

**RAKHI IS NOT A REMEDY: A CASE ANALYSIS OF APARNA BHAT
V. STATE OF MADHYA PRADESH**- Prachi Mehta¹**ABSTRACT**

Aparna Bhat v. State of Madhya Pradesh (2021) is a milestone in the Indian judicial system against patriarchal bias. The case emerged when the Madhya Pradesh High Court imposed a so-called “Rakhi-tying” bail on a sexual assault accused, a decision criticized by the Supreme Court as trivializing sexual violence that violates the dignity of the survivor.

The order was overturned by the Supreme Court, ruling that judicial discretion should be informed by constitutional morality and not by social traditions or gender stereotypes. The Court stressed that sexual offenses are non-compoundable social evils which cannot be solved by force of reconciliation, marriage, or through symbolic practices. To bring systematic change, the Court established binding guidelines that barred victim-accused contact as a bail condition and mandating gender sensitization for the judiciary.

The ruling recognizes judicial stereotyping as a violation of the right to a fair trial by bringing the Indian jurisprudence in line with international human rights such as CEDAW. Ultimately, Aparna Bhat serves as an essential corrective measure that has changed the legal landscape of its patriarchal paternalism to a trauma-informed, survivor-oriented approach that respects the agency and constitutional rights of women.

CASE DETAILS

Case Name	Aparna Bhat vs The State of Madhya Pradesh
Case Citation	(2021) 16 SCC 179

¹Student, Symbiosis Law School, Pune.

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Bench	A.M. Khanwilkar, S. Ravindra Bhat
Case No.	Criminal Appeal No. 329 OF 2021
Petitioner	Aparna Bhat
Respondent	State of Madhya Pradesh
Petitioner's advocate	Aparna Bhat
Respondent's advocate	Mr. K K Venugopal
Court	Supreme Court of India
Judgement Date	March 18, 2021

INTRODUCTION

The judgment of the Hon'ble Supreme Court in *Aparna Bhat v. State of Madhya Pradesh (2021)*² is a landmark intervention in the field of gender justice and judicial accountability in India. The case arose from a highly controversial bail condition imposed by the Madhya Pradesh High Court, which directed the accused in a sexual assault matter to visit the complainant's residence on the occasion of Raksha Bandhan, allow her to tie a 'Rakhi' on his wrist, and tender a monetary gift as a gesture of reconciliation. This situation not only minimized the seriousness of the crime alleged but also exhibited a remarkable level of insensitivity and patriarchal bias in judicial thinking.

Thereby, Advocate Aparna Bhat and others approached the Supreme Court with the intent to challenge the constitutionality and appropriateness of such bail conditions in sexual offense matters. The Supreme Court, headed by **Justice S. Ravindra Bhat**, provided a stern rejection of gender stereotyping in court jargon. The Court highlighted that conditions of bail must be drawn up in a manner that is respectful of the dignity, autonomy, and mental health of

² *Aparna Bhat v. State of Madhya Pradesh*, 2021 SCC OnLine SC 230.

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survivors, and the imposition of the same culturally symbolic acts reiterates injurious patriarchal narratives.

This pathbreaking ruling not only overruled the objectionable state of bail but also set down binding guidelines for steering clear of injecting gender biases into judicial orders, especially in the case of sexual violence cases. The Aparna Bhat judgment therefore forms an important reaffirmation of the constitutional role of the judiciary as a check against discrimination and a guardian of gender equality. It again reaffirms the order that judicial discretion, particularly in such a delicate case, should be applied with proper regard for constitutional traditions, human dignity, and real-life experiences of survivors.

FACTS

A) BACKGROUND AND CAUSE OF ACTION

On July 30, 2020, Indore Bench of the Madhya Pradesh High Court released the accused on bail in a sexual assault case under Sections 354, 354-A, and 506 of the Indian Penal Code, 1860 (now Sections 74, 75, 351(2) and 351(3) of the Bhartiya Nyaya Sanhita, 2023). A very objectionable condition of bail was laid down by ordering the accused to go to the complainant's house on the occasion of Raksha Bandhan, permit her to tie a 'Rakhi' on his wrist, and give her ₹11,000 as a traditional gift, as well as a pledge to "*protect her.*"

This state of affairs, seen as profoundly patriarchal and insensitive, provoked national and legal indignation, with numerous people condemning the normalization and trivialization of sexual violence and the imposition of regressive gender roles on survivors. The order was seen as an affront to a survivor's dignity and agency, perpetuating harmful stereotypes that debase the gravity of sexual offenses.

