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Who Gets to Be Believed? Brahmanical Patriarchy's Influence on the Judiciary's Construction of a Woman's Victimhood

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Sexual assault cases in India are believed to be decided solely based on the existing legal framework and evidentiary principles. However, the courtroom cannot be considered as an abstract institution, immune to the impact of the socio-cultural environment in which it exists. This paper seeks to examine the way Brahmanical patriarchy and its perpetuated culture influence the understanding and treatment of female victims of sexual assault. By analysing the concepts of 'brahmanical patriarchy' developed by Uma Chakravarti, and the 'ideal victim' proposed by Nils Christie, this paper attempts to explain how purity, chastity, and caste contribute to the development of the image of the 'ideal woman', and subsequently 'ideal victim'. The article will consider several myths and feminist theories, as well as case laws, in order to demonstrate the role played by mythological characters like Sita, Draupadi, and Abahya in determining the characteristics of an ideal woman today. Some examples of case laws, including the Mathura rape case, Bhanwari Devi case, and Mahmood Farooqui judgment, will demonstrate the effect that caste, sexual past, occupation, and the behaviour of the victim have on their credibility and capacity to give valid consent. Often, women whose behaviour does not correspond to society's standards are treated with heightened suspicion and disbelief. While there have been recent judicial reforms that are admirable, the paper argues that dismantling the deeply entrenched patriarchal assumptions remains essential for ensuring fair access to justice for all victims of sexual assault, and not merely the ones society bestows its acceptance on.

Keywords: sexual violence, patriarchy, ideal victim theory, victimhood, judiciary, caste, gender.

INTRODUCTION

The sad reality of the world humans inhabit in the 21st century is embodied by the whispered gossip and loud headlines discussing the innumerable cases of sexual assault that are perpetuated in India every single day. While the lists of crimes against women teem and overflow, they also, albeit unintentionally, serve to desensitise the masses against the actual atrocities of the crimes, and the injustices doled out to women afterwards, in their quest for justice. This is further aggravated by the intense backlog of cases in India, with more than 2.4 lakh pending cases of rape and POCSO, as of 2020, which not only delays justice for the aggrieved but also prolongs their pain with the never-ending dates of hearings serving as constant reminders of the crimes committed against them.¹

In addition to this, India's socio-cultural environment has contributed to the creation of certain perceptions of the 'ideal woman', which has subsequently led to the creation of the 'ideal victim' of sexual assault. Deviations from this benchmark invite social scrutiny, crude remarks, and institutional disbelief, in many cases. It must be remembered that the judiciary, comprised of humans, is not insulated from social realities and personal opinions, and it is inevitable that they will seep into their functioning eventually. Dr B.R. Ambedkar echoed this sentiment in the Constituent Assembly debates, where, although concerning a separate matter, he stated, "...But after all the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have."²

This paper will seek to establish, via analysing case laws and theoretical essays, that the prevalent notions of modesty and morality for women, excessively fueled by brahmanical patriarchy, have contributed to the creation of a restrictive mould for their existence, and have also created a dubious frame of the 'ideal victim'. This framework, dictated by the surrounding cultural narratives, is, at times, deployed by the courts in India, unintentionally or not, in cases of sexual assault, to determine the credibility of the victim and ascertain the veracity of her claims, prioritising her character over the crime.

¹ 'Over 2.4 lakh cases relating to rape and POCSO pending in courts across country, says government' *India Today* (05 March 2020) <<https://www.indiatoday.in/india/story/over-2-4-lakh-cases-relating-to-rape-and-pocso-pending-in-courts-across-country-says-government-1652567-2020-03-05>> accessed 28 May 2026

² Constituent Assembly Debates 1949

THE SUBORDINATION OF WOMEN

It is no secret that Indian society is a heavily patriarchal one, specifically one deeply rooted in self-perpetuating brahmanical patriarchy, which permeates through all socio-cultural structures and individual lives. Brahmanical patriarchy, as formulated and postulated by Uma Chakravarti, refers to the subordination and excessive control of women, not merely to reinforce their gender inferiority, but also the caste hierarchy, to ensure that the purity of the upper-castes is maintained, almost exclusively by the cloistering of women within the subdued, private sphere.³

Its manifestation, in actuality, has rendered women's ability to have free sexual relations, jobs, consume alcohol, and the overall freedom to occupy and utilise their space in the world, in chains, to still be viewed as a 'good woman' deserving of respect in Indian society. By the extension of this logic, a woman out and about in public is not a 'good woman' and therefore inviting molestation and bearing the risk of attack on her shoulders.⁴ This considerably lessens the sympathy available at disposal for lower-caste, or economically weaker women, who, simply by means of their birth or occupation, are forced to step out into a world not deemed appropriate for them. In addition to this, the current world is seeing an influx of women in the workforce and educational institutions. The freedom to participate in these comes with its own set of rules and regulations, which govern the actions of these women to accordingly award them safety and sympathy. This is very blatantly visible in questions like, "Who were you with?" "Why were you out so late?" and "What were you wearing?", that ensue whenever a woman reports sexual harassment.

