

CHAPTER 4

Reinterpreting Victim Testimony in Acquaintance Rape

The extended case studies in this chapter like the previous chapter, show how the dominant power structure tries to disqualify the rape testimonies at different points during the legal proceedings, completely marginalising the impact of trauma on the psyche of the victim. This chapter will look at two other cases where the alleged perpetrator were convicted by the lower court but acquitted by the High Court based on the findings that the testimonies of the victims were not credible. As discussed in the previous chapter, this study is convinced that the verdict was strictly in tune with the provisions of the law. What it does find problematic is the socio-legal paradigm that decides what can and cannot be considered as admissible evidence in a court of law. The two cases chosen are different from one another in terms of the relations the perpetrator and the victim share, the ways rape affects a victim, the difference in the age of the victim, and the consequent differences in legal proceedings. The first case explored is that of a child rape.

The prosecution case is that on 5/5/2005 at 1 p.m., the accused attempted to rape his daughter who was seven years old and then committed “carnal intercourse on her in between her thighs at the cot.” The trial court found the “appellant guilty under Sections 376(f) read with Section 511 and Section 377 I.P.C, convicted him thereunder and sentenced him to undergo rigorous imprisonment for five years each and to pay a fine of Rs. 20,000/- each and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year each for the offences under Section 376 read with Section 511 and Section 377 I.P.C” (*Raveendran @ Maniappan vs State of Kerala*). The

appellant appealed in the High court through the jail authorities and was defended by a State Brief. The High Court after re-examining the case acquitted the appellant. The reasons given by the High Court to reject the case and to acquit the perpetrator are as follows:

According to the court, the child cannot be considered as a competent witness as they are not satisfied by the method adopted by the Sessions Court. “When cross-examined, this witness stated that It is further recorded in the evidence that the child nodded her head positively when she was asked whether [her papa attempted to rape her]? From the evidence of this witness, it is not possible to say that she was telling the truth before the court” (*Raveendran @ Maniappan vs State of Kerala*). The child witness’ testimony according to the court has to be accepted with great caution as she is more susceptible to tutoring. “Both on account of fear and inducement, he can be made to depose about things which he has not seen, and once having been tutored, he goes on repeating in a parrot like manner what he has been tutored to state.’ It is elicited from the evidence of PW.4³⁰ that she did not like the appellant and was afraid of him as he used to come home drunk and quarrel with PW.3, his wife.” (ibid.)

The court suspects that it is a case of the mother of the victim settling scores with the victim’s father, who is her husband. The case was filed fifteen days after the incident and the mother consulted an advocate before doing so. According to the doctor, who examined the victim, there were no “signs of violence of resistance” or injuries on the body of the victim. The child did not complain of any pain as well. Moreover, it is noted by the High Court that even according to PW.4, the appellant had removed her

³⁰ PW 4 is the victim

undergarment up to her knees and did something which she could not explain and which was explained by her mother.

The accused alleges that on the day of the said criminal act he was not at home and had gone for work; left home at 7 am and reached back only at 8.30 pm. None of the witnesses are neighbours and none of the neighbours are made witnesses according to him. The dresses that were said to be worn by the victim are old clothes which she uses no more and was present on the bed when his wife forced him to do sex on 16th. (6) According to the accused, his daughter listens only to his wife and thus filed a false case. The other witnesses were speaking as directed by his wife.

The request letter³¹ or the appeal the accused made to the judge is worth mentioning in this context:

My wife was originally my brother's wife's sister and knew each other earlier. Approximately 9 years back, I and Ganaga³² (his wife) had physical relationship. It was five years since her husband left her and they had one son. She conceived from me and requested not to abandon her. Though she wished to abort, I declined and we got married at Panamaram Register office when she was 4 months pregnant. Since then I have been taking care of my wife and kids and I owe them very much. It is difficult to stay away from them. I still don't realise the reason why she filed such a case. I was working in a different place on the said date. The kids are staying under her custody now. This might be the reason why daughter

³¹ The original excerpts of this case attached in Appendix 2

³² Names changed

lied in front of the court. I cannot stay away from my kids. They are my soul. So please pardon me.

The above case shows that though the allegation is that of rape by the father, it is the mother who is under trial. While the lower court found the alleged perpetrator as accused, the High Court, from the same evidence, concluded that the accused is innocent. One of the points that has to be noted is that, though in the FIR, in the sessions court judgment and in the cross examination, there is a mention of penetration, the High Court judgment, apparently, seems to waive it away when it says that the case is “that the appellant bathed PW.4 and allowed her to sleep on his cot and thereafter he removed her undergarment up to her knees and placed his private parts in between her thighs” (*Raveendran @ Maniappan vs State of Kerala*). This could be construed as a conscious overlooking of certain parts of the cases by the court. The rejection of penetration by the court by not mentioning it in the judgment can be a purposeful action to keep the institution of family intact. The allegation of penetration can be a serious blow to the structure of family. Such allegations question the “normative referents of stability” as Baxi puts it. (“The Social and Juridical Framework of Rape in India” 71) There is an attempt by the law to protect the rights of the “sovereign father” within a heterosexual family. The father is usually seen as the natural guardian in law and here, it is the father who is being framed.

Though the lower court was satisfied to conclude that the girl was a competent witness, the High Court rejected the claim and declared the witness as incompetent. The questions asked by the lower court to prove her competency were regarding the class in which she was studying and the reason for not having class on that particular day. She

answered to the first question as second class and cleared that since it was Saturday there were no classes. She was again asked whether she passed any information to the police officer a few days back to which she answered 'Yes'. When asked whether it could be repeated there, she positively affirmed with a "Yes." The High Court believes that this method adopted by the sessions court to prove her competency is not acceptable. The court is sceptical about the response of the child when asked whether her father raped her. The child nods her head to the question which the High Court believes is not acceptable in a court of law as it can lead to ambiguous understanding of the situation. While the other cases researched in the dissertation were lost as a result of contradictory statements of the victims, here it can be noticed that the gesture of nodding becomes the point of contest. The court, without looking at the internal workings of the mind of the victim, especially, at her age becomes critical of this act.

One of the intriguing factors about a child rape case is that the child victim is expected to behave as that of an adult in the court, but at the same time is anticipated to testify as that of a child with "childlike categories, retaining suggestions of innocence. (Baxi, "The Social and Juridical Framework of Rape in India" 57). Baxi rightly puts it in her work, "...on the one hand, the law assumes that the child does not have the capacity to describe what happened in categories of adult women and on the other hand, the very standards that evaluate the testimony of adult women are used to verify the child's testimony" (58). The question at hand is whether the child is tutored or not, and thus the whole case revolves around the doubt whether the child is deceiving the court by parroting mother's words or is she actually a victim of the father's assault. While a child is expected to be innocent about sexual matters, she is also expected to behave like an

adult female on losing her 'virginity' or 'chastity'. If she displays some knowledge on sexual matters, the credibility and reliability of her testimony can be immediately questioned. Here, the child is both the witness and the victim, and the nodding can be a result of the shame, guilt or self-blame inflicted in the young mind. As discussed in the second chapter, children from the young age are taught how to behave and about the expectations of them by the society. The identity construction as to how girls should behave before a larger public can be one of the reasons for the silent affirmative nodding. More than looking at it as a child's behaviour, the court focuses on this point in questioning the credibility of the case. The legal structure is not concerned of the psychological impact rape can generate in a child's mind where trauma in childhood can form and deform personality.

The alleged abuser in this case is the father of the survivor. The trauma resultant from such an experience questions the whole concept of safety in the world. To cope up with the subsequent trauma caused by an insecure domestic surrounding, the mind opts many defensive strategies. Children facing abuse try to dissociate themselves from the incident by denying or moving to a trance stage. But when they are not able to do it they conclude that it is the innate badness in them which is the cause of the disaster that has befallen on them. Self-blame is the normal reaction in children who are abused. An excerpt from the cross examination will exemplify the child's way of negotiating the stigma and shame resultant of self-blame.

D: Do you³³ like your Papa?

³³ In the cross-examination, the defence counsel uses 'molu' in Malayalam which means daughter where there is a deliberation from the side of the defence to be close or someone who is considerate towards the

V: No.... I like mummy more.

D: Who told you to say that Papa has done like this?

V: Mummy

D: Did Papa do it?

She nodded her head positively. Yes.... Papachi likes me a lot.... I do not like Papachi.

D: Did your mother tell you to say that you do not like papachi?

V: No

There is an assertion from the child that she does not like her father. She has attained special attention from her father and that she adduces as an evidence of the innate badness within herself. They look for badness inside themselves to justify the action caused on them as they cannot find any other reason for the instigation of such an action. The dislike of the father is a strategy of the mind to alienate oneself from the guilt of falling a prey to his sexual innuendos. The society and the culture dictates the expression of what is good, beautiful and true. The small girl is a victim to this belief and since she no more falls into the category of the 'good' and 'beautiful' the tendency is to take the shame and guilt of the abuser on oneself. There is a continuous process of meaning making at various levels for the survivor to justify the action. When she is asked to speak about the incident in front of the court which comprises a group of strangers who do not consider her emotions, she re-experiences the memory of the incident. The fear, the

child. But at the same time, it is a strategy from the defence to take the child into confidence and extract answers in the way s/he wants by using repetitions and remodelling the questions

shame, and the self-blame puts her in a position where to articulate one's experience verbally becomes impossible. Thus the gesture of nodding is the child's way of articulating the experience.

