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Understanding Marital Rape in India: A Discourse on Textual and Constitutional Perspective

UNDERSTANDING MARITAL RAPE IN INDIA: A DISCOURSE ON TEXTUAL AND CONSTITUTIONAL PERSPECTIVE

by

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ABSTRACT

Due to Indian patriarchal structure, women in India are yet not able to attain equality. This inequality is manifest in marital relation too. Different forms of violence against wives within marriage are common in the Indian society. Marital rape is any unwanted sexual act by the husband with his wife. Consent here plays no role. Sec. 375 of IPC defines rape but exempt from its ambit marital rape. As a consequence, it is not a crime in India if husband forces his wife into sexual intimacy. This paper attempts to look at concept of spousal rape and why it has not been criminalised. Constitutionality of exception 2 of sec. 375 of IPC in light of recent Supreme Court judgments is discussed in the paper. Bare equality of treatment, regardless of inequality of realities, is to be accepted by legislators and society.

Keywords: Rape, Marital Rape, Consent, Marriage, Equality, Privacy, Individual Autonomy.



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I. INTRODUCTION

*'Marital rape is not about sex, but about violence; it is not about marriage, but about lack of consent. Rape is rape and it should be penalized whenever and wherever it occurs.'*¹

The most conventional form in a society to show dominance over wife is marital rape. Ironically this violence is hidden behind the iron curtain of marriage. Issue of marital rape is not discussed and debated in Indian society because it is not yet considered as a crime. In India, this issue has shown a colossal loophole in legal regime. It is cheerless to know that only 36 countries across the world don't recognise marital rape as a crime². India is one among them. The first country to criminalise spousal rape in 1932 was Poland³. The first common law country to recognise rape in marriage as a criminal offence was Australia, in 1976⁴. Since the 1980s, number of other common law countries such as South Africa, Ireland, Canada, the United States, New Zealand, Malaysia, Ghana, Israel and other have removed the immunity given to husbands in case of having forced sex with wife, i.e. without her consent. The UN Women's 2011 report stated that 52 countries have outlawed marital rape⁵. Unfortunately, India unlike other developed countries has not yet criminalised marital rape despite the fact that numbers of activists endorse the view that it should be criminalised in India's patriarchal society.

But on the other hand, a more conservative view remains that marital rape cannot be criminalized as it will amount to encroachment into marital relation. Due to India's

patriarchal structure second view is more popular and dominant. Even the present government supports this orthodox view and believe that criminalization of husband in such cases will destabilize the institution of marriage.



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In the Parliament, the then Minister for Women and Child Development, Maneka Gandhi in her written reply stated that criminalisation of rape within marriage is not possible in India due to various reasons like education, poverty, societal structure, customs and values, religious beliefs. She also argued that in India marriage is not a contract but its sacrament. Referring marriage as sacrament and not treating it as mutual relationship between the two individuals our society has discriminated against women more. This view had led to the conceptualization of the female body as property reserved for the exclusive use of the husband and leaves no scope for the recognition of marital rape.

II. CONCEPTUAL UNDERSTANDING OF MARITAL RAPE

An ordinary phenomenon in our country is sexual assault on a woman. Rape, domestic violence, sexual abuse, eve-teasing, acid attack etc. are certain forms of sexual assault committed against a female. Of all these, rape is regarded as one of the most heinous kind of violence against a female across the world and remains an enormous threat to the security of women in the society. It is an extreme manifestation of male dominance which denies the women their human rights altogether. Rape is not merely an issue affecting individual women but it stems from sexist values and beliefs, which is problematic. Crime against women is not only a social issue but also a political issue which manifestly shows the imbalance of power between two sexes.

From the Latin term 'rapia', word rape has been derived, which means "to seize".⁶ Rape is an act of aggression where the women are denied her self-determination. The legal definition of rape may vary from one state to another but all most in every country the definition is limited to non-consensual or forced vaginal penetrations. Definition in many jurisdictions also exempts a particular class of males i.e. husbands, who cannot be charged with the rape of their own wives. In most of the legal system definition of rape does not go beyond the parameters of a patriarchal value system.² Definition of rape in most countries reflects the old notions of chastity, virginity, marital ties.⁸ Same notions are present in the definition of rape in our country also.

