



EXPLORING CONCERNS ASSOCIATED WITH MARITAL RAPE IN INDIA: AN IN-DEPTH LEGAL ANALYSIS

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Abstract

Marital rape, the act of non-consensual sexual intercourse within a legally recognized marriage, is a complex and often overlooked issue that challenges traditional concepts of trust within marriage. This problem hinges on the intricate relationship between consent and power dynamics within marital relationships. Marriage is often seen as a sanctuary of trust and mutual respect. However, the presumption of ongoing consent in marital relationships can obscure instances where consent is absent. Power imbalances due to gender, societal norms, or cultural factors further hinder communication and victim agency.

Addressing marital rape requires a comprehensive legal framework that upholds autonomy and bodily integrity for all, regardless of marital status. Historically, many legal systems have treated marital rape as an exception, hindering prosecution. While progress has been made in some jurisdictions, challenges persist in enforcing these laws due to social stigmas, underreporting, and the difficulty of proving non-consensual acts in private settings.

This paper is particularly relevant in India, where marital rape remains a sensitive and controversial issue. It seeks to understand the concept of marital rape; analyze the legal framework surrounding it; examine relevant court cases; and advocate for the recognition of marital rape as a crime deserving punishment. In a world evolving towards greater gender equality and individual rights, addressing marital rape is a crucial step towards justice and the protection of all individuals within the institution of marriage.

Keywords: Marital Rape, Sexual Intercourse, Intimate, Potentially, Victim, Cultural Factors,

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1. INTRODUCTION

In general, marital rape refers to the act of sexual intercourse or sexual activity that occurs between spouses without the explicit consent of one of the partners. It involves one spouse forcing or coercing the other into engaging in sexual acts against their will. In many societies, traditional perceptions of marriage have often led to the assumption that consent to marriage implies consent to sexual activity within the marriage, disregarding individual autonomy and bodily integrity.

Historically, many legal systems did not recognize marital rape as a crime, primarily due to the belief that marriage implied automatic consent to sexual activity. However, over the past few decades, there has been a growing acknowledgement of the importance of consent and individual rights within the context of marriage.

Even activists, scholars, and legal reformers have advocated for the criminalization of marital rape, emphasizing that consent should be ongoing and freely given, even within a marital relationship. This movement has led to changes in laws in various countries, with marital rape being recognized as a criminal offence, separate from other forms of sexual assault.

It's important to note that attitudes and laws regarding marital rape vary significantly across different cultures and legal systems. While progress has been made in many parts of the world, there are still regions where marital rape may not be explicitly criminalized or where enforcement remains challenging due to social, cultural, or legal barriers. The recognition and understanding of marital rape raise broader discussions about consent, gender equality, and human rights within intimate relationships on which this paper focuses on.

Marital rape stands as the most morally and physically abhorrent transgression within a human society. It infringes upon the fundamental rights of the victim as enshrined in Article 21 of the Constitution. Consequently, the judiciary should handle such cases with utmost seriousness and decisiveness. Sexual violence, aside from its corrupting nature, constitutes an illicit intrusion into a woman's privacy and purity. It deals a severe blow to her esteemed self-worth and disrespects her dignity. It degrades and demoralizes the victim, often leaving behind a lasting and devastating impact. A perpetrator of such an act not only inflicts physical harm but also leaves an indelible mark on a woman's most cherished aspects, including her dignity, respect, reputation, and

innocence. Marital rape is not just a crime against society; it is an offence against women and, by extension, society as a whole. It violates the essence of human rights and breaches the fundamental rights guaranteed by the Indian constitution.

2. LEGAL FRAMEWORK RELATING TO MARITAL RAPE IN INDIA

The term "rape" originates from the Latin word "rapio," signifying a forcible seizure, which is the defining characteristic of this offence. In simple terms, it refers to sexual intercourse with a woman against her will, achieved through force, fear, or deceit. It can be described as "the abduction of a woman without her consent, through the use of force, fear, or deception," or "sexual intercourse with a girl under the age of sixteen, even if she consents." In layman's terms, 'rape' typically involves a violation of a woman's physical and psychological integrity, constituting an egregious offence. It extends beyond being a violation against an individual woman as it is an affront to society as a whole. It profoundly affects a woman's psychological well-being, plunging her into severe emotional turmoil. Consequently, rape stands as one of the most abhorred crimes, not only violating fundamental human rights but also infringing upon the victim's cherished rights, including the Right to Life enshrined in Article 21 of the Constitution.

