Making Rape Legible: Judicial Language, Gendered Legality, and Legal Consciousness in Bangladesh

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I. Introduction: Who Can Become a Believable Rape Survivor?

> In the normal course of human conduct an unmarried girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate to any other overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to any one lest the family name and honor is brought to controversy . . . . The inherent bashfulness and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbalise the hypothesis of false implication. No woman or girl of honor will implicate another person for the commission of rape on her since she sacrifices thereby what is dearest to her.[1]

Like in this case, many rape judgments delivered by the Supreme Court of Bangladesh invoke language that resolves conflict, allocates responsibility, or governs behavior without reference to legislation. By invoking a normative cultural framework, the judicial comments become repositories of "thick description"[2] where cultural legitimacy sanctions legal reasoning. This is elaborated below.

Scholars at the intersection of law and literature have extensively studied court judgments as literary texts, examining their specific rhetorical techniques, vocabulary, and use of metaphor. How a judge chooses to narrate the facts of a case, their specific word selections, and their structural and stylistic choices significantly influence how the decision is interpreted, legitimized, and accepted.[3] A sociolegal analysis of legal language begins from the proposition that the practical meaning of law cannot be located exclusively within statutes, doctrinal propositions, or formal legal categories. The aim of such scholarship is to identify and analyze the distinction between what formal law says and how that law is interpreted, institutionalized and experienced in practice. Legal reasoning is influenced by the judge's general orientation and intentions when applying a rule that is likely to lead to a

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[1] Al Amin v. The State, (1999) 19 BLD (HCD) 307, 317-19.

[2] Clifford Geertz, The Interpretation of Cultures: Selected Essays 5 (1973).

[3] Lord Alan Rodger, The Form and Language of Judicial Opinions, 118 L.Q. Rev. 226, 230 (2002).

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particular outcome.[4] It is the judges who ultimately decide whose account is believable, whether certain conduct signifies consent or coercion, what behavior appears probable, and what kinds of evidence are sufficient to establish the offense. As such, judicial language is not simply the medium through which independently existing legal meanings are communicated. Thus, what the statute says, and how a judgment interprets or applies that statute, can and do vary.

This distinction between formal legal language and its judicial-institutional meaning-making holds particular significance for rape adjudication, especially in contexts where liberal legalism operates in a traditional, patriarchal society such as in Bangladesh. This article asks how judicial language translates gendered understandings of femininity into evidentiary judgments, and how those judgments contribute to the legal meanings of rape and credibility in Bangladesh. It argues that through narrative styles, euphemistic words, and ideological subjectivity, Bangladeshi courts construct a legally intelligible model of the rape survivor that is defined by gendered stereotypes into practice-based rules of determining victim credibility. The judgments, through patterned use of words such as chastity, honor, shame, resistance, sexual history, and respectability, become part of the institutional common sense through which rape is adjudicated.

The article situates this process within legal-consciousness scholarship. It does not claim that judgments reveal how Bangladeshi women themselves understand rape law. Rather, it treats judgments as institutional texts that participate in the production of legality: the circulating meanings through which law becomes knowable, usable, and authoritative. When courts repeatedly describe credible complainants as modest, bashful, honorable, or socially respectable, and incredible complainants as sexually experienced, insufficiently resistant, or behaviorally improbable, they contribute to the discursive environment in which rape, consent, and credibility are socially and legally understood. The focus, therefore, shifts from *what* constitutes rape to question *who* can legally and socially be recognized as a victim, how certain individuals are deemed "unrapable" based on their perceived promiscuity, who is afforded credibility, and how such perceptions may affect the popular understanding of rape.

II. From Legal Language to Legal Consciousness: Language Ideology, Stereotyping and Representation Through Institutional Meaning-Making

Because law does not exist independently of the discourse that creates it, language serves as the primary mechanism through which institutional legal meaning is produced and sustained.[5] Judgments reorganize a multiplicity of narratives into a compact authoritative legal account, comprising complaints, police reports, medical assessments, examination and

[4] Duncan Kennedy, A Critique of Adjudication (Fin de Siècle) 49 (1997).

[5] See generally The Oxford Handbook of Language and Law (Peter M. Tiersma & Lawrence M. Solan eds., 2012).

cross-examination, submissions by lawyers, and the testimony of complainants.[6] In doing so, courts often recognize or deny agency, credibility, and culpability. The judgment is consequently not only an adjudicative outcome but an act of representation. In this way, judicial language is situated within broader sociolegal structures of power—such as family dynamics, gender norms, and social authority—which are important catalysts in shaping a woman's experience with the legal system.[7] Linguistic practices imbued with juridical authority enable specific understandings of gender crimes and one's claim to justice.

Legal consciousness scholarship provides a particularly important framework for explaining the broader significance of this process. Legal consciousness allows for the expression and examination of legality in ways not officially recognized by the law. Merry's[8] work bridges legal consciousness and institutional discourse by showing how lived problems are transformed by passing through legal institutions. Claimants' accounts of events and their experiences are reclassified through official categories, institutional procedures, and legal vocabularies. In rape adjudication, this transformation is particularly acute. A survivor's account of coercion may become a question about *indulgence*, her delayed disclosure may be reframed as *dubious,* her sexual history may be treated as evidence of *loose morality,* and her social background may become the standard of her credibility. Through repetition in authoritative judgments, such categories can become part of the repertoire through which rape, consent, credibility, and victimhood become legally intelligible. Legal consciousness therefore helps understand how judicial production of meaning matters beyond the formal disputes.

A. Law as Institutional Meaning-Making

Legal consciousness is empirical and situated. Nielsen's study of legal consciousness and street harassment, for example, demonstrates that understandings of law differ according to social hierarchy, experience and the particular legal issue involved.[9] This article therefore does not claim to find the legal consciousness of Bangladeshi rape survivors through text analysis. Rather, it examines the discursive conditions through which legal consciousness on rape law may be formed, reproduced, or contested. In sum, the framework of legal consciousness reveals how judicial discourse actively produces and legitimizes legal boundaries and socio-legal understandings of rape.

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[6] Simon Stern, Narrative in the Legal Text: Judicial Opinions and Their Narratives, in Narrative and Metaphor in the Law 121 (Michael Hanne & Robert Weisberg eds., 2018); Tasneem Sultana et al., Narratives of Justice and Power: A Law and Literature Analysis of Legal Consciousness in Contemporary English Texts, 7 ShodhKosh: Journal of Visual & Performing Arts, no. 11s (2026) (https://doi.org/10.29121/shodhkosh.v7.i11s.2026.8275).

[7] Carol Smart, Feminism and the Power of Law (1989).

[8] Sally Engle Merry, Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans (1990).

[9] Laura Beth Nielsen, Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens About Law and Street Harassment, 34 Law & Soc'y Rev. 1055 (2000).

B. Language Ideology

The concept of *language ideologies* refers to the systems of representation through which language is endowed with cultural and social meaning within particular communities.[10] Rather than merely describing social reality, such representations often function normatively. Language serves as a primary vehicle for communication, world-building, and social meaning-making.[11] Postcolonial theorists emphasize that a word's significance extends past its literal dictionary definition to include its rich cultural undertone, nuances, and suggestive power that carry ideological weight far beyond immediate lexical connotation.[12] Feminist scholars demonstrate that dominant representations of gender operate within broader structures of power. As Crenshaw argues, interpretations of events involving women are often "overwhelmingly directed toward interrogating and discrediting the woman's character on behalf of maintaining a considerable range of sexual prerogatives for men."[13] Linguistic practices do not merely describe pre-existing differences between men and women,[14] rather language as a tool constructs the cultural meanings through which gender becomes intelligible. Thus, the credibility of witnesses and recognition of guilt in rape become subjected to pre-existing interpretations,[15] which often work to de-legitimize a survivor's account of sexual violence and credibility when her profile does not fit within these "rape myths."[16] The judicial decisions on which this article builds accordingly reflect dominant ideologies of sexual violence reproduced, sustained and potentially contested through legal language. Feminist legal scholarship therefore addresses rape law, and rape trials, as a critical site where formal legal language reproduces gender hierarchy.[17] The fact that legal stereotypes are indeed social and organizational constructs and not natural principles is proved by feminist judgment scholarship which shows that feminist adjudicative method can reorganize legal facts and legal categories through contextual, gender-sensitive reasoning.[18]

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[10] Kathryn A. Woolard, Introduction: Language Ideology as a Field of Inquiry, in Language Ideologies: Practice and Theory 3 (Bambi B. Schieffelin et al. eds., 1998).

