
CONVENIENCE MARRIAGE AS A SETTLEMENT IN RAPE CASES: A CRITICAL ANALYSIS OF CONSENT, COERCION, AND JUDICIAL DISCRETION IN INDIA

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ABSTRACT

The law relating to rape in India is grounded in the principle that consent must be free, voluntary, and unequivocal. At the same time, rape is classified as a non-compoundable offence, reflecting the legislative intent that such crimes are not merely private wrongs but offences against society. Despite this clear legal framework, a troubling pattern has emerged in judicial practice and societal response where marriage between the accused and the victim is treated, as a form of resolution. This paper examines the uneasy relationship between law and social reality in cases where marriage is used as a mitigating factor in rape prosecutions. Through an analysis of judicial decisions, including *Aparna Bhat v. State of Madhya Pradesh* and other relevant precedents, the study explores how courts have, at times, entertained considerations of compromise, settlement, or future marital prospects while deciding bail or sentencing.¹

The paper argues that such practices blur the distinction between consent and coercion. In many instances, the decision to marry is shaped by societal pressure, stigma, and the perceived need to restore honor particularly in cases involving pregnancy. This raises serious concerns about whether the resulting consent can be regarded as legally or ethically valid. Further, the study highlights the lived consequences of such arrangements, noting that marriages arising out of such circumstances often perpetuate power imbalances and may lead to continued abuse or eventual breakdown. By situating judicial trends within a broader social context, the paper critically evaluates whether the use of marriage as a mitigating factor undermines the core principles of criminal law.

The paper concludes that while courts have increasingly moved away from endorsing such practices, inconsistencies persist. It calls for a more principled approach that firmly separates criminal liability from social settlement, ensuring that the autonomy and dignity of the victim remain central to the justice process.

¹ *Aparna Bhat v. State of Madhya Pradesh*, (2021) 3 SCC 247.

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1. Introduction

The law on rape in India is, at least in principle, unequivocal. Consent must be free, informed, and voluntary, and any act that undermines this standard is treated as a serious criminal offence. Further, rape is classified as a non-compoundable offence, signifying that it cannot be resolved through private compromise between the parties. This reflects a deeper understanding that such offences are not merely disputes between individuals but violations that affect the fabric of society itself. Yet, the reality that unfolds in courtrooms and communities often departs from this legal clarity. In a number of cases, the prospect of marriage between the accused and the victim are introduced sometimes by families, sometimes by counsel, and occasionally even through judicial suggestion as a means of resolving the situation. This phenomenon reveals a troubling intersection between law and social morality, where considerations of honor, reputation, and future security begin to influence outcomes in criminal proceedings.

The Supreme Court has, in recent years, expressed clear disapproval of such practices. In *Aparna Bhat v. State of Madhya Pradesh*, the Court categorically held that courts must not suggest or entertain the possibility of marriage as a solution in rape cases, recognizing the deeply problematic implications of such an approach.² This marked an important step towards reaffirming that criminal liability cannot be negotiated through social arrangements. However, despite such pronouncements, instances persist where courts have taken into account the existence of a relationship, a promise to marry, or even subsequent marriage while granting bail or considering sentencing.

At the heart of this issue lies a deeper question about the nature of consent. When a victim agrees to marry the accused under conditions shaped by social stigma, family pressure, or the consequences of pregnancy, can such agreement truly be regarded as voluntary? The distinction between consent and coercion becomes blurred, raising

² *Aparna Bhat v. State of Madhya Pradesh*, (2021) 3 SCC 247.

concerns about whether the legal system is, in effect, validating outcomes that compromise the autonomy of the victim.

Judicial decisions have long grappled with the complexities of consent, particularly in cases involving promises of marriage. In *Uday v. State of Karnataka*, the Court observed that consent obtained on the basis of a false promise may, in certain circumstances, vitiate consent.³ At the same time, subsequent judgments have shown inconsistency in applying this principle. This lack of uniformity further complicates the question of how consent is understood and applied in practice. This paper seeks to examine the role of marriage as a factor in rape cases through a critical lens. It explores how judicial discretion, when influenced by societal considerations, may unintentionally undermine the foundational principles of criminal law. By analyzing case law, legal provisions, and the broader social context, the study aims to assess whether the continued relevance of such considerations reflects a gap between legal doctrine and lived reality.

