

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES
[ISSN 2581-5369]

Volume 8 | Issue 2
2025

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Compulsion under Various Offences

KSHITIJ JAIN¹ AND PRIYANSHI GUPTA²

ABSTRACT

Along with kidnapping, abduction and sexual offences, these are all defined under the Indian Penal Code (IPC). Kidnapping (under Sections 359–361) is taking any person, when such person is a minor (for a man, below 16, for woman below 18), of unsound mind, against the order of his lawfull guardian, by force and carried away against his consent. Section 362 of the Indian Penal Code addresses abduction, where it is being compelled or induced to write a place by force or deception. It is not only an substantive offence and carries a severe punishment but abducting is subsidiary and punishable only in case of being accompanied by other crimes like wrongful confinement or ransom.

Criminalized by law is the non consensual intercourse in any form including the use of force, fraud or causing or creating any undue threats (Section 375). If the fear or intoxication or misrepresentation of the person involved is such as to amount to involuntary fear and intoxication misrepresentation, the consent is invalid. Additionally Section 375(2) does not provide for an offence even when the case is on non consensual intercourse of a person above 18 years in the case of marial rape. Judicial precedents like Independent Thought v. But Union of India (2017) have reacted partially by making sex with a minor wife (above 15 years age, below 18) criminal, but adult women are not legally safe. However, the psychological impact of sexual violence like revictimization or PTSD makes stronger legal and social reforms even more stronger.

I. INTRODUCTION

The definition of kidnapping and abduction laws varies from state to state, but they typically apply to anyone who forcibly takes another person and confines them without legal permission in order to retain them against their will or to covertly confine them.

Kidnapping

The legal definition of kidnapping is given in Section 359 of the Indian Penal Code. The section defines two specific types of kidnapping: taking someone out of India or abducting someone from their legal guardianship.

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Under section 360 the Code considers someone who moves a person outside India against their consent as a kidnapper under Indian law.

Section 361 makes anyone responsible for abducting minors who are under 16 male or 18 female and people of impaired mental health from their lawful guardianship.

State of Haryana v Raja Ram shows how the accused convinced and took the fourteen-year-old prosecutrix away from her legal guardians. Under Supreme Court law an accused person who persuades a minor to leave home against their guardians creates kidnapping.

1. Consent to Abduction and Kidnapping

It is still considered abduction when the guardian's agreement is obtained under false pretences and the child is taken from their legal custody. Additionally, it is known as force if someone is forced to leave a location or is deceitfully compelled to do so kidnapping.

Both the victim and the abductor break the law because the victim agrees under pressure that include being misled or threatened with harm. We will explore kidnapping and abduction legislation to see what kind of consent victims give during these crimes.

Section 361. Any person who takes a minor who is less than sixteen years old or less than eighteen years old for a girl and their mentally ill relatives from their legal guardian is committing kidnapping. A person kidnaps someone from their guardianship when guardianship permission is not given.

A lawful guardian means someone who formally looks after the welfare of a child or dependent person.

People who feel they have parental rights through natural fatherhood and believe in their right to foster the child do not need to worry about this rule. Section 313 contains all essential elements of child abduction from someone tasked with their care. A person who steals or leads away a minor under sixteen for a male child or under eighteen for a female child commits this offense. Someone takes away these minors from the people who have authority to look after them. The section defines any person authorized with official care of a young person or dependent as a valid guardian under its terms. According to this exception anyone performs this act in good faith based on both parental and desired custody expectations is protected from these rules. His actions would not be acceptable when he performs them for immoral or illegal reasons in these circumstances.

To apply this law the criminal must trick someone into going with them. The rule applies to male victims who must be under sixteen and female victims who must be seventeen or younger

while people with a mental illness do not have an age restriction. The criminal action with a child must not include property that belongs to the child's legal guardian. The lawful guardian of the victim must have not given consent to the enticement or involving. The section gives a comprehensive outlook rather than specific information on lawful guardians to make sense of the term.

Under this section's exemption the authorities cannot prosecute an individual for violating this offense unless they know their purpose in performing the actions was morally wrong or illegal. This exception protects people who act in faith to reproduce an illegitimate child or who have custody rights over the child.

