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INDIA'S SOCIO- LEGAL QUANDARY IN COMPOUNDING SEXUAL OFFENCES

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Abstract

"Yatra naryastu pujanya ramante tatra Devata, yatra itaastu na pujanya sarvaastatrafalaah kriyaah" translates to "Where Women are honoured, divinity blossoms, and wherever women are dishonoured, all action no matter how noble it may be, remains unfruitful.". This shloka from Manusmriti outlines the divinity attached to women of our country since ancient times. The patriarchal impositions behind this being questionable, the proposal of compounding sexual offences against women is frowned upon by society. These are crimes against society and falls out of the purview of compromise. However the High Courts of our country are empowered to allow compromises of non-compoundable offences under special circumstances. This paper explores the scope of compounding sexual offences in India and the possible conditions for same without extinguishing the objective of serving justice. The concept sounds contradicting but is a novel situation cropped up recently with change in societal perspectives on male-female relationships, ideas on family and much more. The accused right issues due to fact that the victim would not assist the case after the compromise and would not provide any evidence, consuming the court's time is also a point to ponder. The stance of Indian judiciary in this matter is perceived through a handful of judgements. As the criminal justice systems

globally look into effectiveness and practicality of a "restorative" justice system, wherein when crime is done against an individual, there is need to focus on that particular individual rather than state displaying itself as a major victim, discussion on compoundability comes into scene.

Introduction

The Oxford Dictionary of Sociology defines crime as: 'an offence which goes beyond the personal and into the public sphere, breaking prohibitory rules or laws, to which legitimate punishments or sanctions are attached, and which requires the intervention of a public authority⁴⁸⁹'. An offence is an illegal conduct or act that is penalised by the law. According to the 1973 Code of Criminal Procedure, there are three types of offences: - Cognizable & Non-Cognizable offence, Bailable & Non-Bailable offence, Compoundable & Non-Compoundable offence. In respect of our subject here we are going to deal with Compoundable & Non-Compoundable offences.

1. Compoundable & Non-Compoundable offences

Compounding or compromise refers to a settlement entered into between the victim and the accused, wherein the victim agrees to have the charges against the accused dropped. Such a compromise, however, must be "Bonafide" and should not be made for any benefit to which the plaintiff is not entitled. Compounding of offences is covered in Section 320 of the CrPC⁴⁹⁰. Criminal offences that are compoundable are less serious in nature. A close study of these offences reveal them to be mostly of a private nature, consequences of which are limited only to the party who raises the accusation.

⁴⁸⁹ GORDON M & JOHN SCOTT, A DICTIONARY OF SOCIOLOGY, (Oxford University Press, 4thed. 2014)

⁴⁹⁰ The Code of Criminal Procedure 1973, & 320, No. 2, Acts of Parliament, 1973 (India)

There are some offences that cannot be compounded, known as non-compoundable offences. This is necessary because the nature of the offence is so serious that the accused cannot be permitted to escape punishment. Crime is generally regarded as a wrong done to the society as a whole despite it being done prima facie to a private individual. It is viewed to be an act affecting the morale and harmony of the society and therefore the subject of complainant entering into a compromise does not come up in this situation because, it is the "state," or the police, who brought charges. All of those offences that are not listed under Section 320 of the CrPC are non-compoundable offences⁴⁹¹.

2. Need for Compounding Offences

The fundamental duty of the judiciary is dispute resolution in order to maintain peace and harmony in society. Administration of justice is mostly an outcome of such resolutions which is based on the age-old idea of "Let a hundred accused escape, but no innocent should ever be punished". Our system is so rooted on this principle that each case stretches over years to conclude. There was an ardent need to find a solution that protected the innocent but at the same time speeded up the process of justice delivery. Compounding of Offences was the answer to this challenge. The policy of law on compoundability of offences is complex and no straightjacket formula is available to reach the decision. A holistic and not an isolated approach is called for in identifying the 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 complex⁴⁹².