1.2 Objectives of the Study

This study aims to critically examine the role of marriage as an influencing factor in rape cases within the Indian legal framework. It seeks to analyze whether such considerations align with the fundamental principles governing consent and the non-compoundable nature of rape as an offence. Further, the research aims to evaluate the manner in which judicial discretion has been exercised in cases involving promises of marriage, subsequent marriage, or compromise between the parties.

The study also seeks to explore the broader social context in which such outcomes arise, particularly the role of societal pressure, stigma, and notions of honor in influencing decisions. In doing so, it aims to assess whether the said consent in such situations can truly be considered voluntary. Finally, the research endeavors to suggest a more principled approach that ensures the protection of victim autonomy while maintaining

³ *Uday v. State of Karnataka*, (2003) 4 SCC 46.

the integrity of criminal law.

2. Concept of Consent in Rape Law

The concept of consent lies at the very heart of rape law. It serves as the primary distinction between lawful intimacy and criminal conduct, and therefore demands careful and precise interpretation. While the statutory definition provides a formal framework, the practical understanding of consent is shaped significantly by judicial interpretation. Over time, courts in India have grappled with the challenge of distinguishing genuine consent from submission influenced by fear, deception, or social pressure. In this context, the issue becomes particularly complex in cases where consent is intertwined with promises of marriage or subsequent developments in the relationship.

2.1 Statutory Framework of Consent

The definition of consent in rape law was enumerated under Section 375 of the Indian Penal Code, now codified under Section 63 of the Bharatiya Nyaya Sanhita, replacing Section 375 of the IPC, which clarifies that consent must be an unequivocal voluntary agreement communicated through words or conduct.⁴ The provision further emphasizes that the absence of physical resistance does not mean implied consent, thereby rejecting outdated notions that equated silence or passivity with willingness.

This statutory articulation reflects a shift towards recognizing the autonomy of the individual and the importance of clear, affirmative participation. However, while the law sets out the formal requirements, its application in specific factual contexts remains subject to interpretation.

2.2 Consent vs Submission

A critical distinction that has emerged in judicial dialogue is that between consent and mere submission. Courts have consistently held that consent cannot be inferred where

⁴ Indian Penal Code, 1860, § 375; Bharatiya Nyaya Sanhita, 2023, § 63.

the circumstances indicate that the individual had no real choice but to comply. In *State of H.P. v. Mango Ram*, the Supreme Court observed that consent involves an active and reasoned choice, whereas submission may arise from fear, coercion, or helplessness.⁵ This distinction becomes particularly relevant in cases where the power dynamics between the parties are unequal or where external pressures influence the decision-making process. The recognition of this difference underscores the idea that consent must be evaluated in light of the surrounding circumstances.

2.3 Consent Obtained Under Misconception of Fact

One of the most contested areas within law regarding rape relates to consent obtained on the basis of a promise to marry. Section 90 of the Indian Penal Code, replaced by Section 28 of the Bharatiya Nyaya Sanhita, 2023 provides that consent given under a misconception of fact is not valid consent.⁶ Courts have relied on this provision to examine whether a promise of marriage, if made dishonestly, can vitiate consent. In *Uday v. State of Karnataka*, the Supreme Court held that not every breach of a promise to marry would amount to rape. The Court emphasized that it must be shown that the promise was false from the very beginning and made with no intention of being fulfilled.⁷ This approach seeks to prevent the criminalization of consensual relationships that subsequently fail.

However, subsequent decisions have demonstrated a degree of inconsistency. In *Deepak Gulati v. State of Haryana*, the Court reiterated that the intention of the accused at the time of making the promise is crucial in determining whether consent was vitiated.⁸ At the same time, courts have often been required to infer such intention from surrounding circumstances, leading to varied outcomes. This inconsistency reflects the inherent difficulty in assessing subjective intention and its impact on consent. It also highlights the thin line between deception and changes of circumstances, which courts

⁵ *State of H.P. v. Mango Ram*, (2000) 7 SCC 224.

