
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**BEHIND CLOSED DOORS: UNMASKING MARITAL RAPE AND
ADVOCATING FOR LEGAL REMEDIES IN INDIA**- Liyana C H¹**ABSTRACT**

This research paper delves into the pervasive yet largely unaddressed issue of marital rape in India, aiming to shed light on this clandestine form of domestic violence. Despite the existence of robust legal frameworks to combat sexual violence, the exemption of marital rape from criminal sanctions poses a significant gap in the Indian legal system. This study critically analyzes the problem, emphasizing the pressing need for legal redress and reform.

The significance of this study lies in its potential to instigate transformative change in India's legal landscape. By unmasking the hidden horrors of marital rape, we bring attention to the plight of countless victims who continue to suffer in silence. Through rigorous examination and analysis, this research aspires to catalyze a broader societal dialogue, fostering empathy, understanding, and ultimately, legal action.

The research gap is rooted in the dearth of comprehensive studies addressing the issue of marital rape specifically within the Indian context. Despite global advancements in recognizing marital rape as a criminal offense, India remains reluctant to adopt similar legal measures. This research endeavors to bridge this gap by consolidating existing knowledge, evaluating cultural and legal complexities, and advocating for the necessary legal amendments.

The central research question driving this study is: How can the criminalization of marital rape in India be achieved effectively, considering cultural, legal, and sociopolitical factors? To answer

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this question, this research begins with an in-depth review of existing literature on marital rape, scrutinizing legal frameworks and cultural norms. This research endeavors to not only expose the deeply entrenched issue of marital rape but also to provide actionable recommendations for policymakers, legal practitioners, and civil society stakeholders. By unmasking this hidden atrocity, we hope to pave the way for a more just and equitable society for all.

KEY WORDS: marital rape, marriage, consent, sexual assault, criminalization

INTRODUCTION

Marital rape pertains to sexual assault perpetrated by one's spouse. The fundamental definition of rape remains unchanged, encompassing sexual intercourse or penetration without consent. Consequently, demonstrating the absence of consent is imperative in proving this offense, often placing this burden on the victim. In cases involving minors, consent is presumed to be absent due to their legal incapacity to consent to such acts. Conversely, instances exist where consent is presumed, particularly within marital unions. In such cases, the concept of marital rape is paradoxical.

Presently, a mere seventy-seven nations have legislated against marital rape as a criminal offense. In numerous jurisdictions worldwide, including India, neither law nor society acknowledges marital rape as a crime. Even in places where rape is recognized as a crime, and penalties are prescribed, there exists an exemption for instances involving marital relationships, commonly referred to as the 'marital rape exception clause'.

Historically, justifications for not criminalizing marital rape were rooted in archaic beliefs about a wife's subservience to her husband, where women were considered their husband's property, devoid of marital rights. The 'unities theory' also propagated this notion, asserting that a woman's identity merged entirely with her husband's post-marriage, precluding her from possessing an independent legal personality. Following the feminist revolution of the 1970s, these justifications lost their relevance as women gained recognition as equal citizens. More nuanced arguments emerged, such as the 'implied consent' theory, positing an inherent presumption of consent upon entering the institution of marriage. Marriage was viewed as a civil contract, with

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sexual consent as its foundation. The most recent justification contends that criminal law should refrain from intervening in the private sphere of marital relationships.

RESEARCH PROBLEM:

Marital rape is a deeply rooted problem in India, often concealed by social norms and reluctance to confront it. Despite progress in different areas, there is a widespread hesitance to recognize and confront this type of domestic violence within marital relationships. Absence of legal remedy and the limited acknowledgment of marital rape as a criminal act sustain a pattern of victimization and lack of accountability. This study aims to expose the concealed aspects of marital rape and push for legal changes that protect the rights and integrity of married women in India.

RESEARCH GAP:

While there is an increasing body of research on sexual violence and domestic abuse, there remains a distinct paucity of comprehensive studies specifically focusing on marital rape in the Indian context. Existing literature often lacks an in-depth examination of the legal, social, and cultural dimensions surrounding this issue. Additionally, the perspectives of survivors, legal experts, and relevant stakeholders are often underrepresented. This research aims to bridge these gaps by providing a nuanced analysis of marital rape in India and proposing concrete legal remedies.

