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INTERPLAY OF THE FIELDS OF MEDICAL AND LEGAL DISCOURSES IN RAPE TRIALS

- Stuti Sharma

In this article, I argue that the rape trials in India are structured around the historically male, heterosexual, and bodily unviolated legal subject, who is the default, universalised, and the ‘invisible’ standard upon which law is built. The implication of such a legal system is that the female survivors are silenced through legal processes which actively reaffirm the phallocentric, patriarchal assumptions upon which it is built. Law often makes claims of neutrality and universality. However, the law often functions as a ‘praxis’ as it actively reproduces and reinforces the status quo hierarchies.¹ The rape trials shed an enlightening example of how the law reinforces sexist assumptions and turns courts into areas of re-victimisation. They do so by structuring the entire rape trial including medical jurisprudence texts, testimony and the courtroom trial around patriarchal understandings of rape.

Cases provide opportunities to examine ‘ways in which a particular kind of knowledge...acts in relation to institutions and the roles prescribed in them’, offering a ‘key to the relations of power, domination and conflict.’² In rape trials, one sees an interesting interplay of the fields of medical and legal discourses which come together to discredit victims and sustain the very violence it claims to remedy. Medical knowledge plays a key role in rape trials by infusing colonial, sexist assumptions about rape victims which infuses gender and powerdynamics into the trial. I primarily rely on Pratiksha Baxi’s ethnographic work on rape trials in Ahmedabad for my analysis.

¹ Margot Stubbs, *Feminism and Legal Positivism*, 3 AUSTL. J.L. & SOC’Y 63 (1986).

² PRATIKSHA BAXI, *PUBLIC SECRETS OF LAW: RAPE TRIALS IN INDIA* (Oxford University Press 2013).

Firstly, colonial medical jurisprudence continues informing rape trials. While medical experts such as Chevers and Taylor have extensively worked on and treated rape of native children as specimens in a laboratory, the enduring form of the two-finger test in terms of inserting glass pipettes, measuring cones or two fingers into the vagina to determine penetration can be traced to Lyon's work.³ The elaboration and legitimacy of the colonial practice of the two-finger test finds its place in 1940, 1969, 2002 editions of Modi's textbook which relies heavily on the work of French medical jurist, Thoinot. Medical jurisprudence books such as Modi's, which is the authority for rape trials is based on racist and sexist assumptions about 'lying, colonised, female subjects,'⁴ which reinforces biases under the garb of scientific objectivity.

For example, Modi's textbook elaborates on the distinction between true and false virgins, which conflates past virginity with rape. It implicitly assumes only virgins can be raped. If a woman has prior sexual history, then she cannot be raped. The idea of 'false virgin' also smuggles in moral value judgement whereby the testimony of so-called 'false virgins' are less credible, and can be seen as a way to falsify testimonies and control women's sexual autonomy. I draw a parallel of this with Anne McClintock's work where she illustrates how the legal system renders prostitutes 'unrapeable' since they are viewed as common property and therefore not included in the phallocentric notion that rape is a violation of male ownership rights.⁵ I believe this reasoning can be directly applied here, as medical jurisprudence books like Modi's rely on phallocentric presumptions that women's right to legal protection against sexual violence is based on their adherence to chastity rather than violation of bodily autonomy. So, the law effectively excludes 'habituated' women from the group of legitimate victims and deems them unrapeable.

Medical jurisprudence textbooks essentially prescribe how victims should act and make suggestions on the kinds of evidence that show a woman's reaction to rape. Courts rely on such

³ Pratiksha Baxi, The Place of the "Two-Finger Test" in Indian Rape Law, in *INJURY AND INJUSTICE: THE CULTURAL POLITICS OF HARM AND REDRESS* 273 (Anne Bloom, David M. Engel & Michael McCann eds., 2018).

⁴ Id. at 271.

⁵ Anne McClintock, *Screwing the System: Sexwork, Race and the Law*, 19 *BOUNDARY 2* 70 (1992).

seemingly scientific and objective assessments of women's behaviour during rape trials.⁶ For example, in assessing rape victim's testimony, the Sikkim High Court quoted Modi to establish what physical consequences would ordinarily follow penetrative sexual assault on a minor and that victims of rape may suffer shock and post-traumatic stress requiring professional psychological help. The court acquitted the accused as her 'hymen' was intact, there were no injuries on her body, the psychiatrist found no need for psychological intervention and no signs of trauma and that the victim herself was singing and playing Antakshari in the car shortly after the alleged last assault.⁷ Thus, the court essentially acquitted the accused because she was not acting like the 'perfect traumatic victim' as prescribed by Modi's book.

