



MARITAL RAPE

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ABSTRACT

In recent decades, despite the growing acknowledgement of various penal laws in India, the issue of marital rape has emerged. There is a pressing need for a specific law addressing marital rape in India, which should align with international standards on this matter. Society and legal frameworks have empowered women to advocate for their safety; however, if a woman's husband, whom she trusted completely, inflicts harm and suffering by engaging in non-consensual sexual acts, it ultimately jeopardises her health and well-being. The concept of matrimonial exemption lacks justification and relevance in today's context. This paper aims to criminalise marital rape, asserting that the law must recognise that rape can manifest in various forms. Any instance of forced sexual intercourse without the consent of either spouse constitutes rape. Additionally, this paper explores the distinction between marital rape and other forms of rape, along with comparative analyses. It also references various observations made by Indian courts over time in different cases. Furthermore, the paper sheds light on the social and legal dimensions of marital rape, discussing its causes, types, severe consequences, and viable solutions to address this critical issue in detail.

Keywords: Sexual Intercourse, Spouse Sexual Assault, Consent, Marriage, Indian Society.

INTRODUCTION

Marriage in India is regarded as a dignified bond, a sacred connection where Dharma (duty), Artha (wealth), Kama (sexual desire), and Moksha unite two individuals in a collective pursuit of salvation; at least, that is the perspective we often share based on principles. However, we must be candid about the reality of this relationship, especially when some of us boast about

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the low divorce rates in our nation and draw comparisons between Western countries and Indian marriages, correct?

In our culture, marriage is held in such high esteem that when a man mistreats his legally married wife, it often goes unnoticed. Yet, this is not the most troubling aspect of weddings in our country! Indeed, the laws here also uphold outdated views and fail to recognise that marital rape is just as damaging as other forms of rape. The specific provisions in Section 375 of the Indian Penal Code outline the conditions under which an individual can be prosecuted for rape. Unfortunately, these provisions do not offer any protection to victims if the perpetrator is their spouse.

Historically, our society has struggled to grasp the notion of marital rape. “If individuals are married, how can it be considered rape?” The assumptions behind this belief are even more disheartening. It is thought that the primary and sole damage caused by rape is the stigma attached to it, which is why no ‘respectable man’ wishes to marry a rape survivor. Therefore, if a woman is already married, why should she voice her grievances? Another alarming issue is that even a revered institution like marriage has become a legitimate excuse for men to exhibit their primal instincts, where they attempt to undermine their wife’s self-respect and dignity, which should be the foundation of this sacred bond. In this context, the issue of consent in sexual relations is entirely disregarded; it is a fundamental right for everyone.

Marital rape is a reality in India, a disgraceful act that has undermined trust and confidence in the marriage institution. A significant number of women have borne the consequences of the decriminalisation of this act. Rape highlights the shortcomings of societal institutions that were created to ensure better security and self-esteem for individuals. These institutions have not only failed to shield individuals from such severe violations of their autonomy and privacy but have also legitimised these acts by either legalising them or failing to declare them illegitimate. Often, states have either permitted marital rape or have chosen not to classify it as a crime, viewing it as a private matter beyond legal scrutiny. Marital rape is a worldwide issue that profoundly impacts the mental and emotional well-being of its victims, leading to devastating consequences in their lives. While numerous countries have banned marital rape or removed the exemption for rape within marriage, the situation in India remains largely unchanged, as it has yet to criminalise marital rape.

DEFINITIONS & LEGAL STATUS OF MARITAL RAPE AND RAPE

Nobel Laureate Bertrand Russell noted in his book *Marriage and Morals* (1929), “Marriage is for women the commonest mode of livelihood, and the total amount of undesired sex endured by women is probably greater in marriage than in prostitution.” This observation is particularly relevant in the context of rural India, where many women are uneducated and unemployed, often married off through arranged marriages.

Engaging in sexual intercourse with a woman against her will is classified as rape. This constitutes a legal offence under the Indian Penal Code, which prescribes punishment for such acts. However, in India, if a husband forcibly engages in sexual relations with his wife without her consent, it is not recognised as a crime. Thus, marital rape in India falls outside the scope of legal prosecution.

The central government has rejected the notion of criminalising marital rape, asserting that such a move would pose a threat to the institution of marriage. The Delhi High Court is currently addressing petitions aimed at criminalising marital rape. The court has requested the central government to provide its perspective on this matter. In response, the Central Government submitted an affidavit claiming that marital rape should not be classified as a punishable offence, as it could endanger the institution of marriage. This could set a precedent that might facilitate the harassment of husbands.

