
RAPE AS A PUNITIVE MEANS OF EXERCISING POWER

Karan Anand, BBA LLB, OP Jindal University

ABSTRACT

In this paper I am analyzing the societal and psychological factors that continue to remain unaccounted for by the legal system. The lack of acknowledgement of these factors has enabled the Brahminical patriarchy to use rape as a means to control and subjugate the women of the country. Rape is used as a means to punishment, exercised by men against women who do not conform to their ideals, and has been established as a social fact, by dividing the society into 2 halves, i.e., the oppressors and the oppressed. The paper focusses on the underlying power dynamics and how the offence of rape, under the garb of protection of “culture”, is in fact a means to control, and perpetuate the cycle of oppression against women. Moreover, the paper also analyses other social factors like religion, caste and financial background in relation to this heinous offence. The article becomes extremely relevant due to the recent events, specifically pertaining to the release and subsequent glorification, of the convicts in the Bilkis Bano case and analyses the offence of rape, and lapses in the judicial system through the lens of various other rape cases, including the Mathura rape case. The article also critiques the lapses in the judicial system, wherein many women do not speak out against their transgressors for fear of being shamed by society, and those who do need to navigate the complex labyrinth of the judicial system. Despite their efforts and bravery, these women are condemned by society, ridiculed in the court room, and in the end are denied justice. The paper also deals with the need for a change in social outlook, a need for a system wherein the victim isn't blamed for what she wears or does, but wherein we must point fingers at the men who commit and systems that condone these offences.

Murdering her innocence, taking away her autonomy, shattering her trust, leaving her hollowed in a pool of blood and tears. This is what rape does to a woman. The heinous crime of rape has inundated the entire country. Every 16 minutes a woman gets raped in India¹. The various ways in which gender and society interact have led to the establishment of patriarchal influences, as what Emile Durkheim refers to as a 'Social fact'². Social facts acquire a sense of generality and affect the entire population by establishing power dynamics, dividing them into 'controllers' and the 'controlled'. The first group is the people who make up the 'controlled', in this context, the female members of society who are discriminated against and have their rights and freedom violated. The second group is a majority, i.e., the male population who act as enforcers of patriarchal norms. They implement the rules based in their own ideology, that restrict the autonomy of the 'controlled' and dispense punishment when such rules are broken. Women are constantly expected to navigate the social labyrinth of culture and modernity. Women are 'allowed' to pursue their dreams as long as they fall in line with the set cultural norms. These so-called protectors of culture, curb a woman's freedom and rob her of her rights. This social paradigm allows for the primary male figure in a woman's life to essentially control every aspect of her life, in order to 'protect' her. This protection may include denying her an education, constant supervision of male figures and tabooing any expression of sexuality. Any deviation from these social norms results in punishment. This paper seeks to establish that rape is one such means of exercising punishment and power.

While the punishment of rape is given in Section 376, and the law has undergone amendments to broaden the ambit and recognition of this heinous offence, there are still those who are unable to receive justice and slip through the cracks of the law, whose stories go unheard and whose misery is overlooked and outright ignored by the law. This is because of a myriad of reasons including, the patriarchal efforts to control and silence women, exploitation of power dynamics both through authority as well as caste and class relations and finally the complex labyrinth of the judicial system that a woman has to navigate to attain justice.

Violence and exploitation of women has been normalized by society. This may be as extreme as rape or as common as cat-calling. This patriarchal attitude would have women's voices suppressed and any form of self-expression silenced. If a woman tries to speak up, she is raped. In accordance with this sexist ideology women are reduced to a man's property, his for the

¹ Shaurya, Surabhi. "NCRB Data Highlights Country's Deteriorated Law & Order". *India News, Breaking News / India.Com*, 2020,

² Durkheim, Émile, and Steven Lukes. *The Rules Of Sociological Method*. Free Press, 1895.

taking. Rape has now become a means of disciplining any rogue, who deigns to speak up or tries to reclaim her power. This is evident from a video that went viral in 2019 when an interviewer took to the streets of Delhi to gather public opinions on why rape occurs. The interviewees claimed that women not only invite but also consent to rape by wearing short clothes, smoking or drinking or staying out at night (Print). This idea of victim blaming acts as a double-edged sword. It not only exonerates men from being part of the problem but also propagates the idea that men are animals who aren't expected to have any self-control.