[11] Ngũgĩ wa Thiong'o, Decolonising the Mind: The Politics of Language in African Literature 14-16 (1994).

[12] Id. at 11.

[13] Kimberlé Crenshaw, Whose Story Is It, Anyway? Feminist and Antiracist Appropriations of Anita Hill, in Race-ing Justice, En-Gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality 402, 409 (Toni Morrison ed., 1992).

[14] Deborah Cameron, Gender and Language Ideologies, in The Handbook of Language, Gender, and Sexuality 279 (Susan Ehrlich et al. eds., 2d ed. 2014).

[15] Alison Gash & Ryan Harding, #MeToo? Legal Discourse and Everyday Responses to Sexual Violence, 7(2) Laws 21 (2018).

[16] R.T. Andrias, Rape Myths: A Persistent Problem in Defining and Prosecuting Rape, 7 Crim. Just. 2, 3 (1992).

[17] Katharine T. Bartlett, Feminist Legal Scholarship: A History Through the Lens of the *California Law Review*, 100 Calif. L. Rev. 381, 395 (2012).

[18] Feminist Judgments: From Theory to Practice (Rosemary Hunter et al. eds., 2010).

C. Feminist Critiques of Rape Adjudication

The legal treatment of rape "epitomises the problem of law for feminism."[19] Stacey and Thorne's critique further identifies that dominant conceptual frameworks marginalize women's experiences and the social organization of gender by treating gender merely as a statistical variable rather than a core theoretical category,[20] which naturalizes gender roles and generalized assumptions about how gender shapes all social life. The judgments analyzed in this article explicitly adopt this orientation so that often the judicial language obscures the significance of women's experiences while embedding gender assumptions within legal interpretation. Thus, the rape law judgments can also be read as manifesting a social construct created and reinforced through the institutional practices of the Bangladeshi judiciary, which is still largely a male-dominated space,[21] and its organizational culture, policies, and practices which affect women's experiences,[22] including both justice seekers and justice dispensers (i.e., female judges). Legality can facilitate the downgrading of women's experiences, for example, during conversations or interactions with medical professionals,[23] and often women might choose not to pursue legal action because if "your reality does not fit the law's picture, your rape is not illegal."[24]

In rape judgments, references to *feminine modesty, bashfulness, chastity*, or *honor* are not merely decorative expressions. These underlying attitudes, beliefs, and narratives perpetuate stereotypes against women.[25] Examining language ideologies therefore requires attention not only to the relationship between linguistic practices and speakers' social identities but also to the institutional and cultural contexts in which they acquire meaning. The relevant question is therefore how linguistic forms organize legal perception, how these stereotypes become new forms of legality, and how they construct new meanings of *rape*, *victim*, and *perpetrator* to produce a socio-linguistically embedded legal consciousness. This is how language ideology and legal consciousness intersect.

Demonstrating the mechanics of this process, Susan Ehrlich's work provides a direct bridge between linguistic analysis, feminist critique of sexual-assault adjudication, and

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[19] Smart, supra note 7.

[20] Judith Stacey & Barrie Thorne, The Missing Feminist Revolution in Sociology, 32 Soc. Probs. 301 (1985).

[21] Ridwanul Hoque, Gender and the Legal Profession in Bangladesh: Achievements and Challenges, No. 3 J.L. & Soc. Res. 45 (2012); Ashutosh Sarker, Higher Judiciary Has 10% Female Judges, Daily Star (Sept. 22, 2025) (https://perma.cc/7JRA-A2LC).

[22] P. Bhandari M., Feminisms in Social Sciences, in Women and Society (IntechOpen 2024) (http://dx.doi.org/10.5772/intechopen.111652).

[23] Ajnin Begum & Nirmal Kumar Saha, Women's Access to Justice in Bangladesh: Constraints and Way Forward, 44 J. Malaysian Compar. L. 39 (2017).

[24] Catharine A. MacKinnon, Women's Lives, Men's Laws 113 (2005).

[25] Kimberly A. Lonsway & Louise F. Fitzgerald, Rape Myths: In Review, 18 Psychol. Women Q. 133 (1994); Sarah S. George et al., Blaming Children: How Rape Myths Manifest in Defense Attorneys' Questions to Children Testifying About Child Sexual Abuse, 37 J. Interpersonal Violence NP16623 (2022).

legal consciousness. The analytical categories developed in this article include agency, representation, metaphors, nominalization, credibility scripts, and linguistic style like active/passive voice. Gender-sensitive judgment consequently involves asking not only whether a rule is formally discriminatory but how the categories through which evidence becomes meaningful have been constructed. This matters for the present article because it suggests that while the Bangladeshi judicial language narrates rape through shame and chastity, it also can and has narrated it through autonomy, consent, equality, and bodily integrity—as the findings section will show.

1. Stereotypes and the Rape Survivor

Stereotypes are fixed, generalized beliefs about a group based on immutable characteristics like race, gender, or sexuality.[26] Such representations are oversimplified and reduce the complex diversity within any given group.[27] Stereotypes work to sustain powerful hegemonic constructs or ideological prescriptions for behavior.[28] Traditional sexist stereotypes can be deeply entrenched so that they can be repeatedly exercised without being contested.[29] They operate not merely as a social prejudice but as part of the institutional vocabulary through which legal subjects and events are recognized. For example, the historically prevalent stereotype of "unchaste woman"[30] contributed to legal processes embedding survivor's sexual history as relevant facts and is often used as a pretext for refuting their claims of violence. This stereotype was institutionalized first through pre-codification era court decisions in colonial Bengal and then through codification of the Penal Code 1860 (PC) and the Evidence Act 1872 (EA). This way, stereotypes transform from being representations to prescriptions.[31] If stereotype represents women as docile and submissive, then any woman who is not submissive can be questioned in the court as provoking or inciting the violence against her through her own actions. By operating as "normative expectations disguised as common sense,"[32] stereotypes can exercise schematic

[26] Walter Lippmann, Public Opinion (1922 [1956]); Richard Dyer, The Role of Stereotypes, in The Matter of Images: Cultural Representations and Signifying Practices 11 (2d ed. 2002).

[27] Dyer, supra note 26.

[28] Gays and Film 353 (Richard Dyer ed., 1977).

[29] Mary Talbot, Gender Stereotypes: Reproduction and Challenge, in The Handbook of Language and Gender 468 (Janet Holmes & Miriam Meyerhoff eds., 2003).

[30] Lawrence M. Friedman, American Law in the Twentieth Century 249 (2002).

[31] Mary Talbot, Language, Gender, and Popular Culture, in The Routledge Handbook of Language and Gender 604 (Susan Ehrlich et al. eds., 2014).

[32] Supreme Court of India Handbook on Combating Gender Stereotypes (Sup. Ct. India 2023) (https://perma.cc/RY2J-NVFQ); Rebecca J. Cook & Simone Cusack, Gender Stereotyping: Transnational Legal Perspectives (2010).

force,[33] thereby exerting normative power.[34]

Through this juridification of stereotypes, cultural expectations of feminine behavior enter judicial discourse. This translates societal norms into legal behavioral standards, which in turn influence the evaluation of testimony and evidence. Ultimately, the stereotype is institutionalized as a legitimate basis for legal reasoning. Repeated through precedent and professional practice, these cultural assumptions solidify into ordinary legal common sense.

2. Agency and Coerced Identities

Ehrlich's concept of "coerced identities"[35] shows how institutional processes can impose subject positions on complainants, rendering their own agency less visible, thereby producing legally consequential identities through dominant understandings of gender and sexuality. The difference between formulations such as "a man raped a woman" and "a woman was violated" is not merely stylistic. The former foregrounds an actor and an action, while the latter can foreground the condition of the woman and reduce the visibility of the perpetrator. Agency therefore becomes an important object of linguistic inquiry. Similar effects can follow from recurrent labels like *victim, girl, woman of loose moral character*, or *respectable family*.

