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Judicial Compromise in Rape Cases: A Critical Analysis of V. Mohan v. State (2015) and Its Implications

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Abstract

It has become a judicial trend in India emphasis is consistently placed on the concepts of dishonour and reputation rather than on the violation of the victim's bodily autonomy by the perpetrator in cases of sexual offences. Compromise in which the accused marries the victim is often seen as a solution by the judges in rape cases to indemnify the 'dishonour' that has been caused to the victim. It is not unusual for courts in India to grant bail to an accused because of their marriage to the victim during the pendency of the case or to dismiss cases based on subsequent marriage. Although the High Court has inherent jurisdiction to safeguard justice under Section 482 of the CrPC, the landmark judgement in Gian Singh v. State of Punjab (2012) made it clear that grave offences like rape could not be quashed by the court even if it was compromised between the victim and the offender, that it cannot have any legal sanction. This judgement was given in 2012, and after three years, the order in V. Mohan v State granted bail to the accused on the condition of settling the case through mediation. This paper critically analyses V. Mohan v State (2015 SCC OnLine Mad 3578), a Madras High court order in a criminal appeal, wherein bail was granted to the accused. This paper scrutinizes the misapplication of precedents and the use of gender-biased reasoning in the judgement. It also examines how "marry-your-rapist" laws, which do not exist in books, are applied by the judiciary through their judicial orders and judgements. This research explores the legal framework relating to sentencing in rape cases, highlighting key Supreme Court decisions that caution against the compounding of serious offences like rape.

Keywords: *Compromise, Gender Bias, India, Justice, Rape, Sentencing, Trial*

1.0 Introduction

A judgment is expected to embody the fundamental principles of the judiciary, including impartiality, fairness, and competence. The judge's conscience is evident in the ruling, demonstrating their impartiality, intellectual honesty, and integrity. The courtroom is a platform for challenging dominance and subjugation while promoting social, economic, and political fairness. Thus, courts are primarily responsible for preserving constitutional principles, individual rights, and the rule of law. Patriarchal, male-dominated courts often demonstrate a bias or lack of receptivity towards women's concerns. A judicial trend has emerged in India wherein the emphasis is placed on the victim rather than the accused, particularly in cases of sexual offences. The focus is consistently directed toward concepts of dishonour and reputation rather than the perpetrator's violation of the victim's bodily autonomy. In sexual offence cases, judges often view compromise, wherein the accused marries the victim, as a solution to indemnify the "dishonour" purportedly inflicted upon the victim.

Compromise is illegal in rape cases in India as opposed to other forms of out-of-court settlements that are referred to as "alternate dispute resolution, plea bargaining, mediation in courts of law (Baxi, 2010)".

However, a discussion regarding compromise often comes up when a petition is filed before the appellate court to quash the FIR or suspend the sentence (Baxi, 2010). 'Marry-your-rapists' laws are those which allow a man to evade conviction in offences such as rape, sexual assault, statutory rape, or other such crimes if he marries the woman or girl that he has raped or assaulted. Around the world, 20 countries or territories have "marry-your-rapists" laws in place (UNFPA, 2021). The issue stems from the deeply entrenched patriarchal notion in society that asserts that the ultimate purpose of a woman's life is to marry and serve her husband. This perspective can be inferred from certain judgements of the Apex court, which appear to treat women as mere property of men and suggest that the honour of the family is contingent upon the virginity and chastity of women. Such rulings imply that a woman who has been subjected to rape has lost everything in life. The emphasis is consistently placed on the concepts of dishonour and reputation rather than on the defilement of the victim's bodily autonomy by the perpetrator. Despite changes in the legal frameworks, the stigma and prejudice about rape victims continue to affect rape adjudication and sentencing (Dhonchak & Bhandare, 2020). In criminal law, the normalization of politics of honour is concerningly increasing.

According to the latest NCRB data, the number of cases of rape under IPC and POCSO that have been compounded or compromised in 2022 is 558 and 348, respectively, even though it is not a compoundable offence (NCRB, 2023). In the majority of instances, women are coerced or forced to marry their rapists because of the societal perception that now she has become their property. Often, it can be seen that compromise is a tactic that is used by the accused or the defence lawyers to compel victims and complainants to alter their statements in court during the trial (Baxi, 2010). This paper discusses how compromises in rape cases often lead to secondary victimization and maintains a culture of impunity.

