

The Legal Comparison on The Law Governing Marital Rape in India, Malaysia and Singapore

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ABSTRACT

The legal comparison of marital rape laws in India, Singapore, and Malaysia reveals significant contrasts in how these countries address the issue within their legal frameworks. In India, marital rape is not explicitly recognised as a crime under the Indian Penal Code, leading to ongoing debates about women's rights and the need for legal reform in domestic laws. The judiciary often faces challenges in addressing this issue due to the limited interpretation of constitutional rights. Additionally, societal and cultural norms continue to influence the legal landscape. Besides, Malaysia presents a mixed approach. While the law criminalizes sexual offenses, including marital rape, enforcement and societal attitudes can hinder the effective prosecution of such cases. The legal framework is shaped by both Civil and Islamic laws, which can complicate the understanding of consent and victim rights. Meanwhile in Singapore, marital rape is recognised as a crime under the penal code, reflecting a progressive stance towards protecting individual rights within marriage. The law, however, includes specific marital exemptions, which have been subject to criticism and calls for reform to fully address the complexities of consent within marriage. This study employs a library research method to gain deeper insights into the issue being examined. Overall, these three countries illustrate a spectrum of legal recognition and societal attitudes towards marital rape, highlighting the need for greater awareness and legal reform to protect victims' rights and ensure justice. The comparison emphasizes the importance of considering cultural, social, and legal contexts in discussions of marital rape legislation.

Keywords: marital rape; India; Singapore; Malaysia; legal frameworks; consent, victim's right; justice, reforms; cultural context

INTRODUCTION

‘Rape’ derives from the Latin word ‘rapio’ in which impliedly illustrates the seizure.¹ It is done by force or to seize.² It can be seen that this offence has been committed for so long in the history of humanity and as long as the law has been governing such crime, mankind will always find a way to breach the line. According to Geneva Academy of International Humanitarian law and Human Rights, sexual violence or abuse is a form of treatment that violates women per se in aspect of their dignity, fundamental liberties and physical integrity.³

Specifically, this written article is to discover the offence of rape and its underlying issues. As such, one of its issues is marital rape in which some countries have not reformed or take attention of. Hence, those reforms or issues will be further seen from three perspectives which are India, Singapore and Malaysia.

LAW GOVERNING RAPE IN INDIA

Firstly, just like any other country, India has codified the crime of rape under Section 375 of the Indian Penal Code (herein referred to as IPC). Historically, the offence

of rape has not been amended starting from its birth in 1860 until 1983.⁴ It can be seen that since the amendments, the progression of rape law has been changing.⁵ Since the protest on the decision of *Tukaram v. State of Maharashtra* [1979] AIR SC 185, which was a rape case concerning a 16 year old girl, was followed by the 1983 amendments where it had imposed a few important protections.⁶

It is also important to look at the elements of rape under Indian criminal law. Essentially, the elements are provided under Section 375 of the IPC which requires against her will, without her consent, with her consent when it was obtained by fear of death or hurt, with her consent at the time she was unsound or intoxicated, with or without her consent if she is under eighteen years of age or when she cannot communicate her consent. The broad sense of description of consent shows that it is one of the most vital elements in *mens rea*.⁷ Despite the fact that the offence of rape has been detailed in the IPC, there comes the exception under it that imposes question and unfairness. Even though the Criminal Law Amendment 2013 has amended the necessary changes, marital rape has not been criminalised.

THE ISSUES OF MARITAL RAPE LAW IN INDIA

Marital rape is rape involving between the perpetrator and the spouse.⁸ In this context, the meaning of rape generally still applies whereas it is a penetration that lacks consent. Only, this involves a husband and wife. According to Exception II,⁹ Section 375 is inapplicable in a situation where sexual intercourse involves a husband to his wife not being under fifteen years of age. This means that rape does not apply if its committed by a husband to his wife. Provided that this provision focuses on consent, the assumption that the consent is given arises in marriage.¹⁰ However, another form of marital rape is criminalised

which when the spouses are living in separation which is expressly provided under Section 376B. Hence, the position of marital rape in India is best seen through a few case laws.

