
“MARRY YOUR RAPIST” LAW: STUDYING JUDICIAL PRONOUNCEMENTS AND ITS SOCIAL IMPACT

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1. ABSTRACT

This paper aims to discuss the “Marry your Rapist” laws which allows a man accused of rape to escape the punishment by just marrying the victim. Rape exposes the inability and failure of the society’s institutions to protect the individuals of the society. As a result of failure of these institutions, the victim is the one who gets punished by marrying their rapist and not the accused. In furtherance of the research paper, many judicial pronouncements have been studied with respect to marry your rapist laws. In a few cases the courts have allegedly asked the accused to either marry the victim or go to jail. India does not have a codified Marry-your- Rapist law. However, Indian judiciary has always tried to highlight the importance of delivering justice to women but still in many cases the justice has remained undelivered due to societal pressure and to save the family’s name.

Various international conventions have been discussed. This paper also points out the mind-set of the society towards the rape survivors and considering marriage as a solution to the lost honour and out-of-court settlements with respect to marry your rapist laws. There are several cases where the rape cases have been settled outside the courts on the condition of accused marrying the victim. The victim takes the complaint back from the court on such condition.

Finally, the paper ends with the suggestions and concluding remark.

2. Keywords: marriage, rape, society, India, Article 21, Court.

3. Introduction

Section 375¹ of the Indian Penal Code, 1860 deals with Rape. According to this section, “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 six following descriptions: —

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested 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 her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age.

Rape is one of the most heinous kinds of violence against women that humanity has witnessed. When you combine that with compelling the victim to marry her rapist, the picture becomes even more uglier. Marry-your-rapist law is a law where the rapist is asked to marry the victim to avoid the punishment. This permits men to have rape convictions overturned merely by marrying the victim. Such laws are expressions of sexist attitudes that have existed in society since time immemorial. Because sexual intercourse before marriage is considered taboo in our culture, our society believes that marrying the perpetrator himself can help the victim overcome the taboo and live a normal life.

¹ Section 375, Indian Penal Code, 1860.

It is significant to note that India does not have a law that specifically allows the "Marry-your-rapist" provision. However, societal norms and certain legal procedures have resulted into similar outcomes. These involve situations when judges have recommended marriage as a resolution or have given rapists with lighter penalties if they married their victims. Even in many cases, the cases are settled outside of the court. The victims under the pursuit of saving families name and extreme societal pressure agree to marry with her rapist and do not approach the court or takes the complaint back from the court.

These situations have resulted in continuous increase in the heinous offences against the women. According to the National Crime Records Bureau², as many as 4,28,278 cases of crime against women were registered during 2021—an increase of 15.3 per cent over 2020 (3,71,503 cases). According to the IPC, "cruelty by husband or his relatives" (31.8%), "assault on women with intent to outrage her modesty" (20.8%), "kidnapping and abduction of women" (17.6%), and "rape" (7.4%) accounted for the bulk of cases of crimes against women. According to NRCB data, the crime rate per lakh women was 64.5 in 2021 compared to 56.5 in 2020.

4. Research Design

4.1 Research Problem

Time and again the society witnesses such rape cases which shook the whole nation despite many improvements for the protection of the women. It raises question whether the authorities, statutes and society's institutions are strong enough to restrain the rapist. It is more disheartening to see that the courts are offering the option to marry the victim and escape the punishment. Such decisions are working as an encouragement for heinous crimes against the women.

4.2 Research Question

- How do societal pressures and concerns for family reputation influence the outcome of rape cases, and what challenges do survivors face in seeking justice?
- Do court decisions in certain cases pressure or coerce survivors into marrying their rapists?

² National Crime Records Bureau data, 2021.

- What legal, social, and educational measures can be recommended to address the issues associated with "Marry your Rapist" laws and ensure justice for survivors?

4.3 Research Objective

- To analyse the situation in India, where there may not be a codified "Marry-your-Rapist" law but where societal pressures and family reputation often play a significant role in the outcome of rape cases.
- To explore and scrutinize court decisions and rulings related to these laws, particularly cases where courts have suggested that the accused shall marry the victim as a form of punishment or resolution.
- To assess the impact of these laws on survivors and society as a whole, and provide suggestions for legal and societal changes to address this issue, ensuring justice for survivors and eliminating such laws and practices.

