

THE LANGUAGE OF EVIDENCE IN RAPE TRIALS

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Sexual assault laws have been amended on several occasions to make the criminal justice system more sensitive to the tribulations of the prosecutrix. However, the manner in which these reforms are implemented in the courtroom and the kind of language that is used by the advocates and judges are instrumental in achieving its objective. In this paper, the reforms mandating in camera trials for rape cases, and excluding past sexual history from evidence have been examined. It is argued that the language used inside the courtroom may serve to defeat the purpose of these reform measures. This argument is based in the premise that language is not merely a means of putting forth evidence in a case, but it in fact transforms the nature of evidence itself, thus influencing the outcome of the case.

I. INTRODUCTION

That rape trials victimise the rape survivor¹ a second time over, has often been stated by activists, policy makers and judges alike.² Indeed, she is subjected to a series of harrowing experiences, from the medico-legal examination to harassment by the police, disturbing cross-examinations and in several cases, the questioning of her character by lawyers, judges and the public.³

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1 The term “survivor of rape” and “prosecutrix” have been used interchangeably here.

2 See *State of Madhya Pradesh v. Babulal*, A.I.R. 2008 SC 582 (Supreme Court of India).

3 LAW COM. OF INDIA, 84TH, REP. ON RAPE AND ALLIED OFFENCES: SOME QUESTIONS OF SUBSTANTIVE LAW, PROCEDURE AND EVIDENCE (1980).

To make the process of rape trials less painful for the survivor, amendments to criminal law statutes and the Indian Evidence Act have been made over several decades, beginning in 1983⁴ in the aftermath of the Mathura gang-rape case.⁵ The amendment Act of 2013 is the most recent attempt made by the legislature towards this end, prompted by the Delhi gang-rape case⁶ of December 16, 2012,⁷ etched in public memory as the Nirbhaya case. Two of the reforms brought about as part of these rape shield legislations include mandating *in camera* trials,⁸ and reforming the evidentiary rules to make evidence adduced with respect to the character of the victim, or her sexual history, irrelevant.⁹

In this article, the rationale behind these two reforms, and how it may be defeated as a result of the nature of language of the evidence that is used in rape trials, has been researched. The central premise of this article is that language is not merely a passive mode for the imposition of law, but its peculiar nature actually transforms the evidence, and consequently, the outcome of the trial itself.¹⁰ The aim of this paper is not to provide a solution to this problem, which is likely to subsist in a patriarchal society. The researcher only seeks to highlight the limitations of reforming the letter of the law.

II. THE PECULIARITY OF RAPE TRIALS

The facts of sexual intercourse and lack of consent are the two ingredients of the offence of rape.¹¹ Therefore, the following are usually, the facts in question in a rape trial:

4 Criminal Law (Amendment) Act, 1983.

5 *Tukaram v. State of Maharashtra*, A.I.R. 1979 SC 18 (Supreme Court of India).

6 *State (Government of NCT of Delhi) v. Ram Singh*, SC No. 114/2013 (Additional Sessions Judge, Saket District Court, Delhi).

7 Criminal Law (Amendment) Act, 1983, Indian Evidence (Amendment) Act, 2003, Criminal Law (Amendment) Act, 2013.

8 Sec. 327, Code of Criminal Procedure, 1973 and Sec. 37, Protection of Children from Sexual Offences Act, 2012.

9 Section 327, Cr.P.C. and Section 53A, Indian Evidence Act, 1872.

10 GREGORY M. MATOESIAN, *LAW AND THE LANGUAGE OF IDENTITY* 212 (2001) [hereinafter *Matoesian*].

11 Sec. 375, Indian Penal Code, 1860.

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1. Did sexual intercourse take place between the accused and the victim/survivor?
 2. Was such sexual intercourse non-consensual?

In order to prove or disprove the above, several other facts are required to be made legally relevant. A fact may be made legally relevant under Chapter II of the Indian Evidence Act.¹² Once it is made legally relevant, its logical relation to the offence is irrelevant. If a fact is made specifically irrelevant, no evidence can be adduced to prove it. The purpose of this 'Rule of Best Evidence,' is often to limit what lawyers may do during a trial.¹³ This Rule forms the foundation of the Indian Evidence Act, as opposed to the diametrically opposite position wherein all evidence is admitted but the weightage given to each varies.