A famous case law that discusses marital rape in India with recent change is the case of *Independent Thought v Union of India* [2017] AIR SC 4904. In this case, Independent Thought is a non-governmental organization that has filed the case as a Public Interest Litigation. The purpose of Independent Thought is to protect children from becoming child brides which is also including marital rape. The Supreme Court rejected the issue of marital rape but also considered the exception to Section 375 precisely Exception II. The Supreme Court mentioned that the idea of legislative immunity that permitted marital rape came from the belief that women are supposed to be nothing but chattel of her husband.¹¹

Even so, the position of marital rape can be seen more in the case of *Dilip Pandey & Ors. v State of Chhattisgarh* [2021] CR R 177 where the court shockingly declared that sexual intercourse between spouses is not seen as rape even if it is against the will of the wife. This clearly shows the position of a wife even in circumstances where her dignity and liberty are being violated and deprived of. Aside from case laws, it is important to look at why marital rape is an issue in India. The conjugal rights are widely a journey that has been embedded in the Indian Constitution. In the famous case of *T. Sareetha v T. Venkata Subbaiah* [1983] AIR AP 356, the court ruled that restitution of conjugal rights are unconstitutional because it infringes Article 14 of the Indian Constitution. Aside from Indian criminal law, marital rape can also be seen as an infringement of the fundamental liberties under the Indian Constitution.¹²

THE DEVELOPMENTS OF MARITAL RAPE LAW IN INDIA

There has been many takes by some academicians, legislatures and judicial stands in regards to marital rape. Accordingly, there is a take that there has been sufficient legal measurement in India regarding marital rape. The existence of two laws such as the Women from Domestic Violence Act 2005 and the Hindu Marriage Act provide a way to fill in the gaps of the existing problem.¹³ As such, these provisions have covered sexual abuse in the context of domestic violence with also providing possible civil remedies.¹⁴

Furthermore, in the context of judicial stand, the decision of *Nimeshbhai Bharatbhai Desai v State of Gujarat* [R/CR.MA/26957/2017] stands as a memorable judgment that has lightened a ray of hope. In this case, the court mentioned that marital rape should be criminalised in the short period of time as the excuse of marriage increases the rape counts in India. The court noted that this would not count as fairness between an unmarried and married woman. Some academicians also looked upon the case of *State of Maharashtra v Madhukar Narayan Mardikar* [AIR 1991 SC 207] where the court also stresses on the entitlement that every woman in India has the right to their own privacy and choices. Hence, all women are protected under the law. It can be seen here that even if such courts stress on the importance of criminalising marital rape, nothing much has ever been done. Accordingly, many opinions have stated that the exceptions provided nothing and the IPC needs to be amended for it to have legal change for the women of India.¹⁵ As such the Law Commission of India has provided some recommendations regarding the offence of rape.¹⁶ However, a suggestion is just merely a suggestion and nothing ever comes out of it.

LAW GOVERNING RAPE IN MALAYSIA

Data shows that massive number of rape incidents in Malaysia and specifically in Selangor, annually around 2500 and 3000 rape case reported.¹⁷ The growing of numbers of rape cases in the country really concerning and because of these Malaysian laws regarding rape needs to be review in order to limit lacunas in it.

The Malaysian Penal Code (herein referred to as 'the PC') governs all criminal offenses including rape in the state and, initially inherited their penal codes from the British in the past. This is due to the fact that Malaysia was once under British rule and because of that the British enacted the Penal Code for its colonies.¹⁸ Therefore, during the colonial Malaysia rely heavily on the common law with regards to crime including rape. As the time pass, the British known as United Kingdom (UK) now, has reformed their own common law rape through legislations and did massive changed where UK did criminalize marital rape.¹⁹ Although Malaysia have reformed their law regarding rape but it does not helps lessen rape cases there as it increase annually.²⁰ However, definition of rape according to PC does not wide enough even though the country has progressed in the aspects of socials. Hence, there is demand for Malaysia to reform and widen the definition of rape.²¹

Section 375 and 375A of the PC, define rape is only as peno-vaginal intercourse and does not recognise all other penetration as rape which now it is known as modern rape. Besides based on Black's Law Dictionary, a sexual intercourse for rape is the act of a man's penis penetrates a woman's genital area, even slightest insertion is sufficient enough to be considered as rape and ejaculation of sperm is not necessary.²² In other jurisdiction, rape can be a penetration of other things including external objects (besides penis) and it is called 'modern rape'. Another example is if a person penetrates anything

into mouth or anus also can be considered as modern rape as long as it objectively sexual. Hence, in Malaysia, the definition of rape is not wide as it only confined to only peno-vaginal intercourse.²³

ELEMENTS OF RAPE IN MALAYSIA

Under Section 375 of the Malaysian PC, it criminalizes no-consensual intercourse and provides various situations where consent is deemed invalid. In proving these offences, two essential elements must be proven which are actus reus and mens rea referring to this provision.