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To apply this law the criminal must trick someone into going with them. The rule applies to male victims who must be under sixteen and female victims who must be seventeen or younger while people with a mental illness do not have an age restriction. The criminal action with a child must not include property that belongs to the child's legal guardian. The lawful guardian of the victim must have not given consent to the enticement or involving. The section gives a comprehensive outlook rather than specific information on lawful guardians to make sense of the term.

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Keeping: In this context, "keeping" refers to the fact that the juvenile or mentally ill individual is under the legal guardian's supervision or protection. It is evident that the latter is more expensive overall than the former. Even when the juvenile or such person has temporarily left the house, the legal guardian is still in charge. The distance that the criminal has taken the victim does not affect the authorised guardian's ability to keep them. The kid would be removed from the custody of her legal guardian if the perpetrator took her away for even a short distance of twenty or thirty yards, and if other requirements of the offence are met, this offence would be committed.³ The length of the imprisonment is also irrelevant, and even if the victim is taken away for a little or extended period of time and then left, it is assumed that she is in the custody of her legal guardian. The word 'keeping' has been purposefully chosen above the word 'ownership', which is associated with static objects. Independence of movement and action within the object being kept is consistent with keeping.

It suggests maintenance, protection, and control rather than apprehension or custody. This is shown not by ongoing activity but rather as needed. As long as the minor is free to use it and put herself under its purview, the relationship between the minor and the "guardian" remains intact.⁴ Section 361's use of the word "keeping" indicates that its purpose is to safeguard the guardians' sacred right with regard to their minor wards.⁵

- **Lawful guardian** - Lawful guardian has been chosen above 'legal guardian'. The former's scope is far more expansive. A legitimate guardian is anybody who has been legally entrusted with the custody or care of a child or someone with a mental illness. A guardian is considered a lawful guardian if their relationship with the ward is formed

³ *Chhajju Ram v State AIR 1968 Punj 439*

⁴ *Emperor v Jetha (1904)Cr LJ 931 (Bom)*

⁵ *Parkash v State of Haryana (2004)Cr LJ 595 (SC)*

through legal and acceptable means.⁶ It has been noted that the explanation aims to expand the protection that the provision provides for parents and minors by incorporating into the definition of "lawful guardian" any someone has the legal right to care for or have custody of the kid. Caimot assesses her father's legal custody or guardianship rights for the purposes of the criminal law. When he permits his child to be in the care of a friend or servant for a brief period of time. Even when the minor must be considered to be in the father's possession or keeping, and their actual physical care should be temporarily transferred to a friend or other person.

if the facts support the father's legal ownership of the minor. A de facto guardianship is adequate under this clause to establish the guardian's status as a lawful guardian.

- **Explanation-** The definition of "lawful guardian" is expanded to encompass any individual who has been legally entrusted with the custody or care of a minor or another individual. The term 'entrusted' refers to something that someone gives, hands over, or confides in another individual. The one who is entrusting has faith in the other. Regarding section 361 of the Code, none of this may be in writing. The subject matter of the trust must be a minor or mentally ill, in addition to the individual who has the confidence and the person to whom it is reposed.

Even if they may not have been explicitly entrusted with it by a third party when someone is officially entrusted with a minor's care or custody if they have legally gained control over them and in circumstances that would infer trust. A clear and consistent pattern of behaviour by the parties and the case's circumstances can be used to infer the entrustment. Consent is required. Consent is a crucial issue since it permits an action that would otherwise be unlawful and unjustifiable.

The consent must be given by the minor's legal guardian; the minor's consent is obviously ineffective, although it can be given explicitly or implicitly, but it must occur before the offence is committed. A significant indication that a future seduction was carried out with the guardian's approval is proof of prior seduction with the consent of the legal guardian (such as the mother). The nature of the consent, which serves as an excuse for an otherwise unlawful and criminal act, has previously been discussed sufficiently (Sec. 90). In this case, the guardian's consent must be freely granted, free from fear or misinformation, and not extracted through compulsion or threats.

Such permission inevitably entails awareness of the minor's destination and the reason behind

⁶ *Jagannadha Rao v Kamaraju* (1900)24 Mad 284

its removal from the guardian. A person's consent would more likely exacerbate the crime than absolve it if they take a child for tuition and then give it away in marriage. The question of what would happen if consent was given for a purpose that was illegal or unethical, or that went beyond the guardian's power, might lead to complex problems.