Several factors which have little probative value may be made relevant under the rules of evidence in India. Their relevance, instead of being backed by logic, is rather embedded in a culture that is *phallogentric* in nature, i.e., understands the 'adult crime of rape' from the point of view of men.¹⁴ For instance, whether right after being raped, a victim made a complaint to someone may be considered relevant as subsequent conduct under Sec. 8,¹⁵ even though this has little probative value as victims may react differently to the offence. Medico-legal evidence such as the presence of fresh hymenal tears,¹⁶ presence of semen stains,¹⁷ capacity of the accused to perform the act of sexual intercourse,¹⁸ all become relevant, apart from facts

12 Sec. 5, Indian Evidence Act, 1872.

13 Peter M. Hazelton, *Rape Shield Laws: Limits on Zealous Advocacy*, 19 AM. J. CRIM. L. 35 (1991-92).

14 See page 3 for further discussion on *phallogentrism*.

15 Section 8 states that "Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact." This section is often used to make subsequent conduct of the victim relevant. In rape trials, the fact that the victim did not inform anyone about the rape immediately after it occurred is used to prove lack of trauma, thus implying the presence of consent.

16 Sec. 7, Indian Evidence Act, 1872. See DEP. OF HEALTH RES., FORENSIC MEDICAL CARE FOR VICTIMS OF SEXUAL ASSAULT-DHR GUIDELINES (2013).

17 See *Hanuman s/o Mahadeo Kuchankar v. State of Maharashtra*, (2010) All. M.R. (Crim.) 1499 (High Court of Bombay).

18 JAISING PRABHUDAS MODI, A TEXTBOOK OF MEDICAL JURISPRUDENCE (2001).
See *Musauddin Ahmed v. State of Assam*, (2009) 14 S.C.C. 541 (Supreme Court of India) and *State of Rajasthan v. Munshi*, (2007) 12 S.C.C. 759 (Supreme Court of India).

such as the relation between the accused and the victim, etc. to establish the first fact in question mentioned above.

For the second fact in question, the burden of proof lies on the prosecution.¹⁹ Except in certain cases,²⁰ it may be required that evidence be adduced with respect to marks of struggle, injuries,²¹ presence of lubrication,²² etc. Earlier, the character of the prosecutrix was often used by the defence to prove consent by drawing the inference of the same by arguing that a woman of “loose character” is likely to have consented to sexual intercourse with the accused. This particular use of character evidence has now been barred.²³

The sections on relevancy in the Indian Evidence Act are very broadly worded, and what becomes relevant in a rape trial depends heavily on the judge’s understanding of sexual intercourse which is more often than not, phallogentric in nature.²⁴ Consent of the woman, and consequently, her pleasure, is expected to coincide with the male definition of pleasure.²⁵

19 Sec. 101, Indian Evidence Act, 1872.

In *State of Punjab v. Gurmit Singh*, 1996 A.I.R. 1393 (Supreme Court of India), it was stated that the Court can act on the testimony of the prosecutrix alone, if the same is found to be truthful and unblemished by contradictions or inconsistencies. This implies that the burden of the prosecution is deemed to be discharged by the testimony of the prosecutrix alone, without any corroboration, but only if the Court is satisfied that her statement is true.

20 Sec. 114A, Indian Evidence Act, 1872.

21 *Sadashiv Ramrao Hadbe v. State of Maharashtra*, (2006) 10 S.C.C 92 (Supreme Court of India), *Radhu v. State of Madhya Pradesh*, (2007) 12 S.C.C. 57 (Supreme Court of India) and *Vinay Krishna Ghatak v. State of Rajasthan*, R.L.W. 2004 (1) Raj 3 (High Court of Rajasthan).

22 *State of Rajasthan v. Hem Raj*, MANU/RH/0662/1986 (High Court of Rajasthan).

23 Character of the prosecutrix was made relevant under Sec. 155(4) of the Indian Evidence Act in order to impeach her credibility. This clause was repealed by the Indian Evidence (Amendment) Act, 2002. However, since character evidence continued to be adduced, it was specifically barred by Sec. 53A in 2013.

24 CAROL SMART, *FEMINISM AND THE POWER OF LAW* (1989.) (hereinafter *Smart*). Smart explains the meaning of phallogentricism in the following words:

“Loosely it implies a culture which is structured to meet the needs of the masculine imperative. However, the term phallogentric takes us beyond the visible, surface appearance of male dominance to invoke sexuality, desire, and the subconscious psychic world. So whilst the term can simply apply to the positive value placed on things identified as masculine, or the way in which specific gendered values have come to dominate, phallogentric has a specific resonance in feminist psychoanalytic work.”

