



MARITAL RAPE

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ABSTRACT

This analytical paper discusses the unconstitutionality of marital rape in light of the legal dispute between Independent Thought and the Union of India. The act of having sex with a partner without the other partner's consent is known as marital rape. It is a form of domestic abuse and sexual mistreatment. The Indian culture makes it very difficult to understand how relationships may be conflictual and dangerous places for human interaction. According to the National Family Health Survey from 2005–2006, one in ten married women in India between the ages of 15 and 49 had been forced to have sex against their will. 94% of the 9% of victims who disclosed sexual assault said their spouses were responsible for it. The right to use a spouse as property that they owned has been granted to spouses. The wife's consent was not understood. "Sexual intercourse by a man with his own significant other, the spouse not being 15 years of age, is not assault," the Criminal Law Amendment Act said up until 1983. The public authority authorities said that by outlawing domestic violence, family values would be weakened because marriage presupposes that wives consent to having sex with their significant others. The Protection of Women from Domestic Violence Act, 2005, which offered only thoughtful treatment, required the victims of domestic violence to respond. However, the subsequent High Court judgement from 2017 altered the existing state of conjugal assault.

The solicitor, a registered organisation working in the area of children's rights, filed an appeal under Article 32 of the Constitution to call attention to the violation of young women who are married between the ages of 15 and 18. The Indian Criminal Code's (IPC's) recommendation that the legal age of consent for sexual activity be 18 years old means that anyone who engages in sexual activity with a young woman under the age of 18 will be legally responsible for assault, regardless of whether she gave her consent. However, under the terms of Exception 2 to Section 375 of the IPC, if a young lady child between the ages of 15 and 18 is married, her significant other may engage in non-consensual sexual activity with her without incurring legal repercussions simply because she is wed to him. Such an exclusion goes against the fundamental design of the Constitution and is not merely discretionary. The dangers of getting married right away were thought about. Early marriage was believed to negatively impact the wellbeing of the young lady child, impede education, and limit financial independence. Moreover, early marriage increases the risk of HIV (Human Immunodeficiency Virus) infection. One of the effects of early marriages is foetal deaths. By making conjugal assault a crime, this decision will undoubtedly mark a significant beginning. The action is anticipated to have a significant impact on India's practise of child marriage. The official charge for a crime of conjugal assault of a young lady child must thus be

initiated after the date of the judgement because this judgement has been declared to be planned in nature. As a result, in the current state of the law, having sex with an underage girl would constitute an assault charge under Section 375 of the IPC, regardless of consent.

Marriage rape refers to inappropriate sexual contact between a man and his significant other that was forcedly obtained, when there was a threat of power or real brutality, or when she was unable to consent. Conjugal violence is a particularly heinous and terrifying crime, but despite this, it is still tolerated in a number of countries, India being one of them. By discussing history, the role of our current society, and various legal declarations, this paper aims to highlight the central issues of marital rape. These legal declarations have contributed to the current problem of marital rape in our society by not resolving the issue appropriately and, it could be argued, deliberately ignoring it by the Courts. Along with addressing the issue of marital rape, this paper also aims to steer the legislature and raise awareness about this horrifying topic, which is still regarded as a taboo in Indian culture rather than a serious crime, leading to a slow rather than moderate rate of social advancement. The goal of this paper is to expose the current state of Indian criminal law.

INTRODUCTION

As, in the case titled as Independent Thought Vs. Union of India, the division bench in this case stated 2 exceptions to section 375 of Indian Penal Code, which presently stands along these lines adjusted, "Sex by a man with his better half, the spouse not being under 18 years old, isn't assault". Although there have been a variety of reactions to the decision, most seem to agree that it raises just as many questions regarding child marriage and child sexual abuse as it clarifies concerning the abuse of underage wives. Yet, the Supreme Court was blunt on one point: the decision would not affect conjugal assault of adult women (hereinafter, conjugal assault simpliciter). The Court stated: "We would want to make it clear that since that subject is not at all before us, we have refrained from providing any objective facts regarding the conjugal assault of 18 or older women. Hence, we shouldn't be seen as even tangentially addressing that issue." Nonetheless, the Supreme Court has established the groundwork for the exception to conjugal assault being declared unconstitutional by addressing the disputes between the two sides. The Convention on the Rights of the Child (CRC; Corporate Resource Centre) and the Convention on the Elimination of Discrimination Against Women (CEDAW; Convention on the Elimination of Discrimination Against Women) were two international agreements that India has ratified. The Supreme Court first considered these agreements. As the exception for domestic violence legalised the practise of "child marriage," it was determined that it violated the commitments imposed by these documents. Additionally, it was determined that the Exclusion violated Articles 14 and 21 in this way. Finally, internal contradictions with the Indian Penal Code was discovered, as compared to the other active laws. Finally, it was decided that the social impact of child marriage, which was justified by the exception for domestic violence, was too unbelievable to even consider keeping the exclusion in the rulebook. In this essay, I'll try to show how each of these claims also applies, mutatis mutandis, to simple conjugal assault.

The forced sexual intercourse been performed by a man to a woman, leads to many health related problems in women, which could be riskier to their life, and in fact can cause death too. Irrespective of their health, men view women as their property and molests them in different ways. Lakhs of deaths take place just because of domestic violence, marital rape, etc., kind of practices being performed by men, with the women.

