

Scrutinizing the Legality of Controversial Series of ‘Marry your Rapist’ Verdicts on the Anvil of Justice: A Critique

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Abstract

The recurring judicial practice of suggesting, facilitating, or considering marriage between a rape survivor and the accused as a ground for bail, sentence reduction, acquittal, or compromise has emerged as one of the most contentious developments in Indian criminal jurisprudence. Although no statutory provision in India recognises a "marry your rapist" rule, several judicial pronouncements have, directly or indirectly, legitimised this approach, raising serious concerns regarding constitutional morality, gender justice, and the rule of law. This article critically examines the legality and implications of such decisions by analysing judicial precedents, statutory provisions, constitutional guarantees, and international human rights obligations. It argues that treating marriage as a solution to sexual violence undermines the survivor's dignity, autonomy, bodily integrity, and right to access justice while reinforcing patriarchal stereotypes and systemic judicial paternalism. The article further explores the impact of gender stereotyping in rape adjudication, the significance of the Supreme Court's Handbook on Combating Gender Stereotypes, and the evolving jurisprudence that rejects compromise in sexual offence cases. Through a comparative study of jurisdictions that have repealed or abolished similar "marry your rapist" laws, the article demonstrates the growing global consensus that marriage can neither extinguish criminal liability nor remedy the harm caused by sexual violence. It concludes that judicial endorsement of marriage in rape cases is incompatible with constitutional values and international human rights standards and advocates a survivor-centric, rights-based, and gender-sensitive judicial approach that unequivocally rejects marriage as a substitute for criminal accountability.

I. CHAPTER ONE

Introductory

1.1.INTRODUCTION: OVERVIEW OF THE “MARRY-YOUR-RAPIST” RULE/RULINGS

“A woman cannot be herself in the society of the present day, which is an exclusively masculine society, with laws framed by men and with a judicial system that judges feminine conduct from a masculine point of view.”

– Henrik Ibsen

A “marry-your-rape” law or rule is a legal provision in some jurisdictions that absolves a person who has committed rape, sexual assault, abduction, or a similar offense from prosecution or punishment if he

chooses to marry his female victim. This law allows the accused to evade legal consequences for his actions.¹

Historically, “marry-your-rapist” rule existed during ancient times until approximately 1900. Advocates of these laws contended that their purpose was to safeguard both the victim and the victim’s family from the disgrace associated with rape. In the societies of antiquity, women were often regarded as their fathers’ property. If a woman fell victim to rape, she was perceived as damaged goods. Consequently, the perpetrator faced two alternatives: a) providing compensation or b) marrying the victim as a means of acknowledging their responsibility for the harm done.

In contemporary times, some nations have reinforced this practice through legislation. However, recent women’s rights movements have led to challenges against similar laws in many countries, resulting in their subsequent repeal.

Although the rule has no formal existence through any legislative provision in India, it has been formalized and assimilated through a series of judicial rulings, which have laid down a worrisome jurisprudence. These rulings are not based on a reasoned decision, but on moral, social and cultural grounds, which is nothing but a manifestation or reinforcement of the patriarchal attitudes and undertones of the society in the words of the Judges.

The most distasteful impact of these Orders is that it not only negates and offends the supreme law of the land, the Constitution, but also trivializes the heinous and non-compoundable offence of rape, an offence against the society, as a petty, compoundable offence, allowing the convict to walk free, bailed out after marrying the victim or the survivor. In such cases, even where the victim consents to a mutual agreement of marriage, the impact of societal pressure, undue influence, politics cannot be ruled out. The very law that should be aimed at securing justice to a victim ought not to be haplessly aimed at giving the license to the rapist to rape the victim for lifetime.

Certain laws even permit the marriage of a pregnant underage girl, with parental consent, which is frequently exploited by statutory rapists to evade legal consequences. This reinforces the treatment of rape victims as mere “**chattels**”, and more specifically, as “**damaged properties**” by their very own families. It further leads to denial of the right to choice² and consent in marriage of the victim and exposes her to further sexual violence and abuse. They perpetuate a societal mindset that places shame and stigma on the victim rather than the perpetrator. These laws effectively treat women as property to be exchanged between families, making it easier for victims of such crimes to be further victimized.

The rationale behind the marry-your-rapist law has often been grounded in cultural values and significance, often neglecting the plight of the victim. These laws have consistently provided a legal avenue for perpetrators to avoid prosecution and punishment. Even in cases where the rapist marries the victim to escape punishment, there remains a significant risk of divorce, subjecting the victim to further distress.

¹ Ishani Samajpati, “Marrying your Rapist – An Immortal Saga of Compromise and Humiliation in Rape Cases | KnowLaw” KnowLaw, 2021, available at: <https://knowlaw.in/index.php/2021/09/02/marrying-your-rapist-compromise-humiliation-rape-cases/> (last visited September 5, 2023).

² See *Smt Deepali & Anr v. State of NCT of Delhi & Anr*, W.P.(CRL) 3016/2023, CRL.M.A. 28098/2023; Right to marry person of choice is indelible and protected under Constitution: Delhi High Court, available at: <https://www.barandbench.com/news/right-marry-person-choice-indelible-protected-constitution-delhi-high-court> (last visited October 26, 2023).

1.2.CONTEXT OF THE STUDY

The research proposed herein navigates the intricate terrain of sexual assault cases in India's legal framework, focusing on a specific and controversial legal provision commonly referred to as the “marry your rapist” law. To effectively address this complex issue, it is imperative to establish a clear context for the study, operational definitions for key terms, and a connection to relevant socio-legal theories.

Operational Definitions:

- **Sexual Assault Cases:** For the purposes of this study, “sexual assault cases” will encompass a range of offenses, including rape, sexual harassment, and related crimes against individuals, involving allegations of non-consensual sexual activity.
- **“Marry Your Rapist” Law:** The “marry your rapist” law, also known as a legal provision allowing perpetrators of sexual assault to marry their victims to potentially avoid prosecution, will be referred to as such throughout this study.
- **Consent:** “Consent” will be understood as voluntary, informed, and unequivocal agreement to engage in sexual activity by all parties involved.
- **Mandatory Mediation/Reconciliation/Compromise:** This term refers to the legal practice of encouraging or mandating mediation, reconciliation, or compromise between the survivor and the alleged perpetrator in sexual assault cases, often involving the pretext of marriage.

Contextualization:

This study operates within the general research area of socio-legal studies, where social phenomena intersect with the legal system, generating multifaceted challenges and dilemmas. The research area is situated at the intersection of gender dynamics, criminal law, and human rights, exploring the impact of legal processes on survivors of sexual assault and broader societal perceptions of justice.

The “marry your rapist” law is a contentious and highly debated aspect of India's legal landscape. It warrants comprehensive examination and scrutiny due to its potential implications on the rights and well-being of survivors, as well as its compatibility with constitutional principles of justice and equality. This study is grounded in socio-legal theories that emphasize the interplay between legal norms, societal values, and gender dynamics, seeking to uncover the nuances and complexities that underlie the application of such laws.

By providing operational definitions and establishing the broader socio-legal context, this study aims to contribute to the understanding of how legal provisions like the “marry your rapist” law impact individuals and society at large, while also offering insights into potential reforms within the legal system to ensure fair and just responses to sexual assault cases in India.

1.3.REVIEW OF LITERATURE

Boesten (2008) explores women's struggles for post-war justice and reconciliation, shedding light on the implications of such laws.³ **Toniyo and Manoj (2021)** present an unconventional perspective, suggesting that these laws might be considered an “exquisite solution to rape.”⁴ **Augustine (1990)** discusses how

³ Boesten, Jelke “8 Marrying Your Rapist” *Gendered peace: Women's struggles for post-war justice and reconciliation* 2 (2008): 205.

