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### **Marital Rape: Analysis of legal provisions**

*“Behind closed doors, a woman is raped again.”*

#### **ABSTRACT**

In this article, the author articulated her point of view on marital rape and the protections in the Indian penal code, categorically or explicitly, in compliance with the statute, this article is divided into four key heads in which the author discussed many aspects of the topic. Starting with the introduction, the author reflected the meaning and how women suffer from this crime, then the next head talks clearly about the breach of the constitutional articles due to this egregious wrongdoing. Supported and reinforced by the evidence the third head deals with objective research, stating the facts and contrasting the rules. The author has also raised numerous questions regarding the subject. The author then ended the article with conclusion and recommendation and everything in one section.

#### **INTRODUCTION**

The definition of “Rape” clearly says – A sexual activity with a lady without her consent. The question here arises in the back of our that does a word marital makes any change to matter and if yes then, will we have any laws mentioned within the acts or statutes.

The author hereby says that there is no denial of the very fact that marital rape cases experienced the tremendous rate of growth, yet there's no segment that armours a wife from the legitimate rapists. Indian legal code persists in shielding the youngsters from this horrific crime but disremembers that this dreadful rape crime has an equal devastating effect on both married and single women of every age. Then why are the husbands exempted from rape punishment, simply because it occurs with an adult? Our law claims that after marriage, the lads are entitled to owe sex from their wives. India appears to not view marital rape as a felony, and also denies that the husbands could be the abuser, too.

The section 375 of Indian legal code clearly states-

An individual is claimed to commit "rape" who has sexuality with a lady, except within the case hereafter, under circumstances falling under one among the six departments <sup>1</sup> - the foremost argued point here arises is exception 2 which states: -

A man's sexual intercourse with his own wife, whose mate falls above the age bar of fifteen, isn't rape<sup>2</sup>. The Unanswered question regarding the context is, **can age be, literally, the scales for assessing crime aversion?** After years of battling in this arena this age stretched up to 18 years<sup>3</sup> Yet our criminal code miserably did not grant justice to the ladies above this age. A female is often totally devastated when a rape occurs inside the trust circle. The patriarchy still weighs more to everyone's surprise than the women's rights. the sole decision left with the married women being stripped of the desired rights is to grill and bare it.

Mr. Swaraj Kaushal an Indian Criminal Lawyer even made a statement that **“if the marital rape is criminalised then all the lads will land in jail.”**

Indian women from their youth were learned the sacramental essence of marriages so that they strive hard to measure this death called life, rather than developing and exposing the fact. Now once we discuss section 376 it says that if a person rapes his own spouse who is between the age bar of 12-15 years then the offence is punishable and the punishment may exceed two years of imprisonment together with the agreed amount of the fine. If the age of the partner is under the age bar of 12 years then sentence will stretch up to 7-10 years of imprisonment and can also exceed adulthood<sup>4</sup>. But isn't this sentence so gentle for a male to whom a lady is entrusted during the wedding ceremony, with those 7 circumambulations and the protective verses.

## **VIOLATION OF CONSTITUTIONAL ARTICLES**

Article 14 of our Indian Constitution guarantees equality before the law No State shall deny to any individual equality before the law or fair treatment of the law within the jurisdiction of India Prohibition of discernment on grounds of religion, colour, caste, sex or place of birth<sup>5</sup> which clearly talks about equality then why this code clothed be gender biased. Women from the very first crack are treated as wares of men and thus always served unequally. No guarantees of protection for married women explicitly contravene Article 14 of the Indian constitution. Nonetheless, a marital rape isn't treated as a criminal offense, and this fact cannot

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<sup>1</sup> The Indian Penal Code

<sup>2</sup> *ibid*

<sup>3</sup> The Criminal Amendment (Act), 2013

<sup>4</sup> The Indian Penal Code, 1860

<sup>5</sup> The Constitution of India

be overlooked now because it's time to contemplate men and ladies as an independent body, and may be treated fairly. How will we disregard the actual proven fact that proving the crimes and breaking the bonds of marriage so quickly is much more complicated for a pair. In **the case of *Chintamani Rao v. State of Madhya Pradesh*<sup>6</sup> and *E.P. Royappa v. State of Tamil Nadu*<sup>7</sup>**. The apex court held that any sorting cited in Article 14 of the Indian Constitution are subject to a equanimity check providing the moral relation exists for the intent which the act would accomplish. And here, within the exemption listed in section 375 of Indian Penal code, there's no fair restriction and logical connection so it violates Article 14.