The central government believes that while marital rape is considered a crime in many Western nations, it does not necessarily follow that India should adopt this approach without question. The Centre also emphasised that before designating marital rape as a crime, various issues such as women’s education, economic status, and poverty in the country must be taken into account.

In a ruling from 2017, the Supreme Court stated, “Rape committed within a marital relationship will not be counted as an offence.”

At that time, a voluntary organisation named Independent Thought had filed a petition to classify marital rape as a criminal offence. A bench comprising Justice Madan B Lokur and Justice Deepak Gupta was reviewing the case in the Supreme Court. Even then, the central government maintained its support for proviso (exception) 2 of section 375 of the IPC, which safeguards the dignity of the husband, minor wife, and their marital relationship. This raises

the question: what distinguishes ‘rape’ from ‘marital rape,’ and what relevance does the institution of marriage have in this context?

A marital rape case refers to a situation where a husband disregards his wife’s consent and engages in sexual relations, which is then classified as rape. This assertion is not merely an opinion but a ruling made by the Kerala High Court. The court stated that treating a wife’s body as personal property and engaging in sexual activity without her consent constitutes marital rape.

In a significant ruling, the Kerala High Court declared that marital rape serves as a valid basis for seeking divorce. The court noted that while there is no legal provision for punishing marital rape in India, it can still be a legitimate reason for divorce. The High Court upheld the Family Court’s decision while dismissing the husband’s appeal.

The High Court’s remarks came as it rejected two appeals from an individual contesting the Family Court’s ruling to grant a divorce. This ruling emerges amidst ongoing discussions about marital rape, with numerous incidents being reported.

WHAT IS MARITAL RAPE?

In simple terms, marital rape is defined as engaging in sexual relations against a wife’s will, yet it is not classified as a crime. According to a United Nations report, approximately 75 per cent of married rape cases occur in India annually. The court remarked that “such behaviour cannot be penalised, but it constitutes physical and mental cruelty. This case highlights the abuses faced by women.” Conversely, some individuals argue that wives might exploit this definition to harass their husbands. This raises the question of the distinction between ‘rape’ and ‘marital rape’ and the implications of marriage on this issue.

WHAT IS RAPE?

As defined by Oxford Dictionaries, Rape is described as “the crime, typically committed by a man, of forcing another person to have sexual intercourse with the offender against their will.” According to Cambridge Dictionaries, Rape is defined as “to force someone to have sex when they are unwilling, using violence or threatening behaviour.”

WHAT DOES THE HINDU MARRIAGE ACT STATE?

The Hindu Marriage Act outlines specific duties that both husband and wife owe to one another. Among these is the mutual right to engage in physical relations. Numerous court rulings have established that a refusal to engage in such relations can be considered cruelty, which can serve as grounds for divorce for either spouse.

As per Section 375 of the Indian Penal Code (IPC), if a man engages in sexual intercourse with a woman under certain conditions, it is classified as rape.

- Sexual intercourse conducted against the woman's will.
- The woman consents, but this consent is obtained through threats of death or harm to her or someone close to her.
- The woman consents, but she is under the false impression that she is married to the man.
- The woman consents, but at the time of giving consent, she is not in a sound state of mind or is under the influence of drugs or alcohol, rendering her unable to comprehend the implications of her consent.
- If a woman is under 16 years of age, any sexual act performed without her consent is considered rape.

However, there is an exception (proviso 2) in this law. If the wife is under 15 years of age, then sexual relations with her by her husband do not constitute rape.

WHAT IS THE DIFFERENCE IN LAW?

The definition of rape has been established in the IPC. However, it does not address the issue of marital rape.

- Section 376 outlines the penalties for rape. This section includes a provision for punishing a husband who rapes his wife, provided that the wife is under 12 years of age.
- It specifies that if a husband rapes a wife who is younger than 12 years, he shall face a fine or imprisonment of either kind for a term that may extend to two years, or both.

- It is evident from the stipulations of sections 375 and 376 that the age of consent for a woman to engage in sexual activity is 16 years, yet the consent or dissent of a wife over 12 years of age holds no legal significance.

In 2013, the NGO Independent Thought submitted a petition to the court contesting Exception 2 of Section 375. Exception 2 states that if a man engages in sexual intercourse with his wife who is at least 15 years old, such intercourse shall not be classified as rape. Independent Thought requested the court to extend the protections against rape under Section 375 to all minors, regardless of their marital status.

