



MARITAL RAPE IN INDIA: THE UNFULFILLED PROMISE OF LEGAL REFORM IN 2023

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INTRODUCTION

Marital Rape now also remains one of the most unrecognized crimes, but this action is most pressing also. Despite many tries to reduce marital rape using spreading awareness and advocating but also now also it continues to be excluded from the legal definition of rape, this majorly deprives a major number of women of raising their voices against this unfolded crime. Further, this negligence from the judiciary deprives the crime of being recognized as a crime, and many societal factors are also involved in the matter of marriage society plays a major role in deciding many factors which becomes a major factor in declination in the approval rights of women. This Article delves into the struggles of women to criminalize marital rape in India mainly even after the introduction of BNS and BNSS marital rape was recognized.

In the year 2023 in India, New criminal laws were introduced, and new legal amendments which mainly aimed at recognizing types of gender-based violence. These amendments were anticipated to enforce major reforms mainly the criminalization of marital rape which is a long-demanded protest for ages by many activities and billions of women. But then after the amendment, all expectations were damaged as marital rape was not recognized and it was again included as an exemption only to rape. This amendment majorly disappointed many sectors of individuals in India but this highlighted the ongoing major struggle faced and led by the women in the societal norms and progressive legal reforms which resist redefining the limits of consent in marriage.

This article is written to acknowledge all the failures of the 2023 legal amendments in India to criminalize the crime of marital rape which is a very critical issue in the conflict for gender equality and human rights. Even though pressure from activists, legal experts, and international bodies there are no changes in recent amendments also which reflects deep-rooted societal and

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cultural resistance. So, this article is written for exploring the legal, social, and cultural implications of not recognizing marital rape as a crime. Furthermore, this article is written for highlighting the need for advocacy, legal reform, and the creation of public awareness to challenge the long-rooted and firmly recognize all forms of sexual violence are considered "rape" regardless of marriage context as forced is considered forced no matter whether they married or not. This article is written for underscoring the need for reforming India's approach to marital rape.

HISTORICAL OVERVIEW

Marital Rape and Indian Law Pre-2023

Over the ages in Indian Law, marital rape has not received recognition as a violent crime as it was placed as an exemption under section 375 of the Indian Penal Code. This section was amended in the pre-colonial era which depicts that this exemption was amended based on societal and cultural norms of the country¹. This exemption is a clear exploitation of a woman, and it indirectly depicts that women should give consent for marital rape. This law depicts the condition of our culture at that time and despite having various legal reforms acknowledging various kinds of sexual violence but until now marital rape is not considered "rape". These norms depict that sexual violence is a part of marriage and this cannot be termed for intervention and makes survivors of their legal rights.

Advocacy and Calls for Reform

Historically there has been significant advocacy to acknowledge marital rape as a crime in India. Women's rights organizations, legal experts, and human rights activists have given numerous efforts to add marital rape as a rape under section 375 and argued that if not added then it violates the fundamental rights to equality, dignity, and liberty. Even the UN has also urged India to merge its laws with global human rights standards. High-profile cases and the testimonies of survivors have fuelled public discourse which brings light on the physical and psychological impacts of marital rape². But even after the efforts, there is no proper positive proceeding in the legal reform in the matter of marital rape as cultural and religious arguments usually have framed that marriage as a sacred, inviolable institution. This further advocates for

¹ Sircar, O. (2017). "Historicizing Marital Rape in India." *Journal of Indian Law and Society*

² Sarkar, L. (1993). "Rape within Marriage: Indian and International Perspectives"

challenging these norms and further enforcing legal recognition and providing proper protection for women who have been affected by marital rape.