Section 375 Malaysian PC stated that:

375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:

- (a) against her will;*
- (b) without her consent;*
- (c) with her consent, when her consent has been obtained by putting her in fear of death or hurt to herself or any other person, or obtained under a misconception of fact and the man knows or has reason to believe that the consent was given in consequence of such misconception;*
- (d) with her consent, when the man knows that he is not her husband, and her consent is given because she believes that he is another man to whom she would consent;*
- (e) with her consent, when, at the time of giving such consent she is unable to understand the nature and consequences of that to which she gives consent;*
- (f) with her consent, when the consent is obtained by using his position of authority over her because of professional relationship or other*

relationship of trust in relation to her;

(g) with or without her consent when she is under sixteen years of age.

Elements of rape is clear based on above provisions and can be classified as four situations that constitutes to rape which are against her will, without her consent, involuntary consent and with or without her consent.

Section 375(a), rape against her will means that sexual intercourse done by overcoming active resistance on the woman's part (vagina).²⁴ Active resistance means consistent refusal of penetration. In the case of PP v Mohammad Awari Ahmad [2018] 1 LNS 976, the court held that sexual intercourse did by the defendant is rape because it was made against the victim's will. The court accepted evidence where there were bruises at the victim's vagina and slashed wounds at her fingers which shows that she resisted the sexual intercourse from happening. Hence, the defendant was held guilty under offence of rape because the sexual intercourse happened against the victim's will.

Section 375(b), rape without her consent means that sexual intercourse done by the accused with the active will in the mind of the victim to prevent the rape.²⁵ In the case of PP v Mohamed [1977] 1 MLJ 121, the court held that the defendant was guilty of rape since the sexual intercourse took place without her consent even though the victim's submit to it. To determine the element of without her consent the court looks at the facts that the victim had bruises on her arms, blood and seminal stains on her paint, tear of her hymen and she submit to it because she was afraid that the defendant might strangle her as evidences of sexual intercourse took place without the consent. Hence the defendant was held guilty of rape since the sexual intercourse happened without her consent.

Section 375(c), (d), (e) and (f) rape because of her involuntary consent. There are four situations respectively regarding

involuntary consent based on the subsections above which are consent to have sexual intercourse because of fear or misconception of facts, mistaken belief that she was legally married or is someone that she consent, without the victim's understanding the nature and consequence to which she had given consent and consent given because of professional relationship or other relationship of trust in relation to her using his position of authority.

In the case of *PP v Mohd Faisal bin Ali* [2019] 1 LNS 1278, the court held that the accused was guilty of rape under Section 375 (c) because consent to have sexual intercourse was given because the defendant imposed fear to the victim by using knife, put the victim in fear that she would be killed. Besides in the case of *PP v Mohd Zaharudin bin Harun* [2019] 1 LNS 822, the court held that the accused was found guilty of rape under Section 375(d) since the consent of sexual intercourse obtained because the victim mistaken that the accused who broke his house was her husband. In this case the court also looked at the fact that the victim was screaming hysterically after she noticed that the accused is not his husband because he was wearing a necklace whereas the husband is not.

Other than that, in the case of *PP v Mohamad Khairul bin Mat Razali* [2020] 1 LNS 279, where the accused was found guilty under Section 375(e) since the consent of sexual intercourse took place because the victim had low intelligence and was afraid that the accused would harm her. The court also looked at evidence through witnesses which included the victim itself, her son and her husband.²⁶

Last example of situation for involuntary consent can be seen in the case of *Augustine Foong Boo Jane v PP* [1900] 1 MLJ 225, where the court held the accused was found guilty of rape under Section 375(f) because the accused obtained consent to have sexual intercourse with the victim which is his maid by establishing his dominance because the

accused was the victim's master and the victim completely dependent on the accused, financially. In this case the court also looked at the evidence where the victim did resist not to have sexual intercourse as much as she could.²⁷

Section 375(g), rape with or without her consent, means that sexual intercourse took place with or without her consent when she is under sixteen years of age still consider as a crime.²⁸ This is illustrated in the case of *PP v Muhammad Saharizan bin Hassan* [2018] 1 LNS 1237, where the court held that the accused who is twenty-eight years old was found guilty of rape under this Section due to the fact that the victim having sexual intercourse and pregnant with the accused at the age of fourteen years of old which is restricted under this Section which is below sixteen years of age despite the fact that they were fall in love.

