Sec 375 IPC

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Marital Rape

Independent Thought vs. Union of India and Anr.,(2017) 10 SCC 800

Facts: Independent Thought, one of the leading NGOs which deals with the child rights, had filed a public interest litigation in the Supreme Court of India. It challenged the constitutional validity of exception 2 to section 375 (Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape) of the Indian Penal Code.

Whether sexual intercourse between a husband and wife, where she is between 15 and 18 years of age would amount to rape?

Whether section 375, exception 2 is violative of fundamental rights of a girl child?

Held: In the judgment, Supreme Court has criminalized the sexual intercourse

with a minor wife whose age lies between 15 and 18 years. The Court opined that the exception 2 in section 375 is violative of Articles 14, 15 and 21 of the Indian Constitution which allows intrusive sexual intercourse with a

girl who is below 18 and above 15 years on the ground of marriage.

Such exception clause in Indian rape laws negates the very purpose of Prohibition

of Child Marriage Act, it violates the provisions of Protection of Children from Sexual Offences Act (POCSO) in context of the age of consent and some other international conventions to which India is a signatory.

In this landmark verdict, Supreme Court has struck down section 375, exception 2 of the Indian Penal Code. Now, the law cannot protect a man who is engaged in sexual relations with his wife where she is between 15 and 18 years because irrespective of the status of a child whether married or not, she will always remain a child.