THE 2023 LEGAL AMENDMENTS

Overview of the 2023 Amendments

The recent amendment of 2023 in India was amended to aim to acknowledge numerous aspects of gender-based violence and firmly strengthen the protection of the women sector in India. These amendments newly introduced firm penalties for sexual offenses and effective measures for protecting sexual violence. However, despite these progressive steps, the amendments excluded recognizing marital rape as a crime. The exclusion of marital rape from these reforms was a glaring gap, mainly the factors like advocacy and public discourse on the issue.³

Expectations vs Reality

There was a great expectation for the 2023 amendment which may include the criminalization of marital rape which shall mark a significant step towards gender equality and could provide proper justice for the women. This could advocate the expected reform to follow the international human rights standards which will address a critical gap in the Indian legal framework but the reality after the amendment was very different. These amendments did not address marital rape which disappointed the activists, legal experts, and survivors. These decisions further highlighted the resistance of deep-rooted societal thought to acknowledge marital rape as a crime which reflects the ongoing struggle between the progressive legal reform and traditional and patriarchal values which prioritized marital sanctity over personal rights.

Key Exclusion

Contrastingly the exclusion of marital rape from the recent amendment was supported by various political, cultural, and social arguments. The arguments from politics were that the inclusion of marital rape would disrupt the sanctity of family and harmony. Culturally they argue that patriarchal belief is that a wife is implied to suffer marital rape, and it makes it difficult to challenge the status quo further socially they neglect to acknowledge the sexual

³ Ministry of Law and Justice, India (2023). "Summary of the 2023 Legal Amendments

violence in marriage, and it is considered merely a private matter⁴. These factors of exclusion reflect the connection between legal, cultural, and societal factors which causes hindrances in the recognition of marital rape as a crime in India.

IMPLICATIONS OF EXCLUSION

Legal Implications

The long-lasting exclusion of recognition of marital rape from India's legal regulations has a major legal implication. The non-inclusion of marital rape the law itself violates the policy of gender-based protection laws which mainly denies the protection of laws for the numerous survivors⁵. This exclusion further disturbs the proper flow of justice and equality in the country, particularly highlighting the right to liberty and dignity. This also leads to weakening the credibility of the legal systems to address and provide proper protection for serious types of sexual crimes.

Impact on survivors

The exclusion of considering marital rape as not a rape is a major drawback for all the survivors. This directly means that the Indian judiciary wants the survivors to continue to suffer physically and psychologically without having legal recourse. Many survivors may feel dismayed and start accepting they this is their life and must endure suffering as part of their marriage they cannot be saved and cannot be provided for justice. This further disturbs more psychologically they may feel depressed, and alone and, may take extensive actions like suicide or any actions.

Social and Cultural Consequences

The non-inclusion of marital rape in the Indian Judiciary again revitalizes the cruel societal and cultural practices which decline women's growth and consent. It continues the existence of the belief that a marriage grants even the license for exploitive sexual rights for the husband which has finally normalized the exploitation of women sexually. This legal work further establishes a form of silence where a survivor cannot report the abuse because of fear of society⁶. This also indirectly makes women accept that they cannot voice against sexual exploitation in marriages.

⁴ Press Trust of India (2023). "Debate over Marital Rape Exclusion in New Legal Reforms

⁵ National Commission for Women (2022). "Impact Study on Survivors of Marital Rape

⁶ Human Rights Watch (2023). "India's Legal Gaps on Marital Rape

COMPARATIVE ANALYSIS

Global Perspectives

In a comparative analysis, many countries around the world have properly recognized marital rape as rape which is in very contrast to the laws present in India. Universal nations like the US, UK, Canada, and African states have properly acknowledged the seriousness of marital rape and have criminalized marital rape these states also give a thought-provoking saying like "The marriage does not deprive the women right and women is not obliged to give consent". Furthermore, great nations like the UN and UK have raised their voice against marital rape exemptions and they majorly emphasize that all sexual acts of violence must be punishable even including marital rape also⁷. India should apply this global perspective, which is very much in need of these thoughts and implying these are very much in need of these thoughts and implying actions.