Besides, Section 375A of the Penal Code addresses sexual offences within marriage, stating that a husband commits an offence if he causes hurt in order to have sexual intercourse. This section states that:

375A. Any man who during the subsistence of a valid marriage causes hurt or fear of death or hurt to his wife or any other person in order to have sexual intercourse with his wife shall be punished with imprisonment for a term which may extend to five years.

This section emphasis is on the offence of hurt and fear of death and not rape. Hence, this Section does not recognize marital rape as an offence. It creates a different charge based on the action of the perpetrator by requiring different elements of criminal intimidation as stated in Section 375 of the PC.

ISSUE OF MARITAL RAPE IN MALAYSIA

Marital rape defines as sexual intercourse with the lack of the wife consent between a husband and wife in a valid marriage.²⁹ This issue is very vexed in Malaysia due to amendments of Malaysian Penal Code that was made in 1989. Before the British enacted Penal Code for its colonies in 1980, marital rape is a crime in the Straits Settlement Penal Code (SSPC) 1936, if the wife is under the age twelve years and this SSPC extended and applicable to Federated Malay States (Federated Malay States Penal Code, FMS)³⁰ as follows:

'Sexual Intercourse by a man with his own wife, the wife not being under 12 years of age, is not rape'

Consequently, the age was increased to thirteen years up until 1989 when Malaysia was already established.³¹ In 1989, the Section 375 of the PC that criminalized marital rape was revised and amended³² into two parts in which is increasing the age of statutory rape from the age of fourteen to sixteen years old and secondly removing the qualifying age of marital rape in the exception of the Section. The exception of the Section is as follows:

'Sexual intercourse by a man with his own wife by a marriage which is valid under any written law for the time being in force, or is recognised in the Federation as valid, is not rape'

The section was amended due to the increase of the number of rape cases in 1988³³ was the age for statutory rape was increased due to child below the age of 16 years unable to understand the impact and consequences of her consent.³⁴ Besides this, the reason why the exception of marital rape was removed and deleted because of inconsistency since Muslim female marriages below the age of 16 is valid at

that time. It completely changed the exception.

The amendment of the Exception raised a few issues such as the victim who married the rapist suffered physical and mental abuse and was deserted by her husband who was her rapist before.³⁵ Besides that, teenagers or even children who married older person experience sexual violence due to non-consensual sex making it painful and unpleasant based on studies.³⁶ The amendment not only affects their mental and physical health but also affects their education where the victim would quit school which deprives her from learning and getting education certificates, hence they will face trouble securing employment.³⁷

There is some effort to criminalise marital rape by amending the PC but it was unsuccessful since it contravenes with the view of Syariah laws and other religions. In the discussion on whether or not marital rape should be criminalise, the question of whether the husband has right to have sex with his wife without the wife's consent also raise. Therefore, it is not suitable for marital rape to be criminalise in Malaysia.³⁸ There is also conflicting opinion with regards to this since according to Muh Endriyo Susila stated that marital rape Islam commands the husband to treat his wife well and hence marital rape is not recognise in Islam.³⁹

Nevertheless, due to this Section 375A was enacted which criminalizes violence conduct of a husband such as causing hurt, or fear of death to his wife or any other person in order to have sexual intercourse with his wife.⁴⁰ However, the objective of enacting this provision is to punish the husband if he acts violence towards his wife and not to protect the wife from having non-consensual sexual intercourse. This means the wife's consent for sexual intercourse is not important and not an element that is impliedly embodied in this section.⁴¹ The research shows that 9-11% of domestic violence victims are particularly because of forced sexual intercourse and it somehow

portrays the ineffectiveness of this section.⁴² Hence enacting this section as alternative to impliedly criminalize marital rape does not solve this issue.

CALL FOR REFORMATION OF EXCEPTIONS OF SECTION 375 OF MALAYSIAN PENAL CODE

There are lacunas in our current law regarding marital rape since it is not recognise in Malaysia. Hence, several reasons why legal reform needs to be done which are 1) 'wife' the victim of 'marital rape' does not have any right to obtain remedy when she suffer psychological abuse; 2) marital rape contravenes the Convention on Elimination of Discrimination Against Women (hereinafter referred as "CEDAW") 1995; 3) marital rape is contradict with Article 5 and Article 8 of Malaysian Federal Constitution.

