

MARITAL RAPE-CONSTITUTIONALITY OF SECTION 375

SPOT THE DIFFERENCE!



What is rape? Forceful sexual intercourse by a man with a woman. What is marital rape? Forceful sexual intercourse by a husband(man) with his wife(woman). Is there any difference between the two? Is the word marital so important as to ignore the term rape? Technically, both the terms mean the same thing. Sexual assault, ripping of dignity of a woman by a man. If you can spot the difference in the picture then you also need to think if this difference is major enough to force sexual relations on a woman without her consent. It doesn't matter what relation the man and woman share. What matters is there is no consent of the woman in the activity.

Section 375 of the Indian Penal Code criminalizes the rape of a woman by a man but it very conveniently leaves out the rape committed by a man on a woman if they are married and above 15 years of age. Is this exception clause valid? At the basic outset, any law is valid only if it passes the test of constitutionality. The exception clause in section 375 violates the fundamental rights of a woman. It also violates the preamble of the constitution as it is resolved to secure to all citizens justice which eventually India will not be able to secure until clause (2) of section 375 is declared as unconstitutional and marital rape is made a crime.

When the state supports this exception it violates article 14 of the Indian Constitution as it discriminates on the basis of marriage a twofold basis. It discriminates between the victim by not giving justice to women who are married and secondly between the accused, it lets go those who committed the crime on their wife. In *Budhan Choudhary v. State of Bihar*¹ and *State of West Bengal v. Anwar Ali Sarkar*² Supreme Court held that any classification under Article 14 of the Indian Constitution is subject to a reasonableness test that can be passed only if the classification has some rational nexus to the objective that the act seeks to achieve. But this exception defeats the purpose of section 375 which is to protect women and ensure justice is given to them by exempting the husbands from the punishment. This exception also violates Article 21 as the right to live with dignity of a woman is taken away from her when she is not given justice. This is also recognized by Indian courts in various cases. In *Bodhisattwa Gautam v Subhra Chakraborty*³, Apex court held that rape is a crime against the basic human rights and the violation of victim's right to life and dignity, thus violating article 21. In *Suchita Srivastava v. Chandigarh Administration*⁴, the Supreme Court equated the right to make choices related to sexual activity with rights to personal liberty, privacy, dignity, and bodily integrity under Article 21 of the Constitution. The Apex court in *State of Maharashtra v. Madhkar Narayan*⁵ opined that every woman has the right to sexual privacy and no one can violate this right. Even after recognizing these rights of women Indian Courts keep denying the right of a married woman to get justice because the Ministry of Home affairs wants to protect the belief of Indian people about Marriage as a sacrament.

¹ 1955 SCR (1)1045

² 1952 SCR 284

³ 1996 SCC (1) 490

⁴ (2009) 9 SCC 1

⁵ AIR 1991 SC 207

Indian Courts seriously need to decide whether taking seven rounds around a fire or a marriage certificate take away the right of woman to live with dignity? Does a mangalsutra take away the right of a woman to sexual privacy? Does sindur in a woman's forehead gives courts the right to deny her justice? When a woman says I do, does she give up her right to say "I don't want to"? The Nirbhaya judgment, Vishakha guidelines, Sabrimala Judgment blind the Indian people to think that women are empowered. But are they really empowered? Aren't we still living in the same society where women are considered to be the possession of men? Would Nirbhaya be denied justice if the man who raped her was her husband? And if the answer to this question is yes, we seriously need to rethink if the Indian justice system is really that efficient as it is portrayed to be!