Lessons from Other Jurisdictions

India should extract various laws enforced by the various countries in the matter of marital rape as many countries have properly executed the punishment for marital rape. For instance, in the country of South Africa, the legal implications are embedded in people's education from the junior level so that when they attain the legal age then they will understand everything⁸. United States they have strongly reinforced the legal laws regarding marital rape which has brought a great impact on the country and married women received needed justice. These jurisdictions depict the major women's values rather not relying on the not-needed cultural and unnecessary patriarchal norms. This factor should be learned by India as India is in very much need of these factors and the introduction of stringent laws on marital rape.

NEEDED ADVOCACY AND THE ROADWAY

Current Advocacy Efforts

The strong voices for enforcement of marital rape from major women's rights, human rights, and prominent legal activists. These support systems have conducted various types of public campaigns, have filed numerous petitions for recognition, and possess various legal challenges

⁷ UN Human Rights Council (2019). "Comparative Analysis of Marital Rape Laws Worldwide

⁸ South African Law Reform Commission (2000). "Marital Rape Law Reform

mainly aiming for the recognition of marital rape in existing laws. Famous profiles like Karuna Nundy have actively engaged in bringing the issues to the limelight of the country through the litigation process⁹. The famous grassroots movements are majorly working on providing extensive support to all the survivors of incidents and they are also extensively trying to educate everyone about the ground reality of cruel marriage.

Legal Strategies

The Legal strategies for acknowledging the inclusion of marital rape may involve 2 methods – direct and indirect method. Some legal professionals are challenging the constitutionality of the marital rape exemption conducted in the court as they argue that the exclusion of marital rape violates fundamental rights and there is no equality between both genders¹⁰. Other legal professionals direct debate to criminalize marital rape and legal experts are also parallelly trying to align the universal laws with India which include help including marital rape in the laws of the country

Role of Public Awareness

In the world of social media and spread chain transmission, public awareness can play a very great role in bringing the limelight to fight against marital rape by fighting against all the social norms which shall lead to reduced stigma in the society. One best way of transmission is it is awareness campaigns help many people to educate the public about one of the major concepts of consent in a marriage. Further by sharing the survivor's stories and by highlighting the major legal intricacy. Mainly this campaign only focuses on empathy and understanding which will majorly encourage the people to support the proposed legal framework. Public awareness has major power as this can reach the needed audience properly, so this also helps the survivors to speak bravely and freely and can seek help freely which would finally break the silence regarding marital rape.

CONCLUSION

In conclusion, I would conclude that the 2023 legal amendments in the Indian region have presented a vast opportunity for contesting the long-lasting fight for recognition of marital rape as these reforms could not prioritize marital rape as a serious crime. Our country had very

⁹ Nundy, K. (2023). "Advocating for Legal Reform: The Marital Rape Debate in India

¹⁰ UN Women (2021). "The Role of Advocacy in Legal Reform

strong legal systems, proper public discourse, and proper international reform except in the matter of marital rape as this factor until now is excluded from legal definition. The historical aspects of marital rape in India reveal sadly deeply enriched societal norms which are unable to see the suffering of the women as this thought only sees their thoughts but not the endurance of the women. The legal effects of the exclusion of marital rape are very cruel as this leaves the survivors without any legal recourse and this pushes for the reinforcement of a proper legal system that properly equalizes gender-based discrimination.

From analysing all the factors this article was research article is purely written to underline the urgent need for more intensive advocacy, proper legal reform, and public awareness. The major legal strategies should focus on challenging the constitutionality of the exemption of marital rape and should create a push for a proper legislative amendment that shall criminalize marital rape. Furthermore, public campaigns are very crucial for transforming societal attitudes which will reduce stigma and create a proper environment.

The fight for criminalizing marital rape is just not about legal reforms; this is mainly about affirming the fundamental human right of each person. Each country should uphold justice for the survivors of marital rape is very crucial for constructing a proper society.

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