However, it is closely related to the topic. When guardians are temporary. Their authority limits the consent question. However, the answer to the question in the case of a natural guardian depends on other factors.

Assume, for instance, that a female Hindu guardian has the right to child custody. The right of guardianship under Hindu law does not accompany the right to dispose of a minor Hindu girl in marriage because it belongs to the paternal relations, even though it is a right that, like the patria potestas of civil law, must be utilised benevolently rather than brutally.

It is appropriate for the minor's benefit rather than the relationships' financial gain. If it is not in the minor's best interests, they may sue the guardian for snooping on a marriage.⁷

However, when determining whether a match is appropriate, they must take the guardian's views into consideration. In order to break off a previous engagement and the resulting marriage, the accused were found guilty of this offence when they gave paternal agnates authority over a minor girl under the guardianship of a female acting on her mother's wishes and quickly and forcibly attempted to marry her off to a person of their choosing.

The issue of criminality has been one of intention and in good faith if the guardian had approved the marriage without being aware of the paternal relationships.

Following the departure of a Hindu woman and her daughter from her husband's home with the express purpose of marrying her without his consent, it was determined that the mother had committed kidnapping and supporting her crime to A's brother, another accused, in accordance with an earlier agreement between the two of them.⁸

A minor girl's pledge to obtain a loan is not enforceable under Common Law and is not a formal contract. However, if the legal guardian agrees and the minor is kept in the creditor's custody. Kidnapping would not constitute the creditor's crime. Whether or not the consent is given for consideration is irrelevant. An offence under Section 361 occurs if, after obtaining custody of the child legally with the approval of the legal guardian, the minor is married or otherwise disposed of in a way that prevents the legal guardian from regaining custody of the minor.

⁷ *Kashi Chunder Sen v Emperor* (1882)ILR 8 Cal 266

⁸ *Prankrishna Sarma v Emperor* (1882) ILR 8 Cal 969

It would be committed, and the temporary guardian would be held accountable under Section 363—but only if nothing was done that would make it difficult to restore or exercise the minor's custody.

The mere fact of the temporary guardian transferring the guardianship to another by pawning her would not constitute an offence.⁹

- **Consent of the prosecutrix**, relevancy of Consent in cases under Section 361. When the prosecutrix is certainly a minor has no relevancy of course, it may be a ground for reduction of sentence.

S. 362 Abduction By force-(According to the definition included in Section 362, the word "force" employed in the I.P.C. implies actual force rather than just the threat of force. Forcibly removing an adult human being against her consent would be illegal. However, it is important to distinguish between an attempt and a completed offence. For instance, the accused hoisted a woman to take her away, but when she raised an alert, they dropped her and fled.)

According to the court, it was merely an effort and was therefore punishable.¹⁰ "By deceitful means"-The expression "deceitful means" is wide enough to include the inducing of a girl to leave her guardian's house on a pretext.¹¹ That term implies the use of misrepresentation by act or conduct. "To go from any place" An abducted woman managed to effect escape one afternoon and was going to police station. She met the accused who persuaded her to go home with him saying he was a police constable and would escort her to the thana. He took her to his house led her into a kotha. On payment of Rs. 600 the girl was handed back to her mother. Held, that when the appellant met the girl she had ceased to be a kidnapped woman in the strict sense. She was then a free agent but she would not have gone with the appellant but for his false representation being a police constable and the inducement held out by him that he would take her to the police station. His action therefore amounted to abduction as defined in Section 362. I.P.C. Held, further that he intended to and actually did, by confining her wrongfully while he negotiated with her relatives for the payment of a sum of Rs. 600 which was structurally her ransom. His act, therefore, falls under Section 365, I.P.C.¹² Consent.- It hardly needs to be mentioned that later consent forgoes kidnapping but not abduction; nonetheless, the consent must be free and not obtained via deception. However, abduction is a crime in and of itself. Abduction as such is therefore not... Infent. It must be accompanied by the mens rea outlined

⁹ *Jildar Kaiyea v Emperor (1929) A.L.R. Pat 316*

¹⁰ *Allu v Emperor AIR 1925 Lah 512*

¹¹ *Rainji Lal v State (1951) AIR Raj 33, 35; 52 Cr LJ 217*

¹² *Bahadur Ali v King-Emperor, (1923) ALR Lah 158, 159–160, 73 LC 510.*

in Sections for it to be punishable.

