

Marital Rape: A curse on Indian Wives

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Abstract

“Rape” not just a word but a “sacrilege”, a transgression against the divine law of humanity. It is a dreadful recount that takes a toll over the innocence of a female, which tends to agonize the woman to the core. This act of evil per se is an offence, punishable under law.

The offence of rape is illegal, violative and against humanity only when it’s committed by an outsider or to say, a stranger. But why it isn’t any more an offence when the same is being done within the four walls of a matrimonial house where the body of a female get objectify to a tool in the hands of her male husband that he can use for his sexual pleasure. Why did the worth of woman consent being wife lose all its significance when it counts on her dignity, her volition to enter into a sexual relationship with her husband? This heinous crime is then veiled behind the pious sanctity of marriage.

The concept of marital rape is a parasite and a host to which is a marriage. This parasite scoots woman to a situation where the dread to confront it makes her suffer through unbearable gloomy thoughts that affects her psyche and not only this, she silently suffers emotional, mentally and physically. Innumerable social stigmas and myths against marital rape are the predominant grounds that make this social evil hide behind the iron walls of marriage.

The prevalence of marital rape in the name of consummation of marriage is unacceptable. It is unjustified to force a wife into a sexual intercourse with her husband irrespective of her volition, health etc. it’s moreover outrageous to know that the woman has a right to fight for protection when the violators are outside entities, but when the perpetrator of her bodily integrity is her husband, who she married with all the pomp and show, such protection is withdrawn by the legislators. Thus, there is a dire need to criminalize Marital Rape and “Treat Rape as Rape.”

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Marital rape: An Exemption

Understanding the Concept

To the general understanding of the concept of rape it is an illicit intercourse done by a man with a woman without her consent. In general words when a female is forced to get into a sexual relationship with a male without her consent it is termed as rape. Whenever a word rape is mentioned, it a general notion of the society that it has been done by an outsider or a stranger nobody thinks it off as an act which could be done by a husband. In this hypocrite, stereotype and conservative Indian society it is a matter of a conjugal right of a husband to have sexual intercourse with his wife irrespective of her consent and will. A married woman has “no say” in the matter of her bodily integrity when it comes to sexual intercourse with her husband; her will is solely subject to that of her husband. The legal definition of the word Rape varies and thereby the marital rape can be referring to as an unwanted intercourse by a man with his wife obtained by force, threat of force, or physical violence, or when she is unable to give consent. Marital rape could be by the use of force only, a battering rape or a sadistic/obsessive rape. It is a non-consensual act of violent perversion by a husband against the wife where she is physically and sexually abused.³

Marital rape in the current scenario can be seen as a byproduct of marriage through which the law eventually confers a right in a rem to husband against the res i.e. his wife and the rape as a mean to protect his res from the sexual aggression of other man. Therefore, the act of rape within marriage was not recognized as an offence as woman was considered the property of the husband, and a man could not be perceived to violate his property. It has moreover turned quite complex and complicate due to the involvement of personal relations in it, as an end of which the victim doesn't feel herself as a victim and could not gather the courage to stand against this offence she is subject to. This makes her suffer silently the unbearable and incurable wounds not only on her body but on her inner conscious and psyche as well.

In the present day, studies indicate that between 10 and 14% of married women are raped by their husbands: the incidents of marital rape soars to 1/3rd to 1/2 among clinical samples of battered women. Sexual assault by one's spouse accounts for approximately 25% of rapes committed. Women who became prime targets for marital rape are those who attempt to flee.⁴ Despite the prevalence of marital rape, this form of domestic violence has received relatively

³PriyankaRath, *Marital Rape and the Indian legal scenario*, volume no.2 India L.J, (2007).

⁴*Ibid.*

little attention from society over the years. Nonetheless, rape is rape — it doesn't matter if the perpetrator and victim exchanged holy vows or have children together. Simply put, it's about time the very real, very severe issue of rape within marriage be exposed for the sex crime it is.⁵

Rationale Applied

Marital rape being an exemption to rape provides “a license to rape” to husband in the name of marriage. This practice is prevalent since ages the history of which can be traced from the primitive societies with an outrageous rationale applied by them to the concept of Marital Rape

The marital rape exemption can be traced to statements by Sir Mathew Hale, Chief Justice in England, during the 1600s. He wrote, “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 herself in kind unto the husband, whom she cannot retract.”⁶ Surprisingly this was given the name of implied consent theory which was believed to be sufficient to justify the concept of marital rape.