Placed alongside Merry, Ehrlich helps explain how this transformation occurs within legal institutions. Merry shows how claimants' problems are reframed as they pass through legal processes;[36] Ehrlich shows how sexual-assault proceedings can produce gendered identities that erase complainants' own accounts of themselves. Seen through legal consciousness, this representational process constructs particular judicial discourse that not only shapes how survivors narrate their experiences during the trials process, but also how sexual violence is articulated, considered, or discussed by the legal actors themselves.[37] This article brings those insights to Bangladeshi rape judgments by examining how such transformations become embedded in authoritative judicial texts.

D. From Stereotype to Legal Consciousness: An Analytical Framework

This article analyzes Bangladeshi rape judgments through the framework of legal consciousness to trace how gender ideology becomes institutionalized legality through

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[33] Schemas are "generalizable procedures applied in the enactment/reproduction of social life" through which people make sense of law in everyday life. They are essential to understand how different norms play a role in the construction of legality. William H. Sewell, Jr., A Theory of Structure: Duality, Agency, and Transformation, 98 Am. J. Soc. 1, 10 (1992). For more discussion on schemas, see Anthony Giddens, The Constitution of Society: Outline of the Theory of Structuration 21 (1984); Patricia Ewick & Susan S. Silbey, The Common Place of Law: Stories from Everyday Life 41-43 (1998).

[34] William H. Sewell, Jr., The Concept(s) of Culture, in Practicing History: New Directions in Historical Writing After the Linguistic Turn 76, 88 (Gabrielle M. Spiegel ed., 2005).

[35] Susan Ehrlich, Representing Rape: Language and Sexual Consent 42 (2001).

[36] Merry, supra note 8.

[37] Gash & Harding, supra note 15.

meaning-making. The process begins with culturally available assumptions about femininity, and then those stereotypical representations become evidentiary inferences, finally shaping a worldview where one's gender identity determines their perceptions of rape law.

Two concepts organize the analysis. The first is *legally intelligible femininity*: the model of womanhood against which courts assess whether a complainant's experience can be narrated and recognized as sexual violence. The second is *gendered evidentiary common sense*: stereotypical assumptions about victim/survivor/complainant behavior that courts treat as evidence. Thus, this article shifts focus from how judgments supplement or complement rape as defined and punished in Bangladeshi law to what judges say about women and how those statements produce legal identities through which rape becomes recognizable or doubtful.

As an epiphenomenon, legal consciousness manifests the broader structural inequalities as produced by the ongoing operation of legal institutions, revealing how ordinary people make sense of, submit to, or subtly resist the hegemony of law,[38] "the ways people understand and use the law . . . their habitual patterns of talk and action and their common sense understandings of the world."[39] Ewick and Silbey approach legal consciousness as an active cultural practice formed through the everyday stories and actions of individuals that demonstrate the commonplace understandings and meanings of law. Legal consciousness represents the repertoire of meanings and narratives through which individuals make sense of their experiences. Ewick and Silbey's classic account of legality directs sociolegal attention away from law as something encountered only in formal institutions. Their broader contribution is to conceptualize legality as socially constructed through practices, narratives, and interpretations rather than existing exclusively within official doctrine.[40] These processes are reciprocal: meanings become patterned and institutionalized, while institutionalized meanings subsequently form part of the discursive and material environment within which further understandings of law are produced.[41] Using the analytical framework of legal consciousness, this article examines the constitutive relationship between institutionalized legal meanings and the wider production of legality. Ewick and Silbey described people's understanding of the law through three cultural narratives: *before the law, with the law,* and *against the law*. This article places the judicial language, and its subsequent translation in legal mobilization, within this framework.

The Identity School of legal consciousness demonstrates how legal language shapes social identities in ways that are both empowering and constraining.[42] While legal claims can provide recognition and avenues for resistance, they often require individuals to inhabit

[38] Ewick & Silbey, supra note 33.

[39] Merry, supra note 8.

[40] Ewick & Silbey, supra note 33.

[41] Id. at 39-46.

[42] Lynette J. Chua & David M. Engel, Legal Consciousness Reconsidered, 15 Ann. Rev. L. & Soc. Sci. 335 (2019).

legally defined identities that may carry stigma or reinforce marginalization.[43] This insight is particularly relevant to studies of rape myths, where legal and cultural narratives construct gendered identities that influence how women understand, perform, and contest victimhood. As Hartog's account of Abigail Bailey illustrates, law simultaneously produces subordinated identities and offers resources through which those identities can be challenged.[44]

Arguably, the juridification of stereotype through vocabularies of chastity, modesty, honor, and virtue in Bangladesh is rooted in its colonial history. These terms belong to longer legal and cultural histories through which gendered categories became available for judicial use. This inherited vocabulary draws upon a sedimented judicial culture in which women's sexual autonomy has often been mediated through the male gaze. The courtroom since colonial times, therefore, has played a performative character in trying rape cases. This is elaborated below.

III. Data and Method: Reading Judgments as Sites of Legality

This article reads Bangladeshi rape judgments as institutional texts through which meanings of rape and female legal subjectivity are produced. These judgments pertain to cases filed under the Penal Code 1860 and the *Nari O Shishu Nirjaton Domon Ain 2000* (Prevention of Violence Against Women and Children Act or NOSNDA), the legislation that primarily governs rape in Bangladesh.[45] I employ Critical Discourse Analysis (CDA)[46] to examine how judicial language in the Bangladesh Supreme Court's rape judgments constructs and legitimates particular understandings of rape, consent, victimhood, and credibility. Discourse here refers to the method of reading judicial opinions not merely as records of legal reasoning but as sites where power, ideology, and social meanings are produced and reproduced.[47] By closely reading selected rape judgments, the analysis identifies recurring discursive strategies—words, phrases, descriptions, and narrative patterns used by judges—paying particular attention to the linguistic construction of complainants, defendants, and evidentiary facts.[48]

The cases discussed were chosen because they span a diverse range of contexts, including different ages and relationships between the complainants and the accused. It is

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[43] Martha Minow, Making All the Difference: Inclusion, Exclusion, and American Law (1990).

[44] Hendrik Hartog, Man and Wife in America: A History (2000).

[45] The definition of rape is provided in section 375 of the Penal Code 1860. The NOSNDA, in section 9, expanded the punishment by imposing the mandatory death penalty or life imprisonment if rape results in the victim's death, occurs during gang rape, or leads to suicide due to harassment (§§ 9(2)-9(4)).

[46] Norman Fairclough, Critical Discourse Analysis: The Critical Study of Language (1995).

[47] Virginia Braun & Victoria Clarke, Successful Qualitative Research: A Practical Guide for Beginners 177 (2013).

[48] Themes are patterned responses of meaning within the data set. Themes work as a central organizing concept. Virginia Braun & Victoria Clarke, Using Thematic Analysis in Psychology, 3 Qual. Res. Psychol. 77, 82 (2006).

important to mention that I do not treat the judgments as transparent evidence of survivors' subjective legal consciousness. Nor does it claim that judicial language alone determines legal consciousness of violence against women. Rather, the article examines judgments as one authoritative site within a broader field of legality.

Significantly, these cases all come from the apex judiciary, thereby having precedential value which has considerable impact on lower court judgments. This shows that a critical analysis of landmark judgments goes beyond simple stereotyping and affects meaning-making by constructing the legal consciousness of judicial officials as to how rape should be understood. In doing so, it links judicial discourse to legal consciousness scholarship, which understands legality as constituted through meaning-making practices and authoritative legal narratives.

Thematic analysis functions as the operative technique within this CDA frame: judgments are sampled purposively, read iteratively, and coded to surface recurrent themes. This enabled me to move from surface-level patterns to interpretive claims.[49]

The analysis codes the judgments at three levels. First, it examines linguistic representation, including terms, stereotyped labels, metaphor, nominalization, and attribution (how the judgment's language implicitly assigns causes and roles to the offense of rape). Secondly, it traces legal consequences, asking how these scripts affect credibility, consent, corroboration, medical evidence, probability, and reasonable doubt. Finally, it examines the production of legality by asking what understanding of rape and the rape survivor this language makes legally possible. Judicial judgments are therefore analyzed as one important site through which legal meanings of rape become intelligible, circulate within legal institutions, and shape broader understandings of law, rights, and justice. This combined CDA-thematic method thus offers a rigorous way to map recurring patterns in rape judgments and to explain their role in sustaining legal and cultural regimes of gendered power. In the judgment excerpts, all emphases are the author's.