Section 375² (herein after referred as sec. 375) of the Penal Code, 1860 (PC) defines the term rape as a sexual intercourse with a woman without



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her lawful consent. Under sec. 375 of IPC the definition of rape is restricted to non-consensual or forced vaginal penetrations. The concept of valid consent has been discussed in detail by the courts in India and a cogent interpretation by the court has been there.¹⁰ It has been stated that consent under sec. 375 of IPC involves an active understanding of circumstances, actions and consequences of proposed Act.¹¹

Sec. 375 of IPC provides two exceptions when a sexual act without consent will not be considered as rape under the code. First exception provides that a medical

procedure or intervention will not come under this section.¹² Second exception states that, "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. This exception has become a wrangling issue as it provides that a husband will not be held liable for raping his lawfully wedded wife. After 2013, by criminal law amendment, age under this exception was increased from twelve to fifteen.

But in a recent case, *Independent Thought v. Union of India*,¹³ an archaic exception to the offense of rape has been read down by the Indian Supreme Court partially. The division bench ruled that a husband who rapes his minor wife (i.e. below 18 years) will not be exempted from sec. 375 of IPC and is to be held liable for rape. The Supreme Court stated that classification between unmarried and married female child below 18 years of age is artificial and arbitrary. It was considered as an unreasonable classification under Article 14¹⁴ of the Indian constitution, as the classification has no rational nexus with any clear objective to be achieved. Exception was also held unconstitutional on ground of Article 15¹⁵ (right against discrimination) and article 21¹⁶ (right to life) of the India's Constitution. Thus at present, second exception is to be read as:— "Sexual intercourse by a husband with his wife (wife not being a minor), does not amount to a rape under present section". This judgment has been very pertinent for those advocating for child and women rights. But by not holding whole exception unconstitutional it has been partial victory for those fighting for criminalisation of marital rape.



III. CONTEXTUALISATION OF ISSUE

California's Penal Code defines a spousal rape under section 262¹⁷ as anyone who has intercourse with their spouse without their consent and does so with force or threat, and for sexual pleasure or arousal. Ahmed and Shaba define marital rape as 'any unwanted intercourse or penetration (vaginal, anal, or oral) obtained by force, threat of force, or when [the] wife is unable to consent'.¹⁸ The term marital or spousal rape has not been defined in Penal Code, 1860. In a simple term it can be stated that when a husband has forced sexual act with his wife then it is to be considered as marital or spousal rape. Dr Sukanta Sarkar in her paper explains marital rape in a form of partner rape and states that in marital rape the perpetrator is the victim's spouse.¹⁹

In India, rape within marriage has just been conceptualised in the context of domestic violence and due to this, rape in marriage is overlooked. Bergen and Barnhill have argued that it is pertinent to recognise marital rape as a separate form of offence against women as the trauma suffered by women in such cases need to be dealt differently by service providers.²⁰ Due to globalisation and feminist movement, crime against women in past few years have gained recognition but unfortunately Indian government has refused to recognise marital rape as crime.

IV. HISTORICITY OF THE ISSUE

It is astonishing that the primary question of the rape of a female by her husband has not been accepted in the Indian society since time immemorial. In India, marriage is regarded the sacred institution, and by this institution one legalizes their right to procreate. It is considered that when a person enters into marriage then there is implied consent for sexual activity. According to K. Vibhute, this exemption is based on the mutual matrimonial contract and this contract takes the right from wife to retract her marital consent to engage in sexual intercourse with her husband.²¹

Marital rape exception history can be traced back to the ancient Sanskrit texts (like Upanishads, Manusmriti) and customs prevailing in our Indian society. The notion which Indian male have created because of social and cultural



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structure regarding marriage is "the license to have sex."²² According to Manusmriti, a wife is not being considered ideal if she denies having sex with her husband.²³ India being a patriarchal society has never thought of concepts like rape in marriage and instead considered it as a private matter between spouses which should not be communicated outside the walls of bedroom. During Mughal era also same view regarding marriage was in vogue and instead during this era condition of women deteriorated more in society.

Rape was recognised as a crime against women but not rape in marriage. Even marital rape as crime was not accepted by Britishers. Lord Macaulay provided exception to spousal rape under rape laws of the country because at common law in the seventeenth century, Lord Matthew Hale, stated that "the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract."²⁴ This view not only affected Indian rape laws but rape laws in many other common law countries. The statement given by Hale was based on theory of marital unity.²⁵ According to doctrine of "Unity in marriage", a man and women are considered to be single entity after marriage²⁶. So, it is impossible for a man to rape himself.

