

CHAPTER 3

Redefining Consent and Resistance: Suryanelli Case

Any deviant practice pursued over a long period of time with the connivance of the ruling groups becomes standardised. Recurrence of the same type of mistakes, omissions and oversights, are no longer deemed inaccurate, but the system assimilates them into the common mix¹⁸. Lapses of these kinds committed time and again inconveniencing many and agitating some brings in the need to fix the deviation and evolve new processes in bettering the system. The present chapter and the next will analyse three cases in detail and attempt to bring real life instances where the system was curtailed from being fully effective. Here, I shall focus on the socio-legal processes, the manner in which cultural hegemony implicitly influences the legal structures which in turn modulate the progress of a rape trial. I shall also explore the various characteristics of trauma inherent in the testimony that do not have a space in the legal arena. I analyse the way cross-examination, a strong instrument for assertion, is harnessed to subdue a victim and negate or trivialise her stand and the way language far from being a vehicle for imposing law, mediates between the litigants and the legal system often to transform or convert facts and evidences. Legal discourse, under the influence of the dominant social structures, inflects the female point of view where the power of law is deployed to question the non-normative, marginal categories of social discourses. The rape testimonies are met with “specific disqualifications” (Smart 20) in law and society as a result of the aberrations from the expected testimonies.

¹⁸ Corruption is an interesting case in point. Most societies teach their subjects to be philosophical about it.

While the previous two chapters provide a general understanding of how the legal system interprets rape cases and how the limitations of the system stop it from having a nuanced understanding of the effects of trauma on victim, the extended case studies in this chapter and the next will show how the dominant power structure congeals to disqualify the rape testimonies at different points during the legal proceedings questioning the category of gender and completely marginalising the impact of trauma on the psyche of the victim. Non-conformity to the socio-legal structures of rape testimony disqualify the narrative while conformation to the structures is beyond the capacity of a victim ridden by trauma. The rigidity of the legal system which does not look into the psychic formation of the victim after a gruesome act like rape forces the victims to give tutored testimonies which do more harm to the victims than help.

This chapter examines how the sovereign power of law intersects with the disciplinary power of the society to regulate sexuality and the working of trauma and the strategies of the mind to negotiate with it, in the case of a rape victim who was captive for 40 days. It will look at the rigidity of the legal discourse which restricts itself to the words inscribed and uttered in the testimony shying away from the unsaid or the pregnant silence which remains an intrinsic part of the discourse. By bringing to bear the expert analyst's opinion about human mind as it exists today and the myriad ways of how mind negotiates with trauma through a range of response on the testimony, I argue that, at times, the testimony has to be read against the grain to unravel the working of the traumatised mind. The testimonies alone can show the diverse emotional and psychological turmoil the survivors are trapped in. Trauma and its repercussions have a great consequence on victim narratology which acts adversely in serving justice to the

survivor. Thus an analysis of trauma is necessary for cases like rape to execute natural justice to the deserving.

In this dissertation, I will analyse three cases out of which one case will be explored in this chapter and the other two in the next chapter. The reason for such a division was dictated by the sheer mass of the first case which involves the rape of a sixteen-year-old girl by more than forty men for forty days. The cross examination of the survivor crossed more than eight hundred pages and it was necessary to devote a chapter to the case. The narratives in the three cases have similarities dominated by one feature of the trauma exclusively in each case in an almost textbook fashion. The case that I explore in this chapter is the first of its kind in Kerala where the girl was coerced by the alleged lover who later pushed her into the hands of a sex racket where she was raped and gang raped by a number of men for over a period of one and a half months. Though the Sessions Court convicted the 35 accused, the High Court of Kerala acquitted all the accused on the grounds that the victim could not produce a cogent and convincing narrative.

This case¹⁹ revolves around the alleged “kidnapping, wrongful confinement, procurement of a minor girl and rape and gang rape of the victim” by 45 men for over a period of 40 days. Out of the 45, two of them could not be traced, one of them was deleted from the list of the accused and two of them were absconding. Charges were filed against the forty accused in the Sessions Court where during the trial, accused number 40 died and four of the accused were acquitted. The remaining 35 were convicted who went

¹⁹ I have replaced the names of the accused with numerals (eg. A1, A2) and altered the names of the survivor (PW3) to protect the identity of the complainant. Also date and place names are changed or omitted to keep anonymity.

ahead and appealed in the High Court. During the process, one of the absconding accused surrendered. The Sessions Court appreciated the evidence put forward by the prosecution and all the alleged accused were convicted on various charges.

The case is that as a result of the conspiracy hatched by Accused 1, 2 and X²⁰, the girl was persuaded and threatened in the name of love by Accused 1 to go away with him from the lawful guardianship of her parents, and join him in place A and thereafter to go with him to place B. Meanwhile before reaching the said place, he disappeared.

Perplexed, she thought of going to her aunt's house and boarded the bus but she reached the place late at night and realized that she could not go alone through the by lanes. At that time, a lady approached her and introduced herself and acted as a familiar person and introduced her to X as somebody who knew her uncle. He assured her that he would take her to her uncle and coerced her to go to the hotel with him where his mother was staying. She went with him to the hotel from where he raped her. The next day, she was taken from there first to place C and then to different places for a period of one and a half months. During these days, she was "presented to several persons" who raped and gang raped her. The names of three women, and the husband of one of the accused women, also featured in the list of the accused. These four persons allegedly aided the others in committing the offence. She was allegedly forcibly confined by these people. The victim had crossed the age of 16 but has not attained 18 years of age. The accused appealed against the Sessions Court verdict in the High Court, which accepted the plea and acquitted all the accused based on the conclusion that the victim's testimony was not

²⁰ This alleged accused is named X as he could not be traced initially by the police and thus they filed a case report with this accused separately from others.

credible on various grounds; it was not coherent. I will discuss the points which the court found not trustworthy enough to charge the accused.

Since this case involves 35 accused as convicted by the Sessions Court, the testimony and the judgment are elaborate when compared to the other cases that are explored in this thesis. My analysis of this case is based on the official cross examination and judgment transcripts. These transcripts are originally in Malayalam which I have translated for easy reference²¹. The reasons given by the court to dismiss the case are as follows:

- The victim cannot be reckoned as a trustworthy witness as she has squandered money given to her to pay hostel fees and has even tried to pledge her ornaments.
- A conjoint reading of her statement with the plea of the accused will prove that she is a willing partner in the sexual intercourse.
- Her conduct is suspicious and has to be dealt with seriously. She is a person who includes and excludes the names in the array of the accused according to her whims and fancies, or as tutored by the investigating officer.
- She is a person who makes acquaintances with strangers easily and is in dire need of money.

Based on these observations, the court comes to the conclusion that the charges levelled against various accused on various sections like conspiracy, kidnapping and rape could not be proved and they were acquitted. The proceedings of the case spanned close to two decades and the final verdict came in 2014. It took nine years for the High Court verdict and another nine years for the Supreme Court to direct the High court to re-examine the

²¹ The original excerpts are attached in Appendix 1. I have deleted the name of the victim in the original transcript to keep anonymity

case. In the re-examination, the High court of Kerala, convicted all the accused. However, in this chapter, I am looking at the initial High Court judgment where all the accused were acquitted, since the re-examination of the case was the result of the direction of the Supreme Court and also the High Court judge of the case was critical of the new judgment as he stood by the earlier judgment. My intention here is to examine the systemic flaws in jurisprudence in the instance of a rape trial, using this trial as a classic case in point. I aim to look into the fields of trauma and gender construction, which play a significant role in the life of a survivor, and affect the proceedings of a case at different stages.

Suryanelli²² is one of the infamous and unique cases where a large number of influential men were involved and it received the glare of media attention for years together. It has been discussed in detail in both print and visual media. The court after a thorough examination of the points put forth by both the prosecution and the defence concluded that the survivor is untrustworthy and her testimony cannot be relied on. The points raised by the court that went against the survivor are interrelated and these homologous ideas are derived from and sustain a certain gender stereotype. The victim's habit of squandering money is the result of her deviant character which is covered over or hidden by the tendency to evade questions. According to the High Court, the case itself is part of a conspiracy theory plotted by the survivor herself and her parents to paint her character as virtuous and cover up her absence for forty days. The woman's character is pivotal to determining the credibility of her testimony and influences the judicial interpretation. This criterion alone has been used to evaluate the testimony and judged

²² This case is more known as Suryanelli case, the name after the place from where the survivor hailed

thus, it becomes a declaration of consent to rape. Despite the medical evidence suggesting the contrary, the Court chooses to view her plea of rape as an act of consent. The character of the survivor is questioned by the court by bringing in various, somewhat unrelated points. It is necessary to reiterate these points, though most of them have already been mentioned in this chapter, for a better understanding of the case.

The court is sceptical about:

- The way she squandered money and attempted to pawn her jewellery
- Her love relation with A1 and the alleged relation with other men like Kiran, Madhav and the driver of the bus she used to regularly commute
- Her decision-making capacity (which includes her decision to go with A1 or as alleged her decision to include and exclude people from the array of the accused)
- The allegation of her acquaintance with strangers
- Her father keeping a watch on her through the nuns²³
- The reason given for leaving the earlier school.

