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**UNVEILING JUSTICE: THE TARUN TEJPAL CASE AND THE  
COMPLEXITIES OF SEXUAL ASSAULT PROSECUTION IN INDIA**

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**ABSTRACT**

The case of Tarun Tejpal, a prominent Indian journalist accused of sexually assaulting a female colleague during an event in 2013, has sparked intense debate and scrutiny. This captivating legal saga unfolded when a female journalist accused Tejpal, the editor-in-chief of Tehelka magazine, of sexual assault in a Goa hotel elevator in November 2013. Her detailed complaint triggered a series of events, including Tejpal's apology emails and subsequent arrest by Goa police, resulting in charges under the Indian Penal Code (IPC) related to sexual assault and rape.

The case hinged on crucial questions: Did the charges against Tejpal have a solid prima facie foundation, and were the apology emails indicative of coercion or voluntary remorse? The defence contended that the evidence fell short and that the victim's demand for an apology pressured Tejpal's actions. Nevertheless, the court found compelling evidence to warrant charging Tejpal and concluded that the apology emails did not signal coercion.

The judgment underscored the principle that, at the charge-framing stage, the court's role is to assess whether the facts prima facie establish the elements of the alleged offense. It stressed the importance of not dismissing the accused based on minor discrepancies, particularly in cases of sexual assault. The judgment's tone and handling of the case stirred controversy, shedding light on the challenges faced by sexual assault survivors in the Indian legal system.

This case is not merely a legal dispute; it represents a critical exploration of the complexities surrounding the prosecution of sexual assault cases. It underscores the delicate balance

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between protecting the rights of the accused and ensuring justice for victims. As of April 2022, the State Government's decision to appeal the judgment keeps the conversation alive, highlighting the ongoing relevance of this case and its broader implications for the discussion of sexual assault in India.

## INTRODUCTION

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- **Background**

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News channels and social media on 21.11.13 were flooded with the headline “Rape at THINK fest”, an event organised by Tehelka in Goa. A female journalist at Tehelka alleged that Tarun Tejpal<sup>2</sup>, (magazine’s editor-in-chief), assaulted her twice during the festival. The alleged assault occurred inside lifts.

The complainant sent a detailed account of the incidents to the managing director Shoma Chaudhary. Following this, Tarun Tejpal sent apology emails expressing his regret. After the matter became public, the Goa police took suo motu cognisance of it and registered an FIR. The police then took statements from the complainant and also got a magistrate to record her statement under Section 164 of Cr.P.C<sup>3</sup> and filed a charge-sheet. The trial court framed the charges against the accused for the offences under Sections 354<sup>4</sup>, 354A, 354B, 341<sup>5</sup>, 342<sup>6</sup>, 376(2)(f) & 376(2)(k)<sup>7</sup> of the IPC. Tarun Tejpal approached the high court dissatisfied with the framing of the Charge for the aforesaid offences. The High Court dismissed the revision application.

On May 21, the court acquitted Tejpal, stating that the prosecution failed to prove the case beyond doubt. The judgment became controversial as its tone seems to idealise a stereotypical poor women lacked self-esteem and traumatized behaviour as one of the relevant fact in corroborating evidences to proof the crime.

- **Timeline**

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<sup>2</sup> founder and editor-in-chief of Tehelka magazine. He is the applicant- originally accused.

<sup>3</sup> Code of Criminal Procedure 1973, § 164, No. 2, Act of Parliament, 1973(India).

<sup>4</sup> Indian Penal Code, 1860, § 354, No. 45, Act of Parliament, 1860(India).

<sup>5</sup> Indian Penal Code, 1860, § 341, No. 45, Act of Parliament, 1860(India).

<sup>6</sup> Indian Penal Code, 1860, § 342, No. 45, Act of Parliament, 1860(India).

<sup>7</sup> Indian Penal Code, 1860, § 376, No. 45, Act of Parliament, 1860(India).