The most abhorrent crime ever committed against a woman is rape. Because of the public's perception of assault and its bias towards the assault victim, the prosecutor in each assault case feels oppressed and as though she is the "criminal" even though this isn't the case. Each woman who is abused internally bites the dust as a result of this. Conjugal violence is a taboo subject that is rarely discussed, despite the fact that it affects a lot of women. Conjugal assault is rarely given the validity or authenticity of other forms of sexual cruelty, yet it very well might be just as destructive. Indian law does not view domestic violence as wrong. For instance, the Indian Criminal Code, 1860, does not view domestic violence as wrong when committed by a spouse. Additionally, there are many other justifications for this, which may be found in various Law Commission studies, parliamentary debates, and judicial decisions. Assuring the holiness of the foundation and union with the current chosen remedies in law are a few of the motives. The conjugal assault exception provision found in Section 375 of the Indian Penal Code, 1860 is obviously illegal because the victim cannot benefit from the equity that should be immediately available to her because she cannot ensure equivalent security of law under Article 14 of the Indian Constitution, which guarantees equal assurance of law to each resident of India just as unfamiliar outsiders and is a Fundamental Right of each resident. In addition, there aren't any elective options available for a woman to consider if her significant other attacks her.

WHAT IS MARITAL RAPE?

Marital rape refers to an assault reported when the person responsible is also the victim's companion. Where there is a lack of consent or when the consent is coerced by threats of serious harm or sexual intrusion, the definition of assault under Section 375 of the IPC, 1860 remains the same. Hence, proving the lack of consent is a crucial element in proving the wrongdoing of assault. Nonetheless, it typically falls on the individual in question to demonstrate the lack of assent. It is sometimes assumed that consent does not exist because minors are legally regarded as being unable to provide their consent to such sexual displays. But, there are also times when agreement is made an effort to exist; typically, this is the case when the accused and the accused are married. The most heinous and terrible crime committed against women is conjugal assault. Conjugal savagery has been viewed as a serious threat to everyone's health with disturbing effects on women's bodily, conceptual, sexual, and mental well-being. Given the aforementioned, it is pathetic to say that India is one of the only countries on the earth that consistently exonerates husbands from accusations of abuse made against their women. Notwithstanding the fact Even while countries like India, the Bahamas, Lebanon, and others still permit husbands to physically abuse their wives with little to no consequence, there is a trend emerging that the absence of conjugal relations is unfair and unwelcome in an acculturated society. The abrogation of Article 522 was recently announced by the Committee for Administration and Justice of the Lebanese parliament in February 2017. However, the Article is still upheld in two situations, namely Article 505, which states that when rape is practised with a young woman between the ages of 15 and 18, the young woman has given her consent prior to the sexual demonstration, and Article 518, which states that when the sexual connection is polished with a young woman between the ages of 15 and 18, there has been a guarantee of marriage prior to the sexual demonstration. In all situations, the male would not be detained for the assault violation if the minor and her guardians agreed to a legal marriage. Just 52 countries now have laws that define conjugal assault as a crime. Even though such countries view assault as a heinous wrongdoing and support punishments for it, they exclude

the use of that law when there is a conjugal connection between the victim and the offender. Conjugal assault is nonetheless not seen as a wrongdoing by law or society in many jurisdictions around the world, including India. The "Conjugal Rape Special Case Clause" refers to this. There are a few notable professions that have advanced for not condemning domestic violence across these wards. Nonetheless, some of these safeguards are ineffective in the current environment due to changes made regulating sex correspondence. The agreement that the spouse is a cooperative, courteous, or accommodating to her significant other served as the main defence. In addition to this legitimization, there was also the Unity hypothesis, which suggested that it was possible for a woman's character to merge with that of her spouse after marriage. As a result, the law did not grant the married woman a distinct or independent character from her spouse. In any case, by the 1970s and the rise of women's activism, these arguments were no longer at the cutting edge of the argument against condemning domestic violence. The justification behind this was that women were viewed as equal citizens to men. Given the conditions, increasingly complex conjectures have become the justifications. One such theory is the implied consent hypothesis, which regards marriage as a binding contract and regards consent to sexual activity as a crucial element of this contract. Another argument, and the most recent one, is that since a couple's marriage is a private matter that should not be regulated by the law, criminal law should not interfere.

There are many types of marital rape in India, which can be classified into major three types, the battering rape, force only rape and the obsessive rape. The Section-375 of the Indian Penal Code, also explains the interpretation of this section, which gives rights to the women to demand justice and separate themselves from all such wrongful acts and practices.

The Section-375 of the Indian Penal Code, also describes the details of the way pf acts been performed by any man, which can fall under this section and is punishable for the same. It also specifies the clauses, which could help women to raise their voice against the men, if any such kind of act is being done with them, without their actual consent, against their will, irrespective of the relation and age and so on.

According to the following, there are three main types of conjugal assault that are typically prevalent in our general population:

- a. Battering Rape - In this type of assault, women who are in a committed relationship are raped while being battered, and they must then deal with the real viciousness afterwards. The majority of victims of intimate partner violence fall into this category.
- b. Power-only assault In this type of attack, the husband of the wife just uses the amount of power necessary to coerce the victim into having intercourse. There is no way that such an incident would involve any type of battering. This type of assault occurs when the spouse refuses to have sex.
- c. Fanatical assault - In this type of assault, cruel sexual provocation and agony take place that are actually detrimental.