A hierarchy of respectability has been introduced by social norms, which determine who deserves respect and which actions mandate respect. Chastity, purity, caste-conforming and demurity are qualities which have historically been instilled and enforced in upper-caste women, and which, by means of *sanskritisation*, have been deemed desirable in all women across the vertical strata. Differentiating from these standards is equivalent to losing points on an exam, which grades and polices women on their behaviour both inside and outside the home.

³ Uma Chakravarti, 'Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State' (1993) 28(14) Economic and Political Weekly <<http://www.jstor.org/stable/4399556>> accessed 28 May 2026

⁴ Kanchana Mahadevan, 'The 'Virtuous Woman': Law, Language and Activism' (2008) 43(17) Economic and Political Weekly <<http://www.jstor.org/stable/40277390>> accessed 28 May 2026

THE SITAS AND SATI SAVITRIS IN A MODERN WORLD

In a country with as rich a cultural fabric as India's, the folk and mythological tales have played an undeniable role in shaping the ideals to which generation after generation is taught to look up to. For women especially, the list of role models is extensive and the characteristics to embody exhausting, with every epic, story, and poem providing new ways for them to reach the pinnacle of purity and respectability. Since an unmarried woman exists in a liminal space not exactly envisioned at the time of these tales, they are generally expected to be modest and demure until they can be married and then conform to the expectations of a good wife.

Sita's domesticity, along with her fidelity to Rama and resistance to Ravana, has long been taught as lessons on 'pativrata' to women on how to be good women and wives deserving of respect and protection. Similarly, Draupadi's resistance against her disrobing and her willingness to endure hardships for her husbands have been taken as symbols of being a good, chaste woman. Despite her being an outspoken, defiant woman, she is ultimately a staunch example of one existing within the bounds of propriety prevalent at the time. These women, by virtue of their purity, are then worthy of protection. Ahalya, on the other hand, despite having been tricked, was punished for her infidelity. Her blindness to the deception was no excuse for the fact that she had been unchaste and was therefore now impure for her husband. Indra's act of lying with Ahalya by trickery was not a crime against her, but against her husband. Sexual autonomy and expression of sexual desires are not desirable traits in women, which end up making their characters questionable and claims contentious.

These tales then reveal a pattern of claiming ownership of women, making rape a crime against their husbands' or fathers' property, rather than against their bodies as individuals. This is also supported by the general belief in India that rape is a crime against a woman's and, by extension, her family's honour, and any remedy deployed to restore it is acceptable, even if it involves marrying the victim, if unmarried, to the rapist in many cases.⁵

A woman alleging rape, who cannot cleanly fit in a box of virtues and titles accorded by society, is a dangerous anomaly and has to be trusted after conducting thorough checks about her respectability to ensure that, despite some deviations, she has still not socially

⁵ Geeta Pandey, 'India Supreme Court: Calls for Justice Sharad Bobde to quit over rape remarks' *BBC* (04 March 2021) <<https://www.bbc.com/news/world-asia-india-56263990>> accessed 28 May 2026

transgressed past the point of no return. These distinctions have emerged from being mere ink on paper, to forming a part of the structures investigating, evaluate, and adjudicate the claims alleged by such women. While it is unfair to assume that the judges actively seek to sneak patriarchal values into the judgments they deliver, it is also a reality that they do not exist in social isolation. The cultural narratives and notions of morality present in the world they inhabit are bound to influence their decisions, as is visible in many other scenarios. The timeless nature of these tales has contributed to the modern construction of the ‘ideal woman’ being still heavily based on them, and has provided for the social expectations and restrictions that still bind women today.

ARE YOU THE ‘IDEAL VICTIM’?