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2013 November	7-9 <sup>th</sup>	A 27-year-old woman journalist is allegedly sexually assaulted and raped by Tarun Tejpal.	
	18 <sup>th</sup>	The survivor makes a complaint against the accused in an email to Tehelka's Managing Editor detailing how Tejpal sexually assaulted and raped her and requesting an office enquiry.	
	19 <sup>th</sup>	Tejpal sends two email apologies to the survivor in which he admits to non-consensual conduct.	
	22 <sup>nd</sup>	The Goa Police's CID Crime Branch registers a complaint against Tejpal based on news reports about the survivor's internal complaint.	
	30 <sup>th</sup>	Goa Police arrests Tejpal.	
2014	February	17 <sup>th</sup>	Goa Police submits their chargesheet.
	July	1 <sup>st</sup>	SC grants bail to Tejpal.
2017	September	26 <sup>th</sup>	<i>"Tejpal contests framing of charges in the High Court of Bombay at Goa. HC refuses to grant stay."</i>
2019	August	19 <sup>th</sup>	SC rejects Tejpal's plea to quash the FIR filed against him.
	October	31 <sup>st</sup>	Trial commences
2021	May	25 <sup>th</sup>	Tejpal is acquitted.

## FACT SHEET

*(Herein the victim shall be addressed as prosecutrix)*

- **RAPE**

1. Mr. Tarun Tejpal allegedly raped the prosecutrix in an elevator at the Hotel Grand Hyatt in Goa on 7.11.13 & on 8.11.13.
2. 10 days of the incidents, the prosecutrix sent an email complaint to Shoma Choudhary describing her sexual assault incident and demanded the accused to apologize to her.

- **FRAMING OF CHARGES**

3. On 26.11.2013 her statement was recorded before the police.
4. The Investigating Officer had filed the chargesheet against the accused for the offences under section 354,354A, 354B, 341, 342,3 76(2)(f) and 376(2)(k) of the

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IPC. That, thereafter, the trial Court has framed the charge against the appellant-original accused for the aforesaid offences, in exercise of its powers under section 227 of the CrPC<sup>8</sup>.

5. The Applicant against whom charge has been framed in order dated 07/09/2017 is challenging the same pursuant to which the learned Additional Sessions Judge ordered charge to be framed against him under Sections 354, 354A, 354B, 341, 342, 376(2)(f) and 376(2)(k) I.P.C.
6. Framing of the Charge against the accused for the aforesaid offences was the subject matter before the High Court under Section 397 r/w 401 of Cr.P.C.

- **Topics**

*Discharge:* Framing of charge in CRPC<sup>9</sup> establishes that mere flaw in the indictment is not a reason for the conviction to be overturned. Even when constructing an indictment with CRPC, the judge only needs to take a prima facie view. A prima facie case merely means having presented enough evidence to withstand a motion for directed verdict.<sup>10</sup> Section 227 of the CRPC<sup>11</sup> deals with discharge, wherein a judge considers if there is sufficient ground for discharging the proceeding against the accused.

*Coercion:* Coercion is the use of force to persuade someone to do something that they are unwilling to do.<sup>12</sup> IPC deals with Criminal intimidation and its punishment accordingly. It states that a threat to reputation of a person, with intent to cause alarm to that person to cause that person to do any act which he is not legally bound to do, commits criminal intimidation.

*Rape:*

Rape is in itself a heinous crime which is punished under section 375 of IPC<sup>13</sup>. Rape is, non-consensual vaginal or anal sexual intercourse, now defined as non-consensual penetration of the penis into another person's vagina, anus, or mouth. The offence is punishable with a maximum sentence of life imprisonment. Further S.345 of IPC includes sexual harassment  
“The basic 3 ingredients are

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<sup>8</sup>Code of Criminal Procedure 1973, § 227, No. 2, Act of Parliament, 1973(India).

