

A STUDY ON MARITAL RAPE A MYTH OR REALITY IN INDIAN CONTEXT

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ABSTRACT

Marriage is a socially sanctioned institution that establishes anthropological, cultural, and legal rights and obligations between persons. Marriage is the establishment for recognizing sexual connections in many societies. In any case, inside relationships, sexual maltreatment and actual aggression have for quite some time been a legitimate ill-defined situation. Marital rape refers to forcible sexual assault or violence by one spouse towards the other. "Despite the tremendous acceptance of numerous penal laws in India, the in the last two to three decades, there has been an increase in the number of cases of marital rape. There is an issue. In India, a special law on marital rape is considered necessary, which must also comply with international rules on the subject. Women have been given the right to fight for their safety, but her own husband, whom she married with complete faith, tries to attack and torture her by having nonconsensual sex with her without her consent, endangering her health and well-being." In today's society, there is no basis or applicability for the concept of total marital exemption. This article discusses is Marital Rape is a myth or reality in Indian Context, and it should be acknowledged by legislation that any type of rape should be prosecuted. This article will discuss the concept of marital rape and how much behind the times Indians are when it comes to such oppressive issues. This report also examines marital rape with the reference of Criminal Law Amendment Act.

Keywords: Criminalization, Forceful sex, International standards, Marital assault, Penal regulations.

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I. INTRODUCTION

Over the most recent couple of years, the pace of conjugal assault has risen. The psychological desolation of being assaulted, the injury of being misled by her own better half, the defenselessness of keeping quiet, and the enduring scars of these episodes are key pieces of conjugal assault. Individuals in India are protected from wrongdoings perpetrated in the city, yet ladies are defenseless against violations carried out inside their own homes that slip through the cracks. As per the United Nations Population Fund, more than 66% of hitched ladies in India matured 15 to 50 have been exposed to constrained sex, beatings, and torment, as well as a share interest. Numerous nations have passed enemy of marriage assault regulation or killed enemy of marriage assault special cases. In 2005, Indonesia and Turkey made marital rape illegal, followed by Mauritius and Thailand in 2007. The criminalization of marital rape means that it is now considered a human rights violation.

According to estimates, marital rape is a crime in at least 100 countries¹, yet India is not one of them. "Several laws and enactments dealing with dowry, cruelty, domestic violence, and female infanticide have been viewed as acts of violence against women. The Verma Committee, which recommended changes to India's sexual assault legislation, urged criminalizing marital rape. The Protection of Women from Domestic Violence Act of 2005 provided a good solution for a variety of victims, but it did not prohibit marital rape." The law had dismissed a significant break of a wedded lady's crucial right to her body and the option to be safeguarded from misuse. Different lawful structures and perspectives on conjugal assault have been examined further.

Regardless of the way that conjugal assault is the most broad and grievous sort of masochism in Indian culture, it is covered behind the iron drapery of marriage. The disavowal of ladies' sexual organization and substantial uprightness, which are at the groundwork of ladies' common liberties, is commonly authorized in India's social practices and legitimate regulations. Assault is assault. It doesn't make any difference assuming it's more unusual assault, date assault, or conjugal assault. Conjugal assault isn't viewed as a wrongdoing by the law. Regardless of whether it, the issue of discipline is covered in legitimate vagueness. "Rape within marriage must be made a criminal offence by the legal system. Women must also break free from societal constraints and fight for justice. They must refuse to conform to the norms that are applied to them since they are the weaker sex."

¹ United Nations Human Rights Commission <https://www.ohchr.org/en/calls-for-input/2021/rape-grave-and-systematic-human-rights-violation-and-gender-based-violence> (Visited on 22 April 2022).

