



# The Indian Journal for Research in Law and Management

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## GUILTY UNTIL PROVEN RESPECTABLE

~ *Sreya Shah*

Have you ever seen that a man who has been a victim of physical abuse was questioned about what he was wearing or whether he was under the influence of alcohol, or if he “instigated” the accused? I suppose not. The sole reason is his gender, because a man is not required to prove his respectability to access justice. Respectability is an enigmatic word; in simple terms, it means being socially acceptable. But a society has not fixed any standards for a man who is a victim of crime, for him to even be a subject of the word, respectability. Conversely, several multifaceted, unwritten norms closely observe the female victim’s lives in Indian society. These outspoken, unwritten rules signify the prejudiced nature of the society, which is quietly silencing the voices of women facing abuse. In such instances, the Justice System remains the last hope for the victim. But sometimes even the Justice System has failed the victims because the lower courts preferred to uphold societal norms over the law, questioning the character of the victim instead of the actions of the accused. Gradually, this seems to be changing, with the Apex Court upholding the constitutional and legal rights of the victim and reversing the impact of the lower courts, continuously regulating them. However, the practicalities always vary.

There is a need to understand the meaning of the word “Respectability” in the context of an Indian woman who has survived a crime before we get into the legal reality. Respectability, here, means the social expectations about how a woman should behave in order to be seen as believable, innocent, moral, and deserving of protection. Being sexually “pure”, having no prior relationships, being “modestly” dressed, avoiding nightlife, speaking softly, fitting into the

traditional gender expectations are some of the traits that society believes an “ideal” woman must possess, and only such a woman is considered a respectable woman. The society and sometimes the Court take character tests of a woman who has experienced a crime based on how many of these expected traits she has. For example, women who have been victims of rape are often asked about their clothes, their past sexual lives, silently making character a proof of her innocence.

Over the years, the Indian law has been enhanced to eliminate such character tests of women as evidence of innocence. The repeal of Section 155 (4) of the Indian Evidence Act, which allowed the defense lawyer in rape cases to impeach the prosecutrix’s credibility by proving that she was of a “generally immoral character”, and the ban on the Two-finger test of rape victims, which was to test if the woman was used to sexual activities, show significant progress in the Indian law. Well, despite the changes brought in the law, the reality remains unchanged, due to which most of the crimes against women go unreported. The Supreme Court has repeatedly held the lower courts responsible for character assassination and moral policing of the prosecutrix. It passed guidelines in 2021, binding the courts to eliminate gender stereotypes and ordered them to use progressive language and reasoning (to avoid passing moral statements on the survivor’s character)<sup>1</sup>. However, the repeated warnings of the Apex Court don’t seem to stop the judges from passing comments on a prosecutrix’s character. In March 2025, the Allahabad High Court’s judge, while hearing a sexual assault case, wrote in his verdict that the woman herself “invited trouble and was responsible for the same.” Similarly, the Calcutta High Court in 2023, in a rape case of a minor, blatantly stated that adolescent girls must “control their sexual urges.” Although the Supreme Court had overruled these judgments, stating that such statements are “stereotypical”, have long-term effects on the survivors, and castigated the High Courts for passing such insensitive comments. There has been progress observed in the laws with the enactment of Section 53A of the Indian Evidence Act (Section 48 of Bharatiya Suraksha Adhinayan). This law prohibited the admission of evidence on a woman’s character or previous sexual experience in matters concerning the issue of consent. The addition of such laws shows progressive mindsets of the law-making body.

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<sup>1</sup> *Aparna Bhat & Ors. v. State of Madhya Pradesh & Anr.*, 2021 S.C.C. OnLine SC 230 (India).

But sometimes even the lawmakers, the Ministers, are in the headlines for their insensitive comments on women, like she is “crossing the limit of morality” and questioning the clothes and whereabouts of the survivors. These instances indicate that victim-blaming has been so generalised in India that it is often prioritised over blaming the actual perpetrators.

Such character assassination and moral policing is not limited to criminal cases; it extends to Divorce cases, Custody cases, and domestic violence cases as well, where the first question is whether the woman is “dutiful” or neglectful of her traditional duties as a wife. A woman is questioned about her chastity in family cases. In domestic violence cases, she must prove that she had not “instigated” or that she is not “quarrelsome.” The questions about their characters are given more importance than the pain and abuse they've faced.

Hence, the fear of being judged and proving her character to society and the justice system just to make them believe that she is deserving of protection often discourages a woman from speaking up for herself and reporting the crime. In India, over 70% to 90% of crimes against women go unreported due to social stigma, family pressure, normalization of abuse, and distrust in the justice system. The Indian patriarchal society has embedded the idea of women being the torch-bearers of the so-called “traditional societal values” so deeply in its roots that it shames a woman who leads her life as per her choice, labelling her as a disgrace to society. Lastly, when the societal values that assassinate the character of a victim who has survived a crime, and not the perpetrator, then there is an urgent need to question the morality of such values.