364-366 and Section 367. Abetment.-From the very definition of abduction as given in this section it follows that a married woman cannot abet her abduction.¹³ American law.-Statutes prohibiting the taking of a child from its parents or the taking of such child with her consent or designed for the protection of the child's presents. The various enactments forbidding the taking of a female under a designated age for the purpose of prostitution or taking such female from parents for prostitution are designed to protect young females, to save the members of her family from sorrow and disgrace, and to inflict punishment on debased persons who engage in the baneful pernicious practice enticing females to houses of prostitution.¹⁴ Where the statute prohibits the taking or enticing of a female for a particular purpose or renders punishable the taking of a female from the lawful custody of her guardian or without such guardian's consent the gist of the offence is the taking of the female, or the taking of such female from its lawful custodian and the means by which accused takes the female may consequently be immaterial.

II. ABDUCTION

According to the definition of "abduction" in Section 362 of the Indian Penal Code, someone is said to have abducted someone if they coerce or convince someone else to leave a place. In *Bahadur Ali v. King Emperor*, the criminal pretended to be a police constable and detained a girl in his house for a 600 rupee ransom. According to the court, what he did constituted kidnapping.

1. Difference between Kidnapping and Abduction

- Age of the Aggrieved Person

As established in the *State of Haryana v. Raja Ram* case, the aggrieved party in a kidnapping case must be at least 16 years old for a man and 18 for a woman in accordance with Section 361 of the IPC. Age is immaterial in abduction cases. Kidnapping charges will be brought against anyone, regardless of age, who has forced or convinced someone else to leave a place (as in the case of *Bahadur Ali v King Emperor*).

- Removal from Lawful Guardianship

¹³ *Natha Singh*, (1813), 11P R 1813 Cr

¹⁴ *People v Fowler* (1891) 88 Cal 136 25 P 1110, *People v Cook* (1882) 61 Cal 478, *Miller v State* (1890) 121 Ind 294 23 NE 94

In this situation, a person is deemed to be in a legal guardianship if they have been legally allowed to care for someone who has not yet attained the age of majority. Legal guardianship can be granted by parents, in-laws, and other relatives.

Since kidnapping considers the age of the person being abducted, the crime entails removing a legal guardian from the custody of a minor who has been legally authorised to care for them, whereas abduction only considers the person who has been abducted, so lawful guardianship is irrelevant in this case.

Means

Kidnapping entails the kidnapper removing something or luring someone away. The methods employed for this aim are unimportant. In the event of kidnapping, the methods may include coercion, force, or dishonest tactics.

Consent

- In circumstances of kidnapping, the consent of the kidnapped individual is irrelevant because the person being abducted is a minor and legally incapable of giving free consent.
- When someone is kidnapped, their consent absolves the accused of the offence so alleged against them.
- The State of Haryana v. Raja Ram case demonstrates that the individual's consent will be tainted.

The intention of the Accused

- In case of Kidnapping, the intention of the person kidnapping a minor is immaterial so as to the crime committed by the accused (as in the case of *Queen v Prince*¹⁵ [3]).
- One crucial element that aids in establishing the accused person's culpability in an abduction case is the abductors' aim.

Punishment

- The crime of kidnapping is quite serious. According to Section 363 of the IPC, a person who kidnaps someone faces a specific sentence of up to seven years in prison as well as a fine.

