

Lalu's sentence

The suspense over Lalu ended on Saturday when a special CBI court handed former Bihar Chief Minister a three-and-a-half-year rigorous imprisonment (RI) in a second fodder scam case but legal troubles for the RJD supremo are likely to continue, with hearing in at least two other fodder scam cases nearing completion and judgment expected in about a month's time. Politically, the answer to whether or not Yadav will be able to get immediate bail in this particular case seemed to have become crucial, with the RJD planning a major offensive against the NDA government in Bihar this month. The response to this agitation will give a clue to Lalu's hold over the masses. If the RJD can muster the support of anti-NDA parties the situation may take an explosive turn.

Had Lalu been awarded a sentence of three years or less, he would have been entitled to get bail from the lower court almost immediately. But now the bail application will have to be filed in the High Court. Lalu's Counsel Kumar says that the processing of the bail petition in the HC may take anywhere between two to three weeks, adding: "We will read the order and then apply for bail. When Lalu was convicted on December 23 last year, his supporters had shouted slogans and virtually tried to stop his vehicle from taking him to jail. However, with video-conferencing being used and the political action shifting to Patna, there was only a handful of supporters, with leaders like Bhola Prasad Yadav, remaining present in the premises.

Has the Lalu magic worn off? Or will the jail term give him a fresh lease of political life through the sympathy factor that will be exploited to the hilt by the RJD, particularly by his sons Tejaswi and Tej Pratap? Sometimes the jail term helps. When Charan Singh had Indira Gandhi arrested—though she was bailed out the same day—her political journey towards recapturing power started from that very moment. Likewise, in 1977, posters of a jailed George Fernandes, post emergency, made such an impact, that he won the Muzaffarpur parliamentary seat in absentia by a huge margin to become the union minister for industries in the subsequent Janata Party government. The RJD supporters believe that the party would be strengthened. The confidence may be infectious to the cadres, but it's difficult to predict yet the impact of Lalu's fresh jail term on the party or his political career. But betting against Lalu, a man known to rebound into national contention every time he appeared to be down and out, can still be a political miscalculation. If Tejaswi can rope in the youth power from Gujarat then that may become a cause of worry to the Nitish Government. But right now everything is in the realm of conjecture. We will have to wait for some more time to assess whether Lalu's magic will click again—helped by the incumbency factor haunting Nitish and the BJP.

SNIPPETS

The Pakistani cricketer-turned politician, Imran Khan, is stated to have married for the fourth time—on January 1. He has begun the new year with a new dame!

Incidentally, the former Pak pace bowler has, for the fourth time bowled a 'maiden' over!

But in India, a man emulating Imran and going out to marry for the fourth time, could not hit the jackpot. The Dulha and the Baraat of Moradabad were held hostages. How could the bridegroom be expected to adjust with the fourth wife when he could not take care of the first three?

Prakash Ambedkar says that casteism will have to be curbed or else the Hindutva society will be producing ultras like Hafiz Saeed. Is that a compliment or an insult?

Chief Minister Yogi has directed top officials to identify the drones and shirkers among the staff and suspend them. But what if the officials entrusted with this task turn out to be shirkers themselves?

STF will be inducted to nab copy cats in the UP Board Examinations. If the Government succeeds, crores of rupees will be prevented from entering the arena of black money.

But what if the Nakal Mafia dons accept this challenge and succeed in outwitting the Government through alternative strategy evolved with the help of connivers in the administration?

Man Alone is not the Author of Adultery

Is adultery law in India not offensive to the dignity of the women? Does it not treat women as the chattel of her husband? Is it not discriminatory against men and therefore repugnant to the equality of men and women? These are the questions which have been agitating the men and women both from the time of the adoption of the Constitution of India. Adultery is a voluntary sexual activity by a married woman with another married or unmarried man. Although it is a voluntary sexual activity between man and woman but the provision for the punishment is only for the men and not women. This is the reason that there has been a consistent demand for scrapping of Section 497 IPC to make it sync with the times. It says that 'whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor.

A sexual link between a married or unmarried man and an unmarried woman or a divorcee or a widow, therefore, does not come within the ambit of adultery. It also holds the man and not the (adulteress) wife of another man, who has been unfaithful to her husband, solely responsible for the sexual liaison. IPC thus views adultery as an invasion of the right of the husband over his wife. Recently this question again came up before the Supreme Court in 'Joseph Shine vs Union of India' and as a result of it the Court issued the notice to the government to know its opinion so that, a finality could be given to it.

In its previous judgement in 'Somwritri Vishnu vs Union of India', the Supreme Court had ruled that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The offence of adultery is considered as an offence against the sanctity of the matrimonial home and it is committed by a man, not a woman. Therefore, those men who defile that sanctity are brought within the net of the law. Who can prosecute who for which offence depends firstly, on the definition of the offence and, secondly, upon the restrictions placed by the law of procedure on the right to prosecute? Section 198 (2) of the Criminal Procedure Code provides the right to prosecute only to the adulterer by the aggrieved husband of the adulteress.