This draconian law of a colonial era has not been repealed even after independence. The patriarchal mind set and concept of privacy in matrimonial matter outlawed the concept of individual identity. Hindu Marriage Act, 1956, which deals with the components of marriage and divorce among Hindus, is also silent about it.

Sec. 375 of IPC is based on consent, i.e. whether consent is free or not, and burden to prove lies on victim. In case of husband and wife it is presumed that by entering into matrimonial relationship both have given consent for sexual act. So, when they are living together consent is presumed. Thus, the point taken into consideration by legislative body and law commissions has been restricted to valid or invalid consent only. For the first time, 42nd Law Commission Report endorses the notion of spousal rape. But it was restricted to a situation where husband and wife are living separately by a mutual consent or under a decree of judicial separation.²⁷ This amendment was



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accepted and brought into Penal Code, 1860. Other recommendation made by Commission was to impose criminal liability on the husband for having sexual intercourse with his minor wife but this recommendation was not accepted.²⁸ Ground stated for rejection was that when two persons enter into marital relationship then there is implied consent of sexual intercourse. So, a husband cannot be punished for raping his own wife, sexual intercourse being part of marriage²⁹. The question of validity of exception to rape again rose before the Law Commission of India in its 172 report.³⁰ But again the reported refused to criminalise husband for raping his wife by stating that it will amount to excessive intrusion into marital affairs. This report again demotivated the persons arguing for married women rights and gave dominance to

husband.

In 2012, in wake of Delhi rape case, a committee, under the chairmanship of Justice J.S. Verma was constituted for recommending amendments in Criminal Law System. The committee gave number of recommendations to make laws more effective to deal with heinous crimes against women. Surprisingly, one of the recommendations made by committee was removal of exception 2 from sec. 375 of IPC³¹. The report stated that there is no rational behind giving immunity to the husband for raping his wife. Report took into consideration that having such kind of exceptions gives the notion that women are property of husband. Though earlier women were considered as being the property of men but in 21st century this view is outdated and not in consonance with human rights. The Parliament Standing Committee on Home Affairs in its 167th report refused to remove marital rape exception on the ground that the entire family system will suffer and this can result in more injustice.³²

In 2015 through a question submitted in Rajya Sabha, DMK MP Kanimozhi advocated for removal of the second exception from the definition of rape provided under IPC.³³ The very same year a private member bill was tabled in Rajya Sabha by the Congress leader Avinash Pandey.³⁴ While introducing the bill he acknowledged the fact that marital rape is a very sensitive issue but on the other hand he stated why it's a proper time to criminalise forced sex



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in marriage. Unfortunately, the bill didn't get much support and he was even asked to withdraw the bill.

Again in 2018 a private member bill has been moved in Rajya Sabha, recognising that the social construct of patriarchy has made women a vulnerable class and this social construct has resulted to the exclusion of them in other social spaces.³⁵ Chapter II of the bill provides for amendment in rape law (sec. 375 of IPC) by deleting exception two.³⁶ Number of other acts like Prohibition of Child Marriage Act, 2006, Domestic Violence Act, Protection of children from Sexual Offences Act, 2012, Juvenile Justice (Care and Protection) of Children Act, 2015 has been passed for protection of women and children but none of them have covered marital rape explicitly. Marital rape can be stated as one of the oldest crimes in society but because of conceptualization of the female body as property leaves no scope, even today, for the recognition of rape within marriage.

V. CONSTITUTIONALITY IN INDIA

A constitution is the document of the founding faiths of the nation.³⁷ It is a unique legal document which lays the foundation for any countries social values and points the ways to achieve those social values. Drafters of the Indian Constitution were very well versed with atrocities faced by weaker sections of society and women. Keeping in mind the atrocities faced and the lower status which women possess in Indian patriarchal society they drafted constitution which not only protected their rights but also gave power to the state to take affirmative action for their protection and development.