<sup>9</sup> Code of Criminal Procedure 1973, § 211, No. 2, Act of Parliament, 1973(India),

<sup>10</sup> Georg Nils Herlitz, The Meaning of the Term Prima Facie, 55 LA. L. REV. 391 (1994).

<sup>11</sup> Code of Criminal Procedure 1973, § 227, No. 2, Act of Parliament, 1973(India),

<sup>12</sup>Dictionary.cambridge.org. 2021. *coercion.*, Cambridge English Dictionary, <https://dictionary.cambridge.org/dictionary/english/coercion>.

<sup>13</sup>Indian Penal Code, 1860, § 375, No. 45, Act of Parliament, 1860(India).

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(i) That the assault must be on a woman,

(ii) That the accused must have used criminal force on her,

(iii) That the criminal force must have been used on the woman intending thereby to outrage her modesty.”

## ISSUES

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1. Whether there was a prima facie case, against Tarun Tejpal to charge him under sections 376(2)(f),376(2)(k),354,354A,354B,341&342 of IPC?
2. Whether there was any element of coercion in the apology mail under question?
3. Whether the evidence weighed were consistent, to charge Tarun Jit with sections 354&376 of IPC?

## ARGUMENTS

### I Applicant

Shri A. Lekhi, learned Senior Counsel for the Applicant contended that the CCTV footage which was relevant and material to understand whether the offence of wrongful restraint and wrongful confinement, were failed to be considered by the trial court along with Nikhil's statement.

He also submitted that no questions regarding the victims sexual encounter with Robert De Niro on 7<sup>th</sup> nov were asked. He next submitted that the apologies in the e-mail which could not have been considered in the absence of due compliance with Section 65B of the Evidence Act.<sup>14</sup> These apologies were coerced and not an admission of the guilt. The Trial Court therefore could not have relied on both apologies to frame charges.

*There was enough jurisdiction in this Court to question the correctness, propriety and legality of the impugned order and therefore the order was liable to be quashed and set aside.*

### II Respondent

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<sup>14</sup> Indian Evidence Act, 1872, § 65B, No. 1, Act of Parliament, 1872 (India).

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Shri S.D. Lotlikar, learned Special Public Prosecutor, contending that the learned Additional Sessions Judge had rightly considered the law in the matter of discharge. He contended further that comparing the conduct of the victim viz a viz the CCTV footage was open for consideration on a full dress trial and not at this stage. The aspect of Section 65B of the Evidence Act<sup>15</sup> to consider the evidentiary value of the documents would be appropriate for consideration at the Trial and at this prima facie stage the learned Trial Court had properly appreciated the material on record and arrived at a finding to frame charge which did not justify any interference in revision.

*There was no justification for interference with the impugned order either on the ground of correctness, legality or propriety.*

## FINDINGS

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### ▪ Evidence

#### I. CCTV-footage

There exists a CCTV footage of the lobby, which wasn't considered while passing the impugned order. The prosecutrix's testimony was refuted by CCTV footage refuted by her own actions.

*Conclusion:* The trial court was in error in not considering the CCTV footage.

This CCTV video does not capture the victim's facial expressions, only shows the movement inside and outside the elevator, which may affect post-incident behavior.

#### II. Email –

- a. Nikhil: Prosecutrix had sent an email to one of her friends Nikhil, to whom she had disclosed about the inappropriate behaviour of the Applicant. the investigating agency failed to examine this important witness.

*Conclusion:* It may be a material lapse of the IO not to do so but definitely not a ground for discharge.

- b. Shoma: Prosecutrix had sent an email to Shoma clearly indicated that she had made a demand on the Applicant for an apology.

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<sup>15</sup> Indian Evidence Act,1872, § 65B, No. 1, Act of Parliament,1872(India).

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*Conclusion:* In that backdrop too Applicants contention does not stand the test of scrutiny that the e-mail of the victim to her senior Shoma was a demand made on the Applicant inasmuch as her reaction was normal for a person feeling outrage.