So in cases where the victim has voluntarily initiated for an amicable settlement of matter, the Court has the power to compound the

offence. This is necessary to reduce the workload of an already overburdened judiciary. No procedure law can be perfect and at the same time limitation of procedure cannot be considered as a ground for not doing justice. This is why the inherent powers of High Courts are important as 'notwithstanding to anything in the CrPC'⁴⁹³, High Court can exercise it to achieve the ends of justice. Even in cases of non compoundable offences, the High Court now exercises its inherent power under Section 482 CrPC⁴⁹⁴ to quash the proceedings in order to meet the ends of justice and to prevent abuse of power. But here the discretionary power of Court must be exercised with due caution. Cases when the offence is civil, where the wrong is personal, and the matter is resolved between the parties consensually or where the conviction is not possible and the parties are ready to settle the case amongst themselves, the High Court has power to quash criminal proceedings even if the offence did not fall under compoundable offences.

In matters of grave and heinous crimes that shake the fundamentals of society and where an offender is a threat not only to the victim but to the public at large if left free, the question of compounding is immaterial even if parties are ready for settlement.

In the recent judgement of **Shilpa Mittal v. State of NCT of Delhi and Ors**⁴⁹⁵, the Supreme Court reiterated its stand on the definition of heinous crimes. Only those crimes for which the minimum punishment is seven years or more in the Indian Penal Code (IPC) or any other law in force shall come under the category of 'heinous' crimes.

In **B.S. Joshi vs. State of Haryana**⁴⁹⁶ the accused were charged with offences which were NON-COMPOUNDABLE in nature. However, the parties reached a settlement amicably and thereafter

⁴⁹¹ *Id.*

⁴⁹² Law Commission of India, 237th Report On Compounding Of (IPC) Offences, para 1.3 (December 2011)

⁴⁹³ R. P Kapur v. State of Punjab, AIR 1960 SC 866.

⁴⁹⁴ The Code of Criminal Procedure 1973, & 482, No. 2, Acts of Parliament (1973)

⁴⁹⁵ Shilpa Mittal v. State of NCT of Delhi and Ors.,(2020) 2 SCC 787.

⁴⁹⁶ B.S. Joshi vs. State of Haryana, AIR 2003 SC 1386

requested the High Court to quash the proceedings by virtue of its inherent powers under section 482 CrPC. In this case however, the court did not quash the proceedings. The matter went to the Supreme court where the court reversed the High Court judgement and quashed the proceedings. The line of reasoning given by the Supreme Court was that Section 482 provides the High Court with some inherent powers to serve the interests of justice. Even if in some cases where the offence is non-compoundable in nature, the High court can still quash the proceedings by virtue of section 482 in order to serve justice. Section 320 cannot be a bar in the way of serving justice. However, permitting a compromise between the parties in case of non-compoundable offences is extremely specific and depends on the facts and the circumstances of each and every case.

3. Gravity of Sexual Offences

An individual is made up of five organs of senses, sensations and intelligence through which he perceives other beings around him and expresses himself. Sometimes, in the ordinary relationship between the two categories of gender, these human qualities are abused in a way that can be offensive.

In maximum cases, women bear the brunt of these violations. Rape culture puts the burden of women's safety on their shoulders and blame them when they don't succeed. The status of women varied over time in different ages. A violence against women was viewed as defilement of a man's property rather than an attack on the safety and privacy of a woman as an individual being.

The first known written rape law was contained in the Code of Hammurabi of Babylonia wherein a raped virgin was blameless and rapist was punished by death. On the other hand a

married rape victim was held guilty of adultery and drowned to death along with rapist⁴⁹⁷.

The ancient Assyrian's went with the 'eye for an eye' interpretation wherein the father of a raped virgin could rape the rapist's wife as punishment and justice was deemed to be served!. How barbaric was it to even conceptualize such a notion of justice⁴⁹⁸.