The supposedly questionable character of the survivor casts a long shadow of suspicion on the claims that she made in the court. The court gives the following reasons for not believing her statements:

- The court is not convinced of her claim that she left with A1 out of her love for him and the fear of incurring his displeasure

²³ One of the points put forward by the defence is that the survivor's father has asked the nuns in the hostel where she was staying to keep a watch on her. This is brought to say that her father doubted her character and hence requested the nuns to be watchful of her actions.

- The fact that she was taken to places in different public transport vehicles and she was put up in hotels, but she never once made an attempt to flee from her so-called captors
- Her captors allowed her to make phone calls which indicate that she was not in captivity and she could have easily escaped from their clutches if she wanted to
- By her own admission, she was alone in the hotel from morning till evening, yet she did not attempt to escape
- She could have conveyed her condition to the doctor or nurse or to PW²⁴46 who was sympathetic to her

From this, the Court concluded that she was consenting to the act, and that it was just a case of a jilted woman trying to settle scores with her former lover. The social stigma attached to rape and the consequent hardships in reporting a rape and the role of rape laws have been the topic of concern for many researchers. This case is interesting as more than the action of the perpetrators, the character of the victim becomes a deciding factor in the final judgment. The legal complaint to expose the perpetrators boomerang on the complainant and destroys her private life and threatens her future. Her familial life and family is dragged into the public domain for uttering the secret. The Court's conclusion that the rape complaint is a strategy of the survivor to find a legitimate excuse for the 40-day absence re-asserts the pre-figured stereotype that complaint of rape is a "sign of conspiracy" (Baxi, "The Social and Juridical Framework of Rape in India: Case Studies in Gujarat" 63) to settle the scores against an estranged lover, husband or acquaintance. Her hurriedly sketched character thus becomes the smoking gun, a piece of clinching

²⁴ Prosecution Witness is the witness brought by the Prosecution to support the witness' claim. It is stated that PW 46 was sympathetic towards the survivor and did not harm her.

evidence of her profligacy. Given the fact that court verdicts are based on legal precedents, it is quite obvious that in the case of rape trials, the character of the woman becomes an overriding factor in validating the claims of the parties involved in the case.

I examine the survivor's testimony in detail to see how the defence and the court verdict brings in her sexual biography (to coin a phrase) along with her mother's to establish that she had a motive to allege a false case against the accused. Her nature of squandering money and leaving the school are cited to tag her character as 'loose'. Her testimony is subjected to a set of questions that portrays her as a woman who gets easily acquainted with men, a sexually "wayward" woman. The DW3s²⁵ assertion that the survivor's letter written to him, which he never furnishes, suggests that her father is an alcoholic and her mother, a deviant woman, is taken as evidence by the court. The invoking of her mother as a deviant by the defence suggests the morally corruptible nature of the family. The determination of virtue is closely linked to the sexual behaviour displayed and the defence's efforts were concentrated on establishing licentiousness as a family trait. The survivor has entered into a relationship by her free will and this is tantamount to her being 'available' for sexual exploitation.

Without a doubt, the Court scrutinised the survivor's testimony very closely; but one finds a significant ambivalence in the position taken by the court when dealing with this testimony. The court assumes that the necessity for money drives the survivor to a forty-day sexual sojourn with forty men. The word squandering associated with a woman is directly linked to her character turning her from a complex entity into an easy-to-read

²⁵ DW is the Defence witness. DW3 was the driver of the bus, 'Friends' (name altered) where A1 used to work as conductor. DW3 alleges that the survivor has written a letter addressed to him indicating her parent's quarrel and her decision to run away from home. This letter was not produced by the defence in the court.

stereotype. The dictionary meaning of 'squander' is to spend extravagantly or foolishly. The Court views the pawning of gold and "irresponsible" way of spending money as being of a piece with her deviant character - she falls into the category of "bad woman" in contrast to the category of "good woman". The "good woman" are those who comply with the rules set up in the society conforming to the traditional sex roles while the "other", the "bad woman" are the woman with unconventional behaviour who does not adhere to the norms of the society, being woman of easy virtue. She is looked at with suspicion and her credibility is often questioned. The reason for this is women are categorized as "guardians of sexuality" (qtd. in Viki 296). The survivor deciding to go away with Accused 1 and her acquaintance with other men, as pointed out by the defence, puts her outside the ambit of the 'normative'. Such a classification places the onus of sexual morality on women: it is her duty to regulate the sexual behavior of men through her self-restraint. The invoking of the name of Kiran, Madhav and the bus Driver by the defence is directed at establishing that the survivor has had a number of sexual relationships with different men. This makes her a clear violator of the normative standards of the 'good woman'. In a clever sleight of hand, the blame neatly shifts from the accused to the victim. Consequently, when accusations of sexual assault are made, the spotlight is on the behaviour of the woman and not on the intention and actions of the perpetrator. Below is an excerpt from the judgment of this case:

She had squandered Rs.450/- entrusted to her by her father for remitting hostel fees, whether it was given to [Kiran] as stated by the appellants or to the first accused as stated by the Prosecutor. That piece of conduct is admitted by her.... A school girl will always be obliged to account when

hostel fee is not remitted. She must have known that she will have to account. Her conduct showed that she was still unmindful of it. She was prepared to take that risk. Added to this is, as suggested by the counsel for the appellants, that she was even courageous enough to approach a jeweler for pledging an ornament of hers which her parents had given her to wear, meaning thereby that she had that much capability or courage of even withstanding a question by her parents as to the loss of such ornament.... So this gives indications about the conduct and mental make up of PW3. She is shown to be one who was prepared to take such risks. She was mentally ready to take that risk for raising money. She needed money. She was prepared to raise it. She had needs which her parents did not know. She was prepared mentally to advance a different false version to justify herself.... She is thus shown to be a girl of deviant character. She was not a normal innocent girl of that age. She was a different person. The peculiarity in her personality must realistically be borne in mind. The evidence of a person of her age with such a conduct certainly has to be viewed seriously and with caution. A court cannot meekly swallow her version. It requires serious critical assessment. (*Joseph @ Baby Vs S.I. of Police*)

This excerpt details the action of the survivor prior to the assault which points towards her “deviant character.” A thorough examination of the testimony and judgment shows that nowhere the character of the accused is brought in though it is illegal to bring in the

character of either of the parties inside a courtroom²⁶ as discussed in the first chapter as per clause (4) in Section 146 of The Evidence Act. The illegality of this action, however, applies to the accused and not the survivor. Her need for money and the secrecy of her relation with a man puts her out of the “pure” and “chaste” role assigned to women thereby frustrating the idealized traditional gender role expectations. The threat of rape with its false promise and spurious logic that by being “good” one can avoid disaster plays an important role not just in training women in the ‘requirements’ of femininity but in a court of law as well. “The feminine body is marked by hesitancy, relative weakness, delicacy, and restraint—qualities that in fact render women more vulnerable to violence—and yet the woman or girl is taught to view her body as dangerously provocative because inherently ‘rapable’ Hence her duty to control, conceal, and monitor her body and its movements, so as not to bring disaster upon herself”. This socially and culturally constructed woman’s body “is the body of the *guilty* pre-victim she was somewhere she should not have been, moving her body in ways she should not have, carrying on in a manner so free and easy as to convey an utter abandonment of her responsibilities of self-protection and self-surveillance” (

Her acceptance of love for A1 and the admission of pawning her gold and handing over her fee to A1 imply that if a girl of her age had the ‘courage’ to hide the truth from her parents, then she can go further ahead and consent to sexual act with different men, for money. The lie and falsity with which she conducted herself in spending money are brought in to portray her as a capricious woman who has fabricated the case to hide her “deviant character.” Her consent is demonstrated by the act of her

²⁶ One of the interesting facts in the cases explored is that the past sexual character of the survivor is always brought by the defence and never by the prosecution. Also the court does not allow to look at the marital and sexual history of the alleged accused as it does not deem relevant to the trial

misusing the money whereby she has departed from the traditional gender role-expectations associated with women.