Nils Christie, in a seminal work, posited the theory of the ‘ideal victim’, essentially someone who is most likely to be believed and defended in case of a crime being committed against them, simply by virtue of their social status, i.e., being blameless and existing in the acceptable social spaces, and there being a clear big, bad offender. He wrote, “By ‘ideal victim’ I have instead in mind a person or a category of individuals who – when hit by crime – most readily are given the complete and legitimate status of being a victim.”⁶ The ideal victim does not exist in a vacuum. She is mostly modelled after the ideal woman, since there is a running belief that an ideal woman, for example, an upper-caste, married housewife, due to her sexually innocuous nature, is much less likely to be deemed the cause of a rape, as compared to, let’s say, a sexually active, unmarried, working woman. It must be noted that in a world where working women are rapidly increasing, there has also been a social construction of hierarchies of respectability between occupations. A female doctor or a government officer will generally be viewed with more social approval than a waitress or house help.

The ‘ideal victim’ creates a hierarchy of victims, with the range of sympathy, outrage, and belief accorded to them, ranging greatly depending on their social markers. Lower caste women, for example, have traditionally had to work outside the home for income, marking them as sexually available for upper-caste men, and lowering the social authenticity of their claims, despite their existing proof of rape being frequently used as a means of subjugation.⁷

⁶ Marian Duggan, *REVISITING THE ‘IDEAL VICTIM’: DEVELOPMENTS IN CRITICAL VICTIMOLOGY* (Policy Pr 2018)

⁷ *BROKEN PEOPLE: Caste Violence Against India’s “Untouchables”* (Human Rights Watch, 1999)

Even a seemingly ideal victim like the victim of the R.G. Kar rape case, who was a doctor, is not free from scrutiny, with the question of 'why was she out so late' still being posed by Mamata Banerjee, to a woman whose occupation required the same of her, to save lives.⁸ The 'ideal victim' then becomes nothing but a morbid, utopian requirement of women to prove their suffering as legitimate and deserving of outrage.

While all laws governing sexual assault and rape are facially neutral in the BNS, their implementations are, at times, marred by the cultural narratives and personal opinions of the officials dripping into their treatment of the allegations as 'suspicious'. Society's discrimination and delegation are omnipresent, and it is unrealistic to expect the judiciary, comprised of social actors, to be immune to the same. It is with this lens that the cases which are discussed below need to be viewed, to dissect the reasons for the reactions received for certain cases, and the eerie silence for others.

A CASE FOR THE DOWNTRODDEN

While there have been many improvements undertaken by the judiciary, there have long persisted certain prejudicial practices and the usage of terms detrimental not only to a fruitful investigation, but also to the mental well-being of the victim have long persisted. An example of the same can be the '2-finger test', which was routinely used as medical evidence to determine whether a woman claiming rape was a 'virgin' or not, implying her chastity was a prerequisite to her being rapeable. While this practice was banned across India by the Supreme Court in 2022 in a welcome step, deeming it regressive, it is worth exploring why this test was considered so important for so long in the first place.⁹ The finger test placed a woman's sexual experience at the forefront, and the conclusion of a rape having occurred was subjected to the condition of her not having been 'habituated to sexual intercourse'. This idea of maintaining a woman's purity is ubiquitous across civilisations, but, in India, it is also a direct result of brahmanical patriarchy, which sought to ensure caste purity by policing a woman's sexuality. The way to do so was to emphasise the importance of a woman being a virgin and sexually innocent, which led to the assumption that a sexually active woman is a

⁸ Shiv Sahay Singh, 'Bengal CM Mamata faces backlash over remarks on women safety' *The Hindu* (13 October 2025) <<https://www.thehindu.com/news/national/west-bengal/mamata-terms-durgapur-gang-rape-shocking-says-no-accused-will-be-spared/article70154689.ece>> accessed 28 May 2026

⁹ Jayshree Bajoria, 'India's Top Court Bans Degrading 'Two-Finger' Rape Test' (*Human Rights Watch*, 01 November 2022) <<https://www.hrw.org/news/2022/11/01/indias-top-court-bans-degrading-two-finger-rape-test>> accessed 28 May 2026

provocative one, and therefore incapable of being raped. This is in addition to the fact that the finger test, even though drawing no conclusive results, sought to decide a woman's sexual past, and had no correlation to the incident being alleged or the lack of consent in the same. As Mitra and Satish wrote, "The finger test is a practice that is purportedly 'scientific,' yet cannot produce any objective conclusions about consent or the question of penetration. The test reinforces stereotypes about the untrustworthiness of the Indian woman and the relationship between the chastity of a woman and the veracity of her testimony."¹⁰

