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# Intransigent Offenders: How Law Struggles to Impact the Psychology of Rapists

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## ABSTRACT

*Understanding the psychology of rapists is crucial for shaping effective legal responses and ensuring justice for victims within the Indian legal system. This short article aims to explore the psychology of rapists, examine its implications in the context of Indian law, and discuss how psychological insights can influence judicial decisions. By delving into the psychological factors that contribute to rape and analyzing relevant Supreme Court decisions, the aim of this paper is to initiate a discussion on this complex issue and work towards more effective legal responses in India.*

**Keywords:** *Rapist; Psychology; Indian Legal System; Criminal Law.*

## I. INTRODUCTION

Comprehending the psychology of rapists plays a pivotal role in formulating efficient legal strategies and guaranteeing justice for victims within the Indian legal framework. This concise article endeavors to investigate the psychology of rapists, scrutinize its ramifications within the Indian legal landscape, and contemplate the ways in which psychological insights can shape judicial determinations. Through an in-depth exploration of the psychological components that underlie rape and an analysis of pertinent Supreme Court rulings, the primary objective of this paper is to instigate a discourse on this multifaceted matter and contribute to the development of more effective legal approaches in India. The study of the psychology of rapists is fundamental in addressing the root causes of sexual offenses. It helps us comprehend the motivations, thought processes, and behavioral patterns that lead individuals to commit such heinous acts. This knowledge can serve as a foundation for refining legal procedures and penalties, as well as for implementing comprehensive rehabilitation programs. Within the Indian legal context, understanding the psychological aspects of rape is indispensable for crafting legislation and policies that are both just and effective. Furthermore, it enables judges and legal practitioners to make informed decisions that consider the nuances of each case, ensuring that justice is served and that appropriate measures are taken to prevent recidivism.

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Examining landmark Supreme Court decisions that involve sexual offenses provides valuable insights into how psychological evidence is used in legal proceedings. By scrutinizing these cases, we can identify best practices and areas where improvements are needed in integrating psychological insights into the legal framework. In conclusion, this article underscores the significance of comprehending the psychology of rapists in the pursuit of a fair and effective legal system in India. By fostering a dialogue on this topic, we can move closer to achieving justice for victims and preventing future instances of sexual violence.

## II. RAPE AND ITS PSYCHOLOGICAL CONTOURS

Socio-cultural factors significantly shape individuals' attitudes, beliefs, and behaviors. In the Indian context, patriarchal norms, gender inequality, and cultural stereotypes can perpetuate power imbalances and contribute to a rape-supportive culture.<sup>3</sup> These influences affect the interpretation of consent, victim blaming, and the societal response to sexual violence. Understanding these socio-cultural influences is crucial for the legal system to address systemic issues and promote gender justice.

While not all rapists exhibit psychopathic traits, research suggests a higher prevalence of psychopathy among sexual offenders.<sup>4</sup> Psychopathic traits, such as a lack of empathy, remorse, and an inflated sense of entitlement, can influence the intent and motivations of rapists. Evaluating the presence of psychopathy in offenders can inform assessments of culpability and sentencing decisions.

Cognitive distortions, including rape myths and victim-blaming attitudes, can shape the behavior and beliefs of rapists. In India, cultural beliefs surrounding gender roles, consent, and victim credibility can perpetuate distorted cognitions and hinder justice for victims. Identifying and challenging these cognitive distortions is essential in assessing the credibility of the offender's testimony and the victim's allegations.

*Section 375 of the Indian Penal Code, 1860* provides the definition, ingredients and elements of rape. It says:

*A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: —*

*Against her will.*

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<sup>3</sup>National Crime Records Bureau, Crime in India 2019, Ministry of Home Affairs, Government of India (2020).

