

VICTIM BLAMING AS A FORM OF RAPE CULTURE: A HINDRANCE TO A WOMAN'S AUTONOMY

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Abstract

This legal journal argues that victim blaming constitutes a core tenet of rape culture, posing a significant hindrance to woman's autonomy and access to justice. It examines the legal implications of victim blaming, exploring its impact on reporting rates, evidentiary values. This article also explores why it is absolutely necessary to break the myth that rape occurs because of some inconsistent behavioral patterns among women. Victim blaming has somehow become a general mindset among both the general public and the educated professionals. This article attempts to analyse the reason behind such a mindset thereby establishing a theory of victim-perpetrator attribution. The link between rape culture, victim blaming and criminal justice system is studied and substantial solutions are discussed in this article. It further analyses how sex workers also fall within the ambit of victim blaming.

Keywords- rape culture, victim blaming, perpetrator, criminal justice system.

Introduction:

"In the face of sexual violence, scrutiny often turns to the victim"

The fundamental principle of our legal system rests on holding perpetrators accountable for their actions. However, Phrases like "You provoked him", "You dressed inappropriately", "Why were you out at night?" exemplify the societal shift in focus that silences survivors and hinders their autonomy. Our society somehow has had the inherent right to question girls and their dignity since primordial times. This phenomenon is often rooted in the "Just World Phenomenon," a psychological concept where people believe bad things happen because the victim did something wrong. The stigma related to rape and making it as a 'culture' means using a woman's body as battlegrounds to establish male dominance. 'Rape Culture' was coined by American feminists in the 1970's which was considered as a phenomena where rape, sexual violence and aggression against women is made common.

A Call for Change:

The focus should not be on a victim's clothing or background. The narrative needs to shift towards educating boys about healthy perceptions of women, both at home and in society as a whole. This paper argues that victim blaming is not merely insensitive, but a cornerstone of a pervasive "rape culture" that undermines a woman's autonomy and creates a chilling effect on reporting sexual violence. By examining the ways victim blaming manifests and its far-reaching consequences, this article calls for a legal shift that prioritises victim safety and perpetrator accountability.

As Alice Walker, the American novelist and activist, aptly stated, "We live in a world where a woman can be raped and blamed for walking home alone at night. This isn't about safety, it's about control."

When Justice Feels Like Blame: Examining Stigma in court and recording of rape Complaints

“Nothing is to be preferred before justice”- as stated by Socrates. Justice is the place where individuals seek refuge in. Therefore, when something as horrendous as rape occurs, it is the Justice system that comes into play at the foremost. However, the court can also be futile in terms of dealing with a rape victim. There is a lot of stigmatization in terms of recording of complaints of rape victims not only by the police but from the entire legal system. When a victim of rape reports the offence to the police, they are more often than not subjected to various prejudices and is forced to choose between seeking justice and protecting their dignity.

Stigmatization by the Courts with regard to conduct of victim:

The Hon'ble Apex Court in the case of **Raja v State of Karnataka, (AIR 2016 SC 4930)**, granted bail to the accused who committed rape on the ground of victim's conduct during trial. The bench very conveniently stated “ her conduct during the alleged ordeal is also unlike a victim of forcible rape and betrays somewhat submissive and consensual disposition”. The court expected the victim to be terrified and traumatized which is in a way convincing for the people in general. The court held it as a simple sexual intercourse only because the prosecutrix did not behave the way she is expected to behave. This clearly reveals of how a victim of rape becomes a scapegoat in a courtroom.

Denigration of victim by a Judge- In the case of **Vikas Garg and Ors v State of Haryana (2017)**, the victim was subjected to character assassination after the commission of rape. The Court made a frivolous attempt to state that the incident was not violent enough to call it as a Rape only because the Law does not find it grueling enough. The judgment was subjected to fallacies:

Ad Hominem- the Court emphasised upon the character of the victim rather than putting its emphasis upon the arguments and commission of the offence by the perpetrator.