B) LEGAL BASIS FOR THE PETITION

The Petition was moved under Article 32 of the Constitution invoking the right to life and personal liberty under Article 21, and equality under Article 14. The petitioners argued that such bail conditions:

- Perpetuate misogynistic stereotypes;
- Result in re-traumatization of survivors; and
- Constitute judicial misconduct, particularly in cases of sexual violence.

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C) RELIEF SOUGHT

The petitioners approached the Hon'ble Supreme Court seeking the following reliefs:

1. Quashing of the bail condition imposed by the Madhya Pradesh High Court.
2. Issuance of guidelines to prevent the imposition of stereotypical, patriarchal, or humiliating bail conditions in cases involving sexual offenses.
3. Directions to ensure that judicial training incorporates gender sensitization and eliminates entrenched biases in the adjudication of gender-based violence.

ISSUES**~ ISSUE 1 ~**

Is it appropriate to allow a compromise between the accused and the victim in such cases?

~ ISSUE 2 ~

Should courts be permitted to issue such directions, and if so, what implications might these judgments have on society?

~ ISSUE 3 ~

Do such judicial directions amount to an unfair conduct of the trial?

~ ISSUE 4 ~

Should the accused be allowed to interact with the survivor or any member of her family?

~ ISSUE 5 ~

What guiding principles should courts adhere to while granting bail and anticipatory bail?

LEGISLATIVE AND JUDICIAL ANALYSIS**ISSUE I: Is it appropriate to allow a compromise between the accused and the victim in such cases?****CLASSIFICATION UNDER BNSS**

Indian criminal law clearly draws a distinction between compoundable and non-compoundable offences.³ Sexual offences—including rape, assault, and harassment—are classified as non-compoundable under the BNSS,⁴ which implies that these offences cannot be privately settled or withdrawn. This classification is rooted in the understanding that crimes of sexual violence are not just personal wrongs, but public offences that harm the collective conscience of society.⁵

JUDICIAL POSITION

The Supreme Court, in *State of M.P. v. Madanlal*, firmly rejected the notion that rape or attempted rape can be resolved through compromise, emphasizing that such crimes strike at the very dignity and autonomy of women.⁶ Similarly, in *Ramphal v. State of Haryana*, the Court held that monetary settlement or compromise is irrelevant when determining the guilt in cases of rape.⁷

In *Aparna Bhat*, the Court reiterated:

*“Using Rakhi tying as a condition for bail transforms a legal process into a sentimental or conciliatory gesture, which has the effect of re-victimizing the complainant.”*⁸

IMPACT ON JUSTICE

Allowing compromise in cases of sexual violence distorts the essence of justice.⁹ It implicitly shifts the burden of resolution onto the survivor, placing her in a morally awkward position

³BharatiyaNagarik Suraksha Sanhita, 2023, § 360, Act No. 46 of 2023, (India).

⁴BharatiyaNagarik Suraksha Sanhita, 2023, § 360 r/w Sch. 2, Act No. 46 of 2023, (India).

⁵ State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, 395.

⁶ State of M.P. v. Madanlal, (2015) 7 SCC 681

⁷ Ramphal v. State of Haryana, (2021) 16 SCC 207.

⁸ Supra n 1.

⁹Shimbhu v. State of Haryana, (2014) 13 SCC 318, 325.

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where forgiveness or settlement is expected.¹⁰ This not only trivializes the crime but also encourages a culture of silence, where women may be dissuaded from reporting assaults in fear of being forced into "reconciliation." The law must remain firm: sexual offences demand legal accountability, not moral negotiation.

As the Court in the present case observed:

*"Courts should not facilitate any process which, in the guise of compromise or bail, undermines the dignity of the woman."*¹¹

ISSUE II: Should courts be permitted to issue such directions, and what implications might these judgments have on society?

SCOPE OF JUDICIAL DISCRETION

According to Sections 437(3)(c)¹² and 438(2)¹³ of the BNSS, the courts have the jurisdiction to attach conditions "*in the interest of justice*" at the time of bail or anticipatory bail. Still, the Supreme Court has been clear in *Kunal Kumar Tiwari v. State of Bihar*¹⁴ and *Sumit Mehta v. State (NCT of Delhi)*¹⁵ that such conditions shall be closely associated with the purpose of a fair trial—stopping flight, tampering with evidence, or intimidating victims.

