

MARITAL RAPE AND INDIA LAWS: SOCIO AND LEGAL PERSPECTIVE

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ABSTRACT

Marital rape is a ubiquitous kind of gender-based violence that has long been a source of concern on a global scale. It is defined as non-consensual sexual contact between spouses. This abstract examines the socio-legal perspective of marital rape in India while examining the current legal framework and its effects on survivors and society. Due to a number of socioeconomic circumstances, India, a nation with strong cultural and traditional traditions, has had difficulty tackling the problem of marital rape. Sexual violence in marriages has frequently been normalized as a result of the prevalent view of marriage as a sacred institution and the cultural expectation that wives should satisfy their husbands' sexual urges. The Domestic Violence Act, 2005 deals with Marital Rape in the form of live-in relationships and marriage.¹ In India, Marital Rape is not a crime because sex after marriage is not counted as "Rape". But on the bases of cruelty women can file a case for divorce. The concept of rape discusses under The Hindu Marriage Act, 1955, Domestic Violence Act, 2005, Indian Penal Code, 1860.² The socio-cultural elements that contribute to the continued prevalence of marital rape are also examined. The abstract talks about the negative effects that cultural taboos and stigmas have on survivors' ability to get support and justice when it comes to talking about sexual abuse in marriages. The abstract also looks at the wider effects of marital rape on women's and society's overall well-being, as well as the psychological and emotional effects it has on survivors.

MARITAL RAPE

Marital Rape is largely neglected by society because as a country of patriarchal domination granting an exemption for husbands in marital rapes. It is for rape that does not come in the ambit of Rape by society or several courts. Some of the courts in India provide verdicts against it and held it unconstitutional and an infringement of Article 14, 21 of the Indian Constitution. Various authors came up with various different theories related to marital rape such as Feminist theory, Social constructionism theory and the Sex-role socialization theory.

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¹ Domestic Violence Act, 2005

² Indian Penal Code, 1860, S. 375

Once a man and woman tie in a marital relationship then it is the duty of man to treat his wife with respect and dignity.³

A hint given under the Domestic Violence Act, 2005 i.e. prohibits any form of sexual abuse in case of a live-in relationship or marriage.⁴ In the current time women are treated as the personal property of men and men assume that he is the owner of their wife body and treat them as they wish and can demand sexual intercourse. Once a woman married to man, her identity merged with her husband.

KINDS OF MARITAL RAPE

There are three kinds of Marital Rape i.e. Battering Rape in which women face physical as well as sexual violence. Most of the marital rapes are covered under this Rape. Force-Only Rape under which when a women refuse to have intercourse then the man assaulted his wife. And the last is Obsessive Rape which involves torture and perverse sexual acts. These acts are physically violent.

LEGAL PERSPECTIVE OF MARITAL RAPE

All India Democratic Women's Association (AIDWA), the RIT Foundation, and two individuals filed the lawsuit. Because it prioritises the institution of marriage over the individuals involved in the marriage, the marital rape exception under Section 375 of the Indian Penal Code (IPC) is unconstitutional.⁵ "Women in most parts of the world are treated as individuals, free to enter into contracts in their own right but when it comes to sexual communion with their husbands, their consent counts for nothing."--- Justice Rajiv Shakhder.⁶

Justice Rajiv shakhder held MRE (Marital Rape Exception)⁷ unconstitutional and violative of Article 14, 15, 19(1)(a) and 21 of the India Constitution.⁸ The government said that the age of 15 had been maintained to safeguard the husband and wife from criminalizing their intercourse.⁹ Indian Penal Code, 1860 amended in 2013 under section 375 in which Age was