Some specific punishments as provided for kidnapping under the Indian Penal Code are:

¹⁵ *R v Prince (1875) LR 2 CCR 154*

Types of Kidnapping	Punishment	Section of IPC
Kidnapping for the purpose of begging	10 years + fine	363A
Kidnapping in order to Murder	10 years + fine	364
Kidnapping for ransom	10 years + fine	364A
Kidnapping with the intent to wrongfully confine a person	7 years + fine	365
Kidnapping so as to compel a woman to marry	10 years + fine	366
Kidnapping so as to subject a person to grievous hurt	10 years + fine	367
Kidnapping a child under 10 years of age in order to steal from a person	7 years + fine	369

- Abduction is not a crime in and of itself; it is merely an ancillary act. Consequently, the Indian Penal Code does not contain a universal punishment for kidnapping. However, certain kinds of kidnapping carry the following penalties:

Types of Abduction	Punishment	Section of IPC
Abduction to murder	10 years + fine	364
Abduction with intent to wrongfully confine a person	7 years + fine	365
Abduction so as to compel a woman to marry	10 years + fine	366
Abduction so as to subject a person to grievous hurt	10 years + fine	367

Abducting a child under 10 years of age in order to steal from a person	7 years + fine	369
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III. SEXUAL OFFENCES

- **Rape**

A person is legally considered a rapist when they perform sexual actions on a woman under any of these six described conditions.

First, against her will. Second: Without her permission. Thirdly. A person commits rape if she gives consent through fear that the perpetrator or someone she cares about may be harmed. He commits rape if he engages in sexual activities despite not being her partner yet knows she gives approval through her mistaken perception of marital status.

If she enters without full comprehension because he or someone else supplies drugs or makes her mentally unable through intoxication she cannot legally agree to their sexual acts. A man can rape a female no matter her age if she is under sixteen years old and permits it.

Being penetrated during sexual contact is enough to count as the act of rape. Under this condition a man cannot be considered a rapist if he has sexual relations with his wife and she is over the age of fifteen. In 1983 the Criminal Law (Amendment) Act created new sections 376A through 376D to handle particular cases. The Amendment Act of 1983 inserted Section 228A to the Indian Penal Code, which forbids publishing court proceedings without the prior consent of the court and disclosing the identities of victims in rape cases. The court may try rape cases in camera under subsection (2) or section 327¹⁶ of the Code of Criminal Procedure, 1973, which was added by the same Amendment Act.

Someone commits rape when they physically make a woman perform sexual intercourse against her own wishes. Every State has laws against sex with a girl under legal age. This minimum age differs across States but ranges from 10 to 18.

A woman faces sexual aggression through forced misuse as rape occurs when someone takes her sexual liberty against her clear unwillingness using threats or tricks.

¹⁶ Code of Criminal Procedure, 1973, s.327

Consent

After the intellect has fairly assessed the pros and cons of each side, consent is an act of reason and consideration. Consent denotes an active will in the mind of a person permits the doing of the act complained of.¹⁷

Prior consent: The woman's consent ought to have been acquired before the act. The woman's assent after the conduct is not a defence. An accused person cannot claim a woman's consent to sexual activity that was acquired by making her fear harm or death as a defence for an offence under this section.

As a general proposition it is not true either in fact or in law that consent obtained by fraud is no consent at all.¹⁸

Consent given by woman of unsound mind is of no avail (Section 90).

Therefore, it was decided that a man's act amounted to rape when he had sexual knowledge of a girl with a mental illness and the jury determined that it was done without her consent since she was unable to give it due to a comprehension deficiency. However, there must be proof that the woman did not consent to the connection or that it was made against her will. However, the accused should be found guilty if the girl was so insane that she was unable to communicate her assent or disapproval and he had a connection to her consent. In a similar vein, a drunk woman's consent is useless.

The accused was found guilty of rape when he made a thirteen-year-old girl very inebriated and then violated her person while she was unconscious.

It is the prosecution's responsibility to demonstrate that sexual contact was conducted against the lady's will or without her consent when an accused individual is charged with raping an adult woman. The defence does not have to demonstrate that the woman gave her consent for the sexual encounter. A suggestion that while the miscreants were bringing the woman back after committing rape she had demanded money, even if true, would not mean her consent.

Presumption as to absence of consent- With effect from December 25, 1983, the Criminal Law (Amendment) Act. 1983 (43 of 1983) added Section 114A to the Evidence Act. This states that in a rape case under sub-section (2) of Section 376, if the accused has sexual relations with the victim and it is established that the sexual relations were not without the victim's consent, and the accused woman testifies before the court that she did not consent, the court will presume

¹⁷ *Vijayan Pil v State of Kerala* (1990) 1 Crimes 261 (Ker), *Hamarain Singh v State* AIR 1958 Pun 133

¹⁸ *State v Mange Ram* (2000) AIR SC 2798 SCC (Cri) 1331 (2000) 7 SCC 224 Cri LJ 4027 (SC)

that she did not consent.

