

Critical Analysis of Position of Law on Marital Rape

in

India & USA

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INTRODUCTION TO MARITAL RAPE

Marriage is a commencement of a new family, more than being a physical union it is an emotional union of the spouses. Whether it is consensual or contractual marriage, marriage is a state of remaining united to a person thereby granting the status of husband and wife.

The act of marriage capacitates the parties to all the rights and obligations available to them under law. Sexual intercourse is also considered as a right of the spouses. It is because of this right that sometimes there creeps into the dominance of the relationship by the husband, where the wife is forced for a sexual intercourse against her will and without her consent. So the sexual intercourse by a husband on his wife against her consent is known as marital rape or spousal rape. It is considered as the rape under the veil of marriage and is detrimental to the interests of a woman. Howbeit, the attitude of the law makers and existence of legislations on law shows the lack of concern of the society towards this sort of cruelty being inflicted on the women.

This article shows in-depth study of the laws on marital rape in two countries i.e., India and United States of America.

MARITAL RAPE LAW IN INDIA

In India, the law on rape is governed by Sec. 375, Indian Penal Code. It lays an elaborate definition of the offence of rape but the exception to this section states that **“Sexual intercourse or sexual acts by a man with his own wife the wife not being under the fifteen years of age, is not rape.”**

So this precludes that if the offence is committed by a man on his wife will not amount to rape based on the marital status of the parties. The major controversy is that is there any point of preserving such a marriage, which is based on lack of concern by the husband towards his wife. This issue deserves attention by law courts and also the legislature.

There is an urgent need for some legal provision to criminalize marital rape and accord it the same status with a rape outside lawful wedlock. It is one of the gravest forms of violence against women. “Marital Rape” is not given deserved and required attention. So this exception demarcates the offence as follows:-

1. Rape on his own wife and rape with a female outside marriage.
2. Rape with a girl in the age of 15-18 years who is married to the accused and rape with a girl in the age of 15-18 years who is not married to the accused.

In the first situation, the offence with the wife would be covered under the exception and hence not an offence.

On the other hand, to settle the controversy arising by the second point, a civil writ petition was filed before the honorable Supreme Court in the case of **Independent Thought v. Union of India**¹.

But the court in the present case, refrained from making any observation on the first point i.e., when a rape is committed by a husband on his wife who is 18 years of age and above, because this issue was not raised before the court. So the court in the present case held that there is no need to arbitrarily discriminate against a girl child who is married between 15 and 18 years of age and also this distinction was held to be violating Article 14, Article 15(3) and Article 21 of the Indian Constitution. Also when the Parliament amended the Sec. 375, Indian Penal Code in the wake of “Nirbhaya’s Case”, it increased the age of the consent in the 6th clause of Sec. 375, IPC from 15 to 18 years but did not amend the provision in Exception 2. So court in the present case, also made an observation that fixing a lower age in this exception is arbitrary and irrational and is also contrary to the age of child as is fixed by different statutes such as age of marriage as fixed by **Hindu Marriage Act, 1955** and **C, Protection of children from Sexual offences**

¹ WRIT PETITION (CIVIL) NO. 382 OF 2013

Act, 2012. So this provision so far as it related to a girl child below 18 years was struck down and therefore the court held that Exception 2 to Section 375 IPC is read down as follows:

“Sexual intercourse or sexual acts by a man with his own wife, the wife not being below 18 years, is not rape”.

This provision was given prospective operation.

So presently the situation is that if rape is committed on a married girl child below the age of 18 years will be covered under the offence of rape as defined under Sec 375, IPC but as regards the rape committed on a female above the age of 18 years, there is no legal resort available to the women under the criminal law and is still being considered as an exception to the rape.

MARITAL RAPE LAW IN UNITED STATES OF AMERICA

In United States there exist two types of laws i.e., National Laws and State laws. There is no national law on rape, so accordingly each state has its own law concerning it. The offence of rape has been defined in the Uniform Code of Military Justice under Chapter 47X, section 920, Article 120 and under this provision marital rape is banned that is it cannot be used as a defense by the accused. The position of state laws is that, in all the 50 states of America, marital rape is illegal. Initially, there existed the “Marital Rape Exemption” which allowed a person to rape a spouse without fear of facing any legal consequences. South Dakota was the first state to drop this exemption and North Carolina the last one.

The punishment for the marital rape is same like the rape committed by any other person. The accused can be penalized for several years or for even life imprisonment. Following is the insight in the marital rape laws existing in few states of United states.

STATE	MARITAL RAPE LAW
South Carolina	Women raped have 30 days to report the incident to the authorities. The act must involve “ use or threat of use of weapon”, “physical violence of high and aggravated nature”

Oklahoma	Can bring charges against the accused if force or violence is used against the victim.
Nevada	It is considered no defense that the perpetrator was married to the victim, if assault was committed by use of force or by threat of force.
Mississippi	Marital rape amounts to rape only if it involves forcible sexual penetration.
Maryland	The spouses are treated as strangers when it comes to marital rape.
Minnesota	Only if force or threat is used.

CONCLUSION

Based on the laws existing in the two countries, it is seen that one does not discriminate between the rape taking place within wedlock and outside it and the other one does that. Marital rape is illegal in United States but not in India. It is still based on the Marital Rape Exemption, which existed in common law but has now been eradicated in many of the countries.

India is still lagging behind in this point and it is a major setback for providing justice to the women. Marriage should not be considered as a license by the men to exploit the women and to go unpunished for this offence.

The immediate demand is that women be protected in a wedlock and that marital rape be declared an offence. India has the largest democracy in the world and it should provide for some law on this point and should not remain silent. More or less, every law is being misused somehow but that cannot be the ground for not recognizing the offence. Marriage should no longer serve as a license to rape. Rape causes severe physical and mental injuries. The law should not turn a deaf ear to such atrocities and violence being faced by the women.