

Lord Justice General Lord Emslie (Case R vs R 1991) stated nowadays, it cannot seriously be maintained that by marriage, a wife submits herself irrevocably to sexual intercourse in all circumstances’(P665): An overview of laws on Marital Rape and domestic and sexual violence in Mauritius and other countries. ‘Then people all over the Earth will know that the lord alone is God and there is no other (1Kings 8:60). Recommendation and suggestion to amend the Criminal Code of Mauritius to Criminalize Marital Rape and Courts to have their Judicial Discretion

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ABSTRACT: *This paper serves as a recommendation and suggestion paper to amend the Criminal code of Mauritius to Criminalize Marital Rape and court to have their Judicial Discretion. In countries like Algeria and Muslim countries there are no specific laws against Marital rape. Wives need to submit to their husbands. In Mauritius there are some laws namely for domestic abuse such as Protection from Domestic Violence Act of 1997 section 2(d) compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain but no specific law as marital rape. The paper explores the different section of the laws of some countries such as US, France, Spain and UK about Provisions for marital rape and serves as a suggestion to amend the law of Mauritius for Marital, spouse rape. Too many times wives are abused and victim of marital violence and raped but prefer to remain silent due to lack of judicial protection.*

KEYWORDS: *Marital rape, Domestic violence, sexual violence, laws*

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I. INTRODUCTION

With this paper, I would like to make a suggestion and recommendation to attached parties namely to **Amend the law, the Criminal Code of Mauritius to Criminalize MARITAL RAPE , also referred to as SPOUSAL RAPE and courts to have their Judicial Discretion.** Lord Justice General Lord Emslie (Case R vs R 1991) stated that ‘ *nowadays, it cannot seriously be maintained that by marriage, a wife submits herself irrevocably to sexual intercourse in all circumstances’* ^{1 2} **Rape and Domestic Violence:** *The law prohibits rape, but there is no provision criminalizing spousal rape, unless it is sodomy. Police and the judicial system did not effectively enforce the law, according to local NGOs that work with domestic violence victims.* ³ **PROTECTION FROM DOMESTIC VIOLENCE ACT 2 (d)** *compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain;* ⁴

II. FINDINGS

Marital Rape laws in some countries

(a) In Algeria, the law criminalises rape but does not address spousal rape.⁵ The Penal Code does not explicitly exclude marital rape from the definition of rape,⁶ however the Algerian Family Code requires a wife to obey her husband ⁷

(b) In Argentina, there is Explicitly criminalized Rape of men and women, including spousal rape, can be punished by imprisonment from six months to up to 20 years. Spousal rape is criminalised by Article 5 (3) of the Law of Comprehensive Protection of Women (Ley de Protección Integral s las Mujeres), 2009.^{8 9 10}

(c) In Bangladesh, marital rape is not criminalised. The law prohibits rape of a female by a male and physical spousal abuse, but the law excludes marital rape if the female is above 13. Section 375 (Of Rape) of the Penal Code includes the exception: "Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape."^{11 12}

(d) In Egypt, the law prohibits rape, prescribing criminal penalties of 15 to 25 years' imprisonment, or life imprisonment for cases of rape involving armed abduction. Spousal rape is not illegal, based on a 1928 Court of Cassation ruling that "a wife cannot withhold sex from her husband without a valid reason according to sharia".^{13 14}

(e) In France, marital rape is Explicitly criminalized. The law criminalises rape, including spousal rape, and domestic violence, and the government generally enforced the law effectively. The Court of Cassation authorized prosecution of spouses for rape or sexual assault in 1990. In 1994, Law 94-89 criminalised marital rape; a second law, passed 4 April 2006, makes rape by a partner an aggravating circumstance in prosecuting rape. (Article 222-24(11) of the Criminal Code)^{15 16 17}

(f) In India, marital rape is explicitly excluded. Section 375 of the Indian Penal Code (IPC) considers forced sex in marriages as a crime only when the wife is under the age of 18.^{18 19}

(g) In Spain, marital rape is decided by Court decision. The law prohibits rape, including spousal rape, and the government generally enforced the law effectively. The penalty for rape is 6 to 12 years in prison. The Supreme Court ruled in 1992 that sex within marriage must be consensual.²⁰

(h) In United Kingdom , the law criminalises rape, spousal rape, and domestic violence. The maximum legal penalty for rape is life imprisonment. The law also provides for injunctive relief, personal protection orders, and protective exclusion orders (similar to restraining orders) for female victims of violence.[468] The common law presumption of a marital exemption was overturned by the House of Lords in the case of R v R in 1991.²¹

(i) In the United States, Marital rape has been illegal in all 50 US states since 1993.²²

III. CONCLUSION

Too many times, wives are abused, raped by their husbands but remain silent because there is no specific law to combat that crime and lack of trust in the law. Gender-based violence within a married couple, namely marital rape, spouse rape cannot go unpunished and there need to be a specific amended law in the Criminal Code of Mauritius , same as in other countries like the US, to make spouse rape a criminal arrestable and condemnable offence.

You shall have no other Gods before Me **Exodus 20:3.** Like a father protects his daughter, like a husband loves his wife, like a son respects his mother, like a friend who never abandons you with a pure selfless love.

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