

**MARRY-YOUR-RAPIST LAW: AN EXQUISITE****SOLUTION TO RAPE**

By Ruban Joe Toniyo
From Christ (Deemed to be
University), Bengaluru

Christie Merin Manoj From Lovely
Professional University, Punjab)

ABSTRACT

This paper aims to discuss one of the burning issues that requires attention at the moment, i.e., marry-your-rapist law. This law allows a man accused of rape to evade punishment by just marrying the victim. To marry the rapist would be the biggest punishment, not for the accused, but for the victim. Currently the law is being practiced in around 20 countries across the globe. The paper has dealt with the origin of this law and its prevalence in various parts of the world including India. The authors have pointed out the contradiction of this law with the fundamental rights such as right to equality (Article 14), freedom of speech and expression (Article 19), right to life (Article 21) and many other human rights. Various international conventions have also been specified in the paper. India doesn't have a codified marry-your-rapist law as in other countries. However, the law is being exercised here one way or the other. The authors have dealt with the Indian scenario of marry-your-rapist law with special emphasis on the Supreme Court's landmark judgement *Aparna Bhat v. State of Madhya Pradesh*. The authors have identified the frailty of this judgement by citing various cases that happened post the Supreme Court's verdict. The paper has also pointed out Khap Panchayats running parallel courts and out-

of-court settlements with respect to marry-your-rapist laws. Lastly, the authors have tried to identify and analyse how this law is in conflict with the theory of punishment. Towards the end of the paper, the authors have suggested certain recommendations and suggestions.

Keywords: *marry-your-rapist law, rape, India, United Nations, fundamental rights, punishment, Aparna Bhat v. State of Madhya Pradesh, Khap Panchayats*

INTRODUCTION

Martin Luther King, Jr. once said, "Our life begins to end the day we become silent about the things that matters". Rape is one of the many ugly forms of crimes against women that mankind has seen. Couple that with forcing the victim to marry her rapist, the picture gets uglier. Marry-your-rapist law is a law wherein the perpetrator is asked to marry the victim to evade punishment. This law allows men to overturn rape convictions simply by marrying the victim. Such laws are reflections of the misogynistic norms set deep within the society since time immemorial. Sexual intercourse before marriage is considered a taboo within our culture and therefore, our society believes that marrying the perpetrator himself can help the victim undo the taboo and live a normal life. Shockingly, people aren't sensitive enough to understand that the victim could never lead a normal life with the person who traumatized her. Alas, this is what happens if a person is born into this world with two X chromosomes.

Femicide is an emerging trend worldwide and the UNODC's 2018 report says that "women killed by intimate partners or family members account for 58% of all female



homicide victims reported globally”¹. Heinous rape can have permanent impact on the woman’s sexual and reproductive health. Rape victims often experience severe mental and emotional trauma that can lead to serious disorders if left untreated.² This trauma can take the form of post-traumatic stress disorder (PTSD) or rape trauma syndrome (RTS).³ Additionally, marrying the rapist would only intensify the pain mentally and physically. Marry-your-rapist law is not a concept that is limited only to India. A lot of countries all over the world have penal laws wherein men can escape penalties by marrying the victim even if it’s against her will. However, as a result of tireless women’s rights movements, a lot of countries have repealed such inhumane laws. Yet, it is still being practiced in as nearly as 20 countries, says the UNFPA annual report of 2021.⁴

Marrying the rapist law and marital rape may seem like two different concepts, but, they’re like two sides of the same coin. Rape-marriage arrangement is a sacrifice that victims make to satisfy the patriarchal society. Marital rape is rape within marriage ties arising out of the traditional misconception that marriage is consent to sexual intercourse, whether the wife likes it

or not. In both the cases, victims are made to suffer throughout their life without having a right to stand up against it. It is only recently that marital rape has been recognized as a concept. Yet, nearly 43 countries including India does not punish rape within marriage.⁵

TRACING BACK TO THE HISTORY

As discussed earlier, the underlying and the very basic reason behind the origin of marry-your-rapist law is the society’s belief that rape is a woman’s mistake and the only way to rectify it is to marry the rapist himself. Daughter was considered to be a property of the father. Rape damages the property, so the rapist must either pay compensation for it or accept the damaged goods.⁶ Rapists would usually marry the victims in order to avoid paying the compensation. Originally in the ancient times, rape was a common way for men to obtain wives. A man would kidnap the woman, rape her, and then marry her.⁷ This concept was inspired by the French Napoleonic Code of 1810, which allowed a man who kidnapped a girl to escape punishment if he married her.⁸ The provision says that if the victim is a girl under the age of sixteen years, the penalty for the perpetrator shall be hard physical labour.⁹ However, if the perpetrator marries the girl,

¹ The United Nations Office on Drugs and Crime (UNODC), *Gender-related killing of women and girls 2018*, https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf [Accessed 29 May 2021].

² Natalie Hoch, *The Real American Horror Story: Overcoming the Hurdles to Terminate a Rapist’s Parental Rights*, 51 VAL. U. L. REV. 783 (2017).

³ *Id.*

⁴ UN Population Fund (UNFPA), *Annual Report 2021*, https://www.unfpa.org/sites/default/files/pub-pdf/SoWP2021_Report_-_EN_web.3.21_0.pdf [Accessed 29 May 2021].

