

The Marital Rape (Prevention) Bill, 2019-09-15

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AS INTRODUCED IN LOK SABHA

BILL NO. XYZ OF 2019

THE MARITAL RAPE (PREVENTION) BILL, 2019-09-15

Further to amend section 376 of Indian Penal Code, 1860

Be it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. i This act may be called The Marital Rape(Prevention) Act, 2019.
- ii. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In the Indian Penal Code, 1860 (hereinafter referred to as the principal Act), in Section 376-
 - i. There shall be added a new clause in the Act defining “marital rape” as –

Any forcible sexual intercourse involving an intimate penetration of any kind to the body of any partner, whether husband or wife, by either the genitals or any other means thereof, which has been not consented to, explicitly or implicitly, which has been against the will of either of the partners and amounts to a rape by all existing definitions in the other clauses of the Act.
 - ii. The word “marital” would be defined by the existence of a legal, authorised relationship between both the spouses as solemnized by the prescriptions made for a valid marriage by the set of personal laws governing the husband and wife, jointly or separately.

NOTE: It must be noted that for purposes of considering the bond, a marriage that is void or not registered will not be considered,

A casual living together or a live in relationship would not be considered.

iii. For the offence to qualify as marital rape, the absence of consent needs to be shown only during the intercourse or the penetration thereof and not the whole of the relationship of marriage.

iv. The offence would be punishable by a period of life imprisonment of 10 years or a fine of Rs 20,000 or both as the Courts would decide.

STATEMENT OF OBJECTS AND REASONS

The proposed amendment to Article 376 by way of introducing the Marital Rape Bill is justified for several purposes:

1. Recognition of dignity of the wife in marital relationship that is extremely patriarchal, dictated by the husband according to his own terms.
2. The social order and prevailing customary beliefs hold that under the Doctrine of Coverture, upon marriage all the rights of a woman are subject to the will of her husband.
3. The assumption of rape in a marital bond to be meaningless on account of a perpetual consent being established by virtue of two persons having married is violative of fundamental right to consent of both the husband and the wife.
4. Marital rape involves forcible sexual intercourse or a coercion of sexual authority by either spouse over the other, and in the absence of safeguards to it, it amounts to a violation of Article 14; under which both the husband and wife have equal say to consent an intercourse and Article 21; as such a torture of marital rape would imply poor living conditions for the person being subjected to it.

NEED

Legislative measures have been mad stringent enough to punish the offence of rape harshly and to increase the safety standards of women in the country. However if the problem is in the domestic front, no matter how much external protection is given to the woman, she will lie vulnerable. Marriage as a sacred institution definitely needs to be respected, but at the same time, any misconduct in the interpersonal relationship of marriage cannot evade the protection given by the Rule of Law provided in the legal system.