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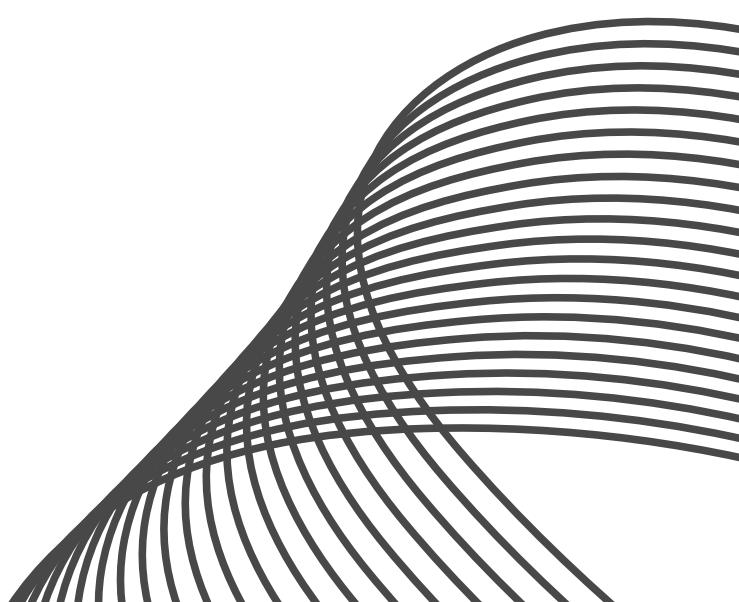
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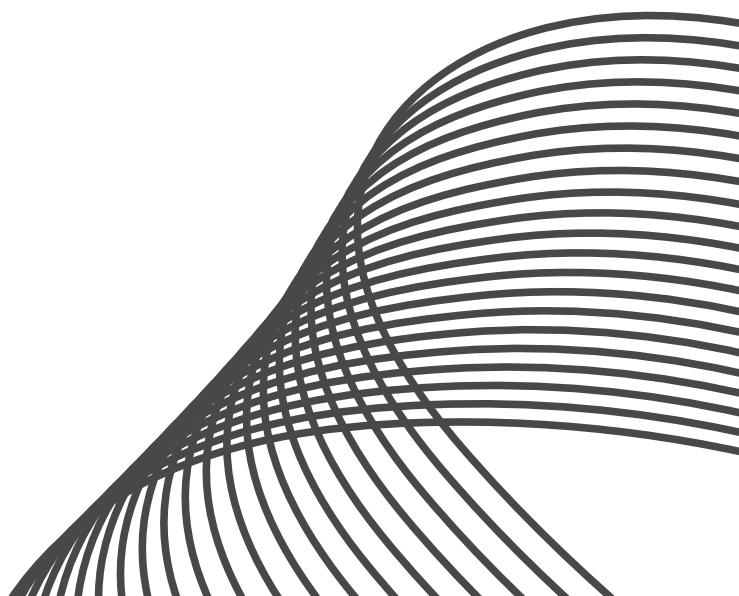


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REWRITING THE MATHURA RAPE CASE FROM A QUEER-FEMINIST LENS

~ Jyotsna Panicker ¹

Abstract

The Mathura rape case (Tukaram v State of Maharashtra, 1978) is one of the biggest failures of Indian criminal jurisprudence, which revealed the deep entrenchment in patriarchal, casteist, and heteronormative assumptions of the Indian Judiciary. This article revisits and rewrites the case from a queer-feminist lens, by reframing the legal analysis around the matters of consent, coercion, institutional injustice, victim's vulnerability and legal morality. This article highlights that the Supreme Court's reasoning based on absence of any injuries, prior sexual history, and silence of the victim have created colonial and patriarchal beliefs about the idea of consent. By re-interpreting the case through feminist jurisprudence, intersectionality, and updated constitutional standards, this article proposes doctrinal and institutional reforms essential to building a gender-just legal system.

¹ You may contact the author at the following email address: jyotsnapanicker0403@gmail.com.

INTRODUCTION:

On the night of 26th March 1972, an orphaned, Adivasi minor girl named Mathura between the ages of 14 and 16 years was sexually violated by two police officers, Tukaram and Ganpat in police custody at the Desai Ganj police station in Maharashtra. Mathura was summoned to the police station due to her alleged abduction by her employer. While the others were allowed to leave the police station, Mathura was not allowed to leave. During this period, she was raped by Ganpat despite her multiple protests and molested by Tukaram, although the Tukaram was considered as too inebriated to perform the heinous act. When Mathura complained about the sexual harassment, she was put through to gratifying medical examinations that majorly concentrated on her being sexually active instead of investigating the sexual assault endured by her. The Sessions Court acquitted both officers on the grounds of “consent” from the victim because there were no injuries on her body, and she was sexually active, hence she must have also consented to the acts of the perpetrators. The Bombay High Court overturned the acquittal and convicted the accused for their crimes. However, the Supreme Court of India, in its 1979 judgment, again acquitted the accused on the grounds of lack of resistance and physical injury as indicators of consent.