Argumentum ad Misericordiam- The Court emphasized on the victim gaining pity of being raped without providing any logical reasons to support the claim.

An instance where a Judge in Canada asked a woman why she ‘could not keep her knees together’ brought a chill down the spine of the public. The judge presiding over this particular rape case, tells the victim that she should could have pushed her bottom to the sink in order to avoid penetration thereby admonishing the victim's claim. The accused was acquitted by the judge as the claim of the accused was more credible and plausible to the judge. This type of attitude is a hindrance to the availing of Justice for the victim standing destitute knocking at the doors of Justice.

Reluctance of police in registering rape cases:

Women and young girls are often made to endure severe pain and trauma post the commission of rape against them apart from the pain that she suffers while being raped. Police officer's initiative and willingness in recording of rape complaints plays a vital role. It reveals how the victim is going to react post the recording of complaints and how she is going to cooperate with the criminal justice system altogether. Former Supreme Court Judge 'Ruma Pal' stated that “were the police interested in tracing our harassers or were they playing harassers themselves?” (The Telegraph, 2017).

The biases of the police in terms of taking complaints of rape carries a long history. The problem of delay in lodging FIR not only impacts the credibility of the case but also affects the entire being of the victim. A prolonged study conducted by 'Tahelka magazine' visited five police stations and spoke with people who were extraordinarily prejudiced with rape victims in the year 2012. A massive prejudice that occurs in case of police taking rape complaints is about the attire of the girl. They are not hesitant to give the logic that the probability of a fully covered up lady being raped is less than a woman who wears a dress that is not palatable for people to watch. Taking cue from the

above-mentioned statement, an Additional SHO of Faridabad Police Station said that “ If a girl wearing transparent clothes, it will encourage lewd thoughts in any kid. Girls wear short skirts, they don’t wear dupattas and they flaunt their bodies. The youth naturally gets attracted to her body”. Most of the police officers even go the extent of believing that most of the rape cases are false and are consensual.

Another instance was that of a 12 year old girl being threatened by the rapist. The police refused to take the complaint from the mother of the girl. It was only after a lot of protests and grievances that the police took action. (Harris, 2013). We do not wish to expect such kind of callous behaviour from the stakeholder of justice.

Another burning issue is when the police is hesitant in registering a case if the perpetrator belongs from a powerful family. The immediate solution provided by the police is to make a ‘compromise’ or ‘settle’ the case with a disdained demeanour. The police goes on to make a ‘no-crime’ report when they find that the case does not have enough evidence or witness. Therefore even if a woman gains the courage and confidence to approach the police to complain, she is bogged down making the entire process shift from victim-centric to offender-centric.

The dastardly crime of rape of a veterinarian in Hyderabad:

A case where a 27-year old veterinarian doctor was brutally gang-raped by four men and then murdered. This case clearly revealed the police inaction and utter negligence when the victim’s sister reached the police station to complain about the missing of her sister. The police subjected the sister and her father with sardonic comments. Instead of giving them the assurance by registering a zero F.I.R, the police went on to say that the victim might have eloped with her significant other. Police blatantly refused to register the case as they said the case did not fall within their territorial jurisdiction. Later three policemen was

suspended for ignoring their duties. Yet we hope for a day when a woman will not be blamed for her rapist’s nasty behaviour.

Unveiling the Bias: How Evidentiary Rules Silence Victims and Perpetuate Rape Myths

The pursuit of justice in sexual assault cases can be a complex and challenging process. One significant hurdle is the use of certain evidentiary rules that focus on the victim’s behaviour rather than the defendant’s actions. Specifically, the introduction of a victim’s past sexual history or clothing choices can perpetuate a culture of victim blaming and discourage victims from coming forward. A person’s outfit has no bearing on their right to be treated with respect and dignity.

Criminal cases require a high burden of proof, meaning prosecutors need strong evidence to convict. Rape can often be a he-said-she-said situation, making it difficult to secure convictions. This discourages victims because they fear the ordeal of a trial with a low chance of success.

