

CRIMINALISING MARITAL RAPE- Ankit Kumar¹**I. Introduction**

When a husband forces his wife to have sexual contact with him against her will and puts her in a position where she cannot defend herself, it is known as marital rape. It is indicated here that a husband who rapes his wife is also a rapist and should be punished accordingly, just like any other criminal. A rapist's actions do not depend on the nature of his relationship with the victim. At now just 150 nations have criminalized the marital rape and sadly India is not included in the collection of these 150 countries since it still hasn't criminalized the marital rape. Countries have passed laws criminalizing rape and have imposed punishments for such crimes, but they do not classify rape in a married relationship as a subset of all rape against women.

The underlying question that has sparked so much discussion is why India has not made it a crime yet. Well, there are a lot of possible solutions to this question, and many intellectuals and academics throughout history have offered various reasons, including: - Firstly, there is a belief that a woman's role in society is to submit to her husband's authority and follow his every command once they are married. This includes being obedient to his wishes and decisions, regardless of her own feelings, because the husband provides for the family and meets their basic needs and wants. Secondly, society has a societal presumption that when two adults get married, the husband has implicit rights over his wife, including physical, mental, and bodily control, regardless of whether the wife has explicitly stated this or not. This mindset is rooted in the belief that marriage is based on consensus ad idem. The third and most current tendency is the idea that the court has no business meddling in what are essentially domestic issues between a husband and wife. Courts should not pry into marital affairs since doing so would violate the couple's right to privacy and reveal too much information about their personal connection.

Now, the issue is that the court should not invade a couple's private space, but here we are,

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questioning the same thing in court, and it's not working. One cannot rape oneself since the idea of coverture, even at its most fundamental level, regards a husband and wife as a one entity. Incredible, isn't it? The crux of the matter with criminalizing marital rape is that it would have far-reaching consequences for Indian culture and undermine the very foundation of the institution of marriage. The second concern is how a legitimate and legal case can be established in court in the event that it is criminalized. Proving culpability, even on a medical basis, will be very difficult, and the woman may use it as a weapon against her husband in the event of a disagreement.

The supreme court's historic decision in September 2022 upheld the legality of spouses raping their wives. Despite the fact that the judgment was only handed down for the termination of pregnancy act, it has far-reaching implications and could be seen as a step towards criminalizing marital rape in India. On 13th November 2022, a private member bill was introduced in the Rajya Sabha to remove exception 2 to section 375, which shields husbands from prosecution for rape of their wives. The criminalization of marital rape has been proposed three times in the Parliament. Like the other two laws, will this one make it to the President of India's desk or die? On the other hand, would the highest court step in before?

Terminology

In this first chapter, we define key words related to marital rape, including: forced sex, rape, family, and sexual behavioral patterns.

i. What is marriage and what are marital relations?

"Marital" denotes anything having to do with marriage. Conjugal, marital, and similar words are synonyms. Coming to marital relations within the framework of Indian culture can help shed light on the meaning of this word, which in turn requires an understanding of marriage as a concept.

Marriage in Hindu tradition

"Vivah" is the Sanskrit word for "to carry away," which is the meaning of marriage. A pertinent issue emerges: what should we take away? After the 'Kanyadaan' rite, is there an item that may be lawfully owned? There is no universally accepted definition of marriage because of the wide range of possible interpretations. Marrying brings together not only the couple but also their

families and, by extension, the community as a whole, according to one school of thinking. Legalizing sexual relations between spouses is important to the institution of marriage and the formation of a family. Also, it's a tie between two sets of relatives. Hindus see marriage as a sacred institution. One of the "Samskaras" suggests that newlyweds utilize the nuptial knot to free themselves from the shackles of sensuality and desire. In truth, marriage was a religious necessity for both sexes; neither could enter paradise apart from their legally wed spouse.