In India, the legal definition of rape has been defined under the Indian Penal Code as engaging in sexual intercourse with a woman under various circumstances, including when it occurs against her will, without her consent i.e., through coercion, misrepresentation, or fraud, or when she is in a state of intoxication, deception, or unsound mental health. Additionally, it qualifies as rape if the woman is under 18 years of age. Under the IPC, a rape has been defined as involving sexual intercourse with a woman under specific conditions, which encompass: a) engaging in sexual intercourse against her will; b) conducting sexual intercourse without her express consent; c) acquiring consent by inducing fear of death or harm; d) gaining consent through deceit, particularly when the perpetrator is aware that he is not her legal husband; e) receiving consent from a woman who, due to mental incapacity, intoxication, or the administration of stupefying substances, cannot comprehend the nature and consequences of her consent; f) involving a woman under 16 years of age, regardless of whether she consents or not. Further, even penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Additionally, the

lack of bodily resistance is an immaterial thing for committing an offence.

In 2013, the J S Verma Committee was established to review criminal law reforms in response to the horrific gangrape and murder of a 23-year-old paramedic in Delhi in 2012. The committee recommended the elimination of the marital rape exception. However, the government at that time, led by the Congress party, did not revise the marital rape law as suggested. But which was subsequently amended in 2013, to redefine the definition of rape thereby modifying Sections 375 and 376 for the old sections and by adding Sections 376- A to 376-D in the IPC which was Subsequently amended in 2019 with the Inclusion of Section 375 (e) which states that for a repeat rape offender to be imprisoned for the rest of his life or sentenced to death.

It is also pertinent to mention that the consent plays a relevant role in rape. According to IPC, Consent is officially described as the woman's unambiguous, voluntary agreement for a specific sexual activity. It's important to note that marital rape is an exemption when it comes to consenting, as it is not considered a criminal act according to the Indian Penal Code, provided the woman is over 18 years old. Moreover, every such act can't come under the definition of rape and hence it has an exemption to it.

Under this section, two exceptions are outlined. The first exception pertains to situations involving medical treatment or intervention, where such actions do not amount to rape. The second exception applies to sexual intercourse, or any sexual act conducted by a husband with his wife, provided she is above the age of 15, and such acts are not classified as rape within the legal framework. than 10 years, but which may extend to imprisonment for life, and shall also be liable to fine. About punishment, except in certain aggravated situations, every accused will be imprisoned for not less than seven years, but it may extend to imprisonment for life, and shall also be liable to fine. But in aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less.

Regarding the paper's subject matter, the issue at hand is highly contentious. According to IPC, which states that "Sexual intercourse or sexual acts by a man with his wife, when the wife is not eighteen years old, does not constitute rape," creates an unjustified and arbitrary distinction between a married underage girl and an unmarried

one. Consequently, this provision infringes upon the principles laid out in Articles 14, 15, and 21 of the Indian constitution.

In the context of marital rape, it's worth noting that even the apex court in the land has decreed that engaging in sexual intercourse with a minor wife between the ages of 15 and 18 constitutes "rape." This ruling significantly narrows the scope of the "marital rape exception" in India, which previously shielded husbands from rape charges involving their wives of certain ages. Consequently, this judgment should not be considered when discussing the issue of "marital rape" involving adult women. In this case, the petitioner argued that Section 375 of the IPC 1860, Exception 2, created an unjustifiable distinction between wives under the age of 15 and those between the ages of 15 and 18. Removing this distinction would subject all wives to the statutory rape provision. Conversely, the respondents contended that Section 375 of the IPC, Exception 2, established an unwarranted division between spouses under the age of 15 and those between the ages of 15 and 18, a categorization introduced in March 2013.