Article 14³⁸ of the Indian constitution grants to every person equality before law and equal protection of law. Equality before law means that the state not to deny equal protection to its subjects. On the other side 'equal protection of the laws' means that the State is obliged to give special treatment to persons in different situation. Both the expressions try to achieve equality of status. Dr Jennings states that:

'Equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike.³⁹ Article 14 implies the absence of any special benefit to anyone without any rationale. It does not talk about absolute equality among humans. Explaining the first expression, Dicey said, "With us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same



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responsibility for every act done without any legal justification as any other citizen."⁴⁰

Article 14 is talking about equality in wider sense as it is the combination of both i.e. rule of law in England and the 14th Amendment in the US Constitution. Equality being a basic feature of the Indian Constitution can't be destroyed even by the constitutional amendment.

Courts in India have progressively interpreted Article 14 and have brought within its ambit due process clause also⁴¹. Article 14 in its ambit and sweep involves two facets, viz. it permits reasonable classification which is founded on intelligible differentia and the differentia must have a rational relation to the objects sought to be achieved.⁴² In *Jaila Singh v. State of Rajasthan*⁴³, SC observed that mere differentiation or inequality of treatment per se does not amount to violation of Article 14. In order to attract Article 14 person has to prove that the differentiation is unreasonable or arbitrary and it does not have any rational objective to be achieved. Though in *E.P. Royappa*⁴⁴, court freed Article 14 from the traditional classification test but it does not mean that the old doctrine does not stand today. Both old and new concept for interpretation of article 14 stands at equal footing. The purpose of an equal protection clause is to offer redress to the vulnerable groups, assailed by discriminatory practices.⁴⁵

After understanding Article 14 in its true and real sense, we can easily visualise that the exception 2 of sec. 375 of the IPC is violating equality concept. Bare reading of exception 2 of s. 375 IPC states that husband can have a sexual intercourse with his wife (wife not being minor) without her consent. This act of husband will not amount to rape regardless of her willingness. Thus, at present a married female cannot prosecute her husband for raping her but can prosecute for molesting her.

Under present exception classification has been made on the basis of marital status (i.e. married and unmarried women) and the object which this classification sought to achieve is family unity. Instead of making proper classification, this exception has created a class legislation by conferring privilege upon a class of persons arbitrarily selected i.e. husband. This classification is per se arbitrary and any legitimate purpose is not served by this classification. State has to justify its discriminatory conduct against married women. By having



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this provision in criminal law, we are still accepting Manu script declaration i.e.

*"In her childhood (a girl) shall be under the will of her father; in (her) youth, of (her) husband; her husband being dead, of her sons; a woman should never enjoy her free will."*⁴⁶

This classification is in conflict with provisions of constitution and denies married

women the equal protection of criminal legislation. It has been stated in *Dwarka Prasad Laxmi Narain v. State of U.P.*⁴⁷, that if any legislation arbitrarily or excessively invades the right then it cannot be held reasonable. The present exception 2 of s. 375 IPC clearly invades the right of dignity and bodily autonomy of married women. The exception carved out creates an unnecessary and artificial distinction between a married and an unmarried woman. The discrimination against married women is absolutely patent and cannot be accepted as constitutional. Sec. 357 exception 2 of the IPC should therefore be struck down as violative of Art. 14 of the Constitution.

Other article which is violated by this exception is Article 15(3). Constitution makers have realised that absolute equality may itself be a cause for inequality, so they have inserted an exception to Art. 15(1) i.e. Article 15(3).⁴⁸ Article 15(1)⁴⁹ prohibits discrimination on ground of sex, but art. 15(3) provide the power to the State to take affirmative action in favour of women and children.

Exception 2 to Section 375 of the IPC is not only arbitrary as per Art. 14 but is also discriminatory and contrary to the beneficial intent of Article 15(3) of the Constitution. Exception 2 to Section 375 of the IPC in the statute book is at no point beneficial to women; in fact it has placed married women at a great disadvantage. This exception is manifestly antithetical to the beneficent philosophy articulated by Article 15(3) of the Indian Constitution. *Independent Thought v. Union of India*⁵⁰ has categorically stated that Art. 15(3) can only be utilised for making laws in favour of women and if law disfavour women by any means then it is contrary to this article. It has been stated that this article should be given its full play and it can't be interpreted narrowly.⁵¹ Exp. 2 of 375 of IPC in no way comprehend to the vision the drafter had while drafting



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article 15(3) and in any form of interpretation it is not favouring women, rather it is protecting married men.