II. MARITAL RAPE - PHYSICAL AND PSYCHOLOGICAL CONSEQUENCES

No matter what the evident disarray that attack by one's assistant is a minor occasion that inflicts damage, research shows that intimate attack has serious and long stretch ideas for women. Wounds to private organs, cuts, trouble, expanding, torn muscles, languor, and spewing are a part of the genuine repercussions of intimate attack. Broken bones, wounded eyes, crazy noses, and sharp edge wounds could occur in women who have been abused and attacked by their life partners. Unnatural birth cycles, stillbirths, bladder pollutions, fruitlessness, and the bet of contracting genuinely sent diseases, for instance, HIV are two or three the gynecological effects of intimate attack. Women who have been attacked by their assistants are likely going to appropriately experience colossal mental results. Nervousness, shock, intense fear, despair, self-destructive ideation, and post-awful pressure issue are a portion of the momentary side effects of conjugal assault. Confused eating, rest issues, sadness, challenges shaping confiding in connections, and expanded negative contemplations about themselves are throughout the entire normal term influences. The mental results are probably going to wait for quite a while. For quite a long time after the maltreatment, some conjugal assault survivors portray flashbacks, sexual brokenness, and close to home torment.

III. TYPES OF MARITAL RAPE

Legal academics have identified the following three types of marital rape as being widely frequent in society:

1. Battering rape: In "battering rapes," women are subjected to both physical and sexual violence in their relationships, which manifests itself in a variety of ways. Some women are abused during the rape, or the rape may occur after a physically violent event in which the husband seeks to make amends by forcing his wife to have sex against her will. The vast majority of victims of marital rape fall under this category.
2. Force-only rape: In "force-only" rape, husbands employ only the amount of force required to persuade their wives; beating is not always present in these marriages. The assaults usually occur after the lady has declined to engage in sexual activity.
3. Obsessive rape: Other women are subjected to "sadistic" or "obsessive" rape, which includes torture and/or "perverse" sexual practices and is often physically violent.

IV. MARITAL RAPE IN INDIAN SCENARIO

"The word "rape" comes from the Latin word "rapio," which means "to seize." Rape literally translates to "forcible seizure." It refers to the ravishment of women against their will, without their consent, or with consent obtained by force, fear, or fraud, or the forcible carnal knowledge of a woman."² Rape is defined in Section 375 of the Indian Penal Code. It implies that assault is characterized as an unlawful sex between a man and a lady without the lady's assent or despite her desire to the contrary under any of the circumstances recorded in the segment. "The panel, led by Justice J S Verma, was mentioned to take a gander at conceivable criminal regulation corrections to guarantee that anybody blamed for rape of outrageous nature on ladies are attempted quicker and get heavier disciplines. The panel was given thirty days from the date of warning to present its discoveries. "The committee was given thirty days from the date of notification to submit its findings. In its report, the committee recommended that sections 375, 376, and 376 A to 376 D of the Indian Penal Code be revised and substituted to make the law relating to sexual assault on women and girls more effective and deterrent." The majority of these recommendations were enacted into law.³ "The offence of "Rape" is defined in Section 375 of the Indian Penal Code, and it is punished in Section 376. The Act, however, has failed to protect married women who are raped by their own husbands."

Marital rape is *de facto* but not *de jure* in India. While in different countries, the official has either condemned conjugal assault or the legal executive has effectively partaken in remembering it as a wrongdoing, the legal executive in India has all the earmarks of being working experiencing some miscommunication. Ladies who are exposed to rape from their life partners are presently denied State security under Indian regulation, which incorporates an overall conjugal assault special case under Section 375 of the Indian Penal Code, 1860. This exception can be traced back to statements made in 17th century England by Sir Matthew Hale, C.J. Hale wrote: "The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract; the wife hath given herself in kind unto the husband, whom she cannot retract."⁴ The Supreme Court stated in the case of *Bodhisattwa Gautam v. Subhra Chakraborty*⁵ that "rape is a crime against basic human rights and a breach of the victim's" most valued of fundamental rights, namely the right to life guaranteed in Article 21 of the Constitution.

² Bhupinder Sharma v. State of Himachal Pradesh AIR 2003 SC 4684, (2003) 8 SCC 551
³ Gazette of India, Extraordinary, Part II, s 3, sub-s (ii), dated 24 December 2012.

⁴ Tamanna Khosla, "Marital Rape in India: A Radical Feminist Perspective", 38 Mainstream Weekly, (2014)

⁵ (1996) 1 SCC 490

However, it contradicts this declaration by failing to recognize marital rape.⁶ This spread out the possibility that a woman doesn't save the choice to decline sex with her mate at whatever point they are hitched. This gives spouses sexual permission to their soul mates, which is in direct encroachment of essential freedoms norms, and gives husbands "consent to rape" their wives.

