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Chapter 4

The Insidious Culture of Fear in Indian Courts

Nidhi Shrivastava

Abstract

On 20 March 2020, the four adult convicts of the 2012 Delhi rape case were executed after a long debate regarding the punishment for their crime. The Delhi rape case, unlike others, was also given to the fast track court because of the worldwide outrage India received in its aftermath. Otherwise, most rape survivors rarely speak out and if they do, their lives are often endangered and threatened, depending on the severity of the case itself and the perpetrator's rank in the society. Through the analysis of Aniruddha Roy Chowdhury's, 2016 film *Pink*, and Ajay Bahl's film *Section 375* (2019), this chapter explores the different ways in which mainstream Hindi cinema deals with such questions, especially in its depictions of courts. Both these films foreground India's contemporary cultural systems of fear that silence the rape survivors. They also imply that in the court cases, unless the specific court case faces intense global publicity, as was the case of the Delhi gang rape, rape survivors will *never* want to speak out. Moreover, the rape survivors will also hesitate to file a First Information Report (FIR) – a document that records crimes by the police against their perpetrators – limiting any possibility for justice for them. The laws surrounding rape cases are obscure and complex and finding justice for a rape victim (unless it is on a global level) is not an easy venture in India. At the time of the #metoo movement, the rape laws in India are not designed in such a way to arguably encourage victim-survivors to *speak up*. Instead, if rape survivors do decide to confront their perpetrators, they not only face ostracisation from society but also the danger of losing loved ones and endanger their lives as well.

Gender Violence, the Law, and Society, 79–89



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The 2019 Unnao gang rape paints a complex picture of the Indian justice system, police attitudes and enforcement (or lack thereof) of rape laws in the midst of the #MeToo movement in India. On 5 December 2019, a twenty-three-year-old woman was set on fire in the Unnao district in Uttar Pradesh (Sagar, 2019). She did not survive the heinous attack and succumbed to her injuries the next day (Kumar, 2019).

A year earlier, she had accused two men of raping her, had testified against them in a court in Rae Bareilly, and had filed a case report against them. In 2018, she reported that both Shivam and his friend Shubham raped her again at gunpoint, which led her to file a report in Lalganj police station in Rae Bareilly (Sagar, 2019). She struggled to get the attention of the police who did not take any action against the accused, such that she was compelled to reach out to the Police Superintendent, who also did not show any interest in pursuing the case further. It was not until March 2019, after she had filed a case report in the District Court, that the police recorded her first information report (FIR) against the two men she had accused of rape. Shivam was arrested and released two months later, in November 2019.

In the aftermath of the rape victim's untimely death, the political leadership of Uttar Pradesh claimed that there would be a fast-track court set up to deliver justice to the victim and her family (Siddiqui, Bhardwaj, & Phartiyal, 2019). However, the authors of *Reuters* note that the judicial system in India, especially for rape cases, involves 'lengthy trials' that 'delay convictions leaving poor, disillusioned victims with little money or patience to pursue the case' (Siddiqui et al., 2019). Moreover, they add that 'long trials result in bails to the accused who often intimidate victims and their witnesses, and try tampering with evidence' (Siddiqui et al., 2019).

This case makes visible that despite the recent amendments to the rape laws in 2013 – initiated in the aftermath of the 2012 Delhi rape case – the current system ultimately does *not* support the rape victim-survivor, rendering her helpless and re-traumatising her in the process. Since the colonial era, the rape laws in India have been shaped by fundamentals rooted in patriarchal attitudes. The resulting system scrutinises the rape victim-survivor if she decides to pursue the case in court to get justice for the violent crime that has been committed against her.