In response to the argument, the highest court categorically dismissed it with the following statements: "The notion that the institution of marriage could be undermined by the marital rape of an underage girl cannot be acknowledged. Marriage is a private commitment, and its status as an 'institution' can only be altered by the enactment of laws that deem it illegal and criminal." Justice Madan Lokur underscored the injustice faced by numerous young girls who are married before reaching the age of 18, emphasizing that "A child remains a child whether she is married, single, divorced, separated, or widowed."

An established tradition that is endorsed by the IPC, 1860, essentially erodes a girl child's ability to safeguard her bodily autonomy. Under Section 375 of the IPC, her husband essentially holds complete authority over her body, permitting him to engage in sexual acts without her awareness or consent, as such actions do not qualify as rape."

The Parliament has periodically revised both the legal age for marriage and the legal age for providing consent, particularly regarding sexual activities. Currently, no girl under the age of 18 is allowed to enter into marriage or provide her consent. However, the increase in the legal age of consent for wives to 15 years renders Exception 2 within the law arbitrary, unjust, and discriminatory, infringing upon the rights of young

girls. It's important to note that age restrictions have been raised in various other legal contexts, making this particular exemption seem arbitrary and inconsistent. The Supreme Court, taking into account international agreements like the Convention on the Rights of the Child (CRC) and the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), to which India is a signatory, found that the marital rape exemption not only permitted "child marriage" but also violated the provisions of these agreements. Additionally, it was determined that the Exception contravened Articles 14 and 21 of the Constitution, rendering it unlawful. Furthermore, the exemption displayed internal contradictions and clashed with other existing laws. Ultimately, considering the profound societal consequences of endorsing underage marriage through the marital rape exemption, the Court deemed it untenable. Another disconcerting aspect is the artificial distinction that disregards the trafficking of young girls, necessitating collective efforts to combat this grave societal issue.

3. WHETHER THE MARITAL RAPE EXEMPTION IS CONSTITUTIONAL

The provision of IPC creates an unnecessary and arbitrary differentiation between a married girl child and an unmarried girl child. It states that "Sexual activities by a man with his wife, the woman being not 18 years old, is not considered rape." This distinction is unjust, especially for girls aged 15 to 18, as it implies that even if a husband forces his young wife into sexual relations, it is not considered rape, while an unmarried girl is protected in such a scenario. Therefore, it can be argued that marriage alone cannot be assumed as an implicit consent for a woman to engage in sexual activities with her husband. There is no logical correlation between the marital status of a young girl and any implied consent for such actions. This artificial distinction violates Article 14 of the Constitution, as it is arbitrary, discriminatory, and not in the best interests of the girl child.

This distinction contradicts the principles and values enshrined in our Constitution, as well as our commitment to international conventions. On the one hand, the Constitution guarantees a girl child the right to lead a life of dignity, whereas the provisions under the IPC, violate her bodily integrity and autonomy in making reproductive choices. The right to life for a girl encompasses the freedom to grow into a healthy, educated, and financially independent woman. It is important to acknowledge that the era in which married women

or young girls could be regarded as the property of their husbands, subject to their whims, has long passed. Women, including not just juvenile girls, hold equal rights under the Constitution, and no law should be interpreted in a manner that departs from this principle. Any notion that perpetuates such a fallacy, in violation of the Constitution, must be firmly rejected. The Supreme Court referred to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the In-Depth Study on All Forms of Violence against Women submitted to the United Nations General Assembly in 2006. The Court used this study to illustrate the harmful traditional practice of early marriage and its mention of marital rape as a specific form of violence against women that should be criminalized.

Additionally, CEDAW emphasizes the necessity to prevent child marriages and establish a minimum age for marriage. India, being a signatory, is obliged to stop child marriages under CEDAW. International conventions that India has ratified, such as the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Racial Discrimination, establish that non-consensual sexual contact between a husband and a child bride "constitutes a violation of her human right to liberty and dignity." This conflicts with Other Laws which will be discussed in the later part of the study.

4. CONFLICT WITH OTHER LAWS IN INDIA

In India, the classification contradicts the core principles of various laws regulating sexual activities, marriage, and minors. For example, laws like the Juvenile Justice (Care and Protection of Children) Act, 2015, the Protection of Women from Domestic Violence Act (PWDVA) 2005, the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Prohibition of Child Marriage Act, 2006, all acknowledge the physical and mental harm caused when sexual acts are forced upon sexually immature individuals.

