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**DILEMMA FOR THE COURTS - ACQUITTAL OF RAPE ACCUSED ON
THE GROUND OF MARRIAGE WITH THE SURVIVOR**

INTRODUCTION

Rape is one of the most heinous crimes that happen against women. It is prevalent in almost all countries. It is considered as a taboo in backward societies, because of which many a times, the survivor & her family do not report the cases. But fortunately, with social & legal awareness & development, survivors have started reporting this heinous crime. This helps the Courts to bring the rapists to the justice. Rape is not only an attack on bodily integrity and sexual autonomy of women, but also on the soul of the women. The rape laws attained a position in IPC in 1860 & the colonial courts were biased towards the victim as it was quite hard to prove the guilt of the accused.

Rape laws in India have evolved a lot after the commission of heinous gang rapes & murder in India. This change happened when the government faced the wrath of the civilians to strengthen the rape laws. Mathura Gang Rape case, Nirbhaya Gang Rape case, Kathua Gang Rape case & Gang rape of veterinarian in Hyderabad. All these cases helped in making drastic changes in the penalties & made laws sensitive towards the survivor.

**CRIMINAL LAW AMENDMENTS AFTER THE MOST HEINOUS RAPE
CASES -**

1. **The Criminal Law Amendment Act Of 1983** - This amendment happened after Tukaram And Ors v. State Of Maharashtra (Mathura Case). In this case, an Adivasi girl was allegedly raped in a Police Station of Maharashtra by the Police Officers when she was in their custody. The sessions court acquitted the accused persons on the ground of lack of evidence by Prosecution. The court held that there was a "*world of difference between sexual intercourse and rape*". It also stated that she gave the consent to the alleged act as she was "habituated of sexual intercourse". The case went for an appeal in High Court which convicted the accused persons & held that it was a case of "*passive submission as the girl felt helpless in the presence of persons in authority...and inferred that her submission was a result of fear and therefore no consent in the eyes of law*". But, unfortunately the Apex Court reversed the adjudication of High Court & held that "*there were no marks of injury on the girl*" and the "*girl had raised no alarm*" which clearly depicts the consent that the alleged intercourse was a "peaceful affair."

This verdict by the Apex Court resulted in the public outcry & protests from the feminist groups. As a result of which, the amendments were made in Criminal Laws & sections 376-B, 376-C and 376-D were inserted to deal with the cases of custodial rapes¹. Sec.114A of Indian Evidence Act,1872, was inserted. It says that if the survivor contends that she did not give consent to the alleged act, then the court shall presume the same & the onus of proving the reverse lies on accused. Sec.228A of IPC was also added to protect the identity of the survivor.

2. **Criminal Law (Amendment) Act, 2013** - This amendment happened after the heinous gang rape of a Delhi Girl in a moving bus by six men, which included a juvenile too. These men raped her, mutilated her private parts & pulled out her internal organs which resulted in her death. The four rapists were convicted for murder, kidnapping, rape & destruction of evidence & the apex court categorised this case under "rarest of rare" case. One rapist committed suicide in jail & the minor was released after being convicted for three years, under the Juvenile Justice Act, 2000.

In this Criminal Law Amendment Act, the parliament widened the definition of rape by including the non-penile penetration. Further, the age of consent was increased from 16 years to 18 years & consent got defined under Sec.375 IPC. Sec 376A was inserted to provide justice to those victims who either

¹ Available at (<http://angulpolice.nic.in/?q=node/396#:~:text=Custodial%20Rape%20%3A,found%20guilty%20of%20committing%20rape>) (last visited on 29.08.2022)
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died or got into persistent vegetative state. The punishments were also raised. Section 376B to 376E were inserted which strengthen the rape laws & their punishments in India.

3. Criminal Amendment Act, 2018 - This amendment was the result of the shocking Gang Rape cases of Kathua & Unnao. In both the cases, the survivors were minor. These two cases also made crucial amendments in the PoCSO Act 2012. Section 166A, 228A, 376 were amended and three new sections 376AB, 376DA, 376DB were inserted in IPC. Sec.376(1) made 10 years of imprisonment as minimum, which may get extended to Life Imprisonment or Capital Punishment. For rape of minor girls below 16 years, rigorous imprisonment of 20 years was made minimum, which could extend to Life Imprisonment or Capital Punishment.

Should rape charges against the accused dissolve if he marries the survivor ?