The argument is that the husband should have the right to prosecute the infidel wife in the same way as the wife must have the right to prosecute the disloyal husband. Admittedly under the law, the aggrieved husband whose wife has been disloyal to him has no right to prosecute his wife, in as much as by the very definition of the offence, only a man can commit it, not a woman. The philosophy underlying the scheme of these provisions appears to be that

as between the husband and the wife social goodwill is promoted by permitting them to 'makeup' or 'break up' the matrimonial tie rather than to drag each other to the criminal court. They can either condone the offence in a spirit of 'forgive and forget' and live together or separate by approaching a matrimonial court and snapping the matrimonial tie by securing the divorce. They are not enabled to send each other

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to jail. Perhaps the idea behind it is that the children (if any) are saved from the trauma of one of their parents being jailed at the instance of the other parent. Whether one does or does not subscribe to the wisdom or philosophy of these provisions is of little consequence.

The Courts have kept their hands off by saying that they are not the arbiter of the wisdom of the law. They are merely the arbiter of the constitutionality of the law. Section 497 and section 198(2) of the CrPC go hand in hand and constitute a legislative packet to deal with the offence committed by an outsider to the matrimonial unit, who invades the peace and privacy of the unit. The 'outsider' breaks into the sanctity of the matrimonial tie by developing an illicit relationship with one of the spouses, subject to the rider that the erring 'man' alone can be punished and not the erring woman. It does not arm the two spouses to hit each other with the weapon of criminal law. That is why, neither the husband can prosecute the wife and send her to nor the wife can prosecute the husband and send him to jail. There is thus reverse discrimination in 'favour' of the woman rather than 'against' her. The law does not envisage the punishment of any of the spouses at the instance of each other. A husband is not permitted to prosecute the wife because she is not treated an offender in the eye of law. Thus, the right to prosecute the adulterer is restricted to the husband of the adulteress but has not been extended to the wife of the adulterer.

Section 497 IPC read with Section 198 CrPC, thus signifies the unequal status of "husband" and "wife" in the institution of marriage in India. It declares that: (i) man is a seducer and the married woman is merely his hapless and passive victim, (ii) he trespasses upon another man's marital property i.e. his wife by establishing a sexual liaison with the married woman with her consent but without the consent or connivance of her husband, (iii) husband of the adulteress wife is an aggrieved party and he (in some cases a person who had to care for the married woman when the adultery was committed), therefore, he is authorised to make a formal complaint, (iv) wife of the man, who had consensual sexual intercourse with another woman, married or unmarried, is not deemed to be an aggrieved party and thereby is precluded from making a formal complaint against either her

husband or the adulteress woman, and (v) a married man, with impunity, may seduce and establish sexual liaison with an unmarried woman, a widow, or a divorcee even though such a sexual link is equally potential to wreck the marriage between him and his wife.

Immediately after the commencement of the Constitution, Section 497 IPC was assailed in Yusuf Abdul case on the ground that it militates against the spirit of equality as embodied in the Constitution. The Apex Court responded: 'We are not able to read any such restriction into the clause; nor are we able to agree that a provision which prohibits punishment is tantamount to a licence to commit the offence. It was contended that Section 497, being contrary to Article 14 of the Constitution, makes an irrational classification between women and men as it: (i) confers upon the husband the right to prosecute the adulterer but it does not confer a corresponding right upon the wife to prosecute the woman with whom her husband has committed adultery, (ii) does not confer any right on the wife to prosecute the husband who has committed adultery with another woman, and (iii) does not take in its ambit the cases where the husband has sexual relations with unmarried women, with the result that the husbands have a free licence under the law to have extramarital relationship with unmarried women.

Assuming that the right to be heard is concomitant with the principles of natural justice and believing that a trial court allows the married woman to depose her say before it records adverse findings against her, the Apex Court held that the absence of a provision mandating hearing the adulteress wife in Section 497 does not make the section unconstitutional. Such judicial reasoning, in the ultimate analysis, unfortunately, endorses the patriarchal, property-oriented and gender-discriminatory penal law of adultery. It conveys that a man is entitled to have exclusive possession of, and access to, his wife's sexuality, and a woman is not eligible to have such an exclusive right and claim over her husband. She is, therefore, not entitled to prosecute either her promiscuous husband or the "outsider woman" who has poisoned her matrimonial home.

It, therefore, suggests that the wife is the husband's property as it reserves for the husband the right to move the law for punishing any trespass on it, while not giving the wife any corresponding right to complain against any transgressions on the part of or relating to her husband. The existing law of adultery is retrogressive and unequal and hence needs to be relooked, which is what the Supreme Court has decided to do.