Under laws other than the IPC, especially the POCSO Act, it's clear that a girl under 18 cannot legally give her consent for sexual activities. The POCSO Act defines penetrative assault and outlines aggravated penetrative sexual assault, even within a marital context. However, there's a contradiction in Section 375 of the IPC, where a husband isn't considered guilty of rape if his wife is between 15 and 18 years old but is guilty of aggravated penetrative sexual assault. The only

major difference between "rape" under IPC and "penetrative sexual assault" under the POCSO Act is that "rape" lacks a specific definition, and both offences carry the same penalties.

Further, the law's inconsistency is evident in assuming consent from legally incapable girls and ignoring the absence of consent from legally competent women. According to the Criminal Law (Amendment Act) of 2013, consent is a voluntary, unambiguous agreement for a specific sexual act. It doesn't extend to subsequent acts or sexual relations with other individuals. Therefore, marriage doesn't automatically imply consent for any sexual activity outside of it. Moreover, the PWDVA, defines domestic abuse as sexual abuse and is taken as an act that humiliates or degrades women. Thus, sexual contact without consent undoubtedly falls under this definition, affecting all women in marital or marital-like relationships, not just child brides.

In addition to that, the IPC's inconsistency is exemplified by its marital rape exemption (as discussed earlier), whereas less severe sexual offences like outraging a woman's modesty or sexual harassment are punishable if committed by a husband against his wife, but marital rape isn't treated as a crime. Such classification effectively legitimizes child marriages by not including forced sexual activities by child brides' husbands under the definition of "rape." This perpetuates the harmful consequences of child marriage on girls, their future children, and society.

The law in India consistently treats the age of 18 as the threshold for various legal aspects, including contracts, property, voting, and sexual consent. The apex court's decision in the Independent Thought case, criminalizing sexual relations with a spouse under 18 in India, leaves important analytical gaps. It fails to address situations where both partners are minors, raising concerns about the rights of young boys involved. Furthermore, the ruling does not extend to marital rape when the girl is over 18, leaving adult women vulnerable to coerced sexual relationships with their spouses. The legal justification used to declare Exception 2 as violating fundamental rights in the case applies equally to adult women, highlighting the need for gender-neutral provisions in the law to ensure equality and dignity for all individuals within marital relationships.

Similarly, it can be argued that the IPC infringes on the bodily integrity of adult women by denying them the right to refuse consent to sexual activity

with their spouses solely because of their marital status thereby violating Article 21 of the Constitution. Some argue that the existing age of sexual consent is too high, as young women under 18 often face accusations of statutory rape for their independent sexual choices. Lowering the legal age of consent is considered by some as a potential solution. In the later part of the study, the researcher's objective will be attempted to justify through relevant case studies.

5. CASE STUDIES

The issue of marital rape has been a contentious and complex legal and social challenge worldwide, and case studies on this subject serve as critical windows into the evolving discourse surrounding this deeply sensitive issue. These case studies will provide valuable insights into how Indian jurisdictions grapple with defining, prosecuting, and addressing marital rape within the context of intimate relationships. Further, examining specific instances and legal responses to marital rape sheds light on the broader societal and legal debates surrounding consent, gender equality, and the protection of individuals' bodily autonomy within marriage. Each case study serves as a microcosm of the broader global conversation on the recognition and redress of marital rape, offering lessons, challenges, and opportunities for progress in the pursuit of justice and gender equity.

The case of Independent Thought in 2017 marked a significant turning point in India's legal landscape. In this landmark decision, the Supreme Court of India unequivocally established that sexual intercourse with a minor wife, even within the confines of a marital relationship, constituted rape. This groundbreaking ruling challenged a longstanding exception within the Indian Penal Code, which had allowed sexual relations with a girl between the ages of 15 and 18 if she was married. The court's judgment not only redefined the legal boundaries surrounding marital relationships but also underscored the paramount importance of safeguarding the rights of the girl child and upholding principles of gender equality within the Indian legal system.