2.0 LEGAL FRAMEWORK OF SENTENCING

In criminal law, sentencing is the "process of determining the appropriate punishment or penalty for a convicted defendant (Jamesju, 2024)." Justice Krishna Iyer in *Krishan Lal v. State of Haryana* (Supreme Court, 1980) observed that "a socially sensitized judge is a better statutory armour against the gender outrage than long clauses of a complex section with all protection writ into it." Stare decisis, a core tenet of judicial decision-making, necessitates legal consistency to ensure that outcomes are foreseeable given specific circumstances. Without this predictability, the doctrine's significance would diminish. Stare decisis aims to restrict judges' personal biases and inclinations in their rulings (Supreme Court, 2014).

There is a disparity in sentencing in the Indian criminal justice system. In systems with indeterminate sentencing, judges exercise discretion to impose penalties that best achieve sentencing objectives within the statutory limits (Isaacs, 2011). Reasoned sentencing is vital for procedural justice (Isaacs, 2011). Marvin Frankiel, a judge and a legal scholar in the United States of America, is often referred to as "the father of sentencing reform." He explained that "the requirement of stated reasons [for sentences] is a powerful safeguard against rash and arbitrary decisions (Frankiel, 1973)." In *Alister Anthony Pareira v. State of Maharashtra* (Supreme Court, 2012), the court held that the twin objectives of the sentencing policy are deterrence and correction. However, in sexual offences, judges are writing orders and judgements on their whims and fancies and are not following fundamental principles like stare decisis and the rule of law.

Recently, in *Sunita Devi v. State of Bihar & Anr* (Supreme Court, 2024), the court observed that "there existed wide disparity in the sentencing of convicts as it is completely judge-centric." It recommended that "the Union Government consider the feasibility of introducing a comprehensive sentencing policy and a report within six months." The court also held that:

"A decision of a Judge in sentencing would vary from person to person. This will also vary from stage to stage as it is controlled by the mind. The environment and the upbringing of a Judge would become the ultimate arbiter in deciding the sentence. A Judge from an affluent background might have a different mindset from a Judge from a humble one. A female Judge might look at it differently when compared to her male counterpart. An Appellate Court might tinker with the sentence due to its experience, and external factors like institutional constraints might come into play. Certainly, there is a crying need for a clear sentencing policy, which should never be judge-centric as the society has to know the basis of a sentence."

3.0 A CRITICAL ANALYSIS OF THE JUDGEMENT

This petition was filed under Section 389 of CrPC by the first accused before the Madras High Court for the suspension of his sentence of imprisonment imposed upon him in the Session Case in S.C No. 373 of 2009, which was tried before the Additional Sessions Judge, Mahila Court, Cuddalore in Tamil Nadu (Madras High Court, 2015). He was convicted under Section 376 of the Indian Penal Code and sentenced to seven years of rigorous imprisonment. He was fined Rs. 5,000/- in default, one year of rigorous imprisonment, and under Section 357(3) of the CrPC, he was directed to pay a compensation of two lakhs of rupees to the victim.

The accused had raped the victim on the pretext of marriage, and after the incident, the victim gave birth to a female child. By DNA test, it was confirmed that the accused was the father of the child. When the matter arose before the Hon'ble High Court, the accused was granted interim bail and referred the matter for mediation. The accused was granted bail till the mediation process was over.

When analysing the judgement, it is evident that the judge is trying to be progressive; for example, he stresses how women should not be treated as chattels, but in truth, the whole judgement reeks of misogyny. Even though it mentions Gian Singh's judgement where it upheld the inherent power of the High Court under Section 482 of CrPC: "In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all (Supreme Court, 2012)."

The victim "has become the mother of a child." The judgement focuses on the "pathetic" condition, saying, "but as on date, she is nobody's wife. So, she is an unwed mother. Now there is a big question mark looming large before [the victim] as well as her child, who is completely innocent."

Some of the reasons the judgement lays down for referring the case for mediation are "petitioner is an eligible bachelor." The judgement fails to provide legal justification as to why it describes the case as "a fit case for attempting compromise between the parties. Mediation mode is best suited to them."

The Court also gave reasons for granting interim appeal bail in paragraph 23 of the judgement, which states as follows: "In these circumstances, keeping the appellant inside the jail and asking him to participate in the mediation talk will not result in any fruitful result. He should be enabled to participate in the deliberations as a freeman and vent his feelings, open his mind and moorings. 'Where there is a will, there is a way".

This judgement was simply bad jurisprudence (Gowen, 2015). As per the rule of law, a judge cannot compound a rape case by using its extraordinary powers (Baxi, 2010). The decision by the Madras High Court judge to recommend mediation reflects a broader cultural pattern where female victims are frequently encouraged to view criminal acts not as offences but as matters that can be settled through negotiation. This is an indication of a deep-rooted patriarchal tendency to downplay the severity of crimes against women.