Ancient Roman law recognized rape as an offence only if committed against a citizen in good standing. The rape of a slave could be prosecuted only as damage to the owner's property. People who worked as prostitutes or entertainers were deprived of social and legal standing. Non conformity to moral standards of society excluded them from the purview of justice and lowered their status to nothing but a mere "good" that can be used and discarded as and when desired.

It was the Canon Law in 11th and 12th century that began to view rape more as a violent crime against an individual.

Swedish writer Steig Larrson once said, "As a girl, she was a legal prey, especially if she was dressed in a worn black leather jacket and has pierced eyebrows, tattoos, and zero social status"⁴⁹⁹. The preconceived societal norms for an 'ideal woman' has made them more vulnerable to violence. Any one who deviated from these standards were deemed to be "asking for it" and therefore subjected to bodily violation.

The law can tell us in detail what a sex crime is, but the exact definition has yet to be determined. Sex offense can be defined as any unwanted sexual activity, whether on a conscious physical, intellectual or spiritual level, that results in the suppression of the will of the

⁴⁹⁷ COLUMBIA UNIVERSITY,
<https://freedomandcitizenship.columbia.edu/gender-equality-history-2021>
(last visited Oct. 7, 2022)

⁴⁹⁸ Id.

⁴⁹⁹ STEIG LARRSON, THE GIRL WITH THE DRAGON TATTOO(MÄN SOM HATAR KVINNOR), Chapter 12 (Norstedts Forlag -Swedish 2005)

victim by entering a personal space where the victim feels coerced or manipulated and involved in pain. (kissing, groping, voyeurism, passing sexually flavoured remarks and demands etc.) This can also be seen as aggressive behavior by an adult or child without their consent. Victims suffer multiple injuries which may include a high risk of harm to reproductive health; sexually transmitted diseases; depression; suicide etc.

Sexual offences hamper the sense of security a society is bound to provide. When we allow such crimes to go without stringent investigation and punishment we ignorantly perpetuate the idea that "it is normal" and "we are OK with it". It is dangerous as they can be used as tools for control, dominance and subjugation during conflicts between diverse groups and nations.

4. Question of Compounding Sexual Offences

Considering the impacts of sexual offence in the society, the question of a compromise is generally outrageous. The very nature of a sexual offence being an aggressive encroachment on to the personal space of an individual, with sheer ignorance and disregard to their consent and comfort, causing life sustaining trauma and injuries, makes it heinous and therefore not subjected to settlement of any sort. Such offenders, if left free, can cancerously thrive in our community.

It takes much time, courage and effort for survivors to heal from those bruises and reintegrate into society and so letting off their offenders freely into the same society is atrocious towards them.

Compromises are usually not freely consented by victims. These were achieved under the coercion of the accused and his family members and the investigator. This occasionally resulted in the survivor or a relative committing suicide or being murdered for resisting a settlement with her rapist. In **Vijay**

Sood v. Himachal Pradesh⁵⁰⁰, the police pressured the complainant and her family to compromise, but they resisted. When the press reached their home, her father committed suicide due to embarrassment. Compromise is thus a disgrace to the victim's consent and freedom of choice and expression.

When the victim is forced to compromise, there is a power dynamic between the abuser and the victim. This is especially true for women from the economically and socially disadvantaged classes. The well-to-do abuser can force the victim to compromise, using money and muscle power. It can also lead to violence, as the abuser begins with the victim. In **Satyanarayan Chhinga v. State of Rajasthan**⁵⁰¹, the victim was brutally murdered by the defendant because she refused to compromise. Thus, compromise indicates an oppressive power relationship between the victim and the aggressor and can terrorize the victim.

The usual mode of settlement in rape cases is a marriage between victim and offender. This stems from the patriarchal concept that a woman once raped is polluted and has no 'life' thereafter. So marriage to the offender will 'better' her status in society and provide her security. A number of movies also promote this idea where it is "happily ever after" when offender marries his victim. Will it be justice?. What is the assurance of her not being subjected to violence post marriage?. The probabilities of torture thereafter are high, especially when marital rape is no crime in our country.