The trauma caused on a child survivor could persist into the adult life as the safety and protection expected of from a caretaker is shattered. For her, the representation of a protective environment turns out to be inconsistent from the expected. For a normal development of the child, she achieves a sense of autonomy by "forming the inner representations of trustworthy and dependable caretakers" (Herman 107), a presentation that can be evoked whenever someone is mentally distressed. This is important in adults as they instigate the representation to preserve a sense of autonomy and independence. But in the case of childhood abuse, these representations are broken. Thus, in such people, "fragmentation becomes the central principle of personality organisation. Fragmentation in consciousness prevents the ordinary integration of knowledge, memory, emotional states, and bodily experience" (107). The mental makeup of an abused child ranges from an uneasiness to dysphoria which is a state of confusion, loneliness, emptiness and form of agitation to a different level of extreme panic, despair and fury. The dissociating strategy used by the child can aggravate the dysphoric state where instead of a protective feeling, it may lead to a state of complete detachment from the outside world and a disintegration of one's own self. The major forms of adaptation by children are dissociation, development of fragmented identities and the regulation of emotional states by inflicting injuries on oneself. But the altered consciousness "memory lapses" or "dissociative symptoms" are not generally diagnosed or recognised or noticed. Such children grow in a state of mistrust, have problems with autonomy and in initiating

any action. There is always a fear of abandonment or exploitation. This fear is evident in the survivor as one looks at the replies given by her in the cross examination. The answers given by the witness to most of the questions are either short or otherwise it is reduced to only a gesture. The lack of confidence in uttering a complete sentence is a result of the fear generated in her from the insecure domestic surrounding. There is a fear of initiating a conversation in the child. Herman asserts that the risk of rape or sexual harassment is double for the survivors of childhood abuse. (111)

It is notable that children are made to look at their body as something that can invite trouble. The discourse of shame is located within one's body and the perception of body parts and it is evident even in the linguistic strategy used to name one's body part. The child is taught metaphorically to suggest the names of penis and vagina as *pootani* and *meenu*. I call it linguistic strategy as it is a means used by the culture in naming the body parts with colloquial terms which have a different meaning in the mainstream Malayalam lexical category. The discourse of shame, is thus, deep rooted where the act of naming one's sexual part itself was considered shameful. It is thus paradoxical that for a child to name her body part itself is shameful while on the other hand, to substantiate her claim she has to describe in detail the act of rape in front of an audience mostly male and thereby the whole act not only sexualise her but she in a way becomes a "pornographic vignette" (Smart 8). This is evident in the cross examination where the child is asked to detail about the incident. An excerpt of cross-examination which I translated from Malayalam to English will explain the usage of linguistic features and the sexualisation of the incident when the defence counsel asks the victim to explain the incident:

V: ... Only I and Papachi were there at home. I slept with nighty and underwear (shaddi) on. Papachi came and removed my shaddi till my knees and inserted his pootani (penis) in my meen (vagina) and pressed.

D: How many times did he press?

V: For some time. Then I got pain and I cried. Then Papachi put it between my thighs.

D: What?

V: Papachi's pootani. Kept it between my two thighs.

D: What did he do? Did he shake it?

V: He shook it.... Pootani is man's thing by which they urinate and meenu is woman's thing by which she urinates.

The description of penis and vagina as the 'thing' by which men and women urinate is the way by which children are taught to speak of one's own body parts and *meenel pootani vachu* is the ³⁴child's way of narrating the incident. This usage puts the child into the innocent world of children who are not used to the usage of the adult's description of rape. At the same time, the child is repeatedly asked about the number of times the man shook his penis and insisting in repeating the name of the sexual organ leads to the

³⁴ It is very interesting to note the language used by the child and the mother to describe what *pootani* and *meenu* are. While the child describes *pootani* and *meenu* as the things by which men and women urinate, the mother describes it as men's and women's sexual organ respectively. Here, one can notice the changes in the linguistic pattern. When the child does not specify the human parts it, becomes the language of children who are innocent and not clear about the body parts which are exclusively restricted to adults. The child is not expected to know the adult way of usage which is rightly seen in this case.

evoking of a pornographic element. The court room is thus transformed into a space where gendered gaze is fixed on the survivor. The child, when asked about, sexualised questions is treated as a desiring subject since by losing her virginity she had lost her innocence and thus is treated as an adult female (Gammon 82). Such questions retain the erotic coded in the courtroom scene.

Though father-daughter rape is considered normally “doubly pathological” by the court, we can find a different approach, here, in this case. The father-daughter relation rests on the relation of power. When the rapist is the father or an acquaintance, it is the most vulnerable and scary of all as these are the people to whom one usually turns for safety in the times of danger. Thus the trauma resultant from such action in children and adolescent are going to be more severe as it may compromise the formation of identity and their relation with the world. Young children are more psychologically vulnerable at young age and ironically, it is at this age they are exposed to maximum traumatic incidents. A supportive environment would help the trauma survivors in a speedy recovery while a hostile environment can aggravate the same and the legal proceedings acts in opposite interest in supporting or well-being of the survivor. Such an environment can compound the damage caused to the individual and it can aggravate her condition. A quote from Herman will give a better perspective, “In sexual and domestic violence...the victim’s safety may remain in jeopardy after the attack... the rapist often enjoys higher status than his victim within their shared community. The people closest to the victim will not necessarily rally to her aid; in fact, her community may be more supportive to the offender than to her. To escape the rapist, the victim may have to withdraw from some part of her social world” (Herman 62). The survivor’s mother’s statement that it was

unbelievable for her initially to comprehend the daughter's allegation and her later fear of the response from the society shows an indifferent society which supports men than women. This is evident in another case in Kerala which was reported in *Mathrubhumi Weekly* where the daughter and the mother were ostracised by the community for reporting rape case against the father (Sreekumar 8-14). The incomprehension of the attack by people close to the survivor or the hostility of people around compounds fear, isolation and a disbelief or distrust of the society around. Burgess and Holmstrom find that the time taken to recover is directly proportional to the support incurred by family or close friends. There is a strong need for the survivor to re-establish autonomy. People who are alienated by families post a traumatic incident tend to get PTSD aggravated while for those who suffer from aggravated PTSD the tendency is to alienate families.

This has a direct repercussion on the time taken to report the case. The delay in reporting³⁵ and the lack of medical evidence are the other reasons to disprove the claim of the witness in this case. Here, the delay in reporting the case functions on two levels: the first one is the delay in disclosing the act to the mother by the survivor and the second is the delay in reporting it at the police station by the mother. While the child disclosed the incident after eight days, the mother delayed reporting it to the police for five days. In this case, the claim is that, it is not believable that the survivor has shared the incident to her mother only after a few days. The normative belief is that a violent incident like rape if occurred, will be immediately reported to a closest relative. Bhanwari Devi was also accused of forging a false case of rape as the court believed that it was not normal for her to not disclose about the incident to her in-laws. On the contrary, the child has disclosed

³⁵ Where the delay was for fifteen days

about the incident after eight days. But there were no singular reason that led her to disclose the incident on that particular day. The reason for such a delay can be multitudinous which is discussed in the following part of the chapter. Of the many reasons, the most important is the adverse social consequences if rape cases are reported. For example, in the *Harpal Singh v/s State of H.P* (AIR 1981 SC 361), the court was satisfied by the explanation that the case was delayed as they were worried about the honour of the family. There can be so many other intricate reasons which might have led the daughter to tell her mother or the mother to delay reporting the case. It is necessary to look from both the angles in detail here.

Though the lower court has passed the judgment in favour of the survivor, it can be noted in the judgment that the court has addressed this issue without coming to any proper conclusion. In the verdict, the court raises the concern, “Why the child did not disclose the heinous act of the accused immediately after the incident is best known only to her, shyness itself may be one of the reasons. Even after the disclosure, PW3 took some time to take a decision as to whether it is to be reported before police or not” (*Raveendran @ Maniappan vs State of Kerala*). On the other hand, the defence counsel raises a tinge of doubt in the audience when he puts forward the point “It is said that only a few days after the incident PW4 disclosed the incident to PW3. This is unbelievable. If such an incident has actually occurred, PW4 would have revealed it to PW3 the same day. Later, there was no special reason or circumstance to divulge the occurrence to PW3” (*Raveendran @ Maniappan vs State of Kerala*). Such a claim overlooks the days of trauma that the child has undergone. The defence counsel tries to assert the unbelievable nature of the argument by claiming that it was not believable that she would

not divulge the fact on the same day. Through this assertion, the defence counsel directs the court's observation to the discourse of believable and unbelievable statements and side-lines the whole idea of an occurrence of trauma in a small child who was a victim of her father's sexual overtures.

Though not threatened with death, the child feels betrayed and fear shadows her. She is found in a state of overwhelming helplessness. This is evident in the cross examination when the child was asked whether she likes her father. The excerpt from the cross examination is quoted below to see the kind of helplessness and disgust towards someone who is exploiting her and at the same time is the person whom she has to rely for any support in life.

D: Do you like your father?

