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Stealthingly Being Legal In US Excuses Sexual Abuse For Millions

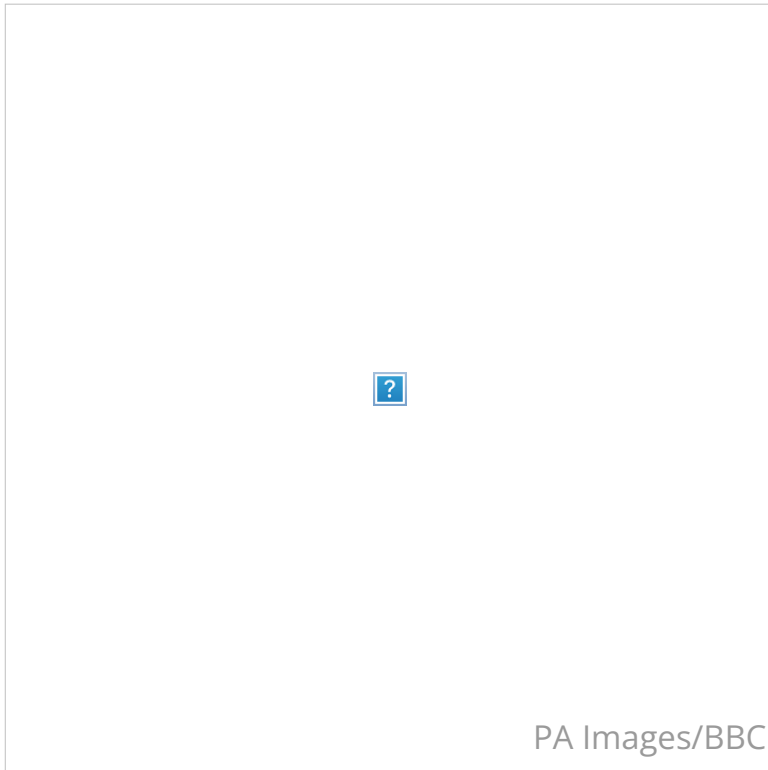
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BY : [SAMAN JAVED](#) ON : 13 MAR 2021 16:06

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PA Images/BBC

Jodie* didn't know what had happened until the next day. She'd seen the purposefully-torn condom after the fact and she'd felt her body tighten during, as if it had been aware of the violation before her mind had time to catch up, but the confusion was first to take hold.

After all, he said the condom had broken, shrugged it off without a second thought.

Next, came the shock. Why didn't I notice? How could I not tell the difference between condom and no condom?

These are some of the thoughts Jodie experienced in the years after she was stealthed.

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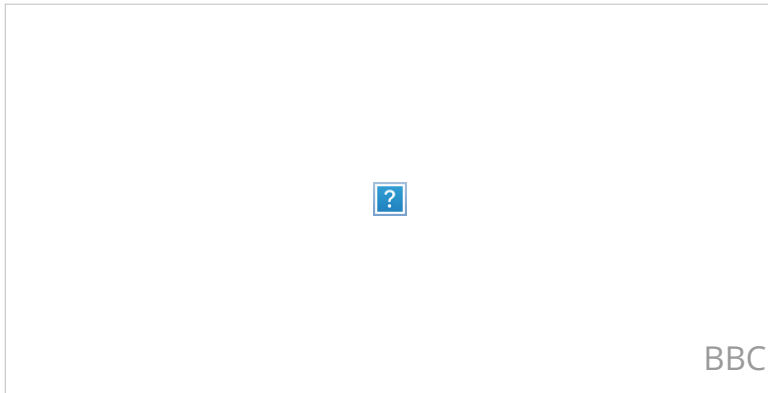


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The perpetrator's denial and dismissal of the incident is similar to a scene in Michaela Coel's acclaimed BBC series *I May Destroy You*, in which Zain removes his condom without consent while the pair are having sex. When Arabella later confronts him, he says: 'I thought you knew.'

Jodie says the experience made her think back to her past relationships and what it took for her to have sex without a condom with someone.

