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"TRAUMA MEMORY AND TESTIMONY: UNDERSTANDING VICTIM BEHAVIOUR THROUGH THE LENS OF FORENSIC PSYCHOLOGY"

~ Chandan Sha[1]

ABSTRACT

People expect a victim to tell their story in court clearly, immediately, and consistently. But real trauma isn't like that; the victim might struggle. She might be silent for months or years, after which she may say something. Her recollection of the event might not be chronological. In most cases, the court has treated this kind of behaviour as highly suspect and has interpreted it as evidence that the victim lies. In this paper, the researcher examines the concepts of trauma, memory and victim behaviours through the lens of forensic psychology and the testimony of the victim. The researcher also conducts several literature reviews on the subject and examines rulings of Indian and foreign courts, particularly related to victim behaviour and expert opinion admissibility in courts, offering suggestions for how the legal system can improve.

Keywords: Trauma memory, Tonic immobility, Forensic psychology, Victim testimony, Delayed disclosure and Expert Opinion.

CHAPTER I

INTRODUCTION

1.1 MEANING OF TRAUMA, FORENSIC PSYCHOLOGY, AND TRAUMA MEMORY

Trauma is an emotional and bodily response to a terrible event like an assault, accident or act of violence and natural disaster that overwhelms a person's ability to cope. Forensic psychology provides an interface between psychological science and legal decision making. In cases involving traumatic experience, it may assist the court in understanding the behaviour,

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memory, emotional responses and the pattern of disclosure that may not conform to ordinary expectations. However, psychological evidence does not itself determine whether a particular allegation is truthful. Its appropriate function is to aid the court in understanding the phenomena that may fall beyond ordinary lay knowledge. Such as how memory is constructed, how people act when they're afraid, and how all this impacts their testimony in court.

Trauma Memory is simply how an event of fear and pain gets stored in the brain and how it is retrieved. It is a type of memory apart from ordinary memory. If a person recalls the food he/she ate for breakfast, the brain writes it down without getting excited, in proper order. However, in the event of an attack or severe fear, the brain enters survival mode. It focuses on the threat itself a face, a smell, a sound and pays less attention to the small details around it, like time and sequence. That's why a victim may recall a victim's voice clearly, but find it difficult to say what time the attack occurred or whether it occurred before or after another event.

In the next section, this article discusses how a person unfamiliar with trauma psychology expects trauma victims to act after or at the time of the incident.

1.2 COMMON-SENSE EXPECTATIONS AND TRAUMA PARADOX.

A central problem arises when evaluating the victim's testimony amid the gap between ordinary assumptions and psychological research. A judge, a lawyer, a police officer, or a person who is not trained or familiar with trauma psychology would naturally assume that a “real or genuine” victim would scream or seek immediate assistance, fight or physically resist the offender and immediately report the crime, remembering every detail in chronological order and maintaining complete consistency throughout testimony. However, the absence of one or more behaviours does not automatically establish that the allegation is not true. For example, the delayed reporting may arise from fear, shame, social stigma, and dependence on the accused, or concern about the family consequences or psychological difficulties. Similarly, a victim's lack of physical resistance does not automatically indicate voluntary participation.

The legal significance of this issue is that the court must distinguish between the behaviour that appears unusual to an ordinary observer and behaviour that is actually inconsistent with the psychological response to the trauma. The purpose of forensic psychology is not to create a presumption in favour of every complainant. Rather, it may assist in avoiding unsupported assumptions about how people who experience trauma must behave.

In the next chapter, the article will discuss victim behaviour and why they do so.

CHAPTER II
LITERATURE REVIEW

2.1 VAN DER KOLK AND THE FRAGMENTED NATURE OF TRAUMATIC MEMORY

One of the earliest and most cited studies on this topic was by Bessel van der Kolk and Rita Fisler, who discovered that trauma survivors' memories are often more like a collection of scattered images, physical sensations and feelings rather than a story, and that they only begin to become verbalised over time.[2]

Van der Kolk also explains in his later book that the brain regions involved in processing memory in time and place (the hippocampus) are less activated during trauma, while the regions that process fear (the amygdala) are more activated, leading to a poorly organised memory that only becomes verbalised over time.[3]

2.2 LOFTUS AND HER STUDY ON THE MALLEABILITY OF MEMORY

Elizabeth Loftus did more than thirty years of research on the malleability of memory regarding how memory can be changed by suggestion. With repeated questions, or leading questions, commonly used in police interviews, the victim's memory of the incident may be altered,[4] not because he or she is lying, but because the memory itself is not a set, recorded printout.[5]

It does not mean that a witness who gives an inconsistent account is necessarily lying and nor does it mean that every inconsistency results from trauma. The court must distinguish between deliberate fabrications and ordinary processes of memory reconstruction.