This case is infamously known as the Mathura rape case which represents one of the most atrocious failures of the Indian judicial system who failed to protect the dignity and human rights of a minor, Adivasi girl who was sexually assaulted in police custody. This case was a failure of the Indian judiciary yet it a crucial in the history of the feminist movement in India, causing nationwide protests and women's rights campaign which resulted in the legislation of the Criminal Law Amendment Act of 1983, like the enactment of Section 228A IPC.²

THE FAILURE OF ORIGINAL JUDGMENT

The judgment of the Supreme Court of India has outlined the facts of this case in a problematic manner that highlight the patriarchal ideology of the Indian Judiciary and society in that era:

- i. **Character Assassination:** Mathura's was painted not as a victim but as a promiscuous girl due to her past sexual relations despite her being a minor.
- ii. **Misinterpretation of Consent:** Her lack of resistance was interpreted as her consent despite the presence of police coercion.

² Tukaram and Another v State of Maharashtra AIR 1979 SC 185, 1979 SCR (1) 810.

- iii. **Credibility:** Her evidence was doubted and blatantly disregarded based on the outdated and patriarchal standards of morality applied to victims of sexual assault.
- iv. **Erasure of her tribal and socio-economic identity:** Her Adivasi status, poverty and financial difficulties were ignored.

WHY QUEER-FEMINIST LENS OF THIS JUDGMENT?

The Indian Judiciary needs to shift its jurisprudential analysis from a woman's morality to the state's failure in protection a woman's bodily autonomy. Instead of viewing her sexual autonomy as a problem, the failure of institutional frameworks to perceive the lived reality of women's powerlessness should be rectified. When judiciary values archaic views on a woman's sexuality and autonomy, its decisions emphasise protection of patriarchal values. Justice cannot be the mechanical application of criminal laws to physical harm, but it also needs to be aware of the power imbalance, socio-economic disparities, caste hierarchy, and silencing of the other genders particularly when the survivor is a minor, a tribal girl, and the accused were appointed as the guardians of the law.³

A queer-feminist analysis of the Mathura case emphasises that:

- Consent in cases of sexual assault is never neutral but shaped by power
- Bodily autonomy cannot be determined through injuries or physical force
- Victims' traumas vary due to their marginalisation in different aspects
- Judiciary's fixation on chastity, virtue and resistance reflects outdated, heteronormative and patriarchal value systems applied to law.

This queer-feminist lens for the judgment is not just theoretical. It also attempts to reform the legal understanding of:

- Custodial rape
- Power imbalance within state institutions
- Credibility of marginalised survivors
- Interpretation of sexual assault using constitutional morality.

By examining and rewriting this landmark case, this article attempts to redefine the legal understanding of sexual violence, most significantly, against State institutions who should not

³ Devisha Dayal, 'Double Standard: Tukaram and Anr. vs The State of Maharashtra' (2023) 4(6) Indian Journal of Law and Legal Research <https://www.ijllr.com/post/double-standard-tukaram-and-anr-vs-the-state-of-maharashtra>.

blame the victims of sexual assault. This article will be diverging from conventional patriarchal and heteronormative standards of sexual autonomy that have been controlling and silencing marginalized voices. Hence, I will be rewriting the judgment from a queer-feminist perspective to reform the doctrinal and ideological foundations of that judgment.

CONSENT: THE FALLACY OF CHOICE:

The Supreme Court in its earlier judgment has incorrectly interpreted the absence of visible wounds and physical resistance as a proof of consent.⁴ This analysis fails to consider the traumatic experiences of many victims of sexual violence, especially those from socially and economically backward part of society. Presuming that a bodily injury must be the only or at least the most visible evidence for lack of consent reinforces a toxic patriarchal fallacy: that the "true" victim must register her resistance by a physical, violent means. Such a fallacy is not only devoid of medical rationale, but also a social understanding.

This article firmly believes that silence, lack of physical resistance, or prior sexual experience cannot be considered as presumptions of victim's consent. The belief that a woman who does not physically resist her perpetrator, scream, or show physical proof of any injury on her body has thereby consented is a vestige of law based on the ideology of an outdated era in which women were viewed as objects and not as individuals with their own sexual autonomy and human rights. As feminist scholars and advocates of feminist jurisprudence have constantly argued that coercion can be psychological, structural, and is usually embedded in the very foundation of power relations. In Mathura's case, she was a young, orphaned, Adivasi girl, called to a police station at night, where two armed, male police officials, intentionally coerced themselves on her. She had no way to leave, had no protector, and had no ability to dissent.

