EAGLE INSTITUTE OF LAW

THEFT OF ONE'S OWN PROPERTY AMOUNT TO COMMITTING THEFT

- Theft under the BNS is an offence against possession and not ownership.
- A person can be convicted of stealing his own property if he takes it dishonestly from another.

For example, **S -303** ,BNS **Illustration 'k'** If, A, having pawned (Mortgage) his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

Again, BNS Illustration 'j' of Section 303 – A gives his watch to B for repairs. B repairs the watch but A does not pay the repairing charges, because of which B does not return the watch as a security. A forcibly takes his watch from B. Here, **A is guilty of theft of his own watch**.

In ***R Vs. Turner***, 1971,WLR,901, the defendant took his car in to a service station for repairs. When he went to pick it up he saw that the car was left outside with the key in. He took the car without paying for the repairs. He was **liable for theft** of his own car since the car was regarded as belonging to the service station as they were in possession and control of it.

It was held that "Where the accused took a bundle belonging to himself, which was in the possession of a police constable and for which the constable was accountable, it was held that the constable had special property in it and that, the accused was **guilty of theft**".

For the following situations, own property theft is not amount to theft;

Seizure of goods under the Mortgage deed

Sekar Vs. Arumugham (2000) CrLJ 1552 was held as **not amounting to theft** under the Code. Here when the person defaulted in his payments to the bank then, the bank under the express clause in the deed seized the lorry; **it didn't amount to theft** because the bank acted as per the deed and there was no dishonest intention.

Also in the case of ***Charanjit Singh Chadha Vs. Sudhir Mehra***,AIR 2001,SC 3721, in case of a hire-purchase agreement, the custody of vehicle was given to the hirer with a condition stipulated in the agreement that the financier will continue to be the owner till payment of last installment. Subsequently, there was a default in payment made by the hirer and as a result the financier took back the vehicle. The Supreme Court held that it **did not amount to theft** because the agreement specifically provided that the owner as a right could repossess the vehicle in case of default in payment. So, the act of financier was lacking dishonest intention.

RAPE ON HIS OWN WIFE/ MARITAL RAPE

Marital rape or spousal rape means indulging in sexual intercourse with one's spouse without consent.

According to S- 63 of BNS, Exception 2, sexual intercourse or sexual acts between a man and his wife who is completed 18 years of age is **not rape**.

Even though **forced sexual** actions or **non-consensual** sexual intercourse between a man and his wife who is at least eighteen years old does not constitute rape.

Thus, coercive and non-consensual intercourse by a husband with his wife (above 18 years of age) is outside the ambit of rape. It has been presumed that a woman, on marriage gives her consent forever to her husband for an act of sexual intercourse.

In ***Independent Thought Vs. Union of India***, AIR 2017 SC 4904, the Supreme Court read down exception 2 to section 375 of IPC,(Now section63 of BNS) on the following grounds

(i) it is arbitrary and violative of rights of girl child and not just or reasonable and therefore violative of Ariicles 14, 15 and 21 of the Constitution of India.

(ii) It is inconsistent with the provisions of POCSO Act, which must prevail.

(iii) Therefore, Exception 2 to Section 375 (Now section **63 of BNS**) is read down as follows; "Sexual intercourse or Sexual Act by a man with his own wife, the wife not being under 18 years of age, **is not rape**."

However,(***Bhupinder Singh Vs. Union Territory of Chandigarh***, (2008) SCC 531)sexual intercourse with a wife, whose marriage with him is void as he was already married and had a living spouse and who was aware of the fact of the first marriage, amounts to rape.

A married woman was not contemplated as a separate or an independent legal body while documentation of the IPC in the 1860s. Instead, she was regarded as the chattel (property) of her husband.But with the passage of time laws prevailing in India, now consider husbands and wives as an independent & separate legal body, & sufficient justice in present times is unequivocally assiduous with the security of women.

In present times, courts are recognizing a right to refrain sexual activities and to excuse oneself from undesired sexual activity incorporated in the wider aspect of the right to life and personal liberty.

However, the Legal Service India recognized three reasons against the criminalization of marital rape.

- Marriage is sacred(holy) and criminalization of such an act would lead to the destabilization of society.
- There is a fear of a large number of fraudulent cases being filed against husbands.
- To prove it medically is another lacuna (a gap) that has helped the offenders to continue to molest or abuse their wives and excuse themselves from the crime.