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BEYOND THE CRIME: SECONDARY VICTIMISATION OF RAPE SURVIVORS IN INDIA

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Abstract

This paper examines the phenomenon of secondary victimization faced by survivors of sexual assault within India's criminal justice system, arguing that the legal process often inflicts a second layer of harm beyond the original crime. Drawing on the neurobiology of trauma, the paper explains how trauma disrupts memory, behaviour, and emotional expression, making survivors' responses appear inconsistent with the expectations of police, doctors, prosecutors, and judges. It critiques the persistence of the "ideal victim" stereotype, which privileges a narrow and unrealistic image of victimhood shaped by patriarchal and cultural notions of purity, honour, and credibility. The paper further shows how institutional hostility manifests at multiple stages: during FIR registration, medical examination, investigation, cross-examination, and media reporting. These practices not only undermine the survivor's dignity and privacy but also shift the burden of proof onto the complainant, thereby distorting the presumption of innocence and violating constitutional guarantees under Article 21. By engaging with recent judicial observations and contemporary cases, the paper highlights how procedural failures and identity disclosures contribute to social death, psychological breakdown, and in some cases, suicide. It concludes that meaningful gender justice requires trauma-informed policing, mandatory use of Vulnerable Witness Deposition Centres, recorded single-point testimonies, strict anonymity protections, and a shift from a purely punitive framework to one that includes state-backed psychological rehabilitation. Only then can the justice system cease to function as a secondary abuser and begin to operate as a genuine site of healing and protection.

Keywords – Secondary victimization; sexual assault survivors; trauma-informed justice; ideal victim; Article 21.

I. INTRODUCTION

In March 2026, the Supreme Court of India issued a judgement criticizing the police officers involved in the case of a 4-year-old rape survivor from Gurugram. Instead of helping, the investigating officers tried to dissuade the mother from filing a First Information Report (FIR). They warned her that taking the case to court would make the next three years "hell" for her family.²⁵¹ Sadly, this is not just a one-time incident of poor policing. It illustrates what happens when the justice system itself becomes an additional abuser. On paper, the law is meant to

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²⁵¹ Aishwarya Iyer, "Shame on You," *Supreme Court Raps Gurugram Police's Conduct In 4-yr-old's Rape Case*, LAWBEAT (Mar. 25, 2026, 8:19 PM), <https://lawbeat.in/top-stories/shame-on-you-supreme-court-raps-gurugram-polices-conduct-in-4-yr-olds-rape-case-1575222>.

provide protection. However, the processes that sexual assault survivors face in India often add another layer of trauma, known as "secondary victimization"²⁵².

Secondary victimization occurs when harm is inflicted upon the victim, not directly from the crime but due to how society and its institutions handle them. This harm can result from insensitive questioning, repeated exposure to the perpetrator, or inappropriate comments from those interacting with the victim. At the core of this problem is what psychologists call "institutional betrayal."²⁵³ This happens when places designed to protect individuals, like police stations, hospitals, and courts, respond to trauma with doubt, hostility, or negligence. To understand why the system fails so often, it is helpful to examine the legal framework through Nils Christie's idea of the "ideal victim."²⁵⁴ In India, society has a strict expectation for how a "real" victim should behave: she should be physically injured, openly cry for help, and be morally "pure." However, the reality of psychological trauma does not fit this mold. When a survivor's brain reacts to an assault - perhaps by freezing up or emotionally disconnecting - it contradicts society's expectations. Instead of recognizing the neurobiology of trauma, the legal system often uses these natural responses against the survivor.

As a result, the most fundamental principle of our justice system gets turned upside down. While the accused is rightfully presumed innocent until proven guilty, the survivor is often treated like a liar until she shows proof of her suffering. This chapter examines how cultural myths, social stigma, and aggressive legal processes combine to violate a survivor's basic right to live with dignity under Article 21²⁵⁵ of the Indian Constitution. It also calls for urgent, trauma-informed reforms to improve the system.

II. Understanding Trauma and the Criminal Justice System

a. Neurobiology of Trauma

In order to understand why the legal system often fails survivors of trauma, we need to look at the difference between what the legal system expects and how the human brain really handles trauma. The criminal justice system wants survivors of trauma to remember everything clearly, like a tape recorder. The police and defense lawyers want a story about what happened in the right order with all the details.²⁵⁶ In the article, *Incredible Women: Sexual Violence and The Credibility Discount* by Tuerkheimer²⁵⁷, it is implied that the legal system demands that an accuser repeat their testimony without any variation from the initial testimony they gave to the police. This is not possible, as when something traumatic happens, the brain does not work that way. The trauma memory is fragmented, not linear. During an assault, the hippocampus is impaired due to the high levels of stress hormones released, which makes it difficult for the brain to encode and consolidate the information. Hence, the memories get stored in a fragmented form, which makes the recall slow and difficult. When a person is attacked, the part of the brain that deals with fear, the amygdala, takes over to help the person survive. In the case of sexual assault

²⁵² Martin Symonds, *The "Second Injury" to Victims of Violent Acts*, 70 AM. J. PSYCHOANAL. 34, 34-41 (2010).