2.3 MORGAN AND COLLEAGUES STUDIED MEMORY UNDER STRESS.

Morgan and his colleagues tried the memory warping technique on over 800 soldiers during a stressful mock exercise in captivity. Their research demonstrated that memories could even be distorted by misinformation/false information provided that is given after the stressful event,

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[2] Bessel A. van der Kolk & Rita Fisler, *Dissociation and the Fragmentary Nature of Traumatic Memories: Overview and Exploratory Study,* 8 J. Traumatic Stress 505 (1995), *discussed in* Bessel A van der Kolk, *The Body Keeps the Score: Memory and the Evolving Psychobiology of Posttraumatic Stress,* Harv. Rev. Psychiatry (1994), http://www.trauma-pages.com/a/vanderk4.php

[3] Bessel van der Kolk, The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma (Viking Press 2014).

[4] Elizabeth F. Loftus, *Planting Misinformation in the Human Mind: A 30-Year Investigation of the Malleability of Memory,* 12 Learning & Memory 361 (2005), https://learnmem.cshlp.org/content/12/4/361.full

[5] Elizabeth F. Loftus & John C. Palmer, *Reconstruction of Automobile Destruction: An Example of the Interaction Between Language and Memory,* 13 J. Verbal Learning & Verbal Behav. 585(1974); Saul McLeod, *Loftus and Palmer* (1974) *Car Crash Experiment, Simply Psychology* (2025), https://www.simplypsychology.org/loftus-palmer.html

even in stressful, personally experienced situations, contradicting the common belief and widely held misconception that trauma will burn in every detail.[6]

The significance of the research is that intense stress does not necessarily "burn" every aspect of the experience permanently into memory. But stress may affect the memory in a complex way, and the existence of the trauma does not itself establish that every remembered detail is accurate.

2.4 TONIC IMMOBILITY AND FREEZING AS A DEFENSIVE RESPONSE

A study was conducted at a rape crisis clinic in Stockholm. They showed that almost 70% of sexual assault victims had "tonic immobility", in which the body just freezes in place and can't move during the attack.[7]

Marx and his fellow researchers elucidate that freezing is not a sign of weakness: It is a step in a natural defence mechanism that is common to both humans and animals: fight, flee, freeze, and finally, total immobilisation when there is no way of escaping.[8] So, it is a survival mechanism, not a choice.

2.5 ATTENTION NARROWING AND TUNNEL MEMORY.

Divas, Hogan and Hart (2024) explain that memory reflects interpretation or reconstruction and that even highly emotional memory may be affected by forgetting and post-event influences.[9] Therefore, it is not appropriate to say that the trauma memory is either completely reliable or completely unreliable. Instead, the trauma may affect what is attended to and remembered, while the resulting memory may be subject to the ordinary process of reconciliation, construction, and potential distortion.

In the next chapter, the article will examine the statutory law regarding the admissibility of expert opinion, and how courts respond towards victim behaviour.

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[6] C.A. Morgan III et al., *Misinformation Can Influence Memory for Recently Experienced Highly Stressful Events,* 36 Int'l J.L. & Psychiatry 11 (2013), https://www.sciencedirect.com/science/article/abs/pii/S016025271200088X

[7] Anna Moller, Hans Peters Sondergaard & Lotti Helstrom, *Tonic Immobility During Sexual Assault- A Common Reaction Predicting Post-Traumatic Stress Disorder and Severe Depression,* 96 Acta Obstetrician et Gynaecologica. Scandinavica 932 (2017), https://obgyn.onlinelibrary.wiley.com/doi/10.1111/aogs.13174

[8] Brian P. Marx et al., *Tonic Immobility as an Evolved Predator Defence. Implications for Sexual Assault Survivors,* 15 Clinical Psychol. Sci. & Prac. 74 (2008); *See also Predictors of Tonic Immobility in Sexual Assault Survivors,* Scholar Works (Call. State Univ.) https://scholarworks.calstate.edu/downloads/kh04dr55c

