

WIFE NOT ELIGIBLE FOR HUMAN RIGHTS?

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INTRODUCTION

The Madhya Pradesh High Court recently decided on an aspect of a much-disputed issue which is the criminalization of marital rape in India in the case of *Manish Sahu v State of Madhya Pradesh*¹ where the question of law was whether unnatural intercourse by a husband to his lawfully wedded wife would be considered Rape under the definition of Section 375 or Section 377 of the Indian Penal Code. According to *Black's Law Dictionary 8th edition*, Marital Rape refers to “a husband's sexual intercourse with his wife by force or without her consent”. In simpler terms, Marital Rape refers to intercourse that takes place because of coercion and force exerted by the husband against the wife's wishes. This judgment talks about another aspect of such rapes which is it also includes unnatural sex i.e. penal sex.

BACKGROUND

The couple got married in the year 2019, but they did not have any children. She has been mentally and physically harassed by her in-laws for dowry since February 2020 due to which she left her husband's house and resided with her parents; she filed a complaint regarding the same for which the trial is pending. When the wife went back to her matrimonial home, her husband committed unnatural sex with her on various other occasions but she kept quiet because he threatened to divorce her and thus did not report the same in the first complaint filed by her.

DEFINITION OF RAPE

Section 375(a) of IPC (amended definition) includes penetration of the penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her to do so with him or with any other person. Thus, the act of unnatural sex has been made a part of the definition of "rape". Section 375(a), (b), (c) & (d) of IPC includes all sorts of unnatural acts. Therefore, if a person penetrates his penis into the mouth, urethra, or anus of a woman, would be guilty of committing rape.

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¹ Manish Sahu v. State of M.P., 2024 SCC OnLine MP 2603

QUESTION OF LAW

Now the question before the Hon'ble Court was whether unnatural sex or forced intercourse by the husband to his lawfully wedded wife, residing with him who is not below the age of 15.

DECISION BY THE COURT

In the landmark judgment of *Navtej Singh Johar and Others Vs. Union of India*², it was held that consensual sexual conduct between adults of the same sex cannot be termed as an offense under Section 377 of the Indian Penal Code. Thus, in a nutshell, it can be said that if unnatural sex takes place between two persons of either the same gender or different gender with the consent of both parties, then it would not be an offense under Section 377 of IPC." Thus, consent plays a very important role in deciding whether a sexual act is covered under the ambit of Section 377 of IPC or not. But according to the amended definition of rape, if a wife is residing with her husband during the subsistence of a valid marriage, then any sexual intercourse or sexual act by a man with his wife not below the age of fifteen years will not be rape. And since consent does not play a role in deciding a matter of marital rape which included unnatural sex, the husband is not convicted for the offense under section 377 of IPC.

INDIA'S STAND ON MARITAL RAPE

Marital Rape is criminalized in the majority of nations across the globe, except in 36 nations which also includes India, a country where there are various laws for the protection of women from others but no such safeguard is available to women against her life partner, its as if marriage license also gives rights of women's body to her husband and she loses all her fundamental rights as well. The reason for marital rape being an exception under Section 375 is because it would disturb the institution of marriage but does not commitment of such a heinous crime by one's husband who is their life partners and can be a father to their children.

CONCLUSION

Indian Constitution guarantees certain fundamental rights to citizens of India such as the right to equality, right to privacy, right to life, etc but these rights are not guaranteed to married women. Not criminalizing marital rape is a direct violation of the fundamental rights of women. On top of that, she must endure the cruelty of unnatural sex as well? This is another level of suppression of women, they can claim relief against domestic violence but not the sexual

² Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

violence committed against them. Every sexual act between two adults needs to be consensual, this very clause of consent is what differentiates whether an act is a crime or not but the same is not available when there is a relationship of marriage between them.

