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MARITAL RAPE OF WOMEN AND INDIAN LEGISLATION- Kajal Sharma¹

ABSTRACT

This article throws light on various aspects related to marital rape, various Indian legislations, some important judgments, and critical analysis related to the same. Marriage in our country is considered to be a sacred union of two individuals; it is a link that binds two souls for life, and beyond. Marriage is not only based on love; it requires trust, loyalty, understanding, and respecting each other too. A girl sacrifices the home; she was born, and grown in, leaving her parents behind she moves to a completely new place, and expects nothing but only the love, and care she deserves, but often reality hits us very hard, and nothing happens the way we expect it to be. The act of sexual contact but without the consent of one of the spouses is known as marital rape. Men can be the victim as well, but most of the time its women who is forced. It is a sort of domestic violence, and sexual assault that generally the women have to cope up with. Predominantly, it is always the wife's consent which is not considered as important as that of the husband during cohabitation, and sometimes she is forced to cohabit against her will just because she is married, and the husband wants to, which is constitutes marital rape itself. Marital rape is not a myth; it exists in the real world.

Keywords: Marital Rape, Marriage, Rape, Forcefully, Spouse, Cohabit, Husband, Wife, Consent

1. B.A.LL.B. [4th-Year Student], Gitarattan International Business School, GGSIPU

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INTRODUCTION

Patriarchy is deep-rooted in our society. Once a woman has tied a knot with her partner, her consent does not matter, and she cannot say no to her partner because he wants to have sexual relations, and that matters. Just because she is now married, this does not imply that her right to say no gets waived off. As a result, there are no safeguards in place to shield a woman above the age of 15 from this kind of "rape." India has not made marital rape a crime along with approximately thirty-six other nations. Marital rape is a big question mark on the sanctity of marriage. Society and the husband need to understand that marriage does not give anyone a license to rape. The inclusion of both partners' permission to have intimacy corresponds to the fundamental aspect of marriage, and this will eventually lead to the subsistence of marriage with integrity, love and affection. A husband, and wife must have consensual intercourse, but when he or she denies intercourse, and is compelled to do so, it will constitute rape. The reality that marital rape is completely legal in India is one of the most disturbing, and patriarchal dimensions of Indian law. The UN Committee on the Elimination of Discrimination against Women (CEDAW) proposed to the Indian government in 2013 that marital rape should be criminalised. The same was recommended by the JS Verma committee, which was constituted in the midst of mass demonstrations over the December 16, 2012 gang-rape incident.²

INDIAN LEGISLATIONS

Our country's rape laws perpetuate the patriarchal mind-set that females are the property of males after the wedding, with little control or no authority over their body. They refuse married women equal rights under the Indian constitution's provisions.

Legislators fail to acknowledge that a marriage is not an authorization to forcefully rape wife. Marital rape has no legal repercussions unless the wife is less than 15 years old, otherwise, involuntary intercourse in marriage is not considered an offence. Sexual contact between a married man, and woman above the age of 15 would not be considered rape, according to exception 2 of *Section 375 of the Indian Penal Code*³. This exception defeats the objective of Section 375, which is to defend women, and prosecute rapists by making a

2. <https://indianexpress.com/article/opinion/columns/the-impunity-of-marital-rape/>

3. Section 375, IPC

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distinction between married and unmarried perpetrators. In a way, this exception grants husbands the right to engage in forcible sexual relations with their spouses.

As a consequence, under the penal code, marital rape is not a crime. Victims of marital rape can file a complaint under the Protection of Women from Domestic Violence Act of 2005. In contrast to criminal law, which focuses on prosecuting the convicted, it is a civil law that focuses on the reliefs provided to the aggrieved woman, such as restitution, immunity, and the right to reside in the "shared household." It encompasses all forms of violence a woman can experience in her "shared household."⁴The Domestic Violence Act applies to all women, regardless of marital status, age, or religious views. This act's expansive concept of "domestic violence" safeguards women's rights to a violence-free household, which are ensured by the Indian Constitution. If a woman has been the victim of marital rape, she may seek judicial separation from her husband under this Act. However, the same does not fully shield females from the consequences of violence.