[9] Davis D, Hogan AA and Hart DJ (2024) Myths of trauma memory: on the oversimplification of effects of attention narrowing under stress. Front. Psychol. 15:1294730. doi: 10.3389/fpsyg.2024.1294730

CHAPTER III
STATUTORY LAW AND COURTS' RESPONSE TO VICTIM BEHAVIOUR

From above, one message repeats itself: real victims do not always behave the way people expect. Fear can silence a scream. Stigma and shame can be a barrier to complaint for years. The problem is not with the victim. It is with the myth of how a victim should act.

3.1 INDIAN LAW AND COURT PERSPECTIVE

In India, the law allows judges to consult trained specialists while dealing with complicated technical subjects. Under Section 39 of the Bharatiya Sakshya Adhiniyam 2023. The court can officially accept an expert opinion on matters involving Science, art or human behaviour.

This rule allows forensic psychologists to step in and help the judge to understand people complex mental stage during the criminal trial. It ensures that the decisions are backed by specialised knowledge. However, the actual use of forensic psychology in India faces real hurdles. There is a severe shortage of trained psychologists and properly equipped government laboratories to handle these cases. Furthermore, India lacks uniform standardised rules for how psychological tests should be conducted, which leads to inconsistent results. Because of this gap, many judges remain deeply doubtful about how accurate and reliable psychological evidence truly is, meaning these reports are rarely given full weight in criminal trials.

Now we will discuss the judicial protection to insulate victims of sexual offences from secondary victimisation.

In the *State of Punjab v. Gurmeet Singh*, a trial court had refused to believe a minor rape survivor because she did not scream near a bus stand, she waited before filing a complaint, and there was no other eyewitness. The Supreme Court of India overturned that decision and held that delay in filing a complaint in a case of sexual assault "could be due to a variety of reasons such as societal stigma, psychological trauma and the fear of public humiliation and particularly the reluctance of the prosecutrix or her family members to go to the police," which naturally causes hesitations and the delay in approaching the police station

Further, the court said that the sole testimony of a victim, if it is honest and reliable, is enough on its own for a conviction; no other proof is required. The court also criticised the process of asking a rape victim to cross-examine her case in a harsh and humiliating manner without her consent, in an attempt to discredit her testimony.[10]

[10] State of Punjab v. Gurmit Singh, (1996) 2 S.C.C. 384. (India).

In the next part, we understand the different foreign court perspectives on victim behaviour and admissibility of expert opinion.

3.2 FOREIGN LAW AND COURT PERSPECTIVE

3.2.1 CANADIAN COURT

The Supreme Court of Canada, in *R. v. Mohan*, has stated that expert evidence may be admitted on "matters that ordinary people are unlikely to form a correct judgment about" without expert help, a standard later used to admit psychological evidence explaining delayed disclosure and unusual victim behaviour.[11]

In *R. v. Marquard* (1993) and *R. v. D.D*. (2000), the Supreme Court of Canada affirmed that while credibility remains the ultimate province of the trier of fact, expert psychological evidence is admissible to explain counterintuitive victim behaviour such as delayed disclosure or continued contact with the abuser that falls outside the average lay understanding.[12]

Further, in *R. v. Bradshaw* (2017) and *R. v. N.S.* (2012) SC of Canada mandates that the trial judges evaluate testimonial reliability through overall memory quality, core details and internal coherence, rather than enforcing rigid chronological perfection.[13]

In landmark rulings *R. v. Seaboyer* (1991) and *R. v. Darrach* (2000), the SC upheld the validity of section 276 of the Canadian Criminal Code, establishing that an accused cannot introduce a complainant's past sexual conduct/activity to imply consent or reduce credibility.[14]

3.2.2 INTERNATIONAL CRIMINAL COURT (ICC)

In landmark prosecutions, *Prosecutor v. Lubanga, Katanga, Bamba and Ntaganda* cases, ICC Trial Chambers recognised that victims of Mass violence frequently Present non-linear, fragmented recollections with temporal gaps.[15] Under Rule 86 of the ICC Rules of Procedure and Evidence and other frameworks accept that memory fragmentation regarding minor circumstantial details does not undermine the inherent credibility of the Victim's account regarding core international crimes.[16]

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[11] R v. Mohan [1994] 2 S.C.R. 9 (Can.) *discussed in expert evidence of delay in complaint in childhood sexual Abuse prosecutions,* vLex UK https://vlex.co.uk/vid/expert-evidence-of-delay-874330177

[12] Paulson, T., Perrin, B., Maunder, R. G., & Muller, R. T. (2023). Toward a Trauma-Informed Approach to Evidence Law: Witness Credibility and Reliability. *The Canadian Bar Review*, 101(3), 496–545.