Compromises can generally provide a fertile ground for sexual offences to flourish, setting up a dangerous precedent. But can it be completely disregarded is a question to ponder considering various new circumstances. Let us explore the possibilities through various possible scenarios.

⁵⁰⁰ Vijay Sood v. Himachal Pradesh, CrI. Appeal no. 194 of 2008

⁵⁰¹ Satyanarayan Chhinga v. State of Rajasthan, 2006 (1) WLC 119

5. Notion of Justice in Sexual Offence

Sexual violence incidents are followed by huge cries for justice to the victim/survivor from different strata of society. Justice in context of sexual offence usually culminates in a prison sentence. The effect of this is that criminal justice responses which are not punitive are seen as unresponsive to the victim's suffering. But have we ever truly tried to view matters from their lens?

The criminal justice process is often burdensome to the victim/survivor as they are forced to relive the traumatic incidents during investigation and trial. The journey to justice is difficult for them. But such reasons prima facie cannot be grounds for compromise of a heinous offence.

The changed perspective of "sex" and relationships in present society has an influence on the concept of compounding sexual offences. Evolution in dating culture, normalisation of casual relationships and consensual premarital sex have raised questions of compounding alleged rape offence which are often charged at the time of failure of a much expected relationship. It is to be noted that such an analysis as just mentioned above is not to devalue the pain of an abuse survivor but is just to bring forth a scenario that has arisen in recent times which is now a controversial ground for deciding on compounding sexual offence.

There is no true justice unless the victim is at peace. In matters that falls within the "literal" definition of rape, there are often situations that are complex and is actually not a violation of an individual's consent whereas circumstances point otherwise.

The exercise of inherent powers to quash criminal proceedings under Section 482 CrPC must only be with the objective to secure ends of justice.

6. Scenarios of Compromise in Sexual Offences

The Courts have a huge challenge in judging compromised cases. Each case has several complex layers unique to it. In cases of sexual intercourse with false promise of marriage, which literally falls within the ambit of rape, as consent is obtained fraudulently, the parties later resolve the matter by getting married to each other or by moving on in life with someone else. Here the court has to consider the welfare of the victim and will have to take steps to quash proceedings so as to ensure a hassle free future for the victim. Looking into the case we can infer that the issue here is not actually of a bodily violation, but is more about betraying the trust of a person. The rape charges are pressed as a retaliation to the breach of promise.

The Supreme Court have differentiated between the rape and consensual intercourse emphasising on the distinction between "breach of promise" and "false promise"⁵⁰². Breach of promise means that at the time of the intercourse, the consent was obtained with the bonafide intention but later the circumstances were such that the man had to refuse marriage due to family pressure or other domestic problem and therefore that intercourse does not amount to rape whereas, for a false promise, the requirement is that there had to be the mala fide intention of a man and he had made the promise to marry just for obtaining the consent of a woman for sexual pleasure. For example, a married man enters into sexual relations with a woman promising marriage but it can be clearly drawn from circumstances that existence of his marriage with another woman is a clear indication of his promise being not capable of fulfilment. Here he will be liable for rape under Section 375 of the IPC⁵⁰³.

⁵⁰² Pramod Suryabhan Pawar vs. The State of Maharashtra and others, (2019) 9 SCC 608

⁵⁰³ The Indian Penal Code 1860, &375, No.45, Acts of Parliament(1860)

So if once the promise is fulfilled, the victim/survivor is at peace. It would then be injustice to continue with the case as it can hinder their marital future. In this type of scenario, the high court either reduces the sentence or quash the further proceedings.

A court adjudges a case on the basis of evidence and arguments put forward by the counsels. In cases of compromise between victim and offender, the Court finds it difficult to assemble necessary evidence as the main witness i.e. the victim turns hostile post compromise. This clearly indicates the low possibility of conviction of the accused, and considering the rights of accused he has to be let free.

In ***Dalbir Singh and Ors. V. State of Punjab***⁵⁰⁴, one of the accused married the victim after which the Punjab and Haryana High Court had to quash the proceedings since the chances of conviction were bleak as the complainant is now not likely to support the prosecution. Continuing the case would just amount to a waste of the Court's valuable time and effort.

