



## MARITAL RAPE: THE ACT OF TRAUMA ON BODY AND MIND

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### Abstract

Marriage could be a state of being united to someone of the other sex as husband or a mate in a very accordant and written agreement relationship recognized by law. It's thought-about as a sacred thread that binds two people in a very time period of intimacy.

Rape associated of itself} is an offence against woman, violating her dignity and pride and once it happens inside the four-walls of a married home, it reduces the woman to the standing of associate object used just for sexual gratification. There's a direct need for a definite law on marital/spousal rape in India, that ought to be at par with the accepted international norms on this issue.

Marital rape is serious and social issue that we must always got to concede as shortly as attainable so no more such offence came about any sexual activity between husband and adult female while not wife's consent is termed marital status rape. The act of inhabitanacy against the desire of married person could be a grievous offence, and can't be condoned simply because the husband has been brought up in a very in a society with a mind-set that it's right of the husband to populate where and whenever he needs so. Wives don't seem to be the assets of their husbands however in our society, marriage in a way, provides men a 'licence to rape' with their wives. Marriage mustn't be seen as a

allow for unconsented sexual activity everybody incorporates a right their body quite anyone else. Sex ought to solely be through with the mutual consent, love, caring and clear communication.

However, despite the increasing range of cases of marital rapes in our country, marital rape isn't outlined in any statue/ laws. It's to be noted that whereas 'Rape'" is outlined below section 375 of the Indian penal code, there's no definition of 'Marital Rape' until currently and there's no reorganization of marital rape below the orbit of Indian Law. In India, marital rape exists *de facto* however not *de jure*. Whereas in different countries either the assembly has criminalized marital rape, or the judiciary has compete an energetic role in recognizing it as associate degree offence, in Republic of India but, the judiciary appears to be operational at cross-purposes. Though marital rape is that the commonest and obscene kind of sexual pleasure in Indian society, it's hidden behind the ideological barrier of wedding. The Hon'ble Supreme Court of Republic of India, the last hope for reforms in superannuated approach towards marital rape once Parliament had adorned up its boots, aforementioned that country is not able to settle for marital rape as against the law. It are often seen that the law manufacturers have a distinct read and believe marital rape can not be applied within the Indian context as a result of factors like "level of education and literacy, inadequacy, social customs and non secular beliefs".

### Marital Rape: A Non Criminalized Crime In India

"Marital rape is defined as any unwanted sexual relation by a partner or ex-partner, committed without consent and/or against a person's will,



prevail by force, or threat of force, fearfulness, or when someone is unable to consent.”<sup>1</sup> Rape in itself is such a traumatic experience and if faced by a spouse in a very marriage, it can leave an everlasting scar on the spouse’s mind and might humiliate the spouse to such a core that the connection can’t be fixed with the partner ever at the moment humiliating sexual experience. Marital rape is more traumatizing experience than rape by a stranger as in a very marital rape because the trust bond between the partners are broken conspicuous which is beyond repair. It perpetuates feeling of mental torture, humiliation and hate and contempt against the partner.<sup>2</sup>

### Present legal position

The definition of rape codified in Section 375 of the Indian penal code includes all types of statutory offence involving non consensual intercourse with a lady.<sup>3</sup> However, Exception 2 to Section 375 exempts unwilling sexual activity between a husband and a wife over fifteen years old from Section 375’s definition of “rape” and thus immunizes such acts from prosecution. As per current law, a wife is presumed to deliver perpetual consent to own sex along with her husband after getting in marital relations. While unwilling sexual contact between a husband and a wife is recognized as a criminal offense in almost every country of the globe, India is one among the thirty-six countries that also haven’t criminalized marital rape.<sup>4</sup> Prior to the amendment in IPC in 2013, when the

wife was between 12 – 15 years, the drastically reduced quantum of punishment was provided, which can have extended to two years or fine. It amounted to rape only the wife was below 12 years old. The amendment in 2013<sup>5</sup> has done away with this clause but at the identical time has not recognized the concept of marital rape and has chosen to continue with the earlier legal approach. it might be pertinent to suggests that Justice Verma Committee Report<sup>6</sup> has recommended that marital rape exemption within the IPC should be withdrawn.