The second school of thought maintains that the only way to attain the status of a wife in Indian society is to recite the 'Panigrahanika' mantras, the limit of which, according to the wise and educated, is the 'Saptapdi' ritual. "The best way to build a lasting family seems to be to enter into marriage mainly out of love, to alleviate financial pressures, and to voluntarily bear and raise children,"

ii. The Meaning of Rape

An in-depth understanding of how men, and Indian men in particular, conceptualize rape is necessary for grasping the rationale behind India's decision not to criminalize marital rape. This study has made an effort to understand the mentality of a guy who commits rape, whether he is married or not.

Rape and Mental Disorders

"Rape" comes from the Latin word "rapere," meaning "to seize" or "force fully take away" (supine stem raptum). Having sexual relations with another person without their permission is considered sexual assault. This includes penetrating another person's vagina, anus, or mouth with or without force, using a sex organ, another bodily part, or foreign item.

According to Chamber's lexicon, rape is defined as the use of physical force or threats of physical force to coerce another person into having sexual relations against their will. According to Collins English Dictionary, a person is raped when they are coerced into having sexual relations, often by physical force or the fear of physical force. Rape is defined as sexual assault according to Vocabulary.com. This crime is among the most heinous. Plundering or stripping something of its resources is another definition of rape. Forced sexual relations, sexual assault, and sexual relations between an adult and a juvenile are all considered forms of rape according to medical professionals. Both gay and heterosexual rape may occur, with the former involving people of different sexes and the latter involving people of the same sex. The act of

rape is inserting a non-living item, such as an erect penis, into a person's vagina or anus. Sexual actions, including coerced oral sex, may be considered rape under some legal systems.

iii. Meaning Sexual Assault Victims

Once the researcher has a firm grasp on the definitions of marriage and rape, they may go on to define the problem at hand: marital rape.

Types and definitions

Some other names for marital rape are intimate partner rape and spousal rape. The shameful crime of marital rape has eroded public faith in marriage and its institution. A large number of women have experienced the hardships caused by the practice's lack of illegality. When a husband has sexual relations with his legally married wife against her will and she is unable to provide her permission, this is called marital rape. Domestic violence refers to the sexual and physical abuse of a woman by her husband in a way that does not include her consent. Marital rape occurs when a spouse engages in sexually suggestive behavior toward his wife without respect for her autonomy. If a husband has sexual relations with his wife against her will or without her permission, it is considered marital rape, according to the Black Law Dictionary. The husband commits marital rape if he feels a claim to his wife's body. Marital union dissolves a woman's life as a person and subjugates her to a man, according to feudal conventions.

Any kind of domestic abuse, including rape, is unacceptable in a marriage. Marital violence may be sexually exciting at times, according to Faulk (1977). To rephrase, it is critical to conduct an inquiry to determine whether physical force and beating are elements of marital rape or if the act of rape itself constitutes violence. Adaptations in mindset and conduct are necessary for any legislative shift on marital rape. Then then the objective will be fulfilled else it would stay simply on papers.

There are several forms of marital rape that are common in today's society:

Coercion in this context does not take the form of physical force but rather social pressure, and it pertains to sexual matters. Here, the woman is coerced into doing it by being told it is her husband's responsibility. When women endure both sexual and physical assault, it is referred to as battering rape. The most typical tactic is the threat to dissolve the marriage if the women deny having sexual relations. In some cases, the husband may physically assault his wife while she is having sexual relations with him. In other cases, the husband may punish himself for a

previous violent act by forcing his wife to have sexual relations against her will. -Force only rape - In this form of rape, the use of force is done solely with the intention of forcing the wife to have sexual relations against her will. Use only as much physical force as is absolutely required to subdue the wife;

In the most extreme cases of obsessive rape, the victim endures horrific acts of torture or sexual assault. Some people refer to these types of marital rape as cruel rape.