The general concern is how well women fit the traditional gender roles. Violence and femininity are antithetical to each other. Men and women are deemed to follow culturally appropriate gender roles. While men are expected to behave according to the culturally set masculine ideals which include confidence, dominance, aggression, independence etc., women are expected to follow feminine ideals like passivity, submission, dependence, compassion, nurturing etc. Thus, when a woman decides on the way she would like to spend her money and the person she has to be with, she questions the dominant set up and crosses the barrier of dependency. Hence, the survivor had not confined herself to the *Lakshman Rekha*, the ‘category of discipline’, because of which she has to bear ‘category of punishment’. There is a transgression from familial normativity when she is tagged with impropriety. Her subject position as a victim is transformed into that of an accomplice of the crime as she resorted to move away from the category of normativity and hence her action marks alterity or it is tagged as ‘asocial’ as it is a disruption of the heterosexist normativity (Baxi, “Rape, Retribution, State” 1192). The transformation to ‘bad woman’ is clear in the words of court. To quote it again,

She was not a normal innocent girl of that age. She was a different person. The peculiarity in her personality must realistically be borne in mind. The evidence of a person of her age with such a conduct certainly has to be viewed seriously and with caution. (*Joseph @ Baby Vs S.I. of Police*)

Being a violator who took her own decisions and chose her love interest, she is not considered worthy of the sympathy and the consideration of the society which it accords to an ‘innocent girl’. On the contrary, she is a loose cannon, a person who has to be viewed with caution, even with a certain degree of alarm. She is a non-conformist, a person who refuses to play the part a society lays down for its female subjects, and so she does not deserve the protection this society offers to its true female subjects. There is a transformation from an innocent girl to a girl of questionable character. This is not the subtext of a single court. The court’s assumptions, evident from the verdict that it eventually pronounced, are drawn from a tradition of sorts in rape trials as observed in the cases that were discussed in the first chapter and also the other cases that are discussed in the next chapter. *State of Haryana vs Prem Chand and Ors.* is another glaring example of such verdict where the court found the nature of the survivor questionable as she had sexual relation with a man she loved²⁷. These trials, more often than not, are conducted within the ‘phallogocentric norms’ of shame, guilt and stigma. In the eyes of the law, only those female subjects who have totally internalised the norms of the patriarchal society have the right to claim violation of natural justice when they are raped. The rape of a woman who defies these norms is seen as agent complicit in the violation of her body; the testimony is often disqualified on these very grounds. Although past sexual history is not allowed to be evoked in court proceedings, we can still find it introduced in courts through other means. It is smuggled in under the guise of motive.

²⁷ Suman Rani, the survivor eloped with her lover and a complaint was filed against her lover Ravi Shankar for abducting her by her family. The police arrested both of them and put them in two different rooms and raped Suman Rani. When the case came to court, Ravi Shankar was tried along with the police constables as it was alleged that Suman Rani was below 18 years of age. The High court acquitted Ravi Shankar but upheld the Trial court decision to imprison the police constable for ten years. In the appeal to Supreme Court, the sentence was reduced to five years and Suman Rani was found to be of questionable character. Though fifteen women’s group filed review petition, it was dismissed by the Supreme Court holding the view that they had not depended on the victim’s character while referring to her conduct.

The victim's character is projected as the reason for the false allegation levelled against the accused, hence extremely relevant to the case. The imbalance in the provisions of the law are too obvious to miss: the prosecution is bound by law not to invoke the character of the accused, while the defence counsel makes merry flouting the law in the name of motive for the false allegation. Admittedly, the character of the survivor and the sexual behaviour are not proof of false accusation beyond reasonable doubt. It is equally important to acknowledge that it is legally banned in trials, but it plays a significant role in the trial proceedings, as is evident in the cases I have examined.

The quotations from the proceedings below will show how the defence plunges the victim into a state of confusion by giving various reasons for squandering money which directly link up with the moral culpability argument.

Q: Haven't you tried to pawn the ring to acquire money to go for a trip?

A: No....

Q: When the money that was given to pay the hostel fee was not paid what was your parents' response?

A: I told them I lost the money. I told the warden that I lost the money and Papa paid it later....

Q: Didn't you say that you have given the money to a man called Kiran?

A: No

Again let us look another excerpt from the cross examination:

Q: When you went to tuition class in K Teacher's house, did a boy named Madhav study with you?

A: Yes. Madhav is my father's colleague's son.

Q: Weren't you and Madhav in an unacceptable relation, because of which the teacher barred you from going to the classes?

A: That is not right.

The defence counsel's motive in asking her about the trip and the relation with two men whose existence or relation with the victim never proved is to shift the onus of proving her innocence and the guilt of the accused onto the survivor. The defence counsel's allegation that she was involved with many men in school and outside is a serious slur on her character. Through this the defence counsel attempts to create a reasonable doubt about the identity of the man who raped her. The whole proceedings follow a pattern: the aggrieved party is, in fact, the accused and the victim is the aggressor, a woman of questionable character trying to send a few innocent man to prison. Pratiksha Baxi's statement that an analysis of the legal judgments make it clear that rape is classified as heinous only when it is committed against a woman who falls within the ambit of "good woman" (Baxi "Rape, Retribution, State" 1199) is amply corroborated in this case. This further establishes the findings of the criminal justice scholars who claim that there is a sturdy influence of gender within the criminal justice system (Weist 351). Weist argues that "patriarchal ideals about appropriate feminine behavior have historically guided practices in the criminal justice system, 'often resulting in more serious punishments for females who violated gender norms than males.'" (351)

Female desires and their expressive possibilities still continue to revolve within the patriarchal borders. Their positions which challenge this order is either ignored or pushed back into the position of "hystericised non recognition." Woman's desire has always been looked and defined from the male logic. The assumption is that man and

woman have identical sexual interests. But when men and women are claimed to have sameness in their sexual desires, there is a naturalisation of male desire which is then projected on to women, foisted onto them as their desires and needs. There is a subtle, yet vibrant, difference between the constructions of identities and though there is a sameness of desire, women are still bound to act differently as is expected of them. So if a woman and man are sexually interested, the assumption is that there is something morally wrong with her to express her desire, unlike men. The evocation of various men allegedly associated with her portrays her as somebody who is sexually overcharged suggesting the distinct possibility of consent with the alleged accused. Consent itself becomes a male category which is defined in their terms but is projected onto female victims (Matoesian 47). This has the power to nullify the experience of the woman and makes it appear consensual. The court's question on the consent of the survivor transforms the case from rape to a consensual sex:

Is PW3 after returning to the fold of her parents on 26.2.96 attempting to wish away all consensual sexual intercourses between 16.1.96 and 26.2.96 by calling them rapes without her consent? Is she trying to paint herself white and attempting to place the blame for her unfortunate predicament on the shoulders of all with whom she had sexual intercourse by making convenient omnibus assertions that they were all rapes? We cannot assume that the consent is no consent because PW3 was a young girl who had just crossed 16 years. Under law she had reached that age of consent. Why did she consent and was it prudent on her part to consent are not certainly the questions before Court. Did she consent - whether for the proper reasons

or the improper ones? Is such consent vitiated on any grounds recognised by law? These are the questions to be considered.” (*Joseph @ Baby Vs S.I. of Police*)

Though the court asserts that various questions are to be concerned to conclude whether the act was with or without consent, the quotation starts with a doubt on the veracity of her testimony. Matoesian, in his analysis, describes how a woman who does not adhere to the standard sets of rules laid down to them and is driven by desire cannot be raped or coerced as they are only too willing sexual partners, according to the patriarchal standards of rationality:

As a configurational unity, sexual interest, the female logic of irrationality, and the illogical organization of motivation condition an interlocking interpretative frame of the rape incident: because the victim consented to sex, she felt guilty afterward.... And because she felt guilty, she must have consented. Likewise, because the victim consented and felt guilty, she was motivated to fabricate the charges against the defendant, a motivational issue that fosters a further impression of irrationality and consent. (47)

The survivor’s desire for the man she loved is a serious deviation from the standard that is expected of a ‘good’ woman! One is reminded of Charles Dicken’s *Oliver Twist*, who scandalizes the orphanage administrators by demanding more food. When the survivor falls in love and goes with the man she loves, she is pushed out of the purview of the family, which, being a derivative of monogamy, is an institution governed by patriarchy, and thus is denied access to “democratic justice” to borrow Shapiro’s phrase. This leads to the assumption that though it was her personal decision to go with the men alleged as

rapists, the reporting of the case is a strategy to cover up the absence away from home to save from the ensuing humiliation. The invoking of her relationship with the bus driver, the reason attributed to her leaving the earlier school-- her relation with Kiran, which she vehemently denies, and for which no proof is adduced, and her father's natural concern for his teenage daughter, are cited by the defence counsel to convey to the audience her promiscuous nature. Her friendliness with men was read using the patriarchal frame of reference, within which friendliness and natural affinity of young women for members of the opposite gender is mere sexual attraction. This facilitates the Court's verdict against her. The reversal of this original verdict in a judicial review underscores the untenability of the assumptions underpinning the verdict of "Not guilty."

The Court is not ready to buy her argument that she was both in love with and in fear of A1. Love and fear, two paradoxical terms coming together in a single narrative is unacceptable as far as the Court is concerned. It is a conflictual message about her feeling for the accused which she is not able to distinguish. This dilemma in the feeling and her decision to go with A1 from her school are unacceptable according to patriarchal logic. The passive 'no' from the victim was taken as an active 'yes' by the abusers as well as the court. What is lost in such cases is men's poor capacity of interpreting complex emotional cues. "The ambiguities and ambivalences associated with sexual discovery for women are read as complicity in or license for male intrusion. To be confused or ambivalent about one's sexual desire has too little 'safe space' in feminine development" (Haaken 141). The survivor in this case, a girl of 16, was confused whether she fears or loves A1 more. There is an oscillation from feeling guilty of going with him to the feeling of betrayal done to her by Accused 1.