CONSTITUTIONALITY OF THE MARITAL RAPE EXEMPTION

The unique case of marital rape, as it relates to young girls under the age of 18, was deemed illegal for violating two important rights found in Articles 14 and 21 of the Indian Constitution. It was said that there was no discernible distinction between "married" and "unmarried" minor young females. Whether or whether there

existed an item, the Court said, there was no logical connection between a juvenile girl's marital status from one perspective and the "indistinct object" from another. In this way, it was determined that the grouping was arbitrary and in violation of Article 14. It's difficult to understand how this logic could only apply to young girls in their teens. It is impossible to discern an article behind categorising women as "wedded" or "unmarried" while considering their right to refuse or consent to sex. As the couple is married, it does not mean that the woman is ready or has given her consent to have sex with her husband. Truth be told, the Supreme Court expressed a similar sentiment when it said, "It should be remembered that the days when a married woman or a married young lady kid [not just a married young lady child] might be viewed as his property or as available to him at all times are long gone. A girl [not only a minor female] intrinsically enjoys the same liberties as a man, and no decision should be interpreted or seen to denigrate from this position. If there is a theory that asserts a particularly illegal legend, that theory has the right to be completely disproved." Additionally, it was decided that the unique case rejects the fundamental right of a young lady child under Article 21 to continue living a respectable life "The right of a young lady child to maintain her high level of reliability has been effectively eliminated by a customary practise that the IPC has purified. For the purposes of Section 375 of the IPC, her significant other legally has complete control over her body and can expose her to intercourse without asking or without her consent because doing so would not constitute rape." The aforementioned "traditional work on" is youthful marriage. I also researched various different laws, which have some contradiction to Marital Rape, these are The Protection of Children from Sexual Offences Act, 2012; Protection of Women from Domestic Violence Act, 2005; which are both related to the sexual abuse to a minor child been done by any man. For such case, the trial procedure have to be adopted by the Courts of Session.

Through this research, it can be said, that committing of rape under section 375 of the Indian Penal Code, is a non-bailable offence, which states that it is a heinous crime, for which only the concerned courts can provide the bail for. Under this section, the punishment has also been specified, which is imprisonment for not less than seven years, which may extend to even life imprisonment, and even a fine of a certain amount, as per the nature and type of crime.

I got to know, about the benefits and remedies provided for such offences, as it is, i.e., the cognizable offences, where the victim has the right to file the First Information Report (FIR), against the accused, who had done the crime. In fact, the couple in affair also have been provided remedies for any of the wrongful act being done by the man in such relationship, which can also lead to punishments, as stated in the case of Dileep Singh V. State of Bihar (30 Oct 1998), and many more. It was also noticed by me during my research work, that, the Marital Rape has not been criminalized in India, i.e., it does not fall under the criminal act, as people says that the women would misuse the same act, if been criminalized. But in reality, it should be criminalized, in order to not to violate the fundamental rights of Article 14 which is right to equality and equal protection of law, and the Article 21 which states the right to life and personal liberty. It is also important to criminalize the Marital Rape in India, as women who are not willing to have sexual intercourse, and have to forcibly go through it, leads to much negative impact on their mental as well as physical health. The IPC approved of this training by allowing a young girl child's spouse to have intercourse with her without asking for her permission if she was at least 15 years old. The harm noted by the Court is that when a young woman's better half is granted complete control over her body, it eliminates her right to maintain her substantial uprightness, reducing her to nothing more than his property. The IPC effectively obliterates this group of mature women's right to their own honesty by preventing

them from having the choice to refuse having sex with their spouses simply by virtue of being married. In this way, the premise of the infringement of Article 21, as determined by the actual Court, is relevant similarly and similarly to mature married women, taking into account younger women. Also, it was also held, that under this case, there is violation of Article 21, for taking away her rights of taking decisions of her life. This harm is made more obvious by child marriage and only unintentionally by the unique circumstance that justifies the instruction. Comparably, sexual assault on a powerful woman may result in pregnancy, which the woman may be forced to carry to term. This would also go against her right to reproductive autonomy, but perhaps not to the extent that a guy forcing a woman to carry his child after having consenting intercourse would. When it comes down to it, the act of conjugal violence does not invalidate a woman's decision to become pregnant; rather, it forces her to carry the child to term or prevents her from aborting the child.

CONTRADICTION WITH OTHER RELEVANT LAWS

The Protection of Children from Sexual Offences Act, 2012 (hereinafter, POCSO Act) and the Protection of Women from Domestic Violence Act, 2005 (hereinafter, PWDVA) both of which expressly forbid having non-consensual sex with a minor and sexual abuse—were in conflict with the exception for conjugal assault, according to the Supreme Court.

Furthermore, it was determined that the exception rendered the IPC internally incoherent because a man's better half's non-consensual, non-penetrative sexual demonstrations continued to be criminally punished.

According to laws other than the IPC, particularly the POCSO Act, a young woman under the age of 18 is incapable of giving her permission to sexual activity or intercourse. Truth be told, Section 5 of the POCSO Act specifically deems having sex with a minor by someone who is related to her through marriage a prohibited conduct. This led to the conclusion that the POCSO Act conflicts with the exception to Section 375 of the IPC, which presumed a young lady child's consent simply because she is married.