V: No

She discloses the incident to her mother by saying "Mother, Papachi is a very wily person" (Papachi bayankara sadhana). Yet another incident shows the power relation between the abuser and the abused:

V: I didn't go to watch TV that day.

D: Why?

V: Papachi didn't allow.

While the first and second quotations show the dislike towards a person who is exploiting her, the last quotation shows the inferior position of the child who cannot decide anything but has to depend on the moods and dictates of the abuser. In the case of child abuse,

where the perpetrator is somebody on whom the family relies, the caretaking relationship will get profoundly disrupted. The nature of violence in this case is unpredictable. Unlike overt expression of violence, there is a coercion to support the violence. Unable to avert the violence, they try to surrender completely. There is a sense of utter helplessness and inability to resist. It is not necessary that the child is physically abused causing injury but a strong fear of the dominating figure would suffice to scare a small child. Here, the child can be an object of parental scapegoating as her father was forced to get married to her mother when she was pregnant with the victim which is further explained in the later part of the analysis.

Along with the fear of violence, a feeling of helplessness creeps into their mind. In such situation, they learn to completely surrender rather than to look for alternatives. A complete surrender for ten days pondering on the action weighing the guilt and shame is evident as the child delays to disclose to the mother about the incident. In spite of the close proximity between the mother and daughter, the child finds it difficult to unveil it to her mother. The difficulty of the survivor to comprehend the incident and her courage to speak about an event that was out of the 'normal' life is worth mentioning in this context. Though aged seven, the child could realize that the action of her father is revolting. For a child to say that her father is very wily, stressing 'very' (bayankara) repeatedly to her mother intensifies her account's veracity. But the adult's denial of the act and resurrecting oneself as free from guilt confuses the child and put the responsibility on oneself for the act and thus she feels ashamed and guilty of the act. The child who was sexually assaulted will have a deeper impact of trauma in her later life. It can lead to confusion about one's own "sexual identity and orientation" (Cohen 25). It can question

her selfhood and self-worthiness. For those survivors who have to turn back to the same people who have hurt them invokes a sense of shame. In such cases, the child occasionally takes the blame on herself as she considers the event as a result of the innate badness in herself. "Self-blame is congruent with the normal forms of thought of early childhood, in which the self is taken as the reference point for all events" (103). The child with a feeling of badness in herself preserves her relationship with her parents in case they are the abusers but this feeling of badness is not stopped even after the abuse ceases and it becomes a part of the child's personality formation. It is this badness that becomes the core around which the child's identity is formed. The child dwindles with the preservation of a loving parent figure in her mind and the actual abusive parent. Thus the image of the abusive neglected parent figure cannot be integrated with the idealized image and therefore the image of oneself as well as that of the parents remain split and contradictory. In such cases, fragmentation becomes the central principle of their personality structure. It helps in preventing the integration of the reality, knowledge, emotional state, memory and physical experience. The child thus dissociates oneself from the abusive environment. But this can aggravate a child's dysphoric stage (which is feeling utter loneliness, confusion, emptiness and agitation) where the dissociation, instead of helping to form a "protective feeling of detachment," leads to a complete disconnection from the closed ones and thereby disintegrating one's self. This can sometimes lead to injuring oneself. Self inflicted injuries are a common symptom of such people. This is believed to relieve the child in trauma of her unbearable emotional pain and consider it as a form of "self-preservation." Such people have fundamental problems

in trusting, taking initiative, or in being autonomous. These factors have not been taken into account in the legal discourse.

Moreover, childhood sexual abuse has adverse effects on the identity formation of the individual. A child's experiences of fear, terror, and disempowerment inversely affect the identity formation, her ability to explore the wider social world and be part of that. Rape can be called as a private form of "organized social violence" (Herman 61). In the case of the child, the person to whom she had to turn for protection itself is the source of danger. This puts her in a vulnerable situation. Sex, an intimate act, has become a contested site negotiating power. The non negotiable stance is sometimes a normative strategy employed to keep herself alive. In the case of women, who are economically dependent on men, who raped them in their house especially their father suggests the gendered pattern of inequality. In the rape cases, often women are rendered invisible as the survivor of the abuse. Thus, for not disclosing it immediately after the incident and revealing it after a few days has its own psychological reason. This is clear when we look at the symptoms of Post-Traumatic Stress Disorder. As discussed in the second chapter, it is divided into three main categories: Hyperarousal which reflects the persistent expectation of danger, Intrusion which shows the unforgettable imprint or memory of the traumatic moment and Constriction which echoes the numbing response of surrender to the terror. Hyperarousal is a response to the overwhelming danger which can come at any time. The human system of "self-preservation" slips into a phase of permanent alert expecting the danger to return at any moment. This fear of the danger recurring at a later stage may have lead the survivor to disclose the incident later.

Burgess and others came up with reasons for delayed reporting. A silent response by the victim is quite natural in cases like rape due to the fear of the perpetrator and due to fear of not being believed. The victim-offender relationship is that of subservience. Such a position gives the whole power and authority to the offender while the victim is confused as she is aware that something wrong is happening. The situation is that of victimization where the child is either confused or not aware of the rules and procedures which accompany the context.

However, one can notice that the delay in disclosing the incident is directly proportional to the lack of medical evidence. A delay of fifteen days resulted in not getting enough corroborative evidence to prove the case. But both the courts failed to look at the mother's testimony where she mentions, "That day when I came home after work, daughter was sleeping. In spite of waking her up, she again went and slept. She was tired. I didn't notice it then" (7). The physical exhaustion of the child is an upshot of the assault. But the corroboration to prove the same was unavailable.

Likewise, the mother, in the cross examination, has given the reason for the delay in reporting rape. The social stigma attached with the case, the future including the marital prospects of the daughter falling at stake, and the fear of social ostracization were some of the reasons which she cited for the delay in reporting. The position of a mother complainant against father for raping their daughter is very vulnerable in the society. For the mother, though not economically dependent on her husband, she is psychologically dependent. A reporting of the incident is questioning the dominant social structure. But, at the same time, there is a clear purpose in reporting rape. Rape leaves a lasting impression on the victim's mind which harrows her for lifetime. The society not only

differentiates or disintegrates women from men but, in addition, in the cultural domination of women by men, women are told to distance from oneself and look or perceive the world from men's angle. They are conditioned right from infancy to see in themselves as well as others only what others, who marginalise them, see. This is the way of becoming socialised. Reconciliation in any such case is consciously putting the women back into the heterosexist violent society. With the mother reporting the case, she is trying to help the child not to reconcile with the traumatic act of the father.

Thus, the reason for the mother to file the case against her own husband can be an act of destabilising the male social order which had expected women to keep silent against sexual exploitation. When a woman goes ahead to report a rape, it apart from being a threat to the man, is also a threat to the femininity which is supposed to live the life as per the dominant structure of the society. Thereby it is relieved from the 'hauntological' grip of the old belief of obediences that she was supposed to follow. (Baxi, "The Social and Juridical Framework of Rape in India" 75) But, at the same time, the gradual shifting of the case from the rape of the daughter to the 'loose character' of the mother is a strategy to keep such women in check. It can be observed that the case revolves more around how the mother was a deviant woman who tried to move away from the traits of a 'good woman,' 'good wife' and 'good mother.'

The proceedings thus become the trial of the chastity of mother rather than the rape of the daughter as she bears the burden of complaining against her husband. Coming from a socially vulnerable position, the mother and the daughter face a hostile world outside. When a woman complains of rape on her daughter by her husband, the woman's sexual and marital history is brought to substantiate the falsity of her claim. This case

marks an example for the above claim where the mother's immoral character becomes relevant to testifying the truth claims of the victim's allegation of rape. The defence counsel treated the testimony of the mother with suspicion by bringing in the category of the bad woman who became pregnant before the wedlock to prove that she manipulated the daughter to testify a lie. Such statements neutralise the idea that parents use their children to bring in false cases for the purpose of revenge. The sexual and immoral character here is not just restricted to the victim but it is extended to the mother who is the complainant. In this case, the mother's sexual and immoral character is brought forward to establish that she had her own motive to implicate against her husband. The whole case was framed with the mother and daughter as collaborators in the conspiracy against the said accused. It is evident in the request letter that the husband has produced in the court from which I have quoted the excerpts in the beginning of this chapter. The defence counsel, with ease, moulds the case as a revenge of the mother when it says in the plea that, "the case was a result of the revenge that emanated in her because of the fear that she might loose him when he helped the first wife and children when they were economically deprived." This pictures her as a woman who is insecure about her relation and vicious enough to do anything to keep the relation and thus this case like many other rape cases discussed in this work is treated as a part of conspiracy against the men involved. She is portrayed as a woman who is morally corrupt. The truth that she was pregnant before marriage points towards the moral corruption. There is a social sanction against "women engaging in pre-marital sex" (Baxi, "The Social and Juridical Framework of Rape in India" 218)

While the defence was questioning her character and her intention in implicating the husband, the wife was trying to sketch a harmonious relation that she and her husband shared. Though the husband did not support the family and was a drunkard, she states that she loves him as he did not resort to violence. She had to accept this framework of stability to prove her words worth counting as a testimony. The mother's claim that her husband did not beat her or physically violate her when he was drunk is a measured claim put forth in the case.