⁶ Indian Penal Code, 1860, § 90; Bharatiya Nyaya Sanhita, 2023, § 28.

⁷ *Uday v. State of Karnataka*, (2003) 4 SCC 46.

⁸ *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675.

must navigate carefully.

2.4 Expanding Understanding of Consent

In recent years, judicial dialogue has increasingly emphasized the importance of respecting autonomy and rejecting stereotypes. The understanding of consent has evolved from a narrow focus on physical resistance to a broader recognition of agency and dignity. Courts have acknowledged that consent must be free from external pressures, including emotional manipulation, societal expectations, and fear of consequences. This expanded understanding aligns with constitutional values of personal liberty and dignity. At the same time, the practical application of these principles continues to face challenges. In cases where relationships are complex or prolonged, distinguishing between voluntary participation and compromised consent becomes particularly difficult.

2.5 Relevance to Marriage and Compromise

The discussion on consent acquires a different dimension when viewed in the context of marriage as a proposed or actual outcome in rape cases. When the victim agrees to marry the accused, whether before, during, or after legal proceedings, the question arises whether such agreement can be treated as evidence of prior consent or as a factor mitigating criminal liability. This approach raises serious concerns.

If consent is to be understood as a free and voluntary agreement, it becomes necessary to examine whether decisions made under social pressure, stigma, or the consequences of pregnancy can truly meet this standard. The possibility that such “consent” is shaped by circumstances rather than choice cannot be ignored. Thus, the concept of consent, while clearly defined in law, becomes far more complex in its application. The interplay between legal principles and social realities creates situations where the appearance of consent may conceal deeper forms of coercion.

The jurisprudence on consent in law regarding rape reflects an ongoing effort to balance legal clarity with the complexities of human relationships. While statutory provisions

and judicial interpretations provide a framework, their application in real scenarios often reveal tensions between formal definitions and lived realities. This complexity becomes particularly evident in cases where marriage is introduced as a factor, either as a promise or as a subsequent development. In such situations, the line between consent and coercion becomes increasingly blurred.

3. Non-Compoundable Nature of Rape and Limits of Compromise

The classification of rape as a non-compoundable offence reflects a conscious legislative choice. It signifies that certain crimes are so serious in nature that they cannot be resolved through private agreements between the parties. Instead, they are treated as offences against society, requiring prosecution irrespective of individual settlements. This framework is intended to prevent the dilution of criminal liability through social or personal arrangements. However, despite this clear legal position, the idea of compromise continues to surface in various forms within rape cases. While not formally recognized, such compromises often influence judicial outcomes, particularly in matters relating to bail, quashing of proceedings, or sentencing. This creates a tension between the formal prohibition of compromise and its informal presence in legal reasoning.

3.1 Statutory Framework: Non-Compoundable Offences

The Code of Criminal Procedure, 1973, under Section 320, which corresponds to Section 359 of the Bharatiya Nagarik Suraksha Sanhita, 2023 specifies the offences that may be compounded and the conditions under which such compounding is permitted.⁹ Rape does not fall within this list, thereby rendering it non-compoundable. The rationale behind this classification lies in the nature of the offence. Rape is not merely a private injury but a violation of bodily integrity and dignity that has broader social implications. Allowing such offences to be settled through compromise would undermine the deterrent function of criminal law and weaken the protection afforded to victims. This statutory framework establishes a clear boundary criminal liability in rape

⁹ Code of Criminal Procedure, 1973, § 320; Bharatiya Nagarik Suraksha Sanhita, 2023 § 359.

cases cannot be extinguished through agreement between the accused and the victim.

3.2 Judicial Approach to Compromise in Rape Cases

The Supreme Court has consistently held that compromise cannot be a ground for quashing proceedings in serious offences such as rape. In *Gian Singh v. State of Punjab*, the Court clarified that while certain offences may be quashed on the basis of settlement, heinous and serious offences involving moral turpitude cannot be treated in the same manner.¹⁰ This position was further reinforced in *State of Madhya Pradesh v. Madanlal*, where the Court unequivocally stated that rape is a crime against society and that courts should not encourage compromise between the parties.¹¹ The Court observed that allowing such settlements would be contrary to the interests of justice and would trivialize the gravity of the offence.