When the law ignores the lack of agreement from women who are legally capable of giving consent, it is just as problematic as when it assumes the assent of young women who are actually unfit for giving consent. According to the Criminal Law (Amendment Act), 2013, "agree" is defined as a clear-cut purposeful arrangement or a letter that expresses enthusiasm to get into any sexual activity. So, it cannot be presumed that just because a man's significant other has consented to marry him, she also consents to let him have sex with her for as long as they are married. Moreover, "producing actual maltreatment, sexual maltreatment, verbal and psychological mistreatment, and financial maltreatment" are all included in the definition of "homegrown abuse" under Section 3(a) of the PWDVA (accentuation added). Hence, "any lead of a sexual nature that maltreats, embarrasses, debases, or in any sense abuses the poise of women" is defined as sexual abuse. Sex without consent would unquestionably fit this definition. This contradiction extends to simple conjugal assault because the PWDVA does not differentiate between children, women, and minors, who are involved in any kind of relationship, and all the women who want to be married with someone, or is already married.

Also, it was noted that the IPC within is in conflict with itself due to the conjugal assault exclusion. While having sex with a significant other exempt a man from being charged with assault, less serious sexual offences, such as insulting a woman's modesty or engaging in obscene behaviour, would still be criminally punishable when

committed by a man against his better half. In this way, a guy could be charged with a crime for kissing his better half without getting her permission but not for vaginally invading her with his penis. Obviously, the spouse's age has little to do with this absurdity, which would still occur whether or not she was older than 18.

INTERNATIONAL LIABILITIES OF INDIA

The Supreme Court made reference to a few international and public studies that detailed the harms of child marriage. Further mention was made of the CRC and other international agreements that oblige states to prioritise children's welfare, a duty that the IPC's Exemption 2 violates. Since the majority of these tests and international instruments focus on child marriage and crimes against children, they are not applicable to simple conjugal violence.

In any case, the Supreme Court also made reference to the CEDAW and the top to bottom Study on All Forms of Violence Against Women prepared for the General Assembly by the Secretary-General of the United Nations. The Research was used by the Court to highlight the fact that early marriage was a harmful custom. Given the persuasive weight the Court gave the Study, it should be noted that it also mentions conjugal violence as a specific instance of cruelty against women that has to be criminalised. The CEDAW's Article 16.2 was also brought up, which states that "The pledge and the marriage of a youngster will have no legal impact, and all necessary activity, including enactment, will be taken to determine a base age for marriage and to make the enlistment of relationships in an authority library necessary." The Court used this arrangement as a way to draw attention to the commitment required under CEDAW to stop child relationships. A spouse having sex with a child woman against her will "would add up to an infringement of her common freedom to freedom or poise exemplified in international agreements recognised by India, for example, the Convention of the Rights of the Child and the Convention on the Elimination of all forms of Discrimination against Women," it was noted. The Court compared the commitment imposed by the two shows on the state in doing this.

At that moment, it is obvious that various CEDAW arrangements should be viewed with a similar gravity. State organisations are obligated by Article 16(g) of the CEDAW to ensure that women do not experience segregation in marriage, notably in the exercise of individual rights. It is inherent to a person's true dependability and sexual freedom to have the choice to consent to sex or, for certainty, to reject consent. Hence, it is a crucial individual right that the state should guarantee.

SOCIAL IMPACT OF MARITAL RAPE

Kid marriage and the ensuing indecencies are heavily discussed in Independent Thought's verdict. The Supreme Court observed that because child marriage inherently includes having sex with the underage woman, the exemption as it pertains to young girls appears to legitimate the practise. As a result, it also ignores the negative effects child marriage has on the young woman little child, on any anticipated children, and on society as a whole. While some of these forms of malice, such as the lack of conceptual judgement or the destruction of assurance and confidence, would also apply to victims of simple domestic abuse, there are other drawbacks to

child marriage that would not. For instance, labour may not actually cost the same for a woman over the age of 18 compared to a young woman working the hour, and it may not, therefore, have the intergenerational effect of giving birth to children who are undernourished. But, regardless of her age, a woman who is assaulted by her partner could suffer real emotional and psychological harm. If she was also forced to carry his child, her harm and harm to the child would positively affect how the child is nurtured.

The argument that it would "annihilate the organisation of marriage" is another one frequently raised as an argument against criminalising domestic violence. The respondents in Independent Thinking, the Union of India made this claim verbally in reference to the 167th Report of the Parliamentary Standing Committee of the Rajya Sabha (introduced in March 2013). Curiously, the real report makes reference to simple conjugal assault rather than just assaults on teenage girls. The Supreme Court dismissed this dispute and any resulting perceptions in full "The idea that the institution of marriage may be destroyed by the sexual abuse of a young woman's child cannot be accepted. Marriage is not an institution, no matter how close to home; the only thing that may end the "organisation" of marriage is a law that declares it to be sinful and punished."

The Court, however, disproved the respondent's argument regarding the sexual assault of teenage girls, their response to the notion of marriage, the potential for a "organisation of marriage," and the effect of laws on them. As a result, the severity of the response cannot in any way, shape, or form be confined specifically to assaults on young women under the age of 18.

Unmistakably, the investigation that was being conducted under the watchful eye of the Supreme Court did not involve the admission of simple conjugal violence as a crime. Yet, the Court has undoubtedly cited objective facts or relied on arguments that are pertinent to the larger question of conjugal violence in determining the legality of Exception 2 to Section 375, IPC as applicable to underage young ladies. The groundwork has effectively been laid for the exception to be declared entirely illegal. The only thing left to do is for someone to refocus.

