



FROM LOVE TO LAW: CONSENT, CONSTITUTIONAL CONFUSION AND THE UNTOLD STORY OF MALE VULNERABILITY IN INDIA

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ABSTRACT

In today's India, consent is not just a legal term – it is a question of dignity, freedom, and sometimes, survival. While the law aims to protect, it often carries assumptions about gender roles, where men are seen only as accused, not as victims. Imagine this: a 16-year-old girl and an 18-year-old boy fall in love. Both enter into the relationship willingly. However, when the girl finds out, the boy is arrested under the POSCO Act, 2012,¹ Because her consent is legally void, even though she is considered mature enough to be tried as an adult under the Juvenile Justice framework. Meanwhile, a married woman forced into sex by her husband is not protected under the Marital rape law – neither is she protected by the old IPC nor under the new B.N.S., 2023 (Section 63).² In Indian Law, marriage is still seen as a permanent contract, which is outdated. In addition, what if a woman, a teacher, a neighbour, or even his mother abuses a boy? Marital or female –on – male rape is not legally recognised in India. There is no specific gender – neutral rape provision under IPC (before 2018 was used in rare cases of male rape. This article does not aim to attack women's rights. This article questions why can't a man be a victim too? Adding to the complexity, consider another rising issue: when two consenting adults (e.g., A boy aged 21 and a girl aged 18) marry without parental approval, families sometimes respond to false criminal cases – alleging kidnapping, POSCO violations, or social dishonour.

Keywords: Consent in Indian Law, Gender-Neutral Rape Laws, POSCO Act Limitations, Marital Rape in India, False Criminal Allegations.

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¹ POSCO Act ,2012

² Bhartiya Nayay Sanhita 2023, s 63

INTRODUCTION

Under the Hindu Marriage Act 1955³ and upheld by the court, a marriage between two consenting adults is legally valid, even without family consent. Still, couples often face emotional trauma and legal hurdles in choosing love. In today's digital world, consent can be expressed through chats, voice notes, or emojis. Under the Bhartiya Sakshya Adhiniyam, 2023 (B.S.A.), such digital communication is now accepted as proof of intent or absence of consent. However, proving "true consent" remains a grey and emotional puzzle. Through the real example, legal updates, and a respectful tone, this article calls for gender -neutral legal recognition of consent, abuse, and victimhood. It supports equality, not conflict, and encourages reforms, not resistance. It questions silence, not the law. It seeks balance, not blame.

CONSENT: NOT JUST A YES – HOWEVER, A REAL FREE YES

In daily life, we often hear "I gave consent or they agreed." However, in law, not every yes is counted as true consent. According to Indian law, especially under the criminal and contract provisions, consent must be:

1. Freely given or given willingly – without coercion or pressure.
2. By a Sound Mind – Not by minors or mentally unstable people.
3. Informed and Without Confusion.

Section 90 IPC⁴/Section 28 of BNS:⁵ Consent must be given under fear, misconception, or by a person of unsound mind or who is below less than 12 years is not valid in the eyes of the law. This idea forms the backbone of criminal and contract law. Whether it is a medical treatment, a risky act, or even sexual consent, if it is not truly free, it is not legally valid. "Consent is not just about saying yes – it's about saying yes freely, clearly, and consciously given choice.

WHAT EXACTLY IS CONSENT?

Consent simply means agreeing to something with full understanding and free will. Under Sections 87 to 92 of the Indian Penal Code (IPC)⁶ and especially Section 90, the law explains when consent is legally valid and when it is not.

³ Hindu Marriage Act ,1955

⁴ Indian Panel Code 1860, s90

⁵ Bhartiya Nayay Sanhita , 2023, s28

⁶ Indian Penal code 1860 , ss 87- 92

1. Freely given or given willingly – without any pressure, fear, force, or blackmail.
2. By a Sound Mind – Not by a minor, or a mentally unstable person.
3. Fully Informed and Without Confusion

WHERE DID THE IDEA OF CONSENT COME FROM?

The concept of consent has existed since ancient times, especially in Roman law, where contracts and personal liberty depended on mutual agreement. In modern law:

- Consent became the key in contracts, crimes, and medicine.
- In Indian law, the British Colonial Codes and later Constitutional principles of autonomy and dignity shaped it.