PW3: He was a loving husband. We never quarrelled. I had to work and take care of the family expenses. The accused never bore the expense in the house. He used to spend drinking.

D: Still you loved him?

PW3: Because he never used to beat me or quarrel with me. (5)

An acknowledgment of the physical violence would lead to a doubt in the legal arena of a false charge fabricated against him. On the other hand, an outright denial of it would place the case in the right pedestal where in the charge becomes singularly on the sexual exploitation done by a man who was otherwise not violent or abusive. This statement asserts the claim of the violence done on him as not part of a retaliatory act but as part of an action that was solely performed on the particular day. Though the daughter says that she is scared of her father as he comes home drunk, the mother makes it clear that he has never physically abused her. She could not describe her married life as abusive or unstable as it could welcome the allegation that the whole complaint is motivated and that it is a result of vengeance. Though a strategy, such a statement can confuse the child.

Judiciary has not yet seriously looked at the concern of the child victims as to how the abuses affect them.

In spite of an ardent effort to narrow the case down to rape, the case gradually moved from that of rape to a revenge case. The defence counsel tried to prove that the delay caused by the mother to report the case and her enquiring with an advocate about it before reporting, implies that she is well prepared to litigate a serious case against him. As a woman who is married for the second time and who was pregnant before getting married, she is pushed outside the category of a 'good wife'. The blame is no more on the father who had raped his daughter, but on the mother who complained about the act. The defence counsel successfully brings in the instability of the married life to establish the motive of the complainant to bring in or forge a false complaint against the accused. Here, the mother is blamed for both being vocal and her decision to go against the habit of submission. It is observed that in many child rape cases, the assumption is that even if the judge finds the accused innocent, the child, as a child, is incapable of telling lies and it is the mother who manipulates the daughter in telling lies, and gives false evidence.

The different strategies used by the defence are worth mentioning in this context. A rough translation of the argument is that as a result of the poor financial condition of his first wife and children the accused gave 3 cents of land and economic support for the construction of a house and fulfilled the duty of a husband and father. This infuriated the second wife and prompted her to fabricate a case against him. By decontextualising the incident and re-contextualising it in a different discourse, the accused and the defence counsel tried to direct the court's observation from the incident of rape to the character of the woman leading to the good woman v/s bad woman category and the husband's role as

the benevolent male who is caring and providing for the first wife. There is a maligning of the woman's character and upholding of the masculine character of the benevolent male who is ready to save the wife and kids in distress, thereby fulfilling his duty as a husband and father. By this, the woman is characterised as envious, and evil who is ready to drag her own husband and daughter to a rape case. At this instance, it is forgotten or overlooked that he has married his second wife after having an extra marital relation with her. But character becomes a point of concern only for women.

Both the defence and the accused cleverly brought the category of the good woman/bad woman³⁶ pushing the discourse of rape to the periphery. The survivor becomes a mute listener to the debate. The attention of the case is diverted successfully when he brings in the theory of benign male who was ready to keep his reputation at stake to get married to a woman who was pregnant with his child. The central focus is not on the woman who is pregnant with his child but on the woman who had an illegal relation with him and who was ready to abort the child. Aborting the child then becomes the cleverly brought out argument in this case. It drags her position from that of the normal categorisation of a "good woman" and a "good mother". This decision to kill one's own child and later to put the same kid as the bait for her larger purpose of teaching her husband a lesson and getting the property back then becomes a cleverly laid down plot. Similarly, when the testimony is closely explored, it is observed that there is shift in the decisive power of the woman from the one who pleaded him to marry her to a woman who went ahead and filed a case against him. There is a move from a weak, dependent

³⁶ Though the defence counsel has every right to use strategies to save the alleged accused, he is bringing the character of the witness or their relatives which is ruled out by the law book. When the defence brings in the category of good v/s bad woman, it is questioning the past character of the mother of the victim.

woman to that of an audacious, independent woman. Thus, through these strategies, the defence manages a competing interpretation of tagging her as a “bad woman” ruling out other possibilities of meanings.

Throughout the court hearing, different meanings and processes of meaning making are expressed by people in power. But different interpretations out-shadow the trauma and the meaning intended. The same statement and argument become the basis for two different interpretations contrasting each other. For Fish, in legal disputes, both the principles that has to be applied to a case and the facts of the case as such are the creations of the interpreter, “how a judge finds principles or sees facts depends on the arguments he believes he must make” (Schelly 159). While the lower court believed in the irresponsible nature of the accused and the statements of the survivor as proof to convict him, the High Court follows the claim of the defence counsel who creates the allusion that the father being irresponsible and someone who had an intention of giving away his property to his first wife, provoked the second wife to fabricate a case against him.

This can be observed not just in this one case but in the other cases that are explored in this study wherein a similar pattern is followed: the lower court judge found the alleged perpetrator guilty as charged while with the same proof, the higher court acquitted them. The final verdict concludes the mother as the abettor in alleging a crime against one’s husband as a result of her agony and anguish at his decision to provide money and land to his first wife and children. But it has to be noted here that there are other cases that have reached the Apex Court where the testimony of the child victim to

the mother was considered as evidence and without any other corroboration, the court has convicted the alleged accused³⁷.

Judiciary, as an institution, has to maintain its relative autonomy from society and both recognise and address the suffering of trauma survivors. As things stand now, the testimony of a rape victim is treated as “disruptive of social conditions and inimical in the judicial proceedings” (*Raveendran @ Maniappan vs State of Kerala*). An instance of severe childhood trauma can even lead to borderline personality disorder which is considered the most notorious of the disorders (depression, panic, distrust). The victims are denied the reality of their experience when they are denied justice, when they are silenced, worse still, when they are not even heard or understood. This inner working of the mind holds a significant position and it has to be duly acknowledged.

The mind of the child from a broken or dysfunctional family is already a virtual, melting pot of diverse needs and emotions. A child who has come out of a traumatic incident, much of which is rendered vague by the victim’s innocence, with the rest of the incident transferred to different planes of consciousness, deserves the undivided attention of the court. The victim’s statements and responses to queries could have been with an open mind, through the mediation of trauma experts, before it was cross-checked against circumstantial evidence. In viewing the child’s deposition and responses through the prism of common-sense and by allowing the defence’s one-sided view of the case to weigh into an overwhelming extent, the High Court seems to have missed the opportunity

³⁷ For examples, cases like *State of Himachal Pradesh v Asha Ram*, *Bhuginbhai Hirjibhai v. State of Gujarat*, *Madan Gopal Kakkad v. Naval Duvey*, *Ranjit Hazarika V State of Assam* are examples.

to re-affirm the disciplinary boundaries of judiciary and immanent intelligibility in the institution and to ensure natural justice to the victim.

It should be noted that trauma is not restricted to any age group and that it can affect anyone. The next case explored in this chapter is an example of how trauma can disturb a middle- aged woman, a widow and mother of three. The different psychic strategies to cope with trauma are not comprehensible in a single reading but one has to read between lines to decipher the meaning. A superficial reading of the text is not enough to understand the displacement, the surrogacy and metalepsis and a host of other psychic devices through which reality, mediated through a mind in turmoil, gets represented. Before dealing with the case in detail, I find it necessary to assert again that my intention is not to question the judgment but to critique the judicial system in an effort to strengthen its efforts to ensure natural justice to all. The legal system which to the present day believes in looking at corroborative evidences or other practical evidences should also look at the working of the human psyche, and if necessary, seek the help of psychologists and psychoanalysts to decode the meaning of the statements given by the survivor.

The case in question is an incident that occurred in 1999 and the final judgment of the High Court came out in 2008. The case is on two charges: rape of the witness and stealing of her gold ornaments. The case is that

the accused in furtherance of the common intention to abduct CW2 and 3 went to their house at Vadakara³⁸ at 18.5.1999 at about 7.30 P.M and

³⁸ All the place and lodge names changed

accused Nos.3 and 4 introduced CW2 to the 1st accused and that the 1st accused informed CW2 that he is a representative of a millionaire who belongs to Bahrain and he made her to believe that the Arab man has decided to give 15 sovereigns of gold ornaments and Rs. 50,000/- for the marriage of poor girls and CW2 is selected as one among them. He informed her that the Arab man and his wife are at Malappuram and he further informed her that he will arrange an employment for her on abroad and he will marry her. Accused Nos.1 and 3 took CW2 and 3 in the jeep bearing No. KLM 8618 driven by 4th accused and accused No.1 took CWs2 and 3 to Quilandi. When they reached Quilandi they met the 2nd accused and he informed them that the Arab man is at Ottapalam and accused Nos.1 and 2 took CWs 2 and 3 to Ottapalam and they resided in room No.207 of SMS Lodge situated in building No. II/757 in Ottapalam Municipality. While they were sitting in the room and while CW1 was taking bath the 1st accused committed rape on CW2 against her will and consent and while CW2 and 3 were in the bathroom committed theft of gold chain weighing 10 sovereigns which were kept by them under the pillow in the room and the first accused left the place after stealing the gold ornaments. (*A.I. Hussainkutty @ Assainar Vs State of Kerala*)

But the accused pleaded “not guilty” and claimed that while he was standing in a bus stand he was arrested by the police and asked whether he was dealing with any visa and several other questions. They took the five thousand rupees which was in his possession and charged four cases against him. According to him, he was not in a relationship with

the complainant and never had any other dealings³⁹ with her. The case thus has two parts: theft of gold ornaments and rape. This study is more concerned with the rape incident; it pays special attention to the case proceedings and the judgment with a view to spot the systemic issues in the proceedings.

