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Suggestive Provision's for Amendment of Marital Rape Laws

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This article deals with the law provision which should be included while drafting the laws for Marital Rape. In India, there is no punishment for Marital Rape as it doesn't come under the definition of Rape which is defined in Section 375 of I.P.C. The Ministry of Women and Child Development while answering a question asked in Lok Sabha regarding the criminalization of Marital Rape, stated that an appropriate decision will be taken by Government at the appropriate time based on the feedback received from stakeholders.¹ Karnataka High Court also stated that the Marital Rape exception Regressive violates Article 14 and High Court also stated that the Husband is not the ruler of the Wife's body and Mind². So, there is a need for an Amendment in Indian Criminal Law that should be helpful for Indian Married women.

Keywords: *marital rape, section 375, article 14, right to life.*

¹ Anirudh Vijay, 'Marital Rape As Offence- Based On Feedback From Stakeholders, Appropriate Decision Would Be Taken At Appropriate Time: Centre Tells Lok Sabha' (*Live Law*, 4 April 2022) <<https://www.livelaw.in/news-updates/marital-rape-offence-feedback-stakeholders-appropriate-decision-time-centre-lok-sabha-195705>> accessed 01 April 2022

² Mustafa Plumber, 'Marital Rape Exception Regressive, Violates Article 14; Husband Not Ruler Of Wife's Body & Mind : Karnataka High Court' (*Live Law*, 23 March 2022) <<https://www.livelaw.in/top-stories/marital-rape-exception-regressive-violates-article-14-husband-not-ruler-of-wifes-body-mind-karnataka-high-court-194834>> accessed 01 April 2022

INTRODUCTION

India is the major hub from where a large number of domestic violence cases are reported. According to a report published by National Crime Record Bureau in 2020, around 77 rape cases on average every day were reported around the nation. The NCRB data also showed that in total crimes which were reported against women in the year 2020, the maximum number of cases i.e., 1,11,549 were registered under the category of cruelty by husbands and family members.³ Now the question arises what is Marital Rape? Why it should be criminalised and why till date it is not criminalised in India and many more.

The definition of Marital Rape in simple language is the forceful intercourse between husband and wife without obtaining the consent of one i.e., either man or woman. In the Indian Penal Code, 1873 Marital Rape is defined under the Section 375⁴ exception in which it is stated as the rape of a wife by a husband will be termed as rape the condition imposed is wife must possess an age below 15 years which ultimately proves that there is no punishment for marital rape as in India legal marriage age of women is 21 years and for man is 21 years as per as the new amendment brought by the Government in 2021, so in any case of marital rape, the wife age will be of 16 years above which do not satisfy the condition which is required for the punishment of rape under Section 375 of Indian Penal Code due to which husband is set free and because of this reason many husbands are raping their wife every day in India. And due to this age factor mentioned in Section 375 of the Indian Penal Code, there is no punishment for Marital Rape in India. Many cases of Marital Rape are not even reported as the women are afraid of their family's so-called prestige in the society which is more important to them rather becoming the victim of rape by their husbands every day. Some women do not report the cases as they are afraid that their husbands will give them divorce and their family and especially the society will not accept it. The word '**society**' is very important mainly in India as these people who are called society is there to judge the decision which is taken by every individual in the society and then they will make an analysis of the situation and then they will impose

³ 'India records 80 murders, 77 rape cases daily in 2020: NCRB report' (ANI News, 16 September 2021) <<https://www.aninews.in/news/national/general-news/india-records-80-murders-77-rape-cases-daily-in-2020-ncrb-report20210916122845/>> accessed 01 April 2022

⁴ Indian Penal Code, 1860, s 375

their so called good judgement on the individual and the individual has to follow the given good judgement by the society if he or she will not follow their judgement, they will discriminate him or her from their society. Who has given the right to the society to impose their valuable judgement on the individual, is it the Hon'ble Constitution of India? The answer to this question is **society has given authority to themselves impose their decision on the individual.**

Yes, Marital Rape should be criminalised, and strict law and punishment should be imposed on the convicts of Marital Rape. Then, the question arises that what kind of laws should be made, what will be the punishment for the accused, and many more.

SUGGESTIVE PROVISIONS WHICH SHOULD BE INCLUDED IN THE AMENDMENT

Some suggestions should be kept in mind while drafting the law on Marital Rape. The suggestions are-

1) *If the laws which are made for Marital Rape are women-centric in nature, then what will be the impact of law on society*

If the laws which are made are women-centric then it will have a great impact on society especially the male in the society.

- **Evidence of innocence** - Taking a situation, if a wife falsely accuses her husband that he had forcefully raped her and the women also satisfy all the conditions which are required to register the case of Marital Rape, from where the husband will get the evidence of his innocence. As the husband is not able to produce evidence of his innocence before the law of court, he will be punished for a crime that he has never done.
- **Increase in divorce rate and decrease in the rate of marriage among male society** - some women in the society can use this law as a tool to blackmail their husband and his family which will lead to an increase in divorce rate and decrease in the rate of marriage among males. The use of this law as a tool will also create the phobia of marriage

among the male category due to which there will be a decrease in the rate of marriage among the males.