IV. Findings

The outcome is explanatory rather than merely descriptive: the study shows how judicial discourse not only reflects but actively shapes social understandings of sexual violence, reproduces gendered hierarchies, and constrains reform. This happens in three ways: stereotype reproduction and representation, regulating female agency, and finally by qualifying the statutory law.

A. Stereotype Reproduction: Constructing the Credible or Incredible Woman

> P.W. 7 Dr. Maqbul Hossain who examined the victim after two days of the occurrence did not find any sign of rape upon her. He adds that at the time of occurrence the victim was carrying for nine months and after fifteen days of the occurrence *she gave birth to a sound female child which was absurd and improbable* . . . . Moreover P.W. 7 who as a member of the medical board examined the victim, opined that there was no sign of rape on the person of the victim and she was *habituated to sexual intercourse* . . . . In *absence of sign of rape* in the *medical*

[49] Id.

> *report* and non-examination of the wearing cloths of the victim made the whole case doubtful . . . . In a case of rape it is improbable that the *victim will go door to door of neighbors* and *report the incident to them*. It is also *against the course of nature* that in case like this the *victim will give birth to a sound child* after fifteen days of the occurrence. Having regard to the facts and in view of the above principles of law hold that *manner of occurrence is doubtful.*
>
> *Rubel v. The State*[50]

The judicial language of Bangladeshi rape judgments reveals that whether the court found the complainant believable or not depended not exclusively on witness statements, police reports and forensic medical evidence, but probably more on her social standing, background, and perceived sexual agency. The above-cited case involved a nine-month-pregnant woman who was raped by a neighbor inside her own house. The prosecution argued that the victim could not resist the perpetrator, and after the crime she informed a series of people, including some neighbors and her sister-in-law. However, in its judgment, the Supreme Court's observations reveal that the court relied on rationalizing the attribution of guilt or credibility of victimhood through symbolic performance—embarrassment, bashfulness, and marital status (i.e., sexual experience).

Similarly, in *Shahin and Others v. The State*,[51] the complainant was taken away from her grandmother and allegedly gang raped at a local hotel. Here too, the judgment emphasized the fact that she had been married twice, and noted:

> this is a case of rape of a *matured woman* who has *married twice* . . . this case is an example where, for the reasons stated above *the sole testimony* of the prosecutrix cannot be given credence . . . .[52]

In *Sree Pintoo Pal v. The State*,[53] a young female maid (i.e., domestic worker) was allegedly raped by her employer. The court noted that

> the *victim entered into the house of the accused* by climbing [a] paupa [sic] tree as the gate of the house was closed which also proves that the victim is a *woman of easy virtue*, so her evidence cannot be believed without the corroboration of reliable evidence.

In *Abdul Majid (Md.) v. State*,[54] the court observed:

> *The withholding and non-production of independent material witnesses* create a serious doubt on the prosecution case which lends support to the defence case that the *victim is a woman of loose moral character* and involved in anti-social and immoral activities and the accused along with others used to give her resistance, for this reason informant (PW 1) filed this false case against the accused only to harass and humiliate the accused. It is argued by the defence that the accused did not commit any rape upon the informant, the *accused is an aged man having his wife and young sons and daughters*.

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[50] 14 BLT 560 (HCD) 2006.

[51] 28 BLD 41 (HCD) 2008.

[52] Id. at para. 29.

[53] 30 BLD 220 (AD) 2010.

[54] 13 BLC (2008) 52.

> *It will be most unsafe to base the conviction relying upon the testimony of highly interested witnesses* without any corroboration by the independent and disinterested witnesses.

The decision in *Sohel Rana v. State*[55] is another landmark example. In this case, the victim and the perpetrator were neighbors. The victim alleged that the perpetrator raped and impregnated her and later promised to marry her. There was a local extra-judicial arbitration where the perpetrator acknowledged having had a romantic relationship with the victim in which he refused to marry her. This apparently led the victim to file the rape charge. While the trial court found him guilty, the judgment was overturned by the Supreme Court on the following grounds:

> The jail appellant committed *sexual intercourse with her against her will*. She *did not raise any outcry*. During the *period of one month* the jail appellant had sexual intercourse with her 15/16 times. *At each of such occurrence her mother and father were not at home*. Materials on record tend to show that the *victim was senior to the jail appellant by age*. Then was it possible on the part of *a boy who was junior to her by age and also a minor to commit rape* upon her forcibly? *Should she not try to resist him* by physical obstruction or at least by raising outcry? *Should she fall easy prey* to his *lust* without any least *resistance to save her virtue* which was *more precious to a maiden than her life itself*. But no such assertion was made that she at all resisted him.[56]

To summarize, in *Rubel*, the court regarded both the complainant's reporting of the incident to neighbors and aspects of the medical evidence as rendering the allegation improbable. In *Abdul Majid*, the discourse of evidentiary insufficiency appears alongside the representation of the complainant as a woman of "loose moral character" and as someone "habituated" to sexual intercourse. In *Sohel Rana*, the absence of outcry and physical resistance is converted into a question about whether the complainant could plausibly have been raped and whether she had attempted to preserve her "virtue." A complainant who despite being an ordinary village woman was brave enough to inform her neighbors about her assault was less credible, but a college professor's daughter could not possibly lie:

> In the instant case the victim girl comes of a *respectable educated family* having *good background as* she is a *daughter of a professor of a college* and it *is not expected that such a person* will lodge any false case *outraging her modesty and dignity* and *honour of her family*.[57]

> She categorically stated that she could know the names of the accused persons from the conversation held amongst themselves when they addressed themselves by names. She categorically stated that out of fear of the accused persons, she and Victim A1 could not shout. Being *apprehensive of her honor and dignity* she did not disclose the incident of commission of rape upon her and also of taking nude photographs to the authority of the college hostel . . . . A girl in a *tradition-bound non permissive society* in Bangladesh would be *extremely reluctant even to admit* that any *incident which is likely to reflect upon her chastity* had occurred being conscious of being *ostracized by the society and or being looked down upon by the society*.[58]

What becomes the determining factor, then, is the meaning of credibility itself. When the court classifies victims through cultural normativity, the law produces borders,

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[55] 57 DLR 591 (AD) 2005.

[56] Id. at para. 27.

[57] Ibrahim Dewan v. State, 21 BLC 813 (HCD) 2016.

[58] Al Amin, supra note 1, at 317.

differentiating pure/impure and proper/improper. Any behavior seemingly "out of place" violates the normative standard and becomes unintelligible. The judgments, therefore, also operate as a boundary-making mechanism, governing the expectations of the justice-seekers. This reasoning converts shame into proof. The complainant is believed because the court assumes that the social consequences of rape allegations are so severe for an honorable woman that she would not fabricate such a claim. At first glance, this may appear protective—it allows the court to recognize the social pressures that inhibit disclosure and to reject rigid corroboration requirements. Yet the protection remains conditional.

Judicial discourse creates a "web of significance" by illustrating how gestures, rituals, emotions, and objects acquire meaning only within shared interpretive frameworks.[59] It produces a cultural normative-grounded alternative jurisprudence for consent, bodily integrity, and plausibility, creating a materially different legal meaning of rape from what the Penal Code says, and how ordinary people perceive law through these stereotypes. These judicial vocabularies also reflect historical struggles faced by women seeking justice, where key social concepts (family, honor, chastity) and cultural categories of what counts as proper take precedence over formal rules and rights.[60] One can trace the normative use of such stereotypical vocabulary back to the colonial era of the company courts, even before the Penal Code was enacted. Elizabeth Kolsky explores the historical genealogy of such normative expressions. She refers to, for example, the 1856 case of *Government and Srimuthee Jumal Bibi v. Heeramun Borrooah* (1856),[61] where an eight-year-old girl's "air and manner of innocence" convinced the Sessions Court judge to accept her testimony. In similar vein, in *Government and Nobin Gowallah v. Kullian Baoree* (1853),[62] the victim was described as "a very intelligent child, [who] suffered from much shame, and seemed to be filled with great indignation against the prisoner"; in *Mussummaut Arjoo v. Amiruddee* (1852),[63] a young widow's allegation of rape was accepted because "[t]he prosecutrix . . . in my opinion strove to render the amount of injury she had sustained much less than it really was . . . . The prosecutrix has the character, and to all appearances justly, of being a virtuous woman."