Domestic Violence Act-2005: The Protection of Women from Domestic Violence Act, 2005, was enacted by the Parliament of India. Its purpose is to protect women from domestic violence within the household. This Act took effect on 26 October 2006. Sexual abuse occurring within the home is defined by this law, which encompasses various forms of violence and abuse, including sexual abuse such as rape and forced physical relations. What does the Hindu Marriage Act state? The Domestic Violence Act was enacted in 2005 to safeguard women from sexual abuse within the household. This legislation offers protection to women against sexual abuse at home. The Hindu Marriage Act outlines various obligations for both the husband and wife towards one another. This includes the right to engage in relationships. It is legally recognised that denying a physical relationship constitutes cruelty; based on this, divorce can be pursued.

TYPES OF MARITAL RAPE

In the case of *Nimeshbhai Bharatbhai Desai Vs State of Gujarat, 2018 SCC Online Gujarat 732*, the Court addressed the issue: Is a husband forcing his wife to engage in oral sex considered rape under Section 376 of the IPC? The Hon'ble Court identified three prevalent types of marital rape in society:

Battering Rape: This form of marital rape involves women suffering both physical and sexual violence within the relationship. Instances include situations where the wife is assaulted during sexual violence, or where rape occurs following a physically abusive incident, with the husband coercing his wife into sex against her will. Victims often fall into this category.

Force only Rape: In this variant of marital rape, husbands exert just enough force to coerce their wives. While physical violence may not be present, women who refuse sexual intercourse frequently endure such assaults.

Obsessive Rape: This type of rape is characterised by extreme torture and/or deviant sexual acts, often manifesting in a particularly brutal manner. It is also referred to as sadistic rape.

There was a recognised need for new legislation addressing sexual assault. The previous laws did not adequately define or encompass the various forms of sexual assault. In the case of *Sakshi v. Union of India*, the Supreme Court acknowledged the shortcomings in the existing rape laws and urged the legislature to implement necessary changes. Following the enactment of the Criminal Law Amendment Bill in 2013, the definition of rape was expanded to include the most egregious acts, with Parliament amending the law to classify oral and anal acts as constituting rape.

STATUS OF MARITAL RAPE IN INDIA

The National Family Health Survey (NFHS) conducted in 2015-16 revealed no progress, indicating that 99.1 per cent of sexual assault incidents remain unreported. An analysis of this data suggests that approximately 99.1 per cent of cases of sexual violence go unreported, with the average Indian woman being 17 times more likely to experience sexual violence from her spouse compared to others. The NFHS reported that among the 80,000 women surveyed, 93 per cent reported experiencing sexual abuse from their current or former husbands. Despite these alarming statistics, the concept of ‘marital rape’ is often met with scepticism. The Verma committee, established following the Nirbhaya incident to enhance sexual harassment legislation, emphasised that the relationship between the victim and the offender is irrelevant, and the primary concern should be the existence of consent.

A 2011 survey by The International Men and Gender Equality Survey found that one in five men in India coerced their wives into sexual relations. According to the United Nations Population Fund Survey from 2000, over two-thirds of married Indian women aged 15 to 49 reported that their husbands either beat them or forced them into sexual acts. Additionally, a study by the Joint Women’s Program, an NGO based in New Delhi, discovered that one in seven married women in India has experienced rape by her husband at least once. Unfortunately, these rapes often go unreported as the law does not recognise them as a crime.

The International Institute of Population Sciences conducted a study revealing that 26 per cent of women in Pune, 23 per cent in Bhubaneswar, and 16 per cent in Jaipur frequently engage in sexual activities with their husbands against their will. The research established a direct correlation between alcohol consumption and sexual abuse, with one-fifth of the surveyed women stating that their husbands were often under the influence of alcohol when they were coerced into sex.

In recent decades, numerous nations have made it illegal for a husband to force sex within a marriage. The United Nations High Commissioner for Human Rights has identified marital rape as a breach of human rights in the Declaration on Violence Against Women. A report from the United Nations indicates that among 104 countries that have criminalised marital rape, 34 have classified it as a distinct offence. The remaining countries treat it as they would any other form of rape.

In India, marital rape is not recognised as a crime. Nevertheless, the *Justice Verma Committee*, established following the horrific *Nirbhaya Rape Case in Delhi in 2012*, recommended the removal of the exemption for marital rape under Section 375 of the IPC.

Nageswara Rao, former director of the Central Bureau of Investigation (CBI), stated, “What is the purpose of marriage if the husband is imprisoned for engaging in sex against his wife’s will? Does this not destroy the family? It harms the children and disrupts their marriage?” He further described the system that allows this as “anti-civilisation,” effectively reducing marriage to mere legal sex.