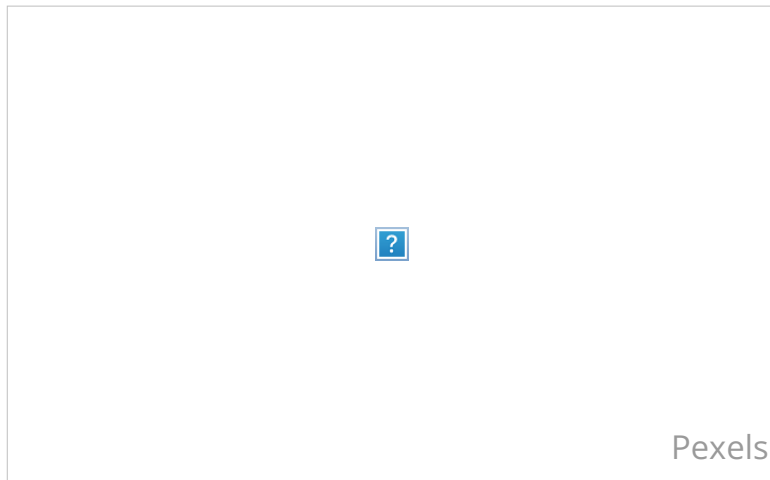
'Well, it took an established relationship of many months, it took us both getting a [sexual health] test with results. All these things to safeguard your health, and then for somebody to just be so reckless, it's absolutely terrifying.'

Under the UK Sexual Offences Act 2003, if a condom is not worn when there was a prior agreement for one to be used, it potentially amounts to rape, Christian Weaver, a barrister and founder of legal project, [The Law in 60 Seconds](#), says.

As per the statute, a person consents if they 'agree by choice, and have the freedom and

capacity to make that choice', Weaver explains. When a perpetrator carries out stealthing, they potentially remove a person's ability to agree by choice.

While laws in the UK recognise stealthing as a serious crime, survivors in the US do not have any legal recourse.



In February, California Assemblywoman Cristina Garcia proposed a new bill which, if passed, will deem the act a form of sexual battery. The legislation, [AB 453](#), seeks to amend the civil code and will allow survivors to sue for emotional and physical damages.

It is not the first time lawmakers have tried to make stealthing illegal, however past attempts sought to amend the country's penal law and were quickly shut down.

As per the latest [figures](#) from the US Department of Justice, there are currently 1,501 Black prisoners for every 100,000 Black adults. This is

more than five times the amount of 268 white prisoners for every 100,000 white adults.

'There's a fear of adding another crime to the books that might be exploited to target men of colour disproportionately. That's been the biggest barrier here in the state of California,' Garcia says.

This is the key reason why Garcia is introducing the bill to the country's civil code.

'As we try to dismantle the racism in the system, we can't ignore the victims and the justice that they need. Having something in the books allows us to make it clear that this is a crime, that it is illegal, that it is wrong, and that it is immoral,' she adds.

Democratic Representative Ro Khanna, who previously rallied to make stealthily illegal, said that if passed, AB 453 would 'not only give survivors legal recourse, but it also gives language, validation, and hopefully empowerment to survivors who have experienced this specific form of violence'.



Adwoa Asante, a [criminal defence lawyer](#) in Dallas, Texas, says an amendment to the civil code sends a clear message to society without disproportionately affecting Black Americans.

'Culture shapes laws and then laws shape culture,' Asante says. 'People who disregard women's bodies and people who engage with women's bodies violently are put on notice that there could be consequences for their behaviour.'

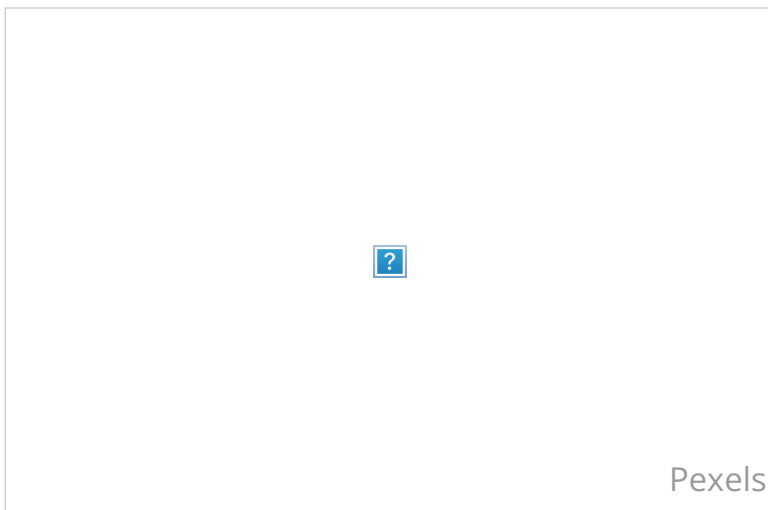
'That's important because people may not respond to morality, but they'll definitely respond to power,' she says.

