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THE VALUE OF A WOMEN'S VIRGINITY

AUTHORED BY - SHIVANI MAHADEVAN & DIYA ABRAHAM

Introduction

Virginity is an age-old concept that means that a person hasn't taken part in sexual intercourse. It is often linked with ideas of purity, chastity and morality¹; it is also always linked to the character of women. One of the earliest examples that is seen in the ancient text is the story of how Vyasa rishi was born in Mahabharata. Rishi Parashara while being ferried across a river is overcome by lust on looking at the boat girl Satyavati, he requests her to fulfill his need but she refused on the account that she will be shamed by society due the loss of virginity for which the rishi promises her that he will grant her the promise *virgo intacta*². Whether these stories depict the truth or not isn't up for debate but its the concept that will be discusses in detail. The very idea of losing your virginity will attract unparallel moral blaming and public shaming which is usually directed only toward women. It is an axiomatic understanding that the women's chastity is the honor of the family. The question is why and why isn't the man honor not questioned? This paper will investigate the value of women's virginity and the legal and social consequences it attracts.

Part I: Character Assassination

Rape is defined under Section 375 of the IPC³, even without looking at the legal definition it is clearly understood in laymen terms as a forced sexual intercourse where there is no consent of one party. The Indian judiciary was very late in grasping this concept, in the case of *Tukaram v State of Bihar*⁴, the High Court stated that because of the moral dubiousness of the victims character she must not be a trustworthy witness. It is to note that the woman was a young tribal girl who worked in home as a maid, she ran away with a son of the family and on the complaint of the parents, the couple was brought in for question by the police where she was raped by a policeman and her moral dubiousness stems from her having habitual sex⁵. It is still not clear why her having

¹ Schlegel, Alice. "Status, Property, and the Value on Virginity." *American Ethnologist* 18, no. 4 (1991) 719–34

² MLA. N.V.R. Krishnamacharya. *The Mahabharata*. Tirupati: Tirumala Tirupati Devasthanams, 1983.

³ Indian Penal Code 1860, Section 375

⁴ *Tukaram v. State of Bihar* 1966 AIR 911

⁵ *Id.*

sexual intercourse prior is relevant in a rape case against a third party, or how a moral dubiousness has any significance in a matter of bodily autonomy.

The basic tenets of criminal law is that, in a criminal proceeding the bad character of the accused is immaterial and irrelevant unless evidence has been given that he has a good character, and even then only to rebut such evidence of good character but the character of rape victims or sexual assault survivors are called into question for no actual reason⁶. Section 155(4) of the IEA provides that when a man is prosecuted for rape or an attempt to ravish, he may impeach the credibility of the prosecutrix by showing that she was of generally immoral character⁷, we protect the character of the accused while tearing apart the victims. Victims who are questioned like in the Tukaram case⁸ need not be ravished once but the law subjects her once again to be ravished in open court for the pleasure of the spectators. This is inhumane practice of treating victims cannot go on any longer. Only in 2002 Section 155(4) of the Indian Evidence act was repealed⁹.

Justice Chaturvedi in the case of *Mukesh Bansal v. State of UP* made misogynistic remarks against the complainant; in the FIR, the women had in graphic detail explained the uncomfortable sexual acts that she was forced to perform at her in laws place, but the Justice Chaturvedi was flabbergasted by the indecency in the FIR and even went as far as to say that did not seem shameful while narrating the way she was abused¹⁰. Firstly, if the acts and words of abuse narrated by the women seemed so indecent to be heard in a civilized society by Justice Chaturvedi, then imagine being the person subjugated to those acts. Secondly, Justice Khanna had said that "First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. Thirdly, why should a women feel shameful due to the abuse meted out to her, rather the accused should feel shameful for how they behave. In the case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*¹¹ while giving a progressive judgment, the courts decided to perpetuate old myth on how 'Indian Women' should be, by giving a checklist for the character of women in rape cases. We always take one step forward but two steps back.

⁶ Babulal v. the State of West Bengal AIR 1959 Cal 693.

⁷ Indian Evidence Act 1872, Section 155(4)

⁸ Tukaram v. State of Bihar 1966 AIR 911

⁹ The Indian Evidence (Amendment) Act, 2002

¹⁰ Mukesh Bansal v. State of U.P., 2022 SCC OnLine All 395

¹¹ Bharwada Bhoginbhai Hirjibhai versus State of Gujarat 1983 AIR 753

The commonality that occurs is the emphasis on the virginity of a women, young unmarried virgins rape victims seem to have favorable verdict with heavier sentencing for the accused¹². The issue with rape isn't the violation of a women's body or the trauma she undergoes, it is about protecting the virginity of the women. The society will ask who will marry an unchaste rape victim, while the correct question to be asked is when will we start castrating rapists.