### III. Apology email –

Certain e-mails were sent by Tejpal –formal apology: circulated within the organisation, and ‘personal apology’, sent to prosecutrix. The applicant claimed that it was on the demand of the victim and not on willingness.

*Conclusion:* No element coercion insofar as the Applicant.

#### ▪ **Witness’s**

##### I. Prosecutrix(victim):

The statement on oath of prosecutrix was recorded under S164 Cr.P.C<sup>16</sup>.

*Conclusion:* her statement was more than adequate for framing of charge.

##### II. Ria:

Prosecutrix conversation with Ria indicated the strategy adopted by the victim to implicate the Applicant and that it was not an act of voicing her anguish.

*Conclusion:* One conversation cannot override the other material and statements on record which reveal that the victim had reposed confidence in her confidantes.

## **JUDGEMENT**

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The Court held that there is more than a prima facie case against the accused. It stated that, ample material against the accused is available and the Trial Court has rightly framed the charge against the accused. It further indicated that the learned judge had duly considered the material facts on the record, the import and legislative intent of 227 Cr.P.C. and came to prima facie finding thereon that there is adequate material to frame charge against the accused. Such findings of the trial court do not warrant any interference in revision on the premise that the order is either incorrect, illegal or lacking in propriety as to exercise the powers vested in this Court under Section 397 r/w. 401 Cr.P.C.

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<sup>16</sup> Code of Criminal Procedure 1973, § 164, No. 2, Act of Parliament, 1973(India).

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In view thereof, no case whatsoever is made out for interference therewith and hence, the revision Petition was dismissed.

#### ▪ Appeal

*Tarun Jit Tejpal v. State of Goa*<sup>17</sup>

The impugned Judgment and Order, passed by High Court dismissed the Revision Application and has refused to discharge the accused for the offences. Hence, feeling aggrieved and dissatisfied, Tarun Tejpal, filed an appeal before the Apex Court. On August 19, 2019- the court dismissed the appeal. The SC directed the learned Trial Court to conclude the trial at the earliest within a period of six months from the date of receipt of the Order of this Court.

#### ANALYSIS

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The law of discharge (S.227 Cr.P.C<sup>18</sup>) was intended to give benefit to the accused. It is in consonance with right to liberty enshrined in Article 21.<sup>19</sup> Despite several discrepancies brought to light by the applicant the judgment declared “*not the appropriate stage to point out the alleged inconsistencies.*” It is the fundamental right of the accused to have a fair investigation, but the IO committed omission while conducting the investigation. The court failed to look into the CCTV footage and also failed to take Nikhil Agarwal’s statement.<sup>20</sup> This all account for a reasonable justification to quash the order.

But a careful reading of precedents suggest otherwise. In *Prafulla Samal*,<sup>21</sup> it is contended that “*At the stage of framing charges the Court is required to evaluate the evidence with a view to finding out if the facts emerging at prime-facie disclose the existence of all the ingredients constituting the alleged offence.*” In *Onkar Mishra*<sup>22</sup>, the SC held that at this stage the Court is not expected to go deep into the probative value of the material on record. In *Om Wati*<sup>23</sup>, the SC held the Court is required to record its reasons only if it decides to discharge the accused but it is not required to do at the contrary.

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<sup>17</sup> Tarun Jit Tejpal v. State of Goa, 2019 SCC OnLine SC 1053.

<sup>18</sup> Code of Criminal Procedure 1973, § 227, No. 2, Act of Parliament, 1973 (India).

<sup>19</sup> INDIA CONST. art. 21.

<sup>20</sup> whom, it is alleged that Prosecutrix discussed cheerfully about her flirtatious moments with Tarun Tejpal.

<sup>21</sup> Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4.

<sup>22</sup> Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561.

<sup>23</sup> Om Wati v. State, Through Delhi Admn, (2001) 4 SCC 333.

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The next question is, was the apology simply as a resultant of the demand?