Similarly, in *Shimbhu v. State of Haryana*, the Supreme Court strongly deprecated the practice of reducing sentences or showing leniency on the basis of compromise or subsequent marriage.¹² The Court emphasized that such approaches reflect a misplaced sense of sympathy that fails to account for the rights and dignity of the victim. These judgments collectively establish that compromise has no legitimate role in determining criminal liability in rape cases.

3.3 Subtle Reintroduction of Compromise Through Judicial Discretion

Despite the clear stance taken in principle, judicial discretion has, at times, allowed compromise-like considerations to re-enter the legal process in indirect ways. This is particularly evident in decisions relating to bail and sentencing. In certain cases, courts have taken into account factors such as the existence of a prior relationship, the promise of marriage, or even subsequent marriage between the parties while granting bail.

While such considerations are not framed as “compromise” in the formal sense, they effectively perform a similar function by influencing the outcome of the case. This

¹⁰ *Gian Singh v. State of Punjab*, (2012) 10 SCC 303.

¹¹ *State of Madhya Pradesh v. Madanlal*, (2015) 7 SCC 681.

¹² *Shimbhu v. State of Haryana*, (2014) 13 SCC 318.

raises an important concern. If the law explicitly prohibits compromise, but judicial reasoning continues to be influenced by factors that resemble settlement, the distinction between legality and practice becomes blurred. The result is not an overt contradiction, but a subtle dilution of principle.

3.4 Marriage as an Informal Mechanism of Settlement

One of the most visible manifestations of this phenomenon is the use of marriage as a means of resolving rape cases. Although courts have increasingly discouraged this approach, it continues to appear in various forms, whether through suggestions during proceedings or through the consideration of marriage as a mitigating factor. The decision in *Aparna Bhat v. State of Madhya Pradesh* marked a significant step in addressing this issue. The Supreme Court explicitly directed that courts must not suggest or encourage marriage between the accused and the victim, recognizing that such suggestions are deeply problematic and inconsistent with the nature of the offence.¹³ However, the persistence of such practices indicates that the problem is not merely legal but also social. The idea that marriage can “restore honor” or provide a solution continues to influence both litigants and, at times, judicial attitudes.

3.5 The Tension Between Law and Social Reality

The continued presence of compromise-like considerations in rape cases reflects a broader tension between legal doctrine and social reality. While the law seeks to treat rape as a serious public wrong, societal attitudes often frame it as a matter affecting family honor and future prospects. This division creates situations where legal processes are influenced by factors that lie outside the formal framework of the law. Victims may be encouraged to accept marriage as a resolution as a result of societal pressure. The non-compoundable nature of rape represents a clear legislative and judicial commitment to treating such offences with the seriousness they deserve.

However, the continued influence of compromise-like factors, particularly in the form

¹³ *Aparna Bhat v. State of Madhya Pradesh*, (2021) 3 SCC 247.

of marriage, reveals a gap between principle and practice. While courts have taken important steps to discourage such approaches, inconsistencies persist. This underscores the need for a more consistent application of legal principles, ensuring that criminal liability is not indirectly shaped by considerations that the law explicitly seeks to exclude.

4. Judicial trends- Marriage, Bail, and Sentencing

The judicial approach to rape cases in India reflects an evolving yet sometimes inconsistent understanding of consent, autonomy, and criminal responsibility. While the Supreme Court has laid down clear principles discouraging compromise and emphasizing the seriousness of the offence, the application of these principles in individual cases often reveals a more complex picture. In particular, the role of marriage, whether as a promise, a subsequent development, or a perceived resolution, has influenced judicial reasoning in subtle but significant ways.

4.1 Marriage as a Consideration in Judicial Reasoning

Historically, there have been instances where courts have appeared to treat marriage as a factor capable of mitigating the consequences of rape allegations. In some cases, proposals of marriage have even been raised during proceedings, reflecting a troubling overlap between social expectations and legal adjudication. The Supreme Court, in *Shimbhu v. State of Haryana*, strongly criticized this approach, observing that a compromise or marriage between the accused and the victim cannot be a ground for reducing punishment in rape cases.¹⁴ The Court emphasized that such reasoning undermines the dignity of the victim and trivializes the gravity of the offence.