AGE AND STATUS: VICTIM'S VULNERABILITY:

Trial court's findings about Mathura's sexual history based on the archaic two-finger test and the state of her hymen is a deep-seated failure to comprehend legal principles and medical understanding of female autonomy. The two-finger test is scientifically flawed to determine sexual experience and has been universally condemned by all Indian and international medical associations. The use of this test in judicial proceedings leads to additional trauma for survivors

⁴ Dr Navin Kumar, 'Shaping Justice: The Legacy of Mathura Rape Case on Indian Legal System' (2025) 7(1) GLS Law Journal.

and annihilates their bodily autonomy. The questioning of Mathura's sexual history was not only irrelevant but was also used to disregard her credibility.

In *State of Maharashtra & Ors. v. Madhukar Narayan Mardikar of 1991*,⁵ the Supreme Court adjudicated that a woman's sexual history or perceived unchastity doesn't abolish her right over her bodily autonomy and the judiciary's obligation to safeguard it. This case involved a woman named Banubi with alleged dubious reputation, who filed a complaint against a police inspector for attempted rape. The Supreme Court of India held that every woman, irrespective of her sexual or social position, is entitled to dignity, privacy, and protection of the law. It emphasized that a woman has the right to refuse sexual advances like any person irrespective of her virtue, and her credibility should not be dismissed on the patriarchal grounds of morality. This decision established an important reinforcement of sexual autonomy and integrity of women in cases of sexual assault.⁶ Relying upon evidence of past sexual history as a representation of consent is unconstitutional as it not only violates the victim's dignity and privacy.

As per the doctor's medical report, Mathura's age is between 14 and 16 years. Sexual intercourse with a girl below 16 years of age is rape, with or without her consent, under Section 375 IPC, 1860.⁷ Accordingly, the assumption that Mathura "consented" irrespective of her age due to her past sexual history is violation of criminal law. The trial court's refusal to consider this provision and its unjustified scepticism regarding Mathura's age based on a preconceived notion that an active girl will always be over her claimed age is unconstitutional. Such absurd reasoning is saturated with caste, class, and gender biases, which the judiciary must remove from its ratio.

POWER AND COERCION: CUSTODIAL RAPE:

This article emphasizes that custodial rape by state authorities is an aggravated form of sexual assault. The coercive nature of the situation is not necessarily overt but is deeply ingrained in the very power imbalance. To expect a woman like Mathura, to physically resist when in a police station deliberately ignores the impact of fear, trauma, and helplessness. The reasoning of Supreme Court not only misinterpreted the facts; it also did not understand that institutional power, exercised without accountability, is perpetuating violence. The illegal confinement of Mathura by police officers resulted in sexual assault which makes this case of a custodial rape.

⁵ State of Maharashtra and Ors v Madhukar Narayan Mardikar AIR 1991 SC 207, (1991) 1 SCC 57.

⁶ Shalu Nigam, 'From Mathura to Farooqui Rape Case: The Regressive Patriarchy Found Its Way Back' (9 October 2017) SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3049756

⁷ Indian Penal Code 1860, s 375.

The contention that fear must be for “death or serious injuries” to invalidate consent is disturbing. Fear of authority, particularly in police custody, is a legitimate reason for fear. The assumption that fear is only justified when it puts life or bodily integrity at risk overlooks the dynamics of coercion, silence, and subordination that often replace physical combat with immobilizing fear.

REWRITING THE DOCTRINE OF CONSENT:

DEFINITION OF CONSENT:

Judicial interpretation of consent must evolve with the changing social realities and fundamental constitutional principles.⁸ Consent is not defined by the absence of a "no," but by the existence of a willing "yes" that is freely exercised, with complete autonomy, within an environment of equality. A modern and constitutionally integrated understanding of consent recognizes that:

- **Consent must be explicit, voluntary, and affirmatively communicated:** Consent cannot be defined by the absence of a “no”, it requires the presence of a “yes” free from coercion, manipulation, misinterpretation and cannot be inferred from silence, absence of resistance, restrained compliance, power imbalance or fear.
- **Validity of consent is determined by circumstances:** Consent is not just an abstract, body-neutral concept. It must be seen within existing power structures, social hierarchies, and structural vulnerabilities.

INDICATORS OF CONSENT:

Supreme Court’s judgment in Mathura case adjudicating that the evidence of physical resistance/injuries is important to prove lack of consent establishes unfair patriarchal standards for the “real victim” character of a woman who is sexually assaulted. This stereotype claims that rape victims must scream, try to fight back, have visible injuries and must try to resist their perpetrators to the extent of suffering from bodily harm.