RELEVANCE FROM A MOVIE TITLED AS "PINK"

PINK, is a story of three girls living in South Delhi as the tenants. They are a normal working women professionals in their fields. It is a story of a night, when three of them accepted a dinner invitation at Suraj Kund, Faridabad, from a man named Rajveer, who is the nephew of the powerful politician, with two of his friends. Minal, Falak and Andrea, with three of the male friends, took drink together, misusing to which, three men separated three girls from each other. Despite of saying NO by Minal, Rajveer tried to molest her, which in reverse reaction lead to smashing of bottle on Rajveer's eye. To take revenge of the same, Rajveer with his friends tried to vacate the house by threatening the girls as well as their landlord, even kidnapped Minal and molested her in the moving car, in the presence of his friends.

Finally, Minal approached to the police to lodge the FIR, with the help of her friend, but unfortunately, due to the known politician, the police did not filed any complaint, and in fact provided details regarding the same to Rajveer. After knowing all this, Rajveer lodges false FIR, against all the three girls, labelling them as Prostitutes, because of which Minal is charged for "Attempt to murder and for soliciting", which could lead to imprisonment for more than 10 years, if convicted. The other girls are labelled as co accused.

Then, Deepak Sehgal, who was a retired lawyer suffering from bipolar disorder, who was the neighbor of the girls, witnesses their problems, and after discussing the same with his wife, represents on behalf of all three girls in the court. The counsel of Rajveer and his friends, tried blaming Minal and her friends in several ways, and finally says that the boys were leaving without paying, so Minal hit Rajveer with bottle on his eye. Then the arguments went on against each party, in which the Rajveer's counsel was speaking rubbish about the females in our society, which criticized the counsel for the girls, i.e., Deepak Sehgal, who stated that, everything a girl do, is wrong, from going out of their house, to coming home late, want to be independent, etc, everything happens to girls because of their willingness to grow, but all of this does not applies to men, it have been only framed for women, being aggressive. Being questioning his own client, Mr. Deepak marked, that her client said NO, and he stops stating that my client said NO, i.e., NO means NO, no further explanations needed. This case lead to the final judgment, by charging all the three men, and setting the girls free from any false allegations.

This movie was a perfect example for the rights of a women to be protected and be served well in the society. It also states that if a woman says NO, it means NO, for which no further explanations are required. People should learn from this movie, being totally realistic one, for educating the men as well as the women of our societies, who are facing such or similar offences, being in their home, or somewhere outside their homes.

FACTS

An affiliated organisation called Independent Thinking, which works in the area of child privileges, recorded the writ appeal. In the interest of the solicitor, it was argued that section 375's exemption 2 artificially distinguishes between married and single women in the age range of fifteen to eighteen, in violation of the Constitution's article 21 and paragraph three, and in violation of India's obligations under a few international conventions, including the Convention on the Rights of the Child (CRC)¹⁵ and CEDAW¹⁶. Additionally, it was at odds with POCSO Act 17, which defined sexual acts with a woman under the age of 18 as assault even if she gives her consent. According to the Union of India's counter examination, child relationships are a reality in India, and condemning domestic violence would not only be against the interests of the woman and husband but would also not be appropriate or practical given the country's financial situation. It was also argued that by virtue of becoming married, the young woman youngster had implicitly or expressly consented to having sex with her significant other.

Another significant justification offered by the UOI (Union of India) was that child relationships have been practised traditionally in our country and should be taken into consideration as such. In this regard, the 167th report of the Parliamentary Standing Committee of Rajya Sabha was introduced, which stated that few people believed that conjugal assault has the potential to destroy the institution of marriage. In its ruling, the court chastised the Union of India for attempting to portray child marriage as an Indian tradition that must be upheld. This method is wholly incompatible with the article and the basis for PCMA¹⁸.

Finally, it emphasised the negative effects of child marriage and how it affects the young lady child physically, socially, and mentally. The court also took into consideration several foreign productions and publications that portrayed arranged marriages as commonly accepted examples of cruelty. It dealt with Indian laws including the PCMA, the Protection of Human Rights Act of 1993, and the Protection of Women from Domestic Violence

Act of 2005 that conflict with the special case 2 of the IPC, which permits sex with a married woman child between the ages of fifteen and eighteen years. The argument made by UOI that a conjugal assault might end marriage as we know it was also rejected by the court, which stated that marriage is not an institution but rather something that must be destroyed by a law making it illegal. The court determined that, after taking into account the candidate's arguments, exemption 2 should be interpreted as follows: "Sex or sexual demonstrations by a man with his own significant other, the spouse not being under eighteen years of age, are not assault. Under Section 375 of the Indian Penal Code, the age to give consent for sex has been raised from 16 years to 18 years in 2013, by the Criminal Law Amendment Act. There are 2 exceptions provided under section 375 of IPC, and specifically exception 2 states that a spouse may engage himself in any sexual conduct with his wife, if her age is below 18 years and above 15 years. The POSCO Act implemented in 2012, specified that the minimum age to give consent to sex is 18 years and as per Section 3 of the POSCO Act, which restricts penetrative rape, special case 2 was an anomaly.

Independent Thinking is a national human rights organisation that was registered on August 6, 2009. On June 11, 2013, the candidate filed a writ appeal under Article 32 of the Constitution, challenging the legitimacy and legality of Exception 2 since it was subjective and biased in favour of the young girl child. The United Progressive Alliance (UPA) administration's Home Ministry made a counter-sworn statement in February 2014, which the National Democratic Alliance government eventually adopted on the side of Exemption 2.

