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Having to marry my rapist: Direct infringement of Article 21?

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All occurrences of sexual assault, including aggravated assault like rape, are serious crimes. The victims are youngsters in more than one-third of the incidents, while older ladies make up a considerable portion of the victims. Despite the fact that just a few of these victims have suffered major physical injuries, they have all suffered psychological trauma that will have an impact on their lives and the lives of others around them. Asking these survivors to marry their predators is as unforgivable as the crime itself. Moreover, the entire mindset that has been ingrained in us, that marriage is the solution to every bad or wrong thing that has been done is also one of the regressive and distressing mindsets that need immediate reformation.

Keywords: *marriage, rape, article 21.*

INTRODUCTION

Section 375¹ of the Indian Penal Code deals with Rape. According to this section, “A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: –

(First) – Against her will.

¹ Indian Penal Code, 1860, s 375

(Secondly) – Without her consent.

(Thirdly) – With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) – With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be law-fully married.

(Fifthly) – With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

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

Explanation – Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”

However, in order to understand the action of Rape, we must look into its medical definition. This offence covers forced sexual intercourse, sexual assault, and sexual intercourse between an adult and a juvenile. *“Rape involves the insertion of an erect penis or an inanimate object into the female vagina or the male anus. Legal definitions of rape may also include forced oral sex and other sexual acts.”*² In 2020, there were 77 rape cases recorded per day on average in India, for a total of 28,046 such crimes. Overall, 3,71,503 incidences of crime against women were recorded across the country last year, down 8.3% from 4,05,326 cases reported in 2019, according to the NCRB. According to NCRB data for the year, which saw the COVID-19 breakout and pandemic lockdowns, there were 28,153 rape victims out of the total cases of crimes against women in 2020. Rajasthan had the most rapes (5,310) in India in 2020, according to NCRB statistics, followed by Uttar Pradesh (2,769 instances), Madhya Pradesh

² Charles Patrick Davis, ‘Medical Definition of Rape’ (*Medicine Net*, 29 March 2021) <<https://www.medicinenet.com/rape/definition.htm>> 08 February 2022

(2,339 cases), and Maharashtra (2,061 cases). In 2020, a total of 1,11,549 occurrences of “cruelty by husband or relatives” were recorded.³

ANALYSING ARTICLE 21

Article 21⁴ of the Constitution of India states, “Protection of life and the personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law.”

There are two sorts of rights in Article 21:

- **Right to life - Every citizen is entitled to life, liberty, and personal safety.** In India's constitution, the right to life is regarded as a basic right and is the only article that has been given the broadest interpretation permissible. The rights to shelter, growth, and sustenance are all addressed in Article 21 of the Indian Constitution.
- **Right to personal liberty -** As our Indian Constitution states, the protection of our liberty is solely the duty of the law. **The Supreme Court is the custodian of India's Constitution.** As a result, the Supreme Court's sole role, according to this Court, is to preserve and ensure basic rights.

Every society has its own set of criteria for ensuring human life and dignity. As a result, the right to life denotes the importance of human presence. It is commonly referred to be the most important fundamental right. Part III of the Indian Constitution provides fundamental rights, which are meant to preserve and defend people's vital entitlements, such as the right to exist with human dignity. The concept of the right to life with human dignity, as enshrined in Article 21 of the Indian Constitution, has provided citizens and non-citizens of India with a slew of vital rights. The framers of the Constitution were primarily concerned with the advancement of individuals as well as societal welfare. There is no specific provision in the Constitution regarding human dignity. Under Article 21 of the Indian Constitution, the right

³ '80 Murders, 77 Rape Cases Daily In 2020: What Report Reveals About Crime In India' (NDTV, 16 September 2021) <<https://www.ndtv.com/india-news/india-records-80-murders-77-rape-cases-daily-in-2020-ncrb-report-2542736>> accessed 08 February 2022