The rape legislation only applies to two types of married women: those under the age of 15 years⁷ and those who are separated from their spouses.⁸ While rape of a girl under the age of 12 may result in a sentence of ten years or more in jail, rape of a girl under the age of 15 results in a lower punishment if the rapist is married to the victim. In 1983, the Indian Penal Code, 1860, was amended to include Section 376-A, which made rape of a judicially separated wife a criminal offence. It was based on the Joint Committee on the Indian Penal Code (Amendment) Bill, 1972 and the Law Commission of India's recommendations⁹. "The claim that marriage is a license to rape was dismissed by the Committee. Thus, if a husband has sexual intercourse with his wife, secondly, without her consent, and thirdly, she is living separately from him, whether by decree, custom, or habit, he can now be indicted and imprisoned for up to two years." The claim that marriage is a license to rape was dismissed by the Committee. Thus, "if a husband has sexual intercourse with his wife, secondly, without her consent, and thirdly, she is living separately from him, whether by decree, custom, or habit, he can now be indicted and imprisoned for up to two years."

Nonetheless, this is just an interwoven of regulation, and Parliament should do considerably more to resolve the issue of conjugal assault. The consideration of sex by a man with his underage spouse as a wrongdoing by the Law Commission in its 42nd Report was hailed as a beam of trust. The arrangement was dismissed by the Joint Committee that concentrated on it. The Committee guaranteed that a spouse, no matter what his significant other's age, couldn't be seen as at real fault for assaulting her. When a guy marries a woman, sex is included in the deal. The repeal of the exemption clause in Section 375 of the Indian Penal Code, which states that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape," has been demanded by many organisations including the National Commission for Women.

In any case, the Task Force on Women and Children, spread out by the Government of India's Woman and Child Department, recognizes that this subject ought to be discussed much something else generally. The

⁶ Tandon, N. & Oberoi, N., "Marital Rape — A Question of Redefinition, Lawyer's Collective", March 2000, p. 24.

⁷ Exception to Section 375 of the Indian Penal Code, 1860.

⁸ Section 376-A of the Indian Penal Code, 1860.

⁹ Law Commission of India, 42nd Report, 1977, Indian Penal Code, para 16.115, p. 277.

Task Force's central goal was to look at all continuous ladies' rule and endeavors. "The biggest of the Task Force's four recommendations on attack under the Indian Penal Code concerns the importance of attack. It battled that the importance of attack should be stretched out to incorporate a wide range of sexual abuse. The Law Commission's proposed term of "assault" might be used rather than the ongoing importance of attack in Section 375 IPC, according to the proposition, since it is wide, thorough, and good." The Task Force, like the Law Commission, tried not to suggest that intimate attack be associated with the new definition. At this point, India's legal framework is terribly missing similar to guarding women's significant trustworthiness and sexual freedom.

V. CONTENTIONS AGAINST CRIMINALIZING MARITAL RAPE BEING REFUTED

The following are some of the most prevalent arguments raised in opposition to the idea and proposal of making marital rape a crime:

- There is no need for legislation to address marital rape because it is so rare.
- Due to the near-impossibility of establishing marital rape, criminalizing it would just add to the already overburdened court system's workload.
- Dissatisfied, enraged, and spiteful wives may accuse their innocent husbands of marital rape.
- When a woman marries a guy, there is implied permission to have sexual relations.
- Many marriages would be destroyed if laws against marital rape were enacted, as they would hinder any conceivable reconciliation.

A close examination of these arguments reveals that they are really fantastical, pathetic excuses for a male-dominated society devoid of any legal substance or moral power. It is not difficult to refute the above-mentioned points. Marital rape is a widespread crime that goes unreported. According to research performed by the Joint Women Programme, one out of every seven married women has been raped at least once by their husband. Because the law does not assist them, they typically do not report these rapes.

"In response to the second point, that marital rapes are difficult to prove, it may be demonstrated that criminalizing marital rape serves to recognize rape in marriage as a criminal offence and would serve as a

deterrent to potential rapist spouses.”¹⁰ “The fact that marital rape is difficult to prove is no excuse for failing to recognize it as a crime. In response to the third objection, it should be highlighted that, while proving a claim of rape in marriage is difficult, proving a manufactured allegation will be even more difficult.” Because of the shame attached to rape cases, it is rare that women will want to go through such an ordeal out of spite.