4.4 Literature Review

(Proma Mukherji, 2022), Sexual assault is a serious crime in all forms, including aggravated assault like rape. In more than one-third of the cases, the victims are youngsters, while older women account for a sizable share of the victims. Just a few of these victims have significant injuries to their bodies, but they have all experienced psychological trauma that will affect their life and the lives of those around them. It is as offensive to ask these survivors to marry with their predators as it is to do the crime.

If we narrow down the discussion to our country India, there are several instances wherein the victims are married to the perpetrator and the marriage is used as a ploy to elude the punishment after committing such odious crime.

In the case of *Mohit Subhash Chavan v. The State of Maharashtra*,³ Sharad Arvind Bobde, the then Chief Justice of India, asked a perpetrator whether he was willing to marry the victim in order to decrease the punishment. His precise words were, "If you want to marry, we can help

³ 'Will You Marry Her?': SC Asks Man Accused of Raping Woman When She Was Minor' (The Wire, 1 March, 2021) <<https://thewire.in/law/supreme-court-rape-accused-marry-pocsgovernment-employee>> accessed 08 February, 2022

you." If you don't, you'll lose your job and go to jail. You seduced and raped the girl. This became a disgrace for the entire judiciary, and everyone mocked the institution.⁴."

(Kushi Rajanahalli, 2020), In a Madras High Court judgment⁵, the accused impregnated a minor and was later given bail because he agreed to marry the girl once she reached the age requirements (attains majority). The accused was booked under POCSO Act sections 5(j)(ii), 5(l), 5(n), and 6. The judgment further stated that the petitioner was required to register the marriage and that if he failed to do so, the respondent police were given the authority to proceed against him in accordance with the law.

In an almost identical yet distinct judgement given by Gujarat High Court⁶, an FIR was registered under Sections 4, 5, and 6 of the POCSO Act, and Sections 363, 366, and 376(2)(n) of the IPC were quashed. While it is well known that FIRs are not quashed by courts in significant and grave offenses such as rape, the court remarked that there was a "settlement" in a way of marriage due to the prayers of family⁷.

(Stellina Jolly and M.S. Raste, 2006), In another recent instance, a lower court in Mumbai appeared to be convinced that the solution to rape is marriage. According to reports, the judge offered a police escort to the wedding party in order to prevent the accused from fleeing the scene. These decisions plainly reflect the preconceptions, cultural biases, and patriarchal prejudices that are prevalent within the court.

These incidents also demonstrate that, despite lofty claims of human rights and a plethora of legislative provisions granting equality to women, modern legal systems and criminal justice delivery systems consider rape to be a crime not because the rapist brutally assaulted his victim's body and dignity, but because he did so to a woman who did not legally belong to him. In other words, as a society and as a democracy, we are still a long way from acknowledging a woman's sexual autonomy and right to physical integrity⁸.

⁴ Proma Mukherji, Having To Marry My Rapist: Direct Infringement of Article 21? (2022), www.scconline.com

⁵ Arunkumar v. State Represented By the inspector of police CRL.A.(MD)No.152 of 2015

⁶ Mitesh Ashokbhai Chunavala v. State of Gujarat ICL 2020 (9) Guj. 684

⁷ Kushi Rajanahalli, Is Marriage with Rapist, a Solution to Lost Honour? (2020), International Journal of Legal Science and Innovation, [ISSN 2581-9453], Volume 3 | Issue 2.

⁸ Rape and Marriage: Reflections on the Past, present and Future, 48 JILI (2006) 277, www.scconline.com

(Navya Singh, 2019), In an androcentric country like India, where women make up 48.5% of the population, there is still a high likelihood of women not making decisions for themselves, despite the fact that they make up 48.5% of the population.

Women who have been raped primarily want the rapist to face heavy punishment for the brutality that has suffocated the breath of her existence today. Rape not only physically affects the victim but also taints her soul. As a result, the discretion of marrying their rapist raises the question of what motivates a victim to take such a liberal attitude. The reasons behind this are-

- Lack of fair and speedy trial
- Societal Pressure
- Media Trial⁹

(Anusha Jain, 2021), In such circumstances, the judges are frequently seen inviting victims to their chambers. In one of the cases where the victim was asked to confess the truth, she admitted that, despite the fact that the crime was committed, she wanted to withdraw her complaint and marry the accused due to family pressure; otherwise, if the guilt was proven, her chances of marriage would be jeopardized.