Marital rape is a clear violation of Art. 21⁵² of the Indian Constitution, the heart and soul of rights. The Indian Courts have been very progressive and transformative while interpreting Article 21. In *Maneka Gandhi case*⁵³ the court took the help of American case⁵⁴ to vividly explain the scope of the words 'life and liberty' under article 21. In *Sunil Batra v. Delhi Admn.*⁵⁵ while quoting *Filed, J*⁵⁶ court stated that the term 'life' means more than mere animal existence. The Supreme Court has moved beyond the literal interpretation to the term 'life and liberty' and has given expansive interpretation to the terms by bringing within its ambit privacy, dignity, movement, safety, security, among others.

While explaining the term life and liberty courts have stated that dignity of women is a part of a non-perishable and immortal self. Life has many shades and dignity is one of its ambits. In *State of Maharashtra v. Madhukar Narayan Mardikar*⁵⁷ court held that a woman is entitled to protect herself against an unwilling sexual assault, even of so called easy virtue. The recent Supreme Courts privacy judgment⁵⁸ has an important implication for women rights, especially with regard to the protection of individual autonomy. By holding right to privacy as fundamental right under article 21 court has broadened the arguments against sexual assault and right to bodily integrity is to be protected not privacy within marriage.

Court in Justice K.S. Puttaswamy (Retd) judgment stated that privacy is the constitutional core of human dignity and it safeguards individual autonomy. D.Y. Chandrachud, J, while holding privacy as fundamental right stated that privacy recognises the ability of individual to control vital aspect of life. Privacy includes with

its ambit marriage, family, procreation and home. If we look into judgment then the question to ponder upon is that concept of individual dignity and marriage both falls within the realm of privacy, so how balancing is to be done.

We need to understand that privacy within marriage does not mean that individual rights are not respected. The American Supreme Court in *Eisenstadt v. R. Baird*⁵⁹ stated that the right to privacy belongs to each one of the married couple separately and is not lost by reason of their marriage. Right to privacy



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is bound to take the human body as its first and most basic reference for control over personal identity.⁶⁰ Institutional privacy in present scenario cannot be given preference over decisional privacy. Right to privacy belongs to an individual and by entering into marriage women are not surrendering their right against husband.

Government need to take note that the personal laws which are governing a private sphere are also subject to the fundamental rights. The argument of privacy within marriage cannot act as shield for assault within marriage. Private sphere of an every individual is respected and protected by state. The civility of a civilisation earns warmth and respect when it respects more the individuality of a woman.⁶¹ An idea of dignity, autonomy and freedom is not defeated by marital relationship. Instead by not criminalising forced sex in marriage legislatures are not accepting the autonomy of female to control over intimacies of personal identity and have transferred the choice to have or not to have marital intercourse to the husband only. There is a need to analyse that it is the starkest form of invasion of personal identity and individuals' zone of intimate decisions. The wife is stripped of its control over the various parts of its body subjected to the humiliating sexual molestation. It is a forcible loss of the precious right to decide whether to have sexual intercourse or not. Forced sexual act is barbarous and pitiless, violating the right to privacy and individual autonomy guaranteed by Article 21.

VI. CONCLUSION

Indian society and legislature need to understand that marital/spousal rape is a worst form of violence against women at the level of family. By accepting rape within a marriage we are still accepting the archaic notion of women as property. Wives are not a sexual property of husbands. We have to look into that how forced sex in marriage is violating individual autonomy of women. Under the garb of marital privacy basic human rights of women cannot be violated.

Rape in any form is degrading, humiliating and affecting the health (both physical and mental) of the women. Rape violates the victim's privacy and personal integrity. It is not merely a physical assault but it is often destructive of the whole personality of the victim. A rapist is to be considered as rapist, why marriage should act as a shield for him. European Commission of Human Rights also endorsed the view that "a rapist remains a rapist regardless of his relationship with the victim."⁶²



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Exception 2 of sec. 375 of IPC is arbitrary and discriminatory and in no way for the protection of married women. This artificial distinction is contrary to the philosophy

and ethos of fundamental rights guaranteed by constitution. Rape within marriage is not only a violation of human rights, but is also recognised as an obstacle to development of women.