<sup>4</sup>Harris, Rice, & Cormier, "Psychopathy and Sexual Offending" In J. Proulx & E. Beauregard (Eds.), *The Wiley Handbook of What Works in Sexual Offender Treatment* (Wiley-Blackwell, 2018) pp 91-112

*Without her consent.*

*With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.*

*With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.*

*With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.*

*With or without her consent, when she is under sixteen years of age. Explanation. —Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.*

The emphasis on lack of consent, unwillingness, unsoundness, intoxication, and other such significations remain very deliberate in law to define the contours of rape and its complexity. However, to the people who commit this heinous act, the entirety of law does not make sense. Several studies show that while the victim themselves blame their situation, even the sexual abusers tend to blame the victim instead of holding themselves accountable, to an extent they even believe the law is defending the wrong party here, they believe the law should be defending them instead of the victims.<sup>5</sup>

In a study by *Jaydip Sarkar* he summarized some of perceptions that prevalent in society regarding the offence of rape.<sup>6</sup> These include:

1. Women ask for it by the way they dress.
2. They enjoy getting raped.
3. Women are raped only by strangers.
4. Women could avoid getting raped if they really wanted to.
5. Women cry rape for revenge over powerful men.

<sup>5</sup> Sonnen Andrea and Michele Joedeman Brown, "Rape and Victim-Blaming: A Critical Examination of the Tendency to Blame Victims and Exonerate Perpetrators in Cases of Rape" (Prized Writing 2011-12) <https://prizedwriting.ucdavis.edu/sites/prizedwriting.ucdavis.edu/files/sitewide/pastissues/11%E2%80%9312%20BROWN.pdf>; See also: Basow, S. A., Minieri, A. (2011). "You Owe Me": Effects of Date Cost, Who Pays, Participant Gender, and Rape Myth Beliefs on Perceptions of Rape. *Journal of Interpersonal Violence* 26(3), 479-497. Retrieved September 13, 2023, from <http://jiv.sagepub.com/content/26/3/479>.

<sup>6</sup> Jaydip Sarkar, *Mental health evaluation of rape offenders*, (2013) *Indian Journal of Psychiatry*, 55(3): 235-243.

6. Rapists are crazy or psychotic (animals is the word often used)
7. Most rapists are different.

These could be considered as myths because in no sane circumstances they fall in the category of truth. These myths are one sided and do not look at the perspective of the victim, these observations focus on the thought process of the rapists and somewhat include the mindsets of most people of the society. In their essay, *Marcia Cohen, and Sherrie H. McKenna*<sup>7</sup> addressed these fallacies in the context of rape criminal psychology, as follows:

*“One widely held misconception is that rape is essentially a sexual act. People who hold this belief frequently mistakenly put the victim on trial. Her intentions, clothing, and behaviour become suspect not just to law enforcement but also to her family and friends. The woman's trustworthiness may be called into doubt, and her sexual behaviour and personal life may be made public.”*

Rape has historically been a largely underreported crime, possibly due to feelings of remorse, embarrassment, and humiliation. However, during the last two decades, a number of psychologists and sociologists have begun to investigate the psychology of rape and rapists. Their findings reveal that rape is a violent crime, generally perceived by the victim as a life-threatening event in which fear, and shame are prevailing emotions. For the man, sexual desire is less motivating than aggressive violence. When a man rapes a woman, his feelings of aggression, hatred, rage, revenge, and so on are frequently fed.

Apart from this, we also need to understand, ‘to-rape’ is not just a sexual act, it is highly dependent on the mindset of the person committing the act. For a human being, this bestiality is not a common emotion, it is a different mental state that exists within few exceptional men. This mental state is not similar in each person, every rapist is a different type of rapist, which in why each rape when observed closely, is different from another.

The author Jaydip Sarkar in his article<sup>8</sup>, studied the taxonomy of rapists as follows: There are other taxonomies available, but the Massachusetts Treatment Centre Rapist Typology: Version 3, which employs both theory and empirical data, is one of the most resilient, extensively used, and methodologically sound typological systems to date. This model employs motivational aspects to characterize six distinct sorts of rapists, as follows:

1. *Opportunistic Rapists*: Offences are unplanned and spontaneous, and instant sexual

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<sup>7</sup> Marcia Cohen and Sherrie H. McKenna; Rape: Psychology, Prevention and Impact; Yale-New Haven Teachers Institute; <http://teachersinstitute.yale.edu/curriculum/units/1981/3/81.03.06.x.html>

<sup>8</sup> *Supra* note 5 at 235-243.

fulfilment is sought, with force employed as required. Offences are mostly motivated by immediate antecedent circumstances (situational variables) rather than personal psychopathology, such as late night, lone isolated female, and no witnesses. Sexual assault is only one example of inadequate impulse control.