Part II: Marriage Nullifies Consent

The exception to Section 375¹³ is marriage, which at the outset does not satisfy the reasonable classification test. Why is there a difference between married and unmarried women, shouldn't both have a right to bodily autonomy and shouldn't both have a right to consent. For reasons unknown, a married women somehow have a lesser right over her own body than an unmarried women. Home Affairs Krishna Raj had once said that "The entire family system will be under great stress if marital rape is brought under the law."¹⁴, it isn't entirely clear why a women's right to consent would add stress to family and if it does, then there is a mistake in the perception about how a family must operate. The Delhi High Court¹⁵ had a split decision on striking down the exception because some judges could not comprehend that consent is only thing that matters in rape, not your marital status. These ideas also stem from patriarchal norms and the idea that married women are not virgins so their violation is less problematic to society as no virginity is at stake. It is for the same reason that cases such as Bhawari Devi still does not get justice and is important to note that the district court acquitted the accused due to it being improbable that a husband would stand there and let his wife be raped¹⁶. These outdated notions of virginity prevent women from being treated as human beings who can offer more than just their purity.

With the recent judgment by the Supreme Court¹⁷, the MTP act recognizes marital rape and while this judgment is welcomed for its progressive understanding, the reality is that, this is only a long-

¹² Is rape sentencing in India a joke? Judgments based on stereotypes have played pathetically important part, 17th Dec 2016 (Accessed on 5th Oct 2022, 5:30pm) <https://www.firstpost.com/living/is-rape-sentencing-in-india-a-joke-judgments-based-on-stereotypes-have-played-pathetically-important-part-3161060.html>

¹³ Indian Penal Code 1860, Section 375 Explanation "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape"

¹⁴ Vakasha Sachdev, Explained: Why Marital Rape Is Not A Crime In India (Yet), 11th May 2022 (Accessed On 5th October 5:29pm) <https://www.thequint.com/news/law/marital-rape-not-recognised-as-crime-in-india-explainer#read-more>

¹⁵ AIDWA vs Union Of India, Hridaya Nest of Family Harmony vs UOI, Diary No. 16226/2022

¹⁶ Vishaka v. State of Rajasthan, (1997) 6 SCC 241

¹⁷ X vs Principal Secretary, Health and Family Welfare Department, Govt of NCT Of Delhi, C.A 2022 LiveLaw (SC) 809

winded way for recognizing marital rape, and criminalization is nothing but a dream we are looking forward to. In 2022 we are still fight for basic human right for women in India

Part III: Virginity Test

Rape victims were subjected to the two-finger test during medical examination, which was done to test the virginity of the women by seeing the laxity of the vaginal muscles and the rupture of hymen. This is an unscientific test that does nothing but subject the victim to even more physical trauma while yielding no results in the process¹⁸. Only in 2013 this test was held unconstitutional in *Lillu v State of Haryana*¹⁹. This test rested on the basis that women who had habitual sexual intercourse are of dubious character and required less validity in witness statement.

Virginity test have been used to test the virginity of the newly married bride after her first night. In a recent case in Rajasthan a rape victim was made to undergo this test by her in laws and when she failed, she was brutally beaten and her family was forced to pay Rs. 10 Lakhs by the *khap panchayat*²⁰. The Sansi community has a social practice of *kukdi pratha* where a white sheet is laid in the bed of the newly married couple and if after coitus there are no blood traces it implies that the women is impure²¹. The women will be shamed and beaten for her suspicious and impure nature in the society while the actual tests are baseless. Even the Roma community in Europe have very outdated and invasive virginity tests to test the bride's purity before marriage, this is usually a public affair with multiple people in attendance to celebrate the passing of this test²².

All these tests have been perpetuated in the attempt to control the women's sexuality and to make sure there is conformity with the patriarchal standard. If the society is truly concerned about the purity of marriage, then why aren't men subjected to the same. Are men incapable of being socially 'impure' or aren't capable of having premarital intercourse?

