby revitalizing the legal system at the ground level.

“There is always light at the end of the tunnel”
