



CAN JUSTICE BE NEGOTIATED? A LEGAL INQUIRY INTO COMPROMISE IN RAPE CASE

Shweta Satish Kale*

INTRODUCTION

Justice may be delayed, but shall not be denied,' the Security Council told at a debate on sexual violence in conflict.¹ It is imperative to protect the rights of the victims of sexual offences. Justice must be served in every case. "The primary objective of the Hon'ble Supreme Court is to ensure the prompt and effective dispensation of justice to victims of sexual offences, by the principles of fairness, equity, and the rule of law." The Indian judicial system predominantly embraces a reformatory theory of punishment in dealing with criminal offenders, and it adopts a cautious and restrained approach in awarding the death penalty, particularly in cases of rape. Courts generally refrain from imposing capital punishment, favouring rehabilitation over retribution. The death penalty is reserved only for the "rarest of rare" cases, as established in the landmark judgment of *Bachan Singh v. State of Punjab*,² wherein the Supreme Court laid down strict guidelines for its imposition. This principle continues to guide the judiciary, ensuring that capital punishment is applied only in cases of such an exceptional nature.

Taking into consideration the severe nature of offences like rape and murder, they are categorised as non-compoundable under the *Bhartiya Nagarik Suraksha Sanhita* 2023, which means parties are not allowed to resolve the dispute with mutual agreement once the offences are registered. In recent times, the judiciary has been increasingly resolving matters wherein First Information Reports (FIRs) are being quashed even in cases involving grave offences, including allegations of rape. This evolving judicial stance warrants serious consideration, particularly about the exercise of powers under Article 142 of the Constitution of India. The

*LAW GRADUATE.

¹ <https://news.un.org/en/story/2016/06/531032>

² (1982)3 SCC 24

concern arises that, in doing so, the Supreme Court may be inadvertently establishing a precedent that could be perceived as contrary to the principles of justice and public interest.

Even in 2014, a controversial moment that drew significant public and legal criticism, former Chief Justice of India, Hon'ble Sharad Bobde, remarked during the proceedings of Mohit Subhash Chavan v. State of Maharashtra, wherein he reportedly asked the accused, who was a government employee that if he intended to marry the victim, who was a minor at the time of the offence. This comment sparked widespread concern regarding judicial sensitivity in cases involving sexual offences. "An important legal and moral question arises as to whether an accused person can evade criminal liability for the offence of rape merely by entering into a marriage with the victim. Such a proposition raises serious concerns regarding the rights and dignity of the victim, and whether it is just and reasonable to expect the victim to cohabit with an individual who has committed a heinous offence against her. The issue further compels examination as to whether allowing such an arrangement undermines the very objective of justice for the victim and is compatible with the constitutional guarantees of dignity, equality, and protection under the law." The Supreme Court of India has consistently held that proposing or facilitating marriage between a rape accused and the survivor cannot be a ground for granting bail, particularly in cases involving minors, and has urged subordinate courts to avoid entertaining such considerations during bail hearings.

In the landmark judgment Jagtar Singh v. State of Punjab, the court established significant principles regarding the quashing of criminal proceedings based on a compromise between parties. The ruling emphasised that while compromise may be considered in certain cases to secure justice and reduce litigation, it is impermissible in offences of a heinous nature, as such crimes have a profound impact on society.

COMPROMISE IN RAPE CASES

Compromise means the settlement of a dispute between parties through mutual agreement. In the Indian legal framework, certain offences are categorised as compoundable, while others are non-compoundable. This categorisation allows disputing parties to resolve the matter through mutual agreement, subject to judicial approval. In recent times, there has been a significant increase in the use of compromise as a mechanism for dispute resolution, which helps the judiciary to reduce the pendency of cases. The Indian judiciary is emphasising more on a settlement outside the courts and the use of methods such as mediation, Negotiation, and

conciliation. Recently in India, the 'Mediation for the Nation' campaign has been carried out; these methods are suitable for civil and family matters; however, these methods shall not be used in heinous crimes.

Section 359 of the Bhartiya Nagarik Suraksha Sanhita, 2023,³ Deals with the provisions related to the compounding of offences. This section enumerates the specific offences that are compoundable and designates the individuals who are legally empowered to enter into such a compromise.

Non-compoundable Offences are those where a compromise between parties is not legally permitted, as these are considered serious crimes against society at large. Examples include murder (Section 101BNS), grievous hurt (Section 116 BNS), rape (Section 63BNS), and kidnapping (Section 137BNS).

Section 63 of the Bhartiya Nyaya Sanhita 2023⁴ Defines Rape and further states that the said offence is non-bailable and non-compoundable. In the context of heinous crimes such as rape, compromise is impermissible. Rape is classified as a non-compoundable criminal offence, owing to its grave nature and the profound impact it has not only on the survivor but also on society as a whole. It constitutes a violation of bodily integrity and human dignity, thereby affecting public order and morality.