He asserted that, upon marriage, the wife automatically hands over her legal person to the husband and consents to all sexual acts, which cannot be retracted at any later date for no reason whatsoever. He introduced within the marriage, a notion of ‘implied consent’ that started at the time of the marriage and continued for the entire course of the marriage, and such consent was deemed irrevocable. This established that once married, a woman does not have the right to refuse sex with her husband. Due to construction of sex as a woman's duty within a marriage, there is always a presumption of her consent.

But over time he propounded other theories i.e. unities theory and the separate sphere theory. Which stated that “By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband.”⁷ Accordingly wives were viewed as husband's chattel, deprived of all civil identity.⁸

⁵Michelle Soriano, Shocking Facts About Marital Rape, The Rebel Circus (May.27,2018, 12:01 Noon), <http://www.rebelcircus.com/blog/shocking-facts-about-marital-rape/>

⁶I M. HALE, the History of the Pleas of the Crown 629(S. Emlyn ed. 1778).

⁷WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 442-445, Vol, I (1765).

⁸L. KANOWITZ, WOMAN AND THE LAW: THE UNFINISHED REVOLUTION 35-38 (1969).

The contemporary rationales for the marital rape exemption exhibit an underlying adherence to the notions of female inferiority and female difference.⁹ It is believed that the “say” of female has no worth as her will is subject to the superiority of male and only an unmarried woman can be raped not a married one.

Legal position in India

“A Murderer kills the body but a Rapist Kills the soul” -Justice Krishna Ayer

Till the time so far, if we continue with the regime of section 375 and 376 then our Laws of IPC have gone through a lot of amendments in 1983 Amendment Act. Section 376A that is, marital rape and Section 376 (B to D), that is, sexual Intercourse not amounting to rape were added as per the criminal law amendment Act (1983), revealing the identity of a rape victim was offence. The Supreme Court also directed trial courts to “strictly adhere” to existing norms while asking them to rule out the possibility of “maneuvering” through undue long adjournments. In cases that come under section 376 (rape) and related offences under section 376 A to D of the IPC, the Cr.P.C. stipulates that “the inquiry or trial shall, as far as possible, be completed within a period of 2 months from the date of commencement of the examination of witness.”

The victim of rape suffers mental and psychological trauma, which must be addressed to provide a helping hand to enable her to cope with the trauma suffered and to tide over her immediate and long term needs so that she is able to lead a dignified and meaningful life.

The provision of rape laws in the IPC (Section 375 and 376, IPC) echoes very archaic sentiments, when it mentions as its exception clause “Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape.” Law bestows an absolute immunity on the husband in respect of his wife, solely on the basis of the marital relation.¹⁰ It is an act of violent perversion by a husband against the wife where she is physically and sexually abused. Marital rape is far too common in Indian Society. Even NFHS in its recent report stated that vast majority of the woman experience sexual violence by their husband.¹¹

⁹Trammei v. United States, 445 U.S. 40.

¹⁰ Supreme Court norms on rape trial not being followed strictly: Expert. The Economic Times. 2012 PTI Dec30

¹¹ Ministry of health and Family Welfare, Government of India, (National Family Health Survey) NFHS-4, Domestic Violence 565,16.3.2. <http://rchiips.org/NFHS/NFHS-4Report.shtml>.

The definition of rape (Section 375 IPC) has been criticized for other reasons as well by the Indian and international women's and children organizations, who insist that including oral sex, sodomy, and penetration by foreign objects within the meaning of rape would not have been inconsistent with new constitutional provisions, natural justice, or equity. Section 509 of the IPC was also sought to be amended, providing higher punishment where the offence set out in the said section is committed with sexual intent.

Marital rape: Explanation (2) of section 375 of IPC should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence. On the same reasoning, Section 376A was to be deleted. Under the Indian Evidence Act (IEA), when alleged that a victim consented to the sexual act and it is denied, the court shall presume it to be so.

It is argued that marital rape should be criminalized in India, as this can be achieved by applying an individual rights approach to violence against women. Indian women's organizations have succeeded to achieve public awareness and to pass legislation on domestic violence, but marital rape has not been fully criminalized by abolishing the distinction between marital rape and stranger rape. But marital rape will neither be criminalized nor punished, until legislators and the society acknowledge women's individual rights within the marriage.