The court did not take this factor into account. Neither did it take the captivity of the survivor seriously. By reprimanding the girl for not making hue and cry in the public when she was taken in public conveyance or hotel or in front of the doctors and nurse, the Court tries to distance itself from understanding the mental makeup of a captive whose sole intention was to live for one more day. The court believes that in the 40 days of captivity she was taken to various hotels, small and large, in various places on buses, trains and in taxicabs and not even once had she shouted or tried to escape. She was taken to hospital twice and though she could have sought the help of the doctors or nurses to escape she had not done that either. The court proclaims that had she not consented or had she been unwilling the perpetrators would not have risked transporting her in public from the very second day. Moreover, when she was alone in Hotel Geeth from morning to evening she did not try to escape. The court concludes that she was not a captive as she was free to make calls to her relatives despite the survivor's plea that she was made to call her uncle on the behest of the accused and could not disclose her condition as she was accompanied by them. According to the court, had she been in trauma, she would have tried all means to escape from the clutches of such criminals.

The survivor was a captive for 40 days and thus a victim of prolonged trauma. For her, it was a repeated trauma for more than a month where she was held like a prisoner unable to flee though the counter argument was that she had chances to escape. But it is necessary to understand the situation she was in. Her captivity was similar to domestic captivity where the physical barriers are almost nil but invisible and more powerful than a barbed wire fence. She is rendered captive by physical force and threat. When it is captivity, it brings a coercive control on the victim by the perpetrator. She is taken by

force, enticement and intimidation and subordinated through psychological and physical force and its effect on the victim is even more gruesome. The perpetrator is the most powerful person before her and in the first encounter itself Accused X made it clear that he was a lawyer by profession who could buy the system which was enough to intimidate a 16-year-old girl. A normal person in gait and appearance, the extent of crimes committed by him was shocking. He enslaved her by showcasing his immense power. He established control over every movement of the victim and thereby whittling down resistance. She was made to see resistance as futile, leading to her supplication and surrender.

He established and controlled the victim rendering her helpless making her lose the 'sense of self'. Violence is not always the only way to intimidate the hostage. Invoking fear in the mind of the victim was a clever strategy used. This was done by the threat of death and harm not just to her but her family members. Again, fear was aggravated at the "unpredictable outburst of violence" (Herman 77) whereby a feeling was created that the captor was omnipotent and her wish to escape and resistance were futile and the only choice was to live in compliance. The actions of the perpetrator lead the victim to lose her sense of autonomy. The physical assault on her was enough to shame and demoralise her. Moreover, the captors established a physical control on the victim. They tried to impose their reality as the victim's reality. Judith Herman makes it clear in her study on the victims of captivity that in the process, the victim might develop an emotional dependence on the captor. Though there is a "fear of death and isolation, gradually the victim may develop a sort of dependence with that of the perpetrator. It is the norm and not the deviance" (82). The perpetrator not only instilled fear in the mind of

the victim in the case of captivity but he also induced a sense of gratitude for letting her live. The captors even usurp the victim's inner life. Just for survival, she would have relinquished her autonomy, her world view, and her moral stance. The survivors of captivity basically shut down their feelings for the sake of survival which Henry Krystal calls 'robotization' (84). But, though it helps in the survival, people often feel later that they were reduced to non-humans. For the survivor, the very thought of attempting to escape from the clutches would have felt terrorising or terrifying as she was not sure whether she would see the next day. The whole energy would have been spent to live the moment. She would have been reduced to a vegetative state. Initially, as per the survivor's testimony, her action was torn between a tendency to resist and periods of submission. Towards the end, one can observe that she lost the will which was "adopting an attitude of complete passivity" (85). Dissociation, suppression of thought and denial are the common features of trauma in captivity. There is a state of the Orwellian doublethink in a survivor. Through this technique, the victim accepts and believes two contradictory beliefs simultaneously. "The [person] knows in which directions his memories must be altered; he therefore knows that he is playing tricks with reality; but by the exercise of doublethink he also satisfies himself that reality is not violated" (87). The prisoner who is a captive for many days does not try to escape but rather thinks of how to stay "alive or look for methods to see how to make their captivity bearable" (90). There is a constriction in the survivors to actively engage with the outer world which is initially a strategy to escape from the violence put forth by the perpetrator. They become adept practitioners of the arts of altered consciousness. Through the practice of "dissociation, voluntary thought suppression, minimization, and sometimes outright denial, they learn

to alter an unbearable reality” (Herman 87). But though they survive, the images of self, the values, the ideals that one carried and that gave a purpose to their life are broken.

In captivity, a profound alteration in the victim’s identity happens. This can be twofold: one gradually done by the victim’s conscience as part of survival strategy which gradually gets converged into the new formed identity or a deliberate move by the perpetrator to create a new identity. In this case, there is a measured move by the perpetrator to change the victim’s name which is an attempt to erase her original identity. But there is a strong resistance from the victim initially against the pseudo identity or altered identity and a determination to reclaim her original identity when she discloses to the abusers her true name and address though it falls on deaf ears. Later, she ceases to divulge her identity to the abusers as well as the doctors and nurses as it saves her from other physical tortures. There is a total obliteration of her old identity and the perpetrator attempts to create a new one when he forces her to call herself as Priya. Everything that was part of her old identity was taken away including the dresses that she has brought from home. Hence, it is necessary to understand the myriad possibilities of survival strategies a captive will follow to live just another day which might have a long lasting repercussion on their life even when they are released. Along with the strategies they lose a part of themselves; their self-respect as their body or life which was so dear to them till then is no more in one’s control and one is not in a capacity to control. Gang rape and rape continuously made her feel degraded, stripping her of her dignity. The body which she was in total control of was suddenly a public property which was accessible to anybody who could throw money. It was transformed into a body that could be controlled and violated. Since it was her decision to go with A1, she feels like an accomplice. Such

guilty feelings throw her into a state of depression. Suicidality is one of the common features that persist even after the release in the case of captives. Her claim that she and her family have planned to commit suicide is the result of this trauma.

The studies on psychological changes that happen during and after captivity are still work in progress. The survivors fall in a state of helplessness, passivity, depression, anger, falling back to the past which they cannot control. She is very often subjected to condemnation. (Herman 115) It is necessary to understand that a woman in captivity cooperates not because she is complicit in the act but because she had no choice if she has to survive. The court's finding that she had a choice to escape but she willed against it cannot be applied to every person under captivity. PW3 is considered an accomplice to the crime as she has consented to get abused in spite of having chances to alter the situation. She was raped by more than 3 or 4 persons in succession each day when she was in confinement. The observation of the Sessions court which was overruled by the High Court is worth mentioning in this context.

It is unimaginable for ordinary logic to think that PW1²⁸ submitted her body for sex atrocities and sex exploitation by the accused and other co-conspirators for deriving sex pleasure. Almost on all days during her illegal custody and confinement she was raped by more than 3 to 4 persons in succession. She was gang raped for almost 19 times while during her custody by persons (co-conspirators) within the age group of 24-55. (*Joseph @ Baby Vs S.I. of Police*)

²⁸ The survivor was called PW1 in the Sessions court case proceedings

It is thus not reasonable to expect a normal reaction to such an abnormal event from the victim. As rightly said by the historian Lucy Dawid Owicz, complicity and cooperation have different meanings in the context of free choice and captivity. For a survivor of extreme situation, “the persistent anxiety, phobias and panic of survivors are not the same as ordinary psychosomatic disorders. Their depression is not the same as ordinary depression. And the degradation of their identity and relational life is not the same as ordinary personality disorder” (Herman 118).

When the court puts forward the reason for its suspicion of the victim testimony on the grounds that she has not disclosed the truth of her captivity to the doctor, the nurse or to PW 46 who was sympathetic to her, it highlights the apathy of the courts, resulting from the existing limitations of the legal discourse which has not built the capabilities to traverse the uncharted areas of the human mind and have a clearer understanding of the effects of trauma on the rape victim. A traumatic experience like rape is psychologically harmful and morally atrocious. Traumatic events threaten the psychological wellbeing of an individual by threatening the integrity of communities from family to nation. It disrupts the interpersonal processes of primary socialization and it can lead to an extreme sense of betrayal and distrust toward other people. Her trust and love for the Accused 1 is reflected in the cross examination.

Q: Since how long have you been in this so-called love affair?

A: One and a half years....

Q: Did he give love letters to you then?

A: Yes, he used to give.

Q: Does he give it in person?

A: Yes

Q: How many letters has he given you?

A: Three. I don't store them. Neither did I give any reply to the letters.

Q: Was it because you did not love him?

A: No, I loved him.