Through a chronological examination of films that were released between the 1980s and present times, in this chapter I explore not only how the Hindi film industry depicts rape victim-survivors during court trials and attempts to problematise the treatment of them in court but I also argue that such cultural representations embody the contradictions that exist within the Indian judicial system. These discourage rape victim-survivors from speaking up against their perpetrators and filing the FIR. Many women are afraid to come to the forefront and seek justice for themselves because they experience a fear for their lives, and humiliation and shame for both themselves and their loved ones. Therefore, it is

in these judicial spaces that the ‘culture of fear’ exists. The term – culture of fear – can be defined as social and political conditions that prevent or discourage rape victim-survivors from coming forward into the public sphere to share their traumatic experiences and reporting their cases to the law systems to get social justice. We will see examples of ‘culture of fear’ in the filmic representations that I explore in this chapter.

Feminist scholar Skylab Sahu (2012) contends that the ‘[Indian] law exercises power and disqualifies women’s experiences and or knowledge’ (Sahu, 2021, p. 165) and that ‘when the laws and policies followed and formulated in a state often or at times help the state to retain its hegemony and the dominance of particular groups within society, it then helps in maintaining an unjust status quo of power instead of ensuring justice to the vulnerable’ (Sahu, 2021, p. 166). Similarly, Swapna Mukhopadhyay (1999) argues that there is ‘the disenchantment with the potential of law as an instrument of social transformation’ (p. 11) because feminist human rights lawyer, Flavia Agnes, in her meticulous research, demonstrates ‘that laws, old and new, are structured to operate against the larger interests of women’. (p. 12) Indeed, the journey to get justice is tumultuous and often considered a shameful and humiliating event not only for the rape survivor-victim but also for her family members.

As we will see, the trials that are represented in the films reduce the rape victim-survivors (usually women) to the essentialised figures of ‘good’ or ‘bad’ women – depending on their past sexual history, behaviour and lifestyle. In most cases when the trial takes place, the rape victim is judged based on her previous sexual history, her behaviour and education. Second, the victim’s testimony is also often used against her. If she is disenfranchised and poor, then she is further unable to seek justice for herself as the cultural and legal systems are often powerful enough to silence her in the process. Moreover, the rape victim-survivor’s body is sexualised during the rape trial as her sexual history is brought forward. While filmmakers in Hindi cinema problematise and highlight these issues within Indian judicial system, the treatment of rape victim-survivors and patriarchal attitudes that silence them continues to remain unchanged even today, as evidenced by the 2019 Unnao gang rape case. It also further highlights that while such rape laws and their amendments aim to act as instruments of social change, they are not enforced because of the socio-political and cultural structures that exist – whether it’s shame, lack of awareness of rights and deployment of further violence through abuse of power that prevents the rape victim-survivor from speaking up, filing a report or fighting for justice in courts.

The History of Indian Rape Laws, the 1983 Amendment, B.R. Chopra’s *Insaaf ka Tarazu* (1980) and Rajkumar Joshi’s *Damini* (1993)

Historically, the Indian rape laws are rooted in its colonial era and were established vis-à-vis the Indian Penal code (IPC) 1860. Informed by reports from Thomas Macaulay’s Indian Law Commission in 1837, the law defined ‘the crime

of rape as sexual intercourse by a man with a woman against her will and without her consent, except in cases involving girls under nine years of age where consent was immaterial' (Kolsky, 2010, p. 109). In 1860, the age of consent was raised to 10 years and the sentencing was either life or up to 10 years (Kolsky, 2010, p. 109). Indian women faced a dual challenge in colonial courtrooms because they were not only 'subjected to British legal presumptions about false charges, they also had to contend with specifically colonial ideas about the unreliability of native witnesses and other prejudicial ideas about Indian culture' (Kolsky, 2010, p. 111). Instead of deterring from these archaic rape laws, Indian law practitioners embraced them.

Jaising Modi's *Medical Jurisprudence and Toxicology* (1920) continues to remain an established text that is referred to in Indian courts to this day. Modi's text, according to Kolsky, echoes the sentiments of colonial predecessors who always already view the rape victim-survivor as a hostile witness unless she proves otherwise. Elizabeth Kolsky's (2010) study of rape trials in colonial India between 1860 and 1947 indicates that the 'colonial criminal jurisprudence was markedly hostile to rape victims who sought judicial remedy in court' (p. 122). 'A woman's charge', Kolsky writes, 'required some form of material corroboration, preferably a body evidencing the crime, although assumptions about class and culture sometimes trumped proof of bodily injury and broken bodice strings' (p. 123). Kolsky further observes that 'strict evidentiary requirements were established by the courts according to the presumption that the doubly doubtful complainant (the native woman) was a non-credible witness whose testimony could not be trusted' (p. 123). In other words, the rape victim-survivor had to 'corroborate her charge and prove non-consent' by providing additional evidence such as 'a fresh complaint, class and caste background, prior sexual activity, and, most importantly, physical marks of violent resistance on the body evidencing the crime' (p. 123).