Constitutional Connect

The Constitution of a country is the text that reflects the soul of the nation. The Indian Constitution organizes and controls power, ensures human rights, balances the competing claims of social and individual interests, mirrors the cultures and experiences of the country and operates as a vehicle for national progress and unity.¹² As per the Indian constitution, every law that is passed in the country has to be in conformation with the principles and ideas enshrined in the Constitution of India. Any law that fails to meet this standard is considered ultra vires and is liable to be struck down by the Courts and declared unconstitutional.

¹² Roy, Sudhanshu & Jain, Iti, “*Criminalizing Marital Rape in India: A Constitutional Perspective*”, Criminal L.J. 81-92(2008).

The rule of marital rape as an exemption to rape should also be declared ultra vires on the ground of abrogating the following rights that are conferred, protected and enforced by constitution, the supreme law of the land, under Article 14, 15, & 21

Article 14

Article 14 confers a fundamental right of equality before law and equal protection of law to all the citizens of India.¹³ To the understanding of this article it is even provided that all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal laws should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject matter of the legislation their position is the same.¹⁴ Furthermore Art. 14 forbids class legislation but it does not forbid reasonable classification.¹⁵ The classification to be reasonable must fulfill the following two conditions:-

1. The Classification must be founded on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the group.
2. The differentia must have a rational relation to the object sought to be achieved by the Act.¹⁶

Thus it is understood to the general understanding of a prudent that if any unreasonable classification is being made it will be derogative to article 14 and the reasonableness of the classification would be determined by the judiciary per se based on the understanding of law and provisions of constitution.

The provision of Section 375 of the IPC criminalizes the offence of rape and protects a woman against forceful sexual intercourse against her will and without her consent. Thereby the exemption to rape discriminates a wife when it comes to protection from rape. It is moreover ironical that the Section 375 of the IPC makes a classification in terms of an exemption that does not regard a forceful sexual intercourse within a marriage as rape and makes an assumption that women have no interest in receiving protection from the State on the ground of “voluntarily in fitinjuria. It is believed that the woman by getting married waives off her right to get protection under Section 375 of IPC. Withdrawing the protection of

¹³INDIA CONST. art. 14.

¹⁴ State of Bengal Vs Anwar Ali Sarkar, AIR 1952 SC 75 (India).

¹⁵RK Garg v. Union of India, AIR 1981 SC 2138 (India).

¹⁶ K. Thimmappa v. Chairman Central Board of Directors SBI, AIR 2001 SC 467 (India).

Section 375 of the IPC from the victims of the crime of rape solely on the basis of their marital status is irrelevant for the purposes of legislation and thus violates the test of classification under Article 14.

Article 15

Article 15 of the Indian constitution confers Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.¹⁷ Article 15(1) prohibits the state from discriminating against citizens on grounds only of religion, race, caste, sex or place of birth. According to the concise oxford dictionary the expression “discriminate against” means “select of unfavorable treatment.” Discrimination in this sense involves prejudice and if it is disclosed that the law so made is based on this ground then it will be struck down

The marital rape being an exemption to rape involves a high degree of prejudice as when there is a close relationship between rapist and the victim, the violence used against the victim tends to be greater.¹⁸ The relationship between the rapist and his victim shows rape to be a brutal, violent event in which the rapist has as his aim not only forcible sexual gratification, but also subjugation and humiliation of the victim¹⁹ that has a detrimental effect on the psyche of the victim

Moreover, the state by denying the protection under Section 375 of IPC makes a prima facie discrimination between a married woman and an unmarried woman this distinction is not justified by real differences between these two groups. The classification and differential treatment of married women rests on the assumption that married women, unlike all other persons, have no interest in receiving protection from the state against violent and sexual assault.²⁰

Article 21

Article 21 of the constitution confers right to life and personal liberty.²¹ The word life incorporated in the article reflects that something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is

¹⁷INDIA CONST. art. 15.

¹⁸ M. AMIR, Patterns in for Cible Rape 29 245 (1971).

¹⁹CAMILLE E. LEGRAND, RAPE AND RAPE LAWS: SEXISM IN SOCIETY AND LAW 922-924, vol. 61:919.

²⁰ Robin West, Equality Theory, Marital Rape, and the Promise of the Fourteenth Amendment, Florida Law Review 65, vol.42(1990).