25 *Id.*, at 28.

What she does before, during and after the offence is considered relevant as per the patriarchal logic of sexual rationality.²⁶ For example, patriarchal logic infers consent from discharge during sexual intercourse, ignoring the complexities the female body and the possibility of physical pleasure in the absence of consent. Similarly, consent may also be inferred from the absence of marks of struggle.²⁷ How a victim should feel, what she should say, where she should go, how she is supposed to react to rape are all dictated by this. When made relevant during a trial, the guilt of the accused and the supposed complicity of the prosecutrix are both evaluated along the lines of this patriarchal logic.²⁸

III. THE IMPORTANCE OF LANGUAGE

Language, and the particular way in which it is used, assumes great importance in adversarial trials. Bulk of the evidence in rape trials is not introduced through ‘real evidence,’ but verbally—i.e. through the use of language through testimonies and cross-examination.²⁹ The significance of real evidence also depends upon the use of language as relevance has to be established before evidence is admitted.³⁰ Therefore, the importance of language cannot be overlooked—it is central to understanding how raw data assumes legal significance, which is through courtroom discourse in the first instance.³¹

One may argue that the above is true for all trials, and not just rape trials.³² However, such an analysis betrays ignorance of the fact that trials are embedded in society and culture, and the sexist prejudices that inform our cultural

26 Sec. 8, Indian Evidence Act, 1872.

27 PRATIKSHA BAXI, *PUBLIC SECRETS OF LAW: RAPE TRIALS IN INDIA* (2014) (hereinafter *Baxi*).

28 Matoesian, *supra* note 10, at 218.

29 Matoesian, *supra* note 10.

30 Matoesian provides an example, by showing how sexually charged words maybe used by the defence attorney. In a trial described by him, the defence attorney repeatedly asks the victim why she did not remove her ‘panties’ if she felt dirty after the accused allegedly raped. The victim, on the other hand, uses the word ‘underwear,’ which is gender-neutral and does not have sexual connotations. Using words that have sexual connotations is one method of focusing on sex rather than violence. It also contributes to the creation of an atmosphere that is pornographic in nature.

31 Matoesian, *supra* note 10.

32 David Brereton, *How Different are Rape Trials?*, 37(2) BRIT. J. CRIMINOLOGY 242 (1997), as cited in Matoesian, *supra* note 8.

understanding of rape find their way into the trial context, often through subtle language uses.

1. The Flawed Logic of *In Camera* Rape Trials

In a rape trial, the prosecutrix is expected to talk, in detail, about the incident. This involves naming her body parts, what the accused did to harm them and with which parts of his body.³³ Furthermore, there is extensive detailing with respect to how much penetration there was, for how long, if the accused ejaculated, and if so, where, whether the woman enjoyed the intercourse, etc. in order to point out inconsistencies in the version of the victim.³⁴

While the prosecutrix relives the ordeal as a result of this, the act of providing such details has a direct impact on the evaluation of the demeanour of the witness. In a society where women's bodies are perceived as shameful, her audacity to recreate the incident and in the case of child witnesses, even her knowledge of sex,³⁵ disqualifies her testimony as evidence coming from a woman of "loose moral character," who in all probability, consented to sexual intercourse with the accused. At the same time, the evidence of a prosecutrix who is unable to recount the incident with all its stigmatising details is also disqualified, as coming from a habitual liar. The act of naming one's own sexual parts and verbalising the trauma of rape is considered shameful, while at the same time the prosecutrix is expected to recount, in graphic detail, the act of rape to prove that she is not lying.³⁶ She is expected to "stoutly deny" her role in the act, lest she be considered as being complicit to the act of sexual intercourse in question.³⁷

33 Smart, *supra* note 24, at 39.

34 Such detailing being ignorant of the psychological impact of rape during and after the incident, which renders memory unclear in most cases. Also note that the fact of the duration of penetration or the extent of it are logically irrelevant to whether the rape occurred or not, and the objective of these questions is only to suggest that the prosecutrix is lying and that her complaint was false. This is indicative of a general assumption that an acquittal implies that the complainant-victim lied in order to misuse the law. Such an assumption is also based on the premise that acquittals always imply innocence of the accused, and is ignorant of the possibility of lack of sufficient evidence in a case where the accused actually committed the offence.