This position was further reinforced in *Aparna Bhat v. State of Madhya Pradesh*, where the Court categorically held that judges must refrain from suggesting marriage as a solution, recognising that such suggestions are rooted in patriarchal assumptions about honour and rehabilitation.¹⁵ These decisions mark a clear shift towards rejecting the

¹⁴ *Shimbhu v. State of Haryana*, (2014) 13 SCC 318.

¹⁵ *Aparna Bhat v. State of Madhya Pradesh*, (2021) 3 SCC 247.

legitimacy of marriage as a factor in determining criminal liability. However, their implementation across different judicial forums has not always been uniform.

4.2 Bail Decisions and the Role of Relationship Context

One of the areas where the influence of marriage and relationship dynamics becomes particularly visible is in bail jurisprudence. Courts, while exercising discretion in granting bail, often consider factors such as the nature of the relationship between the parties, the existence of a prior intimate association, or the possibility of settlement.

In *Maheshwar Tigga v. State of Jharkhand*, the Supreme Court examined a case involving a long-term relationship and highlighted the importance of distinguishing between consensual intimacy and criminal conduct.¹⁶ While the judgment did not endorse compromise, it reflected the complexities involved in cases where personal relationships form the background of the allegations. Similarly, in several High Court decisions, bail has been granted on the ground that the parties were in a relationship or that the accused had expressed willingness to marry the victim. Although such reasoning is often framed in terms of factual context rather than compromise, it nonetheless raises concerns about the implicit weight given to these factors. This trend suggests that while courts may formally reject compromise, they continue to engage with considerations that resemble settlement when exercising discretionary powers.

4.3 Promise to Marry and Judicial Inconsistency

The issue of consent obtained on the basis of a promise to marry has been a recurring theme in judicial decisions. Courts have attempted to distinguish between genuine relationships that later fail and cases where the promise was made deceitfully from the outset. In *Uday v. State of Karnataka*, the Supreme Court held that a false promise to marry would vitiate consent only if it was established that the promise was made without any intention of being fulfilled.¹⁷ This principle was reiterated in *Deepak Gulati v. State of Haryana*, where the Court emphasised the need to assess the intention of the

¹⁶ *Maheshwar Tigga v. State of Jharkhand*, (2020) 10 SCC 108.

¹⁷ *Uday v. State of Karnataka*, (2003) 4 SCC 46.

accused at the time of making the promise.¹⁸ However, subsequent decisions have demonstrated inconsistency in applying this standard. In some cases, courts have taken a more lenient view where the relationship appeared consensual over a period of time, even if it later resulted in allegations of rape. In others, the same set of facts has been interpreted as evidence of deception. This inconsistency reflects the inherent difficulty in evaluating subjective intention and its impact on consent. It also creates uncertainty in how the law is applied, particularly in cases where marriage is introduced as a factor.

4.4 Sentencing and the Influence of Marriage

The influence of marriage has also been observed in sentencing decisions, where courts have occasionally shown leniency on the basis of subsequent developments between the parties. Although the Supreme Court has clearly discouraged this practice, instances persist where such considerations appear to affect the outcome. In *State of Madhya Pradesh v. Madanlal*, the Supreme Court explicitly rejected the idea that marriage or compromise could justify a reduction in sentence, emphasizing that such reasoning is incompatible with the seriousness of the offence.¹⁹ The Court stressed that sympathy towards the accused should not come at the cost of justice for the victim. Despite this, lower courts have, at times, taken a more flexible approach, particularly in cases where the parties have entered into a relationship or marriage after the incident. This divergence between principle and practice highlights the challenges in ensuring uniform application of legal standards.

4.5 Emerging Judicial Sensitivity

At the same time, it is important to acknowledge that judicial attitudes have undergone a significant shift in recent years. Courts have increasingly recognised the importance of victim autonomy and the need to avoid reinforcing harmful stereotypes. The decision in *Aparna Bhat* is particularly significant in this regard, as it not only prohibits certain practices but also reflects a broader awareness of the social context in which such cases

¹⁸ *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675.

