



CONSENT, CULTURE, AND CRIME: UNDERSTANDING INDIAN SOCIETY'S LENS ON WOMEN'S RIGHTS

Dhaarna Shandilya*

ASBTRACT

In India, women's rights and autonomy are deeply shaped by cultural and social perceptions of morality and consent. The article shows how patriarchal norms influence the meaning of consent and crime against the Indian legal system. It will cover the viewpoint of the article on how marital rapes, sexual harassment, and victim blaming are discussed.¹ Still causes a massive impact on women and society, and it brings changes to the legal system of our nation in favour of women's rights, and it also contains the education that transforms social attitudes towards women's dignity and agency.²

Keywords: Women's rights, Legal System, Consent, Culture, Social norms.

INTRODUCTION

The talk here is not about how women can be spared or live peacefully in a society where even the goddess was questioned by her own people, and the irony is that those people were not strangers to her; they were the ones whom she called her family, a family that also includes her husband. A husband who was regarded as a supreme being, who not only ruled the kingdom but also ruled every heart of his people. He was known as the man among men, the most excellent Lord Rama, and his wife was none other than Goddess Sita, the goddess of purity, sympathy, and elegance herself. She was questioned by a man who delivered justice with unmatched fairness and purity. Yet, in the end, he failed to protect his own wife. These are not the stories from the past reality for today's times. If we look around today, the situation remains

*BA LLB, THIRD YEAR, AGRA COLLEGE, AGRA.

¹ Law Commission of India, *Consultation Paper on Reforms of Family Law (2018)*.

² National Crime Records Bureau (NCRB), *Crime in India Report 2022*.

the same, perhaps even worse, in what we call now Kla Yug, an era where a patriarchal society continues to question women who never even sought their concerns.

Let me just clarify what society truly is. What is society? Where this all this come from? And why does this matter so much? Let's clarify it.

SOCIETY

A word that carries immense weight. It matters so much that without its consent, its customs, its norms, its rules, you are not allowed to do anything that you love, the things that make you, you. Your own self is not permitted to justify doing what makes you feel alive, independent, confident, and most importantly, fearless.

Society defines itself in a way that ensures you never truly become who you want to be. They will always judge you, always tell you what matters so much for you, what is good for you, and what is not. Even your own parents, with the best intentions, depend on society's opinions, believing that society is the guiding hand everyone needs, because of the "what society will say?" Questions arose. Which ironically may never truly exist. But still, they say, "It's for your own good," because this will make you a "Real Lady."

Society claims not to be biased, but in truth, it always prefers men over women. The man is seen as a supreme being of the household, the one who carries great responsibility, the head of the family. Yet, the same family depends on women to hold it together. Still, she always remains secondary because her nine months of pain, her sacrifices, her strength are somehow seen as her duty, not her power, her courage, she has been holding through centuries.

But despite everything, the women still stand tall from the past till now today. Time may change, but society rarely does. Across generations, its culture, norms, customs, and self-made rules have tried to stop women from moving forward.³

However, I believe today's society is divided into two parts: one that is backward, and one that is modern. The modern side is more progressive, yes, but even there, a line is drawn, a limit set for a woman. A limit that sometimes, women themselves stop at, not because they are weak, but because they already know that might happen if they dare to cross it, and that's what society calls manners, the upbringing of their society. This fear of social norms and patriarchal

³ Ministry of Women and Child Development, *Status of Women in India Report (2021)*.

structures even influences our legal system, a system that was designed to create rights for women, yet remains bound by the very structures it seeks to overcome.⁴

WHAT IS CONSENT?

Before we talk about anything else, we must first understand this word its meaning, its depth, and its importance. Consent is a simple word, yet it carries a powerful meaning. It can be described in just two possibilities: yes or no. Nothing more, nothing less. But behind those two words lies the dignity, confidence, and autonomy of a person, their right to decide.⁵

Consent is simple to understand, but in our society, people often overlook its essence. Perhaps it's not that they don't understand it, but that they refuse to accept it. Society, which claims to define what is right or wrong, often distorts the meaning of consent, especially when it comes to women.

Most men, even today, fail to grasp the real meaning of no. They know the word very well, but not its weight. That NO means NO. If a woman says no, you have to stop immediately. No debate, no persuasion, no justification. But as the saying goes, "a man will always be a man", and this mindset has led to countless violations of dignity and safety.⁶

Many believe that consent only means Yes. But true consent recognises the power of both yes and no. Both are equally valid, equally strong, and equally important. Because even yes does not give anyone the right to cross boundaries, to exploit trust, or to satisfy their ego.