35 Baxi, *supra* note 27.

36 State of Madhya Pradesh v. Babulal A.I.R. 2008 SC 582 (Supreme Court of India).

37 Baxi, *supra* note 27, at 21.

Furthermore, the nature of evidence required to be introduced, and the language in which evidence is taken, turns the rape trial into a pornographic spectacle, involving the objectification of the woman's body. Such objectification is sexual in nature, thus turning it into what Smart calls a '*pornographic vignette*.'³⁸ The woman is spoken of as a sexual object, and the use of such language is to the recreation and enjoyment of those present during the trial, such as the lawyers and the judge, and of course, the accused. When the first fact in question is sought to be answered, evidence is adduced with respect to questions such as whether the hymen was intact after the alleged offence was committed, whether penetration was vulval or vaginal, etc. As Das states, a typology of signs is created that move on the surface of the body of the complainant, territorialise it, and constitute it as a sexual body, fit or unfit for sexual intercourse.³⁹

The language of evidence focuses on parts of the woman's body and is used in a way that transforms the accused into a subject and the prosecutrix into someone who is acted upon. The woman is not seen as a whole, but as a "*physical centre for sexual congress*."⁴⁰ Very often, the language suggests that the sexual availability of the prosecutrix is her defining characteristic. For instance, Susan Ehrlich, in her book *Representing Rape*, describes a trial in which the underwear of the victim, which had to be examined for tears and stains, was a black Victoria's Secret. As it was produced in Court, it was obvious that the defence sought to highlight the apparent promiscuity of the prosecutrix.⁴¹ Similarly, emphasis may be laid on serial monogamy, as has been explained through the case of *State v. Mahinder Singh Dahiya* below.⁴²

In their quest to defend the accused by shaking the testimony of the victim, asserting that she consented, and that rape did not occur, lawyers tend to be

38 Smart, *supra* note 24.

39 Taking us back to the argument that the objective of the trial is to establish that the prosecutrix is someone who is capable of being raped, instead of the fact that the rape occurred; Veena Das, *Sexual Violence, Discursive Formations and the State*, 31(35) ECO. & POL. WEEKLY 2411 (1996).

40 JUSTICE VERMA, REP. OF THE COM. ON AMENDMENTS TO CRIMINAL LAW (2013).

41 SUSAN EHRLICH, REPRESENTING RAPE (2001).

42 *State v. Mahinder Singh Dahiya*, 37/2014 (Additional Sessions Judge, Tis Hazari Courts, New Delhi).

markedly gruelling during cross-examination.⁴³ They boast of terrorising rape victims during cross-examination. Questions that are unanswerable within the given normative framework are deliberately asked to intimidate and humiliate the victim.⁴⁴

For instance, during the cross examination of a victim in a trial court in Jaipur, she was asked to lie down on an unoccupied bench in the Court room and demonstrate to the Court the position in which she was raped. The judge was a mute spectator to the episode. On appeal in the High Court, it was stated that trial court judges should ensure that cross-examination does not become a means of harassment of the victim.⁴⁵ One may question the need for such detailing, and such zealous advocacy in order to point out inconsistencies in the testimony of the victim. Such techniques of defence lawyering are based on a feigned ignorance of the manner in which women are raped, and have heavy social costs in that they deter reporting of rape cases.⁴⁶ Detailing also creates a pornographic atmosphere in the court-room, worsening the psychological trauma of the survivor.

It was expected that *in camera* trials, wherein the proceedings take place in the judge's chambers instead of in an open courtroom, would do away with some of the ills of the system described above. Therefore, section 327 of the Cr.P.C was amended in 1983⁴⁷ to mandate *in camera* proceedings of rape trials. It was expected that the survivor would be less traumatised if her trial was not made a public spectacle. This reform misdiagnosed the source of the trauma as lack of privacy, when the discomfort was caused by the pornographic nature of proceedings as described above.

43 Hazelton, *supra* note 13.

44 Baxi, *supra* note 27.

Such questions may include references to whether the vagina of the victim was lubricated or not. The use of this category betrays a phallogocentric understanding of sexual intercourse as it conflates biological reactions with pleasurable (and consequently, consensual) sexual intercourse. The fact that lubrication does not necessarily imply sexual arousal is ignored. For instance, in the case of *State of Rajasthan v. Hem Raj MANU/RH/0662/1986* (High Court of Rajasthan), the accused was acquitted on the basis of the fact that the victim “discharged with the accused.”