The Myth of Consent and Shifting the Focus:

At the heart of a sexual assault trial lies the concept of consent. The prosecution must prove that the sexual act occurred without the victim’s consent. However, some defence strategies attempt to introduce evidence of a victim’s past sexual history or clothing choices, implying a tacit agreement to sexual activity based on these factors.

This approach suffers from several flaws. First, it relies on the debunked myth that a person’s sexual history predicts their consent in a particular situation. Second, it shifts the focus away from the defendant’s actions and onto the victim’s behaviour. The question shouldn’t be “what was the victim wearing?” but “did the defendant obtain consent?”

Past Sexual History as Character Assassination:

Defence attorneys try to paint the victim in a negative light to cast doubt on their testimony. This can be incredibly re-traumatizing and

make victims feel like they're on trial themselves. Such situations create a climate where victims feel unwelcome and disbelieved.

In the **Tukaram v. State of Maharashtra (Mathura Case, 1979)** the court dismissed a rape claim by a young tribal girl, Mathura, against two police officers, stating that she was "habituated to sexual intercourse" and therefore could not have been raped. This demonstrated the court's biased view of the victim's sexual history undermining her credibility and consent.

Outrage Erupts as Court Links Clothing to Sexual Harassment:

A Kerala session court ignited controversy in 2022. While granting bail to an author, named civic Chandran, accused of sexual harassment, the judge made a highly inappropriate statement that the victim's clothing was "sexually provocative". He implied that the victim's clothing played a role in the incident, essentially suggesting she was responsible for the harassment. This tactic of victim-blaming is not only insensitive but reinforces harmful stereotypes about women and their attire. The judge's remarks were widely condemned for placing blame on the victim instead of the perpetrator. Critics argued that such a judgment discourages victims from coming forward and normalizes sexual assault. It also suggested the court was adhering to outdated patriarchal notions that hold women accountable for men's actions. This incident sparked outrage and highlighted the need for a justice system that is free from such biases.

Alcohol consumption and victim blaming myths intertwine:

When a victim's intoxication is emphasised, it takes the focus away from the perpetrator's actions. The question becomes "was the victim too drunk to consent?" rather than "did the perpetrator take advantage of the victim's state?"

There's an unspoken assumption that men can't control themselves when a woman is drinking, implying women are responsible for managing

situations to avoid assault. This ignores the fact that perpetrators are responsible for their actions, regardless of the victim's intoxication level.

Problem with Prior Relationship Focus:

Evidentiary rules can be particularly problematic in acquaintance rape cases where the main focus goes on Prior Relationship. Questions about the nature of the victim-perpetrator relationship can imply a victim "led someone on" or should have known better. This ignores the power dynamics that can exist even in friendships and minimises the possibility of coercion. The core issue should be whether consent was freely given, not past interactions.

Also myths persist that "real" victims report immediately. Delays due to shame, fear, family relationships or confusion are common, but questioning a victim's delay reinforces the idea they're somehow lying. These rules all play into the narrative that acquaintance rape is less serious or the victim is somehow to blame. Clearly, more work is needed to address the deep-rooted biases that lead to the unjust treatment of sexual assault survivors in India's courts.

Beyond consent: Victim Blaming and Sex Work in a Rape Culture

Sex workers are often seen as less deserving of sympathy when they experience sexual assault. People might think, "They were already selling sex, what's the difference?" This ignores the power dynamics at play and the fact that sex workers deserve safety just like anyone else. The stigma surrounding sex work can be used to justify the assault. Comments like "They were asking for it" or "They're not innocent anyway" dismiss the seriousness of the crime and shift blame to the victim. This mindset ignores the fundamental principle that all individuals, regardless of their occupation, have the right to bodily autonomy and consent.

The legal framework surrounding rape and sex work often struggles to reconcile the concept of freely given consent with the power dynamics

inherent in the sex industry. This disconnect creates significant challenges in holding perpetrators accountable and securing justice for sex workers who experience sexual assault.