The Additional Sessions Court convicted and sentenced the accused to undergo

rigorous imprisonment for a period of 7 (Seven) years and to pay fine of Rs.5,000/- (Rupees five thousand only) for the offence under Section 366 IPC and in default of payment of fine, to undergo rigorous imprisonment for a further period of 6 (Six months),.

2. He was also sentenced to undergo rigorous imprisonment for a period of 7 (Seven) years and to pay a fine of Rs.5000/- (Rupees five thousand only) for the offence under Section 376 IPC and default of payment of fine, to undergo rigorous imprisonment for a further period of 6 (Six) months. He was further sentenced to undergo rigorous imprisonment for a period of 3 (three) years and to pay a fine of Rs. 3,000/- (Rupees Three thousand only) under Section 379 IPC and in default of payment of fine, to undergo rigorous imprisonment for a further period of 6 (Six) months. Substantive sentence shall run concurrently. (*A.I. Hussainkutty @ Assainar Vs State of Kerala*)

³⁹ Another version of the story brought in this case is that the alleged accused was doing visa forgery and had taken money from the victim and hence she reported a false rape case.

But the High Court reversed the judgment claiming the lack of compelling evidence. The defence counsel argued that the case was fabricated based on certain findings, which the High Court upheld and dismissed the case. The findings are:

- 1) The word used by the survivor is *manabhangam* which means outraging the modesty and not *balalsangam* meaning 'rape'. Thus according to the defence, the lower court made a mistake in reading it as rape. Though the prosecution held that in some local areas *manabhangam* is used for 'rape' in vernacular, the court rejected this claim.
- 2) According to the court "offence of rape is constituted only if the ingredients under Section 375 are made out. There must be evidence to show that there is sexual intercourse" (*A.I. Hussainkutty @ Assainar Vs State of Kerala*). In this case the evidence of the victim "does not disclose commission of offence of rape" (ibid). Besides, the victim was examined by the doctor three months after the incident. Since the lady was married and had children, medical expert could not prove rape had happened. Likewise, the survivor had initially complained about the theft of her ornaments and not about rape.
- 3) The next point put forward is that it is unbelievable that the offence will be committed when her daughter was present nearby. The victim was taken to the lodge with her daughter. The court did not believe that a man with an intention to rape would take the daughter along with the mother. So according to the court, doubt was cast on the veracity of the allegation.

4) The court found that the readiness of both the mother and the daughter in accepting his suggestions to remove the ornaments and keep them under the pillow and going to the bathroom suspicious.

5) It was argued that there was an inordinate delay in naming the accused. The crime was registered only after the accused was arrested under “suspicious circumstances”. The case filed by the survivor after the incident had been suppressed, which again raised suspicion.

6) There is also a discrepancy in the date. The FIR reveals that the date of occurrence of the incident is 18/4/99 while according to the woman, the incident occurred on 18/5/99.

7) The prosecution could not prove that the room was rented by the accused himself.

The judgment concludes with the statement, “May be something happened, may be some ornaments were lost but it cannot be said for sure that the loss was under the circumstances, as alleged by the prosecution” (*A.I. Hussainkutty @ Assainar Vs State of Kerala*).

The above statement clearly questions the veracity of the claim of the survivor. It is necessary to note that the survivor is a woman aged forty six at the time of the incident and she is the mother of three children and a widow. One of the strategies employed by the defence was to make the case look more like the case of a visa forgery where the accused was falsely implicated than looking at it as a rape case. To prove this point, the defence had put forth the above discussed points which the High Court found worth upholding and it rejected the claim of the woman. The first point of contest is regarding the lexical usage *manabhangam*. Lexical precision can hardly be expected from a lay

person under the immense pressure of legal scrutiny. In the mind of an uneducated woman like the survivor, there is hardly any distinction between the words *manabhangam* and *balalsangam* in sharp contrast to the import of the two terms to the legal fraternity. When she is asked to formulate the difference between the two, the defence counsel is in fact asking her to speak another's language, a language she did not understand. For the woman, there is a kind of loss of self when she is asked to speak in a language which is not hers. It is a semantic exploitation of words which is a common strategy to confuse the victim and put the words of the defence counsel in the mouth of the prosecution witness. Though the prosecutor asserts that in some vernacular language *manabhangam* is *balalsangam*, we see that the survivor who is an uneducated Muslim woman is posited as an alien in the legal category. Here the "category of the vernacular itself functions as a stereotype" (Baxi, "The Social and Juridical Framework of Rape in India" 88-89). She is alienated here because of her inability to demonstrate herself in words which are divorced from her daily life. Here, the question of translation of the linguistic criterion and untranslatability of emotion played a major role. Though the testimonies of the witnesses are considered as evidences, they are moulded and controlled by the defence's cross-examination as well through the careful usage of linguistic features. The narrative has to be persuasive and there should be emotional outpouring for the court to be convinced of the authenticity of the claim. Her statement lacks the linguistic and stylistic features of an expert testimony. This kind of an adversarial system shames, blames and humiliates the survivor. The final statement as quoted above in the judgment proves this claim - it directly questions the truth claim of the survivor. "May be something happened, may be some ornaments were lost but it cannot be said for sure that

the loss was under these circumstances.” The usage of “may be” shows the chances of something happening and losing but the circumstances assumed as different show that it was not forced sex, that is it was not a rape.

This compels one to look at the second point raised by the court to reject the case. There is no evidence to prove that the sexual intercourse was against the victim’s consent. According to Matoesian,

rape trial determines if the female consented to arbitrary yet misrecognized male standards of sexuality. If a woman had sex with the man before, if she were intoxicated, if she kissed him, if she was out until the early morning hours, if she went to his apartment or home, if she had found him attractive or interesting, if he were an acquaintance, date, or friend, then the woman has, to varying degrees, consented to sexual access. Her actions align with male-centered criteria—male values—governing the interpretation of sexual desire, regardless of her normative preferences and her personal experience of sexual violence and trauma.

(39)

It is evident that the woman without telling any neighbours had gone with a stranger when the accused told her about the Arab millionaire who was ready to pay her daughter money and gold. She was ready to go with a group of men whom she had not known before. The defence reiterating whether she had plans to tell her neighbours or male

relatives before going out questions the character of the woman who readily accepted the demands of a stranger. An excerpt from the cross would make it more clear⁴⁰:

D: From where did you see the accused for the first time?

V: I saw all the accused for the first time at my sister's house....that day none of the neighbours were there. They had gone for a wedding. Among the people, I knew Ravi before. I told my sister that I am going to visit the Arab man.

D: How old is your son?

V: My son is 26. He was not there that day. My sister's son was also not there.

D: Did you feel like telling your neighbours?

V: Yes, I felt, but the accused said that it was getting late and that he would drop us back by 2.00 at noon. So I did not tell them.

The repetition of the question whether she had disclosed the event either to her son, her sister's son or the neighbours, suggests that, for the defence, and by extrapolation the court, disclosing it to the male members of the family or neighbours is the best rational thing to do as the people who invited her to go with them were strangers. It is significant that the victim's contention that she had passed on the message to her sister before she left is ignored. The underlying message is quite obvious here: divulging one's decision to

⁴⁰ The original excerpts are attached in Appendix 3

a male member of the family is the best, if not the only, precautionary measure against such unforeseen tragedies, something which the survivor failed to do. The reiteration, thus, brings a feeling of guilt in the survivor; it paints this as a terrible failure on the part of the survivor for the benefit of the audience. This gives the room to suspicion as to the nature of the sexual act - was it forced, as claimed, or consensual. There is a strong assertion when the survivor says that she had every intention of telling her neighbours but the circumstances made her do otherwise. For the court, this clearly articulates the guilt that she suffers from— of going out with a stranger. Besides, the survivor had not claimed to have made a hue and cry at the time of violation.

It is important to note that various reasons including the presence of her daughter, and the guilt and shame over going to an unknown place with a stranger could be attributed to the victim's silence about the violence. Moreover, many experiences that terrorize women are not taken seriously by others, the men in the family in particular; even by those who are closely related to the survivor tend to see these incident as trivial. Murder or brutal assault by stalkers, whose presence had been reported by their victims without any action by the family/institution or the police, are glaring examples in point. In such situations, victims tend to be torn between expressing themselves, standing by what they say, and they continue to live their lives as if nothing had happened to them. Under such circumstances, a woman often has difficulty in even naming her experiences.