⁴ Constitution of India, 1950, art. 21

to life and personal liberty has a broader meaning that includes the right to life with human dignity. It is the central concept without which we cannot exist as individuals, and it encompasses all of the aspects of life that contribute to making a man's life meaningful and worthy of living. Life encompasses more than simply an everyday experience of outward display or leisure; it also involves the possibility of living with human poise. The Gauhati high court (HC) has termed rape as a violation of the victim's fundamental right under Article 21 of the Constitution while upholding conviction by a trial court in an 11-year-old case. Justice Rumi Kumari Phukan ruled in an order that the rape survivor's account might be taken as the accurate version of the incident if it was backed up by substantial evidence. *"The courts are sensitized that rape is a violation of victim's fundamental right under Article 21 of the Constitution and a rape survivor is placed on a higher pedestal than an injured witness,"* the court stated in its order.⁵

ROLE OF PATRIARCHY

Rape culture encompasses not just rape itself, but also the exploitation and normalisation that comes with it. Victims have almost always been rebuked for getting raped, it has been undercharged, and mocked for years. This is something that society as a whole does, not just a small number of people. The horrific pain of rape is twisted into a casual act in daily life by society. Rape is shown as a ridicule of the victim, rather than as the crime that it is. Explicit sexual jokes, tolerance of sexual harassment, and educating women to avoid being raped instead of teaching a man not to rape can all contribute to this normalisation. Victims are blamed for the rape in addition to having recanted. Sexist, stupid, and prejudiced sources are frequently at fault. Shame has been used as a **"double-edged sword"**⁶ against women. For activities such as marrying without the agreement of the family, seeking a divorce, requesting

⁵ Utpal Parashar, 'Rape violates fundamental right under Article 21, rules Gauhati HC' (*Hindustan Times*, 2 September 2020) <[⁶ Ragini Nayak, 'Rape, shame and the curse of patriarchy' \(*The Hindu*, 13 June 2016\) <<https://www.thehindu.com/opinion/open-page//article60443385.ece>> accessed 08 February 2022](https://www.hindustantimes.com/india-news/rape-violates-fundamental-right-under-article-21-rules-gauhati-hc/story-CY7pIej2spHfuNPPsZ6MCJ.html#:~:text=Rape%20violates%20fundamental%20right%20under%20Article%2021%2C%20rules%20Gauhati%20HC,-In%20an%20order&text=The%20Gauhati%20high%20court%20(HC,11%2Dyear%2Dold%20case.> accessed 08 February 2022</p></div><div data-bbox=)

a portion in ancestral property, or refusing to cover their hair, face, or body, they are readily labeled as shameless evildoers. They are also made to feel guilty for the physical and sexual abuse they have suffered. Women are often the ones who have to face the weight of humiliation. Shame, in the form of moral consequence, has long been an effective tactic used by patriarchal societies to oppress women, restricting their liberty, mobility, and opportunities.

MARITAL RAPE

It occurs when a man forces or threatens to force intercourse on his wife, or when the wife is unable to agree. Exactly how domestic sexual abuse, like domestic violence, is criminalized, rape should be too, since rape is rape, irrespective of whether it is perpetrated by a spouse or any other relative, or a stranger. *"In April 2015, Ms. Gandhi had said that 'marital rape' cannot apply in India because of factors like illiteracy, poverty, social customs, religious beliefs, and the "sanctity" of marriage."*⁷ Invoking reasons of poverty, religious conviction, and social tradition can be used to excuse a variety of regressive actions that have been outlawed by law. It is all the more vital to offer legal protection for women in our society since we are still hampered by ignorance and tradition. Men are typically forced into married relationships just for unfettered access to physical gratification in societies like India that criticize and criminalize sexual relations, putting women in grave sexual danger. To say that such a law would jeopardize the sanctity of marriage is either to dismiss the very real affection and respect, and bonds that keep good marriages together despite profound disputes and disparities, or to accept that sexual violence and threat of force are so common in marriages that no man would dare to risk such a law.