²⁵³ Carly Parnitzke Smith & Jennifer J. Freyd, *Institutional Betrayal*, 69 AM. PSYCHOLOGIST 575 (2014), <https://psycnet.apa.org/doiLanding?doi=10.1037%2Fa0037564>.

²⁵⁴ NILS CHRISTIE, *FROM CRIME POLICY TO VICTIM POLICY* 17-30 (Ezzat A. Fattah 1986).

²⁵⁵ INDIA CONST. art. 21.

²⁵⁶ JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* 25-45 (Basic Books 1997).

²⁵⁷ Deborah Tuerkheimer, *Incredible Women: Sexual Violence and The Credibility Discount*, 166 U. PA. L. REV. 1, 2017.

victims, the information going into the victim's brain is traumatic and horrifying, which causes the amygdala to recognize it as a threat to the sustainability of the victim, much like an attempted murder is. The amygdala then signals the hypothalamus, which then signals the pituitary gland, and the HPA axis kicks in, and causes a hormonal flood in the victim's body. These hormones impair the part of the brain that controls rational thoughts - The Prefrontal Cortex. Then the victim cannot even think of the options to defend themselves, let alone execute them. Opiates, along with morphine, is released in very high levels during a sexual assault, which causes the emotional blunting of victims. This can seem counterintuitive to both the victim and the other people.²⁵⁸

b. Trauma versus Legal Expectations

The law usually looks for signs that the person fought back, like hitting or screaming, to show that they did not agree to what happened. But science shows that many survivors of trauma experience something called "tonic immobility" when they are very scared. This is often referred to as "rape-induced paralysis". This means their body freezes. It is an autonomic mammalian response where the survivor is unable to fight back or make any noise. Human bodies are wired for a freeze response too in extremely fearful situations - to play or look dead, because that might be the safest thing to do for survival. Investigators and defense lawyers often think that it means the person agreed or wanted that. By expecting people who have been through trauma to think clearly and calmly, the legal system sets a standard that's impossible for most survivors of trauma to meet. The legal system fails survivors of trauma because it does not understand how the human brain handles trauma.

III. The Myth of the "Ideal Victim" in Indian Society

a. Nils Christie's Ideal Victim Theory

In India, people often misunderstand what it means to be a victim of a crime. This misunderstanding is not about the crime itself, but it is also influenced by the stories and ideas that Indian culture tells about how a real victim should act. When a woman is a victim of a crime in India, it is not just seen as a violation of her body. It is also linked to the idea of family honor, which is often referred to as "izzat". Just because family honor is so important, society has created a strict idea of who deserves to be helped and protected by the law.

According to this idea, an "ideal victim"²⁵⁹ like the one described by Nils Christie must be a woman who was attacked by a stranger in a dangerous place. She should have fought back bravely, have injuries that can be seen, and should have reported the crime right away while crying.

b. Purity, Honour, and Patriarchal Expectations

But the truth is that most of the time, this is not what happens when someone is sexually assaulted. Statistically, most survivors know their attackers, and hence, there is no "stranger-danger" struggle²⁶⁰. This trauma often leads to emotional numbing and a flat affect rather than

²⁵⁸ Rebecca Campbell, *The Neurobiology of Sexual Assault: Implications for Law Enforcement, Prosecution, and Victim Advocacy*, NAT'L INST. JUST. (Dec. 1, 2012), <https://nij.ojp.gov/media/video/24056#transcript--0>

²⁵⁹ NILS CHRISTIE, FROM CRIME POLICY TO VICTIM POLICY 17-30 (Ezzat A. Fattah 1986).

²⁶⁰ See generally NAT'L CRIME RECORDS BUREAU, MINISTRY OF HOME AFFAIRS, CRIME IN INDIA 2022 (2023).

crying loudly²⁶¹. The fear of being judged, blamed, and bringing shame to their family often means that people delay reporting the crime by months or years²⁶². When a survivor enters a police station showing this complicated reality, she sharply conflicts with cultural expectations. Because she does not seem or act like the “ideal victim”, people think that she must be lying. This cultural bias is not something that happens only in society, but it also affects the justice system. So, when someone who has been attacked tries to get help, they have to deal with not only their attacker but also with the burden of societal expectations.