The resolute reply in upholding her love for the accused shows her trust in the relation. It is this trust that is shattered by his betrayal. This destroys her sense of invulnerability and the world is transformed to unpredictable and dangerous place. It destroys the fundamental belief about the world, how safe we are in this world. Trust and faith, the fulcrum of a relationship is broken completely. Her trust in A1 and the faith that at least one among the abusers will understand her predicament and help her escape was totally shattered. Thus for a woman who is raped, she feels abandoned and alone severed from the web of protection and care. This is followed by a sense of alienation or a disruption from the most intimate relation of a family to the community. Her autonomy, identity and competence are shattered. She feels like her body is invaded and defiled and suddenly her point of view becomes the least considered. The belief in oneself is lost. For her, prior forms of dependency in human relationships have proved themselves unreliable and her images of protection, reliability and trust are shattered and thus she is on guard against false promises of protection, vitality or any sorts of assistance from anybody. This resistance to human relationships and the psychic stigma of the annihilated which the victim experiences are explained by Lifton through the idea of "self-concept". According to this, if one is treated cruelly, s/he tends to consider oneself worthless. Along with

doubt about oneself, they will start disbelieving everything around them. Trauma manages to shatter the self-image and it creates changes in self-perception.

Rape comes as a devastating shock to the victim which in turn cripples her life for years together or sometimes for a lifetime. This shock shatters the illusion of living in a safe world and they develop a sense of insecurity and distrust in the world around them. For them, things are no longer what they seemed before the traumatic incident. Traumatic events shatter their capacity to initiate or compete in relation to others. The rape victim's courage and fighting spirit do not help her defend herself and in the aftermath of the event, she often reflects on her own conduct which leads to self-recrimination and feeling of guilt and inferiority. Her fall from an active decision-maker into a state where she is not capable of any decisions is a result of the guilt factor resulting from the life-changing 'wrong' decision made by her. Lifton observes that 'survivor guilt' is a common phenomenon among people who had undergone trauma. More than the perpetrators, it is the victim who feels guilty. A traumatic event shatters an individual's 'sense of connection' with the community. This becomes acute for those whose trust and faith have been shattered by the betrayal by an important person in their life. Safety, trust, power, intimacy and self-esteem are the five components which are difficult to find in a rape victim. (Foa 472) The identity that defined them once is irrevocably shattered by the act. The act instils an element of surprise and a constant fear of death in the victim.

The traumatic aftermath leads a person to doubt oneself and others. Her body, which was the most intimate part of her life, is no more in her control. It gets distanced, even objectified. The objectification of the survivor's body is structured by the violation meted out to her where she is extolled as an object to be gazed, touched, prodded and

raped. This leads to shame, which is a response to one's helplessness where their bodily integrity and dignity have been violated by another person through brute force. The victim's incapacity to fight against this force, the incapacity to defend herself leads to a feeling of shame which eventually leads to a doubt about one's capability to hold an oppositional, even a different point of view. This results in her docile acceptance of the norms of the patriarchy of a virulent kind. This explains why the victim in the present case insisted that she was incapable of decision-making during the cross examination.

Traumatic reaction is defined by the total disorganization of the capacity for self-defence and the victim being overwhelmed by the circumstances (Herman³⁴). She becomes incapable of fight or flight, and she just freezes. The survivor in captivity is completely powerless with no chance to escape from there or to resist; she surrenders, with her 'self-defense' completely compromised. Action in the face of danger, rendered impossible by trauma, gets expressed in an altered state of consciousness, physical action, fight or flight, gets transmuted into psychological action; the action of dissociating oneself from the scene becomes the only agency available to these victims. One of the trauma symptoms, the disconnect from the event that triggers trauma, facilitating the perception of the event as one that has a life of its own, is the visible tip of the process wherein submission becomes a kind of action. The rape survivor that features in Herman's book gives a clear indication of this condition, "Did you ever see a rabbit stuck in the glare of your headlights when you were going down a road at night. Trasfixed— Like it knew it was going to get it—that's what happened" and in the words of another survivor "I couldn't scream. I couldn't move. I was paralyzed...like a rag doll" (Herman 42). Most of the rape victims are shocked by the act. This altered state of consciousness

may be one of the best survival mechanisms available to them at that point of time. This is best expressed in the words of another rape survivor as quoted by Herman, "I left my body at that point. I was over next to the bed, watching this happen.... I dissociated from the helplessness. I was standing next to me and there was just this shell on the bed.... There was just a feeling of flatness. I was just there. When I re-picture the room, I don't picture it from the bed. I picture it from the side of the bed. That's where I was watching from" (Herman 43). This characteristic of trauma as already discussed in the second chapter is called psychic numbing. Psychic numbing is compared to 'paralysis of mind' by Lifton. This alternative consciousness, though it helps the victim initially cope with trauma, with time makes her maladaptive as it prevents the reintegration of traumatic experiences with ordinary consciousness necessary for healing. Sometimes the constrictive process which keeps the traumatic experiences from normal consciousness will allow only a small fragment of the memory to appear as an intrusive symptom. (45) They might remember the event in fragments or as "truncated memory" which will be marred by emotion and an overlay of meanings (46). There can be voluntary suppression of thought.

What has to be borne in mind, however, is that the traumatic reaction of one individual can and often does differ from another victim. The acute phase of trauma can be expressed in three different ways according to the research done by Burgess and Holmstrom: an expressive reaction, a controlled reaction, or a compound reaction. Though the impact of rape will result in strong emotions like shock, disbelief and fear, the outward manifestation of these feelings can vary from hysteria to an unnatural calm. This working of trauma is variedly found in the cross examination of the witness in this

case. One of the frequent questions asked to her was regarding the date, time and place of occurrence. Badgered by the repeated questions about the timeline of events and the places where they took her, she is unable to recall the details, the fragments of memory that she is allowed as part of her psychic strategy to negotiate with trauma, is cited as evidence of fabrication by the defence that manages to create doubt in the mind of the judges presiding over the case. The fact that this strategy of the mind to escape from the trauma is unknown to the victim is not given a serious consideration by the Court. Baxi's interview with a High Court judge makes the prejudice and insensitive approach of the judiciary towards a rape victim amply clear. According to the judge, "a judge must pay attention to the demeanour of the victim in the witness box. If she is a liar she will be conscious, perspiring, shifting, will not stand correctly and ask for water" (Baxi, "The Social and Juridical Framework of Rape in India" 209). The trauma and the fear generated in the individual are taken as lie. The psychological manifestation of fear and shock are read as "evidence of falsity." This indifference to victim testimony is evident in the cross examination in this case. When the victim discloses her inability to identify the professor who was one among the rapists, the defence as well as the court in unison comes to the conclusion that she is lying as the professor is the teacher of the investigating officer and that she includes and excludes people from the list of accused according to her whims or as she has been tutored. The inability to identify the accused can be a result of the ambivalent position the self is sited within the mental terrain. The owning of the story she herself had narrated, which is expected of any sane individual, is difficult for the victim due to the psychic processes that regulate her take on reality, counter-intuitive as this might seem to the observer. Since the facts are forbiddingly

difficult to face, the survivor more often than not shies away from them. They stagger through the narrative maze, torn by two sets of compulsions – the need to bring the aggressor to justice and the necessity to survive, to preserve oneself from the life-threatening trauma. In the process of trauma narration, the story undergoes a transformation in an effort to make it more presentable to the audience. The testimony does not accompany any emotions. This story-telling is at the intersection of the confessional, the spiritual, the political and the judicial discourses. Victim testimony is overdetermined by societal expectations and judicial requirements; these being mediated by certain psychic strategies. For the victim, the most difficult part is not to break the amnesiac barrier but to face the other side of the barrier which she has integrated as part of her reality. The telling of one's traumatic story plunges the women into tremendous agony and grief. The cross-examination intended to determine the veracity of the claims works on the assumption of a unified self, consistent in its interpretation of its reality. This is the core of the problem.

Cross-examination in a court can shame and re-stigmatise an already shamed and stigmatised survivor. She is subjected to tremendous humiliation and robbed off her dignity. While the legal discourse considers rape as an offence against the society, it glosses over the harm it does to a victim. To appreciate the extent of the victim's mental agony, one has to look at the way rape testimony is structured. Cross-examination plays a pivotal role in the case of rape narratives as it is during this process that the testimony gets painted as admission of consensual sex. This conversion happens through multiple

processes. Confused victims, contradictions²⁹ in victim testimony, behavioural incongruity, and the gaps and silences are aggressively highlighted to assert that the survivor is lying and the act, if performed, was with the consent of the survivor. The defence counsel asks the survivor the same question in multiple ways to extract contradictory answers to prove that she is lying. The defence counsel's attempt to lead her to make contradictory statements by questioning her about a man whom she met while travelling is a good, if grim, example of how the defence confuses the survivor.

Q: While travelling in PPK bus, was there any male co-passenger called Joseph in your seat?

A: There was an old grandpa (*Appuppan*) sitting in the same seat.

Q: Did the two of you talk?

A: He asked me where I am going. I said I am going to place B. Did not talk anything else apart from this. (170-171)

While this portion of the cross-examination is from the first set of the proceedings, the excerpt quoted below from the second set of proceedings is a continuation of the above cited line of questioning.

Q: Is it that you have not told anyone that your name was Priya between the dates when you were away from home?

A: I have never said anyone my name as Priya.

²⁹ Contradiction can be a strategy of the unconscious to convey and deflect from the truth due to its extreme trauma or the survivor is led to pronounce contradiction as a result of the confusion generated through the cross examination

Q: From Adimali to Kothamangalam when you were travelling, was there any male co-passenger on the same seat?