The parties involved in this case, Independent Thought v. Union of India, were the Union of India and the National Commission for Women, while the applicant was Independent Thought, a registered society that has been fighting on behalf of children's rights. Assault is defined by Section 375 of the IPC, which also establishes the legal age for consensual intercourse as 18. According to Special Case 2 of Section 375, a spouse may engage in non-consensual sexual activity with a partner who is between the ages of 15 and 18. The decision regarding the legitimacy and legality of Exception 2 to Section 375 of the IPC was made under the watchful eye of the Zenith Court. The Supreme Court's division seat provided concurring opinions to select the case with the applicant's permission. It clarified that nothing in the judgement would be taken into consideration when determining whether there had been "conjugal assault" by reading down Exception 2 to Section 375 of the IPC.

According to Section 375 of the Indian Penal Code, the proposed age to give consent for sex is 18 years. This means that anyone engaging in sexual activity with a female minor under the age of 18 would be considered to have committed assault, regardless of whether she gave her consent. The law punishes having sex with a young woman who is under 18 since it is widely accepted in Indian law that a woman under the age of 18 is a child. Sadly, Exception 2 to Section 375 of the IPC allows a man to have non-consensual intercourse with a young woman between the ages of 15 and 18 without subjecting her to legal repercussions. This is because she is married to him for no other reason than that. Non-consensual sex with her better half is not illegal under the IPC, but such a young lady child's right to actual reliability and to decline to have sex with her significant other has been legally eliminated.

ISSUES

Although the topic at hand is limited, it has considerable public significance:

1) Does sexual activity between a guy and his better half, a young woman between the ages of 15 and 18, constitute assault? The mere fact that a young woman between the ages of 15 and 18 gets married does not mean that she stops being a child or that she is mentally or physically capable of engaging in sexual activity or other personal connections.

2) Whether or not Exemption 2 to Section 375 IPC is unjust? A consenting young lady child who is close to an adult is segregated from a non-consenting young lady child.

3) Is the court considering another infraction? One of the concerns expressed was whether or not the Court would be committing a new violation if it struck down Exception 2 to Section 375 IPC entirely or partially.

ARGUMENTS

Over the course of the oral entry, three significant defences were offered by knowledgeable advice for the Union of India in support of this distinction. The main thing is that, if a couple is married, the young lady child has implicitly or by necessary consequences consented to have sex with her better half. The next justification is that child interactions have been practised traditionally in different parts of the country, and as a result, such customs should be respected rather than outlawed.

Next thing is that, only a small number of Members believed that domestic violence might destroy the foundation of marriage. The applicant received the wise counsel that allowing the spouse of a young lady child between the ages of 15 and 18 to engage in non-consensual sex with her achieves absolutely nothing. Also, a young woman between the ages of 15 and 18 who is married does not automatically be a child, or involve herself into any sexual activity or any intercourse or personal connections.

In spite of the positive anticipation of Article 15(3) of the Constitution, which gives Parliament the authority to create unusual arrangements for women and children, it was argued that Exception 2 to Section 375 of the IPC is to this extent not just subjective but also unfavourable. Truth be told, notwithstanding the forward-thinking and practical way of thinking espoused by Article 15(3) of the Constitution, by sanctioning Exception 2 to Section 375 of the IPC in the rule book, the young girl child is placed in an awkward situation.

The Petitioner argued that Exemption 2 was harsh and self-aggrandizing since it artificially distinguished between the entitlements of a married and unmarried young lady child between the ages of 15 and 18. It was argued that this arrangement did not have a clear objective or any connection to the (indeterminate) goal of Section 375 of the IPC. As a result, Exception 2 went against the essential principles of Articles 14 and 21, as well as the favourable anticipation of Article 15(3), which gave Parliament the authority to create unusual arrangements for women and children. Additionally, since virtually all Indian laws, including Section 375 of the IPC, treat women under the age of 18 as children and punish sexual activity with them, the petitioner argued that Exception 2 to Section 375 of the IPC should reflect this legal situation in order to protect the young woman's right to fundamental morality and sexual autonomy. The intervenor (Child Rights Trust) brought forward additional concerns pertaining to protection and psychological and physical health.

The Respondent-State argued that child marriage, despite being illegal, was still a social reality and was widely practised in the country; as a result, Exception 2 sought to secure voluntary child relationships. Condemning these relationships would centre on particular societal groups and their practises. The Respondent further argued that the young lady child had implicitly or implicitly consented to having sex with her spouse simply by virtue of getting married.

JUDGMENT

The Union of India's remaining points can be summed up as follows: "The country's economic and educational development is still uneven, and child connections are still taking place. Hence, it has been decided to maintain the age of 15 years under Exception 2 of Section 375 of the IPC to provide security to a couple against being condemned for engaging in sexual activity together.

In India, 46% of women between the ages of 18 and 29 were married before turning 18[1]. Another estimate puts the number of young women in the country at 23 million. So, it would not be appropriate or useful to associate the conclusion of a marriage association with a real offence, such as assault. Providing young couples guidance in marriage with consent does not seem to fit the bill in light of the nation's current financial situation. The age recommended in Exception 2 of Section 375 of the IPC has since been observed while taking into account the fundamental realities of the still-evolving accepted practises and challenges.

