



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BOOK REVIEW- MARITAL RAPE: THE INDIAN AND GLOBAL PERSPECTIVE, 2021 ED.

AUTHORED BY: SHIVANSHI GUPTA & ARUSHI SHARMA

INTRODUCTION

The subject of marital rape is extensively researched and examined in this book. Research on marital rape is the primary emphasis of this book, which reveals a wide range of information about the crime. Because it elaborates on such a sensitive subject as "Marital Rape," this book stands out from the crowd as it contains in depth study, research, analysis of this topic for securing gender justice in India. An examination of marital rape from the perspective of India and the rest of the globe is the focus of this book. Even now, marital rape continues to plague India and the rest of the world. This book examines this social scourge, which has been in human society since time immemorial. Marital rape has been thoroughly examined in this book in terms of its definition and characteristics as well as its causes and effects. The authors also compares marital rape to other forms of sexual assault, examines international laws on the crime, examines the social and legal implications of marital rape, and discusses possible reforms to existing laws. The goal of this book is to go beyond the stereotypical views of women that we have. In the case of marital rape, which is one of the most devastating crimes against women, the dread of having to face it while still having to silently endure it is an agonizing thought that affects the psychological well-being of the victim. A woman's emotional and physical stability is harmed because of the lack of legislation and widespread social stigmas against marital rape, which prevents her from seeking help. According to the author, denying a woman's self-worth and sovereignty over her body within the patriarchal boundaries and under the veil of what we call a sacred marriage is an affront to her dignity and self-worth. Using principles from public health, human rights, law and general well-being, the book strives to establish up a system that protects women's rights to a good life and human rights. If you are an academic or a practitioner in government or non-governmental organisations, this book is a must read. The book is broken into seven chapters, each focusing on a different aspect of marital rape. An introduction, the concept of marital rape, the history and social context of marital rape, the laws of other countries, and the Indian judiciary on marital rape are among the topics covered in this book. This book further examines the Indian Penal Code's

provision on rape under section 375 of Indian Penal Code, 1860. An in-depth look into Marital Rape in the context of the Indian Penal Code and Indian Constitution follows an analysis of the aforementioned provision. The reasons for and against the Delhi High Court's petitions to declare the Exception 2 to S. 375 Indian Penal Code as extra vires in the light of Article 14 (the right to equality) and Article 21 of the Constitution are examined in this book. Scholars, practitioners, and the general public will all benefit from this work. A harsh fact in today's world is the prevalence of rape at the hands of men and women. Violent perversion by a husband against his wife in which she is physically and sexually mistreated is known as domestic violence. A sacred institution, marriage, has become a closed room in which a woman lives.

SUMMARY

Studies on marital rape has been sparse compared to research on other forms of domestic violence, such as battering, acquaintance rape, and child sex abuse, and is primarily focused on US based but this book is purely in context of India. It has different definitions, meaning of marital rape, similarities and dissimilarities between rape and marital rape, characteristics, causes, effects, myths and ways to prevent marital rape. International, interdisciplinary, and intergenerational researchers and activists have contributed to this publication. Considerable intellectual topics are discussed in depth, including the evolution in the concept of marital rape and the ideology of permanent consent was also discussed in detail but the most interesting and unique part of this book is it presented the state wise statistics of the victims of marital rape to know the magnitude of the offence. **Further, the vein diagram and formula of marital rape which can be used in arguments in court of law to prove the basis of unreasonable classification between the rape victims based on the marital status.** The fact that wife rape is legal perpetuates the problem, and in fact contributes to its recurrence, because as a result, both men and women believe that it is acceptable. Author comes to the conclusion that wife rape should be made criminal everywhere. As long as wife rape is legal, it will be tolerated, and those who perpetrate it will be sanctioned for their crimes. Making raping a woman's wife a criminal offence would serve as a deterrence. Some men would not rape their wives because it would be deemed a crime in their nation. The process of seeking legislative change or fighting an exemption through litigation also gives an opportunity to improve public awareness of the issue.

