

The Construction Women Self in Law: A Case of Medico-Legal Jurisprudence Textbooks in Rape Cases

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Abstract : Using gender as a category to cull out historical analysis, feminist scholars have produced plethora of literature on the sexual symbolics and carnal practices of modern European empires. At a symbolic level, the penetration and conquest of faraway lands was charged with sexual significance and intrigue. The white male's domination and possession of dark and fertile lands in Africa, Asia and the Americas offered, in Anne McClintock's words, 'a fantastic magic lantern of the mind onto which Europe projected its forbidden sexual desires and fears'. The politics of rape were also symbolically a question significant to the politics of empire. To the colonized subject, rape was a fearsome factor, a language that spoke of violent and voracious nature of imperial exploitation. The colonized often looked at rape as an act which colonizers used as tool of oppression. The rape as act of violence got encoded into the legal structure under the helm of Lord Macaulay in the so called 'Age of Reform' in 1860 under IPC (Indian penal code). Initially Lord Macaulay formed Indian Law Commission in 1837 in which he drafted a bill and defined the 'crime of rape as sexual intercourse by a man to a woman against her will and without her consent , except in cases involving girls under nine years of age where consent was immaterial'. The modern English law of rape formulated under the colonial era introduced twofold issues to the forefront. On the one hand it deployed 'technical experts' who wrote textbooks of medical jurisprudence that were used as credential citation to make case more 'objective', while on the other hand the presumptions about barbaric subjects, the colonized women's body that was docile which is prone to adultery reflected in cases. The untrustworthiness of native witness also remained an imperative for British jurists to put extra emphasis making 'objective' and 'presumptuous'. This sort of formulation put women down on the pedestrian of justice because it disadvantaged her doubly through British legality and their thinking about the rape. The Imperial morality that acted as vanguards of women's chastity coincided language of science propagated in the post-enlightenment which not only annulled non-conformist ideas but also made itself a hegemonic language, was often used as a tool and language in encoding of law. The medico-legal understanding of rape in the colonial India has its clear imprints in the post-colonial legality. The onus on the part of rape's victim was dictated for the longest time and still continues does by widely referred idea that 'there should signs, marks of resistance on the body of the victim' otherwise it is likely to be considered consensual. Having said so, this paper looks at the textual continuity that had prolonged the colonial construct of women's body and the self.

Keywords : body, politics, textual construct, phallogocentric

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