

STEREOTYPING IN RAPE ADJUDICATION

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Rape myths have been defined as “prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists.” Examples of rape myths include: (1) rape by an acquaintance is less traumatic than rape by a stranger; (2) a woman always physically resists when sexually assaulted, which leads to injuries on her body; (3) victims of rape are visibly emotional when testifying, and (4) women often make false allegations of rape.

Studies in the United States, the United Kingdom and in India have attempted to establish the adverse impact of rape myths and stereotypes on rape adjudication. Studies have established that if a woman does not fit into a particular stereotype of a victim, it is likely that the person who is accused of raping her will be acquitted. The attempt, world over, has been to reduce the impact that stereotypes have on rape adjudication, by enacting laws that prevent the prosecution and defence from using such irrelevant evidence during trial. An example is rape-shield laws enacted across jurisdictions.

In this dialogue, I primarily focus on the impact of medical jurisprudence on rape adjudication. I argue that books of medical jurisprudence by relying on various rape myths prevalent in the eighteenth and early nineteenth century, have given a scientific veneer to what is essentially an exercise in stereotyping. I demonstrate how in spite of law reform, the changes sought to be brought by the laws are being negated because of failure to reform medical syllabi and books of medical jurisprudence. Using case law, I demonstrate the adverse impact of such medical jurisprudence on rape adjudication in the guilt determination phase.

In the second part of my presentation, I argue that the site of stereotyping has shifted from the guilt determination to the sentencing phase of the trial. I discuss the impact that rape myths and stereotypes have had on rape sentencing in India.