

Gender Stereotypes in Rape Trials: Shakespeare's Lady Macbeth to Indian Courts

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BA.LLB. (NUSRL, Ranchi), LL.M. UGC NET 2022

Abstract

The present article examines the persistent presence of gender stereotypes in both Shakespeare's "Macbeth" and the Indian judicial system, particularly in the context of rape trials. It begins by analyzing the experiences of prominent figures such as Hillary Clinton and Smriti Irani, who have faced gender-based criticism throughout their careers. This analysis draws parallels to the character of Lady Macbeth, whose fierce ambition is consistently undermined by societal perceptions of gender, illuminating the broader implications of such biases. The play reflects a traditional view that regards women as unsuitable for political power, with Lady Macbeth's tragic downfall symbolizing societal expectations. Turning to the Indian judicial system, the article critiques its reliance on patriarchal ideologies. It highlights how these ideologies perpetuate the troubling notion that a woman's worth is intrinsically linked to her chastity, significantly complicating issues of justice and victimhood in rape trials. The judiciary's approach often reflects historical biases, leading to systemic injustices that further disenfranchise women. It is essential to understand the broader social and legal implications of gender discrimination.

The Indian judiciary is criticized for its adherence to patriarchal ideologies, often associating a woman's worth with her chastity. The article emphasizes the urgent need for gender sensitization within the legal framework and highlights women's challenges in pursuing justice. Ultimately, it advocates for reforms in judicial attitudes to more effectively represent women's autonomy and human rights.

Keywords: Gender sensitivity, Rape Trials, Autonomy, Judiciary, Chastity.

Introduction

After Hillary Clinton lost the Iowa elections, she was made subject to various sexual innuendoes and gender stereotypes. David Letterman made comments on her clothing choices, quipping, for example, that her "pantsuits ma[d]e her look 'even hotter.'" ¹ Right-wing campaign buttons make fun of her by insinuating that she cannot sexually satisfy her husband, proclaiming, "even Bill doesn't want Hillary."² To look forward to an example closer to home, Smriti Irani had to go through a similar experience. Photographs of her in a swimsuit did titillating rounds in the media soon after she was sworn in. Ace academicians and intellectuals commented on her TV career to obfuscate her abilities as an education

¹ Elizabeth L. Keathley, *Hillary's Bias Problems Have Deep Cultural Roots*, **WOMEN'S ENEWS**, Feb. 20, 2008, <https://womensspace.wordpress.com/2008/02/20/the-cultural-roots-of-the-anti-hillary-clinton-bias/> (quoting *Late Show with David Letterman* (CBS television broadcast)). (Oct. 24, 2018, 16:07 IST).

² CafePress.com, <http://buttons.cafepress.com/item/even-bill-doesnt-want-hillary-225-button181774874> (last visited Dec. 1, 2008).

minister.³ This is all depressingly familiar and easy to ascribe to gender stereotypes- horizontal across all cultures: women are reducible to their sexual appeal; their only worth is in satisfying a man; they are annoying when they try to do anything but submit to men.

Shakespeare's **Macbeth** remains one of his most popular plays, both for classroom study and performance and with good reason. It is the playwright's shortest play, but arguably his most intense, in terms both of its action and its portrayal of human relationships. The "*butcher and his fiend-like queen*"⁴ are among the most attractive villains in stage history, and the profound psychology with which Shakespeare imbues them is deliciously pleasurable for theatre audiences and students alike.

The play presents an array of twisted characters, each with their own set of virtues and vices. The play, Macbeth charts the bloody rise to power and the tragic downfall of the earlier loyal and faithful Macbeth, who is later infected by greed for the throne.

It is however the character of Lady Macbeth that especially stands out and shines because of its intensity, determination and mischievous bent of mind. Shakespeare uses the character of Lady Macbeth to undo and revise the presentation of a female ruler's conscience, making it incompatible with political power. This reconfirmation is apparent in the second half of play where Lady Macbeth is unable to escape, or even conceal, the workings of her conscience. The depiction of the playwright of the conscience of Lady Macbeth – transparent, visible in her body and incapacitating –amidst the constraints of the then prevalent culture, presents a stunning picture of the gender stereotypes that prevailed in the society.

People in different social strata, locals, economic groups and age groups experienced the effects of these changes differently. As with any cultural shift, "*old*" ideas and symbolic systems continued to hold and away in different ways and only gradually gave way to the new ones. What most historians agree on, however, is that by 1700 or so, women's spheres had been severely restricted and their role in the public life diminished. It is not surprising to note that the sixteenth and seventeenth centuries saw a trend towards disqualification of women from public office based on their gender alone.