Section 375 of the PC needs to be reform because a wife who is a victim of 'marital rape' has no right to get a remedy when she suffers psychological abuse by the husband. Husbands who do not recognize this act as morally or legally wrong often treat their wives as objects, abusing their dominance and failing to protect their wives which are weaker than them.⁴³ Besides, marital rape is closely related to domestic violence, which is addressed under the Malaysian Domestic Violence Act 1994. However it does not establish marital rape as an offence and as a result there is no special protection is guaranteed for women.⁴⁴ This issue affected the wife severely even more severe than stranger rape. This is because when a woman raped by stranger, she have to live with are dark memory but when a wife raped by her husband, she will continue lives with her rapist (husband) unless she seeks a divorce.⁴⁵ Thus, laws regarding rape must recognise marital rape as a part of it in order for the wife to get remedy when she experience these things. Currently, the law

on rape contains contradictions and lacks effective remedies for married women.⁴⁶

Besides exceptions stated in Section 375 and 375A of PC contradicts Article 1 and Article 2(d) of CEDAW, as it shows discrimination because it only protects unmarried women but not otherwise.⁴⁷ In addition, these sections also are not consistent with the Article 2(e) until Article 2(g) of CEDAW.⁴⁸ Article 1 of CEDAW states that:

'For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'

Article 2 of CEDAW states that:

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) ...;
- (b) ...;
- (c) ...;
- (d) *To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) *To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;*
- (f) *To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations,*

customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Hence, legal reform is necessary regarding this issue in order to comply with this convention, considering Malaysia is a state-party to CEDAW.⁴⁹

Other than that, Section 375 and 375(A) are not contrary and violate Article 5 and Article 8 of the Federal Constitution. Interpretation of this constitution is different from any other ordinary law since it is a Supreme Law of the land, where it cannot be interpreted literally and judicial precedent plays a lesser role. When interpreting fundamental rights guaranteed under Part II of the Constitution, it should have been read by courts prismatically and read generously; however, exceptions or provisions that limit those rights must be read restrictively.⁵⁰ Regarding the issue of marital rape, Article 5(1) which explains about 'Liberty of The Person' states that:⁵¹

5(1) No person shall be deprived of his life or personal liberty in accordance with law.

This article protects both citizens and non-citizens and the gist of this article does not only confine to mere existence of a person but more than that.⁵² This article also covers and protects the right of a person to live with dignity. Hence how can a woman have dignity over her body if she does not have control over her own body despite being married or not? It is clearly a deprivation of liberty of a married woman when she does not have rights over her body and her consent is irrelevant when it comes to sexual intercourse with his husband. This right is within the meaning of the right to life and personal liberty guaranteed by Article 5 of the Constitution.⁵³ Hence, marital rape is contravene with this article since it endangers the right to life of the

wife. Other than that, Article 8 (1) and (2) which explains about 'Equality' states that:

8. (1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

Regarding the issue of marital rape, Section 375 and 375A did not give unmarried woman and married woman an equal protection where married woman receive lower protection than unmarried woman and it clearly violates Article 8 of the Constitution. Besides women and men are discriminated against based on their marital status and a married woman is discriminated against only because of marriage the woman's (wife) consent is irrelevant and lost with regards to sex between husband and wife. Thus, these Sections are not consistent with Article 8 of the constitution.⁵⁴

LAW GOVERNING RAPE IN SINGAPORE

If Malaysia practiced a mixed-approach method, Singapore's operation seems more clear regarding this matter. Generally, for rape in Singapore, it is as similar as in India. The wording of 'rape' in Section 376(2) of the Singaporean Penal Code (herein referred to as 'SPC') stated three different scenarios illustrate the action of it, namely:

- (a) When someone pierces another person's anus or vagina sexually. Any area of the body or anything else can be penetrated in this way. The bodily component used should not be the penis if the offender is a guy, or
- (b) If someone gives a man permission to insert his penis into another person's mouth, anus, or vagina, or
- (c) When someone encourages someone else to use any part of their body, whether the victim or the offender, to sexually penetrate someone else's vagina or anus. The body component that was used should not have been the penis if the victim was a man.⁵⁵

The above can be defined as situations where, if the victim did not consent to the penetration, any one of these three scenarios could be considered sexual assault involving penetration. However, consent to penetration in such cases does not necessarily indicate that an infraction has not occurred if the victim is younger than 14 years old.⁵⁶