In ***Mohammed Jahirul Maulana v. State of Assam***⁵⁰⁵, the victim and offender got married during the trial and a child was born to the couple. The High Court had no option but to exercise its inherent power under Section 482 CrPC and quash criminal proceedings against the accused. The Court observed that

"The ends of justice will demand that they should be left at their will and their otherwise happy marital life should not be allowed to be disturbed by the interfering clouds of litigations looming over their heads."

The High Courts are at a tight spot when it comes to quashing proceedings initiated against an accused in sexual offence. There is a

tug of war between legality and justice. The Court has to decide bearing in mind the welfare of the victim, her family and future on one side and the bitter truth of an offender being set free on account of bleak chances of conviction. The probabilities of emergence of a novel rape culture is high when such liberties are granted to accused. But as said before, each case and circumstance is unique and has to be dealt with utmost care and in the interest of the victim, which can lead to such uncomfortable decision-making for the Courts.

Remote chances of conviction are assessed considering various factors such as the age, health and mental condition of the accused.

There has been instances where parents of the girl child accuses the boy for committing rape despite the sexual relationship between the young individuals being purely consensual. Such allegations are raised by parents who vehemently oppose the romantic relationship of their minor child. As a measure to protect their naïve children, they jump onto litigation as a threatening mechanism, by manipulating their young child to believe that she was duped and sexually exploited. It is true that the consent of a minor i.e an individual below the age of 18 is irrelevant in matters of sexual intercourse and it would be presumed to amount to rape, but often the circumstances are such that a litigation may have repercussions on the future of both victim and alleged offender.

The curiosity and excitement of their age might have driven them to explore their sexual fantasies which cannot be declared wrong by the Court, as it is a choice made by two mentally stable individuals. This is another scenario where acts constitute "rape" as per legal definition, but there is no real attack on the privacy or honour of the woman.

Such allegations crop up mostly in cases of interfaith relationship, teenage relationships etc. A settlement between parties can be allowed in the best interest of the duo. The High Court can

⁵⁰⁴ Dalbir Singh and Ors. V. State of Punjab, 1962 AIR 1106

⁵⁰⁵ Mohammed Jahirul Maulana v. State of Assam, Criminal Petition No.234 of 2016

quash the FIR on exercise of its extraordinary powers under Section 482 CrPC.

The Supreme Court bench comprising of Justice Indira Banerjee and Justice Krishna Murari had issued a notice to the Tamil Nadu State Government on the Special leave petition preferred against an order passed by the Madras High Court in **Maruthupandi v. State**⁵⁰⁶, which raises issue of whether an adolescent boy who enters into relationship with a minor girl be punished for sexual assault under POCSO Act 2012.

The petitioner challenged the Madras High Court's order refusing permission to compound the offences alleged against him, as being contrary to a decision rendered by another coordinate bench of the High Court in **Vijayalakshmi & Anr. V. State**⁵⁰⁷. The High Court in its order has also suggested to exclude Consensual Sex with girl aged above 16 from rigours of POCSO Act.

When it comes to minors, the Court generally adopts an iron fist approach towards sexual offences. It is with high caution and stringent examination of circumstances the Court considers compounding a POCSO case. There have been various conflicting judgements passed in this area of law. In 2018, the Madras High Court had quashed a case booked under the Protection of Children from Sexual Offences (POCSO) Act, 2012, because the victim, a boy who was hardly a few days away from attaining majority, did not want to pursue the case as it would affect his studies and his future career⁵⁰⁸.

Justice P.N. Prakash quashed the case after questioning the victim in-camera and finding that the accused, an auto-rickshaw driver, had not even touched the boy and that only an attempt had been made to lure the minor into

sexual acts by showing sex videos and his private parts. A careful analysis of this case can raise questions as to whether an attempt to lure a child to sexual activities not a serious offence or not. This diminishes the very purpose of the Act as a child is not really protected from attempts of sexual offence. But on the other hand, if continuing litigation is a stumbling block to the future prospects of the child, then the objective of serving justice is destabilized.

