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VICTIM BLAMING IN THE LEGAL SYSTEM: IMPLICATIONS FOR JUSTICE AND FAIRNESS

AUTHORED BY – SIMRAN CHAUHAN

CHAPTER 1

INTRODUCTION

Victim blaming is a complex issue that is rooted in societal attitudes and beliefs. It can be perpetuated through media coverage, cultural norms, and even within legal systems. Victim blaming can also take many different forms, such as blaming the victim's clothing, behaviour, or past history, or suggesting that they “asked for it” in some way. These attitudes can be especially harmful in cases of sexual assault, where victims may already be dealing with trauma and shame. Over the years, there has been increasing awareness of the harmful impact of victim blaming, and efforts have been made to combat it. Many advocates, researchers, and organizations have worked to change cultural attitudes and improve legal systems to better support survivors and hold perpetrators accountable. However, victim blaming still persists in many contexts, and continued efforts are needed to address this harmful phenomenon.¹

1.1 LITERATURE REVIEW

- "The Social Psychology of Blaming the Victim" by Melvin Lerner (1980) - This classic article explores the psychological processes underlying victim blaming, arguing that it is often a result of a desire to maintain a belief in a just world.
- "Attribution of Responsibility for Rape: The Influence of Observer's Attitudes and Victim's Perceived Provocativeness" by Martha R. Burt (1980) - This study examines the factors that influence attributions of responsibility for rape, finding that victim blaming is more likely when the victim is perceived as having behaved provocatively.
- "Rape Victim Blaming as System Justification: The Role of Gender and Activation of Complementary Stereotypes" by Jocelyn J. Belanger and Aaron C. Kay (2019) - This

¹ Paul and Norvy, 'A study on victim blaming of rape victims' (2020) <https://www.researchgate.net/publication/341616862_astudy_on_victim_blaming_of_rape_victims > accessed 21 April 2023

article explores the role of gender and complementary stereotypes in victim blaming, arguing that victim blaming serves to justify and maintain existing power structures.

- "The Impact of Rape Myth Acceptance, Victim Resistance, and Victim Blame on Rape Case Processing" by Katie E. Gentile and Andrew R. Flores (2017) - This study examines the impact of rape myth acceptance and victim blame on the processing of rape cases, finding that these factors can lead to lower rates of prosecution and conviction.
- "The Relationship Between Beliefs in a Just World and Victim Blaming in Rape Situations: A Meta-Analysis" by Julia C. Lammers, Sören Kliem, and Jürgen Margraf (2018) - This meta-analysis examines the relationship between beliefs in a just world and victim blaming, finding that the two are strongly correlated.

1.2 STATEMENT OF RESEARCH PROBLEM

The statement of research problem on victim blaming refers to the issue of individuals holding victims responsible for the harm they have experienced. This problem is prevalent in many areas, including sexual assault, domestic violence, and harassment. Victim blaming is a complex issue that involves societal attitudes, cultural norms, and personal biases. It often leads to victim silence and discourages reporting of crimes. The statement of research problem on victim blaming aims to explore the reasons behind the tendency to blame victims, understand how it affects the victim's mental health and well-being and to study the legislative framework to prevent victim blaming. This research problem is important as it helps to shed light on this pervasive issue and may inform policy and practice aimed at reducing victim blaming and promoting accountability.

1.3 RESEARCH OBJECTIVES

1. To examine the prevalence and forms of victim blaming in different types of victimization, such as sexual assault, domestic violence, and harassment.
2. To identify the factors that contribute to victim blaming, including cultural norms, individual biases, and societal attitudes.
3. To investigate the impact of victim blaming on the mental health and well-being of victims, including their self-esteem, self-blame, and help-seeking behaviours.
4. To explore the role of education and awareness-raising campaigns in reducing victim blaming attitudes and promoting accountability for perpetrators.

5. To propose strategies for preventing victim blaming, such as improving laws and policies, providing support services for victims, and promoting positive societal attitudes towards victimization.