⁴ Toniyo, Ruban Joe, and Christie Merin Manoj “Marry-Your-Rapist Law: An Exquisite Solution to Rape” *Supremo Amicus* 27 (2021): 395.

marriage can potentially serve as a safe haven for rapists, highlighting the ethical and legal concerns.⁵ **Mukherji (2021)** delves into the legal aspect, questioning the direct infringement on Article 21 rights when victims are forced to marry their assailants.⁶ **Kumar and Philip (2022)** analyze a specific legal case, emphasizing how it perpetuates toxic masculinity through forced marriage.⁷ **Jolly and Raste (2006)** offer a historical reflection on the complex relationship between rape and marriage in India.⁸ **Basu (2011)** delves into the legal framework from a feminist perspective, exploring the notion of sexual property and its manifestation in Indian law.⁹ **Jackson (2016)** explores the inconsistency between statutory rape laws and underage marriage, advocating for prohibition on underage marriage and against absolution of rape accused.¹⁰

1.4.STATEMENT OF THE PROBLEM

The judicial treatment of cases involving sexual assault, consent, and marriage as well as the practice of Mandatory Mediation/Reconciliation/Compromise in rape cases on the pretext of marriage raise complex legal and ethical issues in India's legal system. One particularly contentious aspect of this issue is the "marry your rapist" law, which allows perpetrators of sexual assault to potentially avoid prosecution by marrying their victims.

This study seeks to comprehensively examine the adjudication of such cases, the legal complexities surrounding the "marry your rapist" law, and its constitutional validity within the Indian legal framework. It aims to explore how this law may affect survivors of sexual assault and the broader societal perception of justice, especially in cases where consent is in question. Additionally, the research will investigate whether courts acting as 'matrimonial facilitators' under this law inadvertently perpetuate gender-based violence and whether such practices align with constitutional principles of justice and equality. Ultimately, this study intends to shed light on the multifaceted legal and societal implications of the "marry your rapist" law, offering insights into potential reforms and improvements in India's legal system to ensure a fair and just response to sexual assault cases.

1.5.OBJECTIVE OF THE RESEARCH ASSIGNMENT

The objectives of the research to be undertaken are as follows:

1. To scrutinize the disturbing trend of "marry your rapist" orders passed by various courts;
2. To critically study cases involving 'Marriage with the Victim' and 'Marital Intent' as a Bail Condition/Ground for Acquittal;
3. To examine whether Mandatory Mediation/Reconciliation/Compromise condones Rape on the False Pretext of Marriage;
4. To examine the dichotomy of consensual relationship with a minor and issue of "Age of Consent" in Rape offences and subsequent Marriage;

⁵ Augustine, Rene I "Marriage: The safe haven for rapists" *J. Fam. L.* 29 (1990): 559.

⁶ Mukherji, Proma "Having to Marry my Rapist: Direct Infringement of Article 21?" *Jus Corpus LJ* 2 (2021): 144.

⁷ J., Gireesh Kumar; George, Arjun Philip "Aparna Bhat and Others v. State of Madhya Pradesh and Another: Solemnizing Masculinity through Rape the Quest for Justice" *DNLUSLJ* 1 (2022): 155.

⁸ Jolly, Stellina, and M. S. Raste "Rape and marriage: Reflections on the past, present and future" *Journal of the Indian Law institute* 48.2 (2006): 277-284.

⁹ Basu, Srimati "Sexual property: Staging rape and marriage in Indian law and feminist theory" *Feminist Studies* 37.1 (2011): 185-211.

¹⁰ Jackson, Erin K "Addressing the Inconsistency Between Statutory Rape Laws and Underage Marriage: Abolishing Early Marriage and Removing the Spousal Exemption to Statutory Rape" *UMKC L. Rev.* 85 (2016): 343.

5. To study comparative jurisprudence across the Globe, including precedents and statutes regarding the Rule;
6. To study international conventions and instances of UN Intervention;
7. To study the influence of Judicial gender stereotypes and patriarchy and its socio-legal implications on rape victims, and suggest the Role of Judges from a feminist theory perspective;
8. To study the present legal framework on ‘marry your rapist’ rule, the legal validity of orders applying the rule and compromise in such cases from the standpoint of the Constitution and Precedents.

1.6.HYPOTHESIS

1. The persistence of the unjust ‘marry your rapist’ rule in India is primarily driven by gender stereotypes and deeply ingrained patriarchal power dynamics within both society and the Judiciary.
2. The paternalistic attitudes of judges contribute to the victimization of victims, resulting in impunity for sexual offenders and undermining the protection and access to justice for victims of sexual violence.

1.7.RESEARCH QUESTIONS

1. How have cases involving ‘Marriage with the Victim’ and ‘Marital Intent’ as a Bail Condition/Ground for Acquittal been adjudicated, and what are the legal and societal implications of such decisions?
2. Does the practice of Mandatory Mediation/Reconciliation/Compromise in cases of alleged rape on the pretext of marriage inadvertently condone sexual assault, and what are the ethical and legal concerns associated with this approach?
3. What are the legal complexities surrounding cases involving consensual relationships with a minor, the issue of “Age of Consent” in rape offenses, and subsequent marriage? How do these factors interact within the legal framework?
4. To what extent do judicial gender stereotypes and patriarchal influences affect the treatment of rape victims within the legal system, and how can a feminist theory perspective inform the role of judges in ensuring fair and just outcomes for survivors?
5. What is the constitutional validity of “marry your rapist” rule in India? Whether the courts can act as ‘matrimonial facilitators’?

1.8.SIGNIFICANCE OF THE RESEARCH

This research is poised to make substantial contributions in various domains, encompassing theory, practicality, and policymaking.

From a theoretical standpoint, this study challenges existing legal norms by critically dissecting the “marry-your-rapist” rulings, unveiling the deep-seated patriarchal biases entrenched within the judiciary, and scrutinizing the validity of such practices within the context of women’s rights and gender equality. It delves into the nuanced dimensions of character evidence, offering fresh insights into how these stereotypes influence legal decision-making and perpetuate systemic misogyny.

On the pragmatic front, this research has the potential to create heightened awareness surrounding the disconcerting prevalence of “marry-your-rapist” rulings in India. This heightened awareness can catalyze the efforts of advocacy groups, non-governmental organizations, and civil society to take more effective action in support of rape victims and to advocate for crucial legal reforms. Additionally, the research

examines the multifaceted consequences of such rulings on rape survivors, laying the groundwork for the development of tailored support systems and rehabilitation programs that address their unique needs.

From a policy perspective, this research carries substantial weight. It can serve as a compelling source of evidence and argumentation in favor of advocating for legal reforms in India, potentially leading to the abolition or significant modification of the “marry-your-rapist” rule and associated practices. Furthermore, the analysis of Supreme Court initiatives aimed at countering gender stereotypes can contribute to the formulation of clear judicial guidelines and educational programs designed to eliminate biases from legal proceedings. Lastly, by exploring international laws and standards, this study can provide policy insights on how India can harmonize its legal framework with global best practices in the realm of women’s rights and gender justice.

Thus, this research stands as a potential catalyst for both theoretical discussions and tangible change, challenging established norms, enhancing awareness, and laying the foundation for policy reforms that seek to promote gender justice and safeguard the rights of rape survivors in India.