HYPOTHESIS:

The hypothesis for this research is that the criminalization of marital rape in India, accompanied by appropriate legal reforms and comprehensive support mechanisms, will lead to a significant reduction in incidents of marital rape, empower survivors, and contribute to a safer and more just society for married women. By acknowledging the gravity of this issue and implementing robust legal remedies, India can take a crucial step towards safeguarding the rights and dignity of married women, in alignment with international human rights standards.

RESEARCH QUESTION:

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How can the criminalization of marital rape in India be effectively achieved, taking into consideration cultural, legal, and sociopolitical factors, and what legal reforms are necessary to ensure justice and protection for married women?

MARITAL RAPE- AN EXCEPTION TO RAPE

“According to Section 375 of the Indian Penal Code, engaging in sexual intercourse by a man with his wife, provided she is above fifteen years of age, constitutes rape, regardless of whether it is done forcibly, against her will, or without her consent.” However, if the wife is below fifteen years of age, the husband can be prosecuted for raping her under the code. In such cases, it appears that her consent would not be considered relevant, given the purpose of this provision, which aims to safeguard the physical well-being of married girls under a certain age, preventing premature sexual activity with their spouses that can often lead to serious repercussions for them, including a significant risk of infant mortality. “The Supreme Court vide its landmark judgment in the case of *Independent thought v. UOI*, raised this age from 15 to 18 to bring our law in conformity with POCSO and Child marriage prohibition act. Now, consent of a girl below 18 years of age is immaterial and sexual intercourse with a girl below eighteen years of age (married or unmarried) would necessarily amount to rape even if she had consented to the same”.²

surveys conducted in 2011 revealed alarming statistics, with one in five men admitting to forcing their wives into sex. Even more distressing is the fact that over two-thirds of Indian married women between 15 and 49 years old reported experiencing beatings or forced sexual encounters at the hands of their husbands³. “One study further unveiled that one in seven married women in India has been raped by her spouse at least once”⁴. However, due to the absence of legal recognition, women face formidable obstacles in reporting these abuses.

Notably, studies establish a clear correlation between alcoholism and sexual abuse, with a significant portion of women reporting their husbands being inebriated during coercive sexual

² Dr. VageshwariDeswal, ‘Marital rape: Demystifying ‘Consent’ within Marriage’ Times of India(New Delhi,12 February 2022)

³ The United Nations Population Fund Survey, 2000.

⁴ Conducted by the Joint Women’s Programme, an NGO, New Delhi.

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encounters.⁵ Marital rape fundamentally entails an intentional process of intimidation and the assertion of male dominance over women. It represents a severe violation of a woman's dignity, reducing her to an object for a man's gratification and comfort. The consequences of marital rape are profound and enduring, as confirmed by medical evidence.

HISTORY OF THE LAW

- **Pre-Independence Era:**

In 1860, the Indian Penal Code (IPC) was enacted, introducing a provision that restricted the exemption for marital rape to women who were at least 10 years old. Subsequently, the law underwent an amendment in 1940, extending the exception to women who were above 15 years of age.

- **Post-Independence Period (1947-1980s):**

After gaining independence in 1947, India retained the IPC with minor amendments. Marital rape continued to remain outside the purview of criminal law.

- **Justice Verma Committee Report (2013)**

Following the 2012 Delhi gang rape case, the Justice Verma Committee was formed to recommend modifications to criminal law. The objective was to hasten trials and impose more stringent penalties on individuals charged with sexually assaulting women. The committee's findings, presented on January 23, 2013, supported the elimination of the provision in the Indian Penal Code that exempted non-consensual sexual intercourse by a husband from being categorized as rape. It emphasized that marriage should not automatically imply consent to sexual acts, asserting that the relationship between the victim and the accused should not influence the inquiry into consent⁶. The committee referenced international legal judgments, particularly highlighting a decision by the European Commission of Human Rights, which affirmed that a

⁵Mihika Basu, "Marital rape is an ugly reality", Mumbai, 30 April 2013 (<http://archive.indianexpress.com/news/marital-rape-is-an-ugly-reality/1109618/>).