The law does not consider submissive behavior toward impending force as actual consent since pressure or fear obstructs intellectual discretion during these situations. For consent to act as legal defense to rape charges a woman must freely choose between resistance and agreement after understanding the meaning and moral nature of the sexual act. Resistance under fear or terror does not count as genuine agreement with sex. The difference between actual agreement and giving in arises subtly in these situations. While consent needs submission it is not necessary that submission always results in consent. A genuine agreement from the girl makes a criminal act legal. Judgment and consideration must happen before a person considers an action as rape. A person freely selects and understands when they agree with actions offered to them.,The victim's testimony, any further supporting evidence that may be available, and the surrounding circumstances before, during, or after sexual activity will all be carefully considered and scrutinised in order to determine whether consent or coercion was given.It is not easy to find a dividing line between submission and consent. Yet, the evidence has to be carefully scanned. According to Stephen J, fraud cannot entirely invalidate consent in criminal proceedings. The rule does not qualify as true because mathematical equations keep their accuracy. Under this definition the prisoner clearly committed rape as she had sexual intercourse without receiving the woman's consent. Fraud with information regarding the act itself or its performer renders a given consent to consensual sex invalid.

THE CRIMINAL LAW AMMENDMENT ACT 2005

Section 53A¹⁹ examination of person accused of rape by medical partitioned, Section 54 Examination of arrested person by medical practitioner at the request of the arrested person and Section 164A²⁰ medical examination of the victim of rape inserted in the criminal procedure code 1973 so that justice in Rape cases may be Provided up to the expectations.

Case on Consent (Year 2008)

In Inqbal v. Justice Dr. Arijit Pasayat and P. Sathasivan in Inqbal v. State of Kerala (2008) decided that Sexual acts with a woman under 16 without her consent fit the definition of rape under Clause 'sixthly. Amounts to rape. Evidence shows that the victim remained below 16 years of age which determines the case. The Court did not find any errors in the conviction of the defendant for breaking Section 376 of the Indian Penal Code. The remaining issue asks if Section 366A IPC properly applies here. A prosecution must show all these things to get a

¹⁹ Criminal Procedure Code, 1973, s.53A

²⁰ Criminal Procedure Code, 1973, s.164A

Section 366A IPC conviction: (1) The accused person enticed a girl (2) this enticed girl had not yet turned eighteen years old, and 3.) The accused knew that the girl would experience sex against her will with someone besides them. During this specific case trial the prosecution confirmed that the victim chose to go with the defendant and that nobody other than the accused performed sexual acts with her. Due to her young age the court accepted her sexual activity with the accused as an infraction of Section 376 under IPC. Since all details about the crime have been admitted the case does not need to prove the intercourse happened between victim and someone other than the accused. Section 366A has no application. In the result. The conviction for offence punishable under Section 366A. Section IPC will no longer apply to the case but the court keeps the guilty verdict and serves out the punishment for the crime under Section. The appeal is allowed to the aforesaid extent.

When a woman gives permission due to threats of death or harm her case still qualifies as rape.

The interviewer should worry about physical danger or life threat. According to the facts presented the victim went with the officer because they all departed together from the police station during this critical moment. Her peers received no effort from her to intervene and she accepted all the constable's actions without protest which proves her consent was never voluntary. The evidence shows that the woman accepted the sexual act willingly because she did not receive injuries during the time.

At night Police constable Ganpat led Mathura behind the station building where he forced sexual penetration. Tukaram was drunk. When the female gives consent believing she marries the man who conducts sexual acts she will be punished under this section.

