

MARITAL RAPE AND ITS LEGAL IMPLICATION IN THE INDIAN SOCIETY

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INTRODUCTION

Men and women are considered the two fundamental pillars of our civilization, they play a significant role in shaping the society. Although, there have been a number of changes that have happened in recent times, both men and women are treated equally on all fronts, yet historically men have had supremacy and power over women. There are countless crimes committed against women that violate their basic rights as a human. The offences include sexual assault, rape, dowry murder, domestic violence, and acid attack among others. Among all the horrifying crimes against women, rape is considered to be the one that is against her self-respect and dignity.

When someone you've trusted with your life commits rape, it is more than simply a physical or sexual attack; it is an abuse of the foundation of your marriage, of your trust, and of who you are as a person. The Indian society and its culture believe marital rape to exist outside the reach of the law.

The Karnataka High Court declared in March 2022¹ that “rape is rape” regardless of whether it is committed by a husband against his wife. Which was a progressive move, but Supreme Court suspended its action. This situation was yet another example of the conflicting perspective Indian culture carries on preserving the dignity and sexual autonomy of women. While intimate partner rape has not been declared unlawful because of the thoughts and beliefs associated with the institution of marriage in Indian culture, it is the thought that a wife should satisfy the needs and wants of her husband. Conjugal rape refers to sexual violence committed against a woman by her spouse without her consent.

HISTORICAL BACKGROUND

During the Rigvedic period or the Vedic era, women were treated with respect and decency. It is in recent times the idea of marital rape has become more prevalent. As there is no law to protect society from this particular type of rape, it deceives young people about the pious

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¹¹ <https://www.livelaw.in/top-stories/supreme-court-stays-karnataka-hc-judgment-which-allowed-trial-of-husband-for-marital-rape-204230>

nature of marriage. As per the existing law, a wife is supposed to provide for her husband with anything that he desires and asks. It is believed that it is the duty of a wife to fulfil all his wishes while on the other hand, the husband has no obligation to do the same. Although, over time several industrialized and developing nations have initiated changes and have brought about legislation to safeguard women from such crimes. Even though India is known to be one of the fastest developing countries in the world, marital rape is still not regarded as a crime here. There are no laws in India to shield married women from sexual assault conducted by their husbands. Parliament and commissions have made several attempts to criminalize it, but still, the horrific deed exists under the protection of the law.

MARITAL RAPEAN EXEMPTION

There is a notion that there remains an implied consent that is irrevocable after marriage. Therefore, there is also an implied consent to sexual intercourse as well. Also, as per Indian society, a wife is considered as someone equivalent to the property of her spouse. He owns his wife as complete possession that is under his control. However, exemption 2 to Section 375 of IPC² preserves the existence of marital rape. The IPC, originally only recognizes marital rape as an offence if the woman was over 15 years of age but this limit was lifted in the famous case of *Independent Thought v Union of India* (2017)³ where the court declared, the legal age for sexual activity in marriage as 18 years of age.

Even though there are laws like Section 376 A⁴, which protects a wife who has undergone formal separation from rape, and Section 498 AIPC⁵ which tackles cruelty in marriage be that even unreasonable sexual behaviour of the spouse, to be a ground for divorce. However, the law fails to recognize perversion or forceful sexual activity in marriage.

THEORIES SHIELDING MARITAL RAPE

1. **Culture:** India is known for its diversity in cultural heritage. The cultural practices that promote male dominance, supremacy, and control over women attribute to the practice of marital rape. The cultural practices of dowry and arranged marriage are also contributing to the existence of rape in marital relations.

²The Indian Penal Code, section 375, No.45, Acts of Parliament, 1860 (India)

³MANU/SC/1298/2017

⁴The Indian Penal Code 1860, 5 376A, No. 45, Acts of Parliament, 1860 (India)

⁵The Indian Penal Code 1860, 5 498A, No. 45, Acts of Parliament, 1860 (India)

2. **Patriarchy:** The institution of marriage is considered as a way to control and dominate women; which makes it difficult for her to raise her opinions as it is always seen of no worth and value. Therefore, consent is a mere word of no meaning in a marriage.
3. **Legal framework:** India not criminalizing marital rape is criticized on different levels and platforms for contributing to sexual violence against women. According to Indian laws, marriage should be preserved on the basis of conjugal obligations. Law sees it as a private matter between a married couple. Prosecuting husbands for marital rape infringes on marital privacy.
4. **Compromising theory:** It is also believed that non-consensual intercourse with her husband is much better than non-consensual sex with a stranger.
5. **Lack of awareness and education:** This is one of the significant reasons for the prevalence of sexual violence in marriages in India. There is no proper sex education provided which is why, the people including the lawmakers fail to understand the harm and trauma it can cause to a woman.

WHY MARITAL RAPE NEEDS TO BE CRIMINALISED?

- Marital rape violates the fundamental rights granted by the Constitution of India. Marital rape is declared unconstitutional⁶ as it breaches Article 14⁷, the right to equality, and Article 21⁸ where it should protect life and personal liberty, the right to privacy, dignity, and sexual autonomy.
- In a marriage, Consent plays a crucial role and it should be an understanding between the couple and not something that is imposed on them. Permission cannot be made meaningless in rape cases just by contending that victim is married to the perpetrator. It stands unwarranted and disrespectful on the part of lawmakers.
- The law considers marital rape as a matter of marital privacy and abstains from interfering in it. As a result of this notion and social conditioning rape committed by the husband remains unreported and women suffer in silence.
- The exception to this clause highlights the unfair rape laws that apply differently to married and unmarried women. Also, distinctively towards married and divorced women. This sort of separate treatment from this not being rape is unclear and hazy.

⁶<https://thewire.in/gender/marital-rape-case-section-375>

⁷Indian Constitution. Art.14

⁸Indian Constitution. Art.21

The marital status of a woman is not a reasonable justification related to the goal to criminalize rape. Discrimination prevails at its best in this situation which needs law interference and a change.

- The fact that marital rape is established as an act of violence against women that goes unreported in society alone cannot undermine marriage as an institution. Men have been enjoying privileges from the dawn of time and Section 375 (exception 2) of the IPC grants them protection.

CONCLUSION

The prevalence of inhuman acts such as marital rape is harmful to society and women at large. India has a constitution that guarantees to protect the rights of the citizens of this country and our judicial system plays an integral role in making an unbiased nation. As stated in Article 14 of our constitution, the law should be the same for everyone and the state shall not discriminate between married women and unmarried girls. If the legislation fears the misuse of the provision against marital rape let it come up with valid restrictions. It's high time that lawmakers stop justifying this heinous act of violence under the shelter of Indian cultural norms. The people living in this country need to change their mentality where it is believed that after marriage, they become two bodies and one soul. Implied consent is a theory generated by the people living in this society and culture. We need to see marriage as a practical concept where two adult individuals are living with mutual respect and care. Women should be given an opportunity to speak up for themselves, surveys can be conducted among married women, and with the ratio of data collection of the number of persons having to go through such violent sexual activity, a law can be formulated. This is a fact that this act of violence is causing to affect the dignity of women. Violence is at its worst when it comes from the ambit of family. There can only be a progressive nation when the women in this country feel safe and secure.