⁵ *Id.*

⁶ Stellina Jolly & M.S. Raste, *Rape and Marriage: Reflections on the Past, Present and Future*, 48 JILI 277 (2006),

⁷ Lauren Hoyson, *Rape is Tough enough without Having Someone Kick You from the Inside: The Case for Including Pregnancy as Substantial Bodily Injury*, 44 VAL. U. L. REV. 565 (2010).

⁸ Rothna Begum, *Middle East on a Roll to Repeal ‘Marry the Rapist’ Laws*, HUMAN RIGHTS WATCH (Aug. 24, 2017, 6:37 AM), <https://www.hrw.org/news/2017/08/24/middle-east-roll-repeal-marry-rapist-laws>

⁹ French penal code, 1810, § 355.



he can only be prosecuted if the marriage has been declared void.¹⁰ Following World War I the Ottoman Code of 1911 introduced a similar article inspired by the French.¹¹ It was only in 1994 that France felt the need to repeal this provision.¹²

Rape-marriage was actually considered as an effective mechanism to minimize the traumatic effects of rape and to secure the victim's acceptability in the marriage market.¹³ Therefore, even the idea of punishing the perpetrator by introducing penal laws was a distant thought. Eventually, in the year 1275 the first statute of Westminster provided that the rape of any woman was an offence punishable with a penalty of two years imprisonment and a fine.¹⁴ This was a significant turning point in the direction of providing punishment to the rapists. Ten years later in the year 1285, the second statute of Westminster converted it into a capital offence. Rape was equated with murder because for a woman, chastity defined her worth as a person.¹⁵ Unfortunately, a lot of countries still follow traces of antiquated rape-marriage laws.

INTERNATIONAL PURVIEW OF MARRY-YOUR-RAPIST LAWS

According to the UNFPA report, countries that allow men convicted of rape to have the verdict overturned if they marry the women they have assaulted in are; Algeria, Angola, Bahrain, Bolivia, Cameroon, Dominican Republic, Equatorial Guinea, Eritrea, Gaza, Iraq, Kuwait, Libya, Philippines, the Russian Federation, Serbia, Syria, Tajikistan, Thailand, Tonga and Venezuela.¹⁶ In Algeria, there is a law that exonerates a man who abducts a girl under 18 without violence, threat or deception if he later marries her. If the victim marries her abductor, the offender can only be prosecuted if the marriage is annulled.¹⁷ Bahrain law exempts the offender from criminal prosecution for crimes of rape, sexual assault, or immoral acts if the woman who is the victim of the crime marries her offender.¹⁸ This law was challenged and the majority of parliament members had approved repealing this law. However, they faced strong opposition from the Government who opined that this law was established to preserve the honour of the family and also to avert rumours that might taint this honour.¹⁹ Rape of a woman could affect the society's view of the victim and her family and therefore, marrying the perpetrator was

¹⁰ *Id.* at 357.

¹¹ *Id.*

¹² *Id.*

¹³ Tsun-Yin Luo, "Marrying My Rapist?!": *The Cultural Trauma among Chinese Rape Survivors*, 14 GENDER AND SOCIETY 581 (2000).

¹⁴ Stellina Jolly & M.S. Raste, *supra* note 6.

¹⁵ *Id.*

¹⁶ *Supra* note 4.

¹⁷ Algeria: Penal Code, 1971, § 326; *see also* United Nations Development Programme (UNDP), *Algeria Gender Justice*, <https://arabstates.unfpa.org/sites/default/files/pub->

[pdf/Algeria%20Country%20Assessment%20-%20English.pdf](https://arabstates.unfpa.org/sites/default/files/pub-pdf/Algeria%20Country%20Assessment%20-%20English.pdf) [Accessed 29 May 2021]

¹⁸ Bahrain Penal Code, 1976, § 353; *see also* United Nations Development Programme (UNDP), *Gender Justice and the Law*, <https://www.arabstates.undp.org/content/dam/rbas/doc/Gender%20Justice/English/updated%202019%20%20pager%20summary/Bahrain.Summary.19.Eng.pdf> [Accessed 29 May 2021].

¹⁹ Samia Aljballi, *The rapists in the Gulf States: Friends of the Law*, GULF HOUSE (May 17, 2017), <https://gulfhouse.org/posts/1865/>



important to bring the family's name back.²⁰ In Bolivia, a law specifies that there shall be no punishment when the perpetrator marries the victim before the sentence become final.²¹ The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) had asked the country to repeal this law and discussions regarding the same are ongoing.²² In Iraq, if the perpetrator marries the victim, any legal action against him becomes void, and any ongoing investigation or legal case is discontinued.²³ If a sentence has already been given, it can be reversed.²⁴ However, it can be reinstated if the perpetrator divorces the victim within 3 years.²⁵ In Kuwait, if the perpetrator legally marries his victim with the permission of her guardian and the guardian requests that he not be punished, the perpetrator is set free.²⁶ In Russia, if the perpetrator has reached 18 years of age and has committed statutory rape with a minor below 16, he is exempt from punishment if he marries the victim. In Serbia, cohabiting with a minor is prohibited but if a marriage is concluded, prosecution shall not be undertaken and if undertaken it shall be discontinued. In Thailand, marriage can be considered as a settlement for statutory rape if the offender is over 18 and the victim is over 15 years old, if she consented to the offence and if the court grants permission for marriage.

