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WAS IT RAPE — OR JUST AN ‘ATTEMPT’?

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Abstract

Does the law require a woman to prove that the violation was "complete enough" for it to be classified as rape? If not, is it simply treated as an attempt? This question is central to India's current approach to rape law. While there is a legal difference between rape and attempted rape, applying this distinction often highlights serious issues related to equality, dignity, and personal autonomy.

This study examines whether focusing on penetration risks reducing the definition of rape to a matter of physical completion, rather than recognizing it as a violation of consent and freedom. It critically reviews cases such as *Vasudeo Gond v. State of Chhattisgarh*. The argument is that justice must align with true equality and respect for human dignity, framing this discussion within the larger constitutional context of Articles 14 and 21.

The work highlights the tension between legal accuracy and ethics by discussing landmark cases like *Shimbu v. State of Haryana*, which rejected marriage as a way to lessen the impact of rape, and *Lillu @ Rajesh v. State of Haryana*, which abolished the outdated two-finger test. It criticizes biases that prioritize the survivor's actions over those of the perpetrator.

Ultimately, the paper contends that rape law should prioritize autonomy over anatomy. Justice must recognize that the core aspect of the offense is the forceful removal of consent; it cannot depend on the level of physical completion. The legal system should focus on the accused's actions, not the survivor's endurance.

An Overview

Was it rape, or just an attempt? Does the law consider an act to be rape as soon as a woman's consent is revoked, or only when penetration occurs? Why do courts sometimes seem more focused on the extent of the act than on the violation of her dignity?

Rape is a serious assault on a woman's freedom, equality, and dignity, not just a physical crime. However, the issue of whether penetration can be proven often overshadows this reality.

Although criminal law distinguishes between rape and attempted rape, its application raises difficult questions. If penetration is not proven, does the law diminish the severity of the act? Does it imply that a woman must show the violation was "complete enough" for it to be labeled as rape?

Ancient myths describe how Sita underwent a trial by fire to prove her purity. While modern women in India are rarely subjected to such trials, many face invasive questioning, extensive medical examinations, and underlying moral judgment in court. Despite the cultural reverence of women as goddesses, the courtroom experience can feel vastly different. The justice system often scrutinizes the survivor's body, credibility, and response rather than focusing solely on the accused's actions.

The Constitution guarantees equality before the law and the right to a dignified life. The judiciary must administer justice without bias. However, some sentencing practices imply that the crime is treated differently unless specific physical criteria are met. The ruling in *Vasudeo Gond v. State of Chhattisgarh* illustrates this concern. This article explores whether the distinction between rape and attempt is applied in a way that undermines women's equal treatment and dignity as ensured by the Constitution.

The Fundamental Difference and the Legal Context

Rape is broadly defined in the Indian Penal Code (now replaced by the Bharatiya Nyaya Sanhita), with any degree of penetration considered sufficient. When an accused takes action toward committing the crime, it is labeled an attempt and faced with punishment.

The High Court in *Vasudeo Gond v. State of Chhattisgarh* changed a conviction from rape to attempted rape due to the lack of proof of penetration beyond a reasonable doubt. This decision relied on established legal grounds differentiating preparation from attempt. However, the more significant question remains: should penetration be the main factor in determining the severity of sexual assault? Constitutional law requires sensitivity, while criminal law demands precision. Yet, when judges obsess over legal definitions, they may overlook the victim's real experiences of coercion and abuse. This situation complicates the balance between constitutional justice and strict legal interpretation. The law should be aware of the actual harm and violation experienced by the victim, in addition to relying on technical aspects.

Geeta Pandey, Allahabad high court: India's top court halts 'shocking' ruling on sexual assault of child, (Mar. 26, 2025), <https://www.bbc.com/news/articles/clynk70jj01o>.

Judicial Precedents and Loopholes: A Critical Look

The treatment of sexual offenses by the courts reveals serious issues, evident in the rulings of *Madan Lal v. State of J&K* and *Koppula Venkat Rao v. State of Andhra Pradesh*, which were referenced in *Vasudeo v. State of Chhattisgarh*. The Supreme Court stated that an attempt at rape does not require full penetration; instead, the focus is on the accused's intent and the extent to which the act was nearly completed.

This creates a loophole where victims may not achieve justice if judges label coercion, restraint, or force as "mere preparation." In *Vasudeo*, the court strictly followed these precedents, prioritizing the accused's actions over the victim's freedom. This perspective suggests that a woman's rights are only genuinely violated once penetration occurs, ignoring the pain, fear, and loss of control she suffers from the initial act of coercion. This case highlights a broader concern in the legal system: it often overlooks the victim's perspective, relies too heavily on rigid regulations, and fails to recognize violations of consent and autonomy as severe harms in their own right.