²¹INDIA CONST. art. 21.

enjoyed.²²The scope of Article 21 has widened over time, incorporating sundry rights that form the basis of life and the exemption to rape is violative to several elementary rights that drive their genesis from Article 21 like right to good health, right to sexual privacy, right to live with dignity.

Right to live life with Dignity

Article 21 confers the right to live with human dignity and includes the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings.²³ The right to live with human dignity is one of the most inherent qualities of the right to life which recognizes the autonomy of an individual.²⁴ The Supreme Court has held in a catena of cases that the offence of rape violates the right to life and the right to live with human dignity of the victim of the crime of rape.²⁵ Rape is less of a sexual offence than an act of aggression aimed at degrading and humiliating the women.²⁶ Thus the marital exemption doctrine is also vocative of a woman's right to live with human dignity. Any law which legitimizes the right of a husband to compel the wife into having sexual intercourse against her will and without her consent goes against the very essence of right to life and personal liberty.

Right to Sexual Privacy

Right to privacy is not mentioned in the Indian Constitution. But it is now well recognized as a part of fundamental right under Article 21 in *Justice K. S. Puttaswamy (Retd.) and Anr. vs Union Of India And Ors.*²⁷ The right of privacy includes right to be left alone. Any form of forceful sexual intercourse violates the right of privacy. The doctrine of marital exemption to rape violates a married women's right to privacy by forcing her to enter into a sexual relationship against her wishes. The Supreme Court in the case of *State of Maharashtra v. Madhkar Narayan*²⁸ has held that every women was entitled to sexual privacy and it was not open to for any and every person to violate her privacy as an when he wished or pleased. In

²² Munn v. Illinois, 94 US 113 (1877).

²³ Francis Corallie Muin v. Union Territory of Delhi, AIR 1981 SC 802(India).

²⁴ Justice K.S. Puttaswamy (Retd.) vs Union of India, WRIT PETITION (CIVIL) NO 494 OF 2012(India).

²⁵ The Chairman, Railway Board v. Chandrima Das, AIR 2000 SC 988(India).

²⁶ BodhisattwaGautam v. SubhraChakraborty AIR 1196 SC 922(India).

²⁷ Justice K.S. Puttaswamy (Retd.) vs Union of India, WRIT PETITION (CIVIL) NO 494 OF 2012(India).

²⁸ State of Maharashtra v. Madhkar Narayan, AIR 1991 SC 207(India).

the case of *Vishakha v. State of Rajasthan*,²⁹ the Supreme Court extended this right of privacy to workplaces. Further, along the same line there exists a right of privacy to enter into sexual relationship within a marriage. By decriminalization rape within a marriage, this right of privacy of married women is violated and is hence, unconstitutional.

Right to good health

The right to good health has been recognized as a part of the right of life under Article 21.³⁰ Such a right is necessary for the continuous intellectual and spiritual well-being of a person. The marital exemption doctrine violates the right to good health of a victim as it inevitably causes serious psychological as well as physical harm in the process. It destroys the psychology of a woman and pushes her into a deep emotional crisis.³¹ A more compelling argument can be made in case where forceful sexual intercourse in a marriage leads to the communication of a sexually transmitted disease (STD) to the victim of crime of rape. The marital exemption doctrine effectively deprives a married woman of her right to good health and is hence, unconstitutional.

42nd Law Commission Report

The Law Commission of India in its 42nd report put forth the necessity to exclude the marital rape from the ambit of Section 375. In the report it is mentioned that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.³² But today the position is being turned to a different side. It also states that when the husband and his wife living apart under a decree of judicial separation or by mutual agreement then the sexual intercourse by a man with his wife without her consent should be punishable as rape.³³

In their words naturally the prosecutions for this offence are very rare. We think it would be desirable to take this offence altogether out of the ambit of section 375 and not call it rape even in technical sense. The punishment for this offence may also be provided in a separate Section.³⁴

²⁹*Vishakha v. State of Rajasthan*, AIR 1997 SC 3011(India).

³⁰ *CESC Ltd. v. Subhash Chandra*, (1992) 1 SCC 441(India).

³¹ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802(India).

³² Ministry of Law, Government of India, Law Commission of India, Forty Second Report 277, 16.115 (1971) <http://lawcommissionofindia.nic.in/1-50/report42.pdf>.