The Honorable Supreme court and various high courts are recently flooded with writ petitions challenging the constitutionality of exception 2 of section 375 Indian penal code 1860.

And during a recent landmark judgment, the Supreme Court criminalized unwilling sexual intercourse with a wife between 15&18 years old.<sup>7</sup> This judgment has successively led to a rise in other writs challenging the constitutionality of Exception 2 as a full.

PIL that the exemption is unconstitutional and violates the rights of married women under articles 14, 15, and 21 of the Indian Constitution. one amongst the petitioners has challenged the provisions of Criminal Procedure Code, which are to be read with section 376 Indian Penal Code on the bottom that differential procedure additionally as

<sup>1</sup> Shruti , why we need to talk about marital rape?, ( july 2, 2020, 1:30pm) <https://sayfty.com/why-we-need-to-talk-about-marital-rape/>

<sup>2</sup> Rea Savla, Trapped in Tradition’s Prison: Why India is Not Ready to Criminalize Marital Rape, ( jun 30, 2020, 4:00pm) <https://bpr.berkeley.edu/2015/10/29/trapped-in-traditions-prison/>

<sup>3</sup> Indian Penal Code § 375, No. 45 of 1860, India Code

<sup>4</sup> *Marital Rape in India: 36 countries where marital rape is not a crime*, India Today, Mar. 12, 2016.

<sup>5</sup> The Criminal Law (Amendment) Act no. 13 of 2013.

<sup>6</sup> Justice Verma Committee Report, (2013).

<sup>7</sup> Independent Thought v. Union of India, (2013) 382 SCC (2017) (India).



differential punishment is prescribed, which is bigoted and unconstitutional<sup>8</sup>.

### Violation of Article 14 of the Indian Constitution:

Article 14 of the Indian Constitution ensures that “the State shall not deny to anyone equality before the law or the equal protection of the laws within the territory of India.”<sup>9</sup> Although the Constitution guarantees equality to any or all, Indian legal code discriminates against female victims who are raped by their own husbands. The Exception to Section 375 creates two categories of ladies supported their legal status and prioritizes one woman in protecting them from rape than married ones — that’s an immediate contradiction of each Indian citizen being guaranteed equal protection of laws.

In **Budhan Choudhary v. State of Bihar**<sup>10</sup> and **State of West Bengal v. Anwar Ali Sarkar**<sup>11</sup>, the Supreme Court, held that any classification under Article 14 of the Indian Constitution is subject to a reasonableness test that may be passed given that the classification has some rational nexus to the target that the act seeks to attain. But Exception 2 frustrates the aim of Section 375: to safeguard women and punish those that engage within the inhumane activity of rape. Exempting husbands from punishment is entirely contradictory to its objective. Put simply, the implications of rape are the identical whether a lady is married or unmarried. Moreover, married women may

very well find it more difficult to flee abusive conditions reception because they're legally and financially tied to their husbands.

### Violation of art. 21 of Indian constitution:

Exception 2 is additionally violate article 21 of the Indian constitution, Article 21 states that no one shall be denied of life and person shall be denied of life and private liberty except consistent with the procedure established by law. That Article 21 of the Indian Constitution, incorporates the correct to measure with human dignity and may be a standout amongst the foremost fundamental components of the proper to life which perceives the independence of an individual. The Supreme Court has held that the offense of rape abuses the right to life and also the right to measure with human dignity of the victim of the crime of rape. The Supreme Court has interpreted this clause in various judgments to increase beyond the purely literal guarantee to life and liberty. It's held that the rights enshrined in Article 21 include the rights to health, privacy, safe living conditions, and safe environment, dignity, among others. In recent years, courts have begun to acknowledge a right to abstain from sexual activity and to be free from unwanted sexual issues enshrined in these broader rights to life and private liberty.