The colonial authorities portrayed the codification project as "bequeathing equity and justice"[64] to natives,[65] while the legal instruments were designed to maintain prevalent

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[59] Geertz, supra note 2.

[60] Sewell, Jr., supra note 34.

[61] 6 Nizamut Adalat Records 1856.

[62] 3 Nizamut Adalat Records 1853.

[63] 2 Nizamut Adalat Records 1852.

[64] Charles Metcalfe, Minute of Feb. 19, 1829, quoted in Parliamentary Debates (Hansard), 3d ser., vol. 18, col. 730 (statement of Charles Grant); see also Thomas R. Metcalf, Ideologies of the Raj 38 (1994).

[65] Elizabeth Kolsky, Codification and the Rule of Colonial Difference: Criminal Procedure in British India, 22 Law & Hist. Rev. 631, 636, 638-39 (2005).

social hierarchies and subjugate the colonized people, which severely aggravated marginalized sections of society, including women.[66] The penal laws in particular intended to police domestic violence, and were influenced by utilitarian philosophy and Victorian morality.[67] The combined effect was to entrench "patriarchal norms and a skepticism towards women's testimonies in cases of sexual violence."[68] Seeking to accommodate perceived local values, the Penal Code introduced sexual offenses such as "outraging the modesty of a woman" and the notion of a "pardanashin woman"[69] for which there were no clear equivalents in local languages. Because terms like "modesty" and "pardanashin" were undefined in statute, courts developed their meanings through case law, creating a new legal vocabulary that shaped legal culture and social values.

Sir Matthew Hale, a key figure in development of the English common law, played a central role in shaping the judicial and legal thinking on rape laws. Section 375 of the Penal Code 1860 defines rape as follows:

> A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:
>
> First: Against her will.
>
> Secondly: Without her consent.
>
> Thirdly: Without her consent, when her consent has been obtained by putting her in fear of death, or of hurt.
>
> Fourthly: With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
>
> Fifthly: With or without her consent, when she is under fourteen years of age.
>
> Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
>
> Exception: Sexual intercourse by a man with his wife, the wife not being under thirteen years of age, is not rape.

This definition reflected Hale's emphasis on rape as vaginal penetration, his belief in women as the only protected victims, and his prejudice against rape victims as a "special class of witnesses to whom special standards of truth applied,"[70] aimed at curbing false charges as opposed to assisting the victims. Hale also maintained that the jury in rape trials

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[66] Leslie Sebba, The Creation and Evolution of Criminal Law in Colonial and Post-Colonial Societies, 3 Crime, Histoire & Sociétés / Crime, History & Societies 71 (1999).

[67] Meenu Sharma, Colonial Legacies and the Codification of Rape Laws in British India, in Chains of Silence: From Mathura to Nirbhaya, India's Battle Against Rape 1 (Shahista Inamdar et al. eds., 2025).

[68] Elizabeth Kolsky, Colonial Justice in British India: White Violence and the Rule of Law (2010).

[69] A culturally and legally significant term in South Asia. Legally it refers to a woman who lives in strict seclusion. Recent connotation includes women who practice veiling, reflecting gendered restrictions on autonomy, and agency.

[70] Sir Matthew Hale, The History of the Pleas of the Crown 628, 629 (Sollom Emlyn ed., 1736).

must be cautioned that while rape was a heinous crime, it was "an accusation easily to be made and hard to be proved, and harder to be defended by the party accused."[71] Consequently, the success of a rape prosecution depended less on the elements of crime and more on evidentiary requirements.[72] Hale declared that the "husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract." This principle, emblematic of coverture—i.e., that a wife's legal persona was "covered" by her husband's—deemed marriage an irrevocable grant of sexual access, thereby decriminalizing marital rape.[73] The culmination of all these debates was Penal Code section 375.

The binding quality of the Supreme Court's precedent-setting judgments discussed above goes beyond stereotyping; they set the normative standards of obligations, breaches, and eligibility for remedies. Instead of formal law influencing normative culture, these judgments are examples of culture influencing formal legal normativity. When courts assign specific social and moral meanings to transgressive acts (such as sexual violence) or reparative measures (such as justice and remedies), they create a shared societal understanding of what constitutes genuine harm. By elevating prevailing cultural expectations into legal standards, the judiciary fundamentally reshapes how legal concepts are constructed. In this process, a rape victim is not merely a woman who suffered non-consensual and forcible vaginal penetration by a man, but rather a woman who having suffered so remained bashful, concerned about her and (more so) her family's honor, and was timid in requesting the legal institution to rescue her. These judgments, in short, are crucial building blocks for a normative world-making that uses the state's legal hegemony to legitimize patriarchal structural violence.

Language in institutional settings is not neutral; judgments are encoded with cultural scripts[74] and actively construct social realities regarding gender, sexual violence, and adjudication.[75] This is explicitly evidenced in the grammatical structure of judgments. While the legislative instruments define the crimes and the punishments thereof in active voice—for example, The Prevention of Violence Against Women and Children Act 2000 states "if a man rapes any woman or child"—the Bangladeshi rape judgments produce narratives of gender-based violence typically in the passive voice, focusing on what happened to the female victims rather than the actions of the male perpetrators. Such discursive choices render victims powerless in the public imagination. Through the use of passive voice, nominalization, and mitigating adjectives, institutional language often minimizes the violence of the perpetrator. This is illustrated by the following excerpts:

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[71] Id. at 635.

[72] Elizabeth Kolsky, The Rule of Colonial Indifference: Rape on Trial in Early Colonial India, 1805-57, 69 J. Asian Stud. 1093 (2010).

[73] Hale, supra note 70.

[74] Kennedy, supra note 4.

[75] Id.

> [The complainant] aged about 17 years *developed fancy for accused* appellant Abdul Quddus @ Nausha with whom *she voluntarily* fled away in the night of occurrence.[76]

> On going to the materials on record it transpires that the complainant Arafa Begum in her petition of complaint categorically stated that *after the departure of her husband* her father-in-law (herein accused-appellant) *developed an extramarital relation* with her within 08-11-1992 to 23-01-1995 and *used to commit sexual intercourse* with her, as a result she became pregnant and subsequently gave birth to a female child named Rashida Khatun. She filed the petition of complaint on 14-01-1996 and the same was recorded as FIR on 01-06-1999. It appears to us that according to complainant's statement there was a *continuous cohabitation* since 08-11-1992 to 23-01-1995 within *this period she did not make any allegation* against *her father-in-law*. So in our view *she had the consent* in such cohabitation. We find that sexual intercourse with consent on *an aged girl* cannot fall within the *mischief* of "rape." Charge of commission of rape, also, could not be carried to the doors of the appellant when there *is absolutely* [sic] *consent* of the girl concerned.[77]

Applying Ehrlich's framework of critical discourse analysis to these excerpts reveals that the judicial language manufactures a narrative of consent and erases structural coercion. The judgments are rich with specific lexical choices: euphemisms ("cohabitation," which can imply extra-marital sexual relations in the Bangladeshi context, and "aged girl" instead of "woman"), and grammatical structures ("commit sexual intercourse"—omitting the coercive, assaulting nature of rape), through which the court actively constructs a reality that protects the patriarchal authority figure while delegitimizing the survivor's experience. Saying that a father figure "developed an extramarital relation" transforms the prolonged abuse of a woman into consensual sex. Wives of absentee husbands in Bangladesh suffer considerable stigma and research shows they are vulnerable to domestic abuse.[78] Using euphemisms such as *relation* distributes decision-making power to both parties equally, whereas the asymmetrical power between a father-in-law and a left-behind wife in a patriarchal rural society is ignored. By linguistically transforming a coercive situation into a romance, the court trivializes the female perspective.

Another insightful example is *Sanjay Kumar Biswas v. State*:[79]

> The prosecutrix reached the *bedroom of the Romeo*, on her own accord and stayed there for quite few days. Meanwhile they two came out and once again went back to the *refuge of the appellant*. Amidst such *free mixing,* it is presumed that these two adults, man and woman, amicably indulged in sexual intercourses. But, as has been illustrated, the *evidence meaning use of force or obtaining consent by deceitful means* remained absolutely missing. Hence the charge of rape concluded by the learned tribunal appears misconceived. Thus, . . . I find that legal evidences and circumstances in the case were far short from the required standard to rope the appellant with the charge of rape.