1.4 RESEARCH QUESTIONS

1. What are the different forms and prevalence of victim blaming in cases of sexual assault, domestic violence, and harassment?
2. What are the underlying factors that contribute to victim blaming, such as cultural norms, individual biases, and societal attitudes?
3. How does victim blaming affect the mental health and well-being of victims, including their self-esteem, self-blame, and help-seeking behaviours?
4. Is there any law that prevents victim blaming?
5. What are the effective strategies to reduce victim blaming attitudes and promote accountability for perpetrators, such as education and awareness-raising campaigns?
6. What are the recommendations for preventing victim blaming, such as improving laws and policies, providing support services for victims, and promoting positive societal attitudes towards victimization?

1.5 RESEARCH HYPOTHESIS

Legal reforms aimed at reducing victim blaming attitudes can improve the outcomes of victimized individuals.

Explanation: This hypothesis proposes that legal reforms aimed at reducing victim blaming attitudes can have a positive impact on the outcomes of victimized individuals. For example, reforms that prioritize victim safety and well-being, such as strengthening laws on sexual assault or domestic violence, can help to reduce the prevalence of victim blaming attitudes and encourage individuals to seek help when victimized. Moreover, legal reforms can also signal a societal shift away from victim blaming attitudes, which can help to reduce the stigma associated with victimization and promote positive societal attitudes towards victims.

1.6 RESEARCH METHODOLOGY

The research relies on secondary data. The information was gathered from a variety of sources, including publications, journals, published books, and government websites. These are also

mentioned in the current study. To get meaningful findings, the data acquired for the study is examined rationally and meaningfully.

CHAPTER 2

MEANING AND HISTORICAL BACKGROUND

2.1 MEANING OF VICTIM BLAMING

Victim blaming is a phenomenon in which the victim of a crime or harmful act is held responsible or blamed for the harm they have suffered.² It is a common social and psychological reaction to crimes such as sexual assault, domestic violence, and other forms of abuse. Victim blaming is a harmful and damaging response to harm that can have serious consequences for the victim, including reduced reporting rates, difficulty in obtaining justice, and increased emotional trauma. Victim blaming often takes the form of questioning the victim's behaviour or actions leading up to the crime, suggesting that they somehow contributed to the harm they suffered. For example, in cases of sexual assault, victims may be asked what they were wearing, whether they were drinking or using drugs, or whether they had a prior sexual relationship with the perpetrator. This can lead to the victim feeling shame, guilt, and self-blame, and may discourage them from reporting the crime or seeking help.

Victim blaming is a result of societal attitudes, cultural beliefs, and biases that are deeply ingrained and can be difficult to overcome.³ It is often perpetuated by stereotypes about gender, race, and class. However, victim blaming is not only harmful to the individual victim, but also to society as a whole. It can perpetuate cycles of violence and abuse, and can make it harder for survivors to obtain justice and for communities to address and prevent harm.

2.2 HISTORICAL BACKGROUND

Victim blaming is not a new phenomenon, and it has been present in many societies throughout history. However, the ways in which it has been expressed and justified have varied over time and across cultures.

One of the earliest examples of victim blaming can be seen in ancient Roman law, which held

² *ibid.*

³ Dhruv Rawat, 'Rape and Victim Blaming in India' (2014) 4(3) *Int. j. Indian psychol* < https://ijip.in/wp-content/uploads/ArticlesPDF/article_39da15fecfc2c20da2ddc380709f9c7a.pdf > accessed 21 April 2023

women responsible for their own rapes if they were not able to demonstrate sufficient resistance. This attitude towards women as being responsible for their own safety persisted throughout much of history and can still be seen in certain cultures today. Similarly, in medieval Europe, women who were accused of adultery or other sexual misconduct were often subjected to public shaming and punishment, and were blamed for their own victimization. This was often done in the name of maintaining social order and protecting the reputation of the community.

In the late 19th and early 20th centuries, victim blaming was often used to justify the mistreatment of minority groups, including African Americans and Jews.⁴ For example, during the Jim Crow era in the United States, white people often blamed African Americans for their own mistreatment, arguing that they were responsible for their own poverty and discrimination.