- You are no one to cross that line.
- You are no one to create the chaos and then place the blame on her.
- You are no one to seek sympathy while standing proudly over your wrongdoing.

Consent always matters, no matter when, where, or how it is given. No one has the right to twist its meaning or use it as an excuse for harm. Consent comes first, always, and must be respected every single time.⁷

⁴ *Vishaka v State of Rajasthan* (1997) 6 SCC 241.

⁵ Indian Penal Code 1860, s 375.

⁶ *State of Punjab v Gurmit Singh* (1996) 2 SCC 384.

⁷ *Farooqui v State* (Govt of NCT of Delhi) 2017 SCC Online Del 7088.

SOME LEGAL TERMS FOR CONSENT

Legal definitions under Section 63 of the Bhartiya Nyaya Sanhita (BNS) represent the true meaning of consent.⁸ It clearly defines acts done “against her will” or “without her consent”, across seven key clauses. Section 64 provides the entire legal understanding of consent in today’s society.⁹

The government did not draft these sections merely to apply them after a crime occurs. They created an entire legal framework, a book full of chapters and provisions, so the people could read, learn, and refrain from committing the same mistakes. Because if they do, the law is ready with strict punishments. Section 64 further elaborates upon these principles in detail.¹⁰

There often exists confusion between “Consent” and “Submission”.¹¹ Let’s clarify this difference. “Consent” means a voluntary act of free will by a person who is in a sound state of mind without any coercion, force, or misunderstanding. On the other hand, “Submission” means yielding or giving in to something under fear, pressure, or compulsion. It represents an act done not out of free choice, but due to fear or helplessness.

A woman should never have to choose between two options that compromise her freedom. Yet in many cases, women are humiliated, judged suspiciously, and treated as if they are at fault, forgetting that they are, in truth, victims. Victims who deserve consolation, not suspicion; respect, not blame.¹²

It is a woman’s worst nightmare to be forced into an act she never consented to, to an act she never imagined could happen to her. She is a free, independent individual, entitled to go anywhere, anytime, and do anything that makes her happy. But happiness, for her, often doesn’t last long.

A woman is not an object of desire for any man. She is a human too with emotions, dignity, and sensibility. It is this very sensibility that often holds her back, making her overthink for safety, not because she wants to, but because she has to.

⁸ Bhartiya Nyaya Sanhita 2023, s 63.

⁹ Bhartiya Nyaya Sanhita 2023, s 64.

¹⁰ Ministry of Law and Justice, *Bhartiya Nyaya Sanhita 2023: Statements of Objects and Reasons* (Government of India, 2023) accessed 16 October 2025.

¹¹ *State of H.P. v Mango Ram* (2000) 7 SCC 224, *Uday v State of Karnataka* (2003) 4 SCC 46.

¹² *State of Punjab v Gurmit Singh* (1996) 2 SCC 384, *Lilu @ Rajesh v State of Haryana* (2013) 14 SCC 643.

Why must women constantly be alert about where they sit, eat, walk, or speak?

Why must they be taught how to dress, where to go, and whom to trust?

Because society has conditioned them with fear, a fear of what could go wrong if they don't comply.

Society never truly teaches women to stand up for themselves. It doesn't teach them to speak confidently in public or to demand justice without hesitation. Instead, it trains them to tolerate, adjust, and remain silent.

This fear, born out of patriarchy and societal norms, continues to shape our culture. And if its culture remains unchanged, one day it may no longer be culture but a cult of silence.

CULTURAL PERCEPTIONS OF WOMEN'S MORALITY

A patriarchal belief continues to judge a woman's character, a character that has always been considered the jewel of her identity. That jewel represents her family, her background, her vision, her speech, her walk, everything that defines her as an "Elegant" and "Perfect" woman, at least in the language of society.

From the past till now, a woman has been defined by some narrow standards: a woman who speaks less, who stays behind curtains before elders, who feeds her family, takes care of her children, represents her in-laws, and gives birth to a child; she is called a woman. A woman who sacrifices herself for her family is worshipped as Devi and Laxmi.

But the question is, are we truly respecting that Devi? Are we actually protecting that Laxmi? The answer is no. Because now, a woman who does not follow these rules, who does not provide these things, is no longer considered a "Real" woman. This is not a sign of modern change, but a paradox of society: a society that once revered women as goddesses but now treats them as objects.

Today, people no longer see women as Goddesses, but as objects to fulfil their desires. When she was behind the curtain, silent and submissive, society called her pure and perfect. But now, when she stands straight, looks society in the eye, and speaks for herself, she is called immoral and characterless. This is the true paradox of our culture: we claim to worship women as goddesses, yet we make them cry tears of blood.