The doctor's testimony makes it clear that though she complained about the theft of the gold, she was not serious about the rape. This was taken note of by the judge. The apathy of the doctor in saying that one is not serious about a violation done to her itself invites close scrutiny. On a surface reading, the reluctance to give importance to rape can

be attributed to either consensual sex or the non-occurrence of the event. But a close reading can lead to multiple interpretations which needs serious attention. Many a time, it becomes difficult for the survivor to name the violence as rape. The situation of the witness in this case is not different from the situation of the victim in the study Allison and Wrightsman present: “She did not call what happened to her “rape” until many years later. In contemplating what happened she:

1. Figured she had made a stupid mistake by agreeing to drive a fellow college student home from a party.
2. Wondered if she had led him on by going into his house.
3. Asked herself if she could have fought back more vigorously when he threw her on the bed and forced her to have sexual intercourse. (37-38)

The survivor in this case feels guilty, responsible and ashamed of the act. What is glossed over in both the instances is the intention and the acts of the perpetrator of the offence. He introduced himself and got acquainted with the victim. He tempted the widow with the offer of marriage to rob her off her ornaments and rape her. There is a deliberate intention on the part of the accused to coerce her to agree to it passively by promising to marry her to avoid his premeditated attempt to rape her being regarded as rape. The court overlooks the fact that the couple was not in any sort of relationship. This case is interesting as it does not fall totally under acquaintance or stranger rape case. Though the accused was a stranger who came to offer help, he also promised to marry her. At the same time, it is not a date or acquaintance rape as the person involved was not someone she knew. However, unlike stranger rape case, here one can see that there was more mental coercion than physical violence. In my conversation with the defence lawyer in

this case, the attorney asserted that the sexual intercourse in the case was not forced but consensual, the reason being absence of physical violence. But the one thing that is often overlooked in such cases is that “victims of acquaintance rapes may be less inclined to resist actively is a direct function of the characteristics of the rape. Before a rape can be resisted, the danger must be identified.... If the situation is not perceived to be dangerous at first, the act of resistance is altered. Initial reactions to intrusions on one’s limits may be that such intrusions are harmless. Unfortunately, victims who wait too long before protesting are viewed as both desiring sex and sharing the blame for the rape” (Allison and Wrightsman 70). One of the reasons for the man to feign as someone who was there to help the daughter get married and to get married to the survivor and rape her is explained in Koss’s study. By acting as an acquaintance, the accused cleverly confused the survivor. Koss’s study concludes that though the acquaintance rape survivors need help by speaking about the experience like the stranger rape cases, only a very few came to the forefront. According to Koss, “...of all the victims willing to talk about their experiences, approximately one fourth of the victims of stranger rape sought this type of help, but only 3% of victims involved with acquaintance rape sought such help, even though 62% of the stranger rape victims and 38% of the acquaintance rape victims felt they should obtain some type of therapy to help them deal with their trauma” (qtd. in Campbell 70). But, at the same time, from this study, it is evident that the possibility of remaining silent in the acquaintance rape makes the victims feel guilty and it leads to self-blame. Janoff-Bulman estimates that 74% of the rape victims who sought counselling blamed themselves for the crime with 69% of them believing that their behaviour was the cause. The psychological impacts on such victims can be worse than that of the stranger

rape cases. In the words of an acquaintance rape victim: “I didn’t tell anyone. In fact, I wouldn’t even admit it to myself until about four months later when the guilt and fear that had been eating at me became too much to hide and I came very close to a complete nervous breakdown” (Herman 153) shows the impact caused by such rapes. The inordinate delay caused in reporting the rape had led to the absence of corroborative evidence which was pointed out by the court in this case.

There are several explanations as to why a woman does not respond to or “refuse to acknowledge that they have been raped, even though the act and the circumstance qualify it for a legal definition of rape. Some women, simply, may not believe that they were raped” (63). It is evident when Allison and Wrightsman quote one woman who was raped by a friend, “It took several days before I realized I was raped. Things get muddled and emotions get scrambled” (63). They believe that when a person acknowledges that she is raped, it necessarily concedes the fact that she has been a victim, which is a very vulnerable position to be put into. For the survivor in this case, the reason for not labelling the assault as rape and not giving importance to rape when she complained to the police can be because she blames herself for contributing to its occurrence — “either through being naïve or having placed themselves...in an unsafe situation” (63).

Additionally, most rapes which are perpetrated by the acquaintances are least concerned in the legal discourse as extreme force used in the violence by a stranger constitutes rape. Additionally, there is an allegation of women falsely charging rape cases. But the “categories of false cases or the injuries inflicted on the self by oneself or by people close to allege a false claim described as natural normalises and attributes the idea of reading falsity from the feminine body” (Baxi, “The Social and Juridical Framework of Rape in

India” 226). This explains the reason for underreporting of acquaintance rape: it is a result of the incredulity of those close to the victims and the view that such rapes are more of seduction/consensual sex than an instance of violence. In acquaintance rape cases, there are more chances of the victim being blamed. There is little social acceptance in the case of acquaintance rape though such rapes are more prevalent than stranger rape cases.

This feeling acts as a deterrent for the victims to file cases or later in the follow-up of cases. The defence and subsequently the court lay great emphasis on the doctor’s statement that she spoke about the theft of gold but not about the rape. According to the doctor, “she was not serious about the sexual act at that time.” In a rape case, the doctor’s statement is the key and the use of words like “not serious” about rape directly affects the verdict as it belays the stance of the survivor. The defence latches onto the doctor’s statement, citing the phrase ‘not serious’ to drive home the conclusion that the delay in reporting the case was a result of the guilt feeling aroused in her as a result of the consensual sex she had had with the accused. Here, the defence counsel, accuses the witness of performing an irrational action and thereby deduces that the irrational action is a result of the guilt. But Halligan emphasises that it sometimes takes years for the survivor to come out and speak about rape. She gives the example of a rape victim who went to the doctor for the medical check-up. But the incident was so traumatic that the survivor did not speak about the incident with the hope of hiding it in memory later only to find that the intrusive memories still trouble her. These women are exposed to an ‘uncertain future’. One of the methods employed by the victim to adjust with the event and to bring herself to normalcy is to suppress or rationalise the attack. Not talking about

the event is the victim's way of restoring mental equilibrium. This, at times, takes days, weeks or months or sometimes even years to find expression.

Gender vulnerabilities play their part against women. There is seldom any reflection on the suffering of the women; when they report a violent act they are challenging the prevalent dominant sexualized stereotypes. As already discussed in the second chapter, the making of the women as sexually docile as put by Foucault is "complex and encrusted" and the call for change is taken as a threat by men as it can undermine their superiority. The gendered social realities are an important factor that has to be given its due importance. The narrative accounts of a victim of sexual account which are mostly ignored, disbelieved or dismissed is a cleverly wrought out strategy to challenge the capacity of women who contest the dominant structure. "In the case of women remembering, the question of belief is crucially tied to the history of disbelief with which women's testimony has been received, whether in the medical profession, when symptoms and pains were dismissed, or in the professions of psychology and psychoanalysis, where their experiences were traditionally read as hysterical and evidence of fantasy" (Sturken 110). In addition, there is a common belief and rightly that the doctors, the mental health workers or criminal justice system and agencies themselves have the victim-blaming tendency leading to further distress in the victims. This can be one of the reasons why, in the present case, the survivor did not disclose the incident to the doctor and hid it for months together. In the case of a rape victim, the incident seems so far-fetched even to themselves that they hesitate to report it as they assume that they won't be believed. The implausibility of the occurrence may cause a doubt on the person's perceptions which will lead to the denial or "misidentification" of the incident.

In spite of these dilemmas, if the survivor reports the event they are either disbelieved or ridiculed. Thus, we have a vicious cycle of perceptions and consequences, “the actual degree of underreporting is sometimes difficult to believe, a skepticism which itself acts as a deterrent to taking seriously those reports which do surface” (Westrum 382).

To reconstitute the self in a new form, the survivor must construct a meaningful narrative that incorporates the trauma, but many survivors face obstacles in this endeavour such as disordered cognition, memory gaps, feelings of despair and futility, and the lack of an audience willing to hear, believe, and understand their story. Such isolation is exacerbated when the trauma was humanly inflicted (as with rape), since such assaults, as Brison puts it, “[sever] the sustaining connection between the self and the rest of humanity. (Whisnant n.pag)

The fear of non-belief in their testimony prevents the victims from reporting the violence. The constant fear of being the centre of malicious gossip is the other reason for not reporting the incident. It can trigger paranoia within the domestic sphere. The legal procedure suddenly transforms the domestic sphere into a fragile space that must be ‘secured’. Being a mother of grown up sons and daughter, she had to keep the past for a better future. The shame and stigma associated with such cases are much worse than in stranger rape cases. The link between shame and horror is directly proportional to the trauma inflicted in an individual. This line of reasoning is alien to the legal discourse, which looks for injuries on the victim and whether they made hue and cry during the act. The absence of injuries on the body becomes the criterion but the legal system overlooks the mental agony. According to Caruth, “...trauma seems to be much more than a

pathology, or the simple illness of a wounded psyche: it is always the story of a wound that cries out, that addresses us in the attempt to tell us of a reality or truth that is not otherwise available. This truth, in its delayed appearance and its belated address, cannot be linked only to what is known, but also to what remains unknown in our very actions and our language” (4). Traumatic event is something that is not precisely grasped according to Caruth (6). Thus, for any victim, trauma is not just the reality of the violent incident but the reality that it is not known fully. There is always an oscillation between “crisis of death” and “crisis of life” that is between the story of the unbearable nature of an event and the story of the unbearable nature of its survival” (Caruth 7).