Historically, Indian society has been known for its traditional practices and beliefs that often perpetuated victim blaming. For example, the practice of sati, where widows were expected to immolate themselves on their husband's funeral pyre, was justified on the grounds that it was the woman's duty and responsibility to follow her husband even in death. This practice was abolished in the 19th century, but similar attitudes about the role of women and their responsibility for their own victimization persist.

During the colonial era, victim blaming continued to be a widespread practice, with Indian women who reported sexual assault being disbelieved, shamed, and blamed for their own victimization.⁵ The colonial legal system was also hostile towards victims, with many laws and policies designed to protect the interests of the colonizers rather than the local population.

After India gained independence in 1947, there were efforts to reform the legal system and provide greater protection for victims of violence and abuse. However, traditional attitudes towards gender and sexuality continued to persist, and victims were often blamed for their own victimization.

In the context of sexual assault, victim blaming became more widespread during the feminist

⁴ Nazo Shinwari, 'Victim Blaming Promotes Rape Culture' (Feminism India, 1 July 2019) <<https://feminisminindia.com/2019/07/01/victim-blaming-rape-culture/>> accessed 20 April 2023

⁵ Manisha G. Kumari, 'the Sexual Harassment, victim blaming and rape culture- I remember it all' (Outlook India, 24 May 2020) <<https://www.outlookindia.com/website/story/opinion-i-remember-it-all-the-sexual-harassment-victim-blaming-and-rape-culture/353420>> accessed 24 April 2023

movements of the 1960s and 1970s. At that time, many people believed that women who dressed provocatively or behaved in a sexually suggestive manner were somehow responsible for the sexual assaults they experienced. This belief was challenged by feminist activists, who argued that women had the right to dress and behave as they pleased without fear of violence or harassment.

In recent years, there has been a growing recognition of the importance of addressing victim blaming and supporting survivors of violence and abuse in India. This has been driven in part by high-profile cases such as the Delhi gang rape in 2012, which sparked widespread protests and calls for action to address violence against women.

2.3 THEORIES OF VICTIM BLAMING

There are several theories that attempt to explain why victim blaming occurs. Some of the key theories include:⁶

Just-world hypothesis: This theory suggests that people have a fundamental need to believe that the world is fair and just. When bad things happen to others, such as being victimized, it threatens this belief. As a result, people may engage in victim blaming as a way to restore their belief that the world is fair and that bad things happen to people who deserve it.

Attribution theory: This theory suggests that people make attributions about the causes of events, including victimization. When people believe that the victim had some control over the event, such as by dressing provocatively or engaging in risky behavior, they are more likely to blame the victim for their own victimization.

Social identity theory: This theory suggests that people identify with certain groups, and that their beliefs and attitudes are influenced by their group membership. When a victim belongs to a group that is stigmatized or marginalized, such as women or minorities, people may be more likely to engage in victim blaming as a way to distance themselves from that group and maintain their own social identity.

⁶ Megan Crippen, 'theories of victim blame' (2015) Senior Honors Projects < <https://collected.jcu.edu/cgi/viewcontent.cgi?article=1065&context=honorspapers> > accessed 20 April 2023

Cognitive dissonance theory: This theory suggests that people experience discomfort or dissonance when their beliefs or attitudes are inconsistent with their actions or experiences. When people engage in victim blaming, it may be a way to reduce the discomfort caused by their own inaction or failure to prevent the victimization.

These theories suggest that victim blaming is a complex phenomenon that is influenced by a range of psychological and social factors.

CHAPTER 3

LEGAL FRAMEWORK IN INDIA

In India, there are several laws related to victim blaming, particularly in cases of sexual assault and violence against women. Here are some of the key legal provisions related to victim blaming in India:

3.1 INDIAN PENAL CODE, 1860

The Criminal Law (Amendment) Act, 2013, which was passed in response to the Delhi gang rape case, increased the punishment for sexual assault⁷ and introduced new offences such as stalking⁸ and acid attacks⁹. The Act also includes provisions for protecting the identity of the victim and prohibiting the publication of her name.¹⁰

Section 166A of the Indian Penal Code, which was added in 2013, criminalizes the failure of a public servant to record a sexual assault complaint. This provision was added in response to concerns that police often discourage or dismiss complaints of sexual assault, blaming the victim for the crime.