⁶ The Justice Verma Committee Report, 2013 (<http://www.legaltools.org/doc/8712ed/>).

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perpetrator of rape remains so regardless of their relationship with the victim⁷. This standpoint challenged prevailing societal beliefs on the subject.

- **Criminal Law (Amendment) Act (2013)**

The 2013 Criminal Law (Amendment) Act⁸ did not incorporate marital rape into the Indian Penal Code (IPC) and still assigns a milder punishment for the rape of a separated wife by her husband. The Act upholds the exemption for a husband's sexual assault on his wife if she is above 15 years old. It only permits legal action for rape within a marriage when the spouses are living apart. According to the legislature, not every instance of 'non-consensual' sexual activity constitutes rape. Even in cases where a wife is separated from her husband, the law displays leniency towards him if he commits sexual assault, reasoning that she was 'once his wife'. This approach views the wife as the husband's sexual possession, rather than an individual with the same agency over consent in sexual matters as any unmarried woman. This provision requires urgent reevaluation to shield women from sexual violence within marriage. It is strongly advised that the government actively seeks input from women's advocacy groups while revising laws and protocols regarding rape and sexual abuse.

- **The Protection of Women from Domestic Violence Act (2005)**

"The Indian Domestic Violence Act recognizes marital rape as a form of domestic violence, though it carries a less severe punishment compared to non-marital rape"⁹. It offers a civil remedy rather than constituting a criminal offense. Under this law, a woman who has experienced marital rape can pursue judicial separation from her husband through legal means. Enduring sexual violence from one's spouse often leaves a wife feeling insecure and fearful, with her fundamental human rights sometimes overlooked for the sake of marriage. However, this legislation is seen as partial and has certain shortcomings. Nevertheless, the implementation of distinct legislations addressing domestic violence has opened the door for potential laws that

⁷ C R v U K (1992) 1A.C.599

⁸ Criminal Amendment Act, 2013, Act No. 13 of 2013 (2 April 2013)

⁹Shikha Chhibbar, 'Sexual Violence in Private Space:Marital Rape in India'(2016)

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criminalize marital rape. This signals a shift in the government's stance on involvement in family issues.

- **The Bharatiya Nyaya Sanhita (Bill) 2023**

After the Supreme Court's decision that engaging in sexual activity with a minor wife constitutes rape, the Bharatiya Nyaya Sanhita (Bill) of 2023 seeks to legally reinforce this ruling. Exception 2 within Clause 63 of the Bill, intended to shield a married man from potential charges of marital rape, states that sexual intercourse or acts with one's wife, provided she is not below eighteen years of age, will not be considered rape.

CASE LAWS

- **T. Sareetha v. T. Venkata Subbaiah¹⁰**

The Andhra Pradesh High Court rendered a crucial verdict, deeming the legality of RCR (Restitution of Conjugal Rights) within the Hindu Marriage Act as null and void. The argument presented was that Section 9 of the Hindu Marriage Act violated Articles 14, 19, and 21 of the Constitution. The Court agreed with this contention, affirming that the RCR solution was deemed unconstitutional as it transferred the authority over sexual relations from the woman to the State. This, in turn, infringed upon an individual's personal autonomy as protected by Article 21 of the Constitution.

Furthermore, the Court recognized that this provision would have a negative impact on women and underscored the significance of women's sexual autonomy. Notably, the Court also recognized the possibility of forced sexual relations within the realm of marriage, an acknowledgment that is uncommon in legal decisions. Yet, the Court ultimately determined that the idea of RCR was incompatible with the concept of the 'marital sphere'.

- **State of Maharashtra v. Madhukar Narayan Mardikar¹¹**

The Bombay High Court ruled that "forced sexual intercourse by a husband with his wife who is living separately amounts to rape under Section 376 of the Indian Penal Code (1860)".