These colonial rape laws continue to influence the contemporary rape laws even today, though the famous 1972 Mathura rape case led to 1983 amendments in the rape laws. A sixteen-year-old girl, Mathura, was repeatedly raped by a head police constable and his colleague while she was in police custody. When her case was tried, the Supreme court concluded that Mathura was responsible for the alleged rape because there was an 'absence of injuries on her body' (Kolsky, 2010, p. 124) which showed no evidence of resistance. Thus, her perpetrators were acquitted. Flavia Agnes (1992) further adds that Mathura's character was decided based on the fact that she 'had eloped with her boyfriend' and was 'habituated to sexual intercourse and hence could not be raped' (p. WS-20).

The Supreme Court's judgement led to nation-wide outrage and protests by feminists and other lawmakers who intervened and demanded a review of the court's judgement in Mathura's rape case in 1979 (Sahu, 2021, p. 61). Ultimately, the Criminal Law (Amendment) Act 1983 was established, which states that 'if the victim says that she did not consent to sexual intercourse, the court shall presume that she did not consent' (Sahu, 2021, p. 61). Renowned women's rights lawyer Flavia Agnes (1992), cultural anthropologist Veena Das (1996), feminist scholars of law and sociology Pratiksha Baxi (2014) and Skylab Sahu (2021) have

stated that although there were some positive changes associated with these amendments, they were largely symbolic.

A cult classic, B.R. Chopra's *Insaaf ka Tarazu* (1980) was released in the aftermath of the Mathura rape case. Film critic [Deepa Ghalot \(2016\)](#) has called this film 'bold for its time' and said that it was considered 'progressive at a time when rape victims in Hindi films usually committed suicide or were sometimes "accepted" by a noble man who did not hold her non-virgin status against her'. The film's plot explores society and law's patriarchal attitudes that shaped the judge and lawyer's perception of the rape victim. Bharti (Zeenat Aman) is a popular model who attracts attention not only for her beauty but also because she is modern, assertive and not afraid to take on modelling projects which at the time would have been considered risqué (photo shoots in swimming costumes and other revealing westernised outfits). Although she has a boyfriend, Ashok (Deepak Parashar), she encounters Ramesh (Raj Babbar) during one of her modelling events. He finds himself obsessed with Bharti and turns up at several of her modelling shoots, eventually holding a party for her. Ultimately, he rapes her during a visit. There are two trials that take place in the film. In the first one, Ramesh is acquitted after the defence lawyer shames Bharti for her lifestyle and career choices. In the second half of the film, Ramesh humiliates and rapes Bharti's sister, Neeta (Padmini Kohlapure). In anger, Bharti shoots and kills Ramesh. The film suggests that a raped survivor-victim has to take laws into her own hands to gain justice, as the judicial system does not support them.