The Unique Challenges Faced by Sex Workers:

Sex workers, already marginalized by societal norms and legal frameworks, face unique challenges in a rape culture. The stigmatization of sex work contributes to a climate where sex workers' experiences of violence are dismissed. This stigma often leads to the belief that sex workers cannot be raped or that their consent is irrelevant because of their profession. Such misconceptions perpetuate violence against sex workers and impede their access to justice and support.

According to a 2014 study by the National Network of Sex Workers in India, approximately 70% of sex workers reported experiencing violence, with a significant number of these incidents perpetrated by law enforcement officers.

Additionally, a report by the Human Rights Watch in 2012 found that police often abuse their power to extort sex workers, further perpetuating a cycle of violence and exploitation.

Traditional Definition of Consent and its Limitations:

The legal definition of consent in rape cases typically focuses on "freely given" agreement to sexual activity. This assumes a situation where both parties have equal power to choose and can freely withdraw consent at any point.

This definition fails to account for the power imbalances often present in sex work. Sex workers may be pressured by economic necessity, fear of violence, or dependence on clients for survival. This can make it difficult to refuse unwanted sexual acts, even if they haven't explicitly consented.

Challenges in Proving Non-Consent:

Prosecutors often face difficulty proving non-consent in sex work assault cases. Clients might

argue that the sexual activity was part of the agreed-upon service, making it difficult to differentiate between a transaction and a forced encounter.

Societal stigma surrounding sex work can also influence legal proceedings. Juries or judges may hold implicit biases about sex workers, viewing them as inherently promiscuous or less deserving of protection, making it harder for them to be seen as genuine victims. The trauma of rape is compounded by the stigma and lack of support, leading to depression, anxiety, and other mental health issues.

Legal and Social Implications:

The legal status of sex work varies globally, but in many places, it is criminalized or only partially legalized, contributing to a unsafe environment for sex workers. Criminalization forces sex workers to operate in the shadows, making them more vulnerable to violence and less likely to report crimes for fear of legal repercussions. This legal marginalisation is compounded by social stigmatisation, which leads to discriminatory treatment by law enforcement.

Sex workers face a higher risk of violence and have fewer resources to seek help.

The fear of being judged or arrested can make sex workers less likely to report sexual assault. They might worry the police won't take them seriously or that their profession will be used against them. This lack of reporting allows perpetrators to continue with impunity.

Seeking Justice, Finding Solace: Recourse for Rape Victims in India's Criminal Justice System

Seeking justice in rape cases is sometimes as difficult as squeezing water from a stone. By the time the victim gets justice in whatever way possible, she loses all her bandwidth to deal with life. In a way, she is not only the victim of the heinous crime of rape but also a victim of a prolonged rape trial. According to the National Commission for Women, the criminal justice system should be 'evolved enough' to give relief to the victims as early as possible. It should be a

combined endeavour of both the Union and the State for giving recourse of a speedy trial and rehabilitation to the victims as was stated by the commission. The commission has set up a scheme in consultation with all the stakeholders that the victims of rape should be provided with Rs 20,000 as an interim assistance within 15 days.

For sure, a rape survivor has certain amount of rights post the commission of rape. Yet the victim has to muster courage in dealing with the gigantic process. According to Justice Saiyed Saghir Ahmad (Former Chief Justice of Jammu and Kashmir) “a woman in our country belongs to a class or group of society who are in a disadvantaged position on account of several barriers and have therefore been victims of tyranny at the hands of men with whom they unfortunately under the Constitution enjoy equal status”. In the case of **Mohd. Habib v State (1989 CRILJ137)** the Delhi High Court acquitted the accused of rape because there was no marks of injury on his penis which was presumed to be an indication of no resistance. The High Court was not hesitant in ignoring that the victim suffered a ruptured hymen and there were bite marks on her body.