The second chapter dealt fairly with the certain myths revolving around the marital rape such as domination only from male side, no relation with education and poverty or moral values, restricted to

rural areas and part of married life etc. Third chapter of this book discusses the historical as well as the social perspective of marital rape, role played by religion and education etc. Human rights and public health activists as well as sociologists and criminologists weigh in on the topic, as do legal experts and other academics from a variety of fields. Research from 150 countries specially Nigeria, South Africa, Turkey, Vietnam, Guatemala, the United Kingdom, and the United States is included in this important volume, which is the first of its kind to examine rape in marriage. Marital rape is clearly pervasive and impacts millions of women around the world, as evidenced by this report. As anthropologists have discovered, forced sexual intercourse in marriage and other intimate relationships is not defined, experienced, or sanctioned in the same way in different countries. It doesn't matter if interpersonal sexual violence is regarded in a particular cultural context as a violation that harms the health and well-being of women. The fifth chapter discussed the marital rape laws in India and discussed 172nd law commission of India report, J.S. Verma Committee, women's sexual reproduction and Menstrual Rights Bill, 2018 which proposed important amendments for Section 375. This bill provided that word husband be replaced with "person" for enlarging scope of Section and provision of age to be deleted and insert definition of consent. It discussed all the bills, laws in detail, proper coverage while discussing Articles 14, 15, 19, 21 and 51A. Further, authors focused on existing legal remedies such as Section 498A IPC, Domestic Violence Act, Sections 376 (B) IPC (intercourse during separation period), 377 IPC (unnatural sex), National Commission for Women Act, 1990, Hindu Marriage Act, grounds for divorce and discussed remedies under all the personal laws. For example, in 1983, as a result of the Women's Liberation Movement's initiatives, new rules were enacted that required the accused in custodial rape cases to prove their innocence. Protests by feminists at the Supreme Court's acquittal of the police rapists who raped a young tribal lady in Mathura prompted this change. Despite these gains, fresh criticisms arose about the limited and patriarchal execution of the new legislation, as well as more severe punishment leading to a lower number of convictions. Other important discussion were also made in this book such as Sentencing for sexually motivated offences would be increased under IPC Section 509 and Explanation (2) of Section 375 of the IPC should be eliminated because if a husband compels his wife to have sex with him, it should be prosecuted as a felony on par with physical abuse. Section 376 A had to go under this logic. The Indian Evidence Act presumes agreement to a sexual act even if the victim rejects it. Domestic Violence Act, 2005 provides civil remedies in addition to criminal remedies under Section 498A of the IPC. However, this law does not modify the position of marital rape. Despite the fact that Section 498-A protects women against their husbands' perverse sexual behaviour, the courts have not

defined or quantified "perversion" or "unnatural." Is too much sex perverse? Isn't it a must? You can rape in marriage. These are some of the issues raised by both authors. Neither marriage nor cohabitation may condone sexual assault unless it is life-threatening or extremely painful. It's not about a woman's autonomy. Due to the essential essence of the marriage institution, she retains her uniqueness and does not have to submit to every physical overture. According to the Indian Evidence Act, marital contracts cannot be disclosed in court unless one spouse is charged with a crime. Evidence of marital rape is only admissible in cases of violence or similar bodily or mental abuse under the rule of cruelty. It will be difficult to combine the DVA and IPC to prove marital rape in court. The Indian Parliament tabled the Criminal Law (Amendment) Bill, 2013, which passed both houses in March and was signed by the President on April 1, 2013. It changes the Indian Penal Code, the Indian Evidence Act, and the Code of Criminal Procedure, 1973. A male entering his pen or nonpen into a woman's body orifices is a violation of IPC 375. For example, rape is defined as any act that ends in penetration of a penis, or any item or portion of the human body, into a woman's vagina, urethra, or anus without her consent or will (Cunnilingus or fellatio).

The lack of bodily resistance is irrelevant in establishing whether an infraction has been committed. Except in rare situations, the penalty is a minimum of seven years in prison and a fine. Extreme offences carry a lengthy prison sentence (from 10 years to life) and a fine. Section 376A of the Penal Code now provides for the death penalty or execution if a sexual assault victim is killed or left in a vegetative state. The CrPC and the IEA have been amended to make it easier to record the victim's account, exclude the victim's character from consideration, and presume no consent where sexual intercourse is established and the victim states in court that no consent was given. The consent age has been raised to 18, therefore any sexual interaction with a woman under the age of 18 constitutes statutory rape, consent or not. Several human rights and women's rights organisations have fiercely criticised the Criminal Law Amendment Ordinance of 2013 for include marital rape, reducing the consent age, and modifying the Armed Forces (Special Powers) Act. There are many other discussions about women's roles in society, and this feminist pressure on governments is just one of them. Because rape is seen by both patriarchy and feminists as a crime against family honour and a violation of a woman's autonomy and bodily integrity, there is widespread agreement that it is a horrific crime. Divergent conceptions of rape lead to drastically opposite approaches to the crime's prevention and repression. The Indian Penal Code's Section 375 has only recognised penetration of the vagina by the penis as rape until 2013. An instrument or a finger's penetration did not count as