1.9. RESEARCH METHODOLOGY

This study mainly employs a **Doctrinal Research Methodology** and also combines the Comparative approach to comprehensively address the complex issue of ‘marry your rapist’ verdicts in India. The Doctrinal methodology entails a thorough analysis of existing legal doctrines, statutes, case laws, and relevant legal literature pertaining to ‘marry your rapist’ verdicts. This phase involves an extensive review of constitutional provisions, judicial decisions and scholarly articles related to the topic. The Comparative methodology focuses on examining legal systems and practices in various jurisdictions worldwide. The study seeks to identify alternative approaches and best practices adopted by different countries, providing a broader perspective on how this issue is addressed on a global scale.

1.10. CHAPTERIZATION

Chapter I presents the introductory and the research methodology.

Chapter II, which is titled, “Tracing the Trend of Marry your Rapist Dictums in Verdicts”, discusses the usage of the rule, tracing its application, from its religious-historical roots and contemporary cases where the Courts have either ordered for the marriage of the rape victim with the accused or allowed the marriage of the victim with the rapist, compounding the heinous offence of rape.

Chapter III discusses the underlying patriarchal biases imbedded in the Indian Judiciary and role of judges in curbing stereotypes and systemic misogyny. It also divulges the Gender Stereotype Handbook released by the Supreme Court in recent times.

Chapter IV analyses the legislative framework comprising of constitutional provisions laws from which the “marry-your-rapist” rule departs from. It also analyses recent landmark cases that condemn the rule and the role of courts as “matrimonial facilitators”

Chapter V discusses the comparative jurisprudence across different countries, including Algeria, Peru, El Salvador, Palestine, among others.

Chapter VI concludes the paper with suggestions.

The last section contains a Bibliography.

II. CHAPTER TWO

TRACING THE TREND OF “MARRY YOUR RAPIST” DICTUMS IN VERDICTS

The application of the controversial “Marry your Rapist” rule by courts has raised a multitude of intricate issues and complexities that demand careful examination. This rule, often invoked in cases involving sexual offences, brings forth a range of scenarios and challenges, particularly in situations where there was a ‘promise to marry’. The complexities further deepen when ‘false promises of marriage’ are involved, or when the victim is a minor. Additionally, cases where there exists mutual consent and agreement to marry, as well as instances of compromise, add layers of intricacy to the legal landscape surrounding this rule. These scenarios are discussed in detail in this chapter.

2.1. Deuteronomy 22:28-29 and the Religious-Historical Roots of the ‘Marry Your Rapist’ Custom

The passage in question, **Deuteronomy 22:28–29**, is often cited by skeptics as evidence of cruelty and misogyny in the Bible. However, a closer examination of the text and its context reveals a different perspective. Deuteronomy 22:28–29 reads like this:¹¹

“If a man happens to meet a virgin who is not pledged to be married and rapes her and they are discovered, he shall pay her father fifty shekels of silver. He must marry the young woman, for he has violated her. He can never divorce her as long as he lives.”

First, it’s important to note that the Hebrew word used in Deuteronomy 22:28, often translated as “rape,” can also mean to seize or take hold of something. It does not necessarily imply force or violence. This word should not be automatically translated as “rape.”¹²

Additionally, **Exodus 22:16–17** presents a similar scenario involving a man and an unmarried woman. In this case, there is no hint of force or rape; it suggests seduction or consensual relations. The penalty is that the man must pay the dowry and marry the girl, but the girl’s father or the girl herself could refuse the marriage.¹³

Deuteronomy 22:28 includes the phrase “**and they are discovered**,” implying that both the man and the woman share some level of responsibility. This suggests consensual actions rather than forcible rape.¹⁴

When examining the entire context of Deuteronomy 22:13–29, it becomes clear that the passage deals with various offenses involving women. It distinguishes between crimes involving married women and unmarried women. The focus of Deuteronomy 22:28–29 is consensual sex, not rape.

In summary, the Old Testament does not command rape victims to marry their rapists. Instead, the irrevocable marriage contract was intended for situations where a man had compromised a woman’s reputation or future marriage prospects due to consensual actions. The goal was to protect the woman from the economic and social consequences of the encounter. Rape victims were treated as innocent, and convicted rapists were executed. The interpretation of these passages should consider cultural and historical context of the time.

Marriage with the Victim and ‘Marital Intent’ as a Bail Condition/Ground for Acquittal from Rape and Offenses under POCSO Act: A Staged Ploy to Absolve the Accused?

¹¹ Does Deuteronomy 22:28-29 command a rape victim to marry her rapist?, available at: <https://www.gotquestions.org/Deuteronomy-22-28-29-marry-rapist.html> (last visited October 27, 2023).

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

In India, there have been numerous cases where the victims are pressurised into marrying their rapist and this sham marriage of victim with the rape accused (without her free consent and often court-annexed) is used as a means to evade punishment. In such cases, the grave offense of Rape goes reported but settled out of court.

In a recent controversial court ruling, the Allahabad High Court granted bail to an accused individual who had been charged with raping a minor girl under the Protection of Children from Sexual Offenses (POCSO) Act.¹⁵ However, the bail came with a highly unconventional condition- the accused was required to marry the victim and provide for their child. This decision has ignited a heated debate about the judicial system's handling of sexual assault cases. The case, which unfolded on October 10, 2022, involved a 17-year-old girl who had accused the defendant of luring her away in March 2022. Charges were filed under Sections 363, 366, and 376 of the Indian Penal Code and Sections 3 and 4 of the POCSO Act.¹⁶

The Supreme Court has frequently, though not consistently, expressed concern over the casual approach of lower courts and has attempted to correct their stance. Numerous judgments, such as the **State of M.P v. Madanlal**¹⁷, have firmly established that compromise should never be entertained when dealing with rape cases.

However, in 2021, then Chief Justice of India, **Sharad Arvind Bobde**, raised eyebrows when he offered bail to a POCSO accused on the condition that he would marry the minor survivor. This decision, as seen in the case of **Mohit Subash Chavan v. State of Maharashtra**, sparked outrage and criticism. In this instance, the accused, a government servant, was asked by Chief Justice Bobde whether he would be willing to marry the minor victim after she had been raped. This approach of offering marriage as a solution in such cases has been met with significant backlash and raises questions about the judiciary's handling of sexual assault cases. This prevailing perspective in Indian society and the legal system, wherein marriage is seen as a panacea for rape cases involving minors, is highly disconcerting. These instances highlight a disturbing trend where marriage is considered an exoneration for rape. This narrative further perpetuates an idealized image of how a rape survivor should behave, based on patriarchal expectations.¹⁸

Another distressing case involves a 14-year-old rape survivor who became pregnant as a result of rape and was subsequently forced to marry her rapist due to the intervention of village elders.¹⁹ Through this, the accused was absolved of his crime. Yet in another instance, an accused person arrested under the POCSO Act for raping a minor girl was granted interim bail for 30 days. When the victim reached the legal age for marriage, she was married to her rapist. Furthermore, In June 2020, a rapist, previously convicted, requested a two-month interim release from the Kerala High Court to wed the minor girl he had sexually

¹⁵ Allahabad High Court Grants Bail To POCSO Accused On Condition Of Marrying Victim, Accepting Their Child., *available at*: <https://www.livelaw.in/news-updates/allahabad-high-court-grants-bail-pocso-accused-condition-marrying-victim-child-daughter-211588#:~:text=Sparsh%20Upadhyay&text=The%20Allahabad%20High%20Court%20recently,child%20as%20wife%20and%20daughter>. (last visited September 10, 2023).