¹⁰T. Sareetha v. T. Venkata Subbaiah, (AIR 1983 AP 356)

¹¹State of Maharashtra v. Madhukar Narayan Mardikar, (AIR 1991 SC 207)

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➤ **Independent Thought v. Union of India**¹²

The court deemed Exception 2 to Section 375 of the Indian Penal Code (IPC) as unconstitutional. This exception, which excluded sexual intercourse between a man and his wife above the age of 15 from being categorized as rape, was found to infringe upon the rights of minors. It was also ruled as unjust, biased, and in contradiction with the constitutional ideals of fairness, safeguarding, and respect for human dignity. The court clarified that sexual intercourse with a girl below the age of 18, whether she is married or unmarried, is considered rape under Section 375 of the IPC.

➤ **Hrishikesh Sahoo v State of Karnataka**¹³

The Supreme Court of India is poised to make a decision on the constitutionality of the ‘marital rape exception,’ a provision under Section 376 of the Indian Penal Code, 1860, which excludes husbands from being charged with rape for non-consensual intercourse with their wives. The case stems from a complaint filed in 2017 by a woman against her husband, Hrishikesh Sahoo, who faced multiple charges, including rape and cruelty. Sahoo contested the charges at the Karnataka High Court, invoking the marital rape exception, but the Court rejected his plea in February 2022, citing the exception as regressive and violative of the wife’s right to equality.

Sahoo subsequently filed a Special Leave Petition at the Supreme Court challenging the High Court’s decision. An interim stay on the High Court judgment was granted in July 2022. Meantime, an NGO and other parties filed petitions against the marital rape exception at the Delhi High Court. In 2022, the judges delivered a split verdict, with one deeming the exception unconstitutional due to discrimination and violation of a woman’s bodily autonomy, while the other considered it legally justifiable within the institution of marriage.

In late 2022, Dalit activist Ruth Manorama filed a fresh petition at the Supreme Court challenging the marital rape exception. This petition, along with the earlier ones, has been consolidated and listed for hearing on March 21, 2023.

¹²Independent Thought v. Union of India, (AIR (2017) 10 SCC 800)

¹³Hrishikesh Sahoo v State of Karnataka, (SLP(Cr.) 4063-4064 of 2022)

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SOCIETAL AND PSYCHOLOGICAL IMPACT OF MARITAL RAPE

1. **Psychological Trauma:** Marital rape survivors often suffer from severe psychological trauma, including anxiety, depression, PTSD, and a pervasive sense of fear and helplessness.
2. **Loss of Autonomy and Dignity:** Being violated by an intimate partner undermines a person's sense of autonomy and dignity, leading to feelings of powerlessness and degradation.
3. **Erosion of Self-Worth:** Enduring abuse erodes a survivor's self-worth and confidence, making it challenging to assert themselves or believe in their own value.
4. **Isolation and Stigma:** The fear, shame, and societal stigma surrounding marital rape often lead survivors to suffer in silence, which deepens their emotional distress.
5. **Physical Health Implications:** Marital rape can result in various physical health issues, including injuries, sexually transmitted infections, and gynecological problems.
6. **Impact on Children:** Children in households with marital rape may witness or sense the abuse, leading to emotional trauma and potential long-term psychological consequences

CHALLENGES IN CRIMINALIZING MARITAL RAPE IN INDIA

- 1 **Deep-seated Societal Norms:** Traditional gender roles and patriarchal norms still prevail in many parts of India, which can hinder efforts to change perceptions around marital rape.
- 2 **Lack of Awareness:** Many people, including survivors themselves, may not recognize non-consensual sex within marriage as a form of rape due to a lack of awareness and education.
- 3 **Privacy Concerns:** The notion of privacy within marriages is often cited as a reason not to interfere with spousal relationships, making it difficult to legislate against marital rape.
- 4 **Reluctance to Report:** Marital rape is vastly underreported due to fear, stigma, societal pressure, and the perception that it is a private matter.
- 5 **Burden of Proof:** Proving lack of consent in a marital rape case can be challenging, as it often comes down to one person's word against another's, without witnesses or physical evidence.
- 6 **Legal Hurdles:** Amending existing laws or introducing new legislation to criminalize marital rape requires political will and legislative action, which can be a slow and contentious process.
- 7 **Cultural and Religious Beliefs:** Some cultural and religious beliefs may condone the submission of wives to their husband's desires, complicating efforts to change legal frameworks.