In March 2021, then Chief Justice of India SA Bobde commented on a petition from a man accused of raping a woman he had been in a relationship with for two years, questioning, “However cruel the husband may be... when two individuals are living as husband and wife... can intercourse between them be classified as rape?”

Last year, the Chief Justice of India posed a question to a government employee about whether he would marry a woman who had accused him of repeatedly raping her. This reflects a blatant disregard for the suffering endured by the woman and serves as a means of legitimising rape. It emphasises that rape is perceived as an affront to the woman rather than a matter of her consent. Even more troubling, the Bar Council of India endorsed this viewpoint.

The Karnataka High Court ruled that a refusal of sex constitutes a violation of the Hindu Marriage Act, providing sufficient grounds for divorce. To reference the ruling, “the husband cannot be victimised through no fault of his own and by his natural desire for sexual pleasure if the wife is unwilling to share the bed and fulfil her responsibilities.” This cannot be disputed. When the influence of patriarchy is prevalent in our belief systems, it becomes increasingly challenging for women to advocate for their rights.

CAUSES OF MARITAL RAPE IN INDIA

The limited discourse surrounding marital rape thus far can be attributed to a lack of resources. Issues such as women’s empowerment and low literacy rates require urgent attention, particularly in nations like India. The continuation of social norms that have shaped women’s perceptions for centuries has also significantly contributed to their reluctance to acknowledge marital rape as a form of rape. Women often feel they must adhere to their husband’s wishes and satisfy his sexual needs as a model wife. Religious texts suggest that engaging in sexual relations with one’s wife is deemed acceptable to uphold family hierarchy.

Various distinguished psychotherapists and sociologists discuss the factors contributing to marital rape, stating that “when discord arises between husband and wife, the husband may attempt to assert his power and dominance over the woman. To demean his wife, he displays his authority and invades her privacy. In doing so, he degrades the woman he holds most sacred. The act of rape is atrocious in itself, often accompanied by the humiliation of the victim, assaulting her dignity. The intricate process of committing and violating her makes marital rape especially degrading for the woman. Through this, the man seeks to assert that he is more powerful than the woman and that she will always be subject to his control.”

Prominent psychotherapists note, “At times, a woman may not wish to engage in sexual activity for reasons known only to her and may decline her husband’s advances. Men are typically more driven by sexual desire than women. Therefore, when a man is denied sex, he perceives it as an affront to his masculinity.

SOCIAL ISSUES RELATED TO MARITAL RAPE

The phrase “marital rape” is contentious and leads to misunderstandings regarding rape, which is broadly recognised as a sexual offence, and marriage, which is viewed as a socially acceptable sexual activity. Typically, women do not perceive sexual assaults perpetrated by

their husbands as rape (in contrast to assaults by strangers or acquaintances) and are thus less inclined to report these incidents.

Numerous stereotypes exist regarding women and sexuality, such as the notion that women enjoy coerced sex or that when women say “no”, they mean “yes”. This belief is widespread. In Indian culture, there is an expectation that a wife must engage in sexual relations with her husband, a notion reinforced by both mainstream society and pornographic media, which encourages men to disregard a woman’s objections.

The Victim Blaming Game plays a significant role in Indian society, misleading women into thinking they may have “sent the wrong signals,” leading them to hold themselves accountable for unwanted sexual experiences.

The idea of “bad wives” is common in Indian culture, with the assumption that women are “bad wives” if they do not enjoy sex against their will. Researchers have found it beneficial to distinguish between various forms of coercion within a husband-wife dynamic and the facilitation of marital rape:

Interpersonal coercion arises when a woman faces her husband with non-violent threats. Spouses who threaten to withhold financial support, disrupt relationships, or mistreat children engage in interpersonal coercion. The coercive nature of such threats is especially evident in marriages where a woman’s dependence and lack of power weaken her negotiating position. However, when these threats do not involve any physical coercion, the subsequent sexual activity cannot be classified as rape.

Physical coercion, whether threatened or actual, is fundamentally central to the act of rape. The range of physical threats can include explicit threats to kill a woman if she does not comply, along with the implied threat of harm if she fails to cooperate. These implied threats are particularly powerful in relationships where a husband has previously abused his partner. The actual application of physical force can vary widely, from overpowering a woman due to greater size and strength to causing significant injuries.

In our culture, social coercion related to marital sex is both institutionalised and internalised by individuals. Although such coercion can be humiliating and harmful, particularly when it is coupled with other forms of male entitlement and control, it does not fit within a practical definition of rape.