On May 11, 2022, the bench of Justice Pankaj Jain of Punjab and Haryana High Court while hearing a petition seeking the quashing of an FIR registered under the Protection of Children from Sexual Offences (POCSO) Act 2012 held that

*"The compromise affected by the child and/or her parents, compromising the dignity of the child, cannot be raised to a status where it defeats the very object of the Act. Power granted under section 482 CrPC (powers of high court to quash an FIR) cannot be exercised to defeat the purpose of an enactment enacted in discharge of constitutional mandate as well as obligation arising out of international conventions. Any agreement/compromise executed by the child (till the age of majority) himself/herself as in the present case will be void ab initio and thus cannot be accorded validity"*⁵⁰⁹

7. Legal Position of Compounding Sexual Offences

On analysing the various judgements passed by the Honourable Courts, it can be inferred that there exists no concrete guidelines with regard to compounding these offences. The gravity of each case varies depending on circumstances and conditions which makes it difficult to draft a uniform protocol to adjudge these offences.

⁵⁰⁶ Maruthupandi v. State, CrI.M.P.No.3209 of 2021

⁵⁰⁷ Vijayalakshmi & Anr. V. State, CrI.O.P.No.232 of 2021

⁵⁰⁸ POCSO case quashed in 'victim's interest', THE HINDU (April 14, 2018, 23:13 IST) <https://www.thehindu.com/news/national/tamil-nadu/pocso-case-quashed-in-victims-interest/article23543678.ece>

⁵⁰⁹ Parents of child who is victim of sexual offence cannot enter into compromise with accused: HC, DECCAN HERALD (May 24, 2022, 15:29 IST) <https://www.deccanherald.com/national/parents-of-child-who-is-victim-of-sexual-offence-cannot-enter-into-compromise-with-accused-hc-1112056.html>

In the case of ***State of Madhya Pradesh v. Bala @ Balram***⁵¹⁰ the Supreme Court held that the long pendency of the criminal trial or offer of the rapist to marry the victim are no relevant reasons for exercising the discretionary power under the proviso of Section 376(2) IPC to reduce the sentence on grounds of special and adequate reasons. The punishment provided in IPC is a legislative recognition of social needs. The legislative intent of deterrence imbibed in punishments should be respected by courts.

In ***Gian Kaur v. State of Punjab***⁵¹¹, the Supreme Court enlists specific guidelines for the use of Section 482 CrPC and specifically mentions crimes such as rape and dacoity to be offences against humanity as whole, thus not subjected to any settlement between accused and offender.

In ***Shimbu and Anr. V. State of Haryana***⁵¹², the prosecuterix was brutally tortured and gang raped continuously for two days by the appellants here in by confining her to a shop. Later they filed a petition seeking reduction of their sentence on the basis of a compromise reached between the parties. An affidavit was produced at Court to prove the same. The purpose of the compromise was to "settle the issue" since the accused belonged to the neighbouring village and she wished to maintain the dignity of her happy matrimonial life. She also stated, in the affidavit, that she had no objections in reducing the sentence of the accused to the period already undergone.

However the Court rejected this on the finding that there needs to be "adequate and proper" reasons to allow reduction and a mere compromise between parties cannot act as a deciding factor on which lesser punishment can be awarded. Rape is an offence with heavy gravity and should be dealt with much sensitivity and consideration.

The SC mentioned that it cannot be sure whether the victim had come to a compromise of her free will or the accused had used his power to coerce her to settle. Thus, in the interest of justice and the victim, it upheld the sentence of the trial Court.

In ***Narinder Singh v. State of Punjab and Ors***⁵¹³, Honourable Supreme Court held that "Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society".

