

Marital Rape—A Nebulous Crime

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ABSTRACT

When a stranger does it, he does not know me, I don't know him. He is not doing it to me as an individual . With your husband it becomes personal. You say that this man knows me. He knows my feelings. He knows me intimately then try to this to me—it's such a private abuse". The definition of Marital Rape is codified under Article 375 of IPC. Marital Rape, the act of forcing your spouse into having sex without proper consent, is an unjust yet not uncommon thanks to degrade and disempowering women. There is no proper law for marital rape, so every non-consensual intercourse with the woman is defined under Section-375 of IPC and non-criminalization of marital rape is defined under exception 2 to Section-375 of IPC. This section is defined that unwilling sexual intercourse between a husband and wife over 15 Years of age from Section-375 [Definition of Rape] and thus immunize such act from prosecution. Despite that, rape laws in our country continue with the patriarchal outlook of considering women to be the property of men post-marriage, with no autonomy or agency over their bodies. As per the report; in India a women is raped every 16 minutes and every four minutes she experiences cruelty at the hands of her in-laws. In spite of the recent amendments within the legal code , various laws meant to guard women from violence and sexual abuse have largely

remained ineffective. But what happens when laws provide a safeguard to the culprits and endanger the victims ?

INTRODUCTION

The concept of marital rape in India is that the epitome of what we call an “implied consent”. Marriage between a person and a lady here implies that both have consented to sexual activity and it can't be otherwise. The IPC,1860 also communicates the same. They deny married women equal protection of the laws guaranteed by the Indian Constitution. Law makers fail to understand that a marriage should not be viewed as a license for a husband to forcibly rape his wife with impunity. A wife has the proper to regulate her own body as does an woman . In 2017, a PIL was filed by independent thought, an NGO, challenging this unintelligible classification and claiming that married women over 15 years aged should even be afforded this protection. The Supreme Court concurred with these averments to some extent and extended the regulation in Section 375 from 15 years to 18 years. Marital Rape should be criminalized cause sexual intercourse without consent is always rape either it is husband or not as well as they have to make such provisions who will try to misuse for her vested interest and they should be punished. If 100+ countries have criminalized the marital Rape then India should also have criminalized it but at the same time there should be strict punishment for its misuse. Article 14 of the Indian Constitution ensures that “the state shall not deny to an individual equality before the law or the equal protection of the laws within the territory of India.” Although the Constitution guarantees equality to all or any, Indian legal code discriminates against women, women who are raped by their husbands.

In **Budhan Choudhary vs. State of Bihar and Anwar Ali Sarkar vs. State of West Bengal**, the Supreme Court held that any classification under Article 14 of the Indian Constitution is subjected to a reasonableness test that can be passed only if the classification has some rational nexus to the target that the act seeks to realize . I think we aren't violating Article 14 with the exception. The marital status is relevant and reasonable in determining the trauma and the consequent punishment for rape. Marital rape should be criminalized. It is sufficient with it under Section-- 498[A] of IPC. Removing the exception in Section 375 of IPC is leading us down a slippery slope. Even physical abuse is non-consensual, an attack on dignity and violative of bodily autonomy. Should we give an equivalent punishment for both physical abuse and sexual assault ? NO. We should look at the trauma and its consequences on the victim. It should be criminalized with sufficient safeguards. The safeguards are very necessary so that no married woman can take unfair advantage of it because we have already noticed that Section—498[A] of IPC and Domestic Violence Act have been blatantly misused. In India, nowadays malicious prosecutions [miscarriage of justice] are the most important challenges within the due course of administration of Justice, due process of law of law and speedy trial. Providing sufficient safeguards and preventing the probabilities of getting misused are equally necessary while

bringing a replacement law. Nobody must be allowed to take unfair advantage by misusing the process of law.

RESEARCH HYPOTHESIS

Why marital rape should be criminalized? Marriage cannot mean irrevocable implied consent and marriage cannot be viewed as a license for a husband to coerce sexual relations on demand. Article 14 of the Indian Constitution protects people's right to equality and marital rape violates that right of a married woman. Forced sexual cohabitation is additionally a violation of the elemental right under Article 21. Marital Rape is in direct conflict with Section 375 of the IPC. Specifically, section 375 intends to guard women and punishes those that violate them through inhumane acts. Section 375 cannot achieve its objective by exempting husbands from punishment since the results of rape are an equivalent whether a lady is married or not. By creating two categories based on marital status, the exception of Section—375 of IPC immunizes men from actions committed against their wives. A women's dignity is suppressed in the case of spousal rape if it is not criminalized, which would mean less value is placed on her dignity while she is married. It is a crime against humanity. It is the most heinous violation's of a woman bodily integrity. As an woman , a wife has an equivalent right to regulate her body. In **Suchita Srivastava Vs. Chandigarh Administration [2009]**, the Supreme Court equated the proper to settle on a sexual intercourse with Article 21 [Right to non-public liberty, privacy, dignity and bodily integrity]. In **Joseph Shine Vs. Union Of India [2018]**, Justice

Chandrachud posed the question of whether a lady or a person loses sexual autonomy once they marry. I think 'NO'. In addition, he noted that "the right to refuse sex should also exist after marriage". In all of these decisions, the Supreme Court upheld Article 21 of the Constitution as granting all woman the right to abstain from sexual activity, whether or not they are married. Criminalizing marital rape gives woman basic human rights while also giving them a sense of security against the most heinous crime that can happen inside marriage. They will get the right to say "NO" when they do not want to indulge in sexual intercourse. Most importantly, criminalizing marital rape will provide direct legal remedies for seeking justice. Section 9 of the Hindu Marriage Act, 1955 has been challenged during a Public Interest Litigation because it forces estranged spouses to reconcile. By moving to the court and seeking restitution of legal right , a partner who lives apart can force their partner to remain together. In a marriage this can also be factor that leads to marital rape. Taking no action against marital rape violates every fundamental rights of woman, their right to privacy, their right to protection from exploitation, their right to bodily integrity and their rights guaranteed by Article 21 and Article 14 of the Indian Constitution.

CONCLUSION

Justice JS Verma Committee recommendations:- The committee discussed exception [2] of Section-375 of Indian Penal Code and recommended that this exception must be removed. In the committee's opinion, the connection shouldn't be wont to justify leniency in such cases of rape. The fact that the victim and therefore the defendant are married isn't a defence which will justify rape. The committee recommended that the legal code Amendment Act,2013 include marital rape as an offence. Raped Victims are victims of violence and therefore the incontrovertible fact that the perpetrator and victim are married enhances the severity of such cases. Merely because the accused is husband and victim is wife, the offence of rape can't be called off and be categorised as forced rape leading to violence . Individual autonomy is of the utmost prerogative of Article 21. "Rape is rape, be it marital or non-marital, the victim is woman only".

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