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MARITAL RAPE - A CRIME STILL NOT A CRIME

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THE CURRENT SCENARIO OF MARITAL RAPE IN INDIA

The definition of rape as defined in Section 375 of IPC 1860 is where it includes all forms of sexual assault including forceful sexual intercourse with a woman. But over that, Exception 2 to Section 375 exclude unwilling sexual intercourse between a husband and a wife over fifteen years of age from Section 375 definition of “rape” and thus left without punishment for such acts from prosecution.

According to the current law a woman cannot complain against her husband irrespective of the fact that she was forced into cohabitation without her consent. A wife is treated as an object of sex where husband whenever he feels like can rape his wife without worrying about the consequences because as per the current laws he is not guilty of any offence¹.

There are hundreds of cases in the courts pending where the women faces shameful crime and she cannot do any thing but to accept it without any complain their has been breakthrough in judgement where the Supreme Court defined reluctant sexual contact with a wife somewhere in the range of fifteen and eighteen years old. This judgement has thus prompted an expansion in different writs testing the defendability of Exception 2 all in all. Considering progressing case, this Article basically investigations the laws for Exception 2 Section 375.

According to a survey by International Centre for Research on Women (2011) around 20% of Indian men reported were charged of sexual violence against their wife. In a report by National Health and Family Survey (NFHS-4) for the year 2015-16, there were about 5.6% women been reported as victims under the category of “physically forced her to have sexual intercourse with him even when she did not want to”.²

HYPOTHESIS

Marital rape is most common crime against married ladies in India, and furthermore most under revealed crime in the nation. Since individuals don't know and furthermore on the grounds that it's anything but an offence under Indian penal code, 1860. Victimization of ladies and intimate rape being a typical wonder in India.

¹<http://www.legalserviceindia.com/legal/article-4056-marital-rape-a-non-criminalized-crime-in-india.html>

²https://www.business-standard.com/article/current-affairs/why-criminalisation-of-marital-rape-is-still-a-distant-dream-in-india-118102900084_1.html

Marital rape is an exception under section 375 of Indian correctional code, 1860

“the lone arrangement of discipline in conjugal rape is in two conditions:

- (i) if the victim is legitimately isolated from her husband, or
- (ii) if the victim is under 15 years old it is in this way, since Indians actually put stock in man centric standards which made outlook that aggressive behaviour at home should be settled inside the house.”

Protection of Women from Domestic Violence Act, 2005 offers common solutions for crime against women including marital rape; it gives assurance against abusive behaviour at home and sexual depravities.

Rape is a crime against essential common freedoms and an infringement of the casualties generally appreciated of key rights, in particular, the privilege to life enhanced in Article-21 of the Indian constitution. Yet at the same time the current criminal law invalidates this said judgement by not condemning marital rape. Also, in the long run disregarding the major right under Article-21 for example Right to existence with nobility.

LAWS AND MARITAL RAPE IN INDIA

The Protection of Women from Domestic Violence Act, 2005 .

This act has provided that any woman suffering canfile a case against their husbands and get legal actions againsttheir spouses for marital rape. This offence is absurd it is a trauma to a women, similarly as her faith and certitude is harmed thus making the relationship dread. Her basic freedoms are given up at the radiant spot of marriage. In any case the laws to ensure about the interests of the difficulties of marital rape are absent and lacking, and the strategies taken are inadmissible.

The fundamental start of these "laws" is that agreeing to marriage determines the agreement into sexual activity even if it does not have consent from the wife. Violation makes an impact of fear and hesitant making the wife submit to sex. It isn't equal to consenting to sex. The refinement among consent and non-consent in opposite is indispensable to criminal law.

CONSTITUTIONALITY OF MARITAL RAPE IN INDIA

Violation of Article 14³

Article 14 of the Indian Constitution ensures that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Though the Constitution of India guarantees equality to every individual irrespective of their race, caste, gender, etc. ,on contrary to whichthe Indian Penal law discriminates against the female victims by allowing their husbands to rape their wives without any fear to punishment.

³<http://www.legalservicesindia.com/article/2369/Marital-Rape.html>

Crime against woman was never a situation that came across the lawmakers mind while framing the India penal code in 1860. Instead, she was considered to be the property owned by her husband. Due to which, she never had many of the rights . But as time changed women are guaranteed as an separate individual from that of their husbands and they are provided right to file complaints just like the male member of the family including the right to file a complaint against another with her own identity. Exception 2, which essentially exempts violence, abuse by husbands against their wives from being considered acts of “rape,” is largely influenced by and derived from this already existing doctrine of mixing the woman’s identity with that of her husband.

Violation of Article 21 ⁴

Article 21 of the Indian Constitution is clearly violated by not considering marital rape a punishable offence. Article 21 states that “no person shall be denied of his life and personal liberty except according to the procedure established by law.” in many judgements by the supreme court it has been clearly stated the right to life is no more than liberal living but rather a mere instance . Instead, it has held that the rights explained in Article 21 include the rights to medical care, food, dignity, shelter, education, privacy, livelihood and safe environment.

