
AN INSIGHT INTO MARITAL RAPE

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ABSTRACT

Marriage is a sacred institution between two individuals entered into by following rituals of saptapadi in which certain promises are being made by husband to wife and vice-versa in which assurance is being given by both the parties to the marriage to each other of taking care of one another and to maintain relationship till they live in its true nature that is mutual respect for each other. But adherence to this is not there to be seen now a days the dominant counterpart to the marriage i.e., Male have been recently seen doing blatant misuse of their physical strength and also does not consider paying much heed to the old traditions of marriage that were to have respect for other party to the marriage. Rather than using their strength to protect their wives what certain husbands tied in marital relationships doing is that using their power to enter into unwanted sexual relations with her that is nothing but an offence of RAPE. It is need of the hour that a law should be brought to punish those who indulge in such activities.

INTRODUCTION

MARITAL RAPE

Marital rape is the unlawful intercourse of a man without his consent, whether because to bodily desire or hazards, or due to the perpetrator's dishonest demonstration. Sections 375 and 376 of the Indian Penal Code make it illegal to rape an immigrant in India. Surprisingly, it specifically exempts marital rape from criminal prosecution. When a husband has intercourse with his wife without her permission or under coercion, this is known as marital rape.

Marital rape, also known as spousal rape, is when a person engages in sexual activity with their spouse without their consent. The most crucial aspect is the lack of authorization, which does not have to be followed by physical violence. Domestic violence and sexual assault that occurs when two individuals are married is known as marital rape. Although sexual intercourse between spouses was historically considered a right of spouses, it is today considered rape in many nations throughout the world, which is denounced by international agreements and progressively criminalized.

Indian Penal Code, 1860 (IPC)-Chapter – XVI Offences affecting The Human Body

Section-375¹. Rape

“Rape is defined as ‘sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation, or fraud, or at a time when she is intoxicated or duped or is of unsound mental health, and in any case if she is under 18 years of age,’ according to Section 375 of the Indian Penal Code.

If it fits under one of the following criteria, it's rape:

1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

¹ Indian Penal Code, 1860 (IPC)

4. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

5. With her consent, when, at the time of giving such a consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

6. With or without her consent, when she is under sixteen years of age. Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape”.

Consent in accordance with Section 375

Consent is defined as a woman's explicit, voluntary communication for a specific sexual act. As long as the woman is beyond the age of 18, marital rape is an exception to granting consent because it is not a crime under the Indian Penal Code.

Section 375 exceptions

Sexual intercourse between a guy and his own wife above the age of 18 is not considered sexual assault.

Punishment

Except in certain aggravating circumstances, the penalty will be a minimum of seven years in jail, with the possibility of life imprisonment, as well as a fine. In serious instances, the punishment will be strict imprisonment for a period of not less than 10 years but not more than life, as well as a fine.

Sexual intercourse with a woman under the age of 16 will be termed Statutory Rape, regardless of whether she consents or not. As a result, the absence of consent is a crucial component in proving the crime of rape. However, a section 375 exemption fully overshadows this need. It states that if a guy has sexual relations with his own wife and she is not under the age of 15, it is not considered rape. According to the law, if a man commits rape on his wife, he is fully free from punishment.

The Supreme Court of India and numerous High Courts are flooded with writ petitions challenging the constitutionality of this exception, and the Supreme Court recently criminalized forceful sexual intercourse with a wife between the ages of fifteen and eighteen, which I discuss further in the article.

It's odd that in a country where rape is regarded one of the most horrible crimes, it's decriminalized if the victim and the perpetrator are married. This is sometimes referred to as the marital rape exemption clause.' "The husband cannot be guilty of a rape perpetrated by himself upon his legitimate wife," Sir Matthew Hale said, "since the wife hath surrendered herself in this sort unto her husband, which she cannot withdraw" by their joint married consent and contract. On the basis of "implied irreversible consent," Indian laws allow husbands to have non-consensual sexual relations with their wives. Non-voluntary sexual intercourse between a husband and a wife does not exist. Marriage gives the husband unrestricted permission to have sexual relations with his wife whenever he wants.