In ***Ananda D. V v. State and Anr***⁵¹⁴, the appellant and respondent were in a live-in relationship and the appellant deceived her on the pretext of marriage. But during the trial proceedings the duo ended up getting married to each other after reconciling their differences. The question before Delhi High Court was whether the parties getting married and settling the dispute between themselves a sufficient reason to quash a FIR registered under Section 375 IPC. Here the Court referred to the case of ***Parbathai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors***⁵¹⁵ in which the Supreme Court once again had discussed the extent and the power of the High Court under Section 482 of CrPC to quash the criminal proceedings on the basis of settlement in a heinous or serious offence. The following was discussed in the case:-

- (i) The inherent powers of the High Court has to be used for securing the ends of justice and to prevent the abuse of process of any court.
- (ii) Whether the F.I.R should be quashed on the ground that the offender and the victim have settled the dispute

⁵¹⁰ State of Madhya Pradesh v. Bala @ Balram, (2005) 8 SCC 1

⁵¹¹ Gian Kaur v. State of Punjab, (2012) 10 SCC 303

⁵¹² Shimbu and Anr. V. State of Haryana, (2014) 13 SCC 318

⁵¹³ Narinder Singh v. State of Punjab and Ors., (2014) 6 SCC 466

⁵¹⁴ Ananda D. V v. State and Anr, 2019 SCC OnLine Del 11163

⁵¹⁵ Parbathai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors, (2017) 9 SCC 641

- depends upon the facts of each case and guidelines can be formulated.
- (iii) While using the inherent powers regarding settlement pleas the High Court has to see the gravity of the offence and the facts of the case. Heinous and serious offences such as murder, rape, dacoity cannot be quashed even though the victim or the members of the victim family have settled the dispute with the offender. Such crimes have a great impact on society.
- (iv) Criminal offences having a civil flavour can be quashed only if the disputants agree for a compromise.

Therefore in this case of Ananda the Delhi High Court in light of the above observations put forward by Supreme Court interpreted the legality of compounding in the following manner and held that even though the Appellant and the respondent have married each other the court cannot quash the offence under Section 482 of CrPC as rape not only affects a woman's body but also her honour and dignity.

Vimlesh Agnihotri & Ors vs. State & Anr⁵¹⁶, in this case, the accused entered the home knowing that the victim's husband was not present, and then raped the victim with the help of other women, filming the crime and threatening that if she told anybody about it, he would post the video on the internet. The petition for quashing the FIR was dismissed with the observation that High Courts must not exercise its powers under Section 482 CrPC for quashing an offence of rape only on the ground that the parties have entered into a compromise.

A close observation of these judgements brings to our notice that the idea of compounding is mostly rejected in cases where the Court was convinced of the ill intention of the accused to

rob the woman of her dignity. Compromises are not allowed under any circumstance where there was planned or clear guilty intention on the part of the accused to commit rape on the woman and to violate her privacy despite definite objections from her side.

The judgments rejecting compromise are crucial as they crush the patriarchal norm of a woman's identity being confined as an extension of a man, be it her father, husband, brother or any such dominating male power of the family. It shatters the idea of "marriage" restoring the "lost dignity" of a raped woman in a society where dignity is equated to virginity. It also recognises the trauma and pressure on a sexual offence survivor and the power play involved in such compromises. Yet the discrepancies and ambiguity in this area of law continue.

In the 2019 case of **Freddy @ Antony Francis and Anr v. State of Kerala⁵¹⁷**, the Kerala High Court in exercise of its inherent powers conferred under Sec 482 CrPC had quashed proceedings against the accused on the basis of subsequent marriage between accused and victim.