In **The State of Karnataka v. Krishnappa**<sup>12</sup>, the Supreme Court held that “sexual violence but being a dehumanizing act is an unlawful intrusion of the proper to privacy and sanctity of a female.” In the identical judgment, it held that sexual

<sup>8</sup> Delhi court to listen to NGO’s Plea Opposing Marital Rape”, Indian Express 28, 2017

<sup>9</sup> India Const. art. 14.

<sup>10</sup> Budhan v. State of Bihar, AIR (1955) SC 191 (India).

<sup>11</sup> State of state v. Anwar Ali Sarkar, AIR (1952) SC 75 (India).

<sup>12</sup> *The State of Karnataka v. Krishnappa*, (2000) 4 SCC 75 (India).



intercourse without will issues amounts to physical and sexual violence.

Later, in **Suchita Srivastava v. Chandigarh Administration**<sup>13</sup>, the Supreme Court equated the correct to form choices associated with sexual issues with rights to non-public liberty, privacy, dignity, and bodily integrity under Article 21 of the Constitution.

In the landmark case of **The Chairman, Railway Board v. Chandrima Das**<sup>14</sup>, the Hon'ble Court held that rape isn't a mere matter of violation of a normal right of someone but the violation of Fundamental Rights which is involved. Rape may be a crime not only against the person of a girl, it's against the law against the whole society. it's a criminal offense against basic human rights and is violate of the victims most cherished right, namely, right to life which has right to measure with human dignity contained in Article 21.

Additionally, Exception 2 violates Article 21's right to measure a healthy and dignified life. As mentioned above, it's well settled that, the "right to life" envisaged in Article 21 isn't merely a right to exist. for instance, there is no dispute that each citizen of India has the correct to receive health care or that the state is required to produce for the health of its constituents.<sup>15</sup>

### **Conclusion:**

Marital bonds are considered inviolable in India and marriages in India don't thrive on sex. These are some hard hitting realities of this modern times during which marital bond isn't as sacred because it is taken into account to be. There's a

pressing must criminalize marital rape as crime and amend divorce laws of the country by making marital rape as a legal ground to require divorce from an abusive marriage. The criminalization of marital rapes also will have a consequence on divorce laws within the country because the "marital rape" could also become a ground for the couples to file for divorce like other grounds like cruelty, adultery etc. The changes in divorce laws by making marital rape as ground for divorce will certainly be a good relief to all or any the victims of marital rape who now will legally be ready to take an action against their respective spouse. The relief which victims of marital rape is change in divorce laws is that they will seek compensation from the competent court for the physical and mental torture they need skillful thanks to the marital rape is finished by their spouse. Also we seen that exception 2 of the section 375 of Indian legal code is violate art. 14, 15 & 16 of Indian constitution and it's unconstitutional. It is pertinent to state that within the absence of a law, there's no data on the amount of cases of marital rapes being reported. It's pertinent to notice that the penal code is within the Concurrent List and is implemented by the States. There's an enormous diversity within the cultures of the states. And hence, seeable of the identical it's necessary for the regime to require stringent steps during this regard. That within the era of legal reforms and revolutions, it's of utmost importance to require steps towards criminalizing marital rape in order that we are able to move a breakthrough towards the road of progress

<sup>13</sup> *Suchita Srivastava v. Chandigarh Administration*, (2008) 14 SCR 989 (India)

<sup>14</sup> MANU/SC/0046/2000

<sup>15</sup> *Regional Director ESI Corpn. v. Francis de Costa*, 1993 Supp (4) SCC 100; 5 D.D. Basu, Commentary on the Constitution of India, 4711 (LexisNexis 2015).



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in real sense. In an exceedingly country like India, such a reform is way from the truth as neither the lawmakers of this country nor the Indian judicial systems are prepared to bridge the gap between marital rape and rape as they're both heinous crimes which could scar the victim for keeps.

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