¹⁶ POCSO accused granted bail by Allahabad HC on condition he will marry victim!, *available at*: <https://cjp.org.in/pocso-accused-granted-bail-by-allahabad-hc-on-condition-he-will-marry-victim/> (last visited September 8, 2023).

¹⁷ (2015) 7 SCC 681.

¹⁸ Tannvi Tannvi & Sharmila Narayana, "The challenge of gender stereotyping in Indian courts" 8:1 *Cogent Social Sciences* (2022).

¹⁹ A Year On: 14-Year-Old Rape Survivor & Mother Marries Her Rapist, *available at*: <https://www.thequint.com/gender/women/rape-survivor-bareilly-abortion-marries-rapist> (last visited September 10, 2023).

assaulted and impregnated. It was reported that the parents of the girl had agreed to the marriage with the perpetrator.

In recent proceedings before the Lucknow Bench of the Allahabad High Court, bail was granted to three individuals accused of rape, contingent upon their commitment to marry the victims. Additionally, in two separate cases, bail was extended following the assurance from the accused's counsel that marriage with the victim would promptly follow their release. The most recent ruling, in **Monu v. State of U.P.**²⁰, issued on October 10 by **Justice Dinesh Kumar Singh**, pertained to the accused, Monu, who had been incarcerated since April 2022. The decision was influenced by the non-opposition of the victim and her father to the bail, as well as the fact that the victim had already given birth to the accused's child.²¹

The recent bail orders issued by the Lucknow Bench of the Allahabad High Court, which grant bail to rape accused on the condition of marrying their victims, raise serious concerns about the justice system's approach to addressing sexual violence. While the court cites factors such as the victim's consent and childbirth as reasons for bail, these decisions effectively normalize coercive and non-consensual relationships, undermining the principles of consent and justice. Such a practice not only fails to protect survivors but also sends a dangerous message that perpetrators can escape legal consequences by entering into marriages that may have been forced or coerced. It is essential to recognize that marriage should never be used as a means to absolve criminals of their actions, and the judiciary must prioritize the rights and safety of survivors in cases of sexual violence.

On the other side, there are judgments that have denied bail to accused or refused to condone the rape on subsequent marriage with the victim. For instance, A 31-year-old man was convicted by a special court for attempting to rape a woman, despite his plea for leniency on the grounds that he had subsequently married the victim and begotten a child with her. The court affirmed that the subsequent marriage and the birth of a child did not absolve the accused, and they couldn't assume the authority to pardon his actions in light of these events, as there was no concrete evidence to prove them. Consequently, the man was sentenced to three years and six months in jail.²²

Prima facie, in specific cases, depending on its facts and circumstances, Judges are convinced of the marital intent behind these rape cases and have granted bail and acquitted the accused, and on top of that, even facilitated marriage of the victim with the minor. However, often in many cases, these marriages are sham. This has also been flagged by the Delhi High Court, which has expressed grave concern about an alarming trend in which rape accused manipulate the legal system by marrying their survivors to avoid criminal charges, only to abandon them once their cases are quashed or they secure bail.

In a recent case involving **Mohammed Amaan**, who had sexual relations with a minor girl from his community and sought refuge in Muslim Personal Laws to avoid prosecution under the POCSO Act and other IPC provisions, the court noted that it is a worrying pattern. The court refused to dismiss the FIR against Amaan, who had married the survivor after she became pregnant as a result of the rape. The judge noted that numerous such cases have emerged in which the accused falsely enter into marriages under the

²⁰ 2022 SCC OnLine All 701.

²¹ Accused in five rape cases get bail in U.P. on condition of marrying victims, *available at*: <https://www.thehindu.com/news/national/other-states/several-rape-accused-get-bail-in-uttar-pradesh-on-condition-of-marrying-the-victim/article66032233.ece> (last visited September 7, 2023).

²² Court refuses pardon to rape accused who married victim, *available at*: <https://indianexpress.com/article/cities/mumbai/court-refuses-pardon-to-rape-accused-who-married-victim-8619163/> (last visited September 11, 2023).

pretence of willingness, particularly when DNA testing confirms their paternity, only to mercilessly abandon the survivor shortly thereafter, emphasizing the critical need to address this issue.²³

2.2.Does Mandatory Mediation/Reconciliation/Compromise Condone the Offence of Rape on the False Pretext of Marriage?

The question that arises after a review of such decisions by the Court is whether it is just to acquit/ bail out a person accused of a heinous offence of rape on the ground of his marriage with the victim? To the latter, in 2015, the Supreme Court reiterated that in rape cases, compromise should not be considered since it is a crime against a woman's body, which is her temple.²⁴ Regrettably, the number of incidents involving the coercion of rape victims into marriage with their assailants is on the rise, yet there have been no substantial alterations or enhancements in the legal framework or its implementation.

The practice of suggesting compromises like marriage between the survivor and the accused is problematic. In several cases, courts have granted bail or reduced sentences if the accused agrees to marry the victim. This approach is deeply flawed as it fails to recognize sexual assault as an act of violence and dominance, and it places the burden of redemption on the survivor rather than holding the perpetrator accountable for their actions. These compromises often fail to address the gravity of the crimes and perpetuate harmful stereotypes and attitudes toward women, girls, and minors.

Very recently, on September 8, 2023, the Allahabad High Court in the case of **Gobind Rai @ Monu v. State Of U.P. Thru. Prin. Secy. Home Deptt. Lko**, took an unusual step, directing the Head of the Astrology Department at Lucknow University to investigate whether an alleged rape victim could be classified as a Mangali/Mangalik by studying her Kundali over the next three weeks. This directive emerged during the legal proceedings surrounding the bail application of an accused individual who, after engaging in a sexual relationship with the victim, declined to marry her, citing her alleged Mangal Dosha as the reason. The Court also requested a confidential report on the matter from the department within three weeks.²⁵ This is a typical incidence of the court acting as a "marriage facilitator" in a rape case. However, in the above case, on September 8, 2023, the Supreme Court stepped in and overturned the decision, noting concerns about privacy rights.²⁶

In the case of **State of M.P. v. Madanlal**, a strong argument was made against considering compromise, particularly in the form of marriage between the accused and the victim (prosecutrix), as a viable legal solution in sexual offense cases. It was asserted that such a notion is deeply troubling and goes against the principles of upholding a woman's honour and dignity.

2.3.The Dichotomy of Consensual Relationship with a Minor and Issue of "Age of Consent" in Rape Offences and Subsequent Marriage

As evidenced by the previous discussion, some judgments have considered consensual or romantic relationships between minors and young adults, which complicates the application of the law in cases involving sexual assault against minors. While age of consent may be a factor, it should not overshadow

²³ Accused marrying rape survivors, deserting them a worry, says HC, *available at*: <https://timesofindia.indiatimes.com/city/delhi/accused-marrying-rape-survivors-deserting-them-a-worry-says-hc/articleshow/101557514.cms?from=mdr> (last visited September 9, 2023).

²⁴ *State of M.P. v. Madanlal*, (2015) 7 SCC 68.

²⁵ Allahabad HC Directs Lucknow University To Determine If Rape Victim Is A 'Mangali' *available at*: <https://www.livelaw.in/high-court/allahabad-high-court/allahabad-high-court-lucknow-university-victim-mangali-accused-refused-marry-sexual-relation-on-false-promise-marriage-229973> (last visited September 10, 2023).