Section 228A of the IPC makes it an offence to disclose the identity of a victim of certain crimes, including sexual assault. This is important in preventing victim blaming, as it protects the anonymity of the victim and helps to avoid stigmatization.

⁷ Indian Penal Code 1860, s 354

⁸ Indian Penal Code 1860, s 354D

⁹ Indian Penal Code 1860, s 326 A

¹⁰ Indian Penal Code 1860, s 228A

Section 499 (defamation): This section provides for punishment for anyone who intentionally makes a false statement about another person that harms their reputation. In cases of victim blaming, where false statements are made about a victim's behavior or character, this section can be used to prosecute the offender.

Section 503 (criminal intimidation): This section provides for punishment for anyone who threatens another person with harm or injury. In cases of victim blaming, where the offender uses intimidation or threats to prevent the victim from reporting the crime or seeking justice, this section can be used to prosecute the offender.

Section 509 (outraging the modesty of a woman): This section provides for punishment for anyone who uses words, gestures, or acts that are intended to insult or offend a woman's modesty. In cases of victim blaming, where the offender makes derogatory or insulting remarks about the victim's behavior or dress, this section can be used to prosecute the offender.

3.2 INDIAN EVIDENCE ACT, 1872

Section 114A of the Indian Evidence Act, which was added in 1983, allows the court to presume that the victim did not give consent in cases of rape, if certain conditions are met. This shifts the burden of proof onto the accused to prove that there was consent.

Section 53A of the Indian Evidence Act, 1872: This provision prohibits questions during cross-examination that are intended to malign the character of the victim, unless such questions are related to the facts of the case.

Section 146 of the Indian Evidence Act, 1872: This provision prohibits questions during cross-examination that are intended to insult or annoy the witness or to shake their credibility, unless such questions are related to the facts of the case.

Section 155(4) of the Indian Evidence Act, 1872: This provision allows evidence of the character of the victim to be admitted if such evidence is relevant to the case, but only with the permission of the court.

3.3 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Protection of Women from Domestic Violence Act, 2005: This act provides for protection and relief to women who are victims of domestic violence, including physical, sexual, emotional, and economic abuse and explicitly states that the victim should not be blamed for the abuse. The act recognizes the importance of the victim's testimony and prohibits questions that are intended to malign the victim's character. It recognizes that victims of domestic violence may face victim blaming and social stigma, and provides for legal and practical support to help them escape from violent situations.

3.4 SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, requires employers to provide a safe workplace for women and take action against sexual harassment. It recognizes that victims of sexual harassment may face victim blaming and social stigma, and provides for a supportive and non-discriminatory environment for women at the workplace. The act recognizes the importance of the victim's testimony and prohibits questions that are intended to malign the victim's character.

3.5 NATIONAL COMMISSION FOR WOMEN ACT, 1990

This law established the National Commission for Women, a statutory body that works to protect and promote the rights of women in India. The Commission is empowered to investigate complaints of violence and discrimination against women, including victim blaming, and to make recommendations to the government for policy and legal reforms.¹¹

These laws reflect the efforts of the Indian government to combat victim blaming and provide greater protection for survivors of sexual assault and violence against women. However, implementation and enforcement of these laws can be challenging, and there is still a long way to go to ensure that survivors are treated with dignity and respect throughout the legal process.

¹¹ Dhruv Rawat, 'Rape and Victim Blaming in India' (2014) 4(3) Int. j. Indian psychol < https://ijip.in/wp-content/uploads/ArticlesPDF/article_39da15fecfc2c20da2ddc380709f9c7a.pdf > accessed 21 April 2023