A: There was an old man who asked me my name and age. I told him my name is R. He did not ask me where I am going or where I am from. (100)

What one has to keep in mind is that the gap between the two cross-examinations was two years and two months. This fact is overlooked and the contradiction of the two versions is highlighted by the defence to allege fabrication. Creating confusion in the mind of the vulnerable trauma survivor is thus an effective tool employed by the defence counsel. The survivor who is afflicted with trauma often caves in, what with their mind constantly negotiating with the life-changing event. This confusion is misunderstood as a flaw in the testimony resulting from the failure to recall the details of a cooked-up story. The question on the professor and the confusing of the names of the accused are instances of it. Below is the transcript of that part of the cross-examination:

Q: Among the rapists was it the professor who was the oldest?

A: I do not know.

Q: Among the rapists was there anyone else who was older than the professor?

A: Accused 5.

The question is modified and repeated to elicit a contradictory statement to prove the falsity of the claim. The defence counsel rephrases the question to get a response that will corroborate his claim. This shows a free flow of questioning strategy by the defence

counsel and the restructuring and improvisation of questions lead to a step by step progression towards eliciting contradictory answers favouring the defence counsel's claim. The defence counsel's deliberate changing of the names of the accused with minor changes in the name where Joseph Seth was called as Joseph Chetan, Stephen Ji as Sivaji and Raghavan Nair as Raghavan are deliberate ploys to confuse the survivor. The fact that the contradictions in the victim statements are partly the effect of such confusion was overlooked in the case.

A close look at the cross-examination quoted above makes one wonder about the reason for such inconsistencies as the details are neither too many nor perplexing. For a person ridden with trauma, the capacity to "think straight" is under severe strain, which results in giving contradictory answers. As La Capra notes, "Trauma is a shattering experience that distorts memory in the "ordinary" sense and may render it particularly vulnerable and fallible in reporting events" (61). The reason for discontinuity or fragmentation or contradiction in a trauma narrative is adequately explained by Lifton. Defensive mechanisms like dissociation or feeling versus not feeling, psychic numbing or the discontinuity of self stops the symbolizing or formative process. "The mind needs the nourishment provided by the continuous process of creating images and forms in order to function well. In extreme forms of psychic numbing, such as dissociation, the symbolizing process is interrupted and distorted. In that way, psychic numbing becomes a key, or at least a lever, to looking at this cessation or interruption of the psychic process, the radical discontinuity, that so characterizes PTSD" (Lifton, "From Hiroshima to the Nazi Doctors." 13). Pierre Janet, on the other hand, has formulated the theory that the experience of extreme trauma leads to a kind of dual consciousness - the individual splits

off the memories of traumatic experience from consciousness. This dissociated memory is in turn “preserved in an alter ego state, or alter personality through an amnesiac barrier protecting one part of the personality from knowledge of the abuse, and presumably they emerge over time in a fragmentary reexperiencing of the trauma, often through self-hypnotic trance states or fluctuating identity states”. (Haaken 131) This paralysis of the mind can be the reason for the victim’s inability to identify the professor during the court proceedings. The court, nevertheless, overlooked the psychic condition and declared this state of mind as a result of her whimsicality that led to the inclusion and exclusion of the accused as per her choice. An in-depth analysis of the testimony alone will lead to the conclusion that dissociation is not just a defence against trauma but also against a system that holds one captive without giving any further integrative possibilities. The psyche’s incapability to integrate sensation, memory and identity is the result of a fragmenting and irrational social order. It is crucial to look in detail the micro-techniques used by law as well as the society in which deviant characteristics are normalised while normal reactions towards deviant acts are deemed unnatural or not so normal. The courtroom procedure many times becomes the foundation for producing and reproducing the “normative” social structure.

This is exemplified in that part of the cross-examination where she is repeatedly asked about her experience with accused X and the mute submission to his dictates even in public. This repetition of the question marks a strong impression in the mind of the judges which will act against her later. The submission to the dictates of the perpetrator under captivity is rendered unnatural. Despite knowing the intentions of Accused 1, she dared to go with him, thus she had invited the trouble on herself. Therefore, her trips

were not forced on her, neither were the sexual acts the result of coercion. With each question, the defence ties the victim down with the logic of patriarchy and its linguistic corollary, which she finds difficult to break free from.

Legal reform has not paid much attention to the deployment of language when a rape case comes up for trial. During cross-examination, when the lawyer uses the quotation of the victim in the direct speech, he makes sure that it is emptied of the emotion attached to each sentence which was originally present. It gets transformed into non-emotional, matter-of-factly utterance. Presented thus, the linguistic features are at once subservient to the ideology. The tendency is to transform the victim to a non-victim through referential features and observe her action through a strict male-centered logic. The language used in a court-room is not just a vehicle to impose or transmit law but has a stronger role in constituting and transforming rules or evidence or facts into “relevant object of legal knowledge” (Matoesian 3). The repetition of the question and intonation or the variance in tone creates a powerful persuasive effect in court proceedings. When the lawyer asks the victim about her opinion on eloping with a man disregarding the parents’ opinion, more than the reply, the linguistic structure and the tone influences the court. The defence uses words and structures in tune with the ideology of patriarchy thus, manipulating language within the discursive context. The purpose is to trap the victim into stating contradictory or inconsistent replies. The language used sometimes constructs the meaning differently with an attribution of contradiction and inconsistency to the victim testimony. The theory of inconsistency is formulated by Matoesian in his book where he claims that inconsistency emerges not just from “logical, rational, or natural juxtaposition of contradictory issues of evidence but also from an interaction between

cultural ideologies and linguistic resources in the trial context” (37) to achieve credibility in the trial.

Inconsistency is not a mere matter of saying (or doing) one thing in one place and another thing somewhere else (a matter of content). It is also a matter of aligning particular behavior through linguistic and conversational structures with the cultural demands of male sexual logic in a given context (a matter of microculture of linguistic practice). There is an inconsistency between the victim's version of events and the *expectations of patriarchal ideology* governing victim identity. (Matoesian 40)

In a case proceeding, language, power and law influence each other to sustain the patriarchal system, which gets naturalised. The inconsistency, instead of being taken as a result of a traumatic act, is attacked for its lack of coherence.

While the tendency is to render the incongruity in the victim testimony to portray women as a consenting adult, there is a stronger propensity to depict the alleged perpetrator in the best light possible by the lawyer as well as the perpetrator. This, however, is done by blaming the victim and attributing psychological problems to her. The intention behind asking the victim about her perception of men and whether she hates them is a clever move to conclude that she has a genuine hatred towards men and thus has concocted the story to trap them. The defence’s query on the dress that was bought and given to the survivor by accused X is a deliberate move to assert the character of the accused as a concerned human being who is incapable of committing a heinous

crime like rape. This has a strong impact on the judiciary as is seen in the verdict where the court declares the accused as sympathetic men who were bothered about her health and were ready to take her to hospital even for minor ailments. To quote the judgment, “Even for a comparatively minor ailment of sore throat for a day she was taken to a doctor. Does that indicate cruel conduct of the captors or sympathetic conduct of friendly individuals?” (*Joseph @ Baby Vs S.I. of Police*) The Court depicts them as kind men while it marginalizes the victim’s version: she was forced to articulate only about the throat infection to the doctor and not about the backache or the puss infected private parts. The defence counsel’s motive to silence the victim and to paint the whole incident as consensual is seen in the evocation of the washing of the clothes. It has a direct connection with the assertion of consent of the victim. The washing of the clothes shows her voluntary decision to clean her from the polluted male seminal fluid which signifies her active participation in the act. Her reason for the act is relegated to the margins and considered irrational. When women fail to make sense within the patriarchal logic, their action is stranded as irrational. “The accusation of irrationality is projected onto women by male ideology. It is this male point of view that makes female logic look irrational” (Matoesian 45).

The perpetrator’s actions are vindicated by invoking outmoded traditions which are mostly patriarchal. The perpetrator terrorizes the victims. The gender he represents then criticizes her for not reacting or fighting. The survivor and her family were approached by some of the perpetrators threatening them not to disclose the truth and warned them of facing serious repercussions if they do so. She was coerced to justify the perpetrator’s violence. Her denial was countered by an attack on her character and

credibility. The forgetting of the event, secrecy and silence are the perpetrator's initial mode of defence. Where secrecy fails, he attacks the credibility of the survivor. If the perpetrator is not able to silence the victim, he makes sure that no one takes her seriously by destroying her credibility. The strategy is to first deny the allegation and when that fails, legitimizing the act. Accused X rejects rape initially and gradually during the period of the proceedings, accepts the sexual exploit not as rape but as an act with consent and his role in taking her to various men at various places is described as a joint decision by him and the survivor. The more powerful the perpetrator the more are the chances of the witness falling in the pit of isolation and trauma. The testimony and the case proceedings are embedded with trauma as a result of this helplessness.