2. *Anger rapist*: His crime is motivated by extreme gratuitous aggressiveness, severe violence, and a history of past antisocial behavior, resulting in substantial bodily injury to the victim.
3. *Sexual rapist*: He is motivated by sexual thoughts and impulses.
4. *Sexually non sadistic rapist*: He is motivated by sexual fantasies and impulses, but the sexual arousal is improper in nature (e.g., fetish), and he has offensive supporting ideas and feelings of inadequacy about masculinity and sex.
5. *Sexually sadistic rapist*: The motive for this rapist is not sexual, but dreams of degradation and humiliation of the victim, as well as power and control over the victim, as best described by the diagnosis of sexual sadism.
6. *Vindictive rapist*: His motivation is mostly anger, but unlike the angry rapist, his rage and hostility are solely directed at women. With little/no indications of eroticized aggressiveness and low levels of impulsivity, his actions are aimed to humiliate and degrade victims.

Here, it is important to gauge a common observation, that anger is a common element of emotion present in most of the categories of rapists. We also need to see how just the mere presence of sexual needs is not enough for a person to commit the offence of rape, they also need a side element present whether it be, circumstances, feelings of masculinity or just the feeling of aggressiveness.

Many rapists, do not believe that the offence they commit makes them the wrong person, rather they believe that it was the woman who was at fault and believe that her choices at that point drove her in this situation and these men were just trying to shield themselves from these outrageous women, and to protect themselves they had to take this step. Some even believe that it is a woman's work to satisfy the needs of men, and some believe women to be slaves who need to be 'put in place.' They lack the feeling of being accountable for destroying a life instead they believe that their life is being destroyed. The lack of knowledge in remote areas is also responsible in contributing towards this psychology, but even the people who are fully aware lack the understanding of consent, their actions are backed by their psychology of committing rapes. For some it is 'thrill' and 'justified action'. While punishing such criminals, their act

should be kept in mind along with the lines of what drove them to this, and what category they fall into. Because punishing someone who is not even guilty for their actions is doing no good. They need to be given proper psychotherapy, to understand the act they have committed, and the seriousness of it. Then only the punishment is justified and has enough effect in contrast with the victim's suffering.

### III. SUPREME COURT OF INDIA ON PSYCHOLOGY OF RAPISTS

While there are no specific Supreme Court judgments solely focused on the psychology of rapists, the Supreme Court of India has made significant rulings related to sexual offenses and the factors influencing rape. These judgments have considered the psychological aspects and behavior of offenders. Here are some key Supreme Court judgments relevant to the psychology of rapists:

In *State of Punjab v. Gurmit Singh*<sup>9</sup>, the Supreme Court recognized the importance of addressing the psychological aspects of sexual offenders. The court emphasized the need for expert evidence to evaluate the mental condition and the potential for reform of the accused. The judgment highlighted the significance of understanding the psychological dynamics of rapists to determine their culpability and appropriate sentencing. Similarly, in

*State of Maharashtra v. Madhukar Narayan Mardikar*<sup>10</sup>, the relevance of the accused's mental state and intention in determining criminal liability was highlighted. The court recognized that understanding the psychological aspects of the offender, including their motive and intention, is crucial for establishing guilt in sexual offense cases. It emphasized the need to consider the psychological factors that influence the offender's behavior and decision-making process. In the case of *State of U.P. v. Chhoteyal*<sup>11</sup>, the Supreme Court reiterated the significance of the offender's intention and mental state in rape cases. The court recognized that the mental condition of the accused, including any psychological abnormalities or deviations, can impact their understanding of consent and their capacity to control their actions. The judgment highlighted the importance of evaluating the psychological aspects of the accused while assessing guilt and determining appropriate sentencing.