¹⁹ *State of Madhya Pradesh v. Madanlal*, (2015) 7 SCC 681.

arise. The Court's emphasis on dignity and autonomy marks a move towards a more rights-based approach. This shift indicates that while inconsistencies remain, there is a growing recognition within the judiciary of the need to align legal reasoning with constitutional values. While higher courts have taken a firm stance against compromise and the use of marriage as a mitigating factor, the persistence of such considerations in bail and sentencing decisions suggests that the issue has not been fully resolved. This inconsistency underscores the influence of broader social narratives that continue to shape legal outcomes.

5. Societal Pressure, Honour, and the Dynamics of Forced Marriage

The legal discourse surrounding rape often operates within a structured framework of rights, consent, and criminal liability. However, the realities that shape outcomes in such cases extend beyond the courtroom. Social norms, family expectations, and notions of honour play a significant role in influencing decisions, particularly when the possibility of marriage arises.

5.1 The Role of Honour and Social Stigma

In many contexts, rape is not perceived solely as an act of violence against an individual but as an event that affects the honour of the family. This perception often shifts the focus away from the harm suffered by the victim to the social consequences of the incident. The concept of honour, continues to influence decision-making at the familial and community levels. The stigma attached to rape can lead to the belief that marriage, particularly with the accused, offers a means of restoring social standing. This approach is deeply problematic. It transforms a criminal act into a matter of social adjustment, thereby diminishing the seriousness of the offence. Moreover, it places the burden of resolving the situation on the victim, rather than holding the perpetrator accountable.

5.2 Family Pressure and the Illusion of Choice

Family involvement in such cases often operates under the guise of protection or concern for the victim's future. However, the decisions that emerge from this

involvement are not always reflective of the victim's own wishes. In situations where pregnancy is involved, the pressure to marry may intensify, driven by concerns about social acceptance and the future of the child. The resulting decision is frequently presented as a "choice," but in reality, it may be shaped by limited alternatives and implicit coercion. This raises an important question about the nature of consent in such circumstances. If a decision is made under conditions where the individual feels compelled to prioritize social expectations over personal autonomy, it becomes difficult to regard that decision as genuinely voluntary.

5.3 Marriage as a Social Solution

The persistence of marriage as a response to rape reflects a broader tendency to seek closure through socially acceptable outcomes. Rather than addressing the underlying issue of violence and accountability, the focus shifts to restoring normalcy. From a legal perspective, this approach is fundamentally incompatible with the principles governing criminal law. Marriage does not negate the occurrence of the offence, nor does it erase the harm caused. Treating it as a solution risks legitimizing the act and weakening the deterrent effect of the law. The Supreme Court, in *Aparna Bhat v. State of Madhya Pradesh*, acknowledged these concerns and emphasised that suggestions of marriage are inappropriate in rape cases.²⁰ The Court recognised that such suggestions are rooted in stereotypes that prioritize social harmony over individual rights.

5.4 Post-Marriage Realities

An aspect that receives comparatively less attention in legal discourse is the reality of relationships that emerge from such circumstances. The assumption that marriage provides stability or resolution is often not borne out in practice. Where the relationship is founded on coercion or social pressure, underlying imbalances of power tend to persist. The victim may find herself in a situation where the original act of violence is followed by continued emotional or physical harm. The absence of genuine consent at the outset can affect the entire trajectory of the relationship. In some instances, such

²⁰ *Aparna Bhat v. State of Madhya Pradesh*, (2021) 3 SCC 247.

marriages eventually break down, leading to separation or divorce. However, by this stage, the victim may have already experienced prolonged hardship, with limited legal or social support. This highlights the inadequacy of viewing marriage as a remedy.

6. Post-Marriage Reality and The Breakdown of Settlement

The notion that marriage can serve as a resolution in rape cases rests on an assumption that the transition from accusation to marital relationship can restore stability. This assumption, however, rarely accounts for the circumstances under which such marriages take place. Where the foundation of the relationship is shaped by coercion, pressure, or unequal power dynamics, the expectation of stability becomes difficult to sustain.

