



Justice Denied, Amendment Prevailed: Mathura Rape Case

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According to Article 14 of the Indian Constitution, no one is denied the right to equality before the law or equal protection under the law. This is a privilege that anyone on Indian land, whether a citizen or a non-citizen, can enjoy. Article 14 is inapplicable in a variety of situations. It can appear theoretical at times and then be put into practice at other times. *Tukaram v. State of Maharashtra* addresses several legal issues, however, the application of Article 14 is still unclear. Citizens of a country place their trust in its legal institutions, but when justice is denied in circumstances where neither the facts of the case are justified until the depth nor the assumption is proven, public outrage becomes effective. *Tukaram v. State of Maharashtra*, popularly known as the 'Mathura Rape Case,' is a case in which many Indian residents considered that justice had not been served. Judgements based on dubious evidence and subjecting a woman to disrespectful assumptions not only denies justice to victim but also jeopardize her dignity and honour wherein public outcry can amend the law as witnessed in the aftermath of *Tukaram v. the State of Maharashtra*.

This case was brought to the session judge who stated that "there was no satisfactory evidence to prove that Mathura was below 16 years of age on the date of occurrence" (1979 AIR 185, 1979 SCR (1) (810)). In the judgement, it is stated Under the fifth ingredient of section 375 of the Indian Penal code that a man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman with or without her consent, under sixteen years of age. The fact that the age of Mathura was unknown does not imply a component to the accused being acquitted. After examining Mathura, the doctor determined that she was between the age of 14 and 16. (1979 AIR 185, 1979 SCR (1) (810)) There was no guarantee that Mathura is under 16, 16, or older than 16, thus it cannot be used as a basis for making a final decision. A court is not built for possibilities, until or unless they amount to being truthful. The law must have acted unfairly in the case of many victims if it only trusted the assumptions. While people around India rallied for justice for Mathura, an open letter in favor of the city was also released. One of the arguments in that open letter was "In restoring the decision of the Sessions Judge, does the Supreme Court of India really believe with him that Mathura had "invented" the story of rape, and even the confinement in the police station, to sound "virtuous" before Ashok? Does the court believe that Mathura was so flirtatious that even when her brother, her employer, and her lover were waiting outside the police station, she could not let go of the opportunity of having fun with two policemen, and that too in the area adjoining a police station latrine? Does it believe with the Sessions Judge that Mathura was "habituated to sexual intercourse" to such an extent? And therefore, further think that the semen marks on Mathura's clothing could have come from further sexual activities between the police incident and the next morning when she was medically examined? What about semen marks on Ganpat's trousers? Why these double standards? Ganpat's sexual habits give him the benefit of doubt of having 'raped' Mathura; her sexual habits make the Court disbelieve the story of the rape altogether!" ("*An Open Letter to the Chief Justice of India*" 1979,1-6). The reasoning is self-evident. Women are frequently thought to be susceptible to criticism, particularly from men. She lied during cross-examination, but it does not change the other facts that must be considered. Mathura was summoned to the police station, while the others were ordered to depart. There was no such explanation or statement offered as to why she was stopped there, which may have helped in the counterargument to the rape accusation.

In an article named "Judiciary's response to rape cases from a colonial hangover", it was argued that the Indian judicial system is in disarray. The judiciary's reaction to rape cases, particularly rape survivors, appears to swing from callous and unthinking to sexist and misogynistic. The example states that in a bail order issued on June 22, 2020, a Karnataka High Court bench made contentious remarks about a rape victim. After a public outcry, the remarks were removed from the order. These instances and "poor rulings" do not occur infrequently in India's legal history. They are, on the contrary, fairly common. These terrible decisions have their roots in India's colonial history particularly in colonial-era rape statutes and subsequent judicial rulings ("*Judiciary's Response to Rape Cases from Colonial Hangover*" 2020). The similarity of the precedent exists with the Mathura Rape case. She was described as untrustworthy and prone to sex. When the High Court stated that the case was one of "passive submission" and condemned the defendant, this was countered by two errors in the Supreme Court's decision. Mathura interchanged the names of the two accused in the cross-examination and lied about the resistance, cries, and alarms after Ganpat caught her hand and was brought to the latrine and also when her undergarments were loosened (1979 AIR 185, 1979 SCR (1) (810)). The statements of the cross-examination don't fulfill the involvement of "passive submission" but sticking to this doesn't negate the question of consent at all. Mathura was examined 20 hours later the incident took place and was asked to file a report before her examination turned out to be the loose ends in availing justice. "My Lord, the ink is hardly dried on the decision in *Nandini Satpathy* (1978) 2 SCC 424 when the Supreme Court, speaking through Justice Krishna Iyer, condemned the practice of calling women to police stations in gross violation of Section 160(1) of the Criminal Procedure Code. Under that provision, a woman shall not be required to attend the police investigation at any other place than her place of residence. The Court said in *Nandini* that it "is quite probable that the very act of directing a woman to come to the police station in violation of Section 160(1) CrPC may make for tension and negate "voluntariness". This observation was made in the context of the right against self-incrimination; is it any