MARRY-YOUR-RAPIST LAW

Though most "marry-your-rapist" laws have been repealed, new UN research shows that laws permitting rapists to avoid punishment by marrying their victims still exist across the world. The so-called "marry-your-rapist" laws still exist in Russia, Thailand, Venezuela, and 17 other

⁷ Vaishna Roy, 'The marital rape debate' (*The Hindu*, 19 March 2016) <<https://www.thehindu.com/features/metroplus/woman-uninterrupted-the-marital-rape-debate/article8370439.ece>> accessed 08 February 2022

nations, per the UN Population Fund (UNFPA). Men in these states can have their rape convictions reversed if they marry the woman they raped, essentially continuing forced marriage, which is a sort of contemporary slavery. Due to patriarchal standards that have propagated the belief that marriage between a man and a woman translates to a man having a sense of "ownership" over their wife, these behaviors continue across the world. Many nations with "marry-your-rapist" laws limit the law to situations involving minor victims, child abuse, and delaying approval to the arranged marriage to the victim's parents or guardians, further diminishing her autonomy.

In the case of *Mohit Subhash Chavan v The State of Maharashtra & Anr.*, the Supreme Court asked a man if he would marry the woman whom he allegedly raped when she was a juvenile. According to NDTV, the Supreme Court was considering a bail application from a government official named Mohit Subhash Chavan, who is accused of raping a schoolgirl. Chavan, a worker of the Maharashtra State Electric Production Company, is facing charges under the POCSO (Protection of Children from Sexual Offenses) Act and has requested bail. When the victim went to the police, Chavan allegedly informed the Supreme Court that his mother had proposed marriage to her. Despite her first refusal, a paper was purportedly made up - it is unclear between whom - in which Chavan vowed to marry the underage victim when she gets 18 years old. As per the petition, when Chavan refused to marry her, she filed a lawsuit. The exact words of Chief Justice Bobde were, "*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.*"⁸

In another case, the Supreme Court granted a man from Punjab who was accused of rape, his freedom on the stipulation that he would marry the woman who was the complainant within six months. The highest court warned that if he broke his commitment to marry the woman, he would be imprisoned. "*Remember, we will send you to jail if we find that your proposal to*

⁸ 'Will You Marry Her?': SC Asks Man Accused of Raping Woman When She Was Minor' (*The Wire*, 1 March 2021) <<https://thewire.in/law/supreme-court-rape-accused-marry-pocso-government-employee>> accessed 08 February 2022

*marry her is just a ploy to get rid of the criminal case against you,”*⁹ a Supreme Court bench headed by CJI SA Bobde, told the lawyer who represented the man while staying his arrest. However, the Supreme Court itself had strongly condemned the practice in a 2013 judgment *Shimbhu & Anr v the State Of Haryana*, “...[R]eligion, 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,”*¹⁰ the court had said.

IMPACT OF RAPE ON THE VICTIMS

While it's natural to have a hard time dealing in the days or weeks after any form of violence, PTSD is a long-term disorder that might include trouble sleeping, nightmares, intense anxiety, detachment, and despair that can continue for more than a month. In reality, these symptoms can linger for extended periods of time with no treatment, and they can worsen over time if left untreated. The victim/survivor is the person who is most directly impacted by sexual abuse, but the impacts of sexual abuse extend well beyond individual survivors, affecting their closest connections as a whole.

- **Physical effects** - If the offender exercised violence during the attack, these may be immediately apparent, and you may require rapid hospital treatment. Physical repercussions such as sexually transmissible illnesses, on the other hand, should be considered in the future.
- **Disassociation / emotional numbness** - Many people's first reactions to being raped are shock and psychological apathy. Many people are initially calm and unconcerned about what has occurred. Friends, relatives, and professionals who anticipate victims to

⁹ Utkarsh Anand, 'SC lets off rape accused after he agrees to marry complainant in 6 months' (*Hindustan Times*, 11 February 2021) <<https://www.hindustantimes.com/india-news/sc-lets-off-rape-accused-after-he-agrees-to-marry-complainant-in-6-months-101613005573547.html>> accessed 08 February 2022

¹⁰ Will You Marry Her?: SC Asks Man Accused of Raping Woman When She Was Minor (n 8)

be devastated soon after an abuse may be surprised by this reaction. Dissociation, on the other hand, is a natural survival tactic that is entirely normal.

