

Strict Laws or Better Implementation

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“Rights may be self-evident and constitutionally secured; however, they do not automatically implement themselves”.

We, the citizens of India having solemnly resolved to constitute India into a SOVERIGN, SOCIALIST, SECULAR, DEMOCRATIC REPLUBLIC. When we interpret the words given, we get a comprehensive look as to how our constitution is. It seems like everything is normal and no loophole stands out. But sadly, In 2011, the International Men and Gender Equality Survey (IMAGES) on gender attitudes showed that 68 per cent of the Indian men surveyed (n=810) agreed that women should tolerate violence to keep their families together, while 65 per cent believed that sometimes a woman deserves to be beaten; 37 per cent of men (n=929) had physically assaulted their intimate partner at least once; 24 per cent had committed an act of sexual violence against someone in society and 20 per cent had committed sexual violence against their partners. And what about the judicial system that we have in our country. It is a clear example of *‘A Rape a day keeps justice away’*.

In the advent of the century that we live in, we still have many Nirbhayas fighting for their lives. But we have ample remedies, Right? The only thing we have is EXTENSIVE LAW and no implementation at all. Section 376 provides for Punishment for rape, easy enough and simple indeed to understand, still it took six years of constant helplessness to the parents of Nirbhaya in order to seek justice. Why does India top among other countries in terms of highest number of rape cases because we need to understand that there is proper reinforcement that is given. In other countries like China where the punishment is Death sentence or castration, Saudi Arabia: Beheading within days, Afghanistan: Shot in the head or hanged to death and many more. But when India needs to be brought under the purview of all such deterrent punishments, we would have all the human rights activists protesting to uphold the rights of the accused, reason being India is a democratic country and everyone has a right to fair trial so why does all such fair trials right come when we talk about the accused, shouldn't these rights be talked about when a girl is deprived of her basic right of fair trial. We as of now need both i.e. Stricter law as well as better implementation.

Let us talk about one of the most prominent of sexual abuses that is marital rape. We do not consider as rape because as per the scriptures, marriage presupposes cohabitation and sexual favors.so as per this logic, if my dignity is outraged by a man without my consent then that is not to be taken into consideration just because that man is my husband? The definition of rape codified in Section 375 of the Indian Penal Code

("IPC") includes all forms of sexual assault involving nonconsensual intercourse with a woman¹ However, Exception 2 to Section 375 exempts unwilling sexual intercourse between a husband and a wife over fifteen years of age from Section 375's definition of "rape" and thus immunizes such acts from prosecution. As per current law, a wife is presumed to deliver perpetual consent to have sex with her husband after entering into marital relations. While unwilling sexual contact between a husband and a wife is recognized as a criminal offense in almost every country of the world.

Article 14 of Indian Constitution describes Right to Equality wherein by this exception 2 of section 375, it discriminates between a married and an unmarried woman. Exception 2 violates the right to equality enshrined in Article 14 insofar as it discriminates against married women by denying them equal protection from rape and sexual harassment. The Exception creates two classes of women based on their marital status and immunizes actions perpetrated by men against their wives. In doing so, the Exception makes possible the victimization of married women for no reason other than their marital status while protecting unmarried women from those same acts.

It even violates Article 21 of the Indian Constitution Article 21 states that "No person shall be denied of his life and personal liberty except according to the procedure established by law." The Supreme Court has interpreted this clause in various judgments to extend beyond the purely literal guarantee to life and liberty. Instead, it has held that the rights enshrined in Article 21 include the rights to health, privacy, dignity, safe living conditions, and safe environment, among others. Additionally, Exception 2 violates Article 21's right to live a healthy and dignified life. As mentioned above, it is well settled that the "right to life" envisaged in Article 21 is not merely a right to exist. For example, there can be no dispute that every citizen of India has the right to receive healthcare or that the state is required to provide for the health of its constituents.² In this vein, the courts have repeatedly held that the "right to life" encompasses a right to live with human dignity.³ Yet the very existence of Exception 2, which fails to deter husbands from engaging in acts of forced sexual contact with their wives, adversely affects the physical and mental health of women and undermines their ability to live with dignity.

It is believed that Justice delayed is Justice denied and therefore to solve this problem of delayed justice we have come up with a system of Fast Track Courts but how fast they actually are is still a question that remains unanswered. We need a Deadline as to when can a decree be passed in a matter of Rape. Only then can our criminal justice system would do justice to the basic tenet of its formation.

¹ Indian Penal Code § 375, No. 45 of 1860, India Code.

² *Regional Director ESI Corpn. v. Francis de Costa*, 1993 Supp (4) SCC 100; 5 D.D. Basu, Commentary on the Constitution of India, 4711 (LexisNexis 2015)

³ *C.E.S.C. Ltd. v. Subhash Chandra*, (1992) 1 SCC 441 (India).

When we talk about law being inclusive of all aspects of human life, we often forget that one of the basic characteristic of law is to be dynamic and not stagnant. This needs to be applied to India and Laws need to be changed with the changing times.

“The dead cannot cry out for justice. It is a duty of the living to do so for them.”

-Lois McMaster Bujold