In 2022 Karnataka High Court allowed compromise in a POCSO case where both the victim girl and the accused had submitted a compromise petition under Section 320 read with section 482 of the CrPC. After the filing of complaint by the victim's father, the victim deposed that the intercourse was purely consensual and a memo was submitted before the high court stating that both the victim and the accused have mutually agreed to compound the offences alleged and have now legally married. A child too was born in this relationship. Justice M Nagaprasanna held that

"In such cases, the prosecution can hardly prove the guilt against the petitioner. If the victim is going to turn hostile in a trial at a later

⁵¹⁶ Vimlesh Agnihotri & Ors vs. State & Anr., CRL.M.C. 1524/2021

⁵¹⁷ Freddy @ Antony Francis and Anr v. State of Kerala, 2018 (1) KLD 558

point in time and the petitioner gets acquitted of all the offences, the sword of crime would have torn the soul of the accused. It is not the end result that is painful or otherwise, but the process in the criminal justice system that generates such pain. In the teeth of these facts, glaring enough they are, if the court would shut its doors to the couple who are married and bringing up the child, the entire proceeding would result in miscarriage of justice. It is therefore, I deem it appropriate, to accept the settlement between the parties and terminate the proceedings qua the petitioner⁵¹⁸.

So it is clear that the judiciary still hasn't reached a closure on this subject as there are a number of contradicting judgements surrounding this. The perspectives and analogy of judges affect the judgement in each case as their reasoning behind the decision regarding compromise of a sexual offence differs in light of the various socio-legal-cultural aspects.

8. Conclusion

Sex and Sexual Offences- the difference lies in consent. Therefore the objective behind penal legislations are to punish the ones who offend the choice and consent of a woman and not to criminalize the act of sex, around which exists innumerable societal taboos and stereotypes. The criminal justice system considers one as innocent until proven guilty. The legal maxim reads – "ei incumbit probatio qui dicit, non qui negat". This translates to – the burden of proof is on the one who declares, not on the one who denies.

This is what appropriately defines why it's necessary for having the rights of accused persons. Prolonged trials wherein the conviction chances are evidently remote from the very beginning hampers the purpose of justice with regard to the accused, as proclaimed by our legal system. That is when the possibilities of

compounding or compromise is looked into. But this is often misconstrued as a sinful leniency offered to offenders that disregards and trivialises the trauma of survivor. People often jump into conclusions without making an effort to understand the reasons and objectives, applicable only under specific circumstances after careful scrutiny. To any person who ardently believes in humanity and gender justice, the suggestion of compromise with a person who violated her body integrity is morally abhorrent. Compounding of sexual offences is and **will always be circumstantial and never a general remedial measure**. The possible scenarios of compromises as identified until now are detailed above. It is clear that such a question arises only in situations where a sexual offence is charged on basis of the existing patriarchal norms of sexual relations, where a real or actual disregard of a woman's body has not occurred.

Before quashing a rape case which has been compromised the court should look into the facts of such compromise and whether this compromise was based on coercion or due to the fear of the offender. Such a compromise if known is due to coercion or fear then wouldn't this be that there is presence of criminal intimidation?⁵¹⁹ If it is criminal intimidation then the court should not allow the petition for quashing the compromised rape case. It will be allowed only on submission of an affidavit by the survivor, after proper inquiry by the investigation officer to ensure her free will. Proper written guidelines can be brought with regard to the questions that need to be investigated by the concerned officer in matters of compromise. It is a measure to safeguard the rights of accused which are pressed down due to prolonged trial in matters of remote conviction possibilities and also ensure peaceful future of survivor in light of changed relationship dynamics.

⁵¹⁸ HC *Quashes POCSO, Rape Charges After Victim And Accused Marry And Arrive At Compromise*, OUTLOOK INDIA (August 24, 2022, 11:36 AM) <https://www.outlookindia.com/national/hc-quashes-pocso-rape-charges-after-victim-and-accused-marry-and-arrive-at-compromise-news-218499>

⁵¹⁹ Pratiksha Baxi, *Justice is a Secret: Compromise in Rape Trials*, 44, Contributions to Indian Sociology – CONTRIBUTION TO INDIAN SOCIOLOGY 207-233. (OCT., 2010).

It is true that a number of sexual offences are non compoundable as per Section 320 of CrPC. But law is a device that evolves with time and societal perspectives. Novel situations give rise to novel legislative measures to meet the ends of justice. Compoundability of sexual offences is one such debatable area of law that needs to be observed and studied better at this hour without prejudices.

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