- **Fear** - One may be afraid of a variety of things based on the circumstances. Someone may have been physically attacked during the incident and are afraid of what will happen if they report it to the police. One may also be hesitant to tell friends and family for fear of offending them. If they know the assailant or he knows where they live, they may be concerned about the violence continues. One may be concerned about being impregnated or acquiring a sexually transmitted disease (STD).
- **Embarrassment & shame** - Many people who have been sexually assaulted are embarrassed or ashamed of what has happened to them. Most of them find it tough to talk about personal matters, therefore it's understandable if they find it tough to talk to people.
- **Guilt** - When someone has been raped, it's natural to feel guilty. Some may believe that they could have done something to prevent the attack, or that they 'provoked' the rape if they knew the attacker.
- **Depression** - As one begins to come to grips with or rehabilitate from any big trauma or emotion-driven incident, depression is to be considered. Dealing with the memories of the assault, as well as the events that follow (calling the cops, informing friends and family, going to court, getting medical exams, and so on) can be physically and mentally exhausting. Each survivor's reaction to sexual abuse is different. These behaviors may be influenced by the survivor's individual "style, culture, and life"¹¹ situation. Some people like to express their emotions, while others wish to keep their emotions hidden. Some people will tell others about the assault immediately, while others will endure weeks, months, or even years without speaking about it. It's critical to support each person's decisions and psychological adjustment in the aftermath of a traumatic experience. Whether an assault was successful or unsuccessful, and whether it occurred lately or many years back, it can have an influence on everyday activities. A study published by a group of German researchers examined 27 World

¹¹ 'Impact of Sexual Violence' (*Chicago Rape Crisis Hotline*) <<https://www.ourresilience.org/what-you-need-to-know/effects-of-sexual-violence/>> accessed 12 February 2022

War II rape sufferers to women who had suffered other sorts of violence during the war. “Women exposed to conflict-related sexual violence reported greater severity of PTSD-related avoidance and hyperarousal symptoms, as well as anxiety, compared with female long-term survivors of non-sexual WWII trauma,”¹² the team wrote of the aged sample, which was found through intense media advertising. According to a 2011 study, cortisol levels in victims of rape were higher than those of other traumatized people. “Whereas salivary cortisol levels decreased in the course of the interview for the group with no past experience of rape, those PTSD patients who had been raped showed a significant cortisol increase when reminded of their traumatic events,”¹³ the authors wrote. While the hormone is helpful in times of conflict or anxiety, it contributes to a variety of health conditions in people who have increased levels on a continuous basis and can even have long-term impacts on the brain.

CONCLUSION

History has been the witness of how rape has been rampant in our society for hundreds and thousands of years. Be it the hunter-gatherers or the esteemed aristocracies or the modern-day capitalistic and communistic societies, women and often even men have been victims of rape. However, the sad part is that the end of infliction of sexual violence does not end with the perpetrator but goes on even after that. Except for the various physiological and psychological impacts that a victim has to undergo, they are also immensely shamed by society. With the kind of patriarchal and misogynistic society that we live in, it is automatically assumed that the cause behind the rape must be how the woman was carrying herself or what her actions were. With male victims of rape, the situation is even worse as society refused to accept that even men can be raped. The other reason behind this regressive mindset of society is the lack of education in our society. Even after the opening of multiple government schools and other similar institutions, most people refuse to send their children to schools as they fail to understand its importance. Even today people believe that women are meant for taking care of

¹² Starre Vartan, ‘The Lifelong Consequences of Rape’ (*Pacific Standard*, 15 December 2017) <<https://psmag.com/social-justice/lifelong-consequences-rape-96056>> accessed 08 February 2022

¹³ *Ibid*

households and that spending money on their education is nothing but a waste of their already scarce finances. It is this very mindset, the mindset where they underestimate the women and firmly believe that men are more capable than women in every sphere, that has resulted in this blatant discrimination. Moreover, the kind of effects that women have after they have been raped is unimaginable, and such acts of violence sometimes leave them emotionally crippled for the rest of their lives. After this, asking women to marry their rapists is equivalent to a death sentence. Article 21 of the Indian Constitution, although does not explicitly mention the right to live with dignity under its purview, and having to marry the person who has committed a crime as heinous as rape against the same woman is not only taking away the right to live with dignity but also snatching away the very basic fundamental right to safety.