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# Marital Rape

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## ABSTRACT

*Rape is a Rape, whether terminated prior to marriage or afterwards. India don't have adequate laws to defend women from rape at unquestionable period of her existence i.e the span of her marriage. Judiciary as well as our society need to realise that consent plays a significant role for women to live independently in the society. Paradoxically, married women should have the right to give consent to her spouse before indulging physically with him. Nevertheless, we don't have an ample of laws concerning this offence so that the women's could live freely and independently. Marital Rape ought to be scrutinized as a rape under the Indian Penal Code and the convicts should be punished for this heinous offence.*

*In India, there are no distinct provisions for Marital rape due to which no punishment is stated to the convict. Countries like Armenia, Belgium, Czech Republic, Russia and many more have considered it as an offence and have specific laws for this crime. Implementing laws for this offence is the need of the hour so that the marital rape is considered as a crime and the convict get penalized for this heinous crime.*

## I. INTRODUCTION

“Consent” the expression reprimand in itself. But do we have a bonafide awareness of the same? We have encounter an ample character of crimes done to individual who are unequal in the eyes of law. Our constitution plays a crucial role for expression stated above. So that the outlay of crime dwindle. But are the law sufficient for this crime? Are the plaintiffs of this offence getting equity? Marital rape as the name argues is the sexual intercourse of man with his own wife without consent”. It is not contemplated as acrime against women. According to the National Family Health Survey 2005, 97.7% women abide by sexual violence at home. Stock still, the government have not affixed it. It is a crime against women. Consequently, the crime against one if not canvassed will eventually build the breeze for alike offences against other. “Rape” mentioned in Section 375 of the Indian Penal Code i.e sexual assault without

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consent is an offence under IPC.<sup>3</sup> However Exception 2 of Section 375 safeguards from prosecution if non consensual sexual intercourse is done by a man with his spouse if she is older than fifteen years.

## **II. EXPLANATION OF OLD LAW**

“A man is said to commit rape if he-

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person, or
- (b) Inserts, to any extent any object or part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions
  - (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
  - (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 believe herself to be lawfully married
  - (5) With her consent when at the time of giving such consent by reason of unsoundness 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 eighteen years of age.
  - (7) When she is unable to communicate consent.”<sup>4</sup>

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<sup>3</sup>Indian Penal Code 1860.

<sup>4</sup>The Indian Penal Code, 1860 Section 375.

### Explanations

- (1) “For the purposes of this section, vagina shall also include labia majora.
- (2) Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman does not physically resist to the act of penetration shall not by the reason only of that act, be regarded as consenting to the sexual activity.

### Exceptions

- (1) A medical procedure or intervention shall not constitute rape.
- (2) Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”<sup>5</sup>

## III. CRITICISM

Section 375 of the Indian penal Code notifies about “Rape”, which is an illegal offence if it occurs under all the provisions listed in the section. Nevertheless, the exception stated the lacunae in law mentioned in the section. It affirms that the sexual intercourse by a man with his own wife is not rape, if the wife is above 15 years of age. The Exception stated above should be omitted and rejuvenate with a new one where “consent”, drawn in marriage should be bestowed in this section. The sexual intercourse by a man without his wife’s consent should be scrutinized as rape and have determined punishment for the same. It clearly shapes the incarnation of equality among individuals. Rape is contemplated only when the woman in the marriage is minor. She can file a report during the span of 365 days of the crime committed to her. What if the minor woman was not competent enough to complain within the specified amount of tempo? Should time restriction be a boundary for registering a crime enacted to her? Though committee headed by Justice Verma advocated that Marital rape should be an offence in the mentioned section. Though the apex court ruled that Marital rape is not a crime as it would destabilise the marriage in our country and women’s can embezzle it as some of them did unseasonably of Section 498(A) of Indian Penal Code. Nonetheless all are vague responses for not shutting out the exception of this section and affixing Marital Rape to it. The Section 375 of the Indian penal Code mounting midway of the pavement to justice for the women of our community.

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<sup>5</sup>Ibid.

#### IV. AMENDMENT OF THE LAW

Modifying Section 375 of the Indian Penal Code is the middle of the women and her virtue. United States, Nepal, Bhutan, Britain and South Korea are various countries which have illegalised marital rape and considered it as an offence. Currently, it's our requirement to consider Marital Rape as an offence against women and infix it in this section and abolish an exception mentioned to it. The Gujarat High Court, examined all questions about whether a wife can prosecute her husband for unnatural sex. Justice JB Pardiwala expressed his concern by conceding that it is a time when government should acknowledge this offence and criminalise it. It is a time when government should acknowledge this offence and criminalise it. It is a disgraceful offence existing in our Indian society which should be cured for the women's who have faced the burnt of non criminalisation of the practice.

#### V. GROUNDS ON WHICH THE LAW IS BEING AMENDED

Courts are flooded with catena of petitions challenging the legality of the marital rape. It infringes fundamental rights enshrined in the constitution of India. This provision breaches article 14 and 21 of the constitution of India. Article 14 states that "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."<sup>6</sup> Right to equality is the first fundamental right assured to the people of India. Section 375 ; exception 2 of IPC is an arbitrary provision which immunizes a man if he sexually assaulted her better half that clearly shows a discrimination between a married and unmarried girl. In the *E.P Royappa v. state of T.N*<sup>7</sup> the apex court observed that arbitrariness is the very antithesis of equality.

Moreover, Exception 2 violates Article 21 of the constitution which guarantees that "No person shall be deprived of his life or personal liberty except according to the procedure established by law."<sup>8</sup> Thus guarantees everyone to live with dignity.<sup>9</sup> and rape is the violation of this right to live with dignity for women.<sup>10</sup> There are plethora of cases and acts which provide protection for women and tried to bridge the gap of gender equity. In *Vishaka v. State of Rajasthan*<sup>11</sup> where the Supreme Court guarantees the protection of women from sexual harassment at workplace. As per current law which are in force it is conceptualised that a girl is presumed to be consented for sexual intercourse with her husband after entering into marital relation. Thus this Exception

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<sup>6</sup>The Constitution of India, Article 14

<sup>7</sup>AIR1974 SC555

<sup>8</sup>The Constitution Of India, Article 21

<sup>9</sup>Francis Coralie Mullin v. The Administrator, Union AIR 746, 1981 SCR(2) 516

<sup>10</sup>Miss L v. The State of Karnataka, AIR 2019 KAR848

<sup>11</sup>AIR1997 SC3011

2 to 375 of IPC is viscious in nature and it should be struck down.

## **VI. CONCLUSION**

Getting sexually assaulted is a truly nightmare for the one who experiences it. It distort the bodily image. It not only causes bodily injury but also it has intimidating effect which further leads to increased stress, anxiety, suicide etc. The Exception 2 to Section 375<sup>12</sup> panders to the lascivious appetite of men who consider their wives to be a chattel by the sheer magnitude of physical or financial prowess. This provision only inflames lecherous craze of men. Immediate steps are called for ameliorating their lot by abolishing such discriminatory and arbitrary law and ensuring no such injustice to women in future.

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<sup>12</sup>The Indian Penal Code, 1860.