A person who lacks mental capacity or is impaired by drinking or drugs cannot give valid consent Through the 1983 Criminal Law (Amendment) Act Section 375 and 376 received complete replacement. The original first four sections of Section 375 remain unchanged. The law applies when sexual intercourse happens because a woman gives consent but she becomes incapable of understanding the meaning and sequence of sexual acts due to her mental instability or being drunk. Under all these circumstances sexual intercourse becomes considered rape even if the victim agrees to participate. Victim below the statutory age.-The age-limit was raised from ten to twelve years by the Indian Criminal Law Amendment Act (X of 1891) for the following reasons: The limit at which the age of consent is now fixed (i.e., ten years) favours the premature consummation by adult husbands of marriages with children who have not reached the age of puberty, and is thus, in the unanimous opinion of medical authorities, productive of grievous suffering and permanent injury to child-wives and of physical -

.deterioration in the community to which they belong. It was raised from twelve to fourteen years by the Indian Penal Code(Amendment) Act (XXIX of 1925), Medical jurisprudence books prove under Section 2 that in India menarche starts when females turn fourteen years old. The body growth through puberty cannot be translated to sexual readiness for girls who need more time to develop strength and body before being ready for intimacy. The death rate for young infants rises from marriages to sex at young girlhood. Using thirteen as the age of consent would serve to shield young females and their future children from sexual dangers.

Raising the legal age helps shield young females from joining inappropriate relationships too early and starting sexual work before they are ready. The government has officially increased the minimum age to 16 through Act XLII of 1949. A woman cannot legally approve sexual intercourse when she is under sixteen years of age.

Repetitive Compulsion: Why only Rape Victims Are More Likely To Be Assaulted Again²¹
Our culture still considers rape taboo subject yet one incident of such abuse is too hard to understand. Several attacks do not seem likely to occur in the given country context.

These victims have extreme problems with regular life because of their repeated sexual attacks. It's a common occurrence. Research shows that victims of sexual assault in childhood plus sexual abuse face higher odds of facing more assaults throughout their life.

Sexual assault extends beyond sexual violence and people refer to it as revictimization. The risk of being abused again is increased for people who already experience domestic abuse. Studies show that burglaries and robberies easily repeat themselves. People face nine times greater robbery chances once they experience it and they need to lock up their homes four times higher after getting burgled.

Research proves sexual assault will likely happen again to victims and findings show women who suffered sexual assault faced 35 times more threat than other non-abused women.

Women who faced rape before age 18 were more than double as likely to meet with sexual attacks as adults than women not victimized previously.

National Intimate Partner and Sexual Violence Survey, 2010, CDC²²

What causes this destructive yet typical pattern? It differs from woman to woman, and there are

²¹ Farahnaz Mohammed, The Repetition Compulsion: Why Rape Victims Are More Likely To Be Assaulted Again (Girls Globe) <https://www.girlsglobe.org/2015/08/04/the-repetition-compulsion-why-rape-victims-are-more-likely-to-be-assaulted-again/> last accessed on 18/3/25

²² Breiding, Matthew Joseph , National Intimate Partner and Sexual Violence Survey (NISVS); 2010 (CDC Home) <https://stacks.cdc.gov/view/cdc/12362#:~:text=This%20report%20presents%20information%20based,are%20based%20on%20complete%20interviews.>

a number of theories. since of their early experiences, women who experienced sexual abuse as children may find it difficult to set healthy boundaries since they have learnt to keep silent. According to some theories, it's an attempt to control trauma or anxiety. Some claim that, in spite of any pain, traumatization may lead some people to return to accustomed behaviours. Others contend that women who experience early assault are less likely to be able to discriminate between coercion and consent because they come to equate sex with pain and trauma.

We are much more inclined to sympathise with recurrent burglary victims, regardless of the relative destruction caused by each offence. It is simpler to picture someone becoming horrified when they return home to find a smashed window once more. However, if someone reported having been raped twice, we would be less convinced. Because of the culture surrounding sexual assault, it can be harder to understand rape. It is common for a victim to be disbelieved once. A forced sexual encounter is perceived as their fault after several occurrences, regardless of their attire, behaviour, or level of alcohol consumption. One simple explanation is to believe they are attempting to hide regrettable sex or that they are misinterpreting the concept of rape.

Chris O'Sullivan from Safe Horizon consistently saw women taking responsibility for the first physical attack even when they could not resist during the sexual abuse. They could not stand up against further assault since they remained trapped in feelings of self-blame that started with their initial victimization. According to Sullivan victims must bear no responsibility for their sexual assault retribution regardless of the form it takes. A woman doesn't recover completely from sexual assault until many years have passed. Multiple assaults will intensify how the victim feels.