MARITAL RAPE LAW IN SINGAPORE

Here the same question lies. Can 'marital rape' exist? Singapore's Penal Code (herein referred to as 'SPC') has a different view on this issue. Associate Professor Ho Peng Kee, who was the Senior Minister for Home Affairs, finally brought up this subject in the Parliament.⁵⁷ The immunity from marital rape was eliminated by the most recent changes to the Singapore's Law. Stated differently, husbands are now liable for the rape of their spouses. While advocating for a new law that would provide "protection to women whose marriages, are, in practical terms, on the verge of a breakdown or have broken down, and who have clearly signaled that they are withdrawing their implicit consent to conjugal relations, so that their husbands

are forewarned that marital immunity has been lifted", Professor Ho emphasized that marital immunity would not be completely eliminated. Although there was support for this amendment to marital immunity, many members of parliament believed that the adjustment was insufficient to adequately protect the interests of women who were forced into these kinds of marriages. Many were particularly concerned about the clarity of the circumstances in which the exceptions would be invoked.⁵⁸

The SPC was amended, and the new Section 375(4) states that the husband's protection from prosecution for marital rape against his wife will be revoked in the following five circumstances:

- (a) His wife was living apart from him;
 - (i) under a decree nisi for nullity or an interim judgment of nullity not made final;
 - (ii) under an interim judgment of nullity not made final;
 - (iii) under a judgment or decree of judicial separation; or
 - (iv) under a written separation agreement;
- (b) his wife was living apart from him and proceedings for divorce, nullity, or judicial separation had been started but were not yet finished or concluded;
- (c) A court injunction prohibiting him from engaging in sexual activity with his spouse was in effect;
- (d) He was subject to a protection order under section 65 or an expedited order under section 66 of the Women's Charter (Cap. 353), which was made against him for his benefit; or
- (e) His wife was living separately from him and legal proceedings had been started regarding the protection order or expedited order mentioned in paragraph (d), and these procedures had not been finished or concluded.⁵⁹

This is a good move for women in Singapore, as Anthony Yeo has observed that in situations where a husband forces his wife away, the woman experiences significant mental and emotional pain that can result in PTSD in Singapore. It would be harder for a woman (wife) in such a state to raise her kids. Moreover, it is currently uncertain how much the rape will affect the child if she gets pregnant as a result of it. Here, what it meant was giving birth to the child as a result of unwilling intercourse. Furthermore, it is often known that children who experience violence in their homes suffer greatly from a psychological standpoint.⁶⁰

ISSUES REGARDING MARITAL RAPE LAW IN SINGAPORE

The proposed revisions will make child sex tour operators and the prostitution of minors outside of Singapore illegal, despite worries about proof and enforcement. Thus, these worries shouldn't stop the abolition of the marital rape exemption. Apparently, it is fact that there are difficulties when it comes to proving marital rape. Conversely, there is no justification for not making marital rape a crime, even though convictions for the crime may be uncommon because it is difficult to establish lack of consent. Although they may be challenging to prosecute, other crimes like acquaintance rape and incest are nonetheless regarded as crimes. The burden of proof has never been a suitable standard for determining what actions warrant formal social disapproval. The argument that it could be challenging to establish lack of consent clearly outweighs the public policy of shielding women from the terrible crime of rape by anyone, including their husbands.⁶¹

In cases of marital rape, given the close nature of marriage and the complexity of consent, it might be difficult to establish lack of permission in cases of marital rape. Criminal attorney Ramesh Tiwary, who practices alone, told Channel NewsAsia

that proving rape inside a marriage has unique challenges with regard to the definition of consent and how clear it is. He questioned if a husband should always get his wife's consent, pointing out that a long-term connection like marriage complicated things more than other kinds of unions.⁶² This is illustrated in *Public Prosecutor v. N* [1999] SGHC 255. In that instance, the wife returned to her parents' house as a result of her husband's death threats. Later, she met her husband, hoping for a calm conversation. They eventually got into a fight, though, and he pulled her back to their married house before forcing her to have sex against her will. Since the case was held before the amendment, the husband was free from the charge.

Even if the act was done after the amendment, where the husband was free from marital rape immunity under Section 375 of the SPC, it is still hard for the court to access the consent as normally, it is hard or almost impossible to proof lack of consent to have sexual intercourse with husband and wife as this is related to 'privacy matter'. Plus, the definition of consent under the Act is not clear. It does not state that proof of resistance to the attack, such as physical harm to the body, is required to establish that sexual activity occurred without consent.⁶³ This makes it even harder to obtain evidence of permission in trial. In the end, a repeal would not guarantee that women who are exposed are completely protected.