THE RAKHI BAIL CONDITION

In *Aparna Bhat*, the Madhya Pradesh High Court's order that the accused go to the survivor's house to tie a Rakhi and give money was considered an abuse of judicial discretion, leading the Supreme Court to issue corrective guidelines.¹⁶

The Court cautioned that:

*"This kind of bail condition has the effect of diluting the object of bail and reflects a gross ignorance of the nature of the offence."*¹⁷

¹⁰ Leigh Goodmark, *Restorative Justice and Intimate Partner Violence*, 29Harv. Women's L.J. 53, 66–67 (2006).

¹¹ Supra n 1.

¹² BharatiyaNagarik Suraksha Sanhita, 2023, § 437, cl 3(c), Act No. 46 of 2023, (India).

¹³ BharatiyaNagarik Suraksha Sanhita, 2023, § 437, cl 2, Act No. 46 of 2023, (India).

¹⁴ *Kunal Kumar Tiwari v. State of Bihar*, (2018) 16 SCC 74.

¹⁵ *Sumit Mehta v. State (NCT of Delhi)*, (2013) 15 SCC 570.

¹⁶ Supra n 1.

¹⁷ Supra n 1.

IMPLICATIONS ON JUSTICE SYSTEM

Courts are guardians of legality, not agents of social custom.¹⁸ When they overstep their statutory authority and impose culturally motivated conditions—as seen in the Rakhi order—they inadvertently promote extra-legal moral settlements. Such actions dilute the judiciary’s credibility, signalling that criminal liability can be offset by symbolic rituals. More dangerously, they may reinforce patriarchal structures by casting survivors in the role of forgivers or peacemakers, even before trial begins. The wider consequence is a system of justice which replaces symbolism for responsibility—a path that needs to be reversed.

As stated in the judgment:

“Courts must refrain from expressing any stereotype opinion, especially during bail proceedings, as this may influence the course of trial and shake the confidence of the victim.”¹⁹

ISSUE III: Do such judicial directions amount to an unfair conduct of the trial?

CONSTITUTIONAL SAFEGUARDS

A pillar of Indian constitutional law is the provision of a fair trial under Article 21,²⁰ encompassing procedural fairness, impartiality, and victim rights.²¹ Where courts instruct survivors to engage in activities such as Rakhi tying or permit pre-trial contact, they undermine these principles.

SUPREME COURT OBSERVATIONS

In *Aparna Bhat*, the Court noted that such directions embed gender stereotypes, downplay the offence, and could result in secondary trauma. A trial, being fair, must be one of non-coercion—aided to neither legally nor emotionally.²²

It also stated:

¹⁸ P.N. Bhagwati, *Judicial Activism and the Role of Courts in Social Justice*, 16 J. Indian L. Inst. 300, 320 (1974).

¹⁹ *Supra* n 1.

²⁰ INDIA CONST. art. 21.

²¹ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²² *Khatri v. State of Bihar*, (1981) 1 SCC 627.

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“Orders like these are counterproductive, as they trivialize the trauma and contribute to the re-victimization of the complainant.”²³

IMPACT ON NEUTRALITY

These types of directions tend to skew the trial inbuilt. They can accidentally convey to the two sides—and even to the trial court—both that the offence is light or that a reconciliation is probable. This warps the neutrality due to judicial process and invites outside considerations into the process of adjudication.²⁴ On the part of survivors, it could lead to retraumatization and demote future activism within the judicial process. For that reason, such instructions detract not just from the impartiality of the trial but from the psychological integrity of the survivor.²⁵

ISSUE IV: Should the accused be allowed to interact with the survivor or any member of her family?

LEGAL BOUNDARIES

The law governing bail prohibits all actions by the accused that may have an effect on the trail of justice, more so regarding the survivor and witnesses.²⁶ In *Aparna Bhat*, the Supreme Court, without reservation, held that the terms of bail should not direct or allow for any manner of contact between the accused and the survivor, since it tends to result in intimidation, coercion, or influence. It also called for protection measures to be taken wherever there is a possibility of harassment.²⁷

CONSEQUENCES OF INTERACTION

Allowing contact between the accused and the survivor—particularly under the guise of ritual or compromise—weaponizes proximity.²⁸ Even without explicit threats, the psychological cost to the survivor can be tremendous. It can cause her to internalize blame, repress testimony, or be afraid of reprisal. Such contact subverts her right to pursue justice on an

²³ *Supra* n 1.