The representation of both trials is insightful. At the beginning of the first trial, Bharti is warned by her female lawyer that many women do not file charges of rape – because often they are humiliated and shamed but the perpetrator is not convicted. This gender bias is made visible during the covering of the rape itself: whenever she denies his claims, the defence lawyer speaks to her in a dismissive tone. Chandra dissects different aspects of Bharti's culturally un-traditional and modern behaviour. During the cross-examination, we see that Chandra uses Bharti's lifestyle and career choices for choosing to adopt a modelling career over a secretary job (which he considers to be more decent for a young woman) as a way to discredit her. Throughout the trial, he shows that Bharti is responsible for the rape and not Ramesh because she is a woman of a 'loose' and indecent character ([Chopra, 1980](#), pp. 1:14:43–1:20:00). In contrast, the second trial is noticeably different because Bharti is no longer clad in a western dress. Instead, she is wearing a sari with her head covered. The attitudes of the judges and lawyers change remarkably at this time. In the initial ruling against her in the first trial, the judge's decision resulted in Bharti's social ostracisation in her society where she was not only viewed with hateful and disgusted eyes but was also spit on. Whilst being examined, she says that her trial became an example of the consequences that rape survivors face if they choose to step forward. This is a pivotal moment in the film for two reasons. First, we hear Bharti, the rape survivor-victim's testimony as she admonishes the judge and defence lawyers who shamed and obliterated her case in the first trial. The film seems to argue that the patriarchal and misogynistic attitudes permeate the justice system creating conditions that prevent a rape survivor from seeking justice. Ultimately, she is *forced*

to take the law into her own hands to punish the rapist. It is no wonder that this film is still considered to be a cult classic. At the end of the film, the judge and the defence lawyer, Chandra, are ashamed such that the judge even steps down from his position because he could not deliver Bharti justice. Her honour is also restored after her boyfriend Ashok's family accepts her and her sister back into their lives after the trial, as if the rape and murder had never happened. The film, therefore, suggests that for a raped woman to regain her honour, she is left with no choice but to seek justice on her own terms whether it be by breaking laws.

Although *Insaaf ka Tarazu* shows a progressive representation of a rape victim-survivor, it is important to note that Bharti, who was a model by profession, belonged to middle/upper middle class, even though the defence lawyer disparaged her work in court. She still had a further privileged position that enabled her to speak up and condemn the court. In Rajkumar Joshi's *Damini* (1993), however, that is not the case because the rape victim-survivor belongs to a lower class and works as a domestic servant. The film reveals complex power structures that continue to silence and erase the narratives of rape survivor-victims, especially those who would be considered poor.

The film follows the story of Gupta family who use their power to cover up the brutal gang-rape of Uma, their domestic servant, that Rakesh, Damini's brother-in-law, and his friends are responsible for. Throughout the film, we see instances of different avenues of power and law: police, prosecuting lawyers and even Damini's wealthy father-in-law are working to silence Uma. At first, Uma is admitted to the hospital where none of the Gupta family members come to visit her. Eventually, she is murdered by the police. The narrative then shifts to Damini, who begins the journey to fight for her justice. We do not see Uma at all during the trial: although it is *her* rape case that is at the heart of the film, the focus is not on her. It is implied that she has been murdered by the corrupt policemen who have been bribed by the perpetrator's family to do away with the case. Instead, the film focusses on Damini and the forces that work to silence her for speaking and advocating for the rape victim. Ironically, Damini was also the name given to the 2012 Delhi gang rape victim. But, in the film, Damini is the victim's advocate/activist, *not* the rape victim herself. The common thread that both these films share is the disparaging and humiliating line of questioning that rape survivors and their witnesses are asked to humiliate and shame them. During the trial, the devious prosecuting lawyer questions Damini about the details of Uma's rape, asking her where the men were and which parts of her body were they holding.

Damini also shows instances of 'compromise' – a method that has been used to put pressure on the rape victim-survivor and her family outside of the court. In other words, Pratiksha Bakshi (2014) explains that 'it becomes apparent that the pressure to compromise is enforced through networks of powerful middlemen including lawyers, policemen and local politicians who act on the behalf of the accused. Refusal to compromise often results in tragic consequences [for the rape victim and her families]' (p. 182). Sahu also adds further that, 'in many cases, compromise could be possible and trials can be curtailed, or the witness may turn hostile. There are several cases that depict the grim consequences for women who

are raped, assaulted, murdered or were forced to commit suicide by the men who raped them (especially when the rapists were from socio-economically and politically powerful groups) and because they refused to compromise' (p. 69). Indeed, this tactic is used often by the perpetrators and their families to settle the rape case outside of the court/ by persuading the rape victim to marry the man who raped her or by threatening to harm her and her family members as I discussed earlier in 2019 Unnao rape case as well. It becomes apparent, then, that if the rape victim belongs to the (upper) middle class or higher, she is given a platform to challenge and, ultimately, is able to claim justice while the women who belong to the lower echelons of the society are left silenced and powerless in these same courts.

