
DOES SECTION 375, INDIAN PENAL CODE, 1860 ANSWER SITUATION OF MARITAL RAPE IN COUNTRY?

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ABSTRACT

One of the few nations in the world where non-consensual sex occurs within a marriage is India, where it is not regarded as rape. If or not the wife implicitly consents to sex and whether marriage gives the husband an expectation of sexual activity is one of the most disputed questions. Will the elimination of this exemption lead to the emergence of a brand-new crime? The court should interpret the exception since marital rape is not now considered to be rape. Since January 20, 2022, Several petitions that seek to throw out the Indian Penal Code's allegation of marital rape are being heard by a jury of two judges from the Delhi High Court. In the State of Maharashtra v. Madhkar Naraya case, the Supreme Court held in 1991 that every woman has a right to privacy that must be respected. This essay will examine the idea of marital rape.

Introduction

On May 11, two Delhi High Court judges rendered a decision in the matter of RIT Foundation v. Union of India. The case before the court was uncomplicated. Rape, as defined by section 375 of the IPC, is when a male engages in sexual activity with a woman against her consent. Contrarily, Section 375 does not classify engaging in sexual activity with a wife without her permission as rape. According to the law, a husband cannot be charged with raping an adult wife. Four petitions questioning the legitimacy of the "marital rape exemption" have been filed with the Delhi High Court.

Any sexual conduct carried out within the bounds of a marriage is not regarded as criminal because it is a religious event. Rape is defined as sexual activity or sexual penetration that occurs without permission. As a result, proving rape requires establishing that consent was not given. Typically, the burden of proof rests with the victim to show that there was no consent. For instance, minors are legally seen as not being competent to consent to such conduct, hence consent is improbable. However, when the victim and the criminal are married, permission is frequently taken for granted.

Indian homes are patriarchal, and women have long been seen as the property of their guardians or significant others. Rape was therefore considered a crime against a woman's husband or guardian as well as a theft of the woman's property. By granting him the protection of his spouse's right to marry, This belief system has persuaded our politicians to ignore the spouse's rape crime, tacitly accepting the idea that women are nothing more than a way for him to express his sexual fulfilment for his darling and have no influence over his libido. With this ruling, the right to equality and homogeneity for women was established.

Rape is more than simply violence against women; it is a significant violation of a person's fundamental right to life and individual freedom. Nothing alters because the victim and the offender are connected. Therefore, it is incorrect that marriage bestows to the husband the right to engage in sexual activity with his wife. Marital rape is associated with societal shame since it silences a woman's voice against her husband, who takes advantage of her privileged position to betray her trust and unworthiness. Marital rape has been shown to be more traumatic and to have long-lasting physical and emotional effects. As a result, marital hostility between spouses has lessened in several nations. By decriminalising spouse rape, our state transgresses upon its

obligation to promote sexual justice, which includes protection from wrongdoing and maltreatment.

Several nations have now approved legislation that forbids marital rape, repeals exceptions for marital rape, or adopts rules that make no distinction between marital and common rape. This proves that rape in marriage is now viewed as a human rights violation. According to estimates, In 2006, more than 100 countries banned marital rape, but India was not one of them. Although India has developed several laws and organisations addressing violence against women in their homes, such as laws outlawing the murder of girls and domestic abuse, according to those in charge of the strategy, marital rape has not yet been classified as a crime. The holy coverings of marriage in India conceal marital rape.

Marital Rape and laws

In India, raping a partner when you're married is not a crime. The courts in India interpret the obscure or nonexistent statutes that are in place to prevent marital rape. Section 375 of the Indian Penal Code states, "A man's sexual intercourse with his wife, his wife who is no less than 15 years old, are not rape" (IPC). Unless the victim of the rape is the spouse and is at least 12 years old, the rapist shall be punished with detention or imprisonment for a time that may extend to life imprisonment or up to 10 years, in addition to the fine.

Only if the victim is under the age of 15 is marital rape considered since the punishment is less harsh. After the age of 15, the spouse has no legal protection, which is against international human rights standards. A similar law that raises the legal age of consent for marriage to 18 only protects adolescents under the age of 15 from sexual assault.

If the wife is between the ages of 12 and 15, the offence is punishable by up to two years in imprisonment, a fine, or both; if the woman is younger than 12, the offence is punishable by up to 10 years in prison and fines. Rape of a legally separated spouse is punishable by up to two years in jail and a fine, but not if the victim is a wife older than 15 years old.

Marital rape is recognised as a kind of domestic abuse under the Protection of Women from Domestic Violence Act, which was approved by Congress in 2005. Under this statute, a woman may use the legal division process to bring a rape claim against her spouse. Because it destroys a woman's love and trust, making her feel uncomfortable and terrified, marital rape is illogical. He must renounce his human rights in the hallowed setting of marriage. The methods employed

and the legislation protecting the rights of victims of marital rape, on the other hand, are unfavourable and insufficient.

These "rules" are predicated on the notion that consent to sexual conduct is a prerequisite for marriage. But is it accurate to say that giving agreement to sexual activity also means giving assent to sexual violence? The roughness makes the lady feel intimidated and vulnerable, so she consents to sex. This is distinct from indicating your assent to sexual conduct. The contrast between assent and non-assent is crucial in criminal law.