The Author

Rajputs, their women, & Muslim rulers

It is pointless to speculate whether Padmini or Padmavati was a real person or not. There would have been a chief queen in Chittor even if we do not know her real name.

Acasteist outfit, the Rajasthan-based Sri Rajput Karni Sena's objection to the movie 'Padmavati' is somewhat surprising because the Rajputs acquitted themselves honorably in this period. The Delhi Sultanate was relatively a new thing and the Rajputana rulers were still hopeful of challenging it militarily. They fought valiantly till the end and their women took their own life to protect their honour.

Mughal-Rajput marriages
As time passed, Rajputs became increasingly disadvantaged. Babar defeated the Rajput confederacy led by Rana Sanga of Chittor. His widow Rani Karnavati's appeal to Humayun for help against the Gujarat Sultan failed to elicit any prompt response. The rules of the game changed with Akbar. Rajput rulers became allies of the Mughals, but at a price. They were asked to send their daughters to the imperial harem. The practice lasted 150 long years, from 1562 to 1715.

From Jodha Bai to Indira Kanwar
The first Rajput girl in the Mughal zenana was a daughter of Raja Bharmal of Amber, known variously as Jodha Bai, Hira Kunwai or Harkha Bai, who was married to Emperor Akbar. Given the secular image of Akbar, the marriage has been presented as an inter-religious affair. Movies and television serials have romanticised this particular pair, but the reality, in general, was different. It is noteworthy that Mughal chronicles do not record Hindu names of Rajput wives; they know them only by their Muslim titles. While the Rajput wives in the Mughal harem would probably have met their male blood relatives, it is unlikely that they ever visited their parental home.

The last incidence of a Mughal-Rajput marriage is particularly unsavoury; it belongs to an era when the Mughal power had precipitously declined. In 1715, Maharaja Ajit Singh of Marwar was compelled to marry off his daughter Indira Kanwar to Emperor Farrukhsiyar. The Maharaja showed no fondness for his Mughal son-in-law. He, in fact, was instrumental in Farrukhsiyar's dethronement and assassination. Indira Kanwar was converted back to Hinduism and

brought to Jodhpur with all her property. It was the first ever instance of a Rajput princess being 'restored' to her own people after she had once entered the

Rajesh Kochhar

imperial harem." The daughter was obviously nothing more than a pawn in her father's politicking.

Karni Sena's aim
The Karni Sena has violently reacted to 'Jodha-Akbar' and 'Padmavati'. One shudders to think of its reaction if someone were to make a movie on Indira Kanwar.

The Karni Sena's avowed aim is to consolidate the Rajput vote with a view to striking a hard bargain at the next General Election. Keeping the vote bank politics in mind, Rajasthan Chief Minister Vasundhara Rajje has argued: "Why insist upon a film if it is hurting

announced that historians would be included in the panel that views 'Padmavati'. Such a move can serve no useful purpose. History is a tricky subject; it cannot be written without implicating the historian. Not all historical facts are recorded nor are all points of view accommodated. What is considered important today may not even have been considered worthy of notice in the past.

Alauddin Khilji's chronicler Amir Khusro records the jauhar committed by the queens and other women in the Ranthambore Fort which was conquered in 1301. It was the first description of the custom in Persian. Two years later, the Chittor fort was reduced under similar circumstances but no jauhar is mentioned. It will be wrong to conclude from this that no jauhar took place. The absence of mention does not constitute proof of absence. Muslim chroniclers may not have been overly enthusiastic about recording the goings-on in the Rajput camp. It is probable that Amir Khusro's interest was in reporting a new phenomenon to his readers. Once the purpose had been served, there was no need to report the incident again.

If the womenfolk in Chittorgarh did not take their own life, what happened to them? If they had been taken to Delhi, surely the Sultanate historians and chroniclers would have found it worthy of mention. It is pointless to speculate whether Padmini or Padmavati was a real person or not. There would have been a chief queen in Chittor even if we do not know her real name.

Suppose Jayasi had set his epic in Ranthambore rather than in Chittor. There would have been no controversy on the historicity, but the impact of the epic would have been the same as now.

No movie can ever be made based solely on the inputs provided by chroniclers and historians. Even if names, dates and events are authentic, characters will have to be fleshed out, tensions created and drama enacted. As the high court has said, a movie should not be pre-judged.

The decision on its release should be awaited and respected. More importantly, a nation should be able to look its past in the eye without feeling discomfited. It should allow its artistes and creative persons to function in an atmosphere free of fear.



the sentiments of a particular caste?" Pandering to populism, the governments of Rajasthan, Haryana and MP have banned the film even without waiting for a decision by the certification board.

The Karni Sena president has demanded that the film be cleared by the erstwhile ruling family of Mewar. This is a pernicious principle. Every Hindu has a caste. Historical personalities cannot be considered as the property of their present-day caste descendants. If Maharana Pratap can be a national hero, why can the others not be seen from a general perspective?

History and art

The National Film Certification Board has