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[76] Abdul Quddus and Another v. The State, 11 CLC (HCD) (1982).

[77] Idris Miah v. Arafa Begum and Ors., 35 BLD 325 (2015).

[78] S.R. Treena et al., Psychological State of Wives of Migrant and Resident Husbands: A Comparative Study in Bangladesh, 11 Int'l J. Indian Psychol. 85 (2023); Main Uddin, Left-Behind Women of Migrant-Men: Rethinking Agency and Autonomy of Women in Rural Bangladesh, 14 Int'l J. Soc. & Anthropology 1 (2022).

[79] 68 DLR 185 (2016).

Legal representation is inherently ideological. The court's language grammatically removes the perpetrator from the sentence, treating the assault almost as an inevitable natural disaster rather than a deliberate act of violence committed by a specific agent. In this case, the court juxtaposes a technical term like "prosecutrix" with a highly romanticized literary archetype of "Romeo," thereby sensualizing the narrative around a grave legal issue.

Additionally, the court describes the *actus reus* as evidence, arguably a mischaracterization which conflates the substantive elements of the crime with corroborative proof, thereby invalidating the survivor's testimony as sufficient form of evidence in its own right—a legal principle well recognized in Bangladeshi rape jurisprudence.[80]

This example, much like using a term like "mischief" to characterize a severe violation of bodily autonomy like rape in *Idris Miah,* reveals a lexical choice full of thick description about the judicial treatment of such women. Not only does the court belittle an alleged crime but ridicules the complainant in *Sanjay Kumar Biswas* by equating her to the classical love-struck teenager Juliet, implies that "developing a fancy" cancels the possibility of rape in *Abdul Quddus*, and infantilizes the complainant in *Idris Miah* by addressing the survivor as an aged "girl." In all these cases, the judge linguistically removes aggressive characteristics of the male accused, and vests in them a "virtue" of safety and security: it describes the perpetrator's space as a "refuge," ignoring that the father-in-law's homestead is not a power-neutral environment but may well operate as a locus of domestic and spatial vulnerability for a socio-economically dependent woman whose silence might be a survival tactic under structural coercion.[81]

This way, the legal system ultimately serves conservative, patriarchal ends,[82] by overlooking the socio-structural realities of a South Asian society that routinely prevents women from speaking out due to fear of retaliation, economic dependency, honor-based stigma, and the internalization of shame. All these factors may delay filing of complaints.[83] The next section will address the construction of agency in rape judgments.

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[80] The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should find no difficulty in acting on the testimony of a victim of sex crime alone to convict an accused where her testimony inspires confidence and is found to be reliable. See Al Amin, supra note 1, at 317; but see the contrary decision in Momtaz Ahmed Khan v. State, 19 DLR (SC) 259: "In certain jurisdictions, it is the rule that the solitary evidence of the prosecutrix being a woman of full age, is not accepted as sufficient, but requires corroboration by independent evidence, in order to be believed."

[81] Sharon Marcus, Fighting Bodies, Fighting Signs: A Realist Manifesto for the Prevention of Sexual Violence, in Cultural Studies 385 (Lawrence Grossberg et al. eds., 1992).

[82] Smart, supra note 7.

[83] Liz Kelly, Surviving Sexual Violence (1988); R. Emerson Dobash & Russell Dobash, Violence Against Wives: A Case Against the Patriarchy (1979).

B. Agency

Rape judgments may invoke a liberal definition of agency, which ignores how in postcolonial and patriarchal contexts, an individual's agency is relational,[84] i.e., deeply embedded in, and constrained by, familial hierarchies and material dependencies. Empirical studies of domestic violence and sexual assault show that prolonged victimization often produces silence rather than immediate complaint; survivors may only report after separation, death of the abuser, or when alternative supports emerge.[85] Feminist scholarship has long problematized narrow, voluntarist models of agency that equate speech or immediate resistance with autonomy, while treating silence as capitulation.[86]

By failing to contextualize the complainant's silence within patriarchal power relations, like in *Idris Miah,*[87] the court reproduces a legal fiction of freely given consent and thereby perpetuates institutional disbelief toward survivors. MacKinnon argues that legal concepts of "consent" routinely adopt a male perspective, mistaking a woman's forced submission under structural inequality for voluntary participation.[88] The court's inference that a lack of immediate allegations between 1992 and 1995 indicates "continuous cohabitation with consent" directly contradicts established scholarship on trauma and domestic abuse. Individuals subjected to prolonged, localized abuse experience coercive control.[89] Within an abusive domestic unit, non-reporting is a coping mechanism for physical and social survival, not evidence of willingness. Thus, the court patronizes the victim by simultaneously giving her agency (to have an affair), denying her agency (calling her a girl instead of a woman who has given birth), and implying that her failure to complain immediately was tantamount to consent.

Again, in *Sanjay Kumar Biswas*, the court said:

> Malati . . . had stated earlier . . . that as a relationship developed, she *indulged* in sexual intercourses. *In the same breath* she claimed that the sexual intercourse was *without consent***,** hence it was rape. Thus, her statement as regards the all important element of "no consent" is *patently dubious* . . . . On record, Malati . . . was *adult enough* to understand what is marriage, what is *premarital sex* and *what a man can say or how he can behave* with an intent to *win a girl's consent* to premarital sex.[90]

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[84] Ratna Kapur, Erotic Justice: Law and the New Politics of Postcolonialism (2005); Lois McNay, Gender and Agency: Reconfiguring the Subject in Feminist Theory (2000).

[85] Marianne Hester, Who Does What to Whom? Gender and Domestic Violence Perpetrators (2009).

[86] Saba Mahmood, Politics of Piety: The Islamic Revival and the Feminist Subject (2005); Judith Butler, Excitable Speech: A Politics of the Performative (1997).

[87] 35 BLD 325 (2015).

[88] Catharine A. MacKinnon, Toward a Feminist Theory of the State (1989).

[89] Lenore E. Walker, The Battered Woman (1979); Judith Lewis Herman, Trauma and Recovery: The Aftermath of Violence from Domestic Abuse to Political Terror (1992).

[90] 68 DLR 185 (2016).

The court's assertion of Malati to be "adult enough" to avoid assault relies on a dangerously simplistic, neoliberal conception of agency, which determines cognitive maturity merely from biological age. Power is not a simple commodity one holds, but a pervasive, relational network. The court ignores the micro-networks of power operating within the domestic household, overlooks that an adult woman in a patriarchal society may be interacting with men not on a completely equal playing field. By stating she should have known "how [a man] can behave," the court employs disciplinary power and regulates female behavior by establishing a normative standard: the vigilant, hyper-rational woman who must anticipate and manage male sexual aggression. When Malati fails to successfully navigate his behavior, the court uses her "adulthood" not to protect her rights, but to hold her entirely responsible for her own victimization.

The court expresses sheer incredulity that Malati could claim to have a relationship and "in the same breath" claim the intercourse was without consent. This exposes a rigid judicial binary: one is either in a consensual romantic relationship, or one is a victim of a sudden, stranger rape. By describing a man's potentially manipulative, deceitful, or coercive behavior as an "intent to win a girl's consent," the court treats what might be sexual harassment to a woman as mutual courtship, thereby linguistically "repackaging" male aggression as romantic pursuit.[91] Legal consciousness scholarship on sexual harassment finds that despite exposure to the same behaviors, women are more likely than men to classify such experiences as sexual harassment.[92] This attitude epitomizes "the patriarchal construction of gender [that] makes domination the model of masculinity and rape (or at least power and submission) the model of sex."[93] The verb "indulged" inscribes contributory guilt to the victim, and actively overrides Malati's own testimony by calling it "dubious." The court also endorses the patriarchal myth that having a relationship automatically implies consent to any act between the couple. This denies agency to Malati that she can agree to have a relationship but refuse to have sexual intercourse, ignores the nuances of gender power asymmetry, and reduces her complex gendered reality to a simple binary of victim vs. indulgent paramour. Arguably, the court assimilates intimate partner violence to marital rape—which is not criminalized by the Penal Code. Notably, Bangladesh does not categorize intimate partner violence as an offense.