LEGAL DEFINITIONS OF CONSENT

Cornwell Law School (U.S.):⁷ “Consent” means a person voluntarily and willfully agrees in response to another's proposition. Consent requires absence of coercion, fraud, or error”.

Indian Contract Act 1872- Section 13:⁸ Two or more people are said to consent when they agree upon the same thing in the same sense. (Known as “consensus ad idem”)

Indian Penal Code –Section 90/ Section 28 BNS: Consent is not valid if given under fear, under a wrong belief by a person with an unsound mind, or the age of 12.

WHY IS CONSENT IMPORTANT IN CRIMINAL LAW?

In crimes like sexual assault, injury, or medical procedure, consent decides the guilt.

- A person’s clear “yes” may protect someone from criminal charges.
- However, if that “yes” was forced, faked, or misled, it is not valid.

Types of Consent

Type	Means
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⁷ <https://www.law.cornwell.edu/wex/consent#:~:text=Cornwell%20Law%20or%20silence> accessed by 16 July ,2025

⁸ Indian contract Act ,1872 ,s13

Express	Clearly said “yes” verbally or in writing.
Implied	Understood from actions
Informed	Given that after knowing facts, especially in sexual matters

Important Legal Sections on Consent (India)

Section 87-92 I.P.C / Section 25 BNS	Consent as a defence to certain harms
Section 90 IPC / Section 28 BNS	When consent is invalid
Section 375 IPC / Section 63 BNS	Define rape, and how consent is key in the offence.
Juvenile Justice Act	Mental Maturity of Minor in Law

PROOF OF CONSENT

In cases of Sexual activity or relationships, consent alone is not enough – proving it with solid evidence is crucial, especially in legal matters. Courts assess real consent based on:

1. **Digital Evidence (Text, Chats, and social media):**⁹ Messages on WhatsApp, Instagram, or regular texts can serve as powerful proof of consent. If both parties agreed, it could help show the act was mutual.
2. **Witness Statements** -Friends, roommates, or anyone present during the time can testify that everything happened with consent. Witnesses are often trusted by the courts when physical evidence is lacking.
3. **Medical or Forensic Report** -Medical check-ups or lab reports can reveal signs of force and lack of it. If no injuries or resistance signs are found, it might support the claim of a consensual act.

⁹ Bar & Bench, ”Digital Consent and its Legal validity in India”2023 <https://www.branchbench.com>

CONSENT IN SEXUAL OFFENCES: THE AGE TRAP & GENDER GAP

The Laws Protect, However Sometimes Punish Love: In India, the Protection of Children from Sexual Offences Act, 2012 (POSCO) was enacted with the noble intent of protecting children from sexual abuse. One major change it brought was raising the legal age of consent from 16 to 18 Years. However, what happens when two teenagers fall in love?

With the advancement of technology and exposure to social media, today's teenagers are often more emotionally and sexually aware than the previous generation. Yet, our laws still assume immaturity solely based on age. Imagine this: A 16-year-old girl and 16-year-old boy in a consensual relationship – if parents file a case, the boy is charged.

It is so because legally, the girl is under 18, so her consent is not recognised. Even if there is no force, no harm, and she willingly participated, the law sees it as rape. “Her ‘yes’ becomes legally invisible.”

What did the courts reveal?

Studies of the Special POSCO Courts in Mumbai and Dindoshi revealed some eye-opening truths:

- In 50% of romantic cases, the girl turned hostile, saying that she had no complaint.
- In 75 % (Mumbai) and 67% (Dindoshi) cases, the couples had married each other.
- In 28% (Mumbai) and 22% (Dindoshi) cases, they had children.
- Parents often filed for, not the girl, usually due to their caste, religion, or family pressure.

Yet despite these facts, police are legally bound to file cases, and the courts must begin trials.

Punishment- Even Without Exploitation: After the 2019 amendment to the POSCO Act,¹⁰ the punishment became even harsher:

Types of Punishment	Minimum sentence
Penetrative Sexual Assault	10 years imprisonment

¹⁰ POSCO Act, 2012, Amendment 2019

Aggravated Penetrative Assault	20 years to Life Imprisonment
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Even if the act was consensual and there is **no abuse**, the accused must face a minimum of **10 years** of imprisonment. The court has no discretion to reduce the sentence in such cases.

LEGAL IRONY: OLD ENOUGH TO BE TRIED, HOWEVER NOT OLD ENOUGH TO CONSENT?