The damning words 'habituated to sexual intercourse' came to the forefront once more in the judgment delivered in the case of *Tuka Ram and Anr v State of Maharashtra* in 1978, more commonly known as the Mathura rape case.¹¹ The judgment of the harrowing rape of a minor, tribal girl by police officers was dotted with misogynist remarks and patriarchal notions of the ideal victim, a frame that Mathura, being a poor, adivasi girl, could never fit. With statements like Mathura is habituated to sexual intercourse, alleged intercourse was a peaceful affair, her natural impulse would be to shake of the hand that caught her and cry out for help even before she noticed who her molester was, a clear picture is painted, classifying her as a liar due to her lack of resistance, which a 'good woman' would obviously put up if someone threatened her chastity and honour, and the socio-economic dynamics between her and the police officers were completely set aside. The question of consent was overshadowed by her not displaying her victimhood in the timid, subdued manner expected by society. The construction of the ideal woman, which has been held up by cultural narratives, could be seen influencing the judgment in how her not being an 'ideal woman' makes her incapable of being a 'victim'.

Another relevant example to examine how brahmanical patriarchal values seep into judgments in rape cases is the case of Bhanwari Devi, who was a lower-caste woman working for women's empowerment, and was gang-raped by upper-caste men in 1992. The acquittal of her offenders drew massive public outrage, but no justice for her. The reasons given in the judgment deployed bewildering logics, with 'men of higher caste will not rape a lower-caste woman', 'men of different castes cannot rape together', and the 'village head cannot commit

¹⁰ Durba Mitra and Mrinal Satish, 'Testing Chastity, Evidencing Rape: Impact of Medical Jurisprudence on Rape Adjudication in India' (2014) 49(41) Economic and Political Weekly
<<http://www.jstor.org/stable/24480853>> accessed 28 May 2026

¹¹ *Tuka Ram & Anr v State of Maharashtra* 1979 AIR 185

rape' being a few of them.¹² While her credibility was not doubted by Indian society as a whole, perhaps due to the nature of her work, her rights and dignity were certainly outraged by using her caste identity as an excuse to let go of her offenders. This is another example of brahmanical patriarchy at play, which puts upper-caste individuals on a moral high ground, deeming it unlikely that they will tarnish their 'purity' by raping a lower-caste woman. A lower-caste woman's testimony is then more liable to scrutiny simply due to the allegations being made against someone who is socially better-off than her, an act of defiance against the prevalent status quo. Unlike Mathura, whose past sexual history was weaponised against her, Bhanwari Devi's caste identity itself became her hindrance to attaining the status of a 'victim', and subsequently, justice.

A recent case that made headlines was the judgment delivered in the case of Mahmood Farooqui in 2017, which seemingly went against the very definition of consent followed by Indian courts, basing their decision, instead, on the character and behaviour of the victim. The court held that different standards of consent applied to uneducated and educated persons. The victim, a member of the latter group, was an academician and had had sexual contact with the accused in the past. Her literacy and sexual history were weaponised against her, and it was held that consent was hard to ascertain in cases where rape was committed by a known person. This judgment, in addition to being highly regressive, also grossly misinterpreted the wording of S.375 of IPC, emphasising the rapist's realisation of the lack of consent.¹³ The emphasis put on the lack of injuries due to a seemingly 'lack of resistance' also overlooks the fact that several psychological factors may hinder a violent reaction. The importance placed on a severe reaction to assault, and no prior sexual contact with the offender, is again a facet of the cultural structures that demand a 'pure', domestic woman, with no sexual relations, except with her husband. It shifts the blame from the accused and onto the victim, blaming her for not reacting violently enough to convey her lack of consent, as any 'good woman' would do. The lack of adherence to the expectations of what an 'ideal victim' would act like in a given situation significantly lowers her credibility, and is

¹² Geeta Pandey, 'Bhanwari Devi: The rape that led to India's sexual harassment law' *BBC* (17 March 2017) <<https://www.bbc.com/news/world-asia-india-39265653>> accessed 28 May 2026

¹³ Mrinal Satish, 'The Farooqui Judgment's Interpretation of Consent Ignores Decades of Rape-Law Reform and Catastrophically Affects Rape Adjudication' *The Caravan* (07 October 2017) <<https://caravanmagazine.in/vantage/farooqui-judgment-consent-ignores-rape-law-reform-catastrophically-affects-adjudication>> accessed 28 May 2026

punishable by social ostracisation and administrative dismissal, as is particularly visible in this case.