These cases are experiences that are not yet completely grasped and this resonates something that is beyond knowing and understanding, but “it is in the event of this incomprehension and in our departure from sense and understanding that our own witnessing may indeed begin to take place” (Caruth 56). Thus, trauma is the result not only of a destruction, but also of the mystery of its survival. It, according to Freud, is the “peculiar incomprehensibility of human survival” (58). It is something where psychic meaning has not yet achieved. According to Freud, Post Traumatic Stress Disorder, basically, is about what it means to survive after a violent incident. It reflects the “direct imposition on the mind of the unavoidable reality of horrible events, the taking over of the mind, psychically and neurobiologically, by an event that it cannot control” (58). Unlike any physical wound, trauma affects the psyche where it is not directly available for experience.

The breach in the mind...is not caused by a pure quantity of stimulus...but by “fright,” the lack of preparedness to take in a stimulus that comes too

quickly.... The shock of the mind's relation to the threat of death is thus not the direct experience of the threat, but precisely the *missing* of this experience, the fact that, not being experienced *in time*, it has not yet been fully known. And it is this lack of direct experience that, paradoxically, becomes the basis of the repetition of the nightmare. (Caruth 62)

Trauma is thus not the confrontation with death or a tragic event in particular, but surviving it without knowing it. The disbelief of what has happened to them, the unknowing of the experience is trauma. This trauma results in inconsistent and contradictory statements that can go against the survivor in the court. There is a gap in the statements uttered by the woman where she could not give a convincing answer as to why she delayed reporting the case or failed in giving a consistent narrative without contradictions. Elizabeth Jelin observes that "one of the features of traumatic circumstances ...is their massive impact that creates a void, a hole in the possibility of expressing or telling a story" (53). "A traumatic event is defined as one in which: (a) the person experienced, witnessed, or was confronted with an event that involved actual or perceived threat to life or physical integrity; and (b) the person's emotional response to this event included horror, helplessness, or intense fear" (Foa 450). The rape was a threat to her physical integrity which she could not easily convey or disclose to the people around her. Most often, the experience becomes unspeakable for the victim. This unspeakable nature of the experience is impacted by the identity construction where rape is associated with shame and guilt. Eric Santner, the psychoanalyst, proposes that identity has to be seen as a kind of "collectively imposed deadness, stuckness, or automatism, that stereotypes our responses in the present" (Lorenz 12).

One of the defensive mechanisms followed by the mind to cope with such stressful situation is psychic numbing. The common features that are related to numbing are selective inattention, amnesia (partial or full), inability to visualize memories, constriction and inflexibility of thought, a sense of numbness or unreality including detachment and estrangement, over controlled states of mind, including behavioural avoidances, withdrawal from ordinary life activities etc. (Horowitz 31). Forgetfulness is another symptom of traumatic stress. The incongruity in the date and the contradictory statements made by the survivor can be explained here. Freud claims that forgetfulness in a trauma survivor is due to an effective defence mechanism where the ego rejects the unbearable idea with its affect and behaves as if the idea never occurred at all. Another point raised by Freud about forgetting a fragment of the traumatic incident is as a result of the person's belief that s/he is unsuited to resolve the incompatibility between the unbearable idea and the ego by the process of thought. This can be the reason for the two different dates that the survivor claims the event to have taken place. Similarly, psychogenic amnesia makes one unable to recall an important part of trauma. The contradictory statements in the cross-examination, that she did not know any of the accused and later clarifying that she knew Ravi, and the statement regarding her intention in revealing the journey to the neighbours where initially she claimed that there were no neighbours as all of them had gone for a wedding and later modifying the statement claiming that she had the intention of telling them but as the accused promised her to bring her back by the afternoon, she decided not to – all these suggest poor recollection of the events especially before a court of law. The court is procedurally correct in marking it as a bunch of lies. But, the important factor is that, the person involved cannot

keep track of everything that happened and there can be gaps and holes in the story as it is told. This psychogenic amnesia in the survivor can be either partial or complete. High levels of stress in a person can directly affect a person in being not able to recall important details of the event.

The impact of rape will result in strong emotions like shock, disbelief and fear but the outward manifestation of these feelings can vary from hysteria to an unnatural calm. As a result, when a woman is raped, the first feeling that she has is the revelation of the loss of sense of security that she feels in her life. When Robert Jay Lifton says that “the apathy of the ‘disaster syndrome’ resulting from the sudden loss of the sense of safety and even omnipotence with which we usually conduct our lives, and the conflict between self-preservation and wider human responsibility which culminates in feelings of guilt and shame; even some of the later social and psychological conflicts in the affected population are familiar” (485), it shows the sudden psychic shock and the resultant action from a survivor. According to Lifton, when human beings “are unable to remain open to emotional experience of this⁴¹ intensity for any length of time, and very quickly—sometimes within minutes—there began to occur what we may term *psychological closure*; that is, people simply ceased to feel” (467). But, this psychological closure may last for days or months and in the long run would merge into longer term feelings of depression and despair. But, even these profound and unconscious “defensive manoeuvres” involved in the psychological closure does not help a person completely forget the trauma or protect them from the painful sufferings they had to undergo. The psychological closure is thus broken to assert the feeling of guilt and shame in the mind

⁴¹ Extreme intensity like that of an encounter with death or any other traumatic encounter.

of the survivor. The decision to keep the sexual violation away from others is a result of the psychological closure where the survivor 'forgets' the event for a short span of time. But the police's interruption in this state of illusion by reminding her of the theft and violation brings it back to consciousness. For the survivor, shame and self-blame will be yet more as she, a woman of forty six, went with a man to a lodge and was subjected to rape. In such cases the initial response will be to hide the truth and not to disclose it.

The next point raised by the court was that it is not believable that if the accused had the intention to rape the witness then he would not have asked her to bring her daughter with her. Here the court overlooked the statement of Salim, another witness who testified that the accused used to visit the shop where he used to work to meet his colleague accompanied by different women every time. The intention in this case might have been for more gold. The story that he concocted to get them from home necessitated the presence of the daughter. His insistence on making the daughter wear gold ornaments suggests his intention. But when a lawyer fights a case, he tries his best to discredit any alternative interpretation. Thus, it is visible that the omission of the statement of Salim or Sajith⁴² from whom the money was seized is intentional. The contradiction in the accused's statement that the money was seized by the police from him, and later modifying the statement that he used to keep money with Sajith to avoid spending it are conveniently ignored. In such contexts, the witness does not have any role or opportunity to decide what cards to play, when to play it, and how to play it. The defence counsel not only selectively brings out the arguments but with the powers vested in him, compels the

⁴² The alleged friend of the accused from whom the money was seized. The five thousand rupees recovered was said to be the money that the accused got after pawning the stolen jewellery which he handed over to Sajith for safe custody.

court to be persuaded by his argument. He successfully transforms his readings into a set of facts.

But it is necessary to understand in cases like rape, what is overtly and covertly expressed in a rape testimony. The court suspected the victim's claim of rape as it looked at the rationale of insisting the accompaniment of the daughter. The court believes if the accused had the intention to rape, he would not have asked her daughter to join them. But it is to be noted that after the rape when the mother went to the bathroom, the daughter did not stay back in the room with the accused but followed the mother to the bathroom. It is neither questioned by any of the lawyers nor has it been answered in the testimony. One has to be cautious about the fact that any text, if closely read, will have multiple meanings and is not restricted to a single or fixed meaning. The silence of the survivor in this matter can be a strategy on her part wherein she discloses the character of the accused and at the same time tries to evade any other question in relation to her daughter stating that the daughter accompanied her to the bathroom. An excerpt from her testimony would put this behavior in better perspective:

By the time the room was taken in the lodge it was 8.00 pm. When my daughter went to the bathroom, the accused asked me to remove my ornament. As directed, I removed the chain and kept it under the pillow. That is when he raped me.... When my daughter came from bathroom, the accused asked her to remove the ornament and took it and kept it under the pillow. When I went to the bathroom, my daughter followed me. When both of us came out, the accused was not there and when we looked for the ornaments even they were gone.

At that time, the girl was thirteen. It was not natural on the part of a thirteen old girl to follow her mother to the bathroom. As per the testimony, she did not instantly accompany her mother but later went into the bathroom allowing space for multitudinous interpretations. As discussed in the second chapter, there is a tendency for the person in trauma to be torn between a will to proclaim the event and to deny it which results in fragmented, inconsistent and contradictory stories which serve the purpose of both hiding and proclaiming it. "People who have survived atrocities often tell their stories in a highly, emotional, contradictory, and fragmented manner which undermines their credibility and thereby serves the twin imperatives of truth telling and secrecy" (Herman 1). The tendency of a trauma ridden person is to seek attention to an unspeakable truth and immediately to deflect from it. This is a strategy of the mind to be genuine to oneself by speaking the truth but at the same time deflecting from it to keep oneself away from the bitter truth of the incident to keep oneself sane. The survivor is thus disclosing as well as hiding certain facts. The silence or inconsistency or negation of an event are all thus part of the text. Hence one can say that information comes in pre-interpreted forms. There are chances that the text acquires a different shade of meaning when viewed under different assumptions by different people. The defence's argument, however, insists on a perspective and vision which brings a totally different meaning to the incident obliterating the trauma involved in the case.