There is no black and white formula for the circumstances that may lead to marriage between a rape survivor and a rapist, but they can be broadly classified into three situations: one where the relationship was consensual but the family was not supportive of the relationship. Second, where the criminal has sex with the victim after making a fake vow to marry that they do not keep. The third category of rape cases is when social and family pressure results in a marriage between the victim and the perpetrator. It is these cases where the Courts face a lot of dilemmas¹⁰.

(Poorvi Gupta, 2020), It makes no difference if the victim marries her rapist because her life would still be damaged. When the survivor is coerced into marrying a criminal, what assurance

⁹ Navya Singh, Insensitivity of Judiciary in Rape Cases: Marriage Helping in Acquittals, 4 NLUO HRLJ (2019). 91, www.scconline.com

¹⁰ Anusha Jain, Marry Your Rapist Law: A Discourse in India, 2021, <https://lexlife.in/2021/03/28/marry-your-rapist-law-a-discourse-in-india/>

of security is there? Is there really a system in place for the court to determine if the survivor is leading a good life or not?

No law recognizes the "marry your rapist to get out of jail" card. Nonetheless, it persists technically in courts and informally in families and village councils. Marriage is a rescue ploy by convicted or alleged rapists to avoid punishment. A court of law cannot participate in such settlements.^{11"}

(Ishani Samajpati, 2021), In reality, the Marry-your-Rapist laws diminish women's autonomy. These laws also encourage rape exemption, which normalizes illegal sexual behaviors and treats women as an object.

The Marry-your-Rapist laws take no account of women and continue to provide rapists with a legal gateway. There should be some legislation that removes this brutality as soon as possible in order to protect women's basic rights and ensure that future generations are free of this form of cruelty and inhumanity¹².

4.5 Hypothesis –

Having to marry with the rapist is a violation of Article 21 of the Indian Constitution and the biggest punishment, not for the accused but for the victim. There is a need of law to penalize and therefore discourage the practice of forcing the victim to marry her rapist. The rapist should not be offered to marry the victim to escape the punishment, as it encourages the heinous crimes against the women.

4.6 Research Methodology-

For the purpose of addressing the above objectives, doctrinal method has been adopted. It is a descriptive and analytical study is done with a specific analysis of the societal structure and the judicial pronouncements. Both primary and secondary resources have been used. Primary sources include judicial pronouncements. Secondary sources include journals, books and articles.

¹¹ Poorvi Gupta, How India's Rape-Survivors End Up Marrying Their Rapists, 2020.

¹² Ishani Samajpati, Marrying Your Rapist – An Immoral Saga of Compromise and Humiliation in Rape Cases, 2021

5. Societal attitude and the concern for family reputation –

Marriage to the rapist often takes place owing to immense societal pressure, victim shaming, and in pursuit to save the family honor. The victims are coerced to get married to their rapists by family or society at large. Due to a lack of support and awareness, most of these incidents remain unreported and often do not come before the public eye¹³.

The very foundation of "marry-your-rapist" laws rests upon the notion of women as property, a concept that has long been used to justify male dominance and control over female sexuality. By equating a woman's body to a possession, these laws effectively deny her agency and autonomy, reducing her to an object to be exchanged for the preservation of family honor.

The overwhelming concern for family reputation, a cornerstone of many traditional societies, serves as a driving force behind the perpetuation of "marry-your-rapist" laws. The stigma associated with rape is often perceived as a stain on the family's integrity, a blemish that must be erased at all costs. This misplaced emphasis on societal perception prioritizes the perceived shame of the family over the well-being and rights of the victim. The consequences of "marry-your-rapist" laws are far-reaching and devastating for the victims. Forced into a marriage with their attacker, they are trapped in a cycle of abuse, deprived of the opportunity to heal from the trauma of rape, and subjected to ongoing physical, emotional, and psychological harm. Their voices are silenced, their autonomy shattered, and their lives reduced to a mere means of restoring the family's tarnished honor¹⁴. The offer of marriage is made by the perpetrator to the victim in cases of rape because the Indian courts themselves are not authorised by the current statute to recommend a marriage between the victim and the criminal. The victim gives in to the pressure. The victim, however under duress, is unwilling to acknowledge that she is getting married of her own free will despite all the attempts and court-ordered interrogations.

The perpetuation of "marry-your-rapist" laws not only denies victims justice but also reinforces harmful gender stereotypes and norms. By condoning the idea that a woman's worth is determined by her sexual purity, these laws reinforce the notion of female subordination and contribute to a culture that normalizes violence against women.