the less relevant to situations of 'rape' or, as the Court wishes to put it, 'intercourse' in a police station" (*An Open Letter to the Chief Justice of India* 1979,1-6). Nandini's statement was recorded at her residence (*An Open Letter to the Chief Justice of India* 1979,1-6). Nothing like the precedent happened in the case of Mathura as she had to go to the police station to file the report which is a violation of section 160(1) CrPc from the side of the police. It proves to an extent that Article 14 of the Indian Constitution turns out to be theoretical.

"Supreme court wrote in 2004- Sexual violence apart from being a dehumanizing act is an unlawful intrusion *in the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity; it degrades and humiliates the victim A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman, i.e. her dignity, honour, reputation, and not the least her chastity." (*Judging in the presence of Women as Legal Persons* 2011 , 1-71). When the situation of Mathura is understood with respect to the feminist point of view in this patriarchal society, subjecting her to misogynistic and disrespectful assumptions while reaching a judgement that does not even have a solid foundation not only debars a woman to avail justice but also weakens her psychologically.

Madhumanti Mukherjee in her article states "My alternative judgment will align the concept of the woman in criminal law with the constitutional person. She will be constructed as a holder of constitutional rights, and non-recognition and inadequate redress of her harms will be understood as a violation of those rights. Harms inflicted on a woman by sexual invasion will be conceptualized solely as her personal harm and not as property harm to related men. The court will decide in favour of bringing a disconnection between the patriarchal notion of harms to female chastity and the concepts of rape and sexual violence in law and consequently will judge in favour of the petition." (*Judging in the presence of Women as Legal Persons* 2011, 1-71) If this judgement would have been said in the law, then victims like Mathura would have received justice.

All that Mathura had was public support. As per 'The influence of Public Outrage on law making', "Women's groups were founded in direct response to the ruling, one of which was led by Lotika Sarkar, one of the cosigners of the open letter. Her 'Forum Against Rape,' founded in January 1980, was India's first feminist anti-rape group. For the first time, disparate protests around the country were brought together as one, and women's groups began to build a unified, albeit temporary, women's movement - for the first time pursuing legal reform. On International Women's Day, March 8, 1980, 1500 women marched through the streets of Delhi, Mumbai, Hyderabad, and Nagpur to protest the Supreme Court's decision to acquit the police officers and seek a retrial. Women held public meetings to debate rape legislation reforms and poster campaigns, performed street theatre, and delivered petitions to members of parliament and the prime minister." (*The Influence of Public Outrage on Law Making* 2018, 478-498) "THE CRIMINAL LAW (SECOND AMENDMENT) ACT, 1983 in which:

- Section 114(A) was added to the Evidence Act which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent (rebuttable presumption of law).
- Section 376(A), Section 376(B), Section 376(C), and Section 376(D) in IPC were also added which made custodial rape punishable (which were further amended in 2013 after Nirbhaya Rape Case).
- Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused once intercourse was proved; it also added provisions for in-camera trials, the prohibition on the victim identity disclosure, and tougher sentences." (Network L. F. L. N. Mathura rape case: Landmark case which led to the Criminal Law (second amendment) 1983, 2020) This to an extent helped in providing justice to the victims who could have faced the scenario compared to legality of the second amendment in the criminal law, 1983

Public outcry can shape the legal system but may fall weak to change the judgements at times. Mathura did not receive justice, but the amendment sets an example for the whole nation that the law must obey the citizens to get obeyed whether it is via amendments or by any other alternative which is legal.

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