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INTERNATIONAL PERSPECTIVES ON MARITAL RAPE

1. United States:

The United States has undergone significant legal reforms regarding marital rape. In the past, marital rape exemptions existed, but these have largely been abolished. Today, all states in the U.S. recognize marital rape as a crime, with penalties akin to non-marital rape.

2. United Kingdom:

The UK abolished the marital rape exemption in 1991 with the R. v R case. Since then, it is treated as a criminal offense similar to any other form of rape.

3. Sweden:

Sweden was the first country to criminalize marital rape in 1965. The law is explicit in recognizing that a spouse cannot assume consent for sexual activity.

4. Canada:

Canada has taken steps to address marital rape. It removed the marital exemption in 1983 and treats marital rape as a crime under the law.

5. South Africa:

South Africa explicitly criminalized marital rape in 1993 with the introduction of the Criminal Law (Sexual Offences and Related Matters) Amendment Act.

6. Australia:

Australia has also criminalized marital rape. The law treats sexual assault within marriage on par with sexual assault outside marriage.

SUGGESTIONS

- **Advocacy and Awareness Campaigns:** Launch public awareness campaigns to educate the public about marital rape, its implications, and the need for legal reforms.

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- **Legislative Reforms:** Advocate for amendments to the Indian Penal Code to explicitly criminalize marital rape, ensuring that it is treated as a separate offense.
- **Policy Recommendations:** Work with legal experts, policymakers, and women's rights organizations to draft comprehensive policies and guidelines for addressing marital rape.
- **Engagement with Civil Society:** Collaborate with NGOs, women's rights groups, and activists to gather support, raise awareness, and create a unified front in favor of criminalizing marital rape.
- **Research and Data Collection:** Conduct studies and gather data on the prevalence and impact of marital rape in India. This data can be used to strengthen arguments for legal reforms.
- **Engagement with Legal Experts:** Seek the expertise of legal scholars and experts to draft well-structured legal provisions that address the complexities surrounding marital rape.
- **Support from the Medical Community:** Engage with medical professionals and organizations to highlight the physical and psychological consequences of marital rape, and its long-term effects on survivors.
- **Public Petitions and Advocacy:** Encourage citizens to sign petitions and advocate for the criminalization of marital rape. This can help generate public pressure on policymakers.
- **Engagement with Law Enforcement:** Train law enforcement officials on how to handle cases of marital rape sensitively and effectively, and ensure they are aware of the legal framework.
- **Engagement with Judiciary:** Work towards sensitizing the judiciary on the importance of recognizing marital rape as a criminal offense and ensuring justice for survivors.
- **Media Advocacy:** Engage with media outlets to promote discussions, debates, and articles on the need for criminalizing marital rape.

CONCLUSION

The study shows importance of criminalizing marital rape for several significant reasons. Firstly, it would provide women with a legal means to protect themselves, giving them an alternative to enduring the situation in silence, tolerating the abuse, or resorting to drastic measures like suicide. Secondly, it would empower women, enabling them to assert their rights and make choices about their own lives. Additionally, criminalizing marital rape would directly benefit

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women's health by shielding them from the harmful reproductive consequences that can result from non-consensual sex. The presence of legal recourse may also discourage men from engaging in such behavior. The study emphasizes the necessity of adopting a holistic strategy to eliminate various types of violence targeting women, which encompasses addressing sexual violence occurring within marriage. This is seen as an integral part of India's commitment to achieving gender equality and upholding women's human and reproductive rights.

While the introduction of laws, policies, and programs aimed at empowering women and addressing gender-based violence is a positive step, the absence of a specific law criminalizing marital rape still hinders women's ability to exercise autonomy within their households.

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