Article 21 notes this explicitly “Protection of life and private liberty nobody shall be disadvantaged of his life or personal freedom except in keeping with process reputedly founded by law<sup>8</sup>.” But Does a raped woman win this privilege. The melancholiest thing about that is reluctance to discuss the answer. In ***State of Punjab v. Gurmeet Singh*<sup>9</sup>** court observed Lately, there's a rise in crime against women normally and rape particularly. It's an understatement that while we promote women's rights in every area, we've little to no respect for her dignity. This may be a devastating sign of religiously insensitive mentality toward abuses of the human integrity of the sex abuse victims. We must note that a rapist not only abuses the privacy and moral dignity of the victim but within the process ultimately causes significant psychological and physical harm. Rape isn't just a sexual attack- it's also damages the victim's entire personality. A destroyer kills his victim's body, and a violist degrades the innocent female's inner soul. Thus, the infringement of Article 21 is very evident here.

## **CRITICAL ANALYSIS**

In its study in 2013 the Justice Verma Committee reported that the exception to the law must be immediately repealed. Even though Brutality under Indian Penal Code 498A restricts its jurisdiction only to emotional and physical violence, the frequencies of sexual assault continue to go unpunished. However, in compliance with section 376-B<sup>10</sup>, sexual relations with one's own companion without her permission who is parted under a judicial order was made punishable by up to two or seven years in jail. But the remainder is still present -**what about those women?**

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<sup>6</sup> (1951) AIR 118

<sup>7</sup> (1974) 4 SCC 3

<sup>8</sup> The Constitution of India

<sup>9</sup> 1966 SC

<sup>10</sup> Indian Penal Code, 1860

Although the other countries have undoubtedly succeeded in armouring married women. Poland was the foremost to afford law that overtly made marital rape a criminal offense in 1932. Australia became the first common law nation to enact legislation in 1976, under the influence of the second upsurge of feminism in the 1970's, which rendered marital abuse as a illicit offence. In the preceding two decades, in several Scandinavian countries and Communist bloc countries norms were passed criminalizing spousal rape, including Sweden, Norway, Denmark, the former Soviet Union and Czechoslovakia. After the 1980s, a variety of common law countries have legislatively eliminated marital abuse protections. These include South Africa, Ireland, Canada, the United States of America, New Zealand, Malaysia, Ghana and Israel.

Now if we talk about USA Researchers in there reported that in marriage, 10 to 14 per cent of married women experience rape<sup>11</sup>. When they looked at the prevalence of different forms of rape, they found that marital rape accounted for about 25 percent of all rapes. In 1993, in all fifty States of United States of America, marital rape became a felony under at least one part of the codes of sexual assault<sup>12</sup>. It is disheartening, that only a handful of States have revoked the exemption from marital rape in its entirety and that it remains somewhat different in rest.

Marital Rape happens to be de facto and not de jure in India. The legislature in many other countries has successfully acknowledged the intensity of wrongdoing thus criminalising the marital rape, but judiciary in India seems to offer the other services by a keeping a step forward in the field of physical and mental abuse but still not able to function against the sexual abuse in marriages.

## CONCLUSION AND SUGGESTION

While marital rape in Indian society is the most typical and objectionable type of masochism, it's hidden behind the ideological barrier of nuptial. The Hon'ble Apex Court of India, the sole chance of fixing the archaic solution to marital rape after Parliament hanging its boots, said that the globe isn't prepared to acknowledge marital rape as an offence. Apparently, the lawmakers hold a distinct perspective and conclude that marital rape can't be criminalized within **the Indian sense, thanks to factors like "unemployment, illiteracy rates, violence, social norms and spiritual beliefs."** In the order to unravel the difficulty the treatment should commence with the base causes and fortunately we are responsive to them. Thus, to answer a

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<sup>11</sup> National Violence Against Women Survey, NCJ 172837, Washington, DC:

<sup>12</sup> National Clearinghouse on Marital and Date Rape, 1996

misdemeanour like marital rape the ministrations should start with educating people within the order to alter their mindset and making them realize the intensity of crime. Crime is abuse and deterrence would also be the same. The law proved to raise the penalty of abuse in 2018<sup>13</sup> but not for marital violence so it's high time to equalise the retribution to sheath our women.

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<sup>13</sup> 2018 Amendment act