6.1 The Persistence of Power Imbalance

In cases where marriage follows allegations of rape, the relationship is rarely one between equal parties. The accused, having been in a position of power during the initial incident, often continues to hold a degree of control within the marital dynamic. This imbalance may not always manifest in overt forms of abuse, but it can influence decision-making, communication, and the overall structure of the relationship. The absence of genuine consent at the outset creates a foundation that lacks mutual trust and autonomy. From a legal perspective, this raises concerns about whether such marriages can truly be viewed as voluntary unions or whether they represent an extension of the original coercive context.

6.2 Continuation of Harm Beyond the Incident

One of the key limitations of treating marriage as a resolution is that it focuses on the immediate closure of the case without addressing the possibility of continued harm. The transition into marriage does not erase the circumstances of the initial act, nor does it guarantee a change in behaviour. In some situations, the victim may experience ongoing emotional distress, compounded by the expectation to maintain the relationship. The absence of a clear exit without social or economic consequences further restricts

autonomy. This continuity of harm challenges the assumption that marriage provides a rehabilitative or corrective outcome. Instead, it may create a prolonged environment in which the effects of the original offence are reinforced.

6.3 Breakdown of the Marital Relationship

An important but under-examined aspect of such arrangements is the frequency with which these marriages fail over time. While comprehensive statistical data specific to such cases may be limited, broader patterns relating to marital instability and domestic conflict suggest that relationships formed under pressure are less likely to endure. Where the marriage eventually breaks down, the victim is often left in a position that is both legally and socially complex. The initial criminal proceedings may have been influenced or weakened by the existence of the marriage, and the subsequent separation may not restore the original position. This creates a situation where the supposed “solution” not only fails but also complicates access to justice and support.

6.4 Legal Consequences of Post-Marriage Breakdown

The breakdown of such marriages raises important legal questions. If the criminal process has already been influenced by the existence of the marriage, whether in the form of bail, leniency, or altered perceptions of consent, the subsequent dissolution of the relationship does not necessarily reverse those effects. The law, as it stands, does not provide a clear mechanism to address this sequence of events.

6.5 Rethinking Marriage as a Resolution

The examination of post-marriage realities calls into question the very premise that marriage can function as a meaningful resolution in rape cases. Rather than addressing the harm caused, it shifts the focus towards managing social consequences. This shift is inconsistent with the objectives of criminal law, which are centred on accountability, deterrence, and the protection of rights. A resolution that fails to uphold these objectives cannot be considered adequate, regardless of its perceived social acceptability. The idea of marriage as a form of settlement in rape cases does not withstand scrutiny when

examined beyond its immediate context. The realities that follow such arrangements reveal persistent imbalances, the continuation of harm, and, in many cases, the eventual breakdown of the relationship.

These outcomes highlight the limitations of approaches that prioritise social closure over legal and ethical considerations. They reinforce the need for a framework that recognises the long-term implications of such decisions and places the autonomy and dignity of the victim at the centre of the legal process. This analysis leads to a broader critical inquiry into whether the current approach adequately addresses these concerns, which is taken up in the following chapter.

7. Critical Analysis and Suggestions

The preceding analysis reveals a consistent tension between the formal principles of criminal law and their application in practice. While the legal framework governing rape in India is structured around the protection of autonomy, dignity, and non-compoundability, the persistence of marriage as a factor in judicial reasoning reflects a departure from these foundational values. This chapter seeks to critically examine this divergence and assess whether the current legal approach adequately safeguards the interests of the victim or inadvertently accommodates outcomes that compromise them.

7.1 The Contradiction at the Heart of the Legal Framework

At a doctrinal level, the law is unambiguous. Rape is a non-compoundable offence, and consent must be free, voluntary, and unequivocal. Judicial pronouncements, particularly in cases such as *Shimbu v. State of Haryana* and *Aparna Bhat v. State of Madhya Pradesh*, reinforce this position by explicitly rejecting compromise and discouraging marriage as a solution.²¹ However, the continued consideration of factors such as prior relationships, promises of marriage, and subsequent marriage in bail and sentencing decisions reveals a contradiction. While courts formally uphold the principle that rape cannot be settled, their reasoning occasionally reflects an implicit accommodation of

²¹ *Shimbu v. State of Haryana*, (2014) 13 SCC 318; *Aparna Bhat v. State of Madhya Pradesh*, (2021) 3 SCC 247.

settlement-like outcomes. This inconsistency does not merely represent a difference in interpretation; it points to a deeper structural issue where legal principles are, at times, overshadowed by considerations rooted in social context rather than constitutional values.