The 2013 Amendments to the Rape Laws, Aniruddha Roy Chowdhury's *Pink* (2016), and Ajay Bahl's Section 375 (2019)

The 2012 Delhi gang-rape case was so heinous that it led to another amendment in the rape laws, after a twenty-three-year-old student was brutally gang-raped on a moving bus in Delhi. In 2013, the committee on Amendments to the Criminal Law, also known as the Justice Verma committee, was asked to guide and advise the Indian government as national and international protests sparked in the aftermath of the Delhi gang rape case.

The 2012 Delhi gang-rape case was so heinous that Indian government established the Criminal Law (Amendment) Act, 2013, resulting in significant changes to the rape laws in the form of section 375, to ensure quicker trials and stricter punishment. Sahu highlights that, 'the amended law bars the use of sexual history in determining the consent of woman and bars cross examination as the way to prove the general immoral character of the victim'. If the victim states in the court that she did not give consent, the court will presume that it is so (p. 66). The 2012 gang-rape case also prompted the justice Verma committee to reframe the definition of rape. As a result, the 'penetration of a woman's vagina, urethra, anus or mouth by a penis and penetration of the vagina, urethra or anus by finger(s), object(s), body part(s) is considered "rape". Acts of cunnilingus and fellatio are also covered within the definition' (Satish, 2016). By calling it 'sexual assault', the law now recognises that penetration by objects will also be considered rape. The Ministry of Women and Child Development also established the \$113m Nirbhaya fund to ensure empowerment, safety and security initiatives dedicated to help victims of gender and sexual violence. One of their schemes under this fund was the creation of One Stop Centres that were designed to aid rape survivors and victim-survivors medically. However, media critics have noted that the one stop centres have been inefficient in providing the appropriate services to the rape victim-survivors (Bajoria, 2017). Additionally, the current rape laws in India problematically acknowledge *only* the sexual violence experienced by people who are assigned female at birth. These laws do not recognise the gender-based violence that young men and transgender people experience in India. Aayush Akar and Shubhank Suman (2020) note that, at most, Indian rape laws refer to

the act of sodomisation under section 377 [10] of the Indian Penal Code, but beyond that there is an assumption that the rape victim-survivors are primarily women, in the Indian court of law.

Since 2013, the state and government, as well as the judicial government, have in fact created and designed laws that do support the victims of gender and sexual violence. Social-political and cultural realities prevent the rape and sexual violence survivor from receiving the support she needs as she is reeling from the trauma of the crime. Sahu reports, 'lack of coordination between the one-stop centre, the police, the magistrate, medical service and the magistrate creates hurdles for the rape survivor' (p. 176). Rupal Oza, a feminist geographer who has worked on sexual and gender-based violence in Haryana, has also argued that 'despite amendments to the 2013 Code of Criminal Procedure, which holds the police accountable for not filling a first information report, Human Rights Watch found that the police resist filing cases, especially if the accused is from a dominant caste or community' (p. 104).