Section 320 of the CrPC lists the set of offences that can be compounded. Under Section 320(9), it is given that offences not mentioned cannot be compounded, and it is to be noted that rape is not included in this section, so it is not compoundable. Section 359 of Bharatiya Nagarik Suraksha Sanhita, 2023, also incorporates this provision. Section 213 of the Indian Penal Code of 1960 deals with the offence of accepting a gift or other gratification in exchange for concealing an offence or preventing someone from being legally punished for an offence. The same provision is incorporated in Section 250 of the Bharatiya Nyaya Sanhita, 2023, which came into effect recently. The order is a clear violation of all these provisions.

When a victim is forced into compromise, it can adversely affect them. In *Balwinder Singh v. State of Punjab* (Recent Criminal Reports, 2014), the police officers tried to pressure the victim into settling with the accused, and subsequently, the victim took their own life.

In *Gian Singh v. State of Punjab* (Supreme Court, 2012), the Supreme Court held that "compounding of offences which are non-compoundable in nature cannot be permitted." This case is one of the most important cases regarding the use of inherent powers of the High Court under Section 482 of CrPC. It specifically mentions that the crimes such as rape, murder, and dacoity are offences against the State, so such cases cannot be quashed even though the accused and victim has reached a compromise.

In its 237th report, the Law Commission had laid down the following as to compounding of offences of rape:

"Compounding, in the context of criminal law, means forbearance from prosecution as a result of an amicable settlement between the parties. As observed by Calcutta High Court in a vintage decision in Murray, compounding of an offence signifies that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement of his desiring to abstain from prosecution. The victim may have received compensation from the offender, or the parties' attitudes towards each other may have changed for good. The victim is prepared to condone the offensive conduct of the accused who became chastened and repentant. The offences that affect the security of the State or have a serious societal impact at large ought not to be permitted to be compounded. A holistic, and not isolated, approach is called for in identifying compoundable and non-compoundable offences. The interest of victims of crimes and the societal interest in the conviction of the offender often clash and this makes the job of law-makers more complex. No offence other than that specified in Section 320 can be compounded."

4.0 CASUAL SEXISM, GENDER BIAS, AND JUDICIAL DISCOURSE

Often, the courts resort to victim blaming, especially in cases where the victim was sexually active before the assault. A girl's personality, attire, and sexual history are often referenced as aspects indicating the victim's complicity in the crime committed against her and are presented in the court proceedings. This often leads to reluctance by women to report incidents of sexual abuse. In India, judges recommending mediation and compromise is not a new concept, especially in cases involving consensual sex based on the promise of marriage (Nagarathinam, 2015). In *State of Punjab v. Gurmit Singh & Ors.* (Supreme Court, 1996), the Hon'ble Supreme Court held that judges should deal with cases relating to sexual offences with the utmost sensitivity and realistic approach.

In *Aparna Bhat v. State of Madhya Pradesh* (2021), the Supreme Court addressed deeply rooted patriarchal and misogynistic attitudes in judgments and orders concerning gender-based sexual violence cases, establishing the following guidelines to address these issues (R & R, 2021):

- "Any suggestion of compromise (including marriage) is out of the court's jurisdiction. Bail conditions should not allow for contact between the accused and the complainant.
- The complainant should receive appropriate protection where necessary and be informed of the bail order.
- Judges should ensure nothing they say affects the impression of impartiality or fairness of the Court, and remain sensitive to the trauma of the complainant.
- Bail orders should not reflect patriarchal notions such as commenting on women's morals, physical weakness, and capability to make decisions, position in the family, submissiveness or motherhood. Neither should any comment be made or inference drawn from women's sexual activity, clothes, consumption of alcohol/cigarettes or lack of physical harm.
- Gender sensitisation must be carried out for all judges, which will include training on what reasons are relevant and what are not, and the kind of language judges should use. This should also be a compulsory module in the Judicial Services Examination. These topics should also be included in the syllabus for the All India Bar Examination."

In *Shimbhu v. State of Haryana* (Supreme Court, 2014), the court held that "rape is a non-compoundable offence and that it is an offence against society, and is not a matter to be left for the parties to compromise and settle." The court also pointed out that "punishment should always be proportionate/commensurate to the gravity of the offence. 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."

In *Deepak Gulati v. State of Haryana* (Supreme Court, 2013), the Apex Court remarked, "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," which reflects the patriarchal mindset that a woman's honour is in her vagina.