³³ Ministry of Law, Government of India, Law Commission of India, Forty Second Report 277, 16.115(1971) <http://lawcommissionofindia.nic.in/1-50/report42.pdf>.

³⁴ http://www.siu.edu.in/Research/pdf/Shaila_Daware.pdf 20. 172nd report of Law Commission of India on Review of Rape Laws, March 2000, para 3.1.2.1

172nd Law Commission Report

The 172nd Law Commission Report propounded the following recommendations for substantial change in the law with regard to rape.

- a) Substitution of definition of 'Rape' by definition of 'sexual assault'.
- b) 'Sexual intercourse as contained in section 375 of IPC should include all Forms of penetration such as penile/vaginal, penile/oral, finger/vaginal, finger/anal and object/vaginal.
- c) In the light of *Sakshi v. Union of India and Others*,³⁵sexual assault on any part of the body should be construed as rape.
- d) Rape laws should be made gender neutral as custodial rape of young boys has been neglected by law.
- e) A new offence, namely section 376E with the title 'unlawful sexual conduct' should be created.
- f) Section 509 of the JPC was also sought to be amended, providing higher punishment where the offence set out in the said section is committed with sexual intent.
- g) Marital rape: explanation (2) of the section 375 of IPC should be deleted. Forced sexual intercourse by a husband with his wife should be treated equally as an offence just as any physical violence by a husband against the wife is treated as an offence. On the same reasoning, section 376 A was to be deleted.
- h) Under the Indian Evidence Act, when alleged that a victim consented to the sexual act and it is denied, the court shall presume it to be so.

It was urged nine years ago that the definition of rape must be replaced with a broader, definition of sexual assault, which is both age and gender neutral. Even the sexual assault by the husband upon his wife during separation under Section 376A shall be punishable for two years and may extend to seven years along with fine.³⁶

Justice J.S. Verma Committee

Rape is one of the most brutal forms of violation of a woman's privacy and integrity. In the wake of increasing rapes in the country, the rape laws were amended in 2013 on the recommendations of the Justice J.S. Verma Committee Report. An emphasis has been made

³⁵*Sakshi v. Union of India and Others*, 2004 (5) SCC 518(India).

³⁶ Ministry of Law, Government of India, Law Commission of India, One Hundred and Seventy Second Report, Review of Rape Laws 3.1. – 3.9 (2000),<http://www.lawcommissionofindia.nic.in/rapelaws.htm>

on the “consent of the woman, “violence of any particular category, is not a necessary element of rape as defined in S. 375. The cardinal fact is absence of consent on the part of the woman³⁷ which isn’t there in marital rape. Moreover it was recommended to prohibit sexual intercourse with a married girl below 18 years³⁸ within the purview of 84th law commission report.

Judicial perspective

The judicial stand on this conflicting issue of marital rape is gradually unrolling in the favor of victim and can be witnessed from the chain of subsequent cases like in the case of *Queen Empress vs. HareeMythee*,³⁹ the husband was convicted under section 338, Indian Penal Code, for rupturing the vagina of his eleven-year old wife, causing hemorrhage leading to her death.

In *Emperor vs. ShahuMehrab*,⁴⁰ the husband was convicted under section 304A Indian Penal Code for causing death of his child-wife by rash or negligent act of sexual intercourse with her.

In *Saretha vs. T VenkataSuhhaih*,⁴¹ the Andhra Pradesh High Court held: If State enforced sexual intercourse between husband and wife is a violation of the right to privacy, surely a women's right to privacy is equally violated in case of non-consensual sexual intercourse with the husband. Rights and duties in a marriage, like its creation and dissolution are not the terms of a private contract between two individuals. The right to privacy is not lost by marital association.

More recently the Supreme Court criminalized sexual intercourse by a husband with his wife who is under 18 years of age which was 15 years earlier in case of *Independent Thought vs. Union of India and Anr.*⁴²

The judiciary thus seems to have a favorable opinion towards woman to some extent but its hands are being cuffed in the shackles of pious belief of accepting marital relationship as devout. It is seen in *Sree Kumar vs. Pearly Karim*,⁴³ that the wife stayed with the husband for

³⁷Justice Verma Committee, Amendment to Criminal Law 100, 53(2013).

³⁸Justice Verma Committee, Amendment to Criminal Law 101, 55(2013).