In 2013, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) and the JS Verma committee, which was formed in the aftermath of the Nirbhaya gang-rape case on December 16, 2012, both urged that the Indian government outlaw marital rape. Despite the fact that marital rape has been criminalized in over 100 nations, India is one of the 36 countries where it remains unpunished.

Because of the bizarre distinction between married and unmarried women that is used as a prerequisite for addressing rape, the marital rape exception violates Articles 14 and 21 of the Indian Constitution, which guarantee the right to equality and equal protection, as well as the right to life and personal liberty. The exemption mentioned above is arbitrary and illogical. Women are categorized based on their marital status, which serves as a prerequisite for rape. If consent isn't a factor in domestic abuse cases, why are rape laws tied to a woman's marital status? It's hard to believe that a woman would consent to domestic abuse.

It's also irrational to think that a married woman would readily submit to forced sexual intercourse after marriage. The marital rape exemption must be eliminated. The notion that a marriage union is established on the fundamental premise of presumed consent gives rise to a marital rape exemption. A woman, on the other hand, is not forced to give up her sexual rights when she marries.

Judgments on marital rape that changed the game

Case:01

“Nimish bhai Bharat bhai Desai v. State of Gujarat”²

The Court considered whether a husband compelling his wife to engage in oral sex constituted rape under section 376 of the Indian Penal Code.

According to the court, marital rape has not yet been criminalized in our nation because the Parliament is concerned that it may undermine the institution of marriage. By submitting fraudulent and frivolous accusations against her husband, an unprincipled wife may use it as a formidable tool or weapon to punish him. However, there are protections in place in the criminal justice system to detect and scrutinize falsified or incorrect evidence.

Anyone who makes false and vindictive accusations against a spouse can be held accountable under the law. Because of this anxiety, marital rape cannot be disregarded. Indian laws guarantee women the right to life and liberty inside her marriage, but not to their bodies. Because there is a lawful marriage, a husband's attack on his wife would be an offence under the IPC, but if the same husband compels his wife to have sexual intercourse, he would be responsible for assault but not for rape.

Case:02

“Independent Thought vs Union of India”³ (2017) 10 SCC 800

The court had to decide if sexual intercourse between a man and his wife, who was a girl between the ages of 15 and 18, was rape.

Despite the fact that the exception 2 to Section 375 of the Indian Penal Code, 1860 (the IPC) takes a gloomy view of this matter, the court ruled that sexual intercourse with a girl under the age of 18 constitutes rape regardless of whether she is married. The unnatural distinction is in violation of the spirit of Article 15(3) of the Constitution, as well as Article 21. As a first step in this direction, the Prohibition of Child Marriage Act (PCMA) was enacted in 2006, but no later amendments to Section 375 of the Indian Penal Code (IPC), as it stood in 2006, were made to legalize marital rape of a girl child. If a married girl between the ages of 15 and 18 is raped by her husband, she may be charged with "aggravated penetrative sexual assault" under

² 2 April,2018

³ (2017) 10 SCC 800

the Protection of Children from Sexual Offences (POCSO) Act, 2012, but she will not be charged with rape under the IPC because the IPC does not recognize such an assault as rape.

The court ordered that Exception 2 to Section 375 IPC, in as much as it pertains to a female child under the age of 18, be struck down for the following reasons:

- ❖ It is arbitrary, despotic, and not just, rational, or fair. It infringes on the rights of girls by violating Articles 14, 15, and 21 of the Indian Constitution.
- ❖ It is discriminatory and violates Article 14 of the Indian Constitution.
- ❖ It is in violation of the terms of the POCSO Act.

Conclusion

The provision for marital rape establishes an odd difference between rape of a married and unmarried female. It is past time for the Parliament to address the possibility of non-consensual sexual intercourse between a husband and a wife, which should be considered rape. This horrible act must not be overlooked simply because it poses a threat to the institution of marriage. Marriage is a holy and religious tie between two individuals, which is why one believes his or her partner to be his or her better half. It's a horror to consider how terrible a marriage may be if a female is subjected to such abuse. Even in marriage, a female should be able to defend her bodily integrity. Rape is a horrific offence. Even if he is the husband of the lady he has raped, a rapist should be handled as such.