The gender bias from the 16th century has not changed much as time progressed and the same bias and stereotyped seemed in the Indian Society. As the men decided for the women, in an almost hyper-masculine culture, with little or no understanding of victimology especially in cases of sexual assault, there was hardly any doubt where the balance would tilt

Judicial opinions through cases on Indian rape laws reflect a rather traditional understanding, where rape is not only viewed as an assault on the body of a woman, but also on her modesty, chastity, and honour. This view stands on a patriarchal bedrock and undermines the sufficiency of arguments based on the victim's individual autonomy and bodily integrity. The loss of chastity/virginity is viewed by courts as the primary 'harm' that rape causes. "Since the law prevents courts from using chastity-related factors when trying to fix guilt during the trial, the site of stereotyping has now moved to sentencing, where wide discretion existed until recently."

Shakespeare's Lady Macbeth

The play 'Macbeth' is well suited reflection of the school of thought that women are unsuited to duty in the public realm. The play outlines the plot that how a prophecy on a man's ambition could unleash an untamed bull towards the throne. The story line that is relevant here is how Lady Macbeth uses her husband's masculinity to continuously enrage the fire of ambition engulfing her, and how that overturns

³ <https://www.dailyo.in/politics/smriti-irani-bjp-rss-congress-hrd-ministry-education/story/1/3285.html>

⁴ Act 5 Scene 8, Macbeth

making her husband indifferent to her own death. The play also delineates how Lady Macbeth's cruelty and cold bloodiness lead to her own death, and how Macbeth, a loyal to the crown turns into a murderer of a king on mere incitement by his wife. The play enacts the moral reversal of husband and wife: Macbeth becomes more and more ruthless and corrupt, plotting other murders to keep his secret; Lady Macbeth eventually succumbs to the torments of her conscience and apparently commits suicide.

At the beginning of the play, Lady Macbeth receives a letter from her husband recounting the sisters' prophecies and quickly decides what must be done. She worries that her husband is "*too full o'th'milk of human kindness*" to carry out the deed, and she therefore seeks the necessary resolve in herself. She calls on the "*spirits I [t]hat tend on mortal thoughts*" to "*unsex*" her,

*“And fill me from the crown to the toe top-full
Of direst cruelty! Make thick my blood;
Stop up th'access and passage to remorse,
That no compunctious visitings of nature
Shake my fell purpose, n
or keep peace between Th'effect and it”*

It is important to note that it is biological transformation – a biological female body with stereotypically male traits- is exactly what Lady Macbeth demands from the spirits. It is done to suppress in herself any qualities that might deter her from her deeds. She calls upon the spirits to perform a specific, biological task of "*unsex(ing)*"; she asks them to stop her menstrual cycles. She specifically wishes for them, to block her genital tracts with thickened blood. This can be derived from the belief that the womb is connected to the heart; this blockage would also metaphorically impede the flow of remorse from her heart.

Her soliloquy suggests that the only way for the female body to exhibit male traits, like ruthlessness and aggression, is to change its very biology. This formulation more closely approaches the modern conflation of sex and gender. As can be observed there existed an overall trend in the culture towards seeing the sexual difference as increasingly absolute. The process of Lady Macbeth's transformation can be realised with the forward course of the play.

These lines echo Lady Macbeth's taunt, in Act 1, Scene 7, when Macbeth declares they would "*proceed no further in this [murder] business.*" She responds by mocking Macbeth's inability to translate his desires into action and adds that she will consider his love for her the same way. Her mockery provokes an angry retort: Macbeth tells her, "*I dare do all that may become a man.*" After committing the murder she prodded him to do, Macbeth expresses his transformation into one who cannot refrain from acting in the heat of passion, unable to pause to contemplate the wisdom of his deeds.

Simultaneously, Lady Macbeth figuratively ceases to function; as Macbeth's conscience disappears behind his actions, she leaves the world of action to become the embodiment of conscience. Her conscience is made manifest by a debilitating physical illness that leaves her unfit for worldly action.

Lady Macbeth's transformation from monster to penitent - or, the failure of her demand to be "*unsexed*" - is brought about by the activation of her conscience. Apparently tormented by guilt over the murder, she sleepwalks nightly, seeing through her sightless eyes a murky hell, smelling blood, and compulsively washing her hands. The point is clear: Lady Macbeth's body is inhabited by the awareness of her crimes; far from being "*unsexed*" in order to do violence, she is now completely incapacitated. Her rumoured suicide is the inevitable end of this process. Lady Macbeth's madness and suicide offer the hope of containing the chaos unleashed by the play; this hope stems from the elimination of the female ruler's opa-

city through the emergence of Lady Macbeth's "transparent" conscience.