Historical Development of Marital Rape clause in India

Pre-Independence Development

Lord Macaulay's 1837 Code is the progenitor of both section 375 IPC and its contentious exemption. Since the British founded the IPC on Macaulay's code, an exception to section 375 has been in existence. The assumption that husbands exercised authority over their wives was the foundation of this exemption in mediaeval law. There was almost little personal freedom for women in the Victorian period, and they were even deprived of the most fundamental rights. They were considered property. This exception requires a reevaluation since it is based on such fundamental principles.

It would be unfair to punish a guy for vandalizing his own property when rape constituted a crime against personhood. This led to the development of the Marital Rape exception.

Rape was included in the original IPC as a crime under section 359. We get our present contentious marital exemption from an exception in this section. A man's sexual relations with his own wife do not constitute rape, according to the exclusion. A husband may have a sexual connection with a wife of any age since there was no age limit on the wife. The proposed age of consent, however, was nine years old.

In 1860, when the first version of the Indian Penal Code was passed, clause 359 was renumbered as section 375. The new provision limited the Marital Rape exemption to those under a certain age. A man's sexual intercourse with his own wife, provided that the woman is not less than ten years old, does not constitute rape, according to the revised exemption. First of its kind, the new statute imposed a minimum age requirement. The clause clarified that a husband would be held criminally responsible for rape if his wife was less than 10 years old, rather than providing an obvious immunity to the husband. The husband is entitled to marital immunity only if his wife is more than 10 years old. A frequent penalty was life in jail without

the possibility of parole or a maximum sentence of 10 years in prison.

Something terrible occurred in 1889 that rocked the nation. The injuries experienced by a 10-year-old girl during sexual intercourse with her 30-something spouse ultimately proved fatal. The court reached the conclusion that a husband cannot treat his wife like property and ignore her physical and mental well-being in violation of any law, whether civil or religious. It may not constitute rape, but it certainly gives rise to additional criminal accusations. After taking this into account, the court found the husband guilty of grievous bodily harm but did not find him guilty of rape or culpable homicide. He was sentenced to twelve months in prison. The Age of Consent Act of 1891 raised the legal age of consent for women from 10 to 12 years old, regardless of marital status, in response to this case.

This exemption was amended to raise the age to thirteen years old in 1925 by the Indian Penal Code Amendment Act. And hence, if a woman was thirteen years old or older, her husband could not rape her. The age of consent, which was raised to 14 years old, and the age of marital exemption were now different for the first time. The legal definition of rape has always included sexual relations with a female under a certain age, regardless of her marital status. A further watering down of the sentence for wives aged 12–13 was a reduction from 13–20 to 2 years.

Changes in post-colonial India

An amendment to the Code of Criminal Procedure (Amendment) Act, 1949, and the Indian Penal Code raised the age of exception from thirteen to fifteen years. Accordingly, a woman could never sue her husband for rape if she was more over fifteen years old.

I. Final Thoughts

It is important for every husband to remember that being married does not give him permission to rape his wife. No husband has any legal claim to his wife's body just because they are married. She has not relinquished her inherent right to complete control over her body just because she is married. Refusing to give her permission to sexual relations is well within her legal rights. Even if the wronged husband has a number of legal options, none of them permit him to physically harm his wife. A woman is under no legal obligation to blindly follow her husband's every command since the couple is legally considered equals in a marriage. In order to determine whether an exception to a rule is legal, a living law must constantly consider

societal changes. These days, it would be unfair to say that a woman has given her consent to sexual relations forever just because she is a wife. Regardless of whether it's physical, mental, or sexual, no married woman has ever given her agreement to such an attack.

The harmful dominant mentality that encourages "Marital Rape" may be dismantled if the crime is criminalized. A border will be established and the public will be made aware that there will be consequences for crossing it. The husband's thoughts would be dissuaded from committing rape as a result of punishment. Eliminating the Marital Rape exception would send a strong message to communities that they will not stand for the brutal abuse of women and that such crimes are not the right of husbands but rather a heinous manifestation of injustice.

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