7.2 Consent Under Constraint: A Legal Fiction?

A central concern arising from this analysis is the treatment of consent in situations shaped by social pressure and limited choice. Where a victim agrees to marry the accused due to stigma, familial expectations, or the consequences of pregnancy, the resulting decision is often interpreted as an exercise of agency. However, such an interpretation risks elevating form over substance. Consent, in its legal sense, requires the presence of genuine choice. Where that choice is constrained by external pressures, the validity of consent becomes questionable. Treating such outcomes as indicative of voluntariness creates a legal fiction one that acknowledges consent in appearance while ignoring the conditions under which it was produced. This not only undermines the integrity of the concept itself but also weakens the protection that the law seeks to provide.

7.3 The Role of Judicial Discretion

Judicial discretion is an essential component of the legal system, allowing courts to adapt principles to the specific facts of each case. However, the exercise of such discretion must remain anchored in established legal standards. In the context of rape cases, the reliance on factors such as marriage or the possibility of settlement raises concerns about the boundaries of this discretion. When discretionary decisions begin to incorporate considerations that the law explicitly excludes, the result is a dilution of principle. This does not suggest that courts are intentionally disregarding the law, but rather that broader social narratives continue to influence legal reasoning. The challenge lies in ensuring that discretion operates within a framework that prioritises constitutional values over societal expectations.

7.4 Need for Doctrinal Clarity and Consistency

The inconsistencies identified in judicial approaches highlight the need for greater doctrinal clarity. While the Supreme Court has laid down clear guidelines, their application across different courts has not always been uniform. A more consistent approach is necessary to ensure that the principles governing rape law are not undermined in practice. This includes a clear reaffirmation that marriage, whether proposed or actual, has no bearing on the determination of criminal liability or the exercise of judicial discretion in such cases.

7.5 Suggested Reforms and Safeguards

In light of the above analysis, the following measures are proposed:

Firstly, there is a need for stricter adherence to the principles laid down in *Aparna Bhat*, ensuring that courts refrain from suggesting or entertaining the possibility of marriage at any stage of the proceedings. Secondly, judicial training programmes should emphasise the distinction between consent and submission, particularly in cases involving social or familial pressure. This would help reinforce a more nuanced understanding of consent in practice.

Thirdly, bail and sentencing decisions should be guided by clearly articulated principles that exclude considerations related to marriage or compromise, thereby reducing the scope for inconsistent reasoning. Fourthly, there is a need to strengthen support mechanisms for victims, including legal aid and counselling, to reduce the likelihood of decisions being influenced by external pressures. Finally, greater judicial sensitivity is required in recognising the long-term implications of decisions that prioritise social closure over legal accountability.

7.6 Reframing the Approach

The issues identified in this study suggest that the challenge is not merely one of legal interpretation but of perspective. The continued reliance on marriage as a factor reflects

an underlying tendency to view rape through a social lens rather than as a violation of individual rights. Reframing this approach requires a shift towards centring the autonomy and dignity of the victim as the primary considerations in all aspects of the legal process. This involves moving beyond notions of honour, settlement, and rehabilitation of the accused, and focusing instead on accountability and justice.

8. Conclusion

The examination of marriage as a factor in rape cases reveals a complex interplay between law, discretion, and social reality. While the legal framework clearly rejects compromise, its indirect influence in judicial reasoning continues to raise concerns. A principled approach requires not only the articulation of clear rules but their consistent application in practice. The integrity of the criminal justice system depends on its ability to uphold its own standards, even in the face of social pressures. Ultimately, a system that allows the appearance of consent to override its absence in substance risks undermining the very protections it seeks to enforce. A justice system that compromises rights in the pursuit of resolution risks losing both.