The Two-Finger Test and the Myth of Purity

The struggle against penetration-centric thinking in sexual offense cases is not a recent development. For decades, courts employed medical tests like the two-finger test to assess a woman's sexual history. This practice was condemned in *Lillu @ Rajesh v. State of Haryana* as unconstitutional, unscientific, and disrespectful of human dignity. The Court confirmed that a woman's sexual history has no relevance to whether she was raped, marking a shift from assessing credibility based on virginity to recognizing rights based on autonomy. However, legal arguments still frequently focus on whether penetration has been proven, reflecting an outdated obsession with physical evidence. This tendency moves the focus from hymenal rupture to simply proving penetration. In Indian law, the protection of property is so stringent that even the briefest movement of a mobile phone constitutes theft. Why is the standard for safeguarding a device lower than the standard for protecting human dignity? The Constitution safeguards dignity, not anatomy. Prioritizing completion over consent, coercion, or violations fails to recognize the real harm to victims while maintaining old, patriarchal views of "purity" that the law should reject.

How Close is Close Enough: Rethinking Proximity in Attempted Rape Cases - P39A Criminal Law Blog, (Oct. 15, 2024), <https://p39ablog.com/2024/10/how-close-is-close-enough-rethinking-proximity-in-attempted-rape-cases/>

Marriage as "Justice": A Disturbing Narrative

Can marriage erase the trauma of rape? It is a serious violation of constitutional ethics when judges suggest that marriage can serve as a remedy for sexual abuse. The Supreme Court made it clear in *Shimbu v. State of Haryana* that a rapist's marriage proposal does not mitigate the crime. Yet, patriarchal notions still affect court decisions. In *Aparna Bhat v. State of Madhya Pradesh* (2021), the Apex Court warned judges against offering "compromises" like marriage or symbolic gestures such as tying a rakhi to the accused as conditions for bail. Such actions do not resolve the issue; instead, they echo the survivor's trauma.

This narrative treats a woman's dignity as a commodity to be "restored" by marriage rather than seeking accountability. It dangerously diminishes a violent violation of autonomy to a simple loss of social reputation. The Court reiterated that compromise is not permissible in rape cases in *State of M.P. v. Madanlal*. Suggesting that a victim should marry her attacker is an institutionalization of trauma, not a settlement. Women are not tokens of "honor" to be moved from an assault site to a marriage ceremony; they are individuals entitled to constitutional rights. True justice requires acknowledgment of autonomy, not social status, and conviction based on accountability, not ritual.

The Modern Agni Pariksha: Where Anatomy Trumps Autonomy

Is dignity in the Constitution really quantified in terms of millimeters of penetration? Has the right to life really translated into self-sovereignty in terms of Articles 14 and 21? Our legal system is often mired in a clinical obsession that is more focused on the mechanism of the act rather than the affront to the person. By ruling that a grave sexual assault is "incomplete" in cases such as *Vasudeo Gond* because there is insufficient evidence of anatomical assault, our legal system is sending a chilling message: the affront to the person is also "incomplete."

Centuries ago, women were subjected to the Agni Pariksha by fire as a means of determining truth. In our modern world, the legal process and the clinical, antiseptic eye of the medical report have become the new Agni Pariksha. Rather than being protectors of autonomy, our legal system is actually asking survivors of assault to prove their pain by comparing it to anatomy. Since the Constitution treats survivors as persons with inalienable rights rather than crime scenes awaiting examination and measurement, justice must be the shield of liberty rather than the guide for anatomy.

Critical Reflection: Anatomy vs. Autonomy

The conflict between autonomy and anatomy represents the ultimate paradox that confronts Indian sexual jurisprudence. Anatomy-centric jurisprudence examines the body of the survivor like a crime scene, with an obsessive focus on measuring bodily limits. Autonomy-centric jurisprudence, which is necessary from a modern constitutional perspective, recognizes that a crime is complete as soon as the consent of a woman is breached. A patriarchal ranking of seriousness is once again invoked by a legal system that perceives a violent conflict as incomplete due to an anatomical failure. The legal system must be perceived by the courts as a guardian of the 'non-perishable self' and not as a catalog of physical mechanics.

Conclusion

Rape is an infringement of autonomy, dignity, and consent, and not a 'completion' issue. Law must no longer assess trauma by measuring endurance, anatomy, and technicality. Law must assess justice from the perspective of the offense, not from that of the survivor. The fear, trauma, and lack of control that survivors feel from the first act of coercion must be acknowledged by courts. Laws must fill the voids that allow for "attempts" that water down the severity of violent crimes. Where the entire system is autonomy-centric, with dignity as the start rather than the end, justice can begin. Without the threat of antiquated systems of "seriousness," survivors must be recognized and believed.

“Justice isn’t measured. Justice is served”

By: Anshika Namdeo

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