It is shocking to realise that countries that are forward in terms of development lack behind to grant some of the basic fundamental rights to its citizens. Even with a lot of movements happening worldwide trying to change these laws, results are minute. In Morocco, it cost a girl's life for the people to realise the need to repeal such baseless laws. She committed suicide after she was asked to marry the man who raped her. Her death made a difference to other girls of the country, but, a lot of such suicides go unreported and nobody is talking about them.

INDIAN SCENARIO

India is a vast country which has vowed to protect its women and thus have rigorous laws for offences against women. We have numerous laws for such offences on paper but in reality these laws remain standstill while execution. India doesn't have marry-your-rapist laws but the same is being implemented in both inside and outside the Courts alternatively.

HOW DID MARRY-YOUR-RAPIST LAW FIND ITS WAY INTO INDIAN COURTS?

India has stringent laws for protecting its women. Despite having no laws in support of marry-your-rapist law, it is still being practiced here. To begin with, the then Chief Justice of India, Sharad Arvind Bobde asked

²⁰ *Id.*

²¹ Bolivian Criminal Code, 1972, § 317.

²² UN Committee on the Elimination of Discrimination Against Women (CEDAW), Consideration of reports submitted by States parties under article 18 of the Convention, Fifth and sixth periodic reports of States parties due in 2011: Plurinational State of Bolivia, 17 December 2013, CEDAW/C/BOL/5-6, <https://www.refworld.org/docid/559e4bbe4.html> [Accessed 29 May 2021].

²³ *Supra* note unffa; *see also* Iraqi Penal Code § 398.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Kuwaiti Penal Code § 182; *see also* Global Campaign for Equal Nationality Rights, *Joint Oral Statement to the Human Rights Council at the 35th Session of the Universal Periodic Review*, https://www.upr-info.org/sites/default/files/document/kuwait/session_35_-_january_2020/2._global_campaign_for_equal_nationality_rights_and_womens_refugee_commission_smt.pdf [Accessed 29 May 2021].



a perpetrator if he was ready to marry the victim in order to reduce the punishment. This became a shameful incident for the entire judiciary while everyone mocked the system. The most striking fact here is that, there are innumerable cases that ruled in favour of perpetrator for marrying the victim but remain unnoticed. Closely looking into the various precedents; In the case of *Md. Jahirul Maulana v. State of Assam*²⁷, the Guwahati High Court quashed a case against a rape offender who married the victim, stating that the probability of conviction is less due to the parties' compromise and marriage. The Delhi High Court acquitted a rape accused on the guise of marrying the victim, and the sentence was reduced for the same in *Rahul v. State of NCT Delhi*²⁸. In the case of *V. Mohan v. State*²⁹, Madras High Court suggested the rape victim to solve the matter by mediation. The judge stated that these days, such ADR methods are being commonly used in criminal trials as well, and therefore the same can be used here as well. In Haryana, a 19 year old girl committed suicide by hanging herself after getting married to her rapist. Allegedly, the rapist had married her which waived his punishment, but, the victim was subject to continuous mental and physical torture throughout her marriage. After seven months of continuous torture, she committed suicide to put an end to it once and for all.³⁰ All these cases were ruled in favour of rape accused that went unnoticed. The judges themselves considering marriage as a method of

compromise or as a substitute for punishment of rape is equivalent to mockery of the judicial system. It is clear that marry-your-rape law doesn't exist in our laws but it crept into our system by way of judgements. This shows the stereotypical thinking of judicial officers favouring patriarchal biasness.

FUNDAMENTAL RIGHTS AND INTERNATIONAL CONVENTIONS WITH RELATION TO MARRY-YOUR-RAPIST LAWS

Marry-your-rape laws clearly violates many fundamental rights that form the basic structure of the Constitution of India. Such violation has been occurring in the presence of educated lawyers and judges since many years. In this section, the authors point out how marry-your-rape laws violates Article 21, Article 14 and Article 19 of the Constitution of India. Additionally, it also violates several other universally recognized human rights.

RIGHT TO MARRY: A FUNDAMENTAL RIGHT UNDER ARTICLE 21

Article 21 of the Constitution of India provides the right to have a dignified life. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is an undermining of choice.³¹ It's true that the same is bound by principles of constitutional limitations, but in the absence of such limitation, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's

²⁷ *Md. Jahirul Maulana v. State of Assam*, Criminal Petition No. 234 of 2016.

²⁸ *Rahul v. state of NCT Delhi*, Review Petition (Criminal) No. 297 of 2018.

²⁹ *V. Mohan v. State*, Criminal Appeal No. 628 of 2017.

³⁰ Manvir Saini, *7 months after marriage to rapist, 19-year-old hangs herself*, THE TIMES OF INDIA (Oct. 26,

2016, 7:53 A.M.)
<https://timesofindia.indiatimes.com/city/chandigarh/7-months-after-marriage-to-rape-19-year-old-hangs-herself/articleshow/55061447.cms>.