In Rajesh Sharma, issues were raised concerning with the misuse of Section 498A of the IPC, which deals with dowry-related harassment. The court issued guidelines to prevent the misuse of this section and emphasized the need for family welfare committees to review complaints before any arrests were made. However, this decision was criticized for potentially weakening the safeguards against domestic violence.

Further, in *Joseph Shine*, the Supreme Court decriminalized adultery by striking down Section 497 of the IPC, which treated a man having sexual relations with a married woman without the husband's consent as an offence. The court held that treating women as the property of their husbands was archaic and unconstitutional.

Earlier in *Sakshi v. Union of India*, the Supreme Court emphasized the need for reforms in laws dealing with sexual offences, including marital rape. The court acknowledged that women's rights were human rights and that the government should take steps to amend laws to address concerns like marital rape.

In the *State of Maharashtra v. Madhukar Narayan Mardikar*, While this case primarily dealt with the question of whether consensual sex could be considered rape if it later turned into rape due to a change in circumstances, it highlighted the importance of understanding consent and the evolving nature of sexual activity within marriage.

In another significant case before the Karnataka High Court, charges of rape brought by a wife against her husband were denied. The court's decision went against the exception outlined in rape law. While the court did not explicitly invalidate the marital rape exception, it permitted the prosecution to proceed. Before this, the husband had appealed to the High Court after a trial court had acknowledged the offence under Section 376 (rape). Justice M Nagaprasanna, a single judge on the Karnataka High Court, declared, "A man is a man; an act is an act; rape is a rape, whether committed by a man referred to as the 'husband' against a woman who is termed the 'wife'. The court also emphasized that the "outdated... regressive" belief that "husbands possess dominion over their wives, including their bodies, minds, and spirits, should be eradicated."

The marital rape is not explicitly criminalized in India. Unlike many other countries, India does not have a specific law that treats marital rape as a separate offence. Instead, it falls under the broader framework of sexual offences within marriage. Further, it is essential to note that the absence of a specific law criminalizing marital rape has been a subject of debate and concern in India. Activists and organizations have been advocating for legal reforms to address this issue and ensure the protection of spouses from sexual violence within marriage.

These case laws reflect some of the legal developments and discussions surrounding sexual violence and marital rape in India. They have played a significant role in shaping legal and societal perspectives on these issues. Keep in mind that legal interpretations and perspectives can change over time, so it's advisable to refer to up-to-date legal sources for the latest information.

Recently, in the case of *RIT Foundation* before the Delhi High Court, a panel of two judges, Justices Rajiv Shakdher and C Hari Shankar delivered a split verdict concerning a series of petitions challenging the marital rape exemption in the IPC on the issue of criminalisation of marital rape with one of the judges favouring striking down the provision, the other holding it was not unconstitutional and was based on an intelligible differentia. Justice Shakdher concluded that this exemption violated the Constitution and thus deemed it unconstitutional. In contrast, Justice Hari Shankar upheld the validity of the exception, contending that it was based on a reasonable distinction. Recognizing the significant legal implications of the matter, both judges granted permission to file an appeal with the Supreme Court.

The court's verdict came on PILs filed by NGOs *RIT Foundation*, *All India Democratic Women's Association*, a man and a woman seeking striking down of the exception granted to husbands under the Indian rape law. The petitioners had challenged the constitutionality of the marital rape exception under Section 375 IPC (rape) on the ground that it discriminated against married women who are sexually assaulted by their husbands. It was argued by the petitioner that the argument against marital rape immunity is grounded in the principles of equality, the right to life with dignity, personhood, sexual autonomy, and personal autonomy. These fundamental rights are protected under Articles 14, 19, and 21 of the Indian Constitution. Further, they contended that this exception creates an unjustifiable distinction between married and unmarried women, thereby infringing upon a married woman's right to give or withdraw consent to sexual activity. They further argued that courts have acknowledged the right to withdraw consent even during or between sexual acts, making the assumption of "consent in perpetuity" legally invalid.

Regarding the concept of a "reasonable expectation of sex," the petitioners argued that while there may be such an expectation in various relationships, including sex workers and other domestic

arrangements, consent is not deemed irrevocable in those instances either. Additionally, the petitioners pointed out that since this provision was introduced before the Indian Constitution came into effect, it should not be presumed to be in alignment with constitutional principles.

