

Tonic Immobility in Victims of Sexual Violence in the Spanish Forensic Context

Jesus De La Torre Laso*

Department of Social Psychology and Antropology, University of Salamanca, Salamanca, Spain

Abstract

Tonic Immobility (TI) is a state of temporary involuntary motor inhibition that occurs in states of intense fear and has been studied among victims of sexual violence. Studies on TI are scarce and have mainly focused on rape victims, on describing the prevalence of this phenomenon, the variables involved or the consequences it causes at the psychological level and on its subsequent treatment. There are no studies that analyse the presence of TI in the legal and forensic context. The present study is an analysis of the presence of the TI phenomenon in the legal and forensic context, which aims to describe its relevance in this context. A review of court rulings containing the expression tonic immobility in the legal database CENDOJ, of the Spanish Ministry of Justice, has been carried out. The results show a worrying absence of judgments where this phenomenon has been mentioned or studied and, therefore, the need to carry out studies such as this one. The implications for the legal and forensic context of TI in victims of sexual violence is fundamental, as it may help to understand why some victims react by paralysing and not responding at all. In addition, forensic knowledge of TI may help facilitate the recovery of these victims. Limitations of the study are discussed.

Keywords: Tonic immobility • Victims • Sexual violence • Paralysis • Forensics

Introduction

Sexual violence can be considered an epidemic. The World Health Organization (WHO) estimates that one in three women experience physical or sexual violence by an intimate partner or sexual assault by others, a figure that has remained stable over the past decade [1]. One of the arguments used in the legal context to prove the existence of sexual violence is the behaviour of the victim, the consent to the sexual act or the resistance shown by the victim Marx BP, et al. [2]. Some countries follow the standard of explicit consent as a requirement for determining whether a relationship is forced or not, and in fact, the victim's reaction is often the criterion for assessing sexual violence. In some experiences of rape, victims are paralysed and do not react to the aggression, which has been perceived as a sign of symbolic consent. The absence of response in an interaction context may be an indicator of an absence of rejection and therefore willingness to continue with an activity, as in other social contexts Dougherty T [3]. In recent years, it has been studied whether such a lack of response before an episode of sexual violence corresponds to an involuntary paralysing response, referred to as "Tonic Immobility" (TI), and thus contradicts the idea of symbolic consent.

IT is a reflexive, involuntary defensive response composed of profound motor inhibition, lack of vocalisation, tremors, analgesia and other symptoms characteristic of victims in predatory situations [4]. This phenomenon has been studied in animals [5] as a phylogenetically ancient defence that occurs in a large number of species: insects, crustaceans, fish, amphibians, reptiles, birds and mammals, and manifests itself as a flight or fight response when these

are ineffective [4- 7]. The study of TI in humans has been very limited, and has focused on the experience of traumatic events, such as those experienced by shocked soldiers, victims of plane/car crashes, and survivors of physical assault or wild animal attacks. Research has described that the IT response in human victims of a traumatic experience is characterised by two factors: fear and immobility [8,9]. The immobility factor is the determining factor in explaining the victim's lack of defence or resistance and causes effects such as trembling, physical and psychological paralysis, inability to vocalise and eye closure [4-11].

Most significantly, TI has been found to be present among victims of sexual violence and the first studies were carried out by Galliano G, et al [12]. These researchers analysed the experiences of 35 female rape victims and detailed that a substantial percentage (37%) clearly reported the experience of being immobile or paralysed during the assault. Subsequently, studies in Sweden with a sample of 298 women survivors of child sexual abuse 7 out of 10 reported experiencing significant immobility and almost half reported extreme immobility.

The study of TI in victims of sexual violence has been considered very important for two reasons. One, related to the clinical field, because a relationship has been demonstrated between the experience of tonic immobility and traumatic symptomatology. Episodes of sexual violence leave an indelible mark on the victims who experience it, and psychological symptoms such as depression, anxiety, post-traumatic stress disorders, in addition to the physical sequelae, make treatment and recovery difficult for all of them. Women who experienced behaviours typical of a freezing response are more likely to have a higher degree of symptomatology after the assault. A study conducted with 88 women who reported experiencing sexual victimisation [13] showed that almost half of those who experienced tonic immobility reported their experience as extremely frightening.