³¹ Stellina Jolly & M.S. Raste, *supra* note 6.



own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. It can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation.³²

In the case of *KS Puttaswamy v. Union of India*³³, it was held that right to choose a partner irrespective of caste, creed or religion, is reserved under right to life and personal liberty which is an integral part of the Fundamental Rights under Article 21 of the Constitution of India. The Honorable Allahabad High Court recently in *Salamat Ansari and others v. State of UP and others*³⁴ gave a similar ruling. Apparently, a woman had converted to Islam before marrying a Muslim man and a case was filed by the parents of the woman against him. The Court cancelled the petition saying that it doesn't see them as a Hindu-Muslim couple but as two equal individuals tying a knot. The judgement further said that an individual's right to live with a person of choice, independent of religion, is natural for the right to life, and of personal freedom. The Bench specifically noted that right to choose a partner is an intrinsic part of Article 21 and provisions for the same has been given under the Special Marriage Act, 1954.³⁵ This judgement is significant because it maintains numerous constitutional principles of freedom and liberty.

In another such sensational case of *Shafin Jahan v. Asokan K.M*³⁶, the Supreme Court stated that, “*The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme. Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution. Society has no role to play in determining our choice of partners*”.

In a landmark judgement, *Lata Singh v. State of Uttar Pradesh*³⁷ the Supreme Court viewed that the right to marry is an inseparable part of right to life under Article 21 of our Constitution. The Court held that: “This may be a free and democratic country, and once an individual becomes serious he/she will marry whosoever he/she likes.”

The above mentioned cases are various remarkable observations of the Hon'ble Supreme Court and other High Courts and are therefore, treated as precedents. Analysing all these judgements, one aspect unanimously being agreed upon by the judges is that, the right to a choose partner is protected under Article 21. Therefore, by asking a victim to marry her rapist, the Court itself is violating Article 21 to its citizens by leaving her with no other option. Justice is not delivered by

³² Shakti Vahini v. Union Of India, Writ Petition (Civil) No. 231 Of 2010.

³³ KS Puttaswamy v. Union of India, (2017) 10 SCC 1.

³⁴ Salamat Ansari and others v. State of UP, Crl. Mis. Writ Petition No-11367 of 2020.

³⁵ Shafin Jahan v. Asokan K.M, (2018) 16 SCC 368.

³⁶ *Id.*

³⁷ Lata Singh v. State of Uttar Pradesh, AIR 2006 SC.



marrying the victim to a criminal; in fact it turns into a beneficial system for the perpetrator himself.

RIGHT TO EXPRESS CHOICE OF PARTNER: A FUNDAMENTAL RIGHT UNDER ARTICLE 19

Article 19 provides for freedom of speech and expression. Rape-marriage proposals denigrates the victim's dignity, alongside she loses her right to express herself as well. She loses her opportunity to enjoy her rights like any other normal citizen of the country. It was held by the Supreme Court that the expression of choice is a fundamental right under Article 19 and it cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married.³⁸ When a woman is made to marry her rapist, she is not only denied her fundamental right Article 21, but also Article 19. Not allowing the victim to even express her denial to marry the rapist, and forcefully sending her off to the perpetrator's home is an extreme case of violation of Article 19 as well. It's quite heart-shaking to realise that the Court, who is supposed to be the protector and watchdog of justice is in fact turning its face to the opposition direction. The judicial system must try and remove the social stigma of rape victims being treated impure and give them a sense of empathy like any other human being.

RIGHT TO CHOOSE OWN LIFE: A FUNDAMENTAL RIGHT UNDER ARTICLE 14

The essential basis of our Constitution is that all citizens are equal under the law³⁹ and women who form one half of the human race, have every right to claim equality before law

and equal protection of laws.⁴⁰ Article 14 grants equality to all law bearing citizens of the country but marry-your-rapist law snatches away a woman's right. Every individual has the right to choose their partners. Therefore, when rape victims are made to marry their rapists, such equality under Article 14 is denied. Victims of rape-marriage are denied equality because they do not get to choose the life they want. Instead they are succumbed to follow the society's or Court's order to marry their perpetrators. Every citizen of this country is entitled to get remedy for wrongful action against him/her but this law not only fails to deliver justice but also helps a criminal run scot-free without having to face punishment. Nobody, not even the Courts or the government can interfere with a woman's right to choose her life, her family, her status or her partner. Any such interference resulting in injustice of the victim is only a downright violation of fundamental rights under Article 14, Article 19 and Article 21 that form basic structure of the constitution.

RIGHT TO MARRY: A UNIVERSALLY DECLARED HUMAN RIGHT

The first instrument is the Universal Declaration of Human Rights (UDHR) which is implemented for the promoting freedom, justice and peace among the people. According to Article 16 of UDHR;

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal

³⁸ *Supra* note 35.

³⁹ *Tarif Rashidbhai Qureshi v. Asmabanu D/O Alimohammad Idarbhai, R/First Appeal No. 2012 Of 2019 With Civil Application (For Stay) No. 1 Of 2019.*

⁴⁰ *Mariyam Akhter & Anr v. Wazir Mohd., Cr. Rev No. 51 of 2005 and Cr M.P No. 15 OF 2005.*



rights as to marriage, during marriage and at its dissolution.⁴¹

2. Marriage shall be entered into only with the free and full consent of the intending spouses.⁴²

States Parties are bound to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family and in particular shall ensure equality of men and women. According to this article, men and woman must have the equal rights to enter into marriage. They must be provided with equal right to freely choose a spouse/partner and to enter into marriage only with their free and full consent. They must have same personal rights as husband and wife, including the right to choose a profession and an occupation, a family name etc. In the case of *The Prosecutor v. Dominic Ongwen*⁴³ a ruling by the International Criminal Court held that, forced marriage when part of a widespread or systematic attack against civilians, may amount to a crime against humanity.