The impulse to deprive the female body of supernatural secrets appears in the play's sleepwalking scene. First, the scene reveals a gender divide. Women (the waiting gentlewoman) are associated with royal secrets; men (the doctor) reveal those secrets. When the doctor asks her to tell him what Lady Macbeth says while sleepwalking, the waiting woman refuses to "*report after*" because as the sole witness, no one can confirm her account. It is the male doctor who transcribes - or renders part of the visible record - Lady Macbeth's utterances, Her words, of course, reveal secrets of state: the regicide, the various murders;" and effects without perceptible causes.'

Lady Macbeth's conscience takes over her entire being, incapacitating and finally destroying her. No longer hidden inside an invisible royal body, the female conscience is now literally and visibly embodied in a mortal, female body. In Lady Macbeth, then, the female body is no longer imaginable as a locus for the secrets of the state; it is now transparent, accessible to the moral judgments of all, and deprived of the opacity necessary for the exercise of political power.

In summary, Macbeth produces a conception of women that excludes them from political power. The play achieves this result in two stages. First, it shows us the threatening instability of female rule in the image of the "*unsexed*" Lady Macbeth. Then, in a recuperative move, the play offers a benign vision of women: Lady Macbeth, disabled by remorse and paralyzed by her conscience, will never intervene in affairs of state again. This banishment from political power extends to the bearing of children, to the extent that giving birth constitutes an intervention in politics (for example, when the child is destined to succeed to the throne). We learn from the image of Macduff "*[u]ntimely ripped*" from his mother's womb that the role of this reconceptualised woman will be limited to a purely physical, mechanistic one.

Indian Judicial System

Irrespective of how unbiased and unaffected the Judges are supposed to be, it is impossible that the thinking and morality of the society do not create a lens in the eyes of men belonging to the society. There have been numerous instances of gender stereotypes where Judges have been nothing short of patriarchal males the Indian society has bred. The silver lining has been the fact that they have realized this shortcoming and have adopted various measures where gender has not been the line of discrimination. The Indian Judiciary should be given due credit for also understanding female psychology and evolving out of the stereotypes revolving around it.

Theory of Implied Consent

As pointed out by popular textbooks of medical jurisprudence⁵ and followed by most judges are perpetuating stereotypes regarding rape and victims – it is stated that it is "essential that the woman should resist to her utmost... It would not amount to rape if after half-hearted resistance she gave consent."

Another makes class distinctions, stating a woman belonging to a "labour class" who is "accustomed to hard and rough work, will be able to deal blows on her assailant, and will thus succeed in frustrating his attempts at violation". On the contrary, a well-to-do woman might not be able to resist for long, and might soon "faint from fright or exhaustion"⁶

Implied consent has been a major factor in acquitting accused in rape cases. Some courts have positively used it as a basis to conclude that the allegations are false on the ground that the absence of any physical

⁵ The most prominent being *Modi's Textbook on Medical Jurisprudence*, considered a locus classicus on the topic

⁶ Alison Phillips (2009) *Rape and respectability: ideas about sexual violence and social class*. Sociology, 43 (4).

injury or harm on victim's body proves implied consent. It has made physical injury on victim's body a pre-requisite for proving the allegations of rape. Even the doctors are taught to believe that the presence of physical injury is pre-requisite for proving rape, as it is mentioned under authoritative textbooks of medical jurisprudence.

Tukaram and Anr. vs State of Maharashtra⁷: Rape of a tribal girl in custody brought in views of the regressive Indian society. In the judgment put down by Justice A.D. Koshal, "*No marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false.*" Her previous voluntary sexual intercourse had also thrown light upon and used to establish that no rupture of the hymen took place because of the alleged assault.

Criticism: The presumption that if no physical injury is evident on the victim's body, no sexual intercourse (or rape) has taken place, ignores the fact that rape is not only an offence involving physical violence but also psychological violence. It is the feeling of having been exploited and violated more than anything else which leaves lifelong scars on the minds of the victim. Is it even possible that a 14-16 year old would resist a middle-aged man of the police forces and would cause injury marks on his body? The idea of passive submission was also ruled out simply because she did not cry for help.