A lack of awareness around stealthily and the magnitude of its effect on survivors significantly contributes to their trauma. The act is often left out of the conversations around sexual violence, which not only allows perpetrators to attack without consequence, it leaves survivors confused and isolated.

‘That was part of the assault: the psychological warfare. And the thing is, if they [the perpetrator] catch you in a time where you’re not doing well, you’re not confident in yourself, or you’re second-guessing yourself, then I think a lot of women would tell themselves, “Yeah, the condom just broke,”’ Jodie says.

Weaver says the term ‘stealthingly’ may also contribute to why people do not understand the seriousness of the act or even consider themselves a victim of sexual assault.

‘By giving the non-consensual removal of a condom during sex its own term, it strays into the territory of not only trivialising the act but cloaking it with an illusion of acceptability as opposed to a sexual assault,’ he says.



At the time of Jodie’s assault, stealthingly was talked about so little that she found herself obsessively googling, trying to understand what had happened to her. She knew she felt violated and

attacked, but she didn't understand why.

'For the few months after it was a bit of a disembodied experience that women who have been violently sexually assaulted have spoken about. I had never experienced any other kind of sexual assault. So, I only learned about the things I was feeling by researching how rape survivors felt,' she says.

And then came the self-blaming, followed by the victim-blaming.

'We place the onus on survivors. Why didn't I notice? How could I not tell the difference between condom and no condom? That is a really isolating experience,' she says.

'If there was more awareness and more written about it, maybe I wouldn't have felt so alone,' she adds.

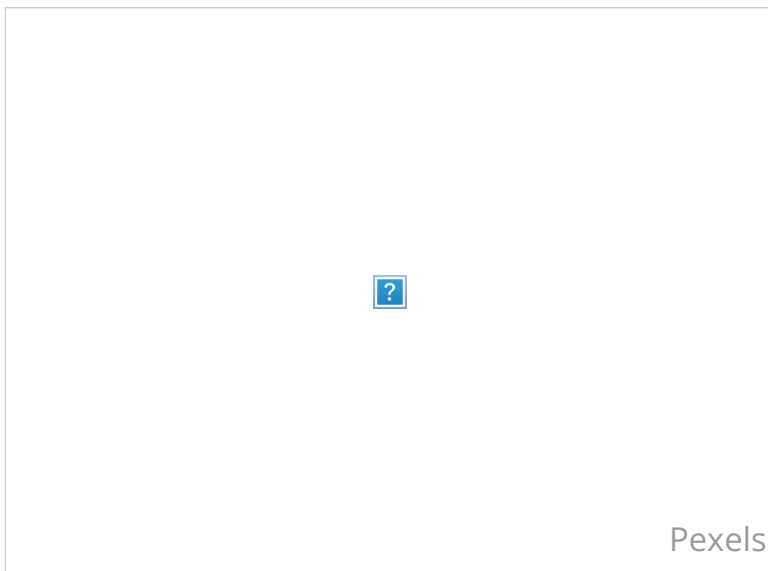
Garcia agrees: 'It's always, what did the victim do? How could they have prevented it? But actually, how about you teach people not to rape instead of teaching me how to avoid being raped?'

'We've put a lot of shame and stigma on victims of sexual assault. You shouldn't be ashamed that this happened to you. The person who is the perpetrator, who crossed the line, who's raping and sexually assaulting me, that's the person who should be ashamed.'

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Asante says the very existence of Garcia's bill is a deterrent, but, she fears survivors will still face difficulties when trying to get justice.



While the American criminal legal system poses huge issues in terms of racism, exoneration and brutality, a lot of people can't access the civil legal system for economic reasons.