In **Suo Motto v State of Rajasthan or (The German Lady Case) 2000 AIR 988**, Justice N.N Mathur took suo moto cognizance of a rape case a foreign tourist in Rajasthan. Certain guidelines were laid down for criminal investigation and trial of offences against women in rape cases. The Court was of the opinion that “In order to combat the increasing crime against women and to ensure protection and preservation of their human rights. The criminal justice system needs to be addressed from the point of view of systematic victim support service. There is a need to promote the proactive role of police as well as trial courts”.

Guidelines that remain unnoticed- The case of **Delhi Domestic Working Women’s Forum v UOI and Ors (1995)** mentioned the guidelines and recourse available for the victims. They were as under:

- a) Police station must have a facility of legal assistance;
- b) If any victim reports about any sexual assault case, it is the duty of the police officer to let her know about her rights;
- c) Advocates must be appointed by the courts if the victim is unable to afford a lawyer for herself forthwith;
- d) To establish a Criminal Injuries Compensation Board;
- e) Compensation must be provided by the board to the victim.

Giving ‘Justice’ to rape victims- sounds convincing in letter but not in spirit:

Our Criminal Justice System has gone back and forth when it comes to providing justice to rape victims. Certainly it has pushed its boundaries in punishing the accused and giving recourse to the victims, however all that endeavour is unfortunately inadequate when it comes to a victim’s indescribable pain. As per the National Crime Records Bureau data in 2022, 4,45,256 sexual assault cases have been registered and only one in four reported cases result in conviction (2019) according to NCRB data. Therefore more focus should be given to the amount of conviction for rapists rather than blaming the victim.

Journey towards Justice of a rape victim- An ordeal:

Needless to say, when a woman goes through something as ghastly as an offence of rape, her entire existence is compromised along with her life let alone having the courage to avail justice. In such a case, attention should be tilted towards the victim rather than putting the blame solely on the women as if it is the responsibility of the woman to prevent the rape.

‘Rape Trauma Syndrome’ concept: this concept was initially originated by Burgess and Holmstrom in the year 1974. This syndrome is basically a culmination of all common symptoms found in rape victims such as self-blame, sleeplessness, inconsistent reactions etc.

It is the psychological trauma experienced by the rape victim including physical and emotional stress.

Rape Trauma Syndrome in courts and trials- In the case of **Santosh Prasad v State of Bihar (2020) 3 SCC 443**, the Hon'ble Apex Court reiterated that in order to make the accused convicted based on the sole testimony of the victim, the testimony should be 'absolutely trustworthy, unblemished and of a sterling quality'. The preliminary idea of Rape Trauma Syndrome is that the expert explaining to the judge about the long-term psychological effects post the commission of rape. This makes it likely for the judge to peruse about it and will probably give more emphasis on the testimony of the victim which under normal circumstance would not have been the case. In India however, such evidence has not been introduced till now. Rape Trauma Syndrome cannot be applied in all cases, yet it can be made admissible in a rape trial. It has been reassured by many experts that the aim of rape trauma syndrome is not to test the veracity of the occurrence of rape, it is only to support the testimony of the victim not claiming it as a substantial piece of evidence. Even here the credibility of a woman's testimony is questioned and criticized as it is not considered as 'hard scientific evidence'.

The path of seeking justice rather than blaming the victim is an inexplicably difficult path. It mostly depends upon the legal and carceral systems. Out of everything victim blaming has inadvertently become a part and parcel of rape culture including all the pain and trauma that most of them tend not to take notice of. It is rather lamentable that even if a rape has been committed against the victim and the rape committed is a fact, it does not necessarily mean that the accused shall be convicted based on that fact. Therefore, before taking recourse to justice, a victim is demonized and harassed in the court rooms forcing her to doubt her own self-conviction. The courtrooms are often engrossed with the idea of rape culture and archaic rape myths thereby having

completely forgotten about rendering 'justice' to the ailing victim.