Now according to Article 23(c) of the International Covenant on Civil and Political Rights 1966 says that no marriage shall be entered into without the free and full consent of the intending spouses.⁴⁴ It recognizes that

every person has the freedom to choose their spouse and consent must be obtained freely, else, the marriage so entered would be void ab initio.⁴⁵ Similar laws are mentioned in Article 10(1) of the International Covenant on Economic, Social and Cultural Rights 1966 whereby all the signatories are bound to follow them.⁴⁶

The most recent development in the international purview against rape is when, the UN Committee on the Elimination of Violence against Women (CEDAW) adopted a new recommendation (General Recommendation 35) on July 2017, to fight for the normalization and downplaying of rape in many legal systems globally.⁴⁷ CEDAW called upon States to repeal all legislations that enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against women including marry-your-rapist laws. The committee also called upon States to fight against social attitudes that allegedly make women responsible for the violence they suffer and for their own safety.

⁴¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, Article 16, <https://www.refworld.org/docid/3ae6b3712c.html> [Accessed 16 May 2021].

⁴² *Id.*

⁴³ *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15.

⁴⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <https://www.refworld.org/docid/3ae6b3aa0.html> [Accessed 16 May 2021].

⁴⁵ *Id.*

⁴⁶ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 5, <https://www.refworld.org/docid/3ae6b36c0.html> [Accessed 16 May 2021].

⁴⁷ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, <https://www.refworld.org/docid/3ae6b3970.html> [Accessed 16 May 2021].



THE STATUS OF MARRIAGE AS A COMPROMISE OF RAPE IN INDIAN LAW: APARNA BHAT V. STATE OF MADHYA PRADESH

Can marriage be a solution or compromise for rape cases in India? The answer is a downright no. The case of *Aparna Bhat v. State of Madhya Pradesh*⁴⁸ is a solid judgement which was pronounced with a view to completely bar and prohibit rape-marriages or any forms of compromise of rape. The Supreme Court overturned the decision of Madhya Pradesh High Court wherein it aided a man who molested a woman to walk away from the punishment he deserves by just tying a rakhi and consider the victim his sister.

FACTS OF THE CASE

The accused, a neighbor of the complainant, entered the victim's house and caught hold of her hand, and allegedly attempted to harass her sexually. Accordingly, the case was registered at Police Station, Bhatpachlana, District-Ujjain for the offences punishable under sections 452, 354A, 323 and 306 of the Indian Penal Code, 1860 (IPC). The accused then filed an application for anticipatory bail.

The High Court, while granting bail imposed the following freaky condition which was challenged; *"The applicant along with his wife shall visit the house of the complainant with Rakhi thread/band and a box of sweets. He must request the complainant to tie the Rakhi band to him with the promise to protect her to the best of his ability for all times to come. He shall also tender Rs. 11,000/- to the complainant as a customary ritual usually offered by the brothers to sisters on such*

occasion and shall also seek her blessings. The applicant shall also tender Rs. 5,000/- to the son of the complainant - Vishal for purchase of clothes and sweets. The applicant shall obtain photographs and receipts of payment made to the complainant and her son, and the same shall be filed through the counsel for placing the same on record of this case before this Registry."

The High Court's opinion that a rakhi knot reinstates a woman's lost right in itself contains absurdity and immorality. On challenging this order, the Supreme Court overturned Madhya Pradesh High Court's decision.

RATIO DECIDENDI

This case deals with sexual harassment, yet, the Supreme Court made excellent observations on rape-marriages. It was held that rape-marriages should not be allowed and specified that methods like mediation can never be suitable to solve crimes like rape. Judges play a vital role in the society as teachers and thought leaders, and it is their responsibility to remain impartial while deciding any case. Since ages, women in our country have always been surrounded by misogynistic thoughts and comments. In most of the houses, a girl child is injected with stereotypes by our largely male-centric society. Therefore, it is the judge's moral duty towards our women to ensure that such stereotypes don't get reinforced in Courts.

OTHER JUDGEMENTS

Similar opinions were held in various other cases. It was held by a three judge bench in another case of *Shimbhu and Another v. State of Haryana*⁴⁹ that *"Rape is a non-*

⁴⁸Aparna Bhat v. State of Madhya Pradesh, Criminal Appeal No. 329 of 2021.