Besides, the court's suspicion of both the mother and the daughter readily accepting the accused individual's suggestion of taking off the ornament and keeping it under the pillow and going to the bathroom can be explained through a close scrutiny of the cross-examination. She asserts her stance of not passively listening to the accused but

questioning him of the reason for asking them to remove the ornament. According to the victim, the accused gave two reasons: the Arab millionaire should not see them with gold jewellery and secondly, he wanted to weigh it. The court questioning her ready acceptance of the suggestion of the accused stems from its bias: the ill-founded assumption that the accused is a woman of questionable character. Her decision to go with a stranger without informing any male member of the family and staying with him in a hotel and readily accepting his suggestion makes her a rebel, one who has violated the familial norms of going out only in the company of a male companion from the family. Hers is thus deviant behavior, and through this behavior she forfeits the right to protection from the state. Her claim to have questioned the intention of the man in asking her to remove her jewelry is dismissed as an insignificant gesture, her efforts to win the favour of the very institution that she chose to slight through her actions. Viewed thus, the victim's claims to have been robbed of her ornaments sound dubious. At best, the court is willing to concede that she might have lost some ornaments but not under the circumstances as claimed by her. In short, the court chooses not to treat her as a rape survivor, preferring instead to cast suspicions on her claims. If the 'circumstances' are deemed to be different, it follows that this is just a case of an affair or a one-day stand gone awry. Or, it is the victim's fig-leaf, her efforts to protect herself from the humiliation which otherwise would befall her. Thus the cross-examination and the judgment, which is a fruit of it, blame the victim for her 'transgression' and disregard her testimony.

In doing this, the court had merely followed the common, societal attitude to women who choose to live differently, to exist independently of the patriarchal family

structure. While the worship of the woman as the mother, life-giver and home-builder, has been gathered into history, and has become the stuff of myths and legends, a woman is continued to be defined as a being, situated within the boundaries of the family, her identity being one with the institution that has been transformed into an oppressive structure. The woman who refuses to play her traditional role is seen as a malcontent trying to corrupt and destabilize 'normal' social life. Her need for freedom is seen as a challenge to the "normative social convention." The survivor asserting that she had indeed questioned the accused individual's intention is an act to reintegrate herself into the family structure and the structure of alliance, and in viewing her narrative thus, the court merely followed the beliefs and expectations of the patriarchal society, the latter forming the horizon of judicial interpretation. The victim's reasons for her physical intimacy with the accused— he had promised to get married to her, was glossed as her efforts to be reckoned as a good woman, to belong to the 'good woman' category. The hapless widow who seeks the good of her daughter and feels tempted when someone promises to bring cheer to her blighted life is seen as a transgressor of norms and violator of decency, who, after having selfishly casted all values of civil society to the winds, hatches a diabolical plan to work her way into the society she attempted to destabilize by proclaiming her faith in family. It is her desperate attempt to be categorized under the group of 'good woman'⁴³ as opposed to the 'bad woman.'

What is totally lost in this interpretation of the victim's claim is a vital fact about psychic reality. The passivity or the silence during and after the mistreatment is due to the massive "external intrusion into psyche that dominating powers impose to keep the self

⁴³ The category of 'good woman' and 'bad woman' are already discussed in detail in the previous chapters.

from ever fully seeing itself. Since the self's power resides in another, little faith is placed in the true self, in one's own experiential knowledge" (Williams 63). Thus her "power is actually reduced to the intuitive rather than to the real: social life is based primarily on the imaginary" (63). This is one of the reasons for the inability to react to hostile situations. Her self is made subservient to the other. Judith Herman quotes a survivor to demonstrate the vulnerable position of the women in general, and victims in particular, "The gender stereotype is also amplified with trauma. Women are not only underrepresented but also misrepresented. There is an invisible part to female experiences. The silence is sometimes forced not just from without but is sometimes forced from within oneself also. The psychodynamics of a rape victim pre and post rape differs highly. The hegemonic order of the society was institutionalized, internalized and also uninterrupted" (84). When a woman goes against it they are punished. Their emotions are indescribable which does not find space in the "socio-legal structure" (Baxi 57).

The defence finally concludes the case as a visa forgery case where the survivor is cheated by an unidentified man but on the coercion of the police she has implicated the alleged accused into the case. However, there is no previous animosity or friendship between the two according to both the accused and the witness and the case as observed here is not on visa forgery but one of rape and theft. In the cross examination, the defence counsel makes an alternative framework of the narrative when he says

D: It is said that such an incident as described has not occurred?

V: That is not true. (Shariyalla)

D: It is said that you have given gold for a visa and you were betrayed by them.

V: That is not true.

D: It is said that you were called to testify by the Kuttikol police when they arrested the other accused with the gold.

V: That is not true.

D: It is said that that the accused has not taken any gold from you.

V: That is not true.

It is obvious that in this excerpt the answer to all the questions by the witness is restricted to a single word (*illa*). The defence counsel moulds the question in several ways to extract contradictory answers from the witness. The one-word denial could well be the result of the victim's fear of verbal manipulation - the term *manabhangam*, which in everyday colloquy denoted rape, being misread as molestation. The victim's inability to speak the language of the educated advocate, with all its sophistry, renders her vulnerable. The cross-examination begins with a detailed description of the incident. The initial response by the survivor to the cross was more explanatory but with the passage of time and pages, the answer gets restricted to single words or monosyllables. There is a fear of uttering words towards the end of the cross-examination. The defence managed to orchestrate a generic strategy of questioning with multiple levels of meanings which intrigued and nearly silenced the witness. Each interaction starts with a phraseology "It is

said that” which had a compelling effect on both the witness and the court. For the witness, the phraseology meant it was not the personal view of the defence but an axiom, something that the society as a whole silently endorsed. This can and did confuse the witness. Likewise, the legal language used in the court, which has a “naturalizing structures of domination” (Matoesian 53) exceeded the poor, uneducated woman’s comprehension. The passage from the detailed description to the monosyllable shows the gradual withdrawing of the survivor from active social world. The doubt cast by the defence counsel, with the blessings of the court, appeared to have intensified the victim’s sense of disbelief in the incident, which was her psychic defence against trauma which could have disrupted normal life. Different people cope differently with personal tragedy; certain people are incapable to cope up with such stressful events. Public outcry, denial or avoidance, intrusion and a phase of “working through” the affective and psychic problem till a kind of completion is achieved, all fall within the spectrum of responses to trauma (Matoesian 5). Further, not all survivors can stage a healthy recovery. Many become “pathologically fixated” at one or another stages of recovery. It is in this sense that rape is unique: it not only creates physical injuries but also affects the psychological and moral side of the survivor. Herman rightly points out that violation is a synonym for rape where the intention is to dominate, humiliate and terrorise the victim by rendering them helpless. Thus the main result of rape is psychological trauma” (Herman 58). The humiliation is aggravated when the victim is disbelieved and the whole case boomerangs back on them.

The case thus gets rejected as the woman is not able to produce sufficient corroborative evidence. Though the claim in the law is that sexual abuse yields no

witness other than the people involved in the act, especially because it takes place behind closed doors, the three cases that I have analysed here show otherwise. The survivors are denied justice by one of the courts hearing their case as they were not able to prove that the act of intercourse had taken place. When a court of law overlooks the fact that the woman subjected to rape is “not an accomplice to the crime but is a victim of another person’s lust and it is improper and undesirable to test her evidence with a certain amount of suspicion” (Baxi “The Social and Juridical Framework of Rape in India” 23), denial of natural justice ensues. The court seeks for corroboration to prove the act of rape. Usually, corroboration becomes a necessity for date rape cases or non-stranger rape cases where the woman’s statement alone is not considered as an evidence enough to prove the case though the written law does not allow this. One has to bear in mind that that acquaintance rapes pose several layers of problems and hold some singular characteristics when compared to rapes by strangers. While on the one hand, rape by strangers involves a serious physical violence often followed by the use of weapons and verbal threat, acquaintance rape is more of subtle coercion. Thus the dual requirement of force and non-consent to prove a rape has led to the dismissal of so many legitimate rape cases. This shows the prejudice and insensitiveness towards rape trauma. The power of gender dynamics in the legal discourse is thus too obvious to miss. Victim responsibility is of prime importance in all the three cases referred here. “Rape is the only crime which involves a role reversal between the accused and accuser-thereby placing the victim on trial” (Hartwig & Sandler 508). Hence a community’s response to the victimization of an individual is noteworthy. It not only fails in protecting its citizens but adds to the victimization by becoming an agent of it, inflicting a “second injury.” Safety, trust,

power, intimacy and esteem are the five components which are difficult to find in a rape victim. (Foa 472) The data compiled by Sales et al. suggests that there is 'never' a return to the pre-trauma stage for victims of such aggravated crime.

In the cases referred to in this chapter where the rapes are made unreal in being calling an act of revenge by the mother in the first case and visa forgery in the second case, the experience of rape is erased and the trauma is blithely ignored. The suffering of the survivor is made unreal by the court when it overlooks the functioning of trauma in such individuals. Along with the trauma induced by the incident, the apathy of the legal proceeding aggravated the mental condition of the victim. It is imperative therefore to acknowledge the reduced mental capacity of the survivor to testify her experiences of trauma by allowing trauma experts to read the testimony and the responses to queries before deciding on the veracity or otherwise of the claim. This is the only way to ensure that even a single victim is not denied justice, and more importantly, in being cast as a prodigal, she does not go on to become an example that discourages future victims from seeking justice.