¹⁸ Eliminating Virginity Testing: An Interagency Statement, WHO 2018 (accessed on 5th October 2022 5:31pm) <https://apps.who.int/iris/rest/bitstreams/1157258/retrieve>

¹⁹ *Lillu v. State of Haryana* (2013) 2 SCR 774

²⁰ Rajasthan woman tortured for failing virginity test (accessed on 5th October 2022, 5:00pm) <https://www.onmanorama.com/news/india/2022/09/06/rajasthan-woman-tortured-for-failing-virginity-test.html>

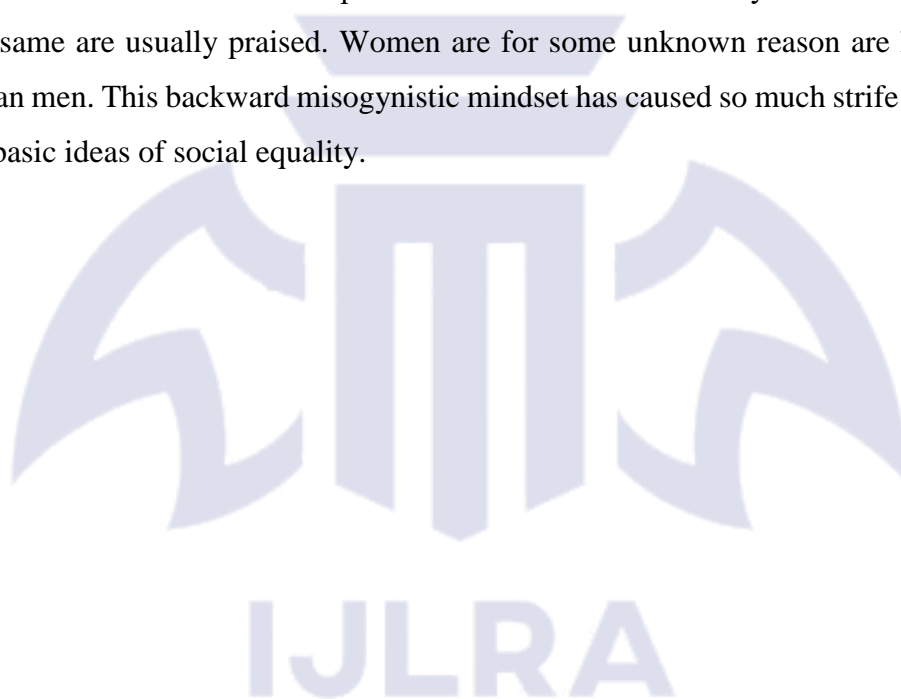
²¹ Deepak Sharma, First Night Means Virginity Test of Bride: Kukdi Pratha of Rajasthan, 6th December 2021 (accessed on 5th October 2022, 5:35pm)

<https://www.sinceindependence.com/rajasthan/first-night-means-virginity-test-of-bride-kukdi-pratha-of-rajasthan>

²² Emily Atkinson, What is 'virginity testing' and why is it going viral on TikTok?, 6th Sep 2022 (accessed on 5th October 2022, 5:40pm) <https://www.independent.co.uk/life-style/love-sex/virginity-testing-viral-tiktok-b2159942.html>

Conclusion

Wedding dresses are white to signify the idea of a pure, chaste bride; Hindu marriages still practices the custom of *Kanyadan* or the gift of a virgin to the groom and other practices are still prevalent. Even today women are subjected to unscientific virginity test²³ before and after marriage to prove their purity with irretrievable consequence if they fail. Honor killing and gender-based violence is perpetrated by the loss of virginity for women and virgin women are sold in many countries²⁴. Why are people obsessed with women's virginity and this obsession has gone so far as to denying them remedy for being married non virgins or their character is put through demeaning tests for being a non-virgin. Rape accused are largely protected under the law than the actual victims. Women who are more promiscuous are termed as 'easy' or 'whores' while men who do the same are usually praised. Women are for some unknown reason are held to higher standards than men. This backward misogynistic mindset has caused so much strife to women and hinders the basic ideas of social equality.



²³ Daniel L Chen, Gender Violence and the Price of Virginity: Theory and Evidence of Incomplete Marriage Contracts (accessed on 5th Oct 2022, 3:45 pm)

http://users.nber.org/~dlchen/papers/Gender_Violence_and_the_Price_of_Virginity.pdf

²⁴ Raina Assainar, Woman Held For Trying To Sell 'virgin' Daughter, September 03, 2020 (Accessed On 5th October 2022, 5:37pm)

<https://www.thehindu.com/news/cities/mumbai/woman-held-for-trying-to-sell-virgin-daughter/article32508938.ece>