⁴⁹ Shimbhu and Another v. State of Haryana, (2014) 13 SCC 318.



compoundable offence. It is a matter not just against the victim but against the whole society. The crime of rape should not be quashed on the basis of compromise between the victim and perpetrator, considering the fact that the consent of victim in this situation is not absolutely free, but affected by trauma or helplessness. The accused can also use force against victim to marry her so that his prosecution can be quashed. Therefore, courts should avoid to use their discretionary power on the basis of compromise between the rape victim and accused". Similar opinion was held by the Delhi High Court in the case of *Ananda D.V. v. State & Anr*⁵⁰. The Supreme Court observed in the case of *Gian Singh v. State of Punjab*⁵¹, "If the parties have entered into settlement, and it has become clear that there are no chances of conviction, there is no illegality in quashing the proceedings under Section 482 Cr.P.C. read with Article 226 of the Constitution. However, the same would not apply where the nature of offence is very serious like rape, murder, robbery, dacoity etc." In *Ramphal v. State of Haryana*⁵², the Supreme Court held that compromise between victim and offender has no direct impact or relevance to court's approach of deciding the matter. Furthermore, it was decided by the Supreme Court in the case of *Parbathhai Aahir v. State of Gujarat*⁵³, that power of High Courts are limited in this aspect. *Narinder Singh v. State of Punjab*⁵⁴ and *State of Madhya Pradesh v. Madan Lal*⁵⁵ are other cases in which Supreme Court held that in the case of

rape or attempt to rape, the idea of compromise under no circumstances can really be thought of.

IN DEPTH ANALYSIS OF CURRENT SITUATION

In this section, the authors have identified the pitfalls of *Aparna Bhat v. State of Madhya Pradesh* by citing cases that happened post judgement. The authors have also made reference to illegal Khap Panchayat rules and out-of-court settlements of rape that go unreported.

POST SUPREME COURT JUDGEMENT

The Supreme Court has already made certain substantial observations on rape offences in the case of *Aparna Bhat v. State of Madhya Pradesh*. However, similar line of incidents continued to happen despite the judgement. In one such case, the parties to a rape case were referred to mediation and the criminal proceedings were quashed by the Supreme Court.⁵⁶ The *Aparna Bhat* judgement had expressly stated that the courts while adjudicating cases involving gender related crimes, should neither entertain any steps towards compromises between the victim and the accused to get married nor mandate mediation between them, as it is beyond their powers and jurisdiction.⁵⁷ Therefore, under no circumstance can mediation be a solution to rape offence.

⁵⁰ *Ananda D.V. v. State & Anr*, 2019 Cri LJ 4904.

⁵¹ *Gian Singh v. State of Punjab*, (2010) 15 SCC 118.

⁵² *Ramphal v. State of Haryana*, Criminal Appeal No. 438 of 2011.

⁵³ *Parbathhai Aahir v. State of Gujarat*, (2017) 9 SCC 641.

⁵⁴ *Narinder Singh v. State of Punjab*, (2014) 6 SCC 466.

⁵⁵ *State of Madhya Pradesh v. Madan Lal*, Criminal Appeal No. 231 of 2015.

⁵⁶ (Name Undisclosed) v. The State of Delhi & Anr., Criminal Appeal No. 708 of 2021.

⁵⁷ *Supra* note 48 ¶ 44.



In the case of *Fr. Robin Mathew v. State of Kerala*⁵⁸, the accused was tried under the Protection of Children from Sexual Offences (POCSO) Act 2012, for raping and impregnating a minor girl. He approached the High Court requesting bail⁵⁹ so that he could marry the victim and the Court rejected it outright. Even though the Court rejected his plea, it is noteworthy that his request for marriage in itself shows the society's perception on rape-marriages being used to evade punishment. Regardless of the fact that we have a Supreme Court precedent, people like Father Robin still does not hesitate in making such ignorant requests to the Court. This shows that the society at large does not fear rape-marriages.

In another case, a couple got married after he raped her. Apparently, she was made to withdraw her criminal complaint and marry the accused so as to save the honour of both the families. A few months later he took his wife to a village and pushed her off a cliff.⁶⁰ Similarly, another man was released free of rape charges as the couple were living together for 10 years. In the case, the girl was 17 years old when the accused raped and impregnated her. Subsequently, he married the victim to escape punishment. Even

though their marriage had solemnised, the accused continued facing trial. 10 years later, in October 2021, he was released free of all pending charges against him on good behaviour.⁶¹ Most recently, a girl was gang-raped by her friends and one of the co-accused married her fearing police arrest.⁶²

All of these cases happened post the *Aparna Bhat* judgement. Notwithstanding it, cases dealing with different versions of rape-compromises continued to happen and this proves the frailty of the judgement. What lacks in the *Aparna Bhat* judgement is an order directing the legislature to frame certain guidelines or provisions prohibiting rape-marriages. In the current precedent, mere observations on rape-marriages have been stated without illustrating on the same. The observations although binding on other Courts, remains futile when it comes to out-of-court settlements.

KHAP PANCHAYATS: PARALLEL COURT SYSTEM

According to a report by the Swabhiman Society⁶³, in almost 60% of cases, the rape survivor withdrew her case and accepted a compromise settlement outside the legal

⁵⁸ CrI. M.C. No. 5129/2017.

⁵⁹ *Kerala HC dismisses rape convict Catholic priest's outrageous plea to marry survivor*, THE NEWS MINUTE (Feb. 17, 2021, 1:43 P.M.) <https://www.thenewsminute.com/article/kerala-hc-dismisses-rape-convict-catholic-priest-s-outrageous-plea-marry-survivor-143608>.

⁶⁰ Abhay Parashar, *Man marries woman who accused him of rape, months later pushes her off cliff in Nainital*, INDIA TV (Jul. 27, 2021 6:07 P.M.) <https://www.indiatvnews.com/news/india/husband-fights-with-wife-pushes-off-cliff-in-nainital-uttarakhand-delhi-police-latest-news-722381>.