¹³ DEA, Sexual Assault Awareness & Prevention Month, 2022

¹⁴ Warrick, Catherine, "The Vanishing Victim: Criminal Law and Gender in Jordan", Law & Society Review, 2005.

6. Perceptions and Perspectives of Judiciary-

The Indian judiciary has played a significant role in shaping the legal landscape on 'marry-your-rapist' laws. While some judges have upheld these laws, citing their adherence to traditional values or the need to protect family structures, others have challenged their validity and advocated for their abolition. These divergent views reflect the complex interplay of legal principles, social norms, and individual biases that influence judicial decision-making in India.

Some judges have believed that these laws are rooted in traditional Indian values and customs that emphasize reconciliation and family unity. They have argued that upholding these laws is necessary to preserve cultural norms and maintain social harmony.

Some judges have viewed marry-your-rapist laws as a means to protect families from the stigma and disruption caused by rape. They have argued that forcing the perpetrator to marry the victim can restore order and stability to the family unit. While some judges have believed that rape is not a victimless crime and that the victim's consent to marriage can mitigate the severity of the offense. They have argued that forced marriages in these cases are preferable to allowing the perpetrator to go unpunished¹⁵.

More recently, a growing number of Indian judges have challenged marry-your-rapist laws. Many judges now argue that these laws violate the fundamental rights of victims, including the right to freedom from violence, the right to bodily autonomy, and the right to equality. They contend that forced marriages perpetuate gender inequality and reinforce harmful social norms.

Some judges also believe that marry-your-rapist laws perpetuate injustice by denying victims the opportunity to seek justice and by shielding perpetrators from punishment. They argue that these laws fail to address the underlying trauma of rape and contribute to a culture of impunity for sexual violence.

The Indian judiciary has always tried to highlight the importance of delivering justice to women. But there remains a fair chance of "blanket denial" by the victim or her family owing

¹⁵ Aiman R Khan, Why 'marry your rapist' court orders are not always what they seem, The Business Standard, 2022

to pressure from various influential quarters or simply giving up due to societal pressure¹⁶.

7. Judicial Pronouncements-

The issue of marry-your-rapist laws has sparked much debate in the judicial system, as there exists a lack of consistency and clarity in legal rulings. This can be attributed to the intricate balance between legal principles, societal norms, and personal biases, which all play a role in shaping judicial decisions.

To begin with, in the highly publicized case of Mohit Subhash Chavan vs State of Maharashtra¹⁷, then Chief Justice of India Sharad Arvind Bobde asked a question to the accused of raping a minor girl - would he be willing to marry the victim as a form of leniency in his punishment? This shocking inquiry sparked widespread outrage and ridicule towards the entire judicial system. What is even more concerning, is that this is not an isolated incident. There have been multiple cases where perpetrators have been rewarded for marrying their victims, without any attention or scrutiny from the public.

In another case¹⁸, a 14 years old girl from a small village of Uttar Pradesh, was raped and she ended up by marrying her rapist due to intervention of village elders. The Guwahati High Court, in the Md. Jahirul Maulana v. State of Assam¹⁹ case, dismissed charges against a convicted rapist who had married his victim because of the fact that the victim and offender had reached a compromise through marriage, which would likely result in a lower chance of conviction. In the case of V. Mohan v. State²⁰, the rape victim was suggested by the Madras High Court to solve the matter through mediation. The judge stated that these days ADR method is commonly used in criminal trials, so, it can be used here as well.

All these cases are ones in which the decision was given in favour of the accused. These cases show how a rape survivor has to face such pressure from the society as well as from the judicial officers. This shows how the marriage is used as a substitute of punishment and a solution of

¹⁶ Ishani Samajpati, Marrying your rapist – An immortal saga of compromise and humiliation in rape cases, Knowlaw, 2021

¹⁷ Apoorva Mandhani, CJI Bobde says his ‘will you marry her’ remark in minor rape case was ‘complete misreporting’, The Print, 2021.

¹⁸ Poorvi Gupta, How India’s Rape-Survivors End Up Marrying Their Rapists, A14, 2020.

¹⁹ Md. Jahirul Maulana v. State of Assam, Criminal Petition No. 234 of 2016.

²⁰ V. Mohan v. State, Criminal Appeal No. 628 of 2017.

rape. Marry -your-rapist laws do not exist in Indian legislations but these cases indicate its presence through stereotypical thinking of judicial officers favouring patriarchal biasness.