In the aftermath of the 2012 Delhi gang-rape case, there was a significant cultural response from filmmakers, activists and feminist groups. Among them were the films, Aniruddha Roy Chowdhury's *Pink* (2016) and Ajay Bahl's *Section 375* (2019). *Pink* begins *in media res* as three female roommates – Minal, Falak and Andrea – are seen escaping from a dangerous situation. At the same time, we see three men – Raunak, Vishwajyoti and Rajveer – who are injured and being rushed to the hospital. As the plot thickens, we learn that the group of men and women had met up for drinks after a concert they had attended. It becomes evident that Minal has caused a head injury to Rajveer. As the women try to put the incident behind them, Rajveer's friend Ankit begins to send threats to Minal and desires revenge for his friend's injury. Falak loses her job after a scandalous photo of hers is sent to her boss and the men also start to harass her landlord to discourage her from filing a court case. The local police are aware that the men have connections with political leaders and are afraid to charge them. We see an instance of compromise as the men eventually kidnap Minal and threaten and molest her in a moving car, which leaves her shaken. Because of Rajveer's uncle's connections, it is Minal who is arrested for attempted murder. Andrea and Falak seek the help of Deepak, a reputed lawyer who has retired. He vows to fight for her as her trial begins. In this trial, Rajveer's lawyer, like Barrister Chandra, also attacks Minal's character and reputation because she is an independent girl living in Delhi: he suggests that the women prostituted themselves to the men and demanded money for their company. Intent on deriding Minal's moral character, the defence implies once again that it is the victim who is responsible for the rape attempt. As the trial continues, the women argue that it was the men who had tried to sexually assault and rape them. Thus, Minal had hit Rajveer with a bottle in self-defence. Deepak argues that the trial is about consent – when a woman says no, it means no – and their clothes, drinking habits and lifestyle should *not* be determining factors. *Pink*, like *Insaaf ka Tarazu*, shows a progressive representation of a rape survivor who also had to take the law into her own hands because the conditions were so perverse that she had no choice but to act in defense.

Unlike Bharti, who killed her perpetrator, Minal is ostracised, blamed for the events that have unfolded, and had her arrested.

It becomes clear that even if the rape laws have been changed to recognise a woman's testimony, the cultural systems and society's patriarchal often misogynistic attitudes continue to seep into the court room trials. In fact, the final film, *Section 375*, is arguably a regressive representation in this genre of films and ultimately foregrounds the problematic notion that women are filing false rape cases for revenge. Released amidst the #MeToo movement, the film explores a rape case in the entertainment industry. Notable film director Rohan Kurana (Rahul Bhat) is accused of rape by costume designer Anjali Dangle (Meera Chopra). The court case is taken up by prosecutor Tarun Saluja (Akshaye Khanna) and Hiral Gandhi (Richa Chaddha), his former mentee who is passionate about social justice. Saluja has a very troubling belief: essentially that law is business, and not an instrument of social justice. He argues that Anjali had created this story of rape as a way to take revenge on Rohan after their relationship soured. While Hiral tries to follow the law and argues that consent is still relevant even if a relationship has taken place where two people were mutually involved, the film implies that the judges are under pressure to support the rape victim even though evidence seems to suggest that she is doing this for revenge. The most frustrating part of this film, as a viewer, is the ending, because Anjali confesses that she had indeed filed the rape charge to avenge Rohan for breaking up with her.

Films such as *Section 375* show that women often file false rape charges and problematically revert back to the old and archaic colonial laws that were doubtful of a woman's testimony. Although this chapter only briefly surveys a selection of four films, it becomes clear that even in the Hindi film industry, rape victim-survivors are viewed with ambivalence and doubt. The rape survivors are compelled to take justice and law into their own hands (which is one extreme) if they belong to (upper) middle or elite classes, which is when there is a danger that they can also file a false rape charge because of their bad and immoral character. If they are poor or marginalised, then they are unable to even stand trial and are silenced before they enter the court, as we saw in Uma's case in *Damini*.

Conclusion

This chapter has been perhaps one of the most challenging and emotionally devastating ones to write because it becomes apparent that there have been significant and noticeable shift in rape laws since India's inception in 1947. Yet, rape victim-survivors continue to be questioned. Oza sees in her work that 'even when they [the rape victim-survivors] are discouraged from filing a case, the very attempt at lodging a complaint is an act of defiance' (2020, p. 105). Although it is indeed true that more women and rape survivors are coming forward, the cultural and societal systems continue to influence the judicial system which does not enforce the laws and often works against the rape survivor. The 2019 Unnao gang-rape case is a clear example of this. Finally, the film industry, which itself

has had to reckon with #MeToo movement, has been able to create and construct narratives of empowered rape survivors, though within the industry itself, the justice for many rape-survivors remains unachievable as their own reputation is put in jeopardy if they come forward.

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