DEVELOPMENTS OF MARITAL RAPE LAW IN SINGAPORE

In order to solve these problems, there are few developments that can be made into the law of Singapore. Marital immunity for rape was abolished as part of a larger review of the SPC, representing the conclusion of Singapore's tremendous progress in tackling the issue of marital rape that now recognized marital rape as a crime.⁶⁴ With effect from January 2020, this action brings

Singapore into compliance with global standards and demonstrates the increasing acknowledgement of women's rights in marriage.⁶⁵

Prior to this change, there were only a few circumstances in which marital rape could not be prosecuted. These included situations in which the wife had a personal protection order, were living apart as a result of a court separation, or were in the middle of divorce procedures. These exclusions, however, were viewed as insufficient since they did not provide many women with protection unless they had already filed official lawsuits against their husbands.⁶⁶ Still, women are still protected by the law as the husband commit rape against her will, then he can be charged under the section provided in SPC. This vividly displays that by the abolition of marital immunity of rape, the woman's right, to be specific, wives, are more secured plus just and fair.

The other development that can be seen in the local law is by the legislative amendment in terms of broader context. Marital immunity had certain prior exclusions, but they were few and insufficient. These were situations in which the wife was separated from her husband by court decree or in which she obtained a personal protection order against him. Even with these exclusions, many women were left defenseless if they hadn't filed official lawsuits against their spouses.⁶⁷ An important legal development was the removal of marital rape immunity by an amendment to the SPC. This action brought Singapore into compliance with international norms and emphasized the need for a wife's consent before engaging in sexual activity, regardless of a person's marital status.⁶⁸

Briefly, societal and public message that sexual violence in the home and private spheres is unacceptable occurs when marital rape is criminalized. Criminalizing spousal sexual assault undermines patriarchal and traditional social norms that grant men unrestricted access to their

spouses' bodies and rejects the idea that a woman becomes a man's property upon marriage. Eliminating legal protection for husbands who abuse their spouses or other intimate partners is based on equality principles and marks a significant step in the establishment of new societal norms pertaining to gender equality, consent, women's autonomy, and sexual personhood.⁶⁹

By the amendment of this immunity in Singapore, the protection of women's rights and gender equality has advanced significantly with the removal of the immunity from prosecution for marital rape. It shows a dedication to bringing the legal system up to date and bringing it into compliance with global human rights norms. Sustained promotion, instruction, and legal development will be necessary to guarantee that these changes have a significant effect and that all types of sexual assault are sufficiently addressed.⁷⁰

COMPARISON BETWEEN INDIA, MALAYSIA AND SINGAPORE

The position of India has been very stagnant from time to time even though the courts have always tried to depart from it. It is not as progressive as Singapore and it remains the same even if there are many calls to it. Case laws illustrated above have agreed that marital rape does not exist due to implied consent and some case laws have been direct by not accepting Exception II of Section 375.

Similarly, in Malaysia, marital rape is also still not recognise as a crime due to reasons of it is not suitable with Syariah laws and other religions. Besides, a wife's consent is irrelevant when it comes to sexual intercourse between the husband and the wife. As an alternative Malaysian enacted Section 375A of the to combat this issue. Eventhough Malaysia enact alternative provisions to "curb" this issue unlike India, this alternative did not solve the core problem of marital rape since it

inconsistent with Federal Constitution and CEDAW and it still affect the victims psychologically, physically and mentally. Hence, reformation needs to be done in order to curb this problem following Singapore's decisions to criminalize marital rape by protecting all women including wife from sexual abuse and any sexual activities must on the basis of mutual consent not by force.

Meanwhile in Singapore, the legal position of marital rape is quite clear and firm. This can be seen by the establishment of the provision in the SPC regarding rape in the marriage by the husband. Briefly, before the amendment of the Code, wives have not much protection under the law as it before known that there are no such things called 'marital rape'. However, after the amendment made in 2020, things changed. Now, the immunity owned by the husband has been abolished and given more rights towards women in their marriage.

The only problem normally arise when it comes to prove marital rape is 'consent'. As per the Ministry of Home Affairs and Ministry of Law in December 2019, announced an amendment that "ensures that all women are protected from sexual abuse" and stated that sexual contact in any relationship should be based on mutual consent. It might be a little complicated to prove the element of consent in committing consummation as it is a 'privacy view'. However, the court comes into solution to solve this matter by define the word of 'consent' itself and provide guidelines in what extend the wives can brought the case of marital rape to the court.