Ian's defence, the central government provided the exemption of marital rape from prosecution. Their rationale encompassed safeguarding men against potential misuse of the law by their wives and preserving the sanctity of the institution of marriage. Nevertheless, it was informed by the Government that there is a need for broader discussions on this matter. It was quoted that the Central Government established a committee in 2019 to evaluate the criminal laws in the country and after its final report, some steps can be taken.

6. CHALLENGES RELATED TO THE ISSUE OF MARITAL RAPE IN INDIA

The challenge of addressing marital rape in India is multifaceted, encompassing various legal, social, and cultural dimensions. Firstly, the absence of a clear and uniform legal definition of marital rape poses a significant hurdle. While there has been progress in recognizing certain forms of sexual violence within marriage, the lack of a comprehensive definition makes it difficult to prosecute offenders and protect survivors effectively. This legal ambiguity can lead to inconsistent judgments and uncertainty in cases involving marital rape.

Secondly, marital rape in India is often shrouded in social stigma and misconceptions. Many individuals wrongly believe that consent is implied within the bounds of marriage, which can lead to underreporting of incidents. Raising awareness about the concept of marital rape and challenging traditional norms is crucial but remains a significant challenge. Breaking down these societal barriers and educating the public about the importance of consent within marriage is essential for addressing the issue effectively.

Another significant challenge is the underreporting and lack of documentation of marital rape cases. Due to societal pressures, fear of retaliation, and a lack of support, many survivors choose not to report their experiences to authorities. This lack of reporting not only perpetuates a culture of silence but also undermines efforts to understand the true extent of the problem. Without accurate data and documentation, it becomes challenging to formulate effective policies and interventions.

Additionally, despite some legal advancements in recent years, the legal remedies available to survivors of marital rape remain limited. The absence of specific laws addressing marital rape, coupled with various challenges in enforcing existing laws, can result in survivors being denied justice. Legal complexities, such as evidentiary challenges and the difficulty of establishing a lack of consent in private settings, can make it challenging to prove marital rape cases in court. These hurdles can discourage survivors from pursuing legal action and seeking justice.

Lastly, addressing marital rape in India also requires political will and legislative reform. While there have been discussions and demands for legal changes, progress can be hindered by competing priorities, reluctance to challenge traditional norms and debates over the boundaries of marital privacy. Furthermore, even when laws exist, inconsistent enforcement and the attitudes of law enforcement officials and the judiciary can pose significant obstacles to justice for survivors. Overcoming these challenges necessitates a comprehensive and coordinated effort involving legal reform, awareness campaigns, support services, and a cultural shift towards recognizing the rights and autonomy of individuals within marriage.

7. CONCLUSION AND SUGGESTIONS

In conclusion, the issue of marital rape demands a comprehensive and compassionate response from societies, legal systems, and individuals alike. The understanding that consent is an ongoing process and not an inherent aspect of marriage is fundamental to dismantling the barriers that perpetuate this form of sexual violence. The power dynamics inherent in many marriages, influenced by gender roles, cultural norms, and societal expectations, must be actively addressed to create an environment where open communication and agency can thrive.

Legislative advancements that explicitly criminalize marital rape are vital steps toward justice, but they are not sufficient on their own. Implementation, enforcement, and continuous education are equally crucial to effect real change. Public awareness campaigns, educational programs, and support networks must be established to challenge harmful myths, provide survivors with avenues for healing, and promote a culture of respect and consent.

Ultimately, combating marital rape requires a collective effort to redefine relationships within the institution of marriage. This involves fostering an

atmosphere of equality, empathy, and understanding where the rights and dignity of all individuals are upheld. By shedding light on this often-taboo subject and taking meaningful actions, societies can move closer to eradicating marital rape and creating a safer and more just world for everyone.