The case proceeding of this case which spans for almost eight hundred pages are mired in inconsistencies and contradictions. One of the interesting facts in this proceeding is the repetition of the "I don't know" or "I don't remember" remarks which add up to 538 from the two cross-examinations. While the court reprimands the survivor for not remembering certain incidents which the court considers impossible for one to forget, it completely overlooks the psychic stage of a rape victim. In India, in the trial proceedings, the presence of an expert to testify to the rape trauma syndrome is absent which makes the prosecution's case weak. The psycho-emotional trauma of rape is not factored in the trial proceedings. For a person ridden with trauma, the idea of forgetting or pushing away of painful experiences bridges the world of the "rational" and the "irrational". Forgetting is a loss or negation of experience and to remember something is to experience it again. Trauma disrupts the continuity of self. "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 is 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 repetition of the replies can be intentional as well to prove how unimportant are those details for the survivor. Taslitz argues that to say ‘I don’t remember’ or ... ‘I don’t know’, is a strategy adopted by witnesses who struggle against the defence lawyer’s control of the cross-examination, as witness don’t want to confirm a detail’s accuracy or concede that the point is important enough to remember” (95). They use “linguistic strategies that perform power by repetition” (96). This repetition makes even the familiar world alien. But such strategies, though, a tactic to escape from the hostility of the cross-examination, is very limited. The legal proceedings sometimes become another rape where it is “organized as a battlefield in which strategies of aggressive argument and psychological attack replace those of physical force.... The legal system is designed to protect men from the superior power of the state but not to protect women or children from the superior power of men. It, therefore, provides strong guarantees for the rights of the accused but essentially no guarantees for the rights of the victim” (Herman 72).

The legal system is heavily dependent on the medical categories in a rape law. Very often medical evidence is an important factor that acts against the victims coming to court. This is important as signs of resistance and struggle is required to show the lack of consent to the act. This may not be available in all the contexts and the lack of medical evidence adversely affects the case. A detailed discussion on the medico-legal categories

will be done in the next chapter. It is ironic that legal system that treats medical examination and the evidence it provides as crucial to the outcome of the trial, as there are many instances like the cases discussed in the next chapter, where cases are lost because of the dearth of proper medical report to prove rape, the court in this case overlooks the overwhelming medical evidence. It is necessary to have a look at the medical report submitted by the doctor after examining the victim:

(1) Healed nail marks of about 10 days on either breast. (2) Multiple circumscribed ulcers on the vulva. Hymen was torn fresh. The carunculae hymenalls was nil. Vagina admitted more than 2 fingers. Rungne distinct. Examination was highly painful to the patient. There was purulent discharge, foul smelling, possibly gunnorroheal infection. The doctor further opined that her condition was very serious and had she not received treatment the injuries would have been life threatening. PW41 noticed injuries on her private parts which were almost two weeks old and even a touch would create bleeding due to infection. It was this PW1 who was subjected to repeated acts of rape and gang rape. (*Joseph @ Baby Vs S.I. of Police*)

This is overlooked to assert that she had consented to the sexual act. Overruling the scientific explanation, the legal discourse worked within the patriarchal system. The behaviour of an individual, a man or a woman is dictated by the society and an aberration from that is considered as worth receiving punishment. The numerous debates surrounding rape that attracted extensive media coverage, has some of the top politicians and bureaucrats asserting that rape is often an incident provoked by misdemeanor of

some kind—from clothes to behavior. This suggests that the male world view has acquired the status of an axiom.

If in making character or patterns of behavior central to the occurrence or otherwise of the crime the defence evokes the norms of patriarchy, it resorts to open misinterpretation of facts to foist a particular set of character traits on the victim. It is contended that the survivor consented to the act for monetary gain by suppressing the fact that her gold and silver jewelry were sold while she was under captivity. Further, the fact that she was subjected to gang rape about 19 times even when she was ill is being undermined. A woman who is interested in monetary gains alone has no need to suffer through an inhuman act for so many days. Worse still, she is converted into an object of voyeuristic pleasure in the proceedings. She was repeatedly asked about her undergarments. While the term panty (*shaddi*) was used 6 times, brassier was repeated twice and was asked about sanitary napkins and menstruation. Though the repetition of these undergarments do not have much of a significance in the proceedings, it still occupies ten pages in the cross-examination. From the detailed description of the underwear, it is clear that the feminine underwear is the “least private’ and ‘most spectacularised clothing that is fetishized and made to stand for the female body” (Baxi, “The Social and Juridical Framework of Rape in India” 137). The description of the cloth constitutes the “female body as a fetish by turning a sexualised gaze to the feminine clothes” (137). The description of the underwear and its detail opens up for the pornographic detailing of the vagina itself. Thus the clothes produced are a metonymy for the body parts. There is a gendered gaze in the description of the clothes of the victim. The production of such “judicial pornography” (139) tries to defame the survivor by

putting the whole responsibility of the crime on the victim. The expressions designating her clothing, underwear in particular, turns an item of clothing into an erotic signifier. The reference and the showing of the underwear right in front of a male dominated crowd evokes “scopophilic pleasure” that is “the pleasure of looking which causes libidinal expiation” (Baxi 175). Hyde talks about “legal vagina” which according to him is the least private and the most spectacularised body part of a woman (Baxi 212) whereby her private life is exposed which has a serious repercussion on her recuperation from the shock. This explains why the survivors of trauma often state that they are not the same person as they were before their traumatic experience. Haaken rightly says “critical aspects of their selves are no more intact—whoever they were has been forgotten” (Haaken 120).

The intensity of extreme form of trauma that has a life-long impact can be reduced by the positive approach of the family and the immediate surrounding that they live in. The community plays an important role in the resolution of the trauma. But most often a victim of sexual exploitation is again victimised by the society by shaming and isolating them. This has a serious consequence on the individual who is already affected by trauma. For those who lost confidence and a sense of justice, they go to court for the little belief they have in the natural justice. But when the survivor approaches the court, their condition turns more traumatic and it aggravates the symptom as they are received with hostility—hostile cross-examination tear off the remaining confidence in themselves and the world outside them. They feel isolated, alienated and invisible before the law. There is a disjuncture between the women’s experience and the court’s belief of the reality and this gap restrains women from effectively participating in the “formal

structures of justice” (72). Use of extreme force and causing injury is still the prerogative in a court whereas, in actual rape, these criteria are not a norm but the deviance. Acquaintance rape is a common phenomenon which is still not accepted. Herman suggests that rape in the legal context is not set “at the level of women’s experience of violation but just above the level of coercion acceptable to men” (72). The whole proceeding in a court is a re-rape where psychological attack coated with arguments replaces physical attack. There is a systematic legal bias which is found in many cases and an “institutional discrimination” against those who seek for justice. The remark of one of the victims of rape as quoted by Herman brings out serious concerns, “The crazy thing about it is at first I felt sure [the rapist] would kill me, because if they let me live, how would they get away with it? Finally, I realized they had nothing to worry about, nothing would be ever done because I had ‘asked for it’” (112). The accused X’s threat that as a lawyer he can come out of the case easily and if she accuses him of rape she will be in trouble shows the position she is subjected to. His contempt for the law, the blame game of the society where the perpetrator enjoys an upper hand and the victim becomes the prey are serious concerns. The social judgment where the blame is befallen on the woman alleging that she has asked for rape shows a deep prejudice against the victims of sexual violence.

Law in many contexts, underplays trauma and psychological issues in women. It is evident in Baxi’s work where the doctor asserts that along with physical injuries the person can have psychological complications as well on which the judge comments back “Those can happen even when according to her wishes” (Baxi 228) which underlie the belief that “category of psychological complications is not useful to establish rape, since

psychological complications arise even in the case of consensual sex” (Baxi 229). While medical experts’ opinion is taken in deciding rape, their claim is either belittled or negated when the topic of discussion is trauma or the after-effect of rape on victims. Similarly, in my interaction with some of the leading lawyers in the High Court of Kerala regarding the present case, the advocate’s comment that only lower class men rape and the rape alleged by the victim, in this case, is fabricated shows that the structural violence against women is disguised as an individual or a specific class’s act of deviancy which is normalised as a natural heterosexist attitude of certain men towards those women who provoke men.