⁶¹ Jay Pachchigar, *Vadodara: Rape case nixed, accuser now father-in-law*, THE TIMES OF INDIA (Oct. 19, 2021,

7:21 P.M.) <https://timesofindia.indiatimes.com/city/vadodara/rape-accused-now-married-to-survivor/articleshow/87119915.cms>.

⁶² *Shameless unaccounted: After the gang-rape, the marriage was solemnized due to the fear of the police, yet this work did not deter him*, HINDUSTAN TIMES HUB (Oct. 29, 2021) <https://hindustannewshub.com/india-news/shameless-unaccounted-after-the-gang-rape-the-marriage-was-solemnized-due-to-the-fear-of-the-police-yet-this-work-did-not-deter-him/>.

⁶³ Swabhiman, *Justice Denied: Sexual Violence & Intersectional Discrimination*, (2020).



system. This usually is a result of unofficial village councils, or Khap Panchayats, coercing women to abandon their quest for justice. Survivors are often threatened, face violence, their families are ostracised and there is extreme pressure from these Panchayats to stay silent. To access justice, therefore, the survivors have to put their lives at risk and endanger their families as well which no one does.⁶⁴ There are many instances of Khap Panchayats running a parallel court system on their own. Their powers are so strong that they can declare marriages void, ostracise families and beat up those who violate their terms.⁶⁵ Despite Khap Panchayats having no legal sanction, the government has failed to invalidate their rulings in the past. The National Human Rights Commission (NHRC) had warned the Khap Panchayats, saying no one had the right to take the law into their own hands by violating an individual's right to life in the name of tradition.⁶⁶ One such instance was when a minor girl was raped, she was offered Rs.50,000 and the accused was let free. The Khap Panchayat did not allow the victim's

family to visit the police station and insisted upon settling for the money.⁶⁷ In another instance, a rape victim was brutally thrashed and assaulted for filing an FIR against her rapist. As per her contentions, the Khap Panchayat wanted to solve the matter out of court.⁶⁸ The most shocking of all incidents is when a woman's nose was chopped off for complaining of rape against her father-in-law which led to his arrest.⁶⁹ Reports by the National Crime Record Bureau (NCRB) shows that on an average 191 rape cases were compromised since the past seven years.⁷⁰

It has been held in various judgments by the Supreme Court that Khap Panchayats orders are not enforceable and illegal. The court observed that these panchayats had no jurisdiction.⁷¹ Victims being pressurized and victimized by unlawful assemblies like Khap Panchayats is wholly illegal.⁷² Yet, the actions of Khap Panchayats are strong and unquestionable thereby making such places a living hell for women.

⁶⁴ Anuradha Nagaraj, *India's low-caste women raped to keep them 'in their place'* THOMSON REUTERS (Nov. 25, 2020, 8:07 A.M.) <https://www.reuters.com/article/us-india-rape-caste-idUSKBN28509J>.

⁶⁵ Pinky Anand, *The paradox of the 21st century*, THE HINDU (Nov. 11, 2016, 5:57 A.M.) <https://www.thehindu.com/opinion/op-ed/The-paradox-of-the-21st-century/article13796345.ece>.

⁶⁶ *NHRC warns khap panchayats*, THE HINDU (Nov. 11, 2016, 5:50 A.M.) <https://www.thehindu.com/news/national/NHRC-warns-khap-panchayats/article13796346.ece>.

⁶⁷ Arvind Chauhan, *Khap panchayat offers Rs 50,000 to rape victim to let off accused in UP's Kasganj*, THE TIMES OF INDIA (Jun. 4, 2016, 8:12 P.M.) <https://timesofindia.indiatimes.com/city/agra/khap-panchayat-offers-rs-50000-to-rape-victim-to-let-off-accused-in-ups-kasganj/articleshow/52591049.cms>.

⁶⁸ *On Khap panchayat's order, 14-year-old rape survivor beaten up by villagers for complaining*, TIMES NOW (Sep. 12, 2018, 1:54 P.M.) <https://www.timesnownews.com/mirror-now/society/article/bhopal-madhya-pradesh-mp-khap-panchayat-order-14-year-old-rape-survivor-beaten-up-villagers-viral-video/283670>.

⁶⁹ *Khap panchayat orders chopping off woman's nose*, THE HINDU (Dec. 25, 2014, 1:46 P.M.) <https://www.thehindu.com/news/national/other-states/khap-panchayat-orders-chopping-off-womans-nose/article6723294.ece>.

⁷⁰ Volume 1, National Crime Record Bureau, *Crime In India 2020*, (2020).

⁷¹ *Vishwa Lochan Madan v. Union of India*, (2014) 7 SCC 707.

⁷² *Arumugam Servai v. State of Tamil Nadu*, (2011) 6 SCC 405.