What is “Good Woman?” and what is “Bad Woman?” Society defines it easily; if you are silent, sacrificing, and obedient, you are stamped as a good woman. But if you speak, dream, and ask questions, you are stamped as a bad woman. Why? Can a woman not choose her independence?

When was our Constitution framed?¹³ The makers didn’t think only about men. They made the Fundamental Rights for every individual, man and woman alike. Everyone has the right to speak, the right to live freely, right to choose. Then why should there be a debate on a woman’s freedom and consent?¹⁴

Society still tries to control a woman’s consent to decide when her “no” means “no”.¹⁵ But in today’s era, a modern woman’s consent is clear as a mirror.¹⁶ Women have fought through countless struggles from the past to now. Even though laws that evolved for women’s rights, social stigma still exists one which criminalises her for her own suffering.

In our culture, there remains a disturbing belief that if a man has sexual intercourse with his wife under 18, it is not considered rape.¹⁷ But what about that woman who silently suffers the cruelty and violence of marriage? Cruelty from her own husband leaves the deepest scars, and yet, society expects her to stay quiet for the sake of the family honour.

These shameless realities reflect not the women's behaviours, but the men’s. Still, when the truth comes out, society only blames her for speaking, for not hiding, for existing. Because in our culture, such harassment must be hidden “for the family’s reputation”.

And these are not isolated cases. Women face many more injustices, honour killings,¹⁸ dowry deaths, and marital abuse,¹⁹ all covered up under the blanket of culture and silence. The so-called protectors of family honour have turned that very honour into a weapon used not to safeguard women, but to silence them.

JUDICIAL ROLE IN FAVOR OF WOMEN IN INDIA

When we talk about Indian society and its culture, the judiciary has played a significant role in silencing many deep-rooted patriarchal norms. The judicial system of our country has always

¹³ Constitution of India, 1950, art 14.

¹⁴ Ibid, art 15.

¹⁵ *State of Punjab v Gurmit Singh* (1996) 2 SCC 384.

¹⁶ *State of Punjab v Gurmeet Singh* (1996) 2 SCC 384.

¹⁷ *Independent Thought v Union of India* (2017) 10 SCC 800.

¹⁸ *Lata Singh v State of Uttar Pradesh* (2006) 5 SCC 475.

¹⁹ *Preeti Gupta v State of Jharkhand* (2010) 7 SCC 667.

been reflective and reformative, bringing change, maintaining peace, and redefining the social structure.

In favour of the woman, the judiciary has acted as a true protector, empowering those who wish to stand tall, raise their voice, and step out of social boundaries. Over the years, the courts have introduced numerous changes that have shaped the path of justice for women.

One of the most notable examples is *Mukesh & Anr. v State (NCT of Delhi)* (2017),²⁰ popularly known as the Nirbhaya gang rape case (2012). On 16 December 2012, a 23-year-old physiotherapy student, Nirbhaya, was brutally gang-raped and tortured inside a moving bus in Delhi. She later succumbed to her injuries. The accused were charged under sections 302, 376, 377, 395, and 120B of the IPC, among others.

In 2013, the trial court awarded them the death penalty, and the Delhi High Court upheld the decision, observing that the brutality of the crime fell under the category of the 'rarest of rare' cases, a doctrine first established in *Bachan Singh v State of Punjab* (1980).²¹

Reasons Why the Delhi High Court Upheld the Death Sentence in the Nirbhaya Case:

The Delhi High Court upheld the death sentence in the Nirbhaya rape case due to the extreme brutality, premeditation, and the crime's deep impact on society.

Brutality of the Crime: The court described the assault as inhuman and barbaric. The victim suffered severe internal injuries caused by the insertion of an iron rod, an act that shook the nation's conscience. The nature and the manner of the assault were beyond comprehension and justified the severest punishment.

Premeditated and Intentional Act: The Court observed that the convicts had acted with a shared and deliberate/similar intention. The act was not spontaneous but preplanned, where all measures were calculated to ensure the completion of the crime, showing their collective resolve.

Impacts on Society: The Court emphasised that such heinous acts not only destroy individual lives but also instil fear in women and the society at large. Upholding the death penalty was

²⁰ *Mukesh & Anr. v State (NCT of Delhi)* (2017) 6 SCC 1.

²¹ *Bachan Singh v State of Punjab* (1980) 2 SCC 684.

necessary to preserve public confidence in the judicial system and to send a deterrent message against crimes of this nature.

Victim's Helplessness and Convicts' Inhumanity: The victim's suffering and courage, contrasted with the convicts utter lack of humanity, deeply moved the court. It was observed that the act had shocked the collective conscience of the nation, warranting the higher punishment.