Reference

1. Tarquin Dispossessed: Expropriation and Consent in "The Rape of Lucrece" on JSTOR. (n.d.). <https://www.jstor.org/stable/3648682>.
2. Constitution of India, 1950, Article 21.
3. Indian Penal Code, 1860, Sec 375.
4. Indian Contract Act, 1872, Sec 15.
5. Id., Sec. 18.
6. Id., Sec. 17.
7. Indian Penal Code, 1860, Sec. 85 and 86
8. Id., Sec. 375.
9. Id., Sec. 375 (a).
10. Committee reports. (n.d.). PRS Legislative Research. <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>.
11. The Criminal Law (Amendment) Act, 2013.
12. Indian Penal Code, 1860, Sec. 376- A to 376-D.
13. What is section 376E of the Indian Penal Code, The Indian Express (July 5, 2019) <https://indianexpress.com/article/what-is/what-is-section-376e-of-the-indian-penal-code-repeat-rape-offender-death-penalty-5762143/>.
14. Indian Penal Code, 1860, Sec. 87-91.
15. Id., Sec. 375 Exception.
16. Id., Sec. 376.
17. Id., Section 375, Exception 2.
18. The Constitution of India, 1950, Articles 14, 15, and 21.
19. Independent Thought v. Union of India and Others (2017) Writ Petition (Civil) No. 382 OF 2013.
20. Indian Penal Code, 1860, Sec. 375, Exception 2.
21. The Constitution of India, Articles 15(3) and 21.
22. The Constitution of India, Article 21.
23. Indian Penal Code, 1860, Sec. 375, Exception 2.
24. Independent Thought (n 19), Para 33.
25. Convention on the Elimination of All Forms of Discrimination against Women, 1965 Art. 16.2.
26. Protection of Children from Sexual Offences (POCSO) Act, 2012, Sec. 3.
27. Id., Sec. 5 (n).
28. Independent Thought (n 19) (n 24), Para 76.
29. Independent Thought v. Union of India, (2017)) Writ Petition (Civil) No. 382 Of 2013.
30. Rajesh Sharma v. State of U.P., (2017) Special Leave Petition (Crl.) No.2013 of 2017].
31. Joseph Shine v. Union of India, (2018): Writ Petition (Criminal) No. 194 Of 2017.
32. Sakshi v. Union of India, (2004), CriLJ 5025, 1999 (5) SCALE 376, (1999) 6 SCC 591.
33. State of Maharashtra v. Madhukar Narayan Mardikar, (1991) AIR SC 207.
34. Hrishikesh Sahoo v. State of Karnataka, (2018) SCC Online Kar 1261.
35. Id., Para. 16.
36. RIT Foundation v. Union of India, W.P.(C) 284/2015 & CM Nos.54525-26/2018
37. RIT Foundation is a non-profit organization founded in 2009 by educationist, writer, and philanthropist Dr. Chitra Awasthi. RIT Foundation works in collaboration with many NGO's promoting social and gender equality in India. In 2015, they filed a petition - RIT Foundation v. Union of India writ petition c no. 284 of 2015 seeking to criminalize marital rape. It will be coming up before the Delhi High Court for final hearing early next year.
38. Navas, S. (2021). Marital Rape: A Hideous Countenance of India's Criminal Justice System. Issue 4 Int'l JL Mgmt. & Human., 4, 110.
39. Tarafder, A., & Ghosh, A. (2020). The Unconstitutionality of the Marital Rape Exemption in India. U. Oxford Hum. Rts. Hub J., 202.
40. Iram, S., & Patri, S. K. (2023). Is Marriage a Contract for Sexual Slavery? A Study on Marital Rape. NUALS LJ, 17, 60.
41. Pant, R. (2022). Exception to Marital Rape: A Violation of Human Rights. Issue 6 Indian JL & Legal Rsch., 4, 1.
42. Chitkara, M. G., & Śarmā, B. R. (1997). Indian republic: Issues and perspective. Aph Publishing.
43. Kurland, P. B. (1961). Of Church and State and the Supreme Court. The University of Chicago Law Review, 29(1), 1-96.
44. Stafford, N. K. (2007). Permission for domestic violence: Marital rape in Ghanaian marriages. Women's Rts. L. Rep., 29, 63.
45. Murray, K., & Hunter Blackburn, L. (2019). Losing sight of women's rights: the unregulated introduction of gender self-identification as a case study of policy capture in Scotland. Scottish Affairs, 28(3), 262-289.