MARRY-YOUR-RAPIST LAW: CONFLICT WITH THEORY OF PUNISHMENT

Hegel's theory of punishment may be defined as infliction of pain on a person because he/she has done wrong.⁷³ A person may be punished if he/she has voluntarily done something wrong and the punishment must match, or be equivalent to, the wickedness of the offense.⁷⁴ The justification for punishing persons is that the return of suffering for evil voluntarily done is itself just or morally good.⁷⁵ The basic principle is that punishment should always be commensurate with the gravity of the offence.⁷⁶ In our country, a common trend shows that most of the punishments for rape revolves around preventive theory; preventing the offender from committing the crime again by giving imprisonment, death penalty etc. Retributive theory is only inflicted when the crime committed is one of the rarest of the rare cases; like capital punishments. However, no theory of punishment is applicable on marry-your-rapist laws. Commuting the perpetrator's sentence because he has agreed to marry the victim is not punishment, but compromise. On one hand, the Court says rape is an offense against the society and no compromise can reduce the punishment. On the other hand, Court contradicts its own words by reducing the offender's sentence.

Marry-your-rapist laws victimizes the victim by implementing corporatist exemptions. Does the law punish the perpetrator or the victim is a matter of concern. The very motto of our judiciary itself is that even if thousands of culprits go unpunished, not one innocent be punished. The only innocent here is the

victim and she should not be punished by getting her married to her rapist. Marrying a criminal traumatizes the victim for the rest of her life by quashing her dreams to lead a normal healthy life. Moreover, the future of such marriages are highly unpredictable. This seems like our judicial system is showing double standards for the two equals. Marrying a criminal must never be considered a solution to rape. It is a common trend observed in most of the cases wherein, when the Court orders the rapist to marry the victim, he does so just to dodge punishment and later on leaves her mid-way. This situation puts the victim in an even more daunting position than she previously was. Marry-your-rapist law is merely a child born out of social stigma and taboos and therefore, it is never a resolution or punishment to rape.

RECOMMENDATIONS AND SUGGESTIONS

In this 21st century, equal rights for men and women is still questionable. Objectification of women in India is a mainstream phenomenon and the fact that there are laws supporting it is shameful. Even with endless women's rights movements happening everywhere, there's not much difference. While people claim that patriarchal biasness doesn't exist in our society, women are still treated inferior. The biasness may not be expressly evident as in the previous times, but one way or the other it's being displayed by way of such laws. Everybody deserves to be treated respectfully whether a man or a woman. Even when our country doesn't specify marry-your-rapist laws, it is still being practiced and implemented here.

⁷³ J. Ellis McTaggart, *Hegel's Theory of Punishment*, 6 INT. J. ETHICS EDUC., 479- 502.

⁷⁴ Hugo Adam Bedau, *Retribution and the Theory of Punishment*, 75 J. PHILOS., 601-620.

⁷⁵ *Id.*

⁷⁶ *Supra* note 49.



Remember that it's happening in the same country which claims to provide stringent punishment for offences against woman. These so called laws are merely on paper; their execution remain at stake. For a crime like rape, the punishment should be serious enough to prevent the perpetrator from committing it again. However in our country, if a man rapes a woman, he hits the jackpot; one, he does not have to face jail term; two, he gets a free wife; and three, he gets the Court's permission to rape her again because marital rape is not a recognized crime yet. Therefore, this law encourages other people to commit such crimes shamelessly without fearing any backlash, and, this is not a healthy trend that India has to follow.

Having analysed the various judgements and recent trends, the authors put forth certain recommendations to improve the existing problems. *Firstly*, it is recommended that the judges should avoid judicial stereotyping in their decisions. Judicial stereotyping is the practice of judges trying to preserve harmful stereotypes that are already present in the society, instead of challenging them. The credibility of judiciary rests in the faith of people. Therefore, stereotypical judgements or remarks make people question judiciary's impartiality. *Secondly*, it is necessary to issue proper guidelines specifically making rape-marriages and other forms of compromise a punishable offence. Without even understanding the gravity of rape-marriages, people are ready to offer such compromises. What is more disturbing is the families themselves being a part of such compromises. Therefore, considering the gravity of this offence, it is recommended that the legislature should draft provisions with regard to punishing rape-compromises. *Thirdly*, it is important to put an end to Khap Panchayats and their own legal system. The

government must take action against such village councils trying to take law into their own hands. Failure on the part of government in stopping such practices is a grave miscarriage of justice. *Fourthly*, legal aid clinics and NGOs should aim to educate women on their rights and encourage them to stand up against such offers to compromise.

CONCLUSION

In conclusion, it is observed that marry-your-rapist law doesn't exist in our law but it is still being practiced in our country in one way or the other, be it, by way of outside court settlements or within the courts. Majority of the society believes that rape is a woman's mistake and marrying her rapist is a solution to it. This belief is where 'marry-your-rapist laws' has its roots from. To put an end to this, it is necessary to remove this stigma and recognize women's rights as important. The UNFPA claims that education is the key to progress against these antiquated laws. Cultural norms have always limited women in all ways. There are countries that still do not recognize the importance of bodily autonomy of women. The failure to recognize this is the reason why the law is still prevalent in many countries including India.

This paper has attempted to point out the real situation of women, how knowingly or unknowingly we are infringing their rights and travelling centuries back in case of respecting their rights. This paper tries to prove how poisoned the marry-your-rapist law in respect of human rights is. The paper points out how the judiciary becomes a watchdog for gross injustice. Also in this paper, detailed analysis of Indian scenario, present judicial precedent and parallel courts have been observed. Let Susan B. Antony's message be an eye-opener for all of us that, "there shall never be another season of



silence until women have same rights as men
on this earth”.

