BLOGS

Marital Rape Exception: The Law & Latest Developments for CLAT

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Introduction

Recently, the High Court of Delhi has been hearing challenges (via a group of petitions) to the marital rape exception to Section 375 of the Indian Penal Code, 1860. The said exception reads as follows:

"**Exception 2:** Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."[i]

While the statute book is clear on the matter, there has been a great deal of deliberation on the constitutionality of the said provision in the Code, including judicial decisions of importance. In this article, we look into the legal discussion—both past and ongoing around the provision.

Committee Reports on marit

1. Law Commission of India: 172nd Report

The Commission refused to recommend the deletion of the marital rape exception from the I.P.C., and justified this decision in the following words:

*"We are not satisfied that this Exception should be recommended to be deleted since that may amount to excessive interference with the marital relationship."**[ii]***

2. Justice Verma Committee Report

This expert Committee report recommended the deletion of the marital rape exception, and additionally recommended the following:

"**The law ought to specify that:**

1. A marital or other relationship between the perpetrator or victim is not a valid defense against the crimes of rape or sexual violation;

2. The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity;
3. The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape."[iii]

Case Law: Independent Thought v. Union of India [iv]

In this case, the Supreme Court read down the provision so far as related to a girl child under the age of 18 years, meaning that the marital rape exception shall not apply to a situation where the aggrieved woman/girl is under 18 years of age [i.e., of an age to give consent]. The Court clarified that they are not creating a new offence, but are merely stating what is already unconstitutional but had not been declared so yet.

Another Important Decision: Kerala High Court

In a recent case [v], the High Court held marital rape as a ground for divorce even though it is not specifically penalized (as such) in India.

"Right to respect for his or her physical and mental integrity encompass bodily integrity, any disrespect or violation of bodily integrity is a violation of individual autonomy…In matrimony, spouse possesses such privacy as invaluable right inherent in him or her as individual.

Therefore, marital privacy is intimately and intrinsically connected to individual autonomy and any intrusion, physically or otherwise into such space would diminish privacy. This essentially would constitute cruelty. Merely for the reason that the law does not recognize marital rape under penal law, it does not inhibit the court from recognizing the same as a form of cruelty to grant divorce.

We, therefore, are of the view that marital rape is a good ground to claim divorce."

In so holding, the Court made important observations regarding the constitutional rights of a person, notwithstanding if they are in a marriage.

[Note: Even the Gujarat High Court in 2018 commented on the seriousness of the exception-provision of marital rape and said that it demanded serious attention.]

Latest Developments

A group of petitions have been filed in the Delhi High Court challenging the said exception to marital rape.

***Case Name*: RIT Foundation v. Union of India and other connected matters**

Bench: Rajiv Shakdher and C Hari Shankar, JJ.

The different petitioners have challenged the provision on specific grounds of violating the right to dignity, sexual and body autonomy. Gautam Bhatia in his blog [vi] identified the two main constitutional issues in the case:

1. Does marital rape create an unreasonable classification under Article 14?
2. Would striking down the Exception create a new offence?

Rebecca John (Senior Advocate) also argued against the interpretation of the Exception in a manner that removed the requirement of the woman's "consent".

The Government submitted that Exception 2 of Section 375 I.P.C. "doesn't leave the wife remediless" and she is still entitled to claiming divorce on the grounds of cruelty, along with criminal persecution under other criminal provisions.[vii]

So far, a group called 'Men Welfare Trust' has filed an application in Court praying against judicial interference in the matter. It claims that the judicial cannot re-write a statute to expand the scope of a provision. One NGO, Hridey, submitted that forcible sexual intercourse between a man and his wife can be labelled as sexual abuse, and not rape.

Conclusion

The upcoming decision of the Delhi High Court would be instrumental in framing the fundamental rights married women in India, which will also have a crucial impact in gender-equality, privacy and dignity related jurisprudence.

To recapitulate recent constitutional developments in the country, click here.

[i] Exception 2 *of* Section 375, The Indian Penal Code 1860

[ii] Full excerpt available at https://lawcommissionofindia.nic.in/rapelaws.htm#chapter3 [accessed 29.01.2022]

[iii] Full Report available at https://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf

[accessed 29.01.2022]

[iv] (2017) 10 SCC 800

[v] Full judgment available at https://www.livelaw.in/pdf_upload/marital-rapewatermark-398094.pdf [accessed 29.01.2022]

[vi] A concise discussion on the defenses of the Exception, available at https://indconlawphil.wordpress.com/2022/01/19/the-marital-rape-exception-case-two-constitutional-issues/ [accessed 29.01.2022]

[vii] Section 498A, 326, 377 I.P.C.