It's high time to recognise marital rape as violation of women's right to bodily integrity, privacy rather than just restricting it to definitions of domestic violence, assault. By limiting sec. 375 of IPC we are acknowledging rape within marriage as merely a sexual intercourse and not as crime and hence, unfortunately accept such behaviour. Instead of considering marriage as sacrosanct, it's a time to realise that marriage is based on mutual respect and trust. It is not marriage rather relation which is sacrosanct. No within marriage also means 'NO'.

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¹ Shashi Tharoor, 'The Citizen about the private member's bill 'The Women's Sexual, Reproductive and Menstrual Rights Bill, 2018' introduced by him in the parliament. <https://www.thecitizen.in/index.php/en/NewsDetail/index/7/15986/Marital-Rape-Is-Not-About-Marriage-But-About-Lack-Of-Consent-Shashi-Tharoor>.

² Do you think Marital Rape isn't a Crime?, DailyO (2019) <https://www.dailyo.in/variety/marital-rape-shashi-tharoor-countries-where-marital-rape-is-legal-consent-sexual-assault/story/1/29347.html>.

³ Shalini Nair, *Marital Rape is crime in many countries, an exception in many more*, The Indian Express (September 7, 2019). <https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/>

⁴ Shalini Nair, *Marital Rape is crime in many countries, an exception in many more*, The Indian Express (September 7, 2019). <https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/>

⁵ Meghan Casserly, *UN Women Report 2011: Good News, Bad News by the Numbers*, Forbes (July 6, 2011). <https://www.forbes.com/sites/meghancasserly/2011/07/06/un-women-report-2011-good-news-bad-news/#65e68e3e5667>

⁶ G.V. Akshaya and M. Kannappam, *A Study on Marital Rape in the Indian Legal Scenario*, International Journal of Pure and Applied Mathematics, Vol. 119 No. 17 2018, 1089-1100. <https://acadpubl.eu/hub/2018-119-17/1/94.pdf>

⁷ Dr. Vandana, *Marital Rape- Exemption under Penal Code, 1860: quest for Recognition and Liability*, ILI Law Review Vol. II, Winter Issue 2017.

⁸ Dr. Vandana, *Marital Rape- Exemption under Penal Code, 1860: quest for Recognition and Liability*, ILI Law Review Vol. II, Winter Issue 2017.

⁹ Penal Code, 1860, S. 375.

¹⁰ *State v. Nalini*, (1999) 5 SCC 253, *K.P. Thimmappa Gowda v. State of Karnataka*, (2011) 14 SCC 475.

¹¹ *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608.

¹² Penal Code, 1860, S. 375 Exception 1.- A medical procedure or intervention shall not constitute rape.

¹³ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

¹⁴ The Constitution of India, Art. 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹⁵ The Constitution of India, Art. 15: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

¹⁶ The Constitution of India, Art. 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹⁷ California Penal Code S. 262 https://www.cmcdefense.com/california_penal_code_section_262.php

¹⁸ R. Ahmed and N.J. Shaba, *Critical Analysis on Marital Rape and its Legal Consequences: Bangladesh Perspective*, 21 IORS Journal of Humanities and Social Sciences 7 (2016).