India's Juvenile Justice Act, 2015¹¹ says that a 16-18-year-old can be tried as an adult in serious offences like rape and murder if found mature. Despite this, under the POSCO Act, a 16-17-year-old girl is treated as a child incapable of giving consent even in consensual love. "Can a teen understand murder, but not love?" "Are we protecting our daughters, or punishing their choice?" This contradiction in Indian Law has left many couples trapped in a legal maze, where their relationship becomes a crime.

When the consent exists, however, Law Denies it: The Forgotten Victims of Gender Bias: "He cried, too. However, no one listened." Indian Rape laws, especially Section 375 IPC, only recognise women as victims and men as perpetrators. This means the Indian rape law (Section 375IPC) recognises only women as victims. No reorganisation for male or trans victims under the IPC. This violates:

Article 14 – Right to Equality

Article 15 (1) –Prohibition of discrimination

Article 21- Right to life and dignity¹²

The Legal Blind Spot: One –Gender Protection: Under Section 375 IPC¹³ Defines rape: a man committing the act against a woman. No space for male or Transgender victims, and LGBTQ+ individuals have no clear IPC remedy for sexual violence. While the Transgender Person Act 2019¹⁴ recognises abuse, it limits punishment to 2 years under Section 18 (d), creating

¹¹ Juvenile Justice Act , 2015

¹² Constitution of India 1950 Art. 14,15,21

¹³ Indian Penal Code 1860, s 375

¹⁴ Transgender Protection Act ,2019 ,s 18(d)

https://paper.ssrn.com/sol3/paper.cfm?abstract_id=51806098#~text=The%20legal%20framewor,of%20gender%20identity. Accessed on 16 July2025

inequality in justice as compared to the IPC's treatment of rape. Navtej Singh V Union of India (2018).¹⁵ The Supreme Court recognised the dignity and sexual autonomy of LGBTQ+ individuals. However, criminal law hasn't caught up.

Reality Check: Men & Trans people are victims too, 1 in 6 boys is sexually abused before turning 18 (Rutgers VPVA data).¹⁶ 60% male victims never report due to shame and fear of being mocked. Trans people face a higher risk of sexual assault – yet laws offer protection. If a woman says no, it's rape. If a man says no, is it a comedy? False accusations, though rare, can cause social death, media trails, and mental breakdown, especially when a proper investigation is missing.

What other countries are doing right?

Country	Law Names	Law Type
United Kingdom	Sexual Offences Act, 2003 ¹⁷	Gender- Neutral covers all genders
Canada	Criminal Code (Section 273) ¹⁸	Gender Neutral Law (Victim = any person)
Australia	State-specific, mostly inclusive	Gender –neutral recognises female and male victims
United Nations of America	State-wise laws, most inclusive	Gender – neutral

¹⁵ Navtej Singh Johar v. Union of India AIR 2018 SC 4321

¹⁶ <https://vpva.rutgers.edu/info-resources/male-victims-sexual-violence#:~:text=Info%20%26%20resourceMenu-Male%20victims%20of%20Sexual%20violence,the%20victimization%20and%20%the%20victimization%20and%20the%20after%20effects%20that%29you%20may%20be%20experiencing,-click%20here%20to>

¹⁷ Sexual Offence Act 2003

¹⁸ Criminal Code, 1985, s273

The Human Side: Stories Left Untold: Imagine, A body gets assaulted – However, the police. A transport person reports rape; However, they are charged under a weaker law. A man is abused in a relationship and is told, “You are Lucky!” “Pain doesn’t check the gender. Protection shouldn’t either”.

PARENTAL APPROVAL IN MARRIAGE – BETWEEN LOVE AND LAW

When the Law says yes, however, Parents say no. In India, the laws give freedom to adults – girls at 18 and boys at 21 – to marry by their own choice. No permission is legally needed from parents. However, the social story is very different. Many people still face pressure, judgment, or even violence for choosing their life partner, especially if it’s from inter – caste or inter–religious match. “Legal, valid love is often treated as illegal by society.”

Consent of Parents is not a Legal Requirement:

While family blessings can bring peace, they are not legally required. The court in India has clearly said:

- Adults have a fundamental right to choose their partner under Article 21 (Right to Life and Liberty).¹⁹
- The Supreme Court has protected many couples in love marriages, even when their parents were strongly against them.

The Laws stand by your choice. However, society may not.