Dnyaneshwar S/o Vishnu Suryawanshi & Anr. vs. State of Maharashtra & Anr.⁵ The Aurangabad bench of the Bombay High Court declined to quash a First Information Report (FIR) registered for rape, observing that any settlement or compromise arising from a 'misunderstanding' cannot override considerations of public interest. The Court emphasised that permitting such compromises in cases involving serious offences like rape would be contrary to the public interest and the principles of criminal justice. In a recent matter involving allegations against two accused persons, a division bench comprising Justices Vibha Kankanwadi and Sanjay Deshmukh rejected the complainant's request to quash the FIR.⁶ Though compromise may be permitted in specific categories of criminal cases, it is neither legally sanctioned nor ethically appropriate in cases involving heinous offences.

³ Bhartiya Nagarik Suraksha Sanhita 2023, sec 359

⁴ Bhartiya Nyaya Sanhita 2023, sec 63

⁵ [Criminal Application No. 864 of 2024]

⁶ <https://www.barandbench.com/news/litigation/bombay-high-court-refuses-to-quash-rape-case-despite-compromise-between-accused-and-victim>

SECTION 528 OF BHARTIYA NAGRARIK SURAKSHA SANHITA 2023.

Section 528: Saving of inherent powers of the High Court -Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Under Section 528 of the Bhartiya Nagarik Suraksha Sanhita (BNSS)⁷, the High Court possesses the inherent power to quash an FIR or criminal proceedings. When invoking this provision, the Court must carefully consider the gravity of the alleged offence. This jurisdiction is not exercised mechanically; rather, it should be guided by the fundamental aim of delivering justice and preventing abuse of the judicial process. Section 528 of BNSS shall be exercised to ensure the ends of justice, especially in cases where the dispute has been amicably settled, subject to the nature of the offence involved.

The Hon'ble Supreme Court in *Gian Singh v. State of Punjab*⁸ clarified the scope of the High Court's inherent powers under Section 482 of the Code of Criminal Procedure. It held that the High Court's authority to quash criminal proceedings is separate from the power granted to trial courts for compounding offences. This inherent jurisdiction is broad and not limited by statutory restrictions, but it must be exercised judiciously to either.

1. prevent misuse of the court's process or
2. Secure the end of justice.

The Court emphasised that the decision to quash proceedings based on a compromise between the parties must be guided by the facts of each case. However, it cautioned that in cases involving serious or heinous offences such as those relating to moral turpitude, homicide, sexual assault, or organised crime, quashing based on a settlement may not be appropriate. Such offences, by their nature, affect society at large and transcend private disputes.

⁷ Bhartiya Nagarik Suraksha Sanhita 2023, sec 528

⁸ (2012) 10 SCC 303

ARTICLE 142 OF THE CONSTITUTION OF INDIA 1950

The power under Article 142 of the Constitution of India 1950⁹ is inherent and can be used to ensure the end of justice. The object of this Article is to enable the Court to declare the law to give such directions or orders as are necessary to do complete justice.

Shilpa Shailesh v. Varun Sreenivasan, in this case Hon'ble Supreme Court held that in the exercise of power under Article 142 of the Constitution of India, the court can quash and set aside the proceedings and orders, including the criminal proceedings. Invoking its power under Article 142 of the Constitution of India, the Supreme Court has quashed a Rape case as it noted that the complainant/alleged victim got married to the appellant/accused.¹⁰

MADHUKAR V STATE OF MAHARASHTRA: AN ANALYSIS

The Hon'ble Supreme Court, in a recent judgement in Madhukar and Ors v The State of Maharashtra and Anr., observed that criminal proceedings related to rape offences can, in exceptional circumstances, be quashed based on a settlement, subject to the facts of the case. "At the outset, we recognise that the offence under Section 376 IPC is undoubtedly of a grave and heinous nature."¹¹

The FIR was registered Police Station, District Jalgaon, under Sections 324, 141, 143, 147, 149, 452, 323, 504, and 506 of the IPC against the appellants. The allegations pertained to assault and unlawful assembly in connection with a family dispute involving the complainant and her relatives.

Subsequently, a second FIR was registered at the same police station under Sections 376, 354-A, 354-D, 509, and 506 IPC against the appellant. The complainant alleged sexual exploitation and criminal intimidation by the accused.

In March 2024, the complainant in the second FIR filed an affidavit before the High Court indicating her desire not to proceed with the prosecution, citing an amicable settlement and receipt of Rs. 5,00,000/- towards marriage expenses.

⁹ Constitution of India 1950, art 142

¹⁰ <https://www.livelaw.in/top-stories/supreme-court-quashes-rape-case-invoking-article-142-complainant-married-accused-195266>

¹¹ <https://www.barandbench.com/news/litigation/rape-case-can-be-quashed-when-parties-settle-if-supreme-court>

Thereafter, the appellants filed Criminal Applications under Section 482 CrPC, seeking quashing of both FIRs. The High Court dismissed the applications, holding that offences under Section 376 IPC are serious and non-compoundable, and thus, proceedings could not be quashed merely based on compromise or monetary settlement. The reason provided by the complainant was that she is now married and residing with her husband, has expressed that continuation of the prosecution would cause further disruption in her personal life and that she has no wish to support the charges or pursue the matter any further.