- ¹⁹ Dr. Sukanta Sarkar, *Crime Against Women*, Chapter 9, *Rape: A Crime Against Humanity*, p. 144, (Manglam Publications, Delhi) (2014).
- ²⁰ Raquel Kennedy Bergen, with contributions from Elizabeth Barnhill, *Marital Rape: New Research and Directions*, Applied Research Forum: The National Online Resource Centre on Violence Against Women, (2006). www.vawnet.org, 4.
- ²¹ K. Vibhute, *Rape within Marriage in India*, 27 Ind. Bar Rev. 167 (2000).
- ²² Sakshi Kanodia & Ranjabati Ray, *Why Penalize Marital Rape*, IOSR-JHSS Vol. 21, Issue 9, (10 September 2016) pp. 49-55.
- ²³ Sakshi Kanodia & Ranjabati Ray, *Why Penalize Marital Rape*, IOSR-JHSS Vol. 21, Issue 9, (10 September 2016) pp. 49-55.
- ²⁴ Sir Mathew Hale quoted in Rosemarie Tong, *Women, Sex and the Law*, 94 (1994).
- ²⁵ Dr. Vandana, *Marital Rape- Exemption under Penal Code, 1860: quest for Recognition and Liability*, ILI Law Review Vol. 11, Winter Issue (2017).
- ²⁶ Shobha Saxena, *Crime against Women and Protective Paws*, pp. 81, (Deep & Deep Publication Pvt. Ltd., New Delhi) (2001).
- ²⁷
- ²⁸ Law Commission of India, 42nd Law Commission Report, Penal Code, 1860, (June 1971).
- ²⁹ Arima Pankaj, *Independent Thought v. Union of India: An evaluation of the judgment and its repercussion in the field of marital laws*, IOSR-JHSS Vol. 22, Issue 11, Ver. 4 (November, 2017) pp. 79-85.
- ³⁰ Law Commission of India, 172 Law Commission Report, Review of Rape Laws, (March 2000).
- ³¹ Justice J.S. Verma (Retd.), Report of the Committee on Amendments to Criminal Law, (January 23, 2013).
- ³² The Criminal Law (Amendment) Bill, 2012, One Hundred and Sixty Seventh Report (Presented to Rajya Sabha on 1st March, 2013).
- ³³ *India not criminalise marital rape*, The Hindu (August 30, 2015). <https://www.thehindu.com/news/national/concept-of-marital-rape-cannot-be-applied-in-india/article7154671.ece>.
- ³⁴ *Private Bill on Making Marital Rape a Crime Tabled in RS*, Outlook Magazine (April 24, 2015).
- ³⁵ Dr. Shashi Tharoor, M.P., The Women's Sexual, Reproductive and Menstrual Rights Bill, 2018 (November 19, 2018).
- ³⁶ Dr. Shashi Tharoor, M.P., The Women's Sexual, Reproductive and Menstrual Rights Bill, 2018 (November 19, 2018).
- ³⁷ *Fatehchand Himmatlal v. State of Maharashtra*, (1977) 2 SCC 670 : AIR 1977 SC 1825.
- ³⁸ The Constitution of India Art. 14.
- ³⁹ M.P. Jain, *Indian Constitutional Law*, (Eight Edition, Lexis Nexis) (2018).
- ⁴⁰ Dicey, *Law of the Constitution* (10th edn.) 193.
- ⁴¹ *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3.
- ⁴² M.P. Jain, *Indian Constitutional Law*, 7th edn., Lexis Nexis, 2016 pg. 881.
- ⁴³ (1976) 1 SCC 602 : AIR 1975 SC 1436.
- ⁴⁴ *E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3.
- ⁴⁵ Gautam Bhatia, *the Transformative Constitution: A Radical Biography in Nine Acts* 57 (Haper Collins Publisher India) (2019).
- ⁴⁶ Manu, *The Ordinances of Manu*, V. 148 (Arthur Coke Burnell & Edward W. Hopkins trans., 1971). (Wherever, Manu has been quoted this translation has been used. For the original Sanskrit passages, see Manu, Manusmriti with the commentary Manubhaāsya of Ācaārya Medhaātithi, (Ganganath Jha ed., 1998).

47 AIR 1954 SC 224: 1954 SCR 803

48 Mamta Rao, *Constitutional Law 135* (Eastern Book Company, 1st Edn.)(2013).

49 The Constitution of India, Art. 15(1).

50 (2017) 10 SCC 800.

51 *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321 : 1954 SCR 930.

52 The Constitution of India, Art. 21.

53 *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

54 *Munn v. Illinois*, 1876 SCC OnLine US SC 4 : 94 US 113, 142 (1876).

55 (1978) 4 SCC 494 : AIR 1978 SC 1675, 1731.

56 *Munn v. Illinois*, 1876 SCC OnLine US SC 4 : 94 US 113, 142 (1876).

57 (1991) 1 SCC 57 : AIR 1991 SC 207.

58 *K.S. Puttaswamy v. Union of India*, (2018) 1 SCC 809.

59 1972 SCC OnLine US SC 62 : 31 L Ed 2d 349 : 405 US 438 (1972).

60 *T. Sareetha v. T. Venkata Subbaiah*, 1983 SCC OnLine AP 90 : AIR 1983 AP 356.

61 *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

62 *CR v. United Kingdom*, ECHR, Ser. A.No. 335-C (1995).

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