Not enough emphasis can be paid on the fact that such gender stereotypes prevail, that any other reaction, apart from the one pigeon-holed by the courts, made by the victim may lead to acquittal of the accused. An adolescent may not be fearful or get into the shock of what is going to happen to her, but should mandatorily create a ruckus and show attempts of resistance. There is no denying in the fact that, that could be one of the reactions, but the complete absence of it should not be the factors leading to the acquittal of the accused. Consent involves submission, but the converse is not necessarily true. From the facts of case, all that is established is submission, and not consent.

Rafiq vs State of Uttar Pradesh⁸: The conviction of a man for raping a worker of a village welfare organization. He was finally punished with a 7year rigorous imprisonment.

Krishna Iyer., J, who is famous for his humanistic approach towards law, observed in this case: "*when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken by the victim strikes a judicial mind as probable. ... When a woman is ravished what is inflicted is not merely physical injury, but 'the deep sense of some deathless shame'. ... Judicial response to human rights cannot be blunted by legal bigotry*"

Though the words of Krishna J. were a welcome change in the correct direction and he was the first one who laid down the foundation of believing the victim and making the judiciary gender sensitive. However, the discussion was reduced around the phrase '*the deep sense of some deathless shame*' rules out the same thing again- because of such an activity, there needs to be an immediate reaction of deathless shame where it hampers her daily life and routine. The yardstick is that the reaction should be deviant of any normal behaviour to prove that rape occurred. This is nothing but an extreme gender stereotype revolving around the reaction of a woman- facing '*deathless shame*'.

Reciprocal passion

When the accused men in rape cases are relatives, neighbours, or the one with whom victim had relation

⁷ (1979) 2 SCC 143

⁸1981 SCR (1) 402

ship- lower sentence is given as compared to the strangers. The person who is convicted of raping the victim, has eloped with the victim is also given lower sentence in trial courts, high courts and Supreme Court.

High courts have reduced sentences in cases of elopement saying the offence had been committed because of "reciprocal passion" and "out of youthful exuberance".

Keeping in view the social uproar after the Mathura Rape Case, a Criminal Amendment (1983) took place, which provided a statutory provision in the face of Section 114 (A) of the Evidence Act made 25 December 1983, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent as a rebuttable presumption. New laws were also enacted following the incident.⁹ The Section 376 (punishment for rape) of the Indian Penal Code underwent a change with the enactment and addition of Section 376(A), Section 376(B), Section 376(C), Section 376(D), which made custodial rape punishable. Besides defining custodial rape, the amendment shifted the burden of proof from the accuser to the accused once intercourse was established; it also added provisions for in-camera trials, the prohibition on the victim identity disclosure, and tougher sentences.

Vishakha vs. State of Rajasthan¹⁰: Vishakha case of sexual harassment at workplace is a case of landmark judgement by Supreme Court of India, because it was attack on working women's fundamental right to work without fear and prejudice. It is a saga of immense torture of a naïve working woman, because a woman showed exemplary courage to fight against the male ego our immoral society. It is a landmark case because first time ever it was officially recognized at such a high level of need for laws for sexual harassment and laying down of guidelines of sexual harassment of working woman. It laid down the guidelines for Prevention of Sexual Harassment of Women at Workplace, which finally became an act in 2013.

Mukesh and Anr. vs State of Delhi¹¹ (Nirbhaya Gang Rape Case): The Supreme Court while pronouncing its verdict in Nirbhaya's case too confirmed the award of death penalty to the accused persons while describing the act of gang rape and death of the victim as 'brutal, barbaric and diabolic'. Justice Bhanumati while concurring with the majority verdict opined that "*crime against women is an unlawful intrusion of her right to privacy, which offends her self-esteem and dignity*" therefore it is the duty of the court to carefully appreciate the evidences while dealing with the cases of rape. She emphasized that the "*court must act with utmost sensitivity and appreciate the evidence of prosecutrix in lieu of well settled legal principles*". She further clarified that "*It is now well-settled that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstantial evidence such as the report of chemical examination, scientific examination etc., if the same is found natural and trustworthy*".

Criminal Amendment (2013): This amendment also expanded the definition of rape to introduce clause vii in the Section 375 which states that a man would be said to commit a rape if a woman "*is unable to communicate her consent*". Narrowly construed, it may imply that a woman is unable to communicate her consent because of her physical or mental infirmities or illness or intoxication or for any such reason, yet in case if these provisions are broadly analysed it may also include the situations where a woman is not given space to communicate and be heard of and therefore it may be said that she is unable to provide her

⁹ Criminal Law (Second Amendment) Act. 46 of 1983, 113 (A) and 114 (A)

¹⁰ AIR 1997 SC 3011

¹¹ AIR 2014 SC 1649

consent. When read with the requirement of 'unequivocal unilateral agreement', it mandates that the sexual acts which are performed in callous disregard of a woman's desire would constitute rape.