Sexual assault survivors have a higher risk of getting depressed and suicidal while facing PTSD symptoms plus hurting themselves physically and mentally. Researchers continue to study the repetition compulsion although it resists effective treatment methods. Nevertheless victims can recover better when people close to them offer nonformal support.

Marital Rape

Marital rape refers to non-consensual sexual intercourse by a spouse, typically the husband, with the other spouse. As a grave attack on individual rights but people still debate this problem in nations worldwide. Some areas identify marital rape as illegal and prosecute perpetrators but other places continue to shield spouses from criminal charges due to their assumption spouses must accept sex forever. When a husband uses force to sexually assault his wife the issue gets harder to interpret because many factors affect whether the act should meet legal consequences.

- **Legal Framework Surrounding Marital Rape in India**

Nonconsensual sex against a woman is punished by Section 375 of the Indian Penal Code from 1860. According to Exception 2 of Section 375 the law extends protection to married men who sexually assault their wives who are at least 18 years old. Many jurisdictions support this old idea that getting married means one must provide free consent to sex permanently.

The Indian Supreme Court and multiple State High Courts have repeatedly examined marital rape problems in official citizen suits. In *Independent Thought v Union of India* (2017) the Supreme Court decided that sexual acts with a younger wife between 15 and 18 years old qualify as rape even if their marriage exists. The decision partially removed Exception 2 legal protection but denied adult women any means to protect themselves.

- **Marital Rape as an Act under Compulsion**

From the viewpoint of law and society forced sexual relations happen within marriages most of the time. Women who live with marital abuse feel pressured into unwanted sex because society makes demands or they depend financially on their husbands plus fear for their safety

After the 2012 Delhi gang rape case the Justice Verma Committee recommended making marital rape a crime because marriage should not protect sexual offenders. The report declared that sexual activity without consent breaks Indian citizens' basic rights to individual freedom and privacy which the Constitution protects under Articles 14, 15, and 21.

- **Social and Psychological Implications of Marital Rape**

The negative effects of marital rape affect both mental and social well-being of survivors.

Victims develop PTSD along with depression and anxiety after living through numerous sexual attacks. Women face double standards when they discuss partner conflict so many of them avoid filing legal claims.

In Indian society men hold complete power in marriage so wives are expected to accept their husbands' sexual orders. The oppressive marital setting takes away female control and freedom by becoming a dangerous type of household mistreatment.

- **Judicial Interpretations and Global Comparisons**

In several landmark cases, the Indian judiciary has acknowledged the injustice of marital rape but stopped short of declaring it a crime. In *Joseph Shine v Union of India* (2019)²³, while decriminalizing adultery, the Supreme Court observed that treating women as the property of

²³ *Joseph Shine v Union of India* (2019) 3 SCC 39

their husbands is unconstitutional and violates their dignity. Although not directly related to marital rape, the judgment underscored the need to reconsider outdated marital doctrines.

In contrast, many progressive legal systems criminalize marital rape. The United Kingdom abolished the marital rape exemption through the *R v R* [1991]²⁴ judgment, recognizing that consent within marriage cannot be presumed. Similarly, the United States, through the Violence Against Women Act (1994)²⁵, criminalizes marital rape under federal law.

IV. CONCLUSION

Kidnapping, whatever the motive, is illegal in all parts of India and the accused can get up to seven years of imprisonments. Although, the abduction is yet to be addressed as a standalone crime. While they are progressive, sexual offence laws have failed to criminalize marital rape because of patriarchal biases. While judicial interventions have expanded protections, they do not take married women so far as to ensure bodily autonomy. The need of comprehensive legal reform, the support of society for the issue, and victim support mechanisms show that sexual violence has associated psychological trauma. It is essential to align Indian laws to global standards like criminalizing marital rape and reinforcement of the principle of consent based jurisprudence in order to achieve the gender justice and the fundamental rights under the Constitution. But change in how society views gender inequalities needs to come hand in hand with changes in legal amendments to fully protect victims.

²⁴ *R v R* [1991] 4 All ER 481

²⁵ *Violence Against Women Act 1994 (USA)*