45 *Yad Ram v. State of Rajasthan*, R.L.W 2008 (2) Raj. 1659 (High Court of Rajasthan). See Sec. 152, Indian Evidence Act, 1872. As per this section, the judge is under an obligation to disallow a question that is intended to insult or annoy, or that is needlessly offensive, even if it is proper in itself and is relevant to the case. However, this is subject to the judge being satisfied that the question is of such a nature.

46 Baxi, *supra* note 27, at 21.

47 Sec. 4, Criminal Law (Amendment) Act, 1983.

In camera trials are not sufficiently effective in reducing the humiliation that the prosecutrix experiences as the trial only moves from the open court to the judges' chambers. The nature of the trial remains the same. While it may reduce the number of men who consume the testimony of the prosecutrix, it is unlikely to displace the pornographic spectacle. A rape survivor still testifies in a room full of men, albeit not those unconnected to the crime, and often in front of the accused.

2. Barring Character Evidence

In rape trials, the character of the witness is often used by the defence. There may be two uses of this evidence. *First*, when consent is in question, the past sexual history of the prosecutrix may be used to suggest that she consented to sexual intercourse with the accused as she generally consents to it with other men as well. In effect, this use suggests that women habituated to sexual intercourse are likely to consent to sexual intercourse. *Second*, character evidence may also be used during cross-examination to suggest that a woman habituated to sexual intercourse is of immoral character and thus, will not have any moral inhibitions to lying. The second use of character evidence threatens the entire testimony of the prosecutrix.

Character evidence has no probative value in rape trials. It is assumed that by disallowing the defence to introduce this kind of evidence, that is highly prejudicial in nature but does not have any probative value, the inequality of power between the parties in a rape trial will be reduced. Therefore, several attempts have been made by the legislature to limit the opportunity of the defence lawyer to subject the victim to harrowing attacks on her character and credibility, and to refocus the trial towards the relevant evidence of injury and lack of consent, which has more probative value.⁴⁸

Despite these legislative reforms, character is routinely adduced, partly because of shoddy draftsmanship. While the provision allowing the use of character evidence to shake the credit of the witness was repealed in 1983, such a

⁴⁸ Matoesian, *supra* note 10.

line of questioning was expressly barred only in 2002, when a proviso was inserted to section 146 of the Indian Evidence Act, stating that the general character of the prosecutrix cannot be questioned during cross-examination.

Before the 2013 amendments to criminal laws, character evidence could be adduced to prove consent, as even though sub-section (4) of section 155 had been repealed, there was no express prohibition against adducing character evidence to prove consent. However, no questions about her general immoral character could be put to the prosecutrix during cross-examination in order to shake her credit.⁴⁹

A shield was sought to be introduced in 2013 to bar character evidence altogether. Therefore, section 53A was inserted, which made character evidence irrelevant on the issue of consent or the quality of consent. However, at the same time, an amendment was brought to section 146, substituting the earlier proviso. As per the new proviso, questions as to the general immoral character of the victim cannot be put to her *when consent is in issue*. While the earlier proviso barred such questions altogether, the protection extended by the new proviso is too narrow and extends only to cross-examination on the issue of consent. As explained above, evidence law as it stands now leaves the possibility of the entire testimony of prosecutrix being challenged if she is proven to be a habitual liar, open, because of her ‘immoral character.’

The category of the *habitué* has been created over the years, and she is described as a pleasure seeking, illicit body.⁵⁰ The defence often brings in evidence, to prove that the prosecutrix has in the past compromised a rape trial.⁵¹

49 Proviso, Sec. 146, Indian Evidence Act, as it stood before the 2013 amendment.

50 Rape trials are often compromised, and conclude with the payment of a certain sum of money by the accused to the victim-complainant. Since rape is a non-compoundable offence, this practice is blatantly in violation of the law. In order to obtain an acquittal, the FIR is either sought to be quashed under Sec. 482, Cr.P.C., or the prime witness, i.e. the prosecutrix herself, is declared hostile. As a result, most documented cases of trial courts that result in acquittals, cite the hostility of the prosecutrix as the reason. An empirical analysis of such judgements is likely to give the impression that most rape cases are false and that women often lie in order to extort money out of the accused.

51 *Papuria @ Rajesh v. State of Rajasthan* 1995 (3) W.L.C. 164 (High Court of Rajasthan) and *Virender @ Bittu and Naresh v. State of Haryana* 2010 (4) R.C.R. (Crim.) 471 (High Court of Punjab and Haryana).