On the validity of Exception 2 to Section 375, IPC, the Court delivered a detailed judgement as two congruent suppositions. The Petitioner's argument that Exception 2 did not make a reasonable order and violated Article 14 was accepted by the Court. Additionally, it was determined that Exception 2 reasonably infringed on Article 21's cherished right to continue with a stately right with fundamental freedom and welfare. The Court further observed that while the majority of laws—including POSCO, the Prohibition of Child Marriage Act of 2006 (PCMA), and the Juvenile Justice (Care and Protection of Children) Act of 2000 (JJ Act)—perceive someone under the age of 18 as a child and support the age at which consent for sex is permissible, Exception 2 permitted non-consensual sex between husbands and wives who are at least 15 years old. The Criminal Law Reform Act of 2013 also changed Section 375 of the IPC and increased the legal age of consent for sexual activity to 18 years. As a result, Exception 2 became an irregularity, allowing a spouse to have non-consensual sex with his better half between the ages of 15 and 18. As a result, the Court determined that Exception 2 to Section 375 violated POSCO's plans and objectives as well as Article 15's social government aid principles. It was deemed important to read Exemption 2 as stating that having primary sex with a spouse older than 18 was not assault in order to combine it with POSCO and essential privileges. The Court also held that the right to life encompassed the opportunity to develop fully, intellectually, and financially as a free independent female adult and took into account a variety of evidence evaluating the detrimental effects of child marriage and juvenile labour. The young girl child's bodily and emotional wellbeing was negatively impacted by Exception 2, which went against her rights under Articles 14, 15, and 21. In this manner, the Court examined Exception 2 to Section 375 to the degree that it permitted a spouse to have sex with his better half who was under the age of 18.

The Court was briefly preoccupied with the issue of how Exception 2 to Section 375, IPC, as interpreted by K.S. Putta Swami and Al. versus Association of India ((2017) 10 SCC 1), violated the right to protection of a young woman kid. Despite this, the Court's response to the question was ambiguous. Equity Regarding security, M. B. Lokar discussed the entitlement to genuine respectability and sexual independence. He cited several cases in

support of his point, including *Suchita Srivastava versus Chandigarh Administration* ((2009) 9 SCC 1), where the right to conceptive decision was compared with individual freedom and security; *State of Maharashtra versus Madhukar Narayan Mirjekar* ((1991) 1 SCC 57), where the Court held that a woman was eligible for security and insurance from interruption and rape regardless of her sexual history and further character; and *State of Karnataka Justice D. Gupta* observed that any detailed analysis of the right to protection against the criticised arrangement would have more significant effects on the legality of domestic violence generally. Since the Court's decision was solely intended to raise the age from 15 to 18 years in Exception 2 in order to read it in accordance with the general legitimate period of consent and time of marriage in Indian law, as well as other women strengthening related objectives, it ceased from discussing security and sexual brutality in detail because it would always include a discussion about the legality of domestic violence.

While deciding whether a spouse submits the charge of assault if he has sex with her better half who is between the ages of 15 and 18, the Division Bench made the following observation:

The IPC's Exemption 2 falsely distinguishes between a married young woman child and an unmarried young woman child who has no meaningful connection. Both Article 15(3) and Article 21 of the Constitution are violated by the counterfeit differentiation. No alternative provision under the reformatory statutes provides the spouse with any pushback. Also, it has no provisions for coping with a young lady child and disregards the young woman child's significant respectability and regenerative decision. In doing so, it is being self-aggrandizing and prejudiced, which will harm the young woman kid's wellbeing. The time of marriage and the time of agreement have occasionally been extended by the parliament. A young girl child is now not allowed to marry or provide consent before the age of 18. By delaying the time of consent for a spouse over a lengthy period of time, Exception 2 has become ludicrous, out of place, unnecessary, and a violation of the rights of the young lady child at the point when age has been brought up in the spectrum of different laws. As a result, it is optional and should be saved.

To make Exception 2 consistent with the Constitution, it should be read down as follows:

Sexual activity or sexual displays between a guy and his own better half who is under the age of 18 are not assault. The court is only concerned with the sexual assault of a young woman who is under the age of 18, not those involving adults. In light of this, the verdict shouldn't be viewed in any way as commenting on the matter of "conjugal assault" of an adult female.

PER JUSTICE MADAN B LOKAR

Article 21 of the Constitution: According to Article 21 of the Constitution, a young girl youngster has the right to exist in dignity, which Exception 2 violates by erasing her true dignity and regeneration judgement.

Right to balance Article 14 of the Constitution A child is a child whether they are married, single, separated, lonely, or orphaned. Due to the lack of characterization between a married and unmarried child in Exception 2, the exceptional instance is now arbitrary, absurd, and in violation of the correspondence rule. According to Article 15(3) of the Constitution, Parliament is required to establish legislation for the government aid of children and women. The council designated POCSO as a special privilege under Article 15(3). POCSO agreements have a revocative effect on other laws. There is an arbitrary and unreasonable distinction between

assault on a married young lady's child and disturbed penetrative sexual assault. To organise the legal framework, Exception 2 to Section 375 of the IPC, which states that having sex with a non-spouse who is under the age of 18 is not an assault, will now be read.

PER JUSTICE DEEPAK GUPTA (CONCURRING)

Basic Rights: Whenever any statute violates a resident's fundamental rights, the court must either overturn it or read it down so that it is consistent with the constitution.

According to Article 14 of the Constitution, Exception 2 decriminalises strong sexual relationships between a spouse and his better half between the ages of 15 and 18 who is a young lady child unable to look after herself. Additionally, it is unfair since it separates an informed young lady child from other children who are protected regardless of whether they engage in sex, whereas it does not aid a married young woman between the ages of 15 and 18 regardless of whether she is exposed to intense sex by her spouse. Because Exception 2 is arbitrary and discriminatory, it violates Article 14 of the Constitution.