The approach of the legal machinery in the case of a rape is not an isolated instance of an institution getting its brief wrong. Judicial proceedings are a mere reflex of the belief systems of the society it is part of. This fact cannot be overemphasized. Here, it is necessary to look at the post-rape phase intermittently revisiting the past through flashback memories where a woman who was respected by a society is suddenly scorned and looked down upon after the incident though the fault is not hers which indirectly makes her look down upon herself. During the post-rape phase, the 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 inducing “second injury.” Trauma is embedded in the cultural construction of rape which gets manifested in the psychological process of the individual rape survivor. It represents the social construction of rape victimisation in a particular society. Guilt, shame, self-blame are the results of this cultural construction of rape. The patriarchal society and culture which places high value on virginity and chastity with the institutional emphasis on the sexual component of

rape contribute to the distinct cultural construction of rape. The studies conducted by Luo prove this point. According to her “Most women felt dirty, filthy, and stained by the rapists, and as a result considered themselves “damaged”, "incomplete”, and thus undesirable for sexual interaction in the future” (586). Victims are traumatised more by the blame from the social network such as victim blame or “victim ridicule.” Shame evoked by the ridicule is the reason for the survivor to wear shawl on her head after the incident. The secondary trauma is evident when she gives reason for not going to church after the incident “Everybody stares at me. They taunt me with words. So I am not able to go to Church or go anywhere outside” (140). Her revelation that her relatives stopped talking to or visiting them and their family got completely isolated and ostracized by the society shows the extent of secondary victimization. This further traumatises them adding to the feeling of guilt in bringing social disgrace to their family. Blaming the victim has been deployed since time immemorial in the case of rape to protect the interests of men in the “event of sexual aggression”. Culture has a great role in deciding the gravity of trauma that an individual has to suffer in the society. In the case of a rape allegation, the cultural stereotypes associated with women and the disbelief in their claims which is a strategy to keep the patriarchal position intact has added to the already existing trauma of a violated person. It is often forgotten that the perpetrator’s violence is his behaviour which cannot be attributed to the victim. The psychopathology of the victim can be a response to the abusive environment, a strategy to cope with the violence. There is a tendency to study and explain the character of the abuser by examining the characteristics of the survivor. This leads to many of the prejudices that are inherent today. This is clear from the study on battered women titled “The Wife-Beater’s Wife” where the reason for

husband's violence was the masochistic's needs of the wives. It is forgotten to look at the gradual corrosion of personality of the woman as she had to stay terrorised for days together.

People have a preconceived notion regarding rape as to how they should behave or respond, however close they are to the survivor. There is an immense gap between the actual experience and the common perception of what constitutes rape. Many experiences which the survivor finds as terrorising need not be the same for others and thus they are tormented in a world where they are forced to act either in connection with others and stand by what the others feel. The experiences of one woman might be different from that of the other. Survivors feel a great disjunction between what she experiences and the social construction of the same reality she experiences. They are not just violated but are also treated with contempt, dishonoured and blamed for one's own violation by betraying one's own moral standards. The survivors are questioned in courts of their veracity of telling the truth and they are disbelieved which creates doubt and disbelief of the incident within the survivor. They are either made to believe they wanted to get raped and it was their choice or that they are fantasising rape. What is missing here is an idea of what constitutes the characteristics of rape narratives.

The essential characteristic of a rape or trauma narrative is that it will be a shifting and fragmented narrative in contrast to the traditional cogent narrative. The survivor's narrative in this case like most Rape Narratives are characterised by trauma, delay, fragmentation, contradiction, repetitions and regressions with no intention to form a unified whole which can be understood in various ways. The issue at hand is how a rape narrative is reported and how it is received by people. It is a multi-faceted patchwork of

stories often contradicting the earlier account. Most of the time the bare and painful story of the witness is so heart-wrenching that it becomes unacceptable for the onlooker to believe what has happened which often results in the victim being blamed for the tragedy. The events get ripped, not forming a unified whole as the victim is not able to find meaning in the event and in turn becomes incapable of coming up with a meaningful story. Besides, the story is multi-faceted or polyphonic that each time when the survivor tells the story it lends itself to new interpretations. These multi-faceted feelings change the meaning of the narrative each time she narrates it. The narrator is not aware of the multiple meanings that her version of the narrative is distilling and one can assume that she is not bothered by it. The different version of the narrative is a form of liberation for the survivors from the clutches of the close knit linear narrative which tries to distil a single monolithic meaning out of it. The narrative, though unconsciously, leads to the dissemination of the story to multiple ending in contrast to the single conclusion. Such a narrative challenges the readers to reconnect the fragments and reconstruct the history whereby meaning has to be made looking at their present symptoms in the light of past events (Herman 3). So one should not take their narrative as a final end product but just as a part of an endless or continuous process of narration.

Herman asserts that for a traumatised survivor, it is necessary to have the support of others who believes in the tale of the survivor without any pre conceived notion. To ensure justice to the victim, one should be aware that as a result of the trauma she might lack expression and she may fail to state what she feels or felt. The consciousness of the survivor is exposed to a fractured reality which results in a broken-down or fragmented testimony. The only reality that the survivor is able to put forth is the endless narratives

which mirror the fragmented reality, the only one she has access to. At times, language fails to express this fragmented reality. The normal tendency is not to recognise the symptoms and merely treat it as a flaw in the statement. Sometimes the traumatic characteristic or symptoms are so persistent that it might be mistaken for the person's normal characteristic which again harms the person, condemning them for their life. Baxi's comment is pertinent here; she argues that for the victim the whole thing lies in what is missing and not in what is said. The common feeling a victim has is that she only has a part of her while the other part died with the incident and wish that she is dead too. In spite of the horrendous mishap she wanted to escape from the captivity but it is the aftermath of the incident, the psychological impact caused due to the act and the secondary victimisation put together, that made her think of suicide.

While victimising a woman for the second time, what is forgotten is the fact that traumatised people relive the past as though it continually recurs. For such people, a recourse to normal life is almost impossible. The traumatic moment gets encoded in "an abnormal form of memory" which breaks back into consciousness where even minor, not so important factors, can evoke the memories with the same intensity in which they were originally felt. Traumatic memories, unlike the ordinary memories, are not encoded in a linear narrative. Traumatic memories mostly lack verbal expression but are mostly expressed in vivid images. Some of the features are fragmentary images without a context of the memories which make it all the more realist. Such an expression does not find space in the legal arena. In a legal battle, a cogent narrative is expected which results in tutoring the survivor. The condition of the victim where she had to use the words put to her to express her anguish and experience is similar to that of the portrayal of Doris

Lessing's father's condition by her, "...his war memories were congealed in stories that he told again and again, with the same words and gestures, in stereotyped phrases.... This dark region in him, fate-ruled, where nothing was true but horror, was expressed inarticulately, in brief, bitter exclamations of rage, incredulity, betrayal" (qtd. in Herman 38). This is evident in this case as well. Here, while in the first set of testimony one can find more of broken statements and nonlinear pattern of description, the second version of the testimony which is the retelling of the event is more linear and cogent and organised with a consistent flow. This can be a deliberate act from the victim to incorporate her version of testimony into the structure of a traditional 'acceptable' narrative which is a move from the destabilized traumatic decentered account to the traditional stable one. But it can be observed that in this narrative there is a complete detachment from the event by the survivor. She removes herself from the narrative and elicits the story as a third person which is the extreme form of dissociation as put forth by Herman. The first version of the narrative is the fragmented polyphonic decentralised narrative. This narrative comprises of fear, trauma, defeat, meaninglessness and radical helplessness. A traditional narrative distorts this excess nature of trauma inherent in a narrative which is sometimes covertly expressed. Hence in the second testimony, it is noted that she is tutored not to say that she was scared of the men who raped her rather, she is guided to say that she resisted the attack. Testimony, as observed by Derrida, is torn between two positions of 'I'. That is, on the one hand, testimony is based on a real life incident happened to an individual, in their own words otherwise called an autobiographical story which is based on an experience, "In essence a testimony is always autobiographical: it tells, in the first person, the sharable and unshareable secret of

what happened to me, to me, to me alone, the absolute secret of what I was in a position to live, see, hear, touch, sense, and feel” (Goldberg 346). While on the other hand it always appears in a “public arena as a part of a collective language and procedure that also establishes a social and political contract” (346). But, there is an intractable gap between the witnessing which is an intimate experience and testifying as a public narrative of the experience. Thus there will be an unbridgeable gap between the story or expression of catastrophic trauma and that of the story expected from any individual by the society where the expectation is to listen to a linear uncomplex plot. This narrative of the victim is the story of the defeated which is not welcoming to the conscious of the individuals who are not ready to take the failure and trauma of the individual and hence they put the blame on the victim and try to shun themselves off from the responsibility of a human to understand the problem of another human. They are ready to enjoy the victory of others but the defeat morally scares them which results in their keeping themselves away from the trouble believing the cocoon where they are in is safe and do not want to be disturbed or shaken. This is the reason why witness take sides between the perpetrator and the victim when the tragedy is human inflicted. The story of defeat or trauma threatens to challenge the very foundation of a narrative itself. It is a web of shattered narratives which has to be joined and read as a whole focusing on what is not said that is to look for the “absent presence” (Goldberg 340). But in a story of trauma, the sequence of the event is confused even for the narrator sometimes. The grey zone of life experienced by the victim is unravelled and deconstructed through the narrative. One of the characteristics of the rape narratives is that they do not hold onto a heroic or a romantic notion of horror and their motive to put forth the case into the public is not only

for getting justice but also for preventing it from recurring by taking precautions or measures to end it.

But in the legal arena, the whole criminal process is not structured around the real experiences of the survivor but concocted to the need of the dominant legal framework which is essentially patriarchal. (Stacy 53) One should make sure that the trauma story should not be made a story of shame and humiliation but a story to regain one's virtue and dignity. The main agenda is to establish and convince the survivor that the perpetrator alone is responsible for the crime. This not only helps the personal well-being of the survivor but also on a larger scale helps the healthy state of the society.

The next chapter will further explore two other cases based on a similar pattern of analysis followed here.