Moreover, the law enforcement framework has inherent shields including the need of verification for certain. This is not a great explanation to deny casualties' security essentially in light of the fact that somebody may be confronting a made claim. “Because of the fourth point, while the facts confirm that a spouse verifiably agrees to sex with her significant other after marriage, sexual closeness as an outflow of adoration isn't equivalent to constrained sex. Then again, whether or not the marriage is a ceremony or an agreement, it strikes at the actual base of marriage. Marriage does not, in any way shape or form, suggest that an individual agrees to damage or savagery, and the law does not permit anybody to do as such.”

“At long last, marriage is as of now ill-fated in the event that the spouse assaults his better half. One of the objectives of marital regulations could be to hold relationships together. Notwithstanding, it can't overrule the essential objective of regulation overall and criminal regulation specifically, which is to secure and keep a person's substantial respectability”. Thus, deferring equity and denying equivalent assurance for the sake of supporting relationships is, best case scenario, an unsatisfactory legitimate reason. Constrained dwelling together ought not be energized, and an assaulting spouse ought not be safeguarded by the law.

VI. RESPONSE OF THE INDIAN JUSTICE SYSTEM TO THE MARITAL RAPE

Marital rape is not a criminal offence in India, and exception 2 to section 375 of the Indian Penal Code specifically specifies that sexual intercourse by a man on his own wife is 'not a rape' if the wife is beyond the age of 18.¹¹ According to the Indian Penal Code, marital rape is not a crime. However, there are a few laws that victims of marital rape can depend heavily on:

Section 498A of the Indian Penal Code, 1860: “Whoever, being the husband or the relative of the husband of a woman, subjects such woman

¹⁰ Prof. Kshitij Naikade & Dr. Garima Pal, “Issues & Challenges Related to Marital Rape in India”, 7 IJHSSI 58-69 (2018).

¹¹ Indian Penal Code, 1860, Section 375, exception (2)

to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. The offence is Cognizable, non-compoundable and non-bailable”.¹² The term 'cruelty' under this section refers to conduct that may push a woman to commit suicide, cause injury, or put her life or bodily and mental health in jeopardy. A woman might classify marital rape as cruelty and file criminal proceedings against her husband as a result.¹³

Section 354 of the Indian Penal Code, 1860: “Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”¹⁴ This section can help victims of marital rape because it punishes anyone who uses force to violate or outrage a woman's modesty. Until recently, it was unclear exactly what 'outraging modesty' meant.

In the case of *Raju Pandurang Mahale vs State of Maharashtra* 2013,¹⁵ however, the court defined a woman's modesty as her sex, saying: “The essence of a woman's modesty is her sex and the accused culpable intention is the crux of the matter. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman”

The Hindu marriage Act, 1955: “Section 13 (1) of the Hindu Marriage Act, 1955 states that Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty;”¹⁶ If their husband has treated them cruelly, marital rape victims can use section 13 (1) to file a divorce lawsuit against their husband. Marital rape is a form of cruelty in and of itself.

The Protection of Women from Domestic Violence Act, 2005: “Section 3 of this act states: Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it - (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes

¹² Indian Penal Code, 1860, Section 498A

¹³ Abhinav Garg, Marital rape already recognised as cruelty under law: Delhi govt., The Times of India <https://timesofindia.indiatimes.com/city/delhi/marital-rape-already-recognised-as-cruelty-under-law/delhi-govt/articleshow/62561452.cms> (Last Updated on January 19, 2018) (Visited on 25 April 2022).