CHAPTER 4

CAUSES AND IMPACT OF VICTIM BLAMING

4.1 FACTORS LEADING TO VICTIM BLAMING

- Cultural norms and beliefs: Cultural norms and beliefs that prioritize male dominance and female submission can create an environment where victim blaming is more likely. For example, in some cultures, it is believed that women who are sexually assaulted or harassed are somehow responsible for their own victimization because they did not behave appropriately.¹²
- Stereotypes and biases: Stereotypes and biases based on gender, race, ethnicity, religion, or sexual orientation can lead people to blame victims for their own victimization. For example, a person may assume that a woman who was sexually assaulted was somehow responsible because she was wearing revealing clothing.¹³
- Lack of information and education: Lack of information and education about violence and victimization can lead people to blame victims for their own victimization. For example, some people may not understand the dynamics of domestic violence and believe that victims could leave the situation if they wanted to.¹⁴
- Fear and anxiety: Fear and anxiety about the possibility of becoming a victim oneself can lead people to blame victims for their own victimization as a way of distancing themselves from the possibility of harm.
- Systemic and institutional factors: Systems and institutions that prioritize the rights and perspectives of the perpetrator, such as the criminal justice system, can contribute to victim blaming by placing the burden of proof on the victim and assuming that their testimony is unreliable.¹⁵
- Lack of empathy and understanding: People who lack empathy or have difficulty putting themselves in someone else's shoes may be more likely to blame the victim. They may not understand the impact of the violence on the victim and may focus more on their own discomfort or inconvenience.

¹² Claire R. Gravelin, Monica Biernat and Matthew Baldwin, 'The impact of power and powerlessness on blaming the victim of sexual assault' (2019) 22(1) GPIR <<https://journals.sagepub.com/doi/pdf/10.1177/1368430217706741>> accessed 23 April 2023

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*

- Rape myths: There are common myths about rape and sexual assault that can contribute to victim blaming. These myths include the belief that women who dress provocatively or are sexually promiscuous are more likely to be raped, or that men cannot be raped.

Moreover, some common defence strategies during trial also contributes to victim blaming, like:

- Attack the victim's credibility: The defence may try to undermine the victim's credibility by questioning their memory, their behaviour before or after the violence, or their motives for reporting the violence. This can include bringing up the victim's past sexual history or character in an attempt to discredit them.
- Shift blame onto the victim: The defence may try to argue that the victim's actions or behaviour were the cause of the violence. For example, they may suggest that the victim provoked the perpetrator, or that the victim did not take steps to protect themselves.
- Downplay the severity of the violence: The defence may try to argue that the violence was not as serious as the victim claims. This can include minimizing the harm caused by the violence or suggesting that the victim was not in danger.
- Challenge the evidence: The defence may try to challenge the evidence presented by the prosecution in an attempt to cast doubt on the victim's story. For example, they may suggest that the evidence was mishandled or contaminated.
- Use societal biases and stereotypes: The defence may try to appeal to societal biases and stereotypes about gender, race, or class to cast doubt on the victim's story. For example, they may suggest that the victim's behaviour was typical of someone from a particular demographic, or that the victim's story is influenced by their biases or prejudices.

4.2 IMPACT OF VICTIM BLAMING

Victim blaming refers to the tendency to hold victims of a crime or harmful behaviour responsible for what has happened to them. It can have significant negative impacts on individuals and society, including:¹⁶

- Silencing victims: When victims are blamed for their own experiences, they may be hesitant to come forward and report the incident or seek support. This can lead to a culture of silence around issues like sexual assault, domestic violence, and other forms of abuse.
- Self-blame: Victims who are blamed may internalize the message and start to believe that

¹⁶ Nazo (n 4)

they are responsible for what has happened to them. This can lead to feelings of guilt, shame, and low self-esteem, which can have long-term effects on their mental health.

- **Impeding justice:** Victim blaming can also have legal implications, as it may lead to a reluctance to prosecute perpetrators or to hold them accountable for their actions. This can perpetuate a cycle of abuse and harm.
- **Normalizing harmful behavior:** Victim blaming can contribute to a culture in which harmful behavior is normalized and excused. This can make it more difficult to create change and prevent future incidents from occurring.
- **Disbelief and lack of support:** When victims are blamed for what happened to them, they may be less likely to seek help or report the crime. This can result in a lack of support from friends, family, and the wider community.
- **Perpetuation of violence:** Victim blaming can also perpetuate a culture of violence by sending the message that perpetrators are not responsible for their actions. This can lead to a normalization of violence and a reluctance to hold perpetrators accountable.
- **Injustice:** Victim blaming can result in injustice, as perpetrators may go unpunished or receive lighter sentences due to a belief that the victim was somehow responsible for what happened to them.