There have been many instances where the judges adjudicating rape cases have made statements contrary to how they might be expected to decide matters. Focusing on the behaviour and character of the victims rather than on the rapists, and harbouring a patriarchal mindset, does not necessarily have to manifest in the judgments delivered; it is also visible in the statements casually made by the judges during the course of the trial. Things like 'it is unbecoming to fall asleep after a rape', 'never be blackmailed into being raped', 'hurry home in a humiliated state', reveal the tacit opinions of how one believes an 'ideal victim' should act.¹⁴ Marriage changes the status of a woman by, on one hand, epitomising her status as the 'ideal woman' in many cases, and on the other, completely exempting her husband from being capable of violating her rights. This stems from the brahmanical patriarchal standpoint of viewing wives as the property of men, and therefore, incapable of being sexually abused by them. This is reiterated by the fact that marital rape is still not a criminal offence in India.

These are just a few cases that demonstrate a clear relation between judicial rulings and the social norms and expectations of the area. The expectation of women to live out their entire lives conforming to the rigid requirements of Indian patriarchy is an unfair burden placed on them, in addition to the myriad of household, familial, and occupational duties assigned to them. Deviations of an 'ideal woman' not only put a target on her back as a sexually available, promiscuous lady, but also open her life up to severe scrutiny, in case any unfortunate incident occurs.

CONCLUSION

Strides have been made to ensure the privacy and comfort of rape victims during trials, like in-camera trials, the use of pseudonyms, and medical examinations within 24 hours of the crime. The banning of the finger test, rejection of sexual history as evidence, and especially the release of the 'Handbook on Combating Gender Stereotypes' by the Supreme Court in 2023, reflected a deep understanding of the influence of archaic terms, which were still being frequently used by the judiciary, like chaste, ladylike, and eve-teasing, on society's

¹⁴ Geeta Pandey, 'Outrage as Indian judge calls alleged rape victim 'unbecoming'' BBC (03 July 2020) <<https://www.bbc.com/news/world-asia-india-53261239>> accessed 28 May 2026

perception of rape and who is to be blamed for it.¹⁵ These terms, stemming from a patriarchal viewpoint of the world, not only define and delegate victimhood to certain classes of women but also deny it to others, who are equally deserving of justice but have committed the crime of being socially disadvantaged. The handbook was preceded by several judgments recognising the inherent biases present in many scenarios, and which contributed to a more sensitised judiciary. A few examples of the same could be the case *Lillu Rajesh v State of Haryana*, in which the Supreme Court deemed the past sexual history of the victim irrelevant in rape trials, the case of *Aparna Bhat v State of Madhya Pradesh*, in which it was held that the usage of language demeaning the victim, or trivialising the assault was to be strictly avoided, and the case of *State of Punjab v Gurmit Singh*, in which the Supreme Court declared that if a prosecutrix's testimony was strong, no corroborative evidence or unnecessary questioning of the victim was required.¹⁶ These ongoing changes show that all is not dark and gloomy in the Indian judicial atmosphere, with the efforts taken by the Supreme Court to remedy the past wrongs, reflecting a commendable level of self-awareness.

The courts have historically often been an operating table where the characters of the victims have been dug into and dissected, to ensure a blemish-free canvas on which rape has cast an indelible stain. What they often failed to examine was the lack of consent, the social dynamics, and the cultural narratives that surrounded and consumed the actors in any particular case. While it is impossible to obtain social objectivity, as judges are also humans, the significance of the handbook must be realised in its role of holding up a mirror to the legal system to reveal the destruction that the usage of these seemingly insipid words can cause in the long run. It leads to a vicious cycle, where the courts are influenced by the pillars of ideal femininity, and then their actions serve to strengthen the foundation on which these standards themselves stand.

The call to dismantle these structures, that exist in society and our individual minds, is urgent, and the handbook, accompanied by more gender-sensitive judges, is the need of the hour to help achieve the goal of a world where victimhood is not denied to anyone because

¹⁵ Amrit Dhillon, 'India's supreme court issues handbook against use of archaic terms for women' *The Guardian* (18 August 2023) <<https://www.theguardian.com/world/2023/aug/18/indias-supreme-court-issues-handbook-against-use-of-archaic-terms-for-women>> accessed 28 May 2026

¹⁶ *Lillu @ Rajesh & Anr v State of Haryana* (2013) 2 SCR 774; *Aparna Bhat v The State of Madhya Pradesh* AIR 2021 SC 1492; *The State of Punjab v Gurmit Singh & Ors* (1996) AIR 1393

of their past or birth, but rather one where justice is prioritised in the face of extreme depravity and disregard for human rights.