Victims or survivors of rape are pressed with backlashes in the courtrooms which makes it a necessity to make fundamental changes and cultural shifts in order to seek justice. 'What does the victim want from the court?' should be the prima facie question to be asked to the victim. The questions of whether the victim wants a restorative justice? Or wants a thorough investigation to be done about the background of the offender? Or does she want her perpetrator to be removed from the power and position if he has any? An American lady who was herself a victim of sexual assault stated that the system did not give her justice, instead she had to do it herself. The system did not make an effort to prevent rapes and dismantle rape culture unfortunately.

Therefore the idea of 'justice' for a survivor of rape is going to be forever far-fetched if we do not ask the victim that what kind of justice does she want for herself, to look beyond the sketchy framework of legal system and releasing ourselves from the make-believe that our criminal justice system works and will work. This thought certainly is of no avail.

Suggestion - Beyond Closed Doors: Strengthening Privacy Protections for Rape Victims in the Justice System

Given the fact that the pain endured by a survivor of rape is unfathomable, the judiciary and the overall criminal justice system must be vigorous in protecting the privacy and identity of the victims in trials. The Kolkata High Court mentioned in one of the judgments that "every individual, particularly of a sexual assault survivor was the cornerstone of a civilized society" as needed stated by Justices **Joymalya Bagchi** and **Gaurang Kanth**. Senior advocate of Supreme Court S. Nagamuthu mentioned according to the new criminal law of **Bharatiya Nyaya Sanhita, 2023** and u/s new provision of **section 73** 'one should not print or publish any matter which may make known the identity of any person against whom a sexual offence is

alleged or found to have been committed and it will be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine’.

Victim’s identity disclosure debate by Kerala High Court:

In a case where the victim of rape to claim an action against a Judicial Magistrate of first class in Kattakkada, who apparently revealed the victim’s identity. However, the judgment emphasized protection granted to the judges according to the Judges (Protection) Act, emphasizing that the magistrate was acting as per the judicial duties. This case was a turning point towards the miniscule application of legal provisions and the harmonious balance that should be maintained between protecting the identity of the survivors and the actions of judicial officers if it is bonafide.

International Perspective:

The new laws that are being framed by the UK government, states that victim’s Commissioner, the government has agreed to amend the laws relating to safeguard against unnecessary intrusion for personal mobile phone data in trials and investigations. Under the new law, victims mobile phone data will be requested solely where a police officer reasonably believes that information stored on the electronic device is relevant to a reasonable line of enquiry.

Therefore, apart from the Constitutional safeguards under **Articles 21 and 19** (The Right to Life and Personal Life and personal liberty and Right to freedom respectively), if the victim is reassured that their identities and personal information will be safeguarded they will be more forthcoming in seeking justice. Legal reforms needs to be strengthened to prevent irrelevant details and character attacks camouflaged as ‘evidence’. Providing the victims the encouragement to report cases more frequently thereby reduces the burden from the victim’s shoulders of getting scrutinized in the court room and by the police.

Conclusion:

A woman’s autonomy means the right to make her own choices free from pressure which is essential for maintaining her dignity including the freedom from sexual violence. While the offence of rape is a violation of autonomy of all women perpetuating male domination in all spheres. The fact that what the women was wearing while she was getting raped is irrelevant in every way. When the justice system fails to give recourse to the victims and focuses too much on the clothing of the victim, it takes away the autonomy of the women. In the case of **Prosecutor v Akayesu, (1998)**, the famous judgment identified rape as a form of torture. It formed a close nexus between women and justice, the Bench stating that “like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control of destruction of a person”. Even the **CEDAW Committee** (Convention on the elimination of discrimination against women) suggested the participating countries give primacy to women’s autonomy in order to respect, protect, fulfill and promote the human rights of women and girls, (as per the 82nd session held in the year 2022). The CEDAW highlighted the need for progress towards true gender equality. The transition from victimhood to self-rule for women is a rigorous challenge indeed. However, there can a seismic shift in the justice system by bringing a balance between criminal justice system and victim justice. As Lord Hewart of England vehemently stated “Justice must not only be done, but must also be seen to be done”.

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