'It's also really burdensome on survivors who are probably trying to heal and process the violence

they experienced. Now they have to navigate a convoluted legal system, trying not to be traumatised and retriggered,' she says.

Despite the many freedoms afforded to women in the US and other western countries, patriarchal attitudes towards sex still exist, and they are having a devastating impact. These views are especially prevalent in conservative states.

'When you don't think someone should be having sex, it's difficult for you and your moral conscience to process their violations because you have this unconscious belief that whatever happens to them during this act that they're not supposed to be doing, is self-inflicted,' she adds.

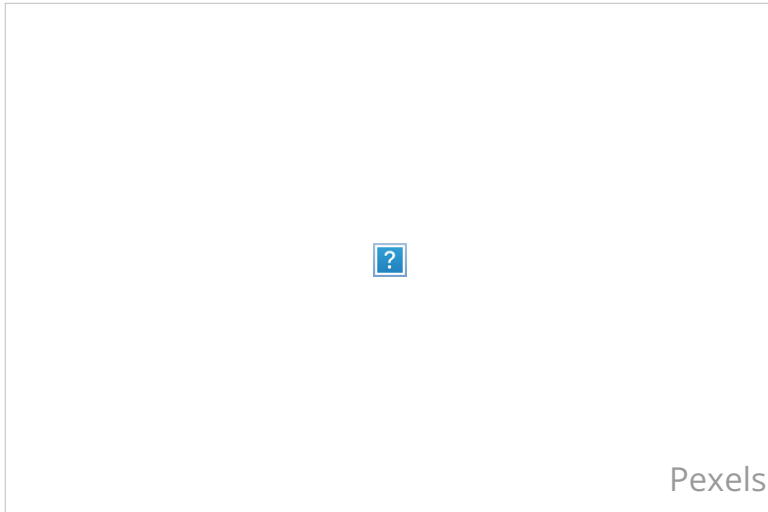
These social hierarchies also play out in the justice system, where they become even more complicated.

'There are a lot more politics at play in the courtroom than the laws on the surface would suggest. We have been socialised to value a man's word more than women.

'Then when you add in class, it gets trickier. When you add in the race, it gets even murkier. Our culture sees some people as more honest, credible than other people.

'And then you add in sexuality. The conversation is very hetero-normative but there are other people, other than women, who are having sex and are

being subjected to stealthingly,' Asante says.



Something that makes it significantly more difficult for survivors to get justice through the legal system is the fact that survivors are not linear in how they respond to harm.

'Assuming someone realises that they've been they've been a victim of stealthingly, they could still continue a sexual relationship with that person, and lawyers can present that information as a defence for the perpetrator,' Asante explains.

Jennifer Long, CEO and founder of [AEquitas](#), a non-profit which aims to improve justice in sexual violence, says with an incident that begins with consensual sexual activity but then becomes non-consensual, like stealthingly, justice can become somewhat of an uphill battle for survivors.

'Sometimes people will say, well, it's not as harmful to a victim, because they've already consented to something. That's a problematic value judgment because survivors have individual

experiences and we can't calculate the harm,' Long explains.

While amending the civil code should bring changes to the conversations around consent in homes and schools, Garcia believes stealthing should be outlawed under the criminal code.

A 2017 study, *'Rape-Adjacent': Imagining Legal Responses to Nonconsensual Condom Removal* by civil rights lawyer Alexandra Brodsky, unearthed entire online communities in which men not only encourage each other to 'spread their seed', but also guide one another on how to stealth without getting caught.

'That fact that these exist, that perpetrators get together and talk about how to carry out this kind of encounter, then you think maybe it should be a crime because it's a planned assault,' Long says.

'I don't think this is the final step. I think it's just one step in the fight to make sure that people are informed and understand what consent is,' Garcia adds.

The bill, which has been assigned to the California Assembly Judiciary Committee, does not have a date for when it will be heard yet.

*Jodie's name has been changed to protect her identity.

If you have been affected by any of the issues in

this article and wish to speak to someone in confidence, contact the Rape Crisis England and Wales helpline on 0808 802 9999 between 12pm– 2.30pm and 7pm– 9.30pm every day.

Alternatively, you can contact Victim Support free on 08 08 16 89 111 available 24/7, every day of the year, including Christmas.

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