Furthermore, the medicalization of sexual violence within the courtroom serves as a powerful mechanism for erasing victim agency. By routinely requiring physical trauma or clinical reports to substantiate a survivor's testimony, the legal system shifts the locus of truth from the victim's voice to the victim's body. The survivor is no longer treated as an active subject capable of defining her own boundaries and consent, but rather as an object

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[91] Sally Haslanger, Social Systems and Intersectional Oppression, in Conversations in Philosophy, Law, and Politics 399 (Ruth Chang & Amia Srinivasan eds., 2024).

[92] Amy Blackstone et al., Legal Consciousness and Responses to Sexual Harassment, 43 Law & Soc'y Rev. 631 (2009).

[93] Leslie Francis, Feminist Philosophy of Law, in The Stanford Encyclopedia of Philosophy (Edward N. Zalta & Uri Nodelman eds., Spring 2026 ed.) (https://perma.cc/NW3F-3BUP).

to be read and interpreted by scientific experts. Consequently, this judicial practice overwrites the survivor's lived reality of coercion, replacing her autonomous voice with the passive status of a medical subject.

C. Qualifying the Law

Another common pattern in Bangladeshi judgments is the tendency to juxtapose the term "rape" with qualifiers such as "forcibly," "compelled," "against her will," or "without consent":

> Accused appellants Abdul Quddus @ Nausha and Abut Hossain along with acquitted accused Abdus Sattar and Serajul Islam were charged under Section 366A/34 of the Penal Code for kidnapping the minor girl P.W. 2 Ferdousi Begum with intent that *she may be compelled or forced to illicit intercourse* with all of them. Accused appellants Abdul Quddus @ Nausha and Abut Hossain were further charged under Section 376 of the Penal Code for *committing rape* on P.W. 2 Ferdousi *against her will* . . . .[94]

> The jail appellant committed *sexual intercourse with her against her will* . . . . Then was it possible on the part of a boy who was junior to her by age and also a minor to *commit rape upon her forcibly*?[95]

> Then, the accused *forcibly raped* her *against her consent.*[96]

This framing is legally perilous because it creates a tautology that conditionalizes the assault. It implies that rape requires these additional, overt displays of violence to be deemed an offense, fundamentally mischaracterizing external physical struggle as the essence of the crime, rather than the violation of bodily autonomy itself.

This process connects directly to legal consciousness. Repeated subject positions become part of the repertoire through which sexual violence is legally knowable. The virtuous girl, the helpless female, the loose woman, the habituated woman, and the woman who failed to resist are not isolated descriptions. They are recurring legal figures that organize credibility and doubt. The question is therefore: when the court retells the woman's experience, whose version of her identity survives?

This discursive move has broader consequences for legal consciousness: it contributes to the meanings through which rape law is understood. From a sociolegal perspective, decentering legality from state authority is nothing new; however, the Bangladeshi cases illustrate a formal legal imagination that equates normativity with state authority. This is not a deterministic claim that judgments directly cause women to think or act in particular ways. Legal narratives circulate as institutionalized meanings and those meanings become available for future legal claims, defenses, and interpretations. Judicial language therefore transforms gender ideology into a particular epistemic and ontological understanding of rape as a legal offense.

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[94]Abdul Quddus and Another v. State, 35 DLR (1983) 373.

[95] Sohel Rana v. State, 57 DLR 591 (AD) 2005.

[96] Rubel v. The State, 14 BLT 560 (HCD) 2006.

V. Discussion: The Judicial Production of Gendered Legality and Gendered Legal Consciousness

From the perspective of legal consciousness, these discursive formations produce three effects. First, they create new meanings of rape and its elements by producing different legalities. Second, as these new meanings are subsumed through popular understandings of rape, such legal consciousness influences strategies for legal mobilization and resistance. As the public internalize the court's biased standards, justice-seekers come to view formal law as an instrument of hostility rather than protection. As victims often retreat from formal prosecution, the defendants "play"[97] with the law—they abuse the legal loopholes to evade accountability, exploit the gendered moral expectations to the detriment of the victims. Third, the judgments sustain structural and legal hegemony by reproducing patriarchal and moral categories as building blocks of vernacular understandings of bodily integrity, choice, and guilt.

Contextualizing this debate within Bangladesh demonstrates how judicial language frequently diverges from statutory language and instead projects the perceptions of lived social realities. The meaning of a statute is shaped not merely by legislative intent, but by convention and the interpretive perceptions of its users.[98] It is well recognized in legal consciousness scholarship that legal discourse shapes cultural norms.[99] However, in the postcolonial, patriarchal setting of Bangladesh, deep legal pluralism not only decenters state law but alternative normative orders (social, gender, religious) often exert greater authority than statutes.[100] In a co-authored study by this author, findings showed that participant definitions of rape included both "non-consensual sexual acts" and "psychological devastation of a female," and many participants were uncertain as to whether sex workers could be "raped."[101] The findings also exposed significant misconceptions about legal consent: multiple comments argued that teenage sexual activity legitimizes child marriage, overlooking a minor's inability to give consent.

Languages with rigid gender-marking systems tend to embed and perpetuate patriarchal norms more explicitly.[102] Bangla features a deeply gendered lexicon designed to shame women through epicene nouns like *kulota* [promiscuous woman who has shamed

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[97] Ewick & Silbey, supra note 33.

[98] Steven D. Smith, Expressivist Jurisprudence and the Depletion of Meaning, 60 Md. L. Rev. 506 (2001).

[99] Susan S. Silbey, After Legal Consciousness, 1 Ann. Rev. L. & Soc. Sci. 323 (2005); Marc Hertogh, What's in a Handshake? Legal Equality and Legal Consciousness in the Netherlands, 18 Soc. & Legal Stud. 221 (2009); Rosie Harding, Regulating Sexuality: Legal Consciousness in Lesbian and Gay Lives (2011).

[100] Arpeeta Shams Mizan, Legal Consciousness in a Legally Plural Postcolonial Context: Stories from Urban Bangladesh (Ph.D. dissertation, Univ. of Bristol 2026).

[101] Arpeeta Shams Mizan & Muhammad Rezaur Rahman, Popular versus Statutory Meanings of the Language of Law: How Does People's Understanding Affect the Functionality of Gender Laws in Bangladesh?, in Language in Society in Bangladesh and Beyond 57 (Shaila Sultana et al. eds., 2023).

[102] Maria Firdous, Linguistic Relativity and Gender: Does Language Shape Sexism? A Cross-Linguistic Study, 3 Liberal J. Language & Literature Rev. 536 (2025).

her family], *noshta* [damaged], *osoti* [unfaithful wife], *beshya* [harlot], *khanki* [whore], and *byabhicharini* [adulteress]—words with no masculine counterparts. This lexical defect demonstrates the way its speakers perceive and think about the world (in a theory known as linguistic determinism),[103] and reflects societal norms that influence both language comprehension and production.[104] Because men historically controlled judicial institutions, they controlled the judicial language as well,[105] thus the references of *ijjot* (honor) as the essence of the female:

> It is a humiliating event in a woman's life which leads to fear for existence and sense of powerlessness. Rape is not merely a physical assault. It is destructive of the whole personality of the victim. A rapist not only violates the victim's personal integrity but leaves indelible marks on the very soul of the helpless female or girl. The Court, therefore, shoulders a great responsibility while trying an accused on the charge of rape . . . . Rape for a woman whether major or minor is deathless shame and must be dealt with as the gravest crime against Human [sic] dignity.[106]

As the judicial language of rape becomes culturally constructed, it is not only the general public but also courts who perceive rape as something that only happens to "bad" women, shifting moral scrutiny away from the rapist and onto the victim. Thus, judicial language transcends formal legal codes conditioned by "underlying social hierarchies and daily negotiations."[107] A jurisprudence organized around chastity and honor constructs a materially different legal meaning of the same offense. This is not merely surface-level stylistic change but a shift in the subject of legal protection, the nature of the legally recognized harm, and the frameworks through which individuals understand and make sense of their experiences of rape. In Bangladesh, this linguistic minimization is evident in how serious harms like sexual harassment are often labeled as "eve-teasing."