Strangely, a woman's right to regulate her body is not protected, but her freedom to live her life and marry is protected. Rape needs to have a distinct definition (IPC section 375). The IPC section 498-A, which addresses the absence of regret, has been used by women up to this point to save themselves against "unreasonable sexual intercourse ordered by the spouse." In any event, there is no legal concept of "perversion" or "unnatural" in married partnerships. Is there such a thing as too much sexual desire? Consent is a must for everything, right? Is it legal to rape your partner? The judiciary and the legislature are utterly mute, thus there is no response.

Reasons for Marital Rape not being a crime in India

In a patriarchal culture focused on marriage, women's voices are stifled. According to former Indian Chief Justice Dipak Mishra, criminalising marital rape will bring to total chaos in homes and our nation's existence rests on the family platform, which supports family values. Due to ingrained customs and social mores, marital rape cannot be made a crime. The Indian government asserts that those who seek to prevent husbands from raping their wives are copying Western countries.

Our society is based on the tenet that once a woman marries, she perpetually consents to her husband's sexual advances. The wife has thereby ceded her rights to her husband by mutual consent and marriage contract, which she cannot cancel. According to Judge Matthew Hale of the United Kingdom, a man cannot be punished for raping his legal wife. In an absurd affidavit to the Delhi High Court, the union government claimed that if all sexual acts between a husband and his wife occur, then the wife will be the only judge of whether they constitute marital rape or not. They also claimed that a law that criminalises marital rape could be used to harass husbands.

This claim that women will accuse their husbands of being unfaithful and that, even if they do, the legal system will support them has been stated many times. There is no other legitimate defence or argument other than the fact that marital rape is a horrifying, repressive, and brutal crime. Because it discriminates against women who have been raped by their husbands, the marital rape statute is illegal even though the Indian constitution guarantees equality.

Men's rights groups believe that many women would exploit the outlawing of marital rape as a justification to make a false accusation against their husbands. They argue that criminalising marital rape will encourage wives to harass husbands. The male victim will not be able to prove his innocence since the wife's relationship with her husband is primarily sexual in character and the wife's denunciation will be the main witness to the crime.

Judicial Interpretation

We'll examine other instances as well as the case of a husband who severely hurt his wife. According to *Queen Empress v. Haree Mythee*¹, marital rape laws do not apply to husband and wife relationships beyond fifteen years. According to section 338 of the Indian Penal Code, 1860, the husband was found responsible for rupturing his 11-year-old wife's vagina and causing an injury that caused her death.

In *Saretha v. T. Venkata Subbaih*², the Andhra Pradesh High Court ruled that the implementation of the restoration of marital rights decree violated the subject person's inviolability, marital integrity, privacy, and home intimacy.

Sexual assault is a demeaning crime and an illegal infringement of a woman's right to privacy and sanctity, according to the Supreme Court of Karnataka's decision against *Krishnappa*. The same ruling defines non-consensual sexual contact as both physical and sexual violence.

In the case *Suchita Srivastava v. Chandigarh Administration*³, the Supreme Court linked the constitutional rights to personal independence, privacy, dignity, and bodily integrity with the right to choose sexual behaviour.

¹ (1891) ILR 18 Cal 49

² AIR 1983 AP 356

³ (2009) 14 SCR 989, (2009) 9 SCC 1

In the case of *State of Maharashtra v. Madhukar Narayan Mardikar*⁴, the Supreme Court clarified the meaning of the right to privacy on one's body. The right of a prostitute to reject sexual activity has been acknowledged. All women have the right to privacy over their bodies, including the choice to refuse sexual activity and refuse consent, with the exception of spouses. Rape by a stranger is likewise prohibited. The issue is that marriage is highly valued. Instead of forcing the woman to fulfil every one of her husband's desires, especially sexual ones, mutual respect and trust should build. Being sexually abused by a friend who lives with you is far more upsetting.

In the case of *Justice KS Puttuswamy (Retd.) V. Union of India*⁵, the Supreme Court of India declared that everyone has the basic right to privacy.

the ability to make choices about intimate connections and those that principally affect one's sexual or procreative nature, as described by "decision-making privacy."

In each of these cases, the Supreme Court recognised the right to abstain from sexual activity as a fundamental freedom that all women, regardless of marital status, are guaranteed under Article 21 of the Constitution. Therefore, compelled sexual cohabitation is against Article 21 of the Constitution.

Conclusion

Marital rape is not totally outlawed in India. It is without a doubt a significant instance of female abuse that calls for government action. Women who have been sexually assaulted by their spouses or partners are more susceptible to various attacks and typically experience persistent physical and mental problems. Living with her abuser on a regular basis makes marital rape more terrifying for a woman in this situation. It is obvious that marital rape has to be made a felony due to how terrible the effects are. In India, the law is improving for women, but more has to be done to make social and legal improvements, such as criminalising marital rape and altering views about women in marriage. Because marital rape is not officially outlawed, the legislation defending women from domestic abuse has several shortcomings. Positively, establishing a law banning domestic violence cleared the path for a law banning marital rape.

⁴ AIR 1991 SC 207

⁵ (2017) 10 SCC 1

This represents a change in the mindset of the state, which before emphasised not interfering in family affairs.