[13] *Id.*

[14] Supreme Court of Canada. Factum of the Respondent in *Her Majesty the Queen v. J.J.*, S.C.C. File No. 38286.

[15] Smith, E. (2015). *Victim Testimony at the ICC: Trauma, Memory and Witness Credibility*. International Criminal Court & Bournemouth University.

[16] *Id.*

3.2.3 UNITED STATES AND UNITED KINGDOM

In the United States, jurisdictions widely admit expert testimony on Rape Trauma Syndrome (RTS), Battled Women Syndrome (BWS), and Child Sexual Abuse Accommodation Syndrome (CSAAS). Appellate courts consistently uphold expert testimony, explaining delayed reporting, recantation, or the lack of physical resistance, provided that the expert does not express an ultimate opinion on whether the victim was actually assaulted or is telling the truth.[17]

The United Kingdom Judicial College's *Crown Court Compendium* provide a comprehensive model jury directions on witness demeanour and delayed disclosure. UK trial judges explicitly instruct the jury that trauma can affect people in vastly different ways, warning them not to draw negative inferences from a witness's calm demeanour, flat affect, emotional breakdown, or the delay in reporting an offence.[18]

In the case of *United States v. Wright*, decided by the Court of Appeals for the Armed Forces, Federal Rule of Evidence 702 was applied to allow specialist expert testimony. Explaining the scientific drama pattern to help the jury to understand the victim's reaction. The expert could not explicitly state whether the rape actually occurred; that ultimate decision of credibility is strictly reserved for the jury.[19]

CHAPTER IV
CONCLUSION

Trauma, memory and testimony cannot be understood properly if the behaviour is solely judged against ordinary expectations of how a credible witness should behave. The research is relatively consistent that freezing and delayed disclosure, as well as the recall of events in a different order, are not markers of a false complaint. At the same time, forensic psychology does not provide a shortcut to determining whether the particular victim is telling the truth or not. The role of psychological evidence is therefore not limited. But it can help the court to understand the behaviour of a victim.

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[17] AEquitas. (2011). *Case Law Digest: Expert Testimony on Victim Behavior*. The Prosecutors' Resource on Violence Against Women, Grant No. 2009-TA-AX-K024, OVW, US Department of Justice.

[18] Beazley, D. (2024). *Understanding the impact of trauma on witness testimony*. CBA National Magazine.

[19] AEquitas, Case Law Digest: Expert Testimony on Victim Behavior 37 (2011), https://evawintl.org/wp-content/uploads/VictimBehaviorExpertCaseDigest.pdf.

CHAPTER V
SUGGESTIONS AND RECOMMENDATIONS

- Replace the outdated or procedural terms like “prosecutrix”, “woman of easy virtue”, or “helpless female” with dignified terms such as “survivor”, “complainant”, or “child/minor”
- Frame sexual offences around violations of bodily autonomy and dignity, rather than morality concepts like “outraging modesty” or “loss of chastity”
- Judges, police officers and lawyers need to be provided with foundational training in trauma psychology to avoid treating silence or delayed responses as suspect behaviour.
- Reject the “Classic Rape.” Myth that an absence of physical injuries or lack of physical resistance does not imply voluntary consent.
- For admitting forensic psychological evidence under section 39 of the BSA, 2023, a detailed guideline must be framed by the authority or judiciary.
- Forensic psychology experts should be given more latitude to explain a pattern of general trauma without passing judgment on it.
- Care should be taken to avoid repeating questions in police stations and to avoid leading questions or hostile cross-examination. Interviews should be recorded carefully because research has shown that the way questions are asked can shape memory.
- Raise awareness among trial judges and litigants regarding the Witness Protection Scheme to ensure safety from threats or coercion.
- Ensure the automated, timely disbursement of interim and final funds under the NALSA Compensation Scheme for women victims/survivors.