²⁶ Supreme Court Stays Allahabad HC Direction To Examine If Woman Who Alleged Rape On Marriage Promise Was 'Mangalik' *available at*: <https://www.livelaw.in/top-stories/supreme-court-allahabad-hc-direction-rape-victim-mangalikhc-order-229993> (last visited October 1, 2023).

the gravity of the offense. Given that a minor is incapable of giving a valid consent by law, the offence would fall under the ambit of rape if the contents of the offence are satisfied, irrespective of the consent of the minor. The POCSO Act would also apply in such cases, which is a stringent law. It must be noted that even the facts in such cases should be taken with a pinch of salt, as influence of patriarchal society cannot be lost sight of.

In addressing the dichotomy surrounding consensual relationships with a minor and the complex issue of the “Age of Consent” in rape offenses followed by subsequent marriage, several critical factors come to light. Frequently, a question arises: What if the survivor herself desires to marry the accused, particularly in cases governed by the Protection of Children from Sexual Offences (POCSO) Act or under the premise of a promise to marry? This conundrum is exacerbated by deeply rooted patriarchal societies that stigmatize rape to such an extent that a woman is often perceived as having lost her ‘honour’ and her life’s purpose if she becomes a victim of rape. Unfortunately, even the courts are not immune to this notion of the ‘fallen’ rape survivor.

In this context, the survivor’s initial reaction may be rooted in the hope that marrying the perpetrator will offer her a pathway to regain social acceptance within a society that has unjustly stigmatized her. Given the intricacies of this situation, it’s crucial that any actions taken, and judicial decisions made prioritize the woman’s agency and autonomy. Women should be at the forefront of these discussions, with their rights, choices, and well-being taking precedence.

III. CHAPTER THREE

AN EXPOSITION INTO THE PATRIARCHAL BIASES OF THE INDIAN JUDICIARY AND ROLE OF JUDGES IN CURBING STEREOTYPES AND SYSTEMIC MYSOGYNY

3.1. JUDICIAL GENDER STEREOTYPES & CHARACTER EVIDENCE: A REFLECTION OF PATRIARCHAL BIASES OF JUDICIARY

India’s judicial system grapples with numerous rape cases that perpetuate patriarchal stereotypes about female integrity. Shockingly, the Supreme Court once formulated a checklist to distinguish between a “**traditional Indian woman**” and a “**western woman**” in the case of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**²⁷. This ‘perfect victim’ is typically depicted as either deceased or bearing visible bodily injuries, and modestly covering her skin. Such a portrayal essentially erases her existence. **Dr. Veena Das of Johns Hopkins University** has highlighted how courtrooms increasingly scrutinize the victim’s experience of sexual violence, reframing it as consensual sex. Many efforts are made to imply the victim’s willingness to engage in intercourse. Factors like the presence of injuries on the victim’s body and the use of force are wrongly deemed crucial in determining consent.²⁸

During the trial of journalist and novelist **Tarun Tejpal** in a rape case, the court in Goa made concerning remarks about the conduct of the victim. References were made to her purported “flirtatious and sexual discussions with her acquaintances,” which were utilized to her detriment. In this scenario, the court imposed an exceptionally stringent standard of ‘acceptable’ or ‘appropriate’ behavior on women, especially those who had experienced sexual assault.

In the case of **Raja v. State of Karnataka** (2016), the Karnataka High Court questioned the victim’s behavior, stating that it was “not consistent with those of an unwilling, terrified, and anguished victim of

²⁷ AIR 1983 SC 753.

²⁸ Veena Das, “Sexual Violence, Discursive Formations and the State” *Economic and Political Weekly Special* 2411-2424 (1996).

forcible intercourse.” The order, which acquitted four men of rape, mentioned that the victim was a woman who had been “accustomed to sexual intercourse” as she had been living separately from her husband for one-and-a-half years prior to the incident. The judgment further commented on the victim’s actions, noting that she did not display behaviors expected of a distressed victim, as she stayed in the vicinity of the incident instead of rushing home.

In a similar vein, the Karnataka High Court, in **Rakesh B v. State of Karnataka**²⁹, granted bail to an accused and questioned why the complainant had fallen asleep after the alleged rape, deeming it “unbecoming of an Indian woman.”³⁰

These cases establish certain behavioural standards for rape victims, both before and after the crime, insinuating that their character veers into promiscuity if they fail to comply. This narrow perspective often leads to their testimonies being discredited or deemed unreliable. Outdated notions of ‘appropriate’ femininity and sexual restraint are invoked to assess the credibility of a victim’s statement.³¹

In a recent instance, the Kozhikode Sessions Court approved anticipatory bail for the defendant, Chandran, citing that the charges under Section 354A (concerning sexual harassment) of the Indian Penal Code may not, at first glance, be applicable if a woman chooses to wear clothing deemed “sexually provocative.” Assumptions are frequently drawn about a woman’s character, often influenced by her choices in self-expression, such as her clothing, and her past sexual history. This bail order exemplifies a disturbing phenomenon known as judicial stereotyping, a prevalent issue in Indian courts.

In response to this issue, the Supreme Court established guidelines in **Aparna Bhat v. State of Madhya Pradesh**³² (2021), prohibiting judges from relying on gender stereotypes such as the notion that “good” women are sexually chaste, or that women who drink and smoke somehow invite sexual advances or are presumed to have consented to rape.

In the case of **State of Punjab v. Gurmit Singh**³³, the Supreme Court issued a crucial ruling addressing the issue of labelling a woman’s character as “loose” or morally questionable. The Court emphasized, “Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of ‘loose moral character’ is permissible to be drawn from that circumstance alone. Even if the prosecutrix [...] has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself to sexual intercourse with anyone and everyone [...] No stigma, like the one cast in the present case, should be attached to such a witness by the courts, for after all, it is the accused and not the victim of the sex crime who is on trial...”

This landmark judgment underscores the critical principle that a woman’s past behavior or choices should not be used to discredit her testimony or imply consent in sexual assault cases, firmly placing the focus on the accused and their actions.

Section 53A of the Indian Evidence Act 1872 aims to challenge this harmful stereotype by prohibiting lawyers from presenting “evidence of the character of the victim or of such person’s previous sexual

²⁹ Criminal Petition No. 2427 of 2020.

³⁰ The Indian Judiciary – A Man’s World, available at: <https://mpp.nls.ac.in/blog/the-indian-judiciary-a-mans-world/> (last visited September 28, 2023).

³¹ Skewed Normatives in India’s Judicial Discourse on Rape, *South Asia@LSE* available at: <https://blogs.lse.ac.uk/southasia/2022/06/20/skewed-normatives-in-indias-judicial-discourse-on-rape/> (last visited September 28, 2023).

³² 2021 SCC OnLine SC 230.

³³ 1996 (2) SCC 384.

experience” to determine issues of consent. This provision serves to protect the dignity and rights of the victim in cases involving sexual offenses. Further, the **repeal of Section 155(4) of the Indian Evidence Act** in 2003 prohibits the defense from presenting evidence suggesting that a rape victim possesses an “immoral character” or questioning the credibility of her testimony.