CHAPTER 5

CASES INVOLVING VICTIM BLAMING IN INDIA

There have been several high-profile cases in Indian history that involved victim blaming. Here are a few examples:

Mathura rape case¹⁷: In 1972, a tribal girl named Mathura was raped by two police officers in Maharashtra. The trial court acquitted the accused, stating that Mathura had given her consent to the sexual intercourse. The verdict led to widespread protests, and the case became a landmark in the women's movement in India.

Bhanwari Devi case¹⁸: In 1992, Bhanwari Devi, a lower-caste social worker, was gang-raped by five upper-caste men in Rajasthan. The defense argued that Bhanwari Devi was lying about the rape to get money and publicity. The trial court acquitted the accused, but the case led to changes

¹⁷ *Tukaram v State of Maharashtra*, AIR 1979 SC 18

¹⁸ *Bhanwari Devi v. State of Rajasthan*, (1996) 1 SCC 166

in the law and the introduction of the Vishakha Guidelines on Sexual Harassment at Workplace. Nirbhaya case¹⁹: In 2012, a young woman named Jyoti Singh was brutally gang-raped and murdered in Delhi. The defense argued that Jyoti Singh was responsible for her own rape, as she was out at night with a male friend. The case led to widespread protests and changes in the law, including the introduction of fast-track courts for sexual assault cases.

Asifa Bano case²⁰: In 2018, an 8-year-old girl named Asifa Bano was gang-raped and murdered in Jammu and Kashmir. The defense argued that Asifa Bano's rape and murder were a part of a conspiracy to drive the nomadic Muslim community out of the area. The case led to widespread outrage and protests, and the accused were convicted and sentenced to life imprisonment.

Hathras gang rape and murder case²¹: One of the recent victim-blaming cases in India that gained national attention is the Hathras gangrape case. In September 2020, a 19-year-old Dalit woman was allegedly gang-raped by four upper-caste men in Uttar Pradesh. She suffered severe injuries and was admitted to a hospital, where she succumbed to her injuries a few days later. The case received widespread outrage and protests, with people demanding justice for the victim.

However, the victim's family was subjected to victim-blaming and harassment. The police initially denied that a rape had occurred, and accused the victim's family of falsely implicating the accused. They also alleged that the victim had a relationship with one of the accused and that the crime was a result of a personal dispute. The family was also forced to perform the last rites of the victim in the middle of the night, without allowing them to see the body.

CHAPTER 6

CONCLUSION AND SUGGESTIONS

Victim blaming is a pervasive problem in India, with victims of sexual assault, domestic violence, and other crimes often being blamed for the crimes committed against them. This can have serious consequences, including discouraging victims from reporting crimes and perpetuating a culture of impunity for perpetrators.

¹⁹ *State vs. Mukesh & Ors*, (2013) 14 SCC 1

²⁰ *Mohd. Akhtar V. The State of Jammu and Kashmir*, MANU/SC/0807/2018

²¹ *Satyam Dubey v. Union of India*, Writ Petition (Criminal) No. 109 of 2020.

To combat victim blaming in India, it is important to raise awareness about the issue and educate people about the harmful effects of victim blaming. This can be done through public awareness campaigns, educational programs in schools, and training for law enforcement officials and other professionals who work with victims.

In addition, it is important to hold perpetrators accountable for their actions and to ensure that they are punished for their crimes. This can help to send a clear message that victim blaming will not be tolerated and that perpetrators will be held responsible for their actions.

Finally, it is important to provide support and resources for victims, including counselling, legal assistance, and other forms of assistance. This can help to empower victims and give them the tools they need to heal and move forward after a traumatic experience.

In conclusion, addressing victim blaming in India requires a comprehensive approach that involves education, cultural change, holding perpetrators accountable, encouraging reporting, and providing mental health support. By taking these steps, India can create a safer and more supportive environment for victims and survivors.