This can be further seen in the Mathura case, where the victim's sexual past was not only brought up but used against her. The fact that her vagina allowed two fingers easily was given more importance than her statements. Why was Mathura's sexual past noteworthy but not Ganpat or Tukaram's? The court used her past to destroy her credibility and publicly shame her. Much like Medusa who was defiled in the very temple she sought protection in, Mathura too was denied the chance to seek justice from the very institution she put all her faith in.

Rape not only includes mental and physical domination of the victim's will but in many cases, it may also include other power dynamics. Michel Foucault theorized the concept of biopower, which is the power that one-person exercises over another. This is also seen in various cases of sexual assault³. There may exist a skewed relation between the oppressor and victim in a financial or social context. For instance, in the Mathura case, the victim belonged to a lower caste. Moreover, the oppressors, being police officers held a social advantage over the victim. This intersection of caste and power has become a norm in society. This is evident from the high rate of crime against members of the lower caste, especially women. As Uma Chakravarti points out women from lower castes are at a particularly vulnerable position as they face a 'three-way' oppression due to their social status. Firstly, as members of the lower caste, they are subject to caste oppression. Secondly, as low-class laborer they face oppression at the hands of landowners, who are mostly from the upper caste. Finally, as women they experience patriarchal oppression by all men, including ones from their own caste⁴.

A much more recent example can be seen with the release of the culprits of Bilkis Bano rape case. Members of political and religious institutions greeted the newly released convicts, not

³ Downing, Lisa, editor. *After Foucault: Culture, Theory, and Criticism in the 21st Century*. Cambridge University Press, 2018.

⁴ Chakravarti, Uma and Maithreyi Krishnaraj. *Gendering Caste: Through a Feminist Lens. First Edition, Mathura Road, New Delhi: SAGE Publications Pvt Ltd, 2018. SAGE Knowledge, Theorizing Feminism, 29 Apr 2021*

with contempt and aggression, nor with a sense to seek justice for the survivor who lost 7 of her kin due the actions of the culprits, but with garlands and sweets. All the 11 convicts, convicted of life imprisonment walked out of jail after the government permitted their bail. Political representatives further made a mockery of the issue by stating, that the accused had “good sanskar” since they were brahmins. The 11 convicts, brutally raped 21-year-old Bilkis Bano, who was 5 months pregnant at the time and murdered 7 of her family members, including her 3-year-old daughter, whose head was bashed in with rocks⁵. However, these actions were condoned, and their release celebrated, because the victims belonged to a lower caste. The members of the upper caste often commit acts of sexual violence against women of the lower caste to show it down. Women from the lower are seen as easy targets for sexual violence. This is mainly because they face minimal risk due to a broken system that favors them at every turn and their own social and financial affluence.

Thus, the oppressors are able to escape their atrocities with minimal consequences while the victim is made to endure the brunt of their abuse. Many victims are beaten and bloodied, left and discarded to die. Those who survive have to undergo extreme physical pain, which is only the beginning of their agony. The victims struggle with the mental trauma and depression for years after their ordeal. They struggle with PTSD (Post Traumatic Stress Disorder), depression, suicidal thoughts and disassociation from other aspects of life (Effects Of Sexual Assault And Rape). Many women choose not to report the issue, either due to fear, shame or due to familial pressure. Those who do however, are made to further endure the inconveniences of the judicial system. The victims are made to fight, provide evidence and relive the entire experience in the several testimonies that they give in the courts. In Mathura’s case the legal system makes a mockery of her story and testimony. It emphasizes on the lack of struggle and Mathura’s ‘voluntary submission’ to the officers. The statements of the court are riddled with misogynistic undertones such as Mathura wanted to ‘appear virtuous’ in front of her relatives. The court completely disregards valid factors such as Tukaram’s intoxication during his duty. Thus, women not only undergo punishment during their violation but also for years after at the hands of society and the judicial system.