It is essential to recognize that judges have sometimes also displayed paternalistic tendencies, undermining the agency of women, even beyond cases of sexual assault, as patriarchy remains deeply ingrained in the collective consciousness. Moreover, the judiciary has persistently adhered to antiquated notions, portraying women in a binary fashion. They are either portrayed as helpless individuals whose honor is tied to their chastity, or they are depicted as cunning manipulators intent on ensnaring innocent men. This binary framework categorizes women as either sanctified, devoid of sexual agency, and therefore deserving of respect, or as sexually active and adventurous individuals, perceived as promiscuous and unworthy of both respect and legal protection. This outlook places them in a precarious position, where they must navigate societal expectations and legal consequences for actions often forced upon them.³⁴

3.2.SUPREME COURT HANDBOOK ON COMBATING GENDER STEREOTYPE: A STEP TOWARDS GENDER JUST JUDICIAL SYSTEM

The Supreme Court’s release of the ‘**Handbook on Combating Gender Stereotypes**’ on August 16, 2023, represents a significant step toward addressing and rectifying pervasive gender biases within the legal community. The handbook explicitly calls on judges to actively challenge and dispel harmful stereotypes rather than passively avoiding them. It acknowledges that when judges rely on such stereotypes, it can lead to a distortion of the objective and impartial application of the law.³⁵

In the introduction to the handbook, **Dr. D. Y. Chandrachud, Chief Justice of India**, highlights the obligation of judges to resist any undue influences on their judgments and to approach cases without any preconceived biases about the parties. The use of pre-established stereotypes in the judicial process not only violates the fundamental duty of judges to decide cases with independence and neutrality but also distorts the fair application of the law, especially with regard to women.

The handbook goes on to categorize various types of gender stereotypes, shedding light on their detrimental effects on judicial proceedings, including stereotypes that rooted in the notion of ‘inherent characteristics’ attributed to women; stereotypes revolving around predefined gender roles; and stereotypes related to matters of sex and sexual violence.

A few of the stereotypes relating to sexual violence, debunked by the Handbook are as under³⁶:

Stereotype

Reality

Women do not speak to the man who has sexually assaulted or raped them after the incident of sexual assault or rape. If a woman speaks or interacts to social circumstances or fear of repercussions. ‘normally’ with the accused, her complaint of sexual assault or rape is false.	Women are often forced to interact with the men who have sexually assaulted or raped them due to social circumstances or fear of repercussions. Interaction with the accused should not lead to a presumption that the complaint is false.
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³⁴ Dhonchak, A. et al. 2020. ‘Courts’ Misogynistic Rules For Rape Survivors’, *available at*:<https://www.article-14.com/post/the-indian-courts-misogynistic-handbook-for-rape-survivors> (last visited September 28, 2023).

³⁵ Sneak Peek into Supreme Court’s Handbook on Combating Gender Stereotypes, *available at*: <https://www.sconline.com/blog/post/2023/08/16/highlights-supreme-courts-handbook-combating-gender-stereotypes/> (last visited September 28, 2023).

³⁶ *Handbook on Combating Gender Stereotypes* (Supreme Court of India), *available at*: https://main.sci.gov.in/pdf/LU/04092023_070741.pdf (last visited on September 29, 2023).

Stereotype

Rape is a crime that taints the honour of the survivor/victim or her family.

Indian women behave differently from Western women her personality, social circumstances, or women of other countries after a man has sexually upbringing, and other factors. Reactions to being assaulted or raped them.

Reality

Rape does not taint the honour of the survivor/victim or her family. The marriage of the rapist to the survivor/victim does not restore honour. Rather, it intensifies the trauma faced by the survivor/victim and encourages the rapist to engage in further violence.

Each woman reacts to sexual violence based on her personality, social circumstances, or women of other countries after a man has sexually upbringing, and other factors. Reactions to being raped cannot be categorized based on the country or region a woman is from.

3.3.THE AFTERMATH: SOCIO-LEGAL POSITION OF RAPE VICTIMS

In discussing the socio-legal position of rape victims in Indian society, a case from Orissa sheds light on the societal pressures surrounding discussions of sexual assault. A woman who married her alleged rapist faced societal pressure due to the taboo surrounding sexual assault discussions in India. Her family, interviewed by the BBC, felt they had no choice but to support the marriage and even considered dropping their complaint against the accused, who had been released on bail.³⁷

The Supreme Court, in the case of **Deepak Gulati v. State of Haryana** (2013)³⁸, eloquently stated that “a rapist degrades and defiles the soul of a helpless female” and inflicts a “serious blow to the supreme honour of a woman, and offends both, her esteem and her dignity.” Furthermore, the Delhi High Court, in the case of **Rohit Bansal v. State** (2015)³⁹, astutely noted that “the victim of rape grows with traumatic experience and an unforgettable shame haunted by the memory of the disaster forcing her to a state of terrifying melancholia.” This highlights the challenges and societal pressures faced by sexual assault survivors in India, emphasizing the need for broader societal change and support systems.

Unfortunately, rape victims in India continue to confront systemic discrimination throughout their lives. Judicial stereotyping is a prevalent issue in Indian courts, contributing to the reluctance of women to seek legal redress out of fear of re-victimization. This trend also results in the underreporting of crimes against women.

India has officially approved the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). According to **General Recommendation No. 33**, which addresses **Women’s Access to Justice from the CEDAW Committee**, it is the responsibility of state parties to guarantee impartial and just legal procedures, allowing women to have effective access to the justice system. States must ensure that judicial proceedings remain free from societal biases, including ingrained gender stereotypes. Additionally, **General Comment No. 28 from the UN Human Rights Committee** emphasizes that using a woman’s sexual history to determine her legal rights in cases of sexual assault is a violation of her right to privacy.

³⁷ Indian woman marries her alleged rapist, *available at*: <https://www.bbc.com/news/world-asia-india-31483956> (last visited September 12, 2023).

³⁸ (2013) 7 SCC 675, 682.

³⁹ CRL.A.-660/1999.

As a whole, the socio-legal position of rape victims in Indian society remains fraught with challenges and systemic discrimination. Judicial stereotyping, societal pressures, and the enduring stigma surrounding sexual assault continue to hinder women's access to justice and the realization of their rights. Addressing these issues requires comprehensive legal reform, societal transformation, and robust support systems for survivors.

3.4.ROLE OF JUDGES: WHAT THE JUDGE OUGHT TO DO?

The result of gender stereotyping by the Judiciary is erosion of trust in the justice system by survivors and victims of heinous offences.⁴⁰ A victim, who is tormented by the offense, by such a paternal stance of the courts, is held back from proceeding against the accused since she would ideally not want to expose herself to the additional trauma of being further victimized by the insensitive legal proceedings without the guarantee of punishment to the accused. As a result, judges must play a proactive role by not giving into any patriarchal underpinnings and giving 'reasoned Orders' in order to ensure justice to the rape victim. Every attempt should be made by the judge to primarily prevent any compromise in rape cases and also overlook whether the marriage of the victim with the accused is by the victim's 'free consent' or under undue influence. Moreover, Judges must be vigilant regarding their own biases to prevent any dehumanizing impact on women who come to seek justice in the courts. The judiciary should actively avoid reinforcing gender stereotypes, as this can compromise the fairness of legal proceedings.⁴¹ When judges prescribe or impose expectations on how victims of harassment or assault should react in specific situations or question the maturity of adult women based on preconceived notions, it sets a debilitating precedent and therefore, there is also a need to eliminate 'character trials' in rape proceedings.

IV. CHAPTER FOUR

A CRITIQUE ON THE MARRY-YOUR-RAPIST RULE & PRESENT LEGAL FRAMEWORK IN THE INDIAN CONTEXT

4.1.CONSTITUTIONAL RIGHTS, INTERNATIONAL CONVENTIONS & VALIDITY OF "MARRY-YOUR-RAPIST" VEDICTS

The rule has no legislative mandate in India, however, the Judiciary has continued to apply and given impetus to this unjust rule. Whether the Courts can, legally speaking, decide whether the marriage of the rapist with the victim should be facilitated in order to condone the conduct of the accused is questionable, and whether such an order should be binding raises more serious implications, destructive to the rule of law.