³ Marital Rape under Indian law, Mukesh Garg, IJMSS, Vol.1, Page No.2

⁴ Domestic Violence Act, 2005, S. 3

⁵ RIT Foundation v. Union of India(2022) SCC Del 1404

⁶ SCC Online Blog

⁷ Indian Penal Code, 1860,S. 375 Except. 2

⁸ Consti. Of India Act, 1950, A. 14, 15, 19, 21

⁹ Independent Thoughts v. Union of India(2010) SCC 800

altered from 15 to 18 to give consent to sexual Intercourse.¹⁰ However, MRE discusses “Sexual Intercourse” and “Sexual Abuse” not existing words like “Non-Consensual” and “Forcible”. In rape cases, BOP (Burden of proof) is upon the accused. In India due to the absence of corroborative evidence, a conviction can be held on the basis of examination of the prosecutrix. But in case of separation if a man has sexual intercourse with the wife then that will amount to punishable under IPC.¹¹

"If the husband hits his wife that would be against the law according to the IPC. Because they are legally wed, if the same husband assaults his wife and coerces her into having sexual relations, he would only be held criminally responsible for the assault and not rape".¹²

Except in cases where one marriage partner is being prosecuted for an offence against the other, correspondence during the marriage is likewise prohibited from being revealed in court under Section 122 of the Indian Evidence Act of 1872. Although marital rape is not a crime, the evidence is admissible since it is pertinent and the case is being prosecuted for battery or physical or mental abuse in accordance with the terms of the cruelty.¹³

CONSTITUTIONAL VALIDITY OF MARITAL RAPE

The Constitution's guarantee of equality between men and women cannot be violated by applying Exception-2 to Section 375 of the IPC. It is up to the lawmakers to consider whether such disparities exist in the law. Since the beginning of time, a man wearing the garb of a husband has treated his wife like a chattel, his crass behaviour ignoring the fact that he exists because of a woman. A horrific sexual attack committed against the wife's will and even though it was by the husband must be classified as rape.¹⁴

According to the recommendation given by Justice Verma Committee Marital Rape must be criminalized under the Indian Penal Code by way of amending section 375. The Justice Verma Committee advised criminalizing marital rape following the 2012 Nirbhaya Rape case by noting that marriage did not imply irrevocable permission for sexual activity.¹⁵ In 2019, a member of parliament named Shashi Tharoor said, "Marital rape is not about sex; it is about the violence and harm that is caused to the women, and it does not depend on whether she is

¹⁰ Criminal law Amendment Act, 2013

¹¹ Indian Penal Code, 1860. S. 376B

¹² Nimeshbhai Bharatbhai Deasi v. State of Gujarat, 2018 SCC Guj 732

¹³ Indian Evidence Act, 1872, S. 122

¹⁴ Hrishikesh sahoo v.State of Karnataka, WP 48367 (2018)

¹⁵ Mukesh Anr. v. State(NCT of Delhi), (2017)6 SCC 1

married or not; it is about the consent that the women give." He was speaking about the Women's Sexual Reproductive and Menstrual Rights Bill, 2018 that he had introduced.¹⁶

The Andhra Pradesh High Court ruled that there is no question that enforcing a decree of restitution of conjugal rights¹⁷ violates the inviolability of the subject's body and mind, his or her integrity, and invades their marital private and domestic intimacies.¹⁸ Marital rape is counted as grounds to get a divorce on the base of cruelty.¹⁹ Also a ground of punishment under IPC, 1860.²⁰

"The wife has given herself in kind to her husband through their mutual consent and marriage contract, and he cannot withdraw, so the husband cannot be guilty of a violation committed by himself against his legitimate wife."²¹

The state is obligated by international agreements, domestic legislation, and the constitution to advance women's rights as citizens, whether or not they are married. Exemptions for marital rape are unconstitutional.

Because the category of unmarried women and the category of married women can be defined in a reasonable manner, there was no discrimination under section 375 of the IPC, 1860. Different laws and provisions apply to married women when their husbands commit rape, and Section 375 is applicable to married women when the crime is committed by a man other than her husband as well as to any girl who is at least 18 years old regardless of her marital status. When it comes to those who are not married, the term "Any Man" is used because it is not the husband who has done the crime. According to Article 14 of the Indian Constitution, it is obvious that there is no discrimination between married and single women because the classification is justified on reasonable grounds.