However, the India Judiciary has always valued the importance of protection of women. There are many occasions and cases where courts have tried to totally bar and restrict the rape marriages. In the case of Aparna Bhat v. State of Madhya Pradesh,²¹ the supreme court overturned the decision of Madhya Pradesh High Court which freed an accused from the punishment on the option to tie a “Rakhi” and consider the victim as his sister. The Supreme Court held that the rape marriages should not be allowed and the methods like mediation can not be a suitable method to solve these cases. In another case of Gian Singh v. State of Punjab,²² the supreme court observed that where the parties have entered into a settlement, there becomes no chance of conviction and the proceedings can be quashed under section 482 Cr.P.C. read with article 226 of the constitution, but this is not applicable to the serious offences like rape, murder, robbery, dacoity etc. A three-judge bench in the case of Shimbhu and Another v. State of Haryana²³ held that rape is a non-compoundable offence. On the basis of settlement or any compromise, the crime of rape should not be quashed, as the consent of the victim may be absolutely free but it is affected by trauma and helplessness. The offence is not done only against the victim but the whole society. Similar opinions have also been given in some other cases to completely bar and restrict the rape marriage and to ensure that marriage should not be used to escape or substitute the punishment.

8. Social Impact of judicial pronouncements -

The judgments made by courts regarding marry-your-rapist laws carry immense weight in molding societal perceptions and attitudes towards rape. When these laws are upheld, it reinforces the dangerous idea that rape can be excused with marriage, perpetuating the acceptance of violence against women and hindering the fight for justice. On the other hand, when these laws are challenged and overturned, it sends a strong and important message that rape is a heinous crime that must not be condoned, regardless of the perpetrator's motives or subsequent actions.²⁴

²¹ Aparna Bhat v. State of Madhya Pradesh, Criminal Appeal No. 329 of 2021.

²² Gian Singh v. State of Punjab, (2010) 15 SCC 118.

²³ Shimbhu and Another v. State of Haryana, (2014) 13 SCC 318.

²⁴ Anusha Jain, Marry your rapist law: A discourse in india, 2021.

Judges have an important role in denouncing the constitutionality of these laws, bringing attention to the serious and damaging effects of rape on victims. This, in turn, allows for a greater understanding within the public on the significance of consent and respecting women's bodies. In addition, this gives victims a sense of recognition for their rights and the possibility to seek justice. This can inspire more victims to come forward and report such heinous crimes.²⁵ Ultimately, by holding perpetrators accountable for their actions, these statements can serve as a deterrent for future instances of rape. This is crucial in creating a more secure and equitable society for all women. The social impact of these pronouncements is far-reaching and can play a significant role in creating a society where women are free from violence and discrimination.

9. Suggestions –

After analysing the situation of rape survivors and the above cases, it can be suggested that now it is very important for the legislature and the judiciary to completely restrict the rape marriages through strict laws and regulations. In order to solve the existing problems and to improve the condition of women victims for justice, firstly, it is very important for the judges to avoid stereotyping decisions and such thinking to not only to serve justice to the victims but also to improve their credibility towards the protection of women from the serious offences. In the situation of such heinous crimes, it becomes important for the judiciary to set an example to discourage the practice of such offences and to ensure justice to the victim. Secondly, there is need for a legislation which completely abolishes rape marriage and focuses on the condition of the victims, that ensures justice to the victim, fair trials, security, access to healthcare, counselling, and psychological support as well as ensuring no societal or family pressure on the victim and prohibiting the institutions like village panchayats and NGOs to take the case into their hands.

Thirdly, to promote gender equality and challenge patriarchal norms that perpetuate violence against women and empower women and girls through education and economic opportunities. This will increase their autonomy, reduce their vulnerability to exploitation, and enhance their ability to seek justice.

10. Conclusion-

It has been noted that despite the absence of a formal "marry-your-rapist" law in our legal

²⁵ Clare Dyer, Judges admit they get round law designed to protect women in rape trials, The Guardian, 2008.

system, this practice still persists in our society in various forms, such as through out-of-court settlements or within the court system itself. This practice is rooted in the belief that rape is somehow the fault of the victim, and that marrying the perpetrator is a solution to this "mistake". To truly address this issue, we must dismantle this harmful perception and recognize the fundamental rights of women. As highlighted in this paper, the notion that marrying one's rapist is a just punishment for the crime is deeply flawed and only serves to perpetuate injustice. By absolving the perpetrator of their actions through marriage, the justice system effectively punishes the victim instead, while the criminal walks free. It is imperative that there is proper implementation and enforcement of laws to stop this practice.