In *State of MP v Madanlal*,¹² the Supreme Court of India, while laudably dismissing the idea of a compromise in cases of rape or an attempt thereof, went on to reason that:

[rapes] are crimes against the body of a woman which is her own temple. These are offences that suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure" is lost. The dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct.¹³

Undeniably, this characterization of rape is a product of a property-based positioning of women in society, where their chastity constitutes a valuable treasure of importance.¹⁴ At first, these observations may appear to hold little legal significance. However, continuous reliance on this property-based approach creates a distinction between an honourable victim of rape and a dishonourable one, who does not fulfil this criterion, the consequence being that, despite the prevalent evidentiary safeguards¹⁵ and judicial directions to this effect,¹⁶ while the testimony of the former is considered reliable, the latter's narration of an act of rape is often looked down on with suspicion. Accordingly, instead of relying on the honour and chastity of a victim, a sounder alternative is to view an act of rape solely as a violation of the victim's bodily integrity; a simple denial of his or her sexual autonomy. This approach limits the possibility of non-factors like the victim's familiarity with sexual intercourse, moral character, etc. permeating into the trial.

Mohammad Farooqi vs State of Delhi:¹⁷The trial court awarded Farooqi a seven-year jail term for sexually abusing the research scholar from Columbia University. After analysing the facts of the case, the single judge said, "*It remains in doubt as to whether such an incident, as has been narrated by the prosecutrix (victim), took place and if at all it had taken place, it was without the consent/will of the prosecutrix, whether the appellant could discern/understand the same.*" The court marred its entire pro-woman stand by stating that "*Instances of woman behavior are not unknown that a feeble 'no' may mean a 'yes'. If the parties are strangers, the same theory may not be applied. But the same would not be the situation when parties are known to each other, are persons of letters, and are intellectually/academically proficient, and if, in the past, there have been physical contacts. In such cases, it would be really difficult to decipher whether little or no resistance and a feeble 'no', was actually a denial of consent.*"

The above statement brings the entire chauvinistic approach of the Mathura Rape Case back on the table, where a feeble 'no' might be a yes. "*The appellant had no opportunity to know that there was an element of fear in the mind of the prosecutrix forcing her to go along. After completing the act, the appellant asks the prosecutrix that he wishes to do it again,*" the court added. It was found that in the present case, the unwillingness of the prosecutrix was only in her own mind and heart but she communicated something different to the appellant.

¹² AIR 2015 SC 213

¹³ Ibid at para 16.

¹⁴ "Forcible and Statutory Rape: An Exploration of the Operation and Objectives of the Consent Standard" (1952) 62(1) Yale Law Journal 55 at 80.

¹⁵ for instance, the Indian Evidence Act, 1872 (India), s 114A.

¹⁶ *State of Punjab v Gurmit Singh* 1996 (2) SCC 384: "The court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime".

¹⁷2017 SCC OnLine Del 6378

If only the Courts would provide a communication manual, which would dictate what degree of communication would be required to prove a man guilty of rape.

Conclusion

Changes in women's roles and views of female nature emerged from a wide variety of social, economic, political, and demographic developments associated with modernity that interacted in complex ways. Women's relegation to the private sphere and claims about their "sensitive natures" were clearly influenced by the demands of these changing circumstances in ways that are beyond this work's purview.

Be it Shakespeare with Lady Macbeth in the play 'Macbeth' or the Indian Courts analysing the victim's brains, there seems a disparity in what men think women should do, and what women actually do. The feminist jurisprudence and understanding of rape law and consent from a gender perspective is shattered by Farooqui's decision in multiple manners.

Including more women in the judicial process is that one solution that never fails to apply. Another solution would be to have gender sensitization among judges of every level and incorporating more medical practitioners and psychologists as amicus curiae in courts. Sensitization of Advocates should also be paid attention to and the most required is the shift from what caused the accused to rape the victim and not what the victim did to provoke him.

The present situation, especially after the Farooqui case, reflects that the embedded patriarchy and the entrenched prejudice and bias regulate women's access to justice. This must also be understood in the context of the overt and covert backlash against women who attempt to claim their citizenship rights, whether in terms of access to public spaces, education, the right to redressal, equal opportunities at the workplace, or to exercise their choice in marriage. This ongoing politics of backlash against women in law, society, and polity calls for introspection about how to make gender equality a reality.