Character evidence may also be adduced indirectly. Such laws do not focus on the micro-linguistic procedures through which the relevance of these topics is introduced and sustained in a rape trial. Rape shield laws cannot effectively modulate the sexual history inferences emanating from the ordinary description of the rape victim by the defence lawyer. These inferences are embedded in our culture. Moreover, such description is part of the evidentiary rules of building foundation before testimony, cross-examination, etc.

For instance, in one case, the prosecutrix who was a domestic help employed through an agency, had alleged rape by her employer.⁵² The judge made several observations about the tendency of domestic helps to falsely accuse their employers of rape in order to coerce them. He further noted that in the present case too, there was a case of theft filed by the accused which was pending against the prosecutrix. The fact that the prosecution failed to establish, beyond reasonable doubt, that the accused was guilty, was taken to mean that she had made a false complaint, more so because of the supposedly prevalent tendency of the women belonging to the occupation of the victim-complainant. Such presumptions about socio-economic groups work on the minds of judges, often affecting the outcome of cases.⁵³

In another case in the same Court, the description of the prosecutrix included the fact of her serial monogamy. While this may not be barred by section 114A, it is certain to have an adverse impact on the mind of the judge, and persuade her to believe that the likelihood of consent on the part of the prosecutrix was high.⁵⁴ Therefore, the interactional environment of evidence in testimony, interpreted in this manner, shows a systemic limitation of rape shield laws at the boundaries of covert descriptive inference.⁵⁵

52 State v. Narender Singh @ Monty, 14/2013 (Additional Sessions Judge, Tis Hazari Courts, New Delhi).

53 The description of the prosecutrix before her testimony includes her age, occupation, etc. In this case, mentioning the occupation was necessary to provide a context for the offence as well, as it took place at the place of work of the prosecutrix.

Such description is likely to work in the following manner:

Description of prosecutrix ” Domestic help of accused ” Increase in probability of false complaint, made in order to coerce accuse.

54 State v. Mahinder Singh Dahiya, 37/2014 (Additional Sessions Judge, Tis Hazari Courts, New Delhi).

55 Matoesian, *supra* note 10, 213.

Rape shield laws only transform specific elements of language of evidence in testimony, without completely understanding the evidentiary rules that govern testimony more generally. This is the primary reason why these laws have only a marginal effect on the experience of a rape victim. The ability of rape reform legislation to bring about change, especially in this context, is limited. In the context of a rape trial, the relationship between law and society is first and more fundamentally embodied in our language practices.⁵⁶

Indirect references to character defeat the purpose of rape shield, and the uncontrolled humiliation and objectification of the victim have frightening implications for the rape victim as well as society. While it is degrading to the victim and deters women from reporting rape,⁵⁷ such language use also clouds the understanding of rape and prevents us from getting to the root of the problem. It takes focus away from accused to the victim, and the question becomes not whether a rape occurred but whether the victim was capable of being raped.

IV. CONCLUSION

The embarrassment and humiliation that a prosecutrix experiences in Court is an established fact. This paper argues that this is a result of not only the gross evidentiary rules for rape trials that were prevalent until 2013, but also of the language that is used by the judges and lawyers. The frequently leering innuendos as far as the woman is concerned- wrecks immense psychological damage.

Consequently, any attempt to reform rape trials is unlikely to be successful if it does not take into account the language of evidence, and merely considers evidentiary rules. Statutory change does not automatically shape the inferential trajectory of courtroom discourse or evidence.⁵⁸ Proponents of reform need to empirically analyse the language use in trial process, to predict the extent to which the proposed reform is likely to succeed. In order to make the trial more bearable,

56 Matoesian, *supra* note 10.

57 Numerous cases point out the fact that women are deterred from reporting rape cases because they fear the kind of treatment that they'll face during trial, one among them being *Shri Bodhisattwa Gautam v. Shubra Chakraborty*, 1996 S.C.C (1) 490 (Supreme Court of India).

58 Matoesian, *supra* note 10, at 211.

and therefore, to encourage women to take recourse to the law in the event of rape, the basic phallogocentric assumptions of trial need to be questioned.

Judges have an important role to play in the same. If sensitised, they have immense powers to control the direction that a trial takes, the kind of questions that are asked, and the manner in which they are asked. Their inaction is not a given, nor warranted. Similarly, there is a need for lawyers to balance their duty of defending their clients, and of acting as officers of Court. Finally, as long as the trial is situated in a patriarchal society that takes a phallogocentric view of women's sexuality, fragments of harrowing rape trial experiences are likely to remain, regardless of reform legislations.