IV. INSTITUTIONAL BETRAYAL WITHIN THE CRIMINAL JUSTICE PROCESS

a. Police Hostility and FIR Registration

When a sexual assault survivor tries to get help from the criminal justice system of India, they have to deal with a lot of problems. This is because there are a lot of misunderstandings and myths about what they have been through²⁶³.

The first big problem is when they try to file a First Information Report or FIR. This is where they often face the worst of what's called secondary victimization. The law says that the police have to write down the FIR when someone reports a sexual assault. But in real life, the police station can be a really tough place for the survivors of sexual assault. The police officers sometimes do not believe them right away because of their own cultural biases. As highlighted by the Supreme Court's March 2026 ruling, the court reprimanded the police who were trying to suppress a child abuse FIR, and pressuring the family to drop the charges as it would lead to years of “hell”²⁶⁴. This is not how it is supposed to be. This inverts the foundational tenet of the legal system. The accused is no longer presumed innocent until proven guilty; rather, the survivor is presumed deceitful until she proves herself destroyed²⁶⁵. The burden of proof aggressively shifts onto her shoulders before an investigation even begins.

b. Medical Examination and Secondary Trauma

If the survivor is able to get through the police station, they still have to go through a medical examination. While the Supreme Court of India has banned the “two-finger” test because it is degrading and not scientifically based, the patriarchal thinking that led to this test still exists in the hospital wards²⁶⁶. Survivors often say that they are asked insensitive questions by the medical staff. They do not get any privacy, and the kind of care that they need when they are being examined for evidence. To make things worse, there is always a risk that their identity will be made public. Even though the law says that it is a crime to publish the name of a rape survivor, sometimes the police, hospital staff, and people in the neighbourhood will still share the details²⁶⁷. In a society where people care a lot about purity, this can be socially damaging for

²⁶¹ See Bessel A. van der Kolk, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (2014).

²⁶² *State of Punjab v. Gurmit Singh*, MANU/SC/0366/1996 (India).

²⁶³ See generally Pratiksha Baxi, *PUBLIC SECRETS OF LAW: RAPE TRIALS IN INDIA* (2014).

²⁶⁴ Aishwarya Iyer, “Shame on You,” Supreme Court Raps Gurugram Police's Conduct In 4-yr-old's Rape Case, *LAWBEAT* (Mar. 25, 2026, 8:19 PM), <https://lawbeat.in/top-stories/shame-on-you-supreme-court-raps-gurugram-polices-conduct-in-4-yr-olds-rape-case-1575222>.

²⁶⁵ Deborah Tuerkheimer, *Incredible Women: Sexual Violence and the Credibility Discount*, 166 U. PA. L. REV. 1, 15 (2017).

²⁶⁶ *State of Jharkhand v. Shailendra Kumar Rai*, MANU/SC/1411/2022 (India).

²⁶⁷ BHARATIYA NYAYA SANHITA 72.

sexual assault survivors. These institutions are supposed to help the survivors of assault. But sometimes they make things worse.

c. Courtroom Cross-Examination and Legal Humiliation

If a survivor manages to get through the police and medical process, she then faces the courtroom experience. In the courtroom, the legal right to cross-examination is frequently distorted into a tool used for humiliating the survivor. In theory, the law protects her. Amendments to the Indian Evidence Act, specifically Sections 146 and 155, were explicitly designed to prohibit defense lawyers from bringing up a survivor's general "immoral character" or past sexual history to discredit her²⁶⁸. However, in practice, defense tactics often exploit ingrained cultural myths to get around these protections. They try to confuse the survivor by questioning her actions, memory, and emotional state. This provokes a natural trauma response, which causes the state of dissociation or confusion, and this is weaponized by the defense as proof of an unreliable testimony²⁶⁹.

d. Media Trials and Public Revictimization

This institutional betrayal extends far beyond the physical courtroom, spilling into the public domain through catastrophic procedural negligence.

In March 2026, the Supreme Court of India issued a stark warning regarding a "disturbing fact" and "general indifference" among trial courts and investigative agencies that illegally disclose survivors' identities in official case records²⁷⁰. This is not just a mistake; it leads to societal revictimization. When judicial records leak a name, it leads to the parallel trials run by the media outlets. They sensationalize the story, broadcasting it to a public, primed by purity culture, that often blames the survivor²⁷¹.