In the case **Kartar Singh v State of Punjab** the supreme court held that the procedure explained by article 21 should be “right ,just and fair” and not settling ,compromising or suppressed upon individuals. For the above said and the procedure be right, just ,fair ,it should comply to the principles established by natural justice. It is unconstitutional and illegitimate not to criminalise marital rape purely on the basis of the outdated standard.

In **Bodhisattwa Gautam v Subhra Chakraborty**, supreme court held that rape is a crime against the basic human rights and the violation of victim’s right to life and dignity, thus violating article 21. Thus there is no real justification in making distinction between the act committed by one’s spouse and a stranger.

The Apex court in **State of Maharashtra v. Madhkar Narayan** opined that every women has the right to sexual privacy and no one can violate this right. Even women of easy virtue or a prostitute have right to say no to have sexual intercourse. This right has to be extended in a progressive way to married women and it is the obligation of state to enforce and protect it. Thus this judgement subsumed right to sexual privacy in article 21 which should not be denied to women on the basis of marriage.

Thus it is clear that this exception is the violation of the fundamental rights merely on the basis of the gender as stated in Constitution of India . Therefore it is now high time that Indian statute shall understand the harsh idea of this arrangement of law and take it down in the books.

ANALYSIS OF MARITAL RAPE IN OTHER COUNTRIES

Marital rape is condemned in numerous nations. Since forever until the 1970s it was a liberty provided to the husband to have sexual intercourse irrespective of the consent of the wife,

⁴<https://harvardhrj.com/2019/01/marital-rape-a-non-criminalized-crime-in-india/>

marriage was certainly a pass for him to rape his own wife. Gradually in the 1970s, a lot of women activist came together to criticize against marital rape and to force the government for starting the anti-rape development, thus protesting against the laws that they be given authorities over their own body and their consent shall matter, including inside marriage.

Due to the pressure of these campaigns, the emancipation of women in the seventies, Australia became the primary precedent in 1976 to enact changes that would make marital rape a criminal offence. Since the 1980s, numerous precedent-based law nations have administratively cancelled the marital rape insusceptibility. These incorporate South Africa, Ireland, Canada, the United States, New Zealand, Malaysia, Ghana, and Israel.

During the period of 1970s to 1993, all of the 50 states laid down marital rape a criminal offence. The Court of Appeals, New York removed the marital rape exception from their codes in 1984. A few countries including France, Germany, the Netherlands, Belgium and Luxembourg in 1986 demanded in for criminalisation of rape.

As per the UN Women's 2011 record, there were 179 countries available for the data, of which 52 countries had amended their laws to clearly make marital rape a criminal offence. The rest of the countries covers the ones that do not consider marital rape in their rape laws, along with those where no such separate exception is specified and where the husband can be booked under the previously existing rape laws.⁵

LEGAL PROVISIONS AND CASE LAWS REGARDING MARITAL RAPE

Section 375 of IPC

In the milestone case of *The Chairman, Railway Board v. Chandrima Das*, the Hon'ble Court held that rape is certifiably not a simple matter of infringement of a customary right of an individual however the infringement of Fundamental Rights which is included. Rape is a crime against the whole society and not just against the woman who faced this offence. It is violation of the fundamental rights and is against right to live as per the directives of human life which are specified in Article 21.

In the case of **Independent Thought v. Union of India** as "Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape". There was a slight change in section before. It is biased in favour of the husband and violates the fundamental rights as stated in the Constitution of India. Instead it is an alert to us that the laws of the Indian Penal Code that does not make marital sexual violence a criminal offence are old and they need to be moulded as per the current situations of the community thus considering fundamental rights to be equal for each person irrespective of their gender.⁶

CONCLUSION

⁵<https://www.theleaflet.in/only-36-countries-have-not-criminalised-marital-rape-india-is-one-of-them/>

⁶<https://blog.ipleaders.in/marital-rape-ipleaders/>

Male centric structure that directs Indian families has continuously considered women as immaterial property of her better half or gatekeeper. So rape was considered as robbery of women and wrong against mate or gatekeeper. The current laws have affected the decision making ability of the courts just because the woman is married to a man means he has the authority to have cohabitation even without the consent of the wife, due to which they are proving that it does not matter whether the wife is ready or not a husband has right to go over the consent and rape is wife and having legal immunity . This wisdom has set out women's privilege to consistency and value.⁷

Marital rape isn't totally condemned in India. It positively is a certifiable kind of wrongdoing against women and meriting government's thought. Further it has been noticed that a woman who are assaulted, violated and raped by their husbands are likely to face different physical and emotional abuse that are undetermined. As discussed here, marital rape is a offence where even after the rape a woman has no other option but to stay with the husband who commits that crime on her. The after effects of marital rape on a woman are disappointing as well as dangerous, therefore it is clear that an urgent requirement is there for criminalization of marital rape. Positive genuine change for women .



⁷<https://feminisminindia.com/2020/06/11/marital-rape-people-still-confused-india/>