



MARITAL RAPE AND INDIAN JURISPRUDENCE

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The socio-legal contemporary issues refer to the challenges and obstacles faced by society, which have the current prevailing interests of the governed and the preferences that need to be addressed. These issues press a sense of urgency to be decluttered by the legal regime as it may hinder the country's progress and degrade democratic values. These may include cybercrime, environmental problems, racism, data privacy, reservation policies, protection of women and children against physical and sexual harassment, etc. Laws need to be dynamic and change according to societal requirements. Marital rape is one such form of harassment that requires to be addressed.

The Indian Constitution provides that marital rape is not a crime. The Indian Penal Code, Section 375, includes that “the sexual intercourse or the sexual acts by a man on his wife, the wife not being under fifteen years of age, is not a crime”. This has sparked recent controversies as the violence against women in the domestic threshold has increased over the years. Various petitions have been made to the Supreme Court to criminalise marital rape which are still under the consideration of the Hon’ble Court. Now, the new Bharatiya Nyaya Sanhita, Section 63, provides the same exception with the increase in the age limit of the wife not being under the age of 18 years.

The Supreme Court provided that the criminalisation of marital rape may destroy the institution of marriage. But the representative of the All-India Democratic Women’s Association, Ms. Nundy, argued that marriage is personal and should not be institutionalised. Further, the argument focused on the exception of a man from the conviction of rape just because of his role as a husband is unreliable and deviates from the purpose of the protection of women by the Constitution. The protection guaranteed to a man for his non-consensual sexual activities

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by the Indian Government violates the woman's right to personal autonomy, bodily integrity, and dignity.

In October 2024, the Union Home Ministry submitted an affidavit consisting of 49 pages which exclaimed that criminalisation of marital rape is "excessively harsh" on the men whereby the married women are provided with enough provisions to protect themselves and seek remedies for the sexual violence so the spousal rape should not be alleged as a crime. But the irony is that the Union government Home Survey shows that 32% of married women face violence based on physical, emotional, and sexual attributes. These are based on the reported basis, but the unreported crime remains uncharted waters.

The Justice Verma Committee on sexual assault, created after the Nirbhaya Rape case, 2012 suggested the criminalisation of marital rape and continued that marriage didn't mean irrevocable consent to sexual activities but the Indian Government neglected the suggestion. In the case of *Harvinder Kaur vs. Harmander Singh*¹, the Delhi High Court stated that the Indian Constitution should not reside inside the domestic household as it may destroy the institution of marriage. This can provoke questions as it is the duty conferred upon the Constitution to protect the citizens residing in India whether on personal or societal means. Whereas, the Karnataka High Court on marital rape stated that the exception 2 provided for the rape is the "old age" rule that has prevailed over the years.

The criminalisation of marital rape could be a hard task as India is still a developing country unlike the developed countries, where marital rape is considered as a crime. In 2016, Maneka Gandhi, the then Women and Child Development Minister stated that due to illiteracy and poverty in India, the concept of marital rape could not be applied here as it cannot be accepted and understood by the local and illiterate people. In *Independent Thought vs. Union of India*², the Supreme Court is compelled to revisit some of the theoretical suppositions on which the marital rape exceptions are based, if marital rape is not a crime for women over the age of 18, what about girls who are married under the age of 18 and their constitutional remedies were questioned.

Exception 2 to the rape laws ultra vires the Article 14 of the Indian Constitution which represents the 'right to equality', as it discriminates against women based on their marital status by disconfirming their security from rape and sexual assault. Exception 2 also violates Article 21 of the Indian Constitution which equates to the 'right to life', so the matter of fact was why

should married women be refrained from exercising this right and tolerate undesirable sexual activities, so the Supreme Court should release guidelines regarding the martial rape and address these issues to avoid further torture towards the women.