From a constitutional standpoint, the rule essentially contravenes constitutional morality and rights enshrined therein. **Article 21** states that "No person shall be deprived of his life or personal liberty except according to procedure established by law." This means that every citizen of India has the inherent right to life, liberty, and personal safety. The right to life is not limited to mere existence but encompasses the right to live with dignity and human poise. Being subjected to sexual violence and then forced to marry one's rapist clearly infringes upon this right to life, as it results in physical, psychological, and emotional harm, depriving the survivor of the opportunity to live with human dignity. Thus, the rule violates the right

⁴⁰ Gender Stereotyping: Paternalism By Courts Erodes Trust in Judicial Institutions, *available at*: <https://thewire.in/law/gender-stereotyping-paternalism-by-courts-erodes-trust-in-judicial-institutions> (last visited September 28, 2023).

⁴¹ *Ibid.*

to dignity⁴² of a victim and the right to life as it belittles a victim/survivor as a property whose fate the patriarchal society imposes. Moreover, forcing someone into a marriage against their will can be tantamount to a form of modern slavery or servitude.

The rule also infringes upon personal liberty of the victim/survivor and her exercise of choice and consent (including right to choose one's life partner). The Supreme Court, in the case of **Shakti Vahini v. Union of India**⁴³, established that the right to choose a life partner is a fundamental right.⁴⁴ The court affirmed that the liberty to enter into matrimony with an individual of one's own choosing is safeguarded by the provisions of **Article 21, 19(1)(a), and 14** of the Indian Constitution. The right to freedom of choice in marriage is also a human right under **Article 16(2) of the UDHR**. Moreover, with the right to privacy being recognized as a part of the right to life and personal liberty under Article 21 in the **Justice K. S. Puttaswamy (Retd.) and Anr. v. Union Of India And Ors.** judgment⁴⁵, it can be stated that forcing a victim to marry her rapist often involves an intrusion into her private choices and decisions as it disregards her privacy and personal autonomy.

Forcing a victim to marry their rapist also violates several crucial human rights, including the Right to Freedom and Security of Person (**UDHR, Article 3**), Right to Freedom of Choice in Marriage (**UDHR, Article 16(2)**), Right to Access to Justice (**ICCPR, Article 14(1)**), and Right to Physical and Mental Health (**UDHR, Article 25**).

UN Human Rights Chief, Zeid Ra'ad Al Hussein has also emphasized that "[punishing] a rape victim by making her marry the perpetrator of a horrible crime against her – there is no place in today's world for such hideous laws."⁴⁶

4.2.POSITIVE JUDICIAL PRONOUNCEMENTS

In **Shimbu & Anr v. State Of Haryana**⁴⁷, the Supreme Court took a strong stance against the "Marry your Rapist" convention. The Court firmly held that circumstances pleaded (which involved an offer by the rapist to marry the victim) should not be considered as special grounds for deviating from the legislative mandate, which prescribes a minimum sentence for the offense under Section 376 I.P.C.

Furthermore, in the case of **State of M.P. v. Bala @ Balaram**⁴⁸, the Court emphasized that neither the extended duration of the criminal trial nor the offer of the rapist to marry the victim are valid reasons for invoking the discretionary power provided by the proviso of Section 376(2) IPC. The Court expounded that rape is a heinous crime, a grave affront to society and human dignity, and that the law prescribes both maximum and minimum punishments for it. It is crucial that the reasons for such a deviation are pertinent,

⁴² In **Maneka Gandhi v. Union of India**, 1978 AIR 597, 1978 SCR (2) 621, the Court held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity.

⁴³ (2018) 7 SCC 192.

⁴⁴ Right To Choose Life Partner Is A Fundamental Right, Consent Of Family, Community, Clan Not Necessary available at: [https://www.livewlaw.in/right-choose-life-partner-fundamental-right-consent-family-community-clan-not-necessary-marriage-two-adults-sc-read-judgment/#:~:text=Right%20to%20choose%20life%20partner%2C%20recognized%20by%20Constitution&text=It%20has%20to%20be%20sublimely,and%201%20of%20the%20Constitution](https://www.livewlaw.in/right-choose-life-partner-fundamental-right-consent-family-community-clan-not-necessary-marriage-two-adults-sc-read-judgment/#:~:text=Right%20to%20choose%20life%20partner%2C%20recognized%20by%20Constitution&text=It%20has%20to%20be%20sublimely,and%201%20of%20the%20Constitution.). (last visited September 30, 2023).

⁴⁵ (2017) 10 SCC 1, AIR 2017 SC 4161.

⁴⁶ End in sight for 'marry your rapist' laws, *OHCHR*, 2017 available at: [https://www.ohchr.org/en/stories/2017/08/end-sight-marry-your-rapist-laws#:~:text=The%20move%20follows%20steps%20taken,marry%20her%20attacker%20was%20removed](https://www.ohchr.org/en/stories/2017/08/end-sight-marry-your-rapist-laws#:~:text=The%20move%20follows%20steps%20taken,marry%20her%20attacker%20was%20removed.). (last visited October 1, 2023).

⁴⁷ (2014) 13 SCC 318.

⁴⁸ (2005) 8 SCC 1.

articulated clearly and coherently, and not applied indiscriminately. Thus, the offer of marriage by the offender should not be considered as special factors justifying a reduction in the statutory sentence.

Recently, in the case of **Ravi Bhushan Upadhyay v. the State**⁴⁹, the Delhi High Court has stated that courts should not be used to pressure rape accused into marrying their victims or to use marriage as a means of obtaining bail in sexual assault cases. Justice Swarna Kanta Sharma emphasized that accused individuals should not use the courts to obtain bail by compelling the complainant to state in court that they are willing to marry.

The court expressed, “The Courts cannot be used as a matrimonial facilitators for the purpose of pressurizing the accused to get married to the victim or be denied bail, or by the accused for obtaining bail by asking the complainant to appear before the Court and state that he was ready to get married to her.”

Justice Sharma, while denying bail to a rape accused who falsely promised marriage, rejected the argument that the complainant now sought bail because of the willingness to marry. The court pointed out the absence of earlier claims and any evidence of a consensual relationship. Both parties were seen manipulating the system, switching positions before different courts, leading to a significant drain on state resources.

V. CHAPTER FIVE: COMPARATIVE JURISPRUDENCE ACROSS DIFFERENT COUNTRIES

Across various countries, the concept of allowing rapists to escape punishment by marrying their victims has been a contentious issue, deeply rooted in historical, cultural, and patriarchal norms. Examining countries such as Algeria, Bahrain, El Salvador, Italy, Morocco and Peru, it becomes evident that the approach to the “marry your rapist” practice has evolved differently over time, influenced by specific societal, legal, and political contexts.⁵⁰

Algeria’s Penal Code, established in 1966, explicitly criminalizes rape, with stricter penalties for offenses involving minors. However, a provision in Article 326 allows exemption for the perpetrator if they marry the abducted minor under 18, provided no violence, threats, or deception were involved. This legal loophole reflects a complex intersection of traditional values and contemporary legal structures.

In **Bahrain**, the recent 2023 abolition of Article 353 in the 1976 Penal Code signifies a significant departure from the past, where rapists could evade punishment by marrying their victims. This decision, spearheaded by **King Hamad bin Isa Al Khalifa**, underscores a progressive shift toward ensuring accountability and justice for victims, reflecting a growing awareness of the importance of human rights and gender equality.⁵¹

Additionally, **El Salvador** has grappled with addressing gender-based injustices, exemplified by the initial repeal of a law in 1996 that enabled rapists to evade punishment through marriage. However, the persistence of Article 14, allowing similar evasions for underage victims, highlighted the need for

⁴⁹ 2023 LiveLaw (Del) 787.