²⁴ Madhav Khosla, *Judicial Neutrality and the Limits of Legal Reform*, 20 *J. Indian L. Inst.* 234, 245 (2006).

²⁵ Leigh Goodmark, *Restorative Justice and Intimate Partner Violence*, 29 *Harv. Women's L.J.* 53, 66–67 (2006).

²⁶ *State of U.P. v. Amarmani Tripathi* (2005) 8 SCC 21.

²⁷ *Supra* n 1.

²⁸ *State of Madhya Pradesh v. Ramesh* (2011) 4 SCC 786.

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equal platform, and empowers the accused by presenting an atmosphere of laxity. For the sake of justice, non-contact should be the norm, and courts need to strictly enforce this rule.

The Court further emphasized:

“Victims of sexual violence must not be further subjected to contact with the accused as part of any judicial condition, as it reopens the wound rather than offers redressal.”²⁹

ISSUE V: What guiding principles should courts adhere to while granting bail and anticipatory bail?

GUIDELINES ON BAIL JURISPRUDENCE IN SEXUAL OFFENCE CASES

(i) Prohibition of Victim-Accused Contact as Bail Condition

The Court categorically ruled that no bail order must require, allow, or suggest any contact between the accused and the survivor. Such contact is coercive in nature and contrary to the objectives of criminal justice. Any perceived threat must lead to further restrictive conditions.

(ii) Mandatory Victim Notification

To enhance procedural fairness and transparency, the Court ordered that the survivors be notified of the grant of bail within two days and a copy of the bail order be communicated to them. This enhances their role as a stakeholder in the criminal justice process, as enunciated in *Rekha Murarka v. State of West Bengal*.³⁰

(iii) Rejection of Patriarchal Stereotypes in Bail Reasoning

Bail orders should not be determined by the victim's clothing, behavior, or "moral character."³¹ The Court reaffirmed that these considerations have no legal impact on consent or the gravity of the offence, in accordance with Section 53A of the Bharatiya Sakshya Act, 2023, which excludes the use of previous sexual history to impeach credibility.³² The judgment denounces the long-standing practice of moral policing and is a reflection of the transition to survivor-oriented justice.

(iv) Absolute Bar on Compromise, Marriage, or Mediation

²⁹ *Supra* n 1.

³⁰ *Rekha Murarka v. State of West Bengal*, (2020) 2 SCC 474.

³¹ *State of Rajasthan v. Balchand*, AIR 1977 SC 2447 (India)

³² Bharatiya Sakshya Act, 2023, § 53A, Act No. 12 of 2023, (India).

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By defining at length that courts cannot suggest marriage, compromise, or mediation in sexual offence cases, the Court reaffirmed the non-compoundable aspect of such offences. This was a much-needed reaffirmation after a series of lower court judgments obfuscated the distinction between criminal liability and civil settlement, particularly in rape and POCSO cases.³³

(v) Judicial Language and Sensitivity

The Court instructed judges to be most sensitive in both written and oral pronouncements. It underlined that the court should not be a place of additional trauma. Judges should maintain a language of dignity and compassion, going beyond outmoded formulas.

COMPARATIVE ANALYSIS

1. Indian Context: From Cultural Symbolism to Constitutional Morality

Prior to *Aparna Bhat v. State of Madhya Pradesh (2021)*,³⁴ Indian courts had granted bail orders based on cultural or reconciliatory principles—like proposing marriage or symbolic acts like Rakhi tying.³⁵ The *Aparna Bhat* judgment conclusively rejected such practices, reiterating that bail conditions must be in line with legal principles under Sections 437(3)(c)³⁶ and 438(2)³⁷ BNS and cannot compromise the dignity of the survivor.

This paradigm shift also strengthens previous jurisprudence in *State of Punjab v. Gurmit Singh (1996)*³⁸ and *Nipun Saxena v. Union of India (2019)*,³⁹ which placed significant emphasis on discarding gendered presumptions and adopting a trauma-informed, survivor-focused judicial practice.

2. UK and US Approaches: Objective Bail Standards and Victim Protection

In the UK, judicial discretion is confined under the Bail Act 1976⁴⁰ and case law such as *R v. D* to concrete issues such as risk of flight or reoffending.⁴¹ Symbolic or moralistic conditions

³³ State (Govt. of NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575.

³⁴ Supra n 1.