In *Narinder Singh & Ors. v. State of Punjab & Anr.* (Supreme Court, 2014), Supreme Court issued guidelines to quash the proceedings in cases where the offences involved are non-compoundable. The court clarified the difference between the court's power to compound offences under Section 320 of the CrPC and the High Court's authority to quash criminal proceedings through its inherent jurisdiction as granted by Section 482. The court upheld the decision in *Gian Singh v. State of Punjab*. It held, "If it is a heinous crime of serious nature, then it has to be treated as a crime against the society and not against the individual alone. Then, it becomes the solemn duty of the State to punish the crime-doer. Even if there is a settlement/compromise between the perpetrator of the crime and the victim, that is of no consequence."

There are instances where High Courts reduce the sentence or quash the criminal proceedings in cases where the victim marries the offender, with the reasoning given that the court considers the welfare of the victim to be of significant importance. This is mainly done in cases involving the offence of false pretext of marriage. However, this, on the contrary, allows the "marry-your-rapist" culture to progress in the society. Because of this, the witness turns hostile, resulting in the courts acquitting the accused or quashing the criminal proceedings.

5.0 RECOMMENDATIONS

1. One of the reasons that patriarchy still lurks in the Indian judicial system is the lack of women's representation. Even though the representation is much better in the lower judiciary, the number is alarmingly too low in the higher judiciary.
2. There has to be a strict interpretation of POCSO Rules, 2020, where it is clear that the victim is to be kept away from the accused to prevent any intimidation by the accused.
3. Before quashing a rape case, the court has to seriously analyse the conditions of a settlement or compromise and check whether she is being coerced or not. What is the surety that this criminal will not commit a similar offence when set free in society? If the court finds the compromise was obtained by coercion or force, the accused should be booked for criminal intimidation.
4. The Prevention of Child Sexual Offences Act, 2012 (POCSO) enables courts to issue convictions even when a child turns hostile, provided there is adequate evidence of rape. However, there is no provision as such in Section 376 of IPC, which deals with punishment for rape. The government should consider implementing such a measure in the new Bharatiya Nyaya Sanhita to prevent prosecutions from failing due to the inadequacies in the legal system (Nagarathinam, 2015).
5. There also arises a need for a uniform sentencing policy. This approach can limit judicial discretion, promoting fairness and justice in more cases while reducing the influence of individual judges' personal preferences in the decision-making process. This can limit judicial discretion and promote fairness and justice in many cases while constraining judges' personal judgments in their decision-making process.

6.0 CONCLUSION

Justice cannot be achieved when the victim is forced or coerced into marrying the offender. The order in V. Mohan v. State reflects the deep-rooted patriarchal tendencies to downplay crimes against women. Even though the Madras High Court recalled this particular order in the wake of the Supreme Court's judgement in *State of Madhya Pradesh v. Madanlal* (2015), it is to be noted that the whole of the legal system needs to be sensitized in their approach when dealing with a crime committed against women. However, even in the case of *State of Madhya Pradesh v. Madanlal* (2015), the Supreme Court bench headed by Justice Dipak Misra said, "When a human frame is defiled, the 'purest treasure' is lost. The dignity of a woman is a part of her non-perishable and immortal self, and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour, which matters the most." Even this statement by the then Chief Justice of India is improper as he upholds a woman's honour lies in her vagina. "The discourse has to be about consent and sexual autonomy, not dignity, chastity and honour," Adv. Vrinda Grover had remarked in an interview (Sharma, 2016). For women to ultimately exercise their rights to live peacefully without facing violence and to be

financially independent, more societal initiatives, reforms in the legal system, and awareness efforts have to be done. India is a country where marital rape is not criminalized yet. Compromise is often resorted to in many cases where it is difficult to ascertain the difference between consent and coercion from the legal records. This order is an example of how the judicial pronouncement in *Gian Singh v. State of Punjab* is misinterpreted. Many courts pass orders and judgements promoting a culture of compromise. The prevailing culture of compromise in rape cases is resulting in a lack of sensitivity in the imposition of suitable penalties. The narrow focus of the Indian criminal justice system while passing verdicts of guilt or innocence fails to address crucial aspects such as victim rehabilitation and safeguarding witnesses. This approach to justice is inadequate and leaves victims vulnerable to compulsion and threats, ultimately undermining the effectiveness of the entire system. A more comprehensive approach to justice is necessary to ensure fair and thorough outcomes in criminal cases. These judgements reflect deep-rooted patriarchal tendencies to downplay crimes against women.

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