Secondly, I focus on the practise of the two finger test which was used to determine the past sexual history of women and its implications on the rape trial. According to Baxi, the two finger test serves and mimics the violent act of rape itself for the diagnosis of rape as evidence. 'Medicalisation of consent' is the process by which an act of coercion is converted into an act of consent. In essence, the judicial system requires survivors to undergo tests that mimic the trauma of rape they seek justice against. In this way, as a 'truth-technology,' the two-finger test is an extension of the humiliation that women experience as a cost for testifying against rape. Consent for the test is an empty category because if a woman refuses, it sheds doubt on her testimony, effectively making it a state-sanctioned assault.⁸ While the practice has been outlawed, it continues to exist as can be seen in the recent case of *Sunshine Kharpan v. State of Meghalaya*.⁹

Thirdly, the court trial and courtroom talk in itself is another form of humiliation that victims face. 'During trials, declarations of extreme habituation, judicial directives to enact postures or breathless recording of states of ejaculations all show that doctrinal law is necrophilic in relation to courtroom talk. In essence, legal actors take pleasure in developing the law on the

⁶ Durba Mitra & Mrinal Satish, *Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India*, 49 *ECON. & POL. WKLY.*, no. 41, at 51 (2014).

⁷ *State of Sikkim v. Rup Narayan Rai (Chamling)*, CrI. A. No. 28 of 2024 (Sikkim HC, Aug. 13, 2025).

⁸ Baxi, *supra* note 3, at 275–76.

⁹ *Sunshine Kharpan v. State of Meghalaya*, SLP (CrI.) No. 1481 of 2024 (SC, Sept. 3, 2024).

emotional corpses of rape victims.’¹⁰ Foucault talks about how we have moved from public spectacle forms of humiliation to more subtle, hidden forms of punishment.¹¹ However, here we see a recourse to a public form of punishment which is a patriarchal, sexualised spectacle where the rape victims are made to re-live, enact and re-live their traumatic experience in court as a cost for testifying against rape and the courtroom acts as a voyeur.

Moreover, language also plays a role in downplaying the violence women face during rape. Baxi shows how language also plays a role in marginalising women during the rape trials. Translation in regional languages in legal practice conceal gendered hierarchies. For example, she states that the translation of ‘penetration’ in Gujarati uses words like entry and insertion. These words technically assume lack of consent and fail to attach the rape's inherent violence to the act in court transcripts.¹² The problematic implication of this is that by defining rape primarily as penile penetration, the law centres the male body and act of what the accused does (in terms of entry or insertion) and reduces rape to a specific physical configuration. It imagines and dehumanises the body as a space being entered rather than a person whose bodily autonomy has been violated.

Another thing that Baxi highlights is how defence lawyers treat rape as an experiential category to discredit the survivor's testimony and minimise the severity of rape through legal technicalities.¹³ The problematic implication of this is that when rape is treated as an ‘experiential category,’ it opens up spaces for patriarchal assumptions to enter the rape trial which set a narrative of how a victim should act in cases of rape. Moreover, trauma responses are subjective and there is no one correct way to react. Relying on such assumptions gives rise to the problem that if a victim does not adhere to such assumptions of how a victim should react, their testimonies may seem as unreliable. Taking up the Sikkim Court judgement again, one of the reasons the court acquitted the accused was because the victim herself was singing and playing Antakshari in the car shortly after the alleged last assault.¹⁴

¹⁰ Baxi, *supra* note 3, at 271.

¹¹ MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 3 (Vintage Books 1995).

¹² Baxi, *supra* note 3, at 279.

¹³ Baxi, *supra* note 3, at 280.

¹⁴ State of Sikkim, *supra* note 7.

In *Rai Sandeep @ Deepu v State NCT of Delhi*, the test for sterling witness was laid down. The test requires the witness' version to be unassailable, consistent from the initial statement, withstand prolonged cross-examination and co-relate with supporting material, only then can the conviction rely on sole testimony.¹⁵ While this may be seen as a progressive judgement in order to protect the rights of the accused, I believe that the sterling witness doctrine has proposed a very high threshold, which may not be easily met given the oppression and pressure victims face for speaking out against rape. Miranda Fricker states that testimonial injustice is linked to identity power differentials. Disfranchised groups face a 'credibility deficit' and dominant groups enjoy a 'credibility excess'.¹⁶ Given the patriarchal nature of society we live in, a doctrine like the sterling test has the unintended potential to widen the credibility deficit that women already face while speaking out against rape due to stereotypes of false cases, shame, clothes and past sexual history associated with rape.