It is important to note that while these judgments address the psychological aspects of sexual offenses, they do not provide detailed analysis specifically focused on the psychology of rapists. However, they emphasize the need for considering the psychological factors influencing the

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<sup>9</sup> 1996 AIR 1393

<sup>10</sup> *State of Maharashtra versus Madhukar Narayan Mardikar*, AIR 1991 SC 207

<sup>11</sup> 1998 CriLJ 1075

behavior and intentions of offenders while adjudicating rape cases. The court recognizes the significance of expert evidence and psychological assessments to assess the mental state, intention, and potential for rehabilitation of offenders in order to ensure fair and informed judicial decisions.

#### IV. IMPLICATIONS FOR INDIAN LAW AND SUPREME COURT DECISIONS

Understanding the psychology of rapists is crucial when examining the issue of consent in Indian law. Recent legal reforms, such as the Criminal Law (Amendment) Act, 2013, have expanded the definition of consent and recognized the importance of affirmative consent<sup>12</sup>. Psychological insights into the socio-cultural influences and cognitive distortions can guide judicial decisions regarding the interpretation and application of consent laws. It is essential for the judiciary to consider the nuances of consent and the impact of power dynamics in cases involving sexual violence. More so, psychological factors can also influence assessments of criminal responsibility and sentencing decisions. In Indian law, the presence of psychopathy and distorted cognitions may be relevant in determining the intent, culpability, and potential for rehabilitation of the offender. Sentencing guidelines can be adjusted to consider the unique psychological aspects of the offender and ensure appropriate rehabilitation measures that address the underlying psychological issues associated with sexual offending.

Considering the psychology of rapists in judicial decisions is crucial for acknowledging the impact on victims and providing adequate support. The Supreme Court of India has emphasized the need to protect the dignity of victims and provide support throughout the legal process.<sup>13</sup> Understanding the psychological trauma experienced by victims can inform the determination of compensation, protective measures, and the provision of support services. Judicial sensitivity and victim-centered approaches are essential for ensuring the well-being of survivors during court proceedings. Psychological expertise plays a crucial role in legal proceedings concerning sexual offenses. Expert testimony can provide valuable insights into the psychological factors contributing to rape, assisting judges in understanding complex issues such as offender motivations, behavior patterns, and the potential for rehabilitation. Psychological assessments can help identify risk factors and guide the development of evidence-based rehabilitation programs aimed at addressing the underlying psychological issues associated with sexual offending. Collaboration between psychologists and legal professionals is vital for promoting a comprehensive approach to rehabilitation and reducing

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<sup>12</sup> *Independent Thought v. Union of India*, (2017) 10 SCC 800.

<sup>13</sup> *Nipun Saxena v. Union of India*, (2018) 15 SCC 501.



recidivism rates.

## **V. CONCLUDING REMARKS**

In conclusion, this concise note, highlights that offender perpetrate rape for a variety of reasons, making it impossible to create rules that apply to each circumstance. The efficient application of the law would be to consider both the victim's suffering and the offender's psyche when passing judgement. Other measures that can be taken include encouraging victims to report the crime of rape on them, encouraging offenders to undergo psychiatric treatment so that they do not commit the offence again, and establishing fast-track courts to deal with cases of rape on minors for expedited relief. Effective change may be brought about not just by treating rape victims, but also by addressing rape perpetrators.

Understanding the psychology of rapists is fundamental to the Indian legal system's response to sexual violence. By recognizing the socio-cultural influences, psychopathy, and distorted cognitions associated with sexual offenders, the law can address systemic issues and promote gender justice. Incorporating psychological insights into consent laws, criminal responsibility assessments, sentencing decisions, and victim support services can ensure a more informed, equitable, and victim-centered legal response. Collaboration between psychologists, legal professionals, and policymakers is essential for implementing effective reforms and addressing the complex psychological dynamics underlying rape within the Indian context.

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