While, Voluntary apologies are motivated by internal causes, coerced apologies are brought about by external circumstances.<sup>24</sup> Although, at that stage, there was no offence registered against him and Tejpal being the editor-in-chief and the owner of Tehelka. There would be no reason for someone in Tejpal's position to send such an email other than an atonement for his act. But still one cannot allude from the findings that several witnesses gave statements that the accused was pressurized to keep up with the victim's demand by sending unconditional apology letter. Since the victim herself told in her email that the matter will be at "closure" at Tehelka level if she gets an unconditional apology from the accused. Therefore, one could argue that, to keep up with the reputation of Tehelka, the apology letters were mailed.

Complaint filing is a critical stage in the prosecution of a case. A significant percentage of sexual assault cases never get beyond this stage. A central feature of these accounts is discrediting the victim's rape allegation by finding discrepancies in the victim's statement<sup>25</sup> which is exactly what the applicant has done in the present case. Prosecutors' accounts reveal the indigenous logic of prosecutors' decisions to reject cases. Further, the 172 Report of the law commission of India<sup>26</sup> the defence counsel is prohibited from asking questions to prosecutrix in a rape case about her general moral character. Further, in *Rajoo v. State Of M.P.*,<sup>27</sup> "The SC laid down that ordinarily the evidence of a prosecutrix should not be suspect and should be believed." Therefore, the applicant's contention that "no questions regarding the victims sexual encounter with Robert De Niro were asked" was in contradiction as it violates the victims right to fair trial.

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<sup>24</sup> Alayna Jehle, Monica K. Miller, Markus Kemmelmeier, Jonathan Maskaly, *How Voluntariness of Apologies Affects Actual and Hypothetical Victims' Perceptions of the Offender*, 152 *The Journal of Social Psychology (JSP)* 727, (2012).

<sup>25</sup> Lisa Frohmann, *Discrediting Victims' Allegations of Sexual Assault: Prosecutorial Accounts of Case Rejections*, 48 *Social Problems* 213, (1991).

<sup>26</sup> Law Commission of India, 172nd report on Review of Rape Laws, Mar. 25 2000. <https://lawcommissionofindia.nic.in/rapelaws.htm>.

<sup>27</sup> *Rajoo v. State of M.P.*, AIR 2009 SC 858.

*State of Karnataka by Nonavinakere Police v. Shivanna @ Tarkari Shivanna*, (2014) 8 SCC 913.

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The Network of Women in Media, India (NWMI) has issued a critique of the judgment, calling it a "new low for cases of sexual assault" and raising concerns about the treatment of sexual assault survivors in the Indian legal system.<sup>28</sup>

## **CONCLUSION**

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In the instant case of Tarunjit Tejpal, the judgement was drafted in a negative tone whereby the applicant's plea to quash all charges against him were rejected.

The judgment laid down a stern example, by stating that applicant cannot be discharged at this stage on the ground that IO and complainant/informant are the same. The researcher opined that by although the contentions, evidences and major loopholes in the investigation did not tolerate sufficient grounds for a discharge, some kind of grievance and recognition regarding the failures and omissions of IO and trial court should have been given.

Further, Tarun Tejpal's apology mail is something of a Schrödinger's cat. If considered Coerced voids its applicability as a confession, precluding him from incriminating himself and if the opposite is considered its admissibility could be questioned under S65B-Evidence Act.

The researcher agrees that although there exist discrepancies in the victim's statement and evidence recorded, the courts contention that the law of discharge dictates, this stage inappropriate to be pointed out. Because if courts start discharging the accused at such minor loopholes, it would be a bad precedent, especially for rape victims.

Some commentators have used the case as an opportunity to reflect on the broader issue of sexual assault cases against women and the way forward for the Indian judicial system. As of April 2022, the State Government had decided to appeal the judgment.

Overall, the Tejpal case remains relevant today as it highlights ongoing issues related to sexual assault cases and the judicial system in India.

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