

Book Review

*Public Secrets of Law: Rape trials in India*

Pratiksha Baxi 2014

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What constitutes justice for rape survivors? Is it seeing the perpetrator convicted and imprisoned? Is it being believed and treated with respect, compassion and empathy by the Criminal Justice System? Is it receiving compensation, from the offender or the state? Is it having the opportunity to tell one's story in a meaningful way? Is the legal apparatus the only site of justice? What if the criminal justice system becomes an aggressor and perpetrator of unspeakable trauma and indignity during the process of trial? Does this serve the cause of justice?

These and many other questions trouble the reader as one flips through a meticulously crafted academic piece by Pratiksha Baxi. Spread over eighteen months, between 1996 and 1998, this ethnographic study of rape trials in the rural district and sessions court in Ahmedabad provides disturbing yet deeply illuminating insights into how rape trials in India become a 'pornographic spectacle', giving men pleasure while the survivors face unbearable humiliation. Drawing on Michael Tussiaig's (1993) concept of 'Public Secret' referring to that which is known yet difficult to articulate, the author explores the relationship between law and public secrecy and argues how public secrecy manifests in rape trials that do not bring justice to a rape survivor, but address and reinforce deeply entrenched phallogocentric notions of 'justice', thereby causing immense trauma to the survivor.

The introduction provides a vivid description of the ethnographic site (the district and sessions court in Ahmedabad) where the author sat through 100 hearings that covered 6 rape trials. Researching rape meant a certain danger, of inviting sexist comments and sexual harassment. Interestingly she was nicknamed '376' after Indian Penal Code Section 376 that deals with rape. In Chapter I the author outlines the trajectory of the feminist campaign for rape law reforms in India until the Criminal Amendment Act, 2013. Over the course of the next five chapters, the author takes us through 4 case studies, outlining in great detail the injuries of spoken law, medicalization of consent and falsity, cultures of compromise in rape trials and rape as atrocity.

She argues that lawyering in trial courts represent major departures from doctrinal law. She makes an important distinction between doctrinal law and spoken law, and rues the fact that law reform has not paid enough attention to the violence of spoken law and how courtroom speech during rape trials titillates, excites and casts a sexual gaze upon the woman's body. Herein lies the first public secret. The injuries caused by spoken law and the extreme indignity and humiliation of women's bodies during the process of trial.

Despite the deletion of section 155 (4) of the Indian Evidence Act in 2002 that enabled the defence to invoke the past sexual history of the rape survivor, it continues to inform rape trials in the courts of law. Notwithstanding section 327 of Criminal Procedure Code (which mandates that rape trials be conducted on camera) and a host of guidelines from the Supreme Court and some High Courts underscoring the need for sensitivity during rape trials, the pornographic spectacle continues. Until 2012 when POSCO was enacted, the rape law made no distinction between child and adult survivors of sexual violence. Rape was seen as an adult crime and child survivors of rape had to grapple with medico-legal procedures, be prepared to face a humiliating trial and yet retain child-like qualities to be believed

Rape trials are all about disbelieving the survivor and transforming a testimony of rape into a narrative of consensual sex. What aids this process is of course medical science. In the chapter on 'Medicalization of consent and falsity', the author shows how the legal system colludes with medical science to construct a narrative of

falsity and to prove consent in cases of rape. Medical and legal discourses and terminologies like 'partial penetration', penetration in vulva, hymen remaining intact or ruptured, habituated to sex, self-inflicted injury, two finger test, though grotesque, are routinely invoked in courts of law to discredit and cast a doubt on the testimony of the survivor. Even the forensic examination of material evidence pertaining to rape such as hair, semen, clothes are subjected to a sexualized gaze.

Out of court settlements though illegal are routine affairs. What enables this are delays in trials, lack of witness protection and social stigma. There are two kinds of compromise cases: One where the survivor is pressured by the lawyer and accused to withdraw; and the other where consensual relationships are turned into complaints of rape and abduction.

When dalit and tribal women are raped, rarely do judges see the context of caste and tribal violence. In those rare instances where rape as atrocity is recognized, it is seen as an exchange of violence between men of unequal status. More often complainants are seen as liars who have pressed false charges to seek compensation under Prevention of Atrocity Act, 1989.

For Rawls, the political philosopher, criminal trial is an instance of imperfect procedural justice where the accused should be convicted only and only if, they have committed the offense. Hence, the trial becomes a means of ascertaining the truth. But this mode of ascertaining the truth, as the author rightly points out, through the clash of equally matched adversaries simply mirrors the male mode of dispute resolution. The unspeakable horror and violence inflicted on the survivor by grotesque means of gathering evidence and questions during the process of trial is simply ignored.

The protagonists in Rawl's theory of justice are invariably men, rational and mutually disinterested, choosing principles of justice that primarily focus on distributive justice. Would men in the original position, behind a 'veil of ignorance', enunciating principles of justice that are fair to one and all, even comprehend the intensely violent experience of sexual assault. Would they be able to anticipate the

disjuncture between doctrinal law and 'lawyer's law' or the varying 'constructs' of law at multiple sites like trial courts, courts of appeal, police stations, hospital etc?

This book is a poignant reminder of what ails the criminal justice system in the country, especially with respect to rape trials. Feminist engagement with law has been somewhat uneasy, characterized by tensions and contradictions. As Nivedita Menon writes (2001) the law and the state render invisible women's subjective experience of oppression since objectivity is installed as the norm. In this sense the law is essentially Male, and can only partially comprehend the harms done to women. What makes this book a compelling read are the critical, feminist insights into court room conversations, the violence of spoken law and what Patricia Uberoi describes as 'judicial ethnosexology', a set of widely held cultural assumptions that inform legal decisions.