The right to live with human dignity is embedded in Article 21 of the Indian Constitution, and it is one of the most basic components of the right to life that acknowledges a people's freedom. The Supreme Court has upheld in a series of cases that rape violates the victim's right to life, and the right to live with dignity.⁵

RELEVANT JUDGMENTS

The court ruled in *Bodhisattwa Gautam v. Subhra Chakraborty*⁶ that rape is a crime against humanity, and a breach of the right to life enshrined in Article 21 of the Constitution, and set out provisions for compensating rape victims.

The Supreme Court ruled in *State of Karnataka v. Krishnappa*⁷ that sexual harassment is an unconstitutional invasion of a woman's right to privacy, and sanctity, in addition to being a dehumanising act. By striking down exception 2 of section 375, the Indian legal system has progressed halfway, and half of it remains to be done.

4 . <https://www.theleaflet.in/know-your-rights-domestic-violence-an-introduction-women-2005-act-aanchal-singh/>

5 . <https://www.mondaq.com/india/crime/691482/law-on-marital-rape-a-much-needed-reform-in-our-legal-system>

6. AIR 1996 SC 922

7. (2000) 4 SCC 75 (India)

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The Supreme Court, in *Vishakha v. State of Rajasthan*⁸, expanded this right of privacy to working conditions as well. In a similar manner, we can extrapolate that even inside the wed-lock, there is a right of privacy when it comes to sexual relationships.

In its recent judgment in “*Nimesh Bhai Bharatbhai Desai vs. State of Gujarat*”⁹, the Gujarat High Court noted that husbands should be reminded that marriage is not a licence to physically rape their wives.

In 2015, the RIT Foundation, the All-India Democratic Women's Association, and a victim of marital rape filed a petition to criminalise marital rape, but the decision has been postponed until now.¹⁰

The Supreme Court acknowledges that criminalising marital rape poses no challenge to marriage. The Court expressly stated in *Independent Thought v. Union of India*¹¹ that marriage is personal, and if divorce, and judicial separation haven't ruined the institution of marriage, it's unlikely that criminalising marital rape would.

CRITICAL ANALYSIS

One of the main reasons by marital rape have not been criminalized is because this provision might be misused to a significant extent. The union government argued in an application submitted to the Delhi High Court¹² that a law criminalising marital rape could become a "simple instrument to threaten the spouses," absurdly arguing that "if all sexual acts between a husband and his own wife qualify to be marital rape, then the decision whether it is marital rape or not would solely rest with the wife."

Due to significant cultural and socioeconomic disparities, marital rape cannot be as effective in India as it is in the Western world. The contention is that, because of social traditions and religious values, as well as widespread illiteracy, marital rape cannot be criminalised because people aren't ready for it. However, the societal reasoning that criminalising marital rape will not succeed in India because women are ignorant, uneducated, and weak clearly contradicts

8. AIR 1997 SC 3011.

9. 2018 SCC Guj 732

10. <http://www.legalserviceindia.com/legal/article-3552-marital-rape-a-legal-crime.html>

11. WRIT PETITION (CIVIL) NO. 382 OF 2013

12. RIT v. UOI (WPC NO. 284/2015)

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the argument that criminalising marital rape will lead to abuse. If women aren't trained enough to fairly use the rule, it stands to reason that they won't be able to abuse it either.¹³

CONCLUSION

Thus, legal provisions under the Protection of Women from Domestic Violence Act or Section 498-A of the IPC on cruelty against a wife by a husband or a husband's family are currently married women's only redress against non-consensual intercourse in India. Several countries around the world are enacting strict anti-marital rape legislation, and recognising it as a criminal offence. This period of judicial changes, and revolutions, it is critical to take action toward outlawing marital abuse¹⁴. In a nation like India, such change is a long way off because neither the country's politicians nor the Indian justice institutions are willing to distinguish between marital rape, and rape, all of which are horrific offences that can leave a survivor tormented for life. Countries such as Denmark, Sweden, Poland, Norway, and the Czech Republic¹⁵ have now made marital rape a criminal offence, while some are not attempting to do so due to the complexities involved, and the possible negative consequences for marital relations.

13. <https://theswaddle.com/marital-rape-india-decriminalized-crime/>

14 . <https://www.mondaq.com/india/crime/691482/law-on-marital-rape-a-much-needed-reform-in-our-legal-system>

15. <https://www.helplinelaw.com/family-law/CLFM/the-current-legal-framework-on-marital-rape-in-india.html>

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