According to Article 21 of the Constitution, the right to a normal life includes the right to feel human nobility. A young woman has a greater than average right to life, which includes the choice to develop into a financially independent, autonomous female adult.

Article 15 of the Constitution states that due to a lack of resources, the state should not enact legislation that will negatively affect any of its citizens, much less a minor female child. In accordance with *Vishaka v. Province of Rajasthan* [3], the following was stated:

An intense sexual encounter with a 15 or 16-year-old young woman causes both physical and mental harm to the victim. Exemption 2 is against Articles 14, 15, and 21 of the Constitution since it seriously jeopardises the physical and mental health of a young woman. Although the Court has not addressed the more complicated topic of "conjugal assault," it should be interpreted that a spouse engaging in sexual activity with her significant other does not constitute assault. Nothing of "conjugal assault" can be observed in the ruling in any way.

CONCLUSION

Independent Thinking case has discovered a vital technique to protect the young girl child by outlawing sex with a partner less than 18 years old. However, the Supreme Court did not outline any unique procedures for handling circumstances where the interests of other children are also in doubt. It did not take into account scenarios in which the partner is also a minor and would be just as innocent if they had consensual intercourse. Eloping and marriage cases are quite common in India, and the Supreme Court's disregard for them since they fall under the category of "kid marriage bodies of evidence" is detrimental to the interests of the child. The Court also decided not to comment on a "conjugal assault" case where the young woman was above 18 years old, stating that the case was not one that the court was regularly monitoring and that the verdict should not be viewed in relation to the case. The reasoning used by the thinking court to conclude that Exception 2 violates fundamental rights was equally applicable to a young woman over the age of 18 whose right to pride was compromised by the intense sexual connection.

Because non-consensual sex is not considered assault under Section 375 of the IPC, the spouse of a young woman child between the ages of 15 and 18 has full freedom and opportunity to engage in such behaviour with his spouse. As a result, he is not criminally responsible for assault under the IPC.

This act of marital rape has been gained criminal recognition in many countries, but 34 countries are still left to declare the problem and crime of marital rape as criminal offense. The section-375 of the Indian Penal Code, states the punishment for the marital rape, but does not describes any criminality for marital rape, because of which, many countries like ours, are suffering from many health and mental issues, which had lead to the increase in such cases and increase in the death rate of women.

But yes, we can say that many laws have come into existence since then, but not every law provides a remedy for marital rape with a married women, done by her husband without her any consent. We hope for the betterment of our country's law in the same matter, by providing different remedies to the victim women and by criminalising the marital rape in the remaining 34 countries.

All this can take place only, when the people of the country will get educated, especially in India. Women, children, men, everyone should be illiterate, at least they should know how to fight for their given rights, and not to allow anyone else to misuse them. The women should be much empowered so that they can easily talk and discuss the same, if happening with any of them, without any fear or threat. Lets all try to make women more powerful and actionable to at least fight for themselves, and disclose if any assault is been performed by their husband/or any male, at any place, so that they could get justice, the sinner could get charges imposed on him, and the country would be more developed, with decrease in the marital rape, assault, or any domestic violence cases, which are increasing on daily basis, to decrease with time, and to make public aware of the same. By socially developing people, especially women, we can help country grow, and decrease the violence taking place in the country.

Therefore, it is inadmissible to legalise and sanction behaviour that is fundamentally illegal and unlawful simply because it has been going on for a while. In both of the authorizations, the Parliament decided that a woman under the age of 18 is not capable of consenting to sexual activity and cannot legally get married. Furthermore, the government has categorically prohibited child marriage and decided that it is a matter that needs to come to an end. If this is the case, child marriage, which is genuinely "a fiendishness," may be permitted. Remarkably, the spouse is not liable for any wrongdoing whether the sex was coerced or performed without the young lady child's consent.

This law is self-aggrandizing because it is unquestionably not just, fair, or reasonable. The "right to life" envisioned in Article 21 of the Indian Constitution is not only a right to maintain a creature presence, as has been finally established by a catena of court decisions. This Court has repeatedly ruled that having the freedom to engage in daily activities includes having the option to do so with dignity. A little girl's right to develop into a strong woman would follow from her having good health. Both excellent physical and excellent psychological wellness are necessary for this. The girl kid's right to make a choice shouldn't be restricted.

The State is competent and engaged to determine the assent time. The State is able to make reasonable arrangements while also establishing any necessary orders. All things considered, in my opinion, this Court is simply eradicating what was unconstitutional and hostile, not creating any new violation.

Hence, it may be said that Independent Thinking exaggerates the proactive pretence made by the legal administration in modifying the laws of the country and adapting them to the new changes. It might be appropriate to quote Justice Benjamin Cardozo in this situation: "The adjudicator attempts to unravel the social heart and give effect to it in the law, but in doing so he sometimes contributes to defining what is more, alters the soul he is called upon to unravel.

Notwithstanding this, the case must be seen as a first step towards a huge problem that requires the swift examination of the legal system and society. Even though the case emphasised the homogeneity of women in romantic relationships, it explicitly stated that it would not address the more serious matter of conjugal abuse, distancing itself from the core problem. This approach fails to address the problem of adult females being sexually assaulted in marriage. In any case, the Supreme Court's opinions in the current case would have a crucially alluring value in a later case, which may be referred to as the silver lining in a cloudy sky.