⁵⁰ ‘Marry your rapist’ laws in 20 countries still allow perpetrators to escape justice, *available at*: <https://www.theguardian.com/global-development/2021/apr/14/marry-your-rapist-laws-in-20-countries-still-allow-perpetrators-to-escape-justice> (last visited October 3, 2023).

⁵¹ Bahrain Parliament Abolishes Law Exempting Rapists from Punishment upon Marriage, *available at*: <https://ddnews.gov.in/international/bahrain-parliament-abolishes-law-exempting-rapists-punishment-upon-marriage#:~:text=Bahrain%20Parliament%20Abolishes%20Law%20Exempting%20Rapists%20from%20Punishment%20upon%20Marriage,-24%2D05%2D2023&text=Manama%2C%20Bahrain%20%2D%20In%20a%20significant,if%20they%20married%20their%20victims> (last visited October 13, 2023).

continued reforms. Recent legislative efforts to abolish this law reflect a growing awareness of the detrimental impact of such practices and the imperative to safeguard the rights of vulnerable individuals, particularly young girls. The widely publicized case of a 12-year-old girl coerced into marrying her 34-year-old rapist sparked widespread outcry, shedding light on the profound repercussions of such legal provisions on the well-being and safety of young victims. Disturbing statistics further emphasize the severity of the issue, with over 22,000 minors currently married or cohabiting and more than 25,000 births by underage mothers in 2015. Shockingly, 25% of girls in El Salvador are reported to marry before the age of 18. This grim reality is compounded by the country's status as having the highest femicide rate in Latin America, recording 8.9 homicides per 100,000 women, according to a 2012 Insight Crime report. Despite ongoing challenges, campaigns such as Global Citizen's "**Level The Law**" continue to advocate for gender equality by advocating for the change of unjust laws, highlighting the urgency of addressing systemic gender-based violence and ensuring the protection of women and girls.⁵²

Further, the case of **Franca Viola in Italy** serves as a poignant example of a woman's refusal to succumb to societal pressures. Her decision to reject a "reparational marriage" after being raped at the age of 17 challenged entrenched gender norms and emphasized the importance of autonomy and agency for victims. Franca Viola's courage in resisting the cultural expectations of forced marriage symbolizes the broader struggle to dismantle harmful practices and protect the rights of victims.⁵³

We should not forget that Morocco's struggle to reconcile traditional beliefs with modern legal principles is exemplified by the persistence of the practice, despite amendments to Article 475 in 2012, enabling rapists to evade imprisonment by marrying their victims. Recent incidents of young girls coerced into marriages with their rapists have shed light on the societal challenges stemming from deeply ingrained cultural norms regarding women's honor and sexuality. The case of a 16-year-old girl **Amina Filali from Tetouan**, pressured into marrying her rapist to avoid legal repercussions, vividly illustrates the profound vulnerability of young girls subjected to harmful practices that undermine their rights and dignity. This persistent reality underscores the urgent need for comprehensive legal reforms that prioritize the protection and empowerment of women and girls, challenging entrenched cultural beliefs that perpetuate gender-based violence and discrimination.⁵⁴

Peru's historical context highlights the prevalence of cases where women were coerced into marriage following acts of sexual violence, underscoring the traumatic impact of forced unions on victims' physical and emotional well-being. The country began to address domestic violence through policies in 1988, acknowledging its high rates of gender-based violence. Over the following decade, various Peruvian institutions documented approximately 68,818 cases of sexual assault, illustrating the scale of the issue. On April 3, 1997, the Peruvian Congress took a decisive step by voting overwhelmingly, 86 to 1, to repeal

⁵² Indicator 14: The law ensures the punishment of rapist regardless of the acceptance to marry the victim | EFI-RCSO, *available at*: <https://www.efi-rcso.org/index-page/vawg/indicator-14-law-ensures-punishment-rapist-regardless-acceptance-marry-victim> (last visited October 30, 2023); "El Salvador Scraps Controversial Law That Allows Men to Marry Underage Girls They Have Impregnated," *Global Citizen*, 2017 *available at*: <https://www.globalcitizen.org/en/content/el-salvador-scraps-law-allowing-underage-pregnant/> (last visited October 30, 2023).

⁵³ The woman who defied Italian tradition by refusing to marry her rapist, *available at*: <https://mashable.com/feature/franca-viola> (last visited October 23, 2023).

⁵⁴ Morocco repeals 'rape marriage law', *available at*: <https://www.aljazeera.com/news/2014/1/23/morocco-repeals-rape-marriage-law> (last visited October 30, 2023); Elizabeth Flock, "Morocco outraged over suicide of Amina Filali, who was forced to marry her rapist" *Washington Post* (The Washington Post, 2012) *available at*: https://www.washingtonpost.com/blogs/blogpost/post/morocco-outraged-over-suicide-of-amina-filali-who-was-forced-to-marry-her-rapist/2012/03/15/gIQApTq4DS_blog.html (last visited October 30, 2023).

the 1924 law that enabled rapists to evade sexual assault charges by marrying their victims. **Congresswoman Beatriz Merino**, the bill's sponsor, hailed the decision as a significant triumph for Peruvian women and men, marking the end of a long-standing and harmful practice.⁵⁵ This momentous change reflects the country's commitment to combating gender-based violence and promoting the rights and dignity of all individuals.

In a comparative analysis, these countries' experiences underscore the importance of legal reforms in addressing deep-rooted societal attitudes toward gender-based violence. While some nations have made significant strides in enacting comprehensive legal changes, others continue to grapple with the complex interplay between tradition, culture, and evolving legal frameworks. The efforts to repeal discriminatory laws and promote gender equality highlight the global imperative to ensure the protection and empowerment of all individuals, particularly those vulnerable to sexual violence and exploitation.

VI. CONCLUSION & SUGGESTIONS

Legislation that allows a survivor to be forced into marrying their rapist not only perpetuates injustice but also condones a heinous crime. It is a grave violation of human rights and must be abolished without delay. As discussed in the previous segments of this chapter, the rule as a whole is unjust for at least four reasons. Firstly, it is being used as a tool to evade prosecution for an offense of rape, which is non-compoundable and an offense against society, not a matter to be left for the parties to compromise and settle. Secondly, it leads to further victimization of the victim and perpetuates stigma and lifelong discrimination against the victim. It also endangers her safety and security at the hands of her very rapist. Thirdly, it amounts to punishing the victim in various ways, which is a nothing but a manifestation of the parochial paternalistic tendencies of the judiciary. Fourthly, it sets for a foul precedent, and discourages potential victims from seeking justice, fails to deter the accused from committing such heinous sexual offences, and erodes trust of the society as a whole in the judicial system.

A potential suggestion to curb the menace of application of the archaic rule is that when marital intent seems apparent between the victim and the accused, the court, before ordering their marriage, must go behind the smokescreen, dispel all stereotypes, and must consider the peculiar facts and circumstances of the case and take into consideration the consent of the victims. Moreover, such orders should not be made binding upon the victim. It is also crucial to challenge and rectify the deeply ingrained societal biases that continue to blame victims and undermine their autonomy, both within and outside the courtroom. Sexual assault cases should be adjudicated based on the law and evidence, free from the influence of outdated attitudes and stereotypes.

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⁵⁵ *Supra* note 3.

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