Doctrine of the "Rarest of Rare": Under the *Bachan Singh v State of Punjab* (1980) principle, the death penalty is reserved for the "rarest of rare" cases when life imprisonment is inadequate. The court held that this case met that threshold due to its extreme cruelty and societal outrage.

Finally, in 2017, the Supreme Court of India confirmed the death penalty for all four convicts. Further linked the issue of the woman's bodily autonomy and dignity to Article 21 of the Constitution, reinforcing that the right to life includes the right to live with dignity and security.²²

Impacts on the Nirbhaya Case: The Nirbhaya case brought one of the most massive legal and social reforms in the history of Indian criminal law. It reshaped how the legal system, the government, and society perceive and respond to crimes against women.

Criminal Law (Amendment) Act, 2013:²³ The Act was passed after the Justice J.S. Verma Committee Report (2013),²⁴ which was constituted within days of the incident. It introduced sweeping changes to strengthen laws relating to sexual offences.

New Offences Introduced:

- Section 354A - Sexual Harassment.
- Section 354B - Assault or use of Criminal Force to Disrobe a Woman.
- Section 354C – Voyeurism.
- Section 354D – Stalking.

²² *Mukesh & Anr. v State (NCT of Delhi)* (2017) 6 SCC 1; see also the *Article 21, Constitution of India*.

²³ Ministry of Law And justice, *The Criminal Law Amendment Act*, (2013). Gazette of India, 2 April 2013.

²⁴ Justice. J.S Verma *Committee Report of the Committee on Amendment to Criminal Law*, Govt of India, 23rd January 2013.

Harassment Punishment: The punishment for rape²⁵ was increased, including provisions for the death penalty in cases falling under the “rarest of rare” category.

Fast-Track Courts: The establishment of fast-track courts is recommended to ensure speedy trials in cases of sexual harassment and rape.

Newly Criminalised Acts: Acid attacks and human trafficking were also recognised as serious offences with strict penalties.

Recognition of Women’s Autonomy and Dignity:

- The judiciary began to strongly uphold women’s bodily integrity and autonomy as a fundamental right under Article 21 of the Constitution, the right to life and personal liberty.
- The interpretation of consent became stricter. The principle “NO means NO”²⁶ was clearly reinforced by courts.
- The Nirbhaya case became a symbol of women’s right to live without fear.
- The Delhi Police established women’s helpdesks or Nirbhaya cells²⁷ in police stations.
- It became mandatory to have women police officers handle women-related complaints.
- The Nirbhaya Fund²⁸ was launched by the Government of India to support initiatives for women’s safety.
- Special investigations units and fast-track courts were created to ensure effective handling of such cases.

Social and Cultural Impact:

- The case triggered mass protests across India, especially by the youth and women, marking a major shift in the country’s social consciousness.
- Issues like rape and sexual violence were no longer seen as private shame, but as public issues²⁹ demanding justice.

²⁵ Now reflected in, *Bhartiya Nyaya Sanhita*. 2023, s 63.

²⁶ *State of Punjab VS Gurmit Singh*, 1996 2 SCC 384.

²⁷ *Ministry of Home Affairs, Advisory on Safety of Women and Establishment of Women Help Desks in Police Station*, Govt of India, 2013.

²⁸ *Ministry of Finance, (by Fin. Minister, P. Chidambaram), Nirbhaya Fund Guidelines*, Govt of India, Union Budget, 2013.

²⁹ *Mr. X v Hospital Z* (1998) 8 SCC 296.

- Society began recognising that women's dignity and safety are non-negotiable. And that silence only protects the opposer.
- These movements pushed the government to strengthen the criminal justice system, bring greater accountability, and protect women.

In essence, the Nirbhaya case was not just a crime; it became a turning point that awakened India's conscience, reshaped its laws, and inspired countless women to speak up against injustice.

This was not only the case that shook the nation. There were many others, such as *Joseph Shine v Union of India* (2018).³⁰ Landmark judgment related to adultery. Under Section 497 of the Indian Penal Code.³¹ Adultery³² was an offence that punished only men who had sexual relations with another man's wife. Without a husband's consent. This law treated women as property of their husbands, giving men complete control over their wives' choices and autonomy.

In this case, Joseph Shine filed a Public Interest Litigation (PIL) challenging the Constitutionality of Section 497 IPC, claiming that it violated the fundamental rights of Equality (Article 14), Liberty (Article 21), and the dignity of a woman. The provision, according to Shine, was outdated, discriminatory, and deeply rooted in patriarchy. It reflected a social mindset that a woman, once married, lost her individuality and became subordinate to her husband. As if she were in debt to her family, and they had to pay off that debt through marriage.