¹⁴ Indian Penal Code, 1860, Section 354

¹⁵ (2004) 4 SCC 371

¹⁶ The Hindu marriage Act, 1955, Section 13 (1)

causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;”¹⁷ Although marital rape is not considered a criminal offence under this act, it is seen as a type of domestic abuse. This statute can be used by the victims to get a judicial separation from her husband.¹⁸

Although marital rape is not a criminal offence,¹⁹ there are legal remedies available to victims of marital rape.²⁰ The problem is that these remedies have been devised by the judiciary on a case-by-case basis; therefore, there is a great deal of judicial discretion in marital rape cases.²¹ In addition, there is no legal consequence for marital rape. Furthermore, because "marital rape" is not deemed rape, the consequences meted out to the spouse accused of marital rape differ from those meted out in other rape cases.²²

VI. RECOMMENDATIONS FOR REFORM

Following are some recommendations based on the above clarification:

1. Parliament ought to proclaim conjugal assault a criminal offense under the Indian Penal Code.
2. Marital assault ought to be rebuffed similarly as assault is rebuffed under Section 376 of the Indian Penal Code.
3. The reality that the gatherings are hitched shouldn't reduce the seriousness of the punishment.
4. The reality that the lady did not retaliate and battled unequivocally or shouted and yelled ought to not be viewed as a guard to the charge.
5. If the case of conjugal assault is demonstrated against her significant other, the spouse ought to have the option to get a separation judgment. However, an instance of conjugal assault might come quite close to "mercilessness" or "assault" as justification for separate, getting legitimate advice is ideal.
6. Changes in marriage regulations ought to be made to mirror this.
7. Demanding separation might be a possibility for the lady, however if she would rather not separate and on second thought

¹⁷ The Protection of Women from Domestic Violence Act, 2005, section 3

¹⁸ What the law says on marital rape, News18, (May 04, 2015), <https://www.news18.com/news/india/what-the-law-says-on-marital-rape-985741.html>

¹⁹ The exception is section 376 B of the IPC.

²⁰ Priyanka Rath, Marital Rape and the Indian legal scenario, India Law Journal http://www.indialawjournal.org/archives/volume2/issue_2/article_by_priyanka.html (Visited on 25 April 2022).

²¹ Bhavana Sharma, Role of Judiciary in Rape cases, Academic (November 13, 2015) <https://www.lawctopus.com/academike/rape/> (Visited on 25 April 2022).

²² Aishwarya Mishra, India: "Law on Marital Rape – A Much Needed Reform in Our Legal System", (April 13, 2018), <http://www.mondaq.com/india/x/691482/Crime/Law+On+Marital+Rape+A+Much+Needed+Reform+In+Our+Legal+System> (Visited on 25 April 2022).

needs to remain in the marriage, the marriage ought to be permitted to proceed.

VII. CONCLUSION

“It is recognized that correcting the regulation on sexual offenses is a troublesome and fragile cycle, particularly in a country like India, where there is a different and unmistakable arrangement of individual and strict regulations that might struggle with the new legal criminal regulation modifications.” While immense changes to the law on sexual offenses are expected, for instance, making them impartial and diminishing uneven characters, a huge patching up of the development of sexual offenses isn't proposed. The brief need is for the Indian Penal Code to make intimate attack a bad behavior. Nevertheless, just articulating an approach to acting to be unlawful is deficient. Even more ought to be done to expose issues among the legitimate chief and the police. It has been concluded that Indian laws do not provide adequate protection to women as they did previously. Women are still considered the property of their husbands, who have complete rights to exploit them with no recourse.

“Despite the fact that a husband's violent and non-consensual act of intercourse may enable a wife to sue for criminal assault, our penal laws do not include the principle of marital rape responsibility. Articles 14 and 21 of the Indian Constitution are seemingly violated in this case. The judicial system in India is concerned about the non-criminalization of marital rape. Women should be protected by the judiciary. Married women should be well-cared for and not exposed to sexual abuse or violence”. As a result, this section takes a very restricted perspective of sexual assault, and there is no legal protection for married women as of yet. Although a few judges have expressed concern about marital rape, the criminal justice system will not change unless the courts or the government take action to ensure that victims of marital rape receive justice.²³ There is likewise a need to teach the overall population about this wrongdoing, on the grounds that the genuine objective of condemning conjugal assault must be understood assuming society perceives and goes against the predominant confusion that assault by one's significant other is irrelevant.

²³ Criminalizing marital rape will destabilize the institution of Marriage: Government tells Delhi HC, Outlook India, (Last Updated on August 29, 2017) <https://www.outlookindia.com/website/story/criminalising-marital-rape-will-destabilise-institution-ofmarriage-government-t/300948> (Visited on 25 April 2022).