The courtroom and media processes can be very traumatic for sexual assault survivors. They need to be handled with care to protect the survivor's rights and dignity.

V. Article 21, Dignity, and the Social Death of Survivors

a. Right to Life and Dignity

The psychological toll of fighting this war on many fronts - against the attacker, the culture, the media, and the justice system - is huge. Even though Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which the Supreme Court has interpreted as the right to live with dignity, the way society and systems treat survivors is an ongoing violation of this basic right²⁷².

b. Psychological Consequences and Social Exclusion

When society and the State completely abandon a survivor, the results are often deadly. One such tragic case is that of a lady doctor in Phaltan, Maharashtra, which is a grim reminder of this. After alleging rape and facing subsequent severe harassment and apathy from the Police and other administrative officials, she died by suicide. Her death was not a sad reaction to the initial

²⁶⁸ Indian Evidence Act, 1872, 146 proviso (India).

²⁶⁹ See generally Pratiksha Baxi, PUBLIC SECRETS OF LAW: RAPE TRIALS IN INDIA (2014).

²⁷⁰ Krishnadas Rajagopal, Supreme Court Flags Repeated Breaches of Law on Disclosure of Sexual Assault Survivors' Identity, THE HINDU (Mar. 28, 2026, 10:32 AM), <https://www.thehindu.com/news/national/sc-flags-repeated-breaches-of-law-on-disclosure-of-sexual-assault-survivors-identity/article70792238.ece>.

²⁷¹ Flavia Agnes, Law, Ideology and Female Sexuality: Gender Deficit in Indian Criminal Justice System, 37 ECON. & POL. WKLY. 844, 846 (2002).

²⁷² INDIA CONST. art. 21.,

attack, but it was the result of a system that made seeking justice more psychologically unbearable than the crime itself²⁷³. For many survivors, the legal process results in a “social death” that feels like a complete loss of their life and seclusion from their community. They lose their jobs and get stuck in a cycle of trauma that destroys their will to live.

Ultimately, survivors face a multitude of systemic problems, navigating a justice system that is intensely hostile to them. They urgently need trauma-informed support and care, rather than institutional betrayal.

VI. CONCLUSION

True gender justice in India is impossible as long as the legal system views a woman merely as the "scene of the crime" or a piece of evidence needed to secure a conviction²⁷⁴. To dismantle this architecture of secondary victimization, India needs to make changes in procedures and structure.

In the short term, systemic relief requires immediate procedural firewalls to protect the survivor from the machinery of the court. Beyond mandating rigorous, neurobiology-based trauma training for first responders, the judiciary must universally enforce the use of Vulnerable Witness Deposition Centres (VWDCs) for adult survivors of sexual assault²⁷⁵. This way, survivors do not have to be in the room with the accused during cross-examination. Also, the way investigations are done needs to change. Investigative protocols must strictly enforce single-point, audio-video recorded testimonies to spare the survivor the agonizing trauma of repeatedly narrating her assault to different officials. Trial courts must also face swift administrative penalties for failing to redact survivor identities, treating anonymity as a non-negotiable right rather than a clerical afterthought.

In the long term, the legal framework must shift from being purely punitive to genuinely restorative. Currently, the Indian justice system severely lacks a statutory mandate for the psychological rehabilitation of adult survivors. Even progressive legislation like the Prevention of Sexual Harassment (POSH) at Workplace Act, 2013, merely commodifies trauma by allowing financial compensation to be deducted from the perpetrator's salary, without legally obligating the employer to fund the survivor's long-term psychological therapy.²⁷⁶ The right to state-sponsored, confidential psychiatric care must be codified as a fundamental right for all survivors of gender-based violence. Until the system commits to healing the minds it has helped break, the law will remain a secondary abuser, and the courtroom will remain a second crime scene.

²⁷³ Saikat Kumar Bose, *Puja, Photo Fight, Final Call For Help: Dead Doctor's Phone Reveals Details*, NDTV (Oct. 28, 2025, 12:14 PM), <https://www.ndtv.com/india-news/satara-doctor-suicide-puja-photo-fight-final-call-for-help-dead-doctors-phone-throws-up-twist-9528905>.

²⁷⁴ See generally Pratiksha Baxi, *PUBLIC SECRETS OF LAW: RAPE TRIALS IN INDIA* (2014).

²⁷⁵ See *Smruti Tukaram Badade v. State of Maharashtra*, 2022 SCC OnLine SC 78 (India).

²⁷⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, 15(3), No. 14, Acts of Parliament, 2013 (India).