³⁵ Shimbhu v. State of Haryana, (2014) 13 SCC 318

³⁶ BharatiyaNagarik Suraksha Sanhita, 2023, § 437, cl 3(c), Act No. 46 of 2023, (India).

³⁷ BharatiyaNagarik Suraksha Sanhita, 2023, § 438, cl 2, Act No. 46 of 2023, (India).

³⁸ State of Punjab v. Gurmit Singh, (1996) 2 SCC 384, 395.

³⁹ Nipun Saxena v. Union of India, (2019) 13 SCC 715

⁴⁰ Bail Act 1976, c. 63 (UK).

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of bail are eschewed. Likewise, in the United States, the Bail Reform Act of 1984⁴² and state-level victim protection legislation such as *Marsy's Law*⁴³ impose:

- Mandatory notification to victims
- Strict no-contact orders
- Emphasis on due process, rather than social mores

India's mandate in *Aparna Bhat*—that survivors have to be informed about bail and shielded against symbolic trauma—closely conforms to these standards, though statutory codification in India is not as evolved.⁴⁴

3. CEDAW and International Norms: Judicial Stereotyping as a Human Rights Violation

The Supreme Court's invocation of **CEDAW General Recommendation No. 33** puts the judgment firmly in the international human rights context.⁴⁵ In decisions such as *Vertido v. Philippines (2010)*⁴⁶ and *V.K. v. Bulgaria (2011)*,⁴⁷ the CEDAW Committee ruled that judicial use of stereotypes breached the right to a fair trial.

Aparna Bhat seconded this argument by believing that cultural practices such as Rakhi tying perpetuate patriarchal norms and constitute secondary victimization—thereby infringing Article 21 of the Indian Constitution and India's international treaty obligations.⁴⁸

4. South Africa: Transformative Constitutionalism

South African courts have been keen on dignity in the determination of sexual offences for a long time. In *S v. Chapman (1997)*, the Court referred to rape as a violation of privacy and dignity.⁴⁹ Courts consistently eschew compromise or moral adjudication in bail, in harmony

⁴¹ R v. D, 2002 EWCA Crim 959

⁴² Bail Reform Act of 1984, 18 U.S.C. §§ 3141–3156 (2022).

⁴³ Marsy's Law for All, Cal. Const. art. I, § 28(b) (as amended 2008).

⁴⁴ Surpa n 1.

⁴⁵ Comm. on the Elimination of Discrimination against Women, General Recommendation No. 33 on Women's Access to Justice, U.N. Doc. CEDAW/C/GC/33 (2015).

⁴⁶ Comm. on the Elimination of Discrimination against Women, *Vertido v. Philippines*, Comm. No. 18/2008, U.N. Doc. CEDAW/C/46/D/18/2008 (2010).

⁴⁷ Comm. on the Elimination of Discrimination against Women, *V.K. v. Bulgaria*, Comm. No. 20/2008, U.N. Doc. CEDAW/C/49/D/20/2008 (2011).

⁴⁸ INDIA CONST. art. 21

⁴⁹ *S v. Chapman*, 1997 (3) SA 341 (SCA) (S. Afr.).

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with their constitutional mandate. *Aparna Bhat* echoes the same reasoning by prioritizing constitutional dignity and eschewing symbolic appeasement as judicial cure.

CONCLUSION

The Supreme Court's decision in *Aparna Bhat v. State of Madhya Pradesh*⁵⁰ is a forceful judicial utterance reaffirming the constitutional ideals of justice, equality, and dignity in the framework of sexual violence. The Court's sharp rebuke of the Madhya Pradesh High Court's bail order—reducing a grave offense to a culturally symbolic and patriarchal ritual—acts as a clarion call against deep-seated gender prejudices within the judiciary.

The case shows that justice should not only be administered but be perceived as well to ensure the dignity of everyone, especially gender-based violence survivors. It affirms that judicial discretion is not absolute and must be exercised in constitutional empathy and informed wisdom. By establishing precedents that put survivor dignity at the forefront and dismantle dangerous stereotypes, this judgment enhances the judiciary's role as a constitutional guardian.

In the future, this case has to become the template for court behavior in gender-based offense cases. Through policy reforms, strong guidelines, and ongoing education, the bar and bench can assist in ensuring not just that justice is legally correct but also socially just and ethically correct. The judgment, thus, is not just the rectification of one case but an evolutionary step towards embedding gender justice into Indian law.

⁵⁰ *Supra* n 1.

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