CONCLUSION

In a nutshell, different cultural, legal, and religious backgrounds are reflected in the different approaches to marital rape taken by Singapore, Malaysia, and India. Singapore has fully criminalized marital rape by a 2020 Penal Code modification, offering victims clear rules on consent and

legal redress, while India maintains its position, rejecting marital rape in case law and preserving the idea of implicit consent inside marriage. On the other hand, Malaysia uses Section 375A of the Penal Code, which falls short in addressing the problem and leaves victims vulnerable, to recognize marital rape as a crime, citing difficulties with Syariah law and religious reasons. These variations show that in order to give victims more protection and handle the problem holistically, legal reforms are required in nations like Malaysia and India.

NOTES

¹Siddharth Mehta, 'Rape Law in India: Problems in Prosecution Due to Loopholes in the Law' [2013]

² Ibid

³ Geneva Academy of International Humanitarian Law and Human Rights, The Situation of Women's Rights 20 Years after the Vienna World Conference on Human Rights-Academy in-Brief No. 4, p.23 (June, 2014).

⁴ Apoorva Ramaswamy, 'Anti-Rape Laws in India Prior to the Criminal Law Amendment Act 2013', p 1.

⁵ Renae Sullivan, 'Sexual Violence in India: The History of Indian Women's Resistance' (2015); [11] 71 MCNAIR J. p. 3.

⁶ Apoorva Ramaswamy, Supra 4, p.3

⁷ Gupta, Siddharth, Kalra, Vanshita, & Ranjan, Ruchika, 'Sexual offences: Critical analysis of Section 375 of the Indian Penal Code', (2021) Jus Corpus Law Journal, p 409.

⁸ Raveena Rao Kallakuru, Pradyumna Soni, 'Criminalisation Of Marital Rape In India: Understanding Its Constitutional, Cultural And Legal Impact' (2018) [11] *NUJS Law Review*, p 2.

⁹ Explanation II of Section 375, IPC.

¹⁰ Raveena Rao Kallakuru, Pradyumna Soni, supra note 8, p 5.

¹¹ Singh, Shreya, & Kar, Anshuman, 'Marital rape and the indian penal code', (2021) *Legal Lock Journal*, 1(2), p 10.

¹² Raveena Rao Kallakuru, Pradyumna Soni, supra note 8, p.6.

¹³ Rea Savla, 'Trapped in Tradition's Prison: Why India is Not Ready to Criminalize Marital Rape'.

¹⁴ Patel, Krina, 'The gap in marital rape law in india: advocating for criminalization and social change', (2019), *Fordham International Law Journal*, 42(5), p 1519.

¹⁵ Singh, Shreya, & Kar, Anshuman, 'Marital rape and the indian penal code', p 10.

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- ¹⁹ Non-consensual sexual intercourse between married couples was not an offense under common law. The House of Lords declared criminalization of such sexual intercourse: R v. R [1991] 1 All E. R. 747; R v. C [1991] 1 All E. R. 755, and R v. J [1991] 1 All E. R. 759.
- ²⁰ Solaiman S.M. Supra, 17
- ²¹ Dinusha Panditaratne, Decriminalizing Same Sex Relations in Asia: Socio-Cultural Factors Impeding Legal Reform (2016); Yee Xiang Yun, Asia to Reform Sex Offender Laws. Jakarta Post, Jun. 13, 2016
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- ²³ Section 375 of the PC.
- ²⁴ Section 375 (a) of the PC
- ²⁵ Section 375 (b) of the PC
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- ²⁷ Section 375 (f) of the PC
- ²⁸ Section 375 (g) of the PC
- ²⁹ Pavitra Kalaiselvan (2022) A Comparative Study of Marital Rape Laws in Malaysia, Indonesia and Singapore: Towards Safeguarding Child Brides, eJournal UM.
- ³⁰ Penal Code (Amendment and Extended Application) Ordinance 1948 (Malaysia).
- ³¹ Penal Code (F.M.S. Cap 45) (Malaysia) Exceptions.
- ³² Penal Code (Amendment) Act 1989 (Malaysia).
- ³³ Malaysia, Parliamentary Debates, House of Representatives, (22 March 1989), (Tan Sri Dato' Mohamed Zahir Bin Haji)
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- ³⁵ Kelly C. Connerton, (1997-1998), 'The Resurgence of the Marital Rape Exemption: The Victimization of Teens by Their Statutory Rapists', Albany Law Review.
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