When analyzing some of the major rape cases that have taken place after Mathura’s we find further proof of our hypothesis. Take for instance, the Hathras rape case, another heinous crime that was motivated by caste superiority. A 19-year-old Dalit girl was mercilessly gangraped by

⁵ "Bilkis Bano Rape Case: VHP Greets Released Convicts With Garlands In Gujarat". *Timesnow.Com*, 2022.

4 upper caste men. The young girl was beaten and eventually succumbed to her injuries. The family of the victim faced threats for taking the matter to court. Moreover, the defense lawyer disrupted the proceeding and made a mockery out of the judicial process by saying, “Yes, please take a good look at these panties”⁶. Another instance is the famous Bhanwari Devi case where the victim was gangraped by the prominent Gujjars of her village. She had stood up to protest an infant marriage that was taking place in their household. They decided to silence the woman who dared to speak her mind and stand up against their regressive traditions.

Rape is no longer merely about sexual gratification; it is a means to control women and keep them in line. It is an open threat, which is reinforced by societal pressures, a constant reminder that they are merely subordinates to their male counterparts. It is a means to remind those who belong to lower castes that the idea of ‘equality’ that they cling to is merely on paper. It is a means to impose their own warped vision of culture and tradition, even if this means destroying a woman’s individuality and freedom. In a sexually regressive country like India the only hope for change is through a strict re-examining of our ideologies. Our societal outlook needs to evolve. We need to stop victim blaming by asking questions like ‘Was she alone?’ and ‘What was she wearing?’ and instead trying and asking, ‘What made him think this is acceptable?’.

⁶ Suresh, Nidhi. “‘Transfer Case Out Of Hathras’: Family Of Dalit Girl Faces Threats In Court, Constant Surveillance”. *Newslandry*, 2021,

Work Cited

1. Chakravarti, Uma and Maithreyi Krishnaraj. *Gendering Caste: Through a Feminist Lens*. First Edition, Mathura Road, New Delhi: SAGE Publications Pvt Ltd, 2018. *SAGE Knowledge*, Theorizing Feminism, 29 Apr 2021, doi: <http://www.doi.org/10.4135/9789353287818>.
2. Downing, Lisa, editor. *After Foucault: Culture, Theory, and Criticism in the 21st Century*. Cambridge University Press, 2018.
3. "Effects Of Sexual Assault And Rape". *Joyfulheartfoundation.Org*, 2021, <https://www.joyfulheartfoundation.org/learn/sexual-assault-rape/effects-sexual-assault-and-rape>.
4. Print, The. *Know Why Delhi Is Called The Rape Capital*. 2019, <https://www.youtube.com/watch?v=APIAPD67Jds>. Accessed 28 Apr 2021.
5. Sharma, Vineet. "Toxic Masculinity And Rape Culture Threatening India's Future; Bois Locker Room Scandal Is Another Eye-Opener". *Timesnow.Com*, 2020, <https://www.timeasnownews.com/mirror-now/in-focus/article/boys-locker-room-instagram-toxic-masculinity-and-rape-culture-threatening-indias-future-bois-locker-room-scandal-is-another-eye-opener/587315>. Accessed 28 Apr 2021.
6. Shaurya, Surabhi. "NCRB Data Highlights Country's Deteriorated Law & Order". *India News, Breaking News | India.Com*, 2020, <https://www.india.com/news/india/no-country-for-women-one-rape-every-16-minutes-in-india-ncrb-data-highlights-countrys-deteriorated-law-order-4159540/>.
7. Suresh, Nidhi. "'Transfer Case Out Of Hathras': Family Of Dalit Girl Faces Threats In Court, Constant Surveillance". *Newslaundry*, 2021, <https://www.newslaundry.com/2021/04/17/transfer-case-out-of-hathras-family-of-dalit-girl-faces-threats-in-court-constant-surveillance>.