- **Violation of Article 14 of The Constitution of India** - as if the law formed is women centric, it will be favourable for women which will be a violation of Article 14⁵ of The Constitution of India which states equality before the law.
- **Misuse of law as a tool** - some women can misuse this law as a tool against their husband and his family to blackmail them so that they can earn a good compensation in the form of money, land, etc from their husband's family.

The laws which should be made for Marital Rape should possess a neutral nature but some points should be kept in mind and some suggestions what should be included while drafting the Marital Rape law:

1. **Evidence of proof and innocence** - how the wife will show the evidence proves that she has been raped by her husband, or how the husband will present evidence of his innocence, so this is one of the challenges which will be faced while drafting this law.
2. **Impact on society** - if the husband is convicted for this offence, and is punished after that her husband's family will not allow the wife to live in their house and take a situation if they allow her to live with them, so what are the chances that they will not hurt her. The woman with whom this offence has happened do the society will accept her, do her own parents will accept her? will women be allowed to do remarriage? These are also some questions that should be put into consideration while drafting the law.
3. **Impact of Personal Laws** -In India, we follow various Personal Laws like Hindu laws, Muslim laws, etc. In many personal laws, there are different methods of divorce granting maintenance to women. So, while drafting this law we should keep those conditions in mind which do not violate any of the provisions of these Personal Laws.

⁵ Constitution of India, 1950, art. 14

4. **Law formed should have a uniform method of divorce and maintenance** - as in India we follow, or we consider personal law for divorce and grant of maintenance between a husband and wife. So, the act which will be formed should have a special provision included in it of divorce and maintenance so that it should maintain equality among each other.
5. **Punishment for Women** - In some conditions, women can also be accused of marital rape, then there should be the provision of punishment for women also. If the wife has filed a case of Marital Rape against her husband and if the case has been found to be a fraudulent case, then, some punishment should be there for the woman for registering a fraudulent case against her husband.
6. **Maintenance** - If the wife is the victim of Marital Rape if she does not have any source of earning and is solely dependent on herself then, some mode of maintenance in the form of money should be provided to her on monthly basis by her husband to maintain her daily needs.
7. **If the husband and wife possess a child then** - if in case husband and wife have a child and the court has given a decision of divorce then who should be given the possession of the child, then the possession of the child will be dependent on his own will. Every month a police officer should visit and should meet the child and ask him or her if he or she is facing any problems in living and in a month, the child should be allowed to meet his or her parent from he or she is separated. If the child is in their mother's possession then-husband will give his wife an amount of money for his child's education to his wife or if he does not have trust in his wife that she will spend this amount on other things then he will direct his child fees on monthly basis in child's school or college. If a child is a very small age is not able to decide with whom he or she will live then the court will give his or her possession to his or her mother and when he or she attains the age in which he or she is able to decide then he or she would tell his or her decision to the police officer who visits him or her monthly and police officer will pass on his or her decision to respected authority so that procedure of possession can be carried out.

8. **Procedure to Transfer of Possession of child** - the procedure to transfer possession of the child will be conducted in the court guidance so that the procedure of possession of the child should be transparent. The court will ensure that no kind of pressure is made on the child. In this procedure, the free consent of the child is taken.
9. **Formation of Check and Balance committee** - The committee should be formed to maintain check and balance between the police and the victim. So, there should be a crystal and clear inquiry into the case. This committee which will be formed should be managed by the Government. If the victim is poor or not able to arrange legal aid this committee should provide them with Legal assistance with the help of the Government.
10. **Set up of special court for speedy trial** - there should be set up of special court for this matter so that there should be a speedy trial and the victim can get speedy justice.
11. **Women judges should be present on the bench of the special court** - the special court, which would be set up for these matters, the bench should be of 3 or more judges, and it should comprise of compulsory one women judge.
12. **Registration of F.I.R before Magistrate** - the F.I.R registered in this matter should be registered before the Magistrate so that no problem or no inconsistency should occur between police and family. The inquiry of the matter will be crystal and clear.
13. **Composition of Inquiring Police team** - the team should comprise at least one women officer in the inquiring police team. So that women victims can share every aspect of the incident which has happened with her with the lady officer comfortably and women victims can share and express their emotions to the lady officer.
14. **Period of inquiry** - the inquiry should be complete within the period of 1-2 weeks at most 2 weeks. A fixed period of inquiry will help the court in delivering a speedy judgement. If the inquiry is not completed within the given period, then a magisterial inquiry should be conducted on the in-charge police officer and his or her team.

AUTHOR'S ANALYSIS: CONCLUDING REMARKS

So, these are some provisions that should be included in the amendment of the Marital Rape Law. If Marital Rape is criminalised in India, it will bring a huge development among Indian people and especially Indian women. Indian women who are victims of marital rape will get justice, but they will get justice only when they will come forward and raise their voices against this crime and exploitation made towards them. But if the wife only does not raise her voice against her family and her husband these laws which are formed for their beneficiary to get them justice will not be helpful for her.