Article 21 of the Indian Constitution deals with the Personal Liberty of a person i.e. a person has a fundamental right to live a free life. The institution of marriage would be destroyed if the constitution intervened in the wife and husband's domestic disputes.²²

¹⁶ Women Sexual Reproductive and Menstrual Rights Bills, 2018

¹⁷ Hindu Marriage Act, 1955

¹⁸ Sareetha v. Venkata subbaiah AIR 1983 AP 356

¹⁹ Hindu Marriage Act, 1955. S. 13

²⁰ Indian Penal Code, 1860, S. 498(A)

²¹ Britannica, 1 Sir Mathew Hale, History of the Pleas of the Crown 629 (1778)

²² Harvinder kaur v. Harmander singh AIR 1984 Delhi 66 ILR 1984 Delhi 546

According to the National Crime Records Bureau's (NCRB) "Crime in India" 2019 report, a woman is cruelly treated by her in-laws every four minutes and every 16 minutes.²³ According to data from the National Family Health Survey (NFHS) 2015–16, an estimated 99.1% of sexual assault incidents go unreported, and the average Indian woman is 17 times more likely to experience sexual assault from her husband than from other men.²⁴

MARITAL RAPE IS WAY OF VIOLENCE AGAINST WOMEN

One in five Indian men surveyed in a 2011 study by the International Centre for Research on Women¹⁹ acknowledged pressuring their spouses into having sex. These are numbers, not words. However, the qualitative study shows that marital rape and sexual violation is a more serious problem than just episodic forced or penetrative sex.²⁵

There are stories about spouses forcing their wives to have sex with their employers, coworkers, and acquaintances. Because spouses are helpless and exposed, these sexual actions are perpetrated. To compel obedience and conformity, violent tactics and strategies are employed. When women are forced to remain in a marriage with their abuser, the situation can become traumatising. Without any support systems, they frequently experience feelings of inadequacy, helplessness, and helplessness. Violence against women continues to be tolerated in the form of rape by in-laws, including fathers, brothers, and other relatives, who also silence their complaints. Many women are compelled to live with wounds that never heal, yet it is challenging to describe the same.²⁶

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CONCLUSION

The main issue in India is that, in the majority of cases, it is true that Indian marriages are holy obligations. It is quite difficult to provide evidence that a husband raped his wife during marriage. Compared to crimes that happened in society, there are fewer cases of marital rape that are brought to the Court of Justice. There aren't any strict regulations that require you to act right away if you commit marital rape.²⁷

²³ National Crime Record Bureau Report, 2019

²⁴ National Family Health Survey, 2015-16

²⁵ ICRW (2014) The Making of Sexual Violence: How Does a Boy Grow up to Commit Rape? Evidences from five IMAGES countries Washington DC

²⁶ Social Science Research Network

²⁷ International Journal of law Management & Humanities

The Act is a quasi-criminal statute that only addresses the crime of marital rape. To combat marital rape difficulties, the legislation cannot be employed in isolation; instead, societal reform is crucial and significant. Thirdly, in order to support the legislature's strict analysis of marital rape, the Evidence Act needs to be amended in a few specific ways. Adopting this peaceful strategy could therefore aid in settling conflicts and achieving the victim's justice goals.

Since women are still seen as the husband's property and are entirely at his disposal, it is obvious that Indian law has failed to adequately protect them. Establishing equality for married women requires addressing the issue of marital rape. We have examined the arguments' viability in light of the ideas of family, marriage, and the place of women in society. We showed that there is no legal basis for any of the arguments made in favor of making marital rape a crime. Marital rape is now an acknowledged crime in a number of countries around the world, breaking with this long-standing custom.