The second, in the legal sphere, is more than obvious. Describing the reaction of the victim of an episode of sexual violence is necessary to determine the existence of a non-consensual act. Studies of TI in the legal and forensic fields are indispensable, as researchers have pointed out Möller A, et al. [14]. Despite this, TI has not been investigated in the forensic setting, even considering the many variables that are associated with the presence of post-traumatic symptoms in victims of sexual violence. There is widespread scientific evidence validating tonic immobility (TI) as part of the response to trauma in rape victims, and criminal justice professionals are increasingly

*Address for Correspondence: Jesus De La Torre Laso, Department of Social Psychology and Antropology, University of Salamanca, Salamanca, Spain, Tel: + 34686347759; E-mail: jesustl@usal.es

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trained in trauma-informed approaches. However, legal definitions and policies of consent do not fully recognise TI during the incident as evidence of lack of consent. This review will analyse how this phenomenon has been dealt with by the courts in Spain.

Methodology

A search was carried out in the Judicial Documentation Centre (CENDOJ) of the general council of the judiciary, filling in the search fields of the database according to the indicator in the free text section: "tonic immobility"; "tonic inhibition". The process reported 5 case law references where the search terms were mentioned.

- SAP of Palma de Mallorca, of eleventh July 2018
- AAP Santander, 28 December 2020
- AAP of Santander, of 2 July 2021
- SAP of Santander, of 4 August 2022.
- SAP of Santander, of twenty-fifth November 2022

Results and Discussion

The only court decision that analyses and studies the phenomenon of tonic inhibition is the ruling of 25 November 2022. The other decisions mention TI in the wording of the facts of the judicial proceedings or as conclusions of the forensic reports found in the case file. For example, in the Order of 28 December 2020, TI is associated with physical paralysis and lack of reaction: "The minor, who had never had sexual relations, became blocked, in a situation defined by the Forensic Doctor as tonic inhibition, unable to react". Similarly, the Order of 2 July 2021 recounts the rape suffered by a 17-year-old girl which occurred unexpectedly and surprisingly, and determining that this absence of response was compatible with tonic inhibition. Physical inhibition as an absence of response was also found in the Judgment of 25 November 2022, where it is described as: "without prior warning and without the consent of the minor, provoking in the latter a situation of initial surprise and discomfort, which turned into a total blockage, generating a tonic inhibition in her, with an absence of response, which prevented her from screaming or reacting as a consequence of the actions carried out by the defendant [15].

The Judgment of 4 August 2022 details, as a fundamental argument, the process of TI, and the arguments by which it can be attributed to the victim of the sexual assault, which is the subject of the judicial decision. The TI is described as a: "A reaction to danger that is facilitated by intense fear, physical restraint and the perceived inability to escape, and explains why many people become paralysed in a traumatic situation. It is what is colloquially called "being paralysed by fear and is described by experts as a temporary state of motor immobility in response to a situation of extreme fear. A reaction that, statistically, is statistically common in many cases of attacks on sexual freedom and sexual indemnity, and whose symptoms include motor inability, inability to scream, lack of response to external stimuli, feeling of loss of ability to feel pain". The forensic reports in the court files confirmed that when attending the victim, the doctors noted the victim's tonic immobility during the attack and at trial confirmed that her reaction was compatible with such an involuntary tonic immobility response [16].

Conclusion

The study of IT has, in recent decades, been an emerging issue among victims of sexual violence. Therefore, understanding this phenomenon and the associated symptomatology is a first step in helping victims of this crime. The results presented in this paper aim to represent a first step in the study of TI in victims of sexual violence from a forensic perspective. This type of study will help forensic and legal professionals to know and use this information, and to apply it in their investigations and as a basis for their reports within the judicial

system. Although little is known about the nature and phenomenology of TI in humans, because its study has been primarily animal-based, research clearly shows that the TI response experienced during episodes of sexual violence may be similar to the phenomena experienced by animals.

The forensic context of the judicial decisions analysed barely reflects this type of reactions among victims of sexual violence, perhaps because research on the subject is still not well known in other fields, such as clinical or legal. Therefore, it is necessary to have information on TI as part of the victimisation process. Furthermore, from a forensic point of view, the phenomenon of TI may shed light on contexts of lack of resistance from victims. What can be interpreted as passive consent is likely to represent an instinctive biological reaction. On the other hand, the judicial decisions also do not reflect the seriousness of the traumatic consequences for the victims and their quality of life, as the researchers have shown. The justice system needs to be able to consider TI as a process among the legal standards for victims of sexual violence and protocolise procedures for intervening in cases where forensic experts observe and describe TI in these victims. Among the limitations are that the court decisions analysed have only dealt with assaults committed by adults, which prevents us from knowing exactly the role played by minors in these crimes. In addition, the fact that the CENDOJ database only collects second instance court decisions or appeals may explain the scarce presence of sentences.

Conflict of Interest

The authors state no conflict of interest.

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