1. Recently, a Special PoCSO Court in Bihar acquitted a man who was accused to commit a rape on 16year old girl. The story is, that the girl was in love with this man & they both fled to Rajasthan to get married. When the parents of the girl found both of them, they got to know about the pregnancy of the girl. She expressed her love for the accused & her desire to live at her matrimonial home. During the trial of the case, the girl was sent to her parents home & the accused was put in jail. After a few months, the parents of the girl threw her out of the house. The girl then visited her matrimonial home to stay with her in-laws. The court called the accused & the girl & counselled them to register their marriage under Special Marriage Act and in this summon the girl claimed that she will be living happily with the accused if he get acquitted. Finally, the special court acquitted the accused to “protect the best interests of the child under Article 15 B of the Constitution and to protect his or her right to privacy and confidentiality”².
2. In yet another incident, the PoSCO court acquitted a man who was accused of raping a minor girl. The court supported its decision by holding that the minor girl got involved in sexual intercourse with the accused with her consent & is of understanding mind and voluntarily gone with the accused at several places. The court held that since the girl herself did not have any issue with the accused, then the accused should not be punished³.
3. **Shimbhu & Anr vs State Of Haryana, 2013** = In this case, the survivor got gang raped by two men rapidly for two days in 1995. The rapists belonged from a neighbouring village. Trial court sentenced the two rapists for Rigorous Imprisonment in 1998. The convicted person filed

² Available at (<https://www.hindustantimes.com/cities/patna-news/bihar-court-lets-off-rape-accused-after-he-marries-victim-101650470686422.html>). Last visited 9.09.2022

³ Available at (<https://timesofindia.indiatimes.com/city/mumbai/court-acquits-rape-accused-as-victim-professes-her-love/articleshow/50631588.cms>). Last visited 9.09.2022

appeal in High Court regarding the conviction by trial court. But, the HC dismissed the appeal. Aggrieved by the impugned dismissal by HC, they filed a Special Leave before Apex Court. The council of convicts plead before the court that the prosecutrix wanted to withdraw her case against the convicts as she married one of the convicts, as a settlement. She had been in this matrimonial relationship since last 12 years and is living a happy life with her husband and four children. She also claimed that she was a consenting party in the alleged act, therefore the punishment of the convicted husband should be reduced under the expression of “adequate and special reasons”. The Court rejected this argument of the council & came heavily upon those cases in which the settlement is made between the parties. The court said that “ Religion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute. The power under the proviso should not be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.”

4. The latest controversy on this matter arise when, a debate sparked on the comments of the former CJI Justice Bobde. The CJI during the hearing of bail application said to the accused that “ *If you want to marry we can help you. If not, you lose your job and go to jail. You seduced the girl, raped her*”. The CJI also said that “*We are not forcing you to marry. Let us know if you will. Otherwise you will say we are forcing you to marry her.*” This conversation between the CJI and the council of the accused attained huge criticism from the public⁴.

The accused was alleged for committing multiple rapes on the girl when she was minor & used to threaten her to keep her mouth shut. He threatened the girl with throwing of acid on her, killing her brother, by burning her. The girl after commission of multiple rapes, tried to commit suicide. Her mother saved her from taking such a drastic step. When the mother of the survivor reached the police station to lodge a complaint, the mother of the accused tried to settle the matter by offering a marriage proposal for her son, when the survivor will turn 18. The mother of the survivor also agreed to this. But, when the minor turned into a major, the mother of accused refused to marry off her son . It was then, a complaint was lodge against the accused⁵.

Conclusion

⁴ Available at (<https://thewire.in/law/supreme-court-rape-accused-marry-pocso-government-employee>). Last visited 9.09.2022

⁵ Mohit Subhash Chavan Vs The State of Maharashtra & Anr., 2021
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This practise attracted huge criticism from legal experts & activists. The advocates of women & children rights are of the view that this practise allow the rapists to escape conviction or long sentences. The survivor & the family of survivor accepts such marriage proposals to save their reputation in the society. Such marriages acts as a settlement. But, since rape is a non-compoundable practice, such settlements stands void⁶ and there is still a huge possibility that the survivor, herself did not wish to marry her own rapist, but she enters into marriage under the pressure of her family & reputation in the society. The trouble for courts arise, when a girl who is now living a happy life with the accused and she genuinely wants to withdraw the case against the accused. In such a situation, the court face a dilemma of saving a marriage and that of punishing the accused when he allegedly had an intercourse with a minor girl or the intercourse was done when the accused promised to marry the girl. This practice should not be encouraged by the courts, as a consensual intercourse with a minor girl is still rape under the Rape Laws in India. This protection to minor girls is given by the law, as law considers minors as immature. So this immaturity, increases their chances of getting seduced by people in the name of promises.



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⁶ Section 320(9) of CrPC.
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