³⁹*Queen Empress vs. HareeMythee*, (1891) ILR 18 CAL. 49(India).

⁴⁰*Emperor vs. ShahuMehrab*, AIR 1917 Sindh 42(India).

⁴¹*Saretha vs. T VenkataSuhhaih*, AIR 1983 AP 356(India).

⁴²*Independent Thought vs. Union of India and Anr*, W.P.(C) 382/2013 (India).

⁴³*Sree Kumar vs. Pearly Karim*, (India).

two days after settlement during which she alleged that she was subject to sexual intercourse by her husband against her will and consent, but the Kerala High Court held husband not guilty of raping his wife though he was de facto guilty of having done so. This was done to preserve the institution of marriage from any blot.

New trend in Marital Jurisprudence

It is obnoxious to put something sacred as marriage and a heinous crime like rape in a single statement but this sustains in our society by way of marital rape in an absurd belief of preserving the sanctity of marriage, where in reality the one being a wife turns out to be a victim of the sexual superiority of her husband and given no right of privacy over her body against her husband, the same belief was being applied in the situation where the married girl is minor.

As per law the marriage of a minor is considered valid. Delhi High Court in Jitender Kumar Sharma v. State⁴⁴ observed that “It is true that one of the conditions of a Hindu marriage is that the bride should have completed 18 years age and the bridegroom, 21 years. But, does this mean that a marriage where this twin condition as to ages is not satisfied is, ipso facto, invalid or void? An examination of section 11 of the HMA would seem to suggest otherwise.” Therefore, the married minor girl was subject to the same ill treatment as major.

It is given in law contained under Exception 2 of Section 375 of the IPC that sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. This now had been amended honoring a new trend in the marital jurisprudence.

The Supreme Court in its landmark judgment in the case of Independent Thought vs Union of India, criminalized sex between a man and his minor wife. The court said that age under Exception 2 will be read as 18 years from now on. This effectively means that the offence of rape will be made out even if the perpetrator is the husband of the victim.⁴⁵

The court held that since POCSO is a new law and has a non-obstante clause (a provision which provides for overruling of all other laws), it shall prevail over the IPC. It also held that

⁴⁴Jitender Kumar Sharma v. State (India).

⁴⁵Raghav Pandey, Evolving Marital Jurisprudence, The Pioneer (May. 28, 2018, 11:00 PM), <http://www.dailypioneer.com/columnists/oped/evolving-marital-jurisprudence.html>

since POCSO was framed in pursuance of Article 15(3) of the Constitution, it naturally will have prominence.⁴⁶

Thus, this slit inclination towards the protection of right to privacy of a wife (minor) over her body will serve a purpose in securing the bodily integrity and dignity of a woman against a perpetrator called husband.

Conclusion

Our law is so crazy that if a husband kills his wife, it is a crime, if he causes injury to her, it is a crime, but if he rapes her, it isn't a crime rather considered as a part of his matrimonial rights. It becomes pitiable when the law which is made for the protection of all is per se depriving one from availing it, to benefit a demon, a perpetrator in the name of sacrosanct of marriage.

A marriage is a bond of trust and affection. A husband exercising sexual superiority, by getting it on demand and through any means possible, is not part of the institution and thus it is just an unacceptable illicit practice of preserving fake male prestige in the society.

It is even sadistic that all stranger rapes have been criminalized and all females, other than wives, have been given the right of privacy over their bodies thereby envisaging the right to withhold consent and refuse sexual intercourse. But the same is denied to a married woman on the assumption of her implied consent that gives power to a male, a husband to exercise his sexual superiority on her and treat her like a rubbish heap.

The woman has and still continues to be victimized by man and society and thereby the time has come to acknowledge her as a human being, away from the ancient notion of her being a mere chattel, and give her respect and the dignity she deserves. To this the state will play an imperative role. It is the duty of a state to protect its citizen, be it a male or a female, apart from the notion of discriminating amongst married and unmarried woman. It is deemed necessary on the part of state to enter the realm of home to protect a woman's right to her body. Moreover, the most atrocious and heinous crime of negating the self-worth of a woman cannot be left outside the ambit of the State and laws.

“When a woman is raped by a stranger, she has to live with a frightening memory. When she is raped by her husband, she has to live with the rapist.”

⁴⁶Independent Thought vs. Union of India (India).