In such a repressive setting, legal consciousness allows us to see how such perceptions translate into action—particularly, how victims mobilize the law. Statutory rights of access to justice can prove instrumental in mobilizing the law;[108] however, the unfortunate fact remains that in Bangladesh the burden of reporting rape and initiating legal proceedings rests almost entirely on the victim.

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[103] Maya Hickmann, Linguistic Relativity and Linguistic Determinism: Some New Directions, 38 Linguistics 409, 410 (2000); see also Language and Culture, in The Anthropology of Language: An Introduction to Linguistic Anthropology 36 (Harriet J. Ottenheimer & Judith M. S. Pine eds., 2018).

[104] Jason J. Jones et al., Stereotypical Gender Associations in Language Have Decreased Over Time, 7 Soc. Sci. 1 (2020); Alba Casado et al., The Influence of Sex Information on Gender Word Processing, 47 J. Psycholinguistic Rsch. 557 (2018).

[105] Hunter et al., supra note 18; Minow, supra note 43; MacKinnon, supra note 24.

[106] Al Amin, supra note 1, at 317.

[107] Ewick & Silbey, supra note 33.

[108] The Asian Law and Society Reader 185 (Lynette J. Chua et al. eds., 2023).

However, legal consciousness scholarship approaches mobilization not only through formal responses, but examines how "even the seemingly simple act of telling others about one's experiences represents a form of mobilization."[109] As the findings in this article show, Bangladeshi rape judgments often flip the act of mobilization—they treat the victim's act of telling others not as a genuine act of seeking justice, but rather as evidence of credibility (or the lack thereof)—depending on how that telling is perceived by the court. In doing so, the court refuses to look at the "law in context," ignoring that many survivors avoid formal legal action out of fear of harassment from law enforcement, medical professionals, and lawyers, while families frequently conceal assaults to protect family honor, avoid pressure from perpetrators, or safeguard the victim's future marriage prospects.[110]

When formal justice is viewed as a trap rather than a remedy, people may often resist the law through complete withdrawal or opting for alternative actions such as marrying their rapist. Analyzed through Ewick and Silbey's trifold schema of legal consciousness, such victim behavior manifests an "against the law" legal consciousness—where law is obstructive and coercive, leading individuals to resist, evade, or subvert legal mechanisms.

Due to the entrenched corruption in the judicial sector,[111] victims engage in bribery, thereby constructing their legal realities by maneuvering through an inherently compromised system. They resort to manifold means, like paying court clerks to secure court dates or issue summonses, or paying the witnesses so that they do not turn hostile.[112] These tactics demonstrate an understanding that the law is a game that can be manipulated and played with to secure a favorable outcome—a manifestation explained by Ewick and Silbey as "with the law" consciousness. In this way, judicial language compounds with victim's tactical engagement with law to simultaneously contest and reproduce patriarchal hegemony. The judgments contest the hegemony by reiterating women's right to safety, bodily integrity, and human dignity while reproducing that hegemony through stereotypes, imposing coerced identities on the victims and humiliating those seeking redress.[113]

Legal meanings are interpreted, appropriated, negotiated, and resisted by differently situated actors in terms of power hierarchy, social experience, and context.[114] Individuals with limited social-cultural capital are disproportionately vulnerable to law enforcement,[115]

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[109] Blackstone et al., supra note 92.

[110] Md. Abdur Rahim Mia, Violation of the Rights of Rape Victims: Response of Criminal Justice System of Bangladesh, 23 Dhaka U. L.J. 127 (2012).

[111] Parvez Rahman, The Enduring Crisis of Administrative Corruption, Daily Star (Oct. 7, 2025) (https://perma.cc/BF3Z-LE4C); S.M. Solaiman, Corruption and Judges' Personal Independence in the Judiciary of Bangladesh: One Bad Apple Can Spoil the Bunch, 6 Cardozo Int'l & Comp. L. Rev. 501 (2023).

[112] Mia, supra note 110.

[113] Kathryne M. Young & Hannah Chimowitz, How Parole Boards Judge Remorse: Relational Legal Consciousness and the Reproduction of Carceral Logic, 56 Law & Soc'y Rev. 237 (2022).

[114] Nielsen, supra note 9.

[115] Leisy J. Abrego, Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants, 45 Law & Soc'y Rev. 337, 345 (2011).

are less likely to assert their rights,[116] and, as the findings here show, even when they try to invoke their rights, the legal system responds with prejudice. Along with law enforcement agencies, many judges fail to recognize the hostile court environment faced by women testifying against abusers, and do not comprehend the nuanced, non-scripted realities of how rape occurs.[117]

Dynamic interactions "between objects, people, and legal norms collectively shape legal consciousness."[118] In Bangladesh, the socio-cultural hegemony of religion, gender, and patriarchal norms pervasively shape public life. Because legal consciousness is co-constituted by personal histories of victimization and the hegemonic order,[119] these judgments explain the prejudice and bias that often undermine rape trials. Furthermore, in recent times, reports show that judges have started mediating marriages between rape survivors and convicted rapists, reflecting how patriarchal norms are effectively being translated into legal practice,[120] moving beyond judicial language.

To sum up, the central problem, then, is not that some judgments contain sexist or archaic language, or that such decisions have binding authority. It is that judicial discourse can convert culturally available stereotypes into legal common sense. Women may be believed because they are respectable, modest, and shame-bearing, or disbelieved because they are sexually experienced, insufficiently resistant, or behaviorally improbable. In both instances, credibility is conditioned through patriarchal hegemony. The law asks not only whether sexual violence occurred, but whether the complainant can be made legible as the right kind of rape survivor.

VI. Conclusion

This article has argued that Bangladeshi rape judgments convert gender stereotypes into informal rules of behavioral probability. Through judicial language, courts construct models of legally intelligible femininity: the respectable woman who is believable because she is imagined as honor-conscious and shame-bearing, and the incredible woman whose sexual

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116 Kathryne M. Young & Katie R. Billings, Legal Consciousness and Cultural Capital, 54 Law & Soc'y Rev. 33 (2020).

117 Mia, supra note 110.

118 Laura Beth Nielsen, Relational Rights and Legal Consciousness Research: Theoretical and Methodological Innovations, 51 J.L. & Soc'y S4 (2024).

119 Cecilia Menjívar & Leisy J. Abrego, Legal Violence: Immigration Law and the Lives of Central American Immigrants, 117 Am. J. Socio. 1380 (2012).

120 High Court Permits Jailed Rape Convict to Marry Survivor, The Court Also Ordered to Submit a Progress Report Within 30 Days About the Marriage, Dhaka Trib. (Oct. 23, 2020) (https://www.dhakatribune.com/bangladesh/nation/227647/high-court-permits-jailed-rape-convict-to-marry); Singer Nobel Marries Rape Case Plaintiff, Prothom Alo Eng. (June 20, 2025) (https://perma.cc/D7PZ-WTL5); Rapist Gets Bail After Marrying Victim in Chattogram, Prothom Alo Eng. (July 24, 2022) (https://perma.cc/8FP7-WKLF); Rapist Marries His Victim in Bangladesh Jail on Court, Bdnews24.com (Dec. 6, 2020) (https://perma.cc/N392-EP3G).

history, disclosure pattern, or failure to resist place her outside the court's script of genuine victimhood. These models shape evidentiary reasoning and become part of the institutionalized legality through which rape, consent, credibility, and harm are understood. In this way, Bangladeshi judicial language constructs new meanings of the statutory rape law. Statutes define rape, but adjudication decides what factual conduct counts as rape, what behavior makes a complainant credible, and what injury rape is understood to inflict. Through judicial narration, as gender stereotypes become evidentiary assumptions, their manifestation is experienced by the victims through lived reality: the well-known challenges of rape adjudication in Bangladesh—inter alia lack of reporting, non-preservation of forensic evidence, derogatory trial processes, and corruption in the judicial institution—become manifestations of the legal consciousness of rape. Victims either resist the law by withdrawing from adjudication or sometimes try to manipulate the system. The rape judgments are both influenced by and affect the reproduction of male hegemony and structural power imbalances, and evidentiary assumptions can become institutionalized legality. Thus, to appreciate the lived reality of rape trials, judicial language requires more than doctrinal clarification or stylistic correction. What must change is not only the words courts use, but the legal imagination those words sustain.