When Family Becomes a threat: What couples can do?²⁰

If parents oppose your relationship, **the law still offers protection:**

Cohabitation Agreement: A mutual legal agreement for living with a partner, especially useful when facing parental or social resistance.

Joint Ownership: Own property or open accounts in both names to avoid legal complications later.

Legal Will: Secure your partner’s rights by writing a valid will.

¹⁹ Constitution of India ,1950 Article 21

Police Protection: Couples can approach the High Court or police if they face a threat or harassment from their family.²¹

Love may need courage, but the Constitution protects it.

A Society in Transition: Urban youth are now moving toward freedom. However, the rural and conservative families still prioritise “honour” over individual choice. In such places, even a legally valid marriage may become the ground for violence or “honour crimes. Courts have repeatedly said: “Social values cannot override Constitutional rights.”

UNHEARD TRUTH IN DOMESTIC CRIMES: A MALE PERSPECTIVE

Forced Marriage, Broken Trust: When Wives Murder Their Husbands: When love is absent and only duty remains, truth dies – life becomes negotiable. Many Indian women are forced into marriage due to family or social pressure. The honour culture that does not allow them to reject arranged alliances.

Ground Reality: In such cases, emotional frustration binds up. Some women maintain secret relationships post-marriage. The husband is seen as an obstacle and is eliminated.

Case Highlight (2023): Tamil Nadu: Husband killed 4 days after marriage. Investigation revealed that she loved another man, married under pressure.²²

Meghalaya: Wife plotted a honeymoon with her lover and hired a killer.

Maharashtra: Killed husband with an axe just 3 weeks after marriage.²³

Uttar Pradesh: Poisoned husband with lover, dumped body into river. Killed husband with lover – nephew, framed neighbours.

Madhya Pradesh: Wife, her lover & minor brother killed husband, body shown on video call.

Just like women, men can also be victims of forced or manipulative marriages. The idea that husbands are always safe or in control is no longer valid. Every crime has a context. Gender is not always the context; sometimes love is.

²¹ <https://blogshadi.com>- Parents approval is not required in live in relationship or marriage

²² [www.https://thehindu.com](https://thehindu.com)

²³ <https://ndtv.com> Radhika Lokhande

CONSENT IN MARITAL RAPE: IGNORING THE MALE PERSPECTIVE

Some recent judicial opinions have argued that the absence of consent, even within marriage, should amount to rape. Justice Rajiv Shankar emphasised that non – non-consensual sex, regardless of material status, violates a woman’s sexual autonomy and equality. While these views show the law is evolving on bodily rights, they often highlight only one side of marriage.

This one–sided focus ignores that even men can face forced intimacy under emotional pressure, legal threat, or guilt. Indian law still sees husbands as always willing. This reveals that men, too, can be victims in marriage. Moreover, in the context of false material rape allegations, many husbands face humiliation, arrest, and social stigma without a fair investigation. Without gender neutral laws, only one partner’s voice matters, which weakens true marital equality.

SUGGESTIVE LEGAL REFORM

1. Make the Rape law gender – neutral, ensuring protection to all – men, women, and transgender persons.
2. Re-examine the age of Consent, especially in the context of consensual relationships with nuanced provisions instead of blanket criminalisation.
3. Introduce protection against misuse of POSCO in the cases of consensual love affairs.
4. Educate police, judiciary, and families on consent, autonomy, and constitutional rights.
5. Recognise marital rape – where consent by default is a dangerous myth.

Law must evolve with society. In the end, consent is not just a “yes” – it’s the right to say yes freely.

CONCLUSION

Consent, as interpreted by Indian law, is caught in a paradox – legally defined, yet emotionally diluted. While statutes like the IPC and POSCO aim to protect, they sometimes end up criminalising mutual love, particularly among young adults. This results in a legal system where a 16- year – old girl can be seen as a victim, even in a consensual relationship, while a 17 – year – old boy becomes a criminal – a tragic irony. Throughout this article, we have witnessed how “consent is not a legal formality, but a deeply contextual human right, which tries to be dignity, autonomy, and free will. However, our current system remains gender-

biased, age-rigid, and morally experienced, the LGBTQ+ struggle, and even the basic freedom to love without fear. It's time to acknowledge:

- Men can be victims too.
- Love is not a crime.
- Consent must be freedom, not just a checkbox.