This harmful standard ignores decades of psychological research which proves that power imbalance, fear, shock, and trauma often immobilize sexual assault victims. Feminist criminologists call this “tonic immobility”, where a paralysis-like state is triggered by extreme fear which is a well-documented response to sexual assault.⁹

⁸ Shaurya Aggarwal and Rahul Rathee, ‘Tukaram and Ors v State of Maharashtra (Mathura Rape Case)’ (2020) 3(5) Amity University, Noida, India.

⁹ Mathilde Genest, ‘Survivors of Sexual Assault on the Stand: A New Feminist and Victim-Centered Bioethical Framework to Discuss Justice and Trauma’ (2023) 25(8) Journal of International Women’s Studies 3.

Hence, the absence of visible injuries on Mathura's body should not be considered as a sign of her consent to the sexual assault. This demonstrates the Court's profound misunderstanding of the neuropsychological effects of sexual offence.

PAST SEXUAL HISTORY IS IRRELEVANT:

The Supreme Court's claiming that Mathura's past sexual relations are an indicator of her supposed immoral character proved the patriarchal doctrine that a woman loses her credibility if she has been sexually active. This logic:

- violates her constitutional right to dignity under Article 21 of the Constitution.¹⁰
- contradicts the Equal Protection guarantee by law under Article 14.¹¹
- reinforces moral policing of female sexuality and bodily autonomy
- operates as an oppressive tool which discriminates based on caste, gender, region etc which violates Article 15.¹²

The post-2003 amendments to ¹³Section 53A and the proviso of Section 146¹⁴ of the Evidence Act expressly prohibit bringing up past sexual history which has also been incorporated into the recently legislated ¹⁵Section 48 and Section 149¹⁶ of Bharatiya Sakhyam Adhiniyam, 2023. But the queer-feminist critique goes further: it exposes how such evidence is used to impose heteronormative, caste-pure constructions of "chastity."

INTERSECTIONALITY TO RECOGNIZE MULTIPLE AXES OF OPPRESSION:

The Supreme Court in this case, considered Mathura only as "a woman" in a sexual assault incident. This erasure of her identity as a poor, orphaned, minor, Adivasi female who was held captive in police custody with limited access to education and legal remedy removed the composite structural disadvantages she faced due to her marginalized life. All these characteristics have moulded the nature of her vulnerability, her autonomy to resist the assault and the credibility of her evidence.

¹⁰ Constitution of India 1950, art 21.

¹¹ Constitution of India 1950, art 14.

¹² Constitution of India 1950, art 15.

¹³ Indian Evidence Act 1872, s 53A.

¹⁴ Indian Evidence Act 1872, s 146.

¹⁵ Bharatiya Sakhyam Adhiniyam 2023, s 48.

¹⁶ Bharatiya Sakhyam Adhiniyam 2023, s 149.

Mathura's social atmosphere as a marginalized, orphaned, Adivasi girl child should have been considered while adjudicating the judgment of this case. It is necessary to understand the role of intersectionality in the legal framework of sexual violence. Women are not just oppressed in a one-dimensional manner; but their experiences are formed through various, overlapping dimensions of marginalization like caste, class, age, and institutional access. The judiciary must be held accountable to integrate this intersectionality into legal framework of sexual assault and consent. A victim like Mathura would face a different kind of oppression compared to upper-caste, upper-class, urban elite woman. Her fear, her silence, and her responses is a sign of systemic oppression faced by her.

CONCLUSION:

The Mathura rape case acts as a cautionary tale of judiciary of how deeply entrenched patriarchy, caste hierarchies, and institutional power imbalance can destroy principle of justice. By examining and rewriting the judgment via a queer-feminist lens helps to establish that the original judgment was not just flawed and unjust, it was also structurally failed to acknowledge the marginalization of a poor Adivasi, orphaned girl child who was a victim of custodial sexual assault. By using outdated indicators of consent like physical resistance, sexual history, and moral credibility, the Supreme Court upheld the colonial and patriarchal standards of women's sexual autonomy which aims to systematically disregard survivors and protect their violent perpetrators.

A queer-feminist understanding of this judgment establishes a feminist jurisprudence which incorporates factors like bodily autonomy, intersectional vulnerability, and constitutional morality in the matter of consent in cases of sexual assault. This paper further stresses that consent doesn't exist in police custody, silence is not consent, and structural coercion and power imbalance must be considered as sexual violence. It attempts to redefine sexual assault not just as a physical act but also as an abuse of power deeply ingrained into social, economic, and institutional aspects of our society.

This article attempts to correct the grave injustice inflicted upon Mathura and many other marginalized survivors. It asserts that the law must progress beyond the narrow statutory interpretation and integrate survivor-centric, intersectional, and consent-based legal principles. In conclusion, reviewing the Mathura rape case is not just about rectifying a historical mistake but

also about visualizing a feminist narrative for Indian criminal jurisprudence where the law and judiciary listens, protects and provide remedies to the victims of sexual violence and punish the perpetrators of such heinous acts.