There were a lot of legal reforms that were brought about after the 2013 Delhi protests. The government abolished the two finger rape test in 2014 after the Justice Verma committee's recommendations and *Lillu @ Rajesh & Anr. v. State of Haryana* (2013) judgement. This was followed by the Delhi government permitting the two finger test again under the name of P/V test in 2015. However, in *The State of Jharkhand v. Shailendra Kumar Rai* case (2022), the Court reaffirmed that 'two-finger test re-victimises women and is an affront to their dignity.'¹⁷

However, there are limitations of top-down legal reforms. Baxi highlights one of the limitations as the habitue's continued presence in varied forms of clinical categories and pathologies despite Supreme Court rulings demonstrates 'the cunning of judicial reform.'¹⁸ It is the system's ability to take feminist critiques into account without truly altering the patriarchal, sexualised, phallocentric nature of the system. Moreover, in 'Bharatiya Nyaya Sanhita:

¹⁵*Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21.

¹⁶ MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* (Clarendon Press 2007).

¹⁷*State of Jharkhand v. Shailendra Kumar Rai*, (2022) 14 SCC 299.

¹⁸ Baxi, *supra* note 3, at 290.

Decolonising or Reinforcing Colonial Ideas?,' it is argued that the BNS claims to 'decolonise' while retaining Victorian morality.¹⁹ It retains the colonial language of 'outraging the modesty of women.' Similarly, recent reforms to move away from colonial medical jurisprudence used in rape trials reassert the same underlying colonial, phallogocentric logic based on Victorian morality.

This stagnation of the legal system is in consonance with Stubb's account wherein she argues that as long as feminists operate within the positivist legal framework which celebrates itself as neutral, we will continue with the fallacious viewing of women's issues as problems with specific laws rather than problems of the legal system itself. Hence, there is a need to transcend positivist law's claims of universality and neutrality.²⁰

In my view, the issue arises due to the legal system's focus on the male legal subject as the epitome of legal personhood which treats rape as from a patriarchal perspective and marginalises other's experiences. In the Indian context, the male legal subject also is historically upper caste, educated which serves as the invisible standard against which law functions, even when it claims to be neutral. Vijay K. Tiwari has provided an alternate framework to study Lon Fuller's *Speluncean Explorers* from a caste perspective. His study highlights how law in action in courts often leads to biased outcomes, when caste identities intersect in India.²¹ I propose that a similar approach should be taken when we look at rape trials. When gender identities come into play in courtrooms, like in rape trials, law often looks at rape from a male perspective, rather than the victim's perspective.

According to Baxi, reform requires changes in terms of increased focus on therapeutic jurisprudence, wherein the victim's welfare is given precedence over other concerns and the

¹⁹ Anushka Pandey, Preeti Pratishruti Dash & Mrinal Satish, *Bharatiya Nyaya Sanhita: Decolonising or Reinforcing Colonial Ideas?*, THE NLS BLOG (Jan. 25, 2024), <https://www.nls.ac.in/blog/bharatiya-nyaya-sanhita-decolonising-or-reinforcing-colonial-ideas/>.

²⁰ Stubb, *supra* note 1.

²¹ Vijay K. Tiwari, *Revisiting "Speluncean Explorers" through a Film and a Supreme Court Verdict*, SCO OBSERVER (Nov. 4, 2025), <https://www.scobserver.in/journal/revisiting-speluncean-explorers-through-a-film-and-a-supreme-court-verdict/>.

aim is to not re-victimise the survivor.²² Judgments like Shailendra Kumar Rai show how the system is moving towards therapeutic jurisprudence by prioritising the victim's welfare. However, we also have judgements like Allahabad High court where the court granted bail to an accused stating that 'victim herself invited trouble' by going to a bar and getting intoxicated.²³ This shows that we have a long way to go.

²² Baxi, *supra* note 3, at 285.

²³ Nischal Chandak v. State of Uttar Pradesh, Neutral Citation No. 2025:AHC:35383 (Allahabad HC, Mar. 11, 2025).