Joseph Shine argued that the law gave husbands complete authority over their wives' sexuality as adultery was considered an offence only when committed without the husband's consent. Moreover, the wife could neither be punished nor file a complaint. Only the husband held that right. This imbalance showed how the law treated women as passive, dependent, and unequal partners within marriage. A clear violation of the constitutional principle of equality and personal liberty.

³⁰ *Joseph Shine v Union of India*, (2018) 2 SCC 189.

³¹ *Law Commission of India. 42nd and 156th. Report on Laws Relating to Adultery, (Section 497 IPC).*

³² *Ujjwal Kumar Singh. 'Adultery, Gender and Constitutional morality: a comment on Joseph Shine v Union of India', 2019 12 (1) NUJS L Rev 73.*

The Supreme Court of India, through a five-judge Constitution bench led by Chief Justice Deepak Misra, struck down Section 497 of the IPC as unconstitutional. The judgment marked a historic shift in India's criminal law, emphasising the principle of gender equality, individual autonomy, and personal liberty.

Justice D.Y. Chandrachud observed that "A husband is not a master of his wife. Women are not cattle or the property of men".

Justice Indu Malhotra, the only woman on the bench, remarked that the law was inherently biased on the grounds of gender and deprived women of their sexual autonomy and freedom of choice."³³

The court held that a woman's autonomy, dignity, and sexual independence are integral to her fundamental rights under Article 21 of the Constitution, adultery, the court clarified. Adultery would no longer be treated as a criminal offence, though it could still serve as a ground for divorce under civil law.

This case was not just about adultery; it was about recognising a woman's equality, dignity, and right to self-determination. It reaffirmed that a woman is the main character of her own life, and no other consent or societal norms can decide her happiness over her choice.

In our culture, we face many social barriers that deeply shape our identities. These barriers are so ingrained that they often define how individuals are seen in society. One such barrier came to light in the landmark case of *Vishakha and others versus State of Rajasthan* (1997).³⁴

This case emerged after the brutal gang rape of Bhanwari Devi, a social worker from Rajasthan who was assaulted by upper caste men while trying to prevent a child marriage.³⁵ Her courage to act against a social evil was met with violence. Not just physical, but societal. At that time, there were no specific laws protecting women from sexual harassment in the workplace. The incident exposed how patriarchy and social norms often justified the wrongful acts of men and silenced women who dared to stand against them.

³³ *Suchita Srivastava v Chandigarh Administration* 2009, 9 SCC 1, *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

³⁴ *Vishakha and others versus State of Rajasthan* (1997) 6 SCC 241, *Rupan Deol Bajaj & Anr. v KPS Gill and Anr*, criminal Appeal No.1183 of 1995 Decided on October 12, 1995. Supreme Court of India.

³⁵ *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, (Adopted 18 December 1979, entered into force three September 1981.

Society, especially in rural areas, often lacked awareness about what is right or wrong. Many followed outdated customs handed down through generations, unaware that such practices had become illegal and harmful. This lack of awareness gave birth to a mindset that normalises injustice, and it is this very mentality that breeds criminals and perpetuates crimes.

The Vishakha case became a turning point. The Supreme Court of India recognised that incidents like this violated fundamental rights under Articles 14, 15, 19, and 21 of the Indian Constitution. It affirmed that a woman's right to work with dignity is part of a right to life. Under Article 21, the Court directed all workplaces to establish internal complaint committees (ICCs). And laid down the Vishakha guidelines, which remained in force until the enactment of the sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.³⁶

This judgment broke the patriarchal silence and became a milestone in recognising women's dignity, equality, and Safety at Work. It transforms how India, both legally and socially, understands sexual harassment and women's rights in professional spaces.

CONCLUSION

These landmark judgments remind us that justice is not a privilege but a promise, a promise that the judiciary must always uphold. The Indian judiciary has not merely interpreted the law, but has defined every essence of equality, dignity, and human rights.

From silence to strength. These cases equal the voices of those who fought for justice at every turning point in our legal history. The judiciary has stood as a guardian of rights. Reminding us that the law is not confined to mere words, it is vast, evolving, and powerful, a force that protects us in every possible way. Yet, it is ultimately in our own hands how we uphold it, prove our truth, and stand firm in the pursuit of justice.

And no society or its cultural norms can ever stand in the way of the justice you have fought for and continue to fight for today. The judiciary and its laws are always there to protect your dignity, your rights, and your voice, so stand firm because your strength defines the meaning of justice itself.

³⁶ *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act).*