IN RE: RIGHT TO PRIVACY OF ADOLESCENTS: AN ANALYSIS

On 20 August 2024 Bench had set aside a judgment of the Calcutta High Court, which reversed the Trial Court's conviction for rape and kidnapping under the POCSO Act, with a rigorous imprisonment of 20 years.¹² The POCSO victim had told the High Court that her relationship with the accused was consensual and that she had married him "out of her own volition." She had a child with the accused and had been cast out by her own family. Due to the criminal proceedings, society and her own family abandoned her and she has no financial support. In such cases, sending her husband to jail for 20 years will not provide the victim justice. The Supreme Court stated that ordinarily, the law mandates that an accused convicted of a sexual offence must undergo the minimum statutory punishment, including imprisonment. However, in the present matter, it is evident that the victim has already endured considerable trauma not only due to the offence itself but also due to the conduct of society, her own family, and the prolonged legal process. In these exceptional circumstances, imposing the statutory punishment would further compound the injustice already suffered by the victim. As members of the judiciary, we cannot remain indifferent to such harsh social realities. To achieve substantive justice in this case, the appropriate course is to prevent the separation of the victim and the accused, now legally her husband. The State and society must take proactive steps to rehabilitate the family and support them until they are fully resettled and stabilised."

VICTIM-CENTRIC JUSTICE

The Indian judiciary has increasingly shifted towards a victim-centric approach to justice, emphasising the protection of victims' rights and interests. This approach ensures that justice is delivered promptly and compassionately, rather than merely focusing on the prosecution and

¹² <https://www.thehindu.com/opinion/lead/the-issue-with-criminalising-all-adolescent-relationships/article69815972.ece>

sentencing of the accused. In cases such as rape, the trauma experienced by survivors is profound, often compounded by social stigma, community judgment, and, in some instances, rejection by their own families. The courts now aim to address these challenges by prioritising the dignity, well-being, and support needs of the victims throughout the legal process. In the case of *In re: right to privacy of an adolescent*, the Supreme Court held that sentencing the accused at this stage would cause greater harm to the victim herself. Hence, they acquitted the accused in the said case and also stated that the State Government must act as the true guardian of the victim and her child and ensure that they settle down in life and lead a happy, healthy and constructive life ahead.

CONCLUSION

The question of whether justice can be negotiated in rape cases is complex, but the answer must remain grounded in the unwavering principle that certain crimes can't be compromised. Rape is not just a personal harm; it is a violation of bodily autonomy, dignity, and fundamental human rights. If compromise is permitted in cases involving rape or other sexual offences, it poses a serious threat to the administration of justice and the public interest at large. It may set a dangerous precedent whereby perpetrators of heinous crimes can escape from legal accountability by coercing victims into settlement, often under the guise of marriage or societal reconciliation. This not only lessens the seriousness of the offence but also creates a risk that others may believe sexual crimes can be settled privately and without any punishment. Therefore, the criminal justice system must take a strong position that such offences cannot be compromised and must ensure that appropriate punishment is given.

The possibility of compromise in rape cases raises fundamental concerns about justice, legality, and human rights. Rape is not merely a private wrong but a crime against individual autonomy and the moral fabric of society. Permitting compromise in such cases undermines the seriousness of the offence, weakens the deterrent value of criminal law, and risks reducing justice to a negotiable commodity. It opens the door to coercion, silencing of victims, and legitimisation of societal pressures that often favour the accused under the garb of settlement, marriage, or financial compensation.

However, the Supreme Court has stated in a recent judgement that when the sexual act between the accused and the victim is consensual, and the victim herself wants to quash the FIR in such cases facts of the case must be considered before convicting a person. And courts which has

the power to quash such proceedings shall exercise such power. In recent times, there has been a noticeable rise in the registration of false cases involving sexual offences. In such instances, the courts must scrutinise the facts and evidence with utmost care. No individual should suffer punishment for an offence they have not committed, and the principle of innocent until proven guilty must be strictly upheld to prevent miscarriage of justice. And FIR can be quashed in order to ensure justice.

Judicial precedents, legislative provisions under the Bhartiya Nyaya Sanhita and Bhartiya Nagarik Suraksha Sanhita, and constitutional values all affirm that rape is a non-compoundable offence, non-negotiable in its legal treatment. The power of the High Courts and the Supreme Court under Article 142 and Section 528 must be exercised with the utmost caution in such matters, ensuring that public interest, victim dignity, and constitutional morality are never compromised.

In a justice system moving toward victim-centric jurisprudence, the emphasis must remain on empowering survivors, ensuring accountability, and reinforcing the message that certain crimes like sexual violence are beyond the realm of compromise. True justice lies not in negotiated settlements, but in upholding the rule of law, affirming the dignity of victims, and ensuring that offenders are held fully accountable. Thus, justice in rape cases cannot, and must not, be negotiated.