rape and was punished with a lesser penalty. This divide was made to protect patriarchal property rights since penile penetration could result in pregnancies. Section 375, which protected patrilineal descent and property systems, and Section 377, which punished the possibility of escaping forced heterosexuality, both penalised consensual anal penetration by the penis because both were designed to defend genuine procreative sexuality. In the seventh chapter discussion on various Indian Judiciary Judgments, beautifully bifurcated the points, systematic case analysis and updated with proper timeline but **no personal analysis of author how those judgments are effective and could have write the summary of all the important points in the hand.** Further, no foreign judgments was cited specially from the countries where it is criminalized. The only judgment which the authors have discussed in detail is **Independent Thought case (2017)**, which criminalised sexual relations with a wife under the age of 18, the girl child has gained significant protection and both the authors suggested that the Supreme Court has not made any particular provisions for dealing with circumstances in which the interests of another child are also at risk. Even though the husband is also a minor, he would be as innocent as the girl if they had voluntary sexual relations with each other. Indian elopement and marriage cases are common, and the Apex Court's lack of attention to them since they can be generalised as child marriage cases is harmful to the interests of the boy kid. By emphasising that "marriage rape" is not an issue before this court and should not be noticed in any way, the Court endeavoured to avoid commenting on "marital rape" issues where the female is over 18 years old. Girl above the age of 18 whose dignity is violated by the forcible sexual relation might use the same logic court used for deciding that Exception 2 violates her fundamental rights.

The book finishes with a discussion of how to intervene in this form of intimate partner violence that is both culturally and legally accepted around the world, from the perspectives of public health, law, and human rights. Further, last chapter is the summary of whole book, around 72 suggestions but less of legal suggestion rather the author focused only on moral grounds and sentiments.

Exemptions for spouses in legally authorised marriages from being charged with rape are known as the "marital rape exemption." It is possible to argue that rape is a right or privilege of marriage because the legal identity of women merges with their husbands, making it impossible for their husbands to rape their wives because the husband cannot rape himself; the position of women as chattel means that a husband's rape of his wife is merely one way of using his property; and Hale's doctrine of "matrimonial" is another. To be eligible for the marital rape exemption, you had to have a legally

binding marriage contract. These explanations do not account for the extending of the exemption to rape by unmarried men of women.

For both the authors, the term "wife rape" refers to any penetration by force, threat, or the victim's inability to resist. Unwanted sex in marriage isn't classed as marital rape by her. According to the author, more women would be raped if they refused to succumb to unwanted sex. Due to the exemption, all women having no legal or socially acceptable right to refuse their husband's sexual advances, wife rape impacts all women directly. It's possible to argue that marital rape is no less a crime than murder or culpable homicide. It diminishes a woman's worth and lowers her to a mere object for the pleasure and comfort of a guy. It turns a person into a walking corpse who is paranoid about getting wounded. Marital rape has long-lasting and severe implications for women, according to medical research. The injustices committed against women in Indian society will not be silenced by criminal law. Regardless of whether or not such recognition is desired, it is necessary to intervene and impose the mark of criminality on any inhumane acts that occur. Complaints may be infrequent, but the law must clearly define marital rape as a penal offence. In order to maintain the purity of the Constitution, legislators must recognize the need of safeguarding married women's self-worth.

ANALYSIS

India's marital rape controversy resurfaces every time a raped woman appears in court and is informed that the exception in the rape statute presumes her permission and thus grants her husband immunity from rape prosecution, bringing the issue to the forefront once more. It is unclear who makes the decisions about what is and is not appropriate when it comes to a woman's constitutionally protected right to sex and reproduction. We lose our freedom and equality as human beings in connection to our own bodies when we marry, and for what reason do we lose this freedom and equality? All these questions are researched in this book beautifully. Discrimination against women and sexual violence is pervasive, but feminists have differing opinions on how to prevent it. Consider, for example, the question of whether women should be viewed in terms of their sexual agency, as victims, or both; whether sexuality should be mystified as something more real than other aspects of one's life; whether gender should take precedence over other identities such as caste or community; and whether the term "women" refers to feminist politics or the queer body. Conflicts like this have been around for a long time and have been crucial to the growth of Indian feminism and people having such reading interest can easily connect with this book. But there are certain flaws in the book which the authors should

consider in the next edition such as there is lack of jurisprudence by certain important scholars, philosophers' definitions, what India can learn from other country's law, could give real instances or interview of certain victims and how victims tackle certain issues etc. Further, table of laws from other countries could have drawn to present in a more systematic manner and one of the major problem I faced while reading was all the case laws, references was not in the page itself rather the end of the chapter. Further, book is little repetitive and could have written in a more concise manner. The writers considered the definition of rape, but they did not go into detail on the amendments made to the Indian Penal Code in connection with the idea of rape and how this could effect marital rape laws. When discussing the topic of marital rape, it is important to remember that it is not a crime. If there is no marriage because of the nullity and voidness of separate marriage laws, then it would fall inside the boundaries of S. 376 because there is no marriage. As a result, when discussing marital rape, it is necessary to conduct additional research into this topic. To be convincing, all laws must be supported by foreign legal precedents when discussing other countries or literature that will have persuasive value; simply stating one's opinion will not be sufficient justification. It is also accepted that morality plays an important role in the creation of various laws, but that when evaluating legal notions, ethical factors such as chastity, virginity, and other similar cultural conceptions should not be taken into consideration, among other things. It is important to focus on both the letter and the spirit of the legislation. Rippling is not a criminal because of moral concerns; rather, it is a crime when it results in the performance of a harmful action against the victim without his or her consent. Damage to the victim's reputation, for the reasons you mentioned, may also be among the injuries sustained. However, when taken as a whole, the text does not have a logical flow because there is no connection made between the moral and legal components of the situation. Additionally, a chapter on victimology should be included, along with the finest theory of punishment that can be used to characterise the circumstance in the most accurate way possible. Best part is the vast coverage, almost covered every aspect of this topic from various sources and covers things it in a wholistic manner. Currently debate of marital rape is going on and hopefully they will come up with a new edition once the debate is settled and a new law is made.

CONCLUSION

"Power trip, not passion trip," says Paul Bart of rape. A spouse who rapes his wife is attempting to exert his authority and control over her by subjecting her to brutal treatment, which is an act of hostility. Because this behaviour derives from an age-old patriarchy enmeshed in our values, our

society and courts are complicit in this crime. Divorced women are stigmatized as "vamps" because of their independence, yet at the same time, we push them to stay in unhealthy relationships that violate their autonomy. That we prefer to think of ourselves as a rapidly expanding society with a progressive mindset where women are "allowed" to work is the worst hypocrisy of it all. When a woman is raped, it's natural to ask what she was wearing when she was assaulted, even if we think we're modern. Indians take offence at the idea that India is the rape capital of the world, but they fail to admit that the men who are supposed to protect and safeguard women are themselves rapists. Human rights apply to women because they are human beings. In doing so, we are denying them basic human rights and allowing them to be exploited. A majority of the country's citizens are denied their most basic human rights since the law does not recognise marital rape as rape. There is no worse punishment for a woman who is raped by her husband than living with her rapist. Marriage rape continues to be immune from the reach of Indian criminal law, allowing the husband to maintain his claim to his wife as his sole and exclusive property in perpetuity. According to the legal reasoning, the female victim is exempt from prosecution under the criminal code since she is her husband's wife. When viewed in the context of dominant familial ideology and female sexuality, this justification can be read as treating a woman as property and as having no sexual agency or decision-making in sexual behaviour inside the marital contract. It is undeniably a significant kind of violence against women, deserving of widespread public and governmental attention. Female rape victims are more likely to be subjected to many assaults by their husbands, and they are more likely to suffer long-term physical and emotional consequences. The trauma of marital rape may be much more severe than the trauma of being raped by a stranger in this setting since the victim lives with her assailant and may live in constant fear of being raped again, whether she is awake or asleep. India is progressing in the direction of positive legal reform for women in general, but additional steps are required, culminating in the criminalization of marital rape and the alteration of underlying cultural assumptions about the role of women during marriage. Hence, this book is extremely helpful, updated with this most important current legal development which need to be discussed and we hope soon this martial rape exception will be deleted and gender-neutral laws will be developed. For this researchers, lawyers, judges have to come forward with the thoughtful views and I thank authors for the same. Most recently for example, Delhi and Karnataka high courts ruling on "marital rape" rekindled the controversy about Section 375 of the Indian Penal Code, which gives "husbands" an exemption from prosecution. Is Section 375's protection for husbands unconstitutional? This is an important topic that the High Court has recently highlighted. The traditional view that husbands are the ultimate authority over their

women' physical, mental, and spiritual well-being should be discarded. Cases of this nature are proliferating across the country only because of this outdated, regressive, and predetermined notion. The Constitution, which serves as the foundation for all other laws, shows equality, but in practise, Indian Penal Code with current law status enforcing the discrimination.