Researchers propose that the definition of marital rape should be confined to instances involving the use or threatened use of physical force without the woman's consent, while still acknowledging the importance of the other two forms of coercion in raising awareness about the issue.

The notion of a Patriarchal society: It has been stated that "A good husband makes a good wife," but in India, this has been interpreted differently, suggesting that 'a good wife fulfills her husband's desires at all times, which is then labeled as love,' while a good husband is perceived as one who asserts his masculinity over his partner. This patriarchal system is evident in India, where married women are often treated as property.

CONSEQUENCES / EFFECTS OF MARITAL RAPE

What are the long-term effects of marital rape? Victims of marital rape often experience a range of painful and distressing symptoms, including:

- Clinical depression
- Fear
- Anxiety and restlessness
- Lack of confidence
- Lack of self-esteem
- Intense self-hatred

While the previously mentioned concerns may not be entirely accurate, the following consequences warrant careful consideration. A survivor of marital rape possesses various resources to assist her in seeking justice. However, without legal protection, a victim of marital rape must endure the following:

Physical injuries to the vaginal and anal regions, such as lacerations, bruises, and other injuries that may remain unhealed due to the absence of timely medical care.

Anxiety, shock, depression, and suicidal ideation can diminish a woman's potential productivity. In the absence of support, women may contemplate suicide, putting their parental duties at risk if they have children.

Gynaecological issues like miscarriage (in cases of non-consensual or unknowing pregnancy), stillbirth, bladder infections, STDs, etc. – these medical complications arise from forced sexual

acts within a marriage, where the lack of legal safeguards increases the likelihood of both physical and emotional suffering. This exemplifies modern exploitation and highlights a significant failure of the three waves of feminism, especially in India.

Long-lasting effects such as insomnia, eating disorders, sexual dysfunction, and poor self-image are among the enduring consequences for which there is no legal, societal, or governmental support. If this situation persists, a large segment of the population will remain discontented, and no governmental initiatives or policies aimed at uplifting or empowering them will succeed, as we have demonstrated, the problem remains unresolved.

SUGGESTIONS

The experts propose the following strategies to help avert this dreadful crime:

As noted by the esteemed philosopher Wolfgang and Schaefer, mutual harassment arises when both individuals consent. Due to societal pressure, women should honour their commitments rather than remain silent. This conduct cannot be solely attributed to men. "A person who passively endures violence is equally culpable." Therefore, women ought to speak out against it.

The concept of "consent" needs to be clearly defined to differentiate it from "coercion". It has been observed that in sexual matters, a woman's 'no' or her silence is often interpreted as 'yes'. Disparities must be addressed, and gender-neutral legislation should be implemented.

Marital rape should be classified as a crime under the Indian Penal Act of 1860, and section 375 of that statute should be amended to include specific provisions to prevent its exploitation. In all personal laws, marital rape should be recognised as a critical ground for divorce. The friends and family of a woman who has experienced marital rape can provide significant comfort and support.

Shelters can offer a temporary haven for the victimised woman. Shelter personnel can also assist by highlighting available options. The hotline for victimised women offers immediate help and referrals to social service organisations. Legal aid services may provide affordable or complimentary legal information or assistance to the victim. Support groups can be beneficial, enabling victims to connect with others facing partner abuse. In the community, advocate for

stronger enforcement of current laws and new legislation to address domestic and sexual violence. Promote educational and prevention initiatives at local, state, and national levels.

HOW ARE VICTIMS OF MARITAL RAPE TREATED?

Prominent medical professionals express some grim perspectives on marital rape, asserting that “it is impossible to completely eradicate marital rape. Despite the establishment of various laws aimed at safeguarding victims and penalising offenders, acts of rape and other offences remain subjective.” “Raising awareness about this issue is crucial. Both partners in a marriage need treatment and counselling. In these situations, consulting a psychiatrist or psychologist is essential and advantageous. Medical professionals suggest that techniques such as hypnotherapy, psychotherapy, or hypnodrama can help release the negative energy within individuals. They examine both the victim and the offender, analysing their behaviours, childhood experiences, and particularly their relationships with their parents. The aim is to gradually rebuild their self-esteem and, if necessary, incorporate sex therapy into the process.

The main objective of the 2013 amendment to the Criminal Penal Code and Evidence Act was to enhance women’s access to the legal system by implementing vital changes to the definition of rape. Revisions were made to the Criminal Penal Code and the Evidence Act to ensure that women are not further victimised when they report rape after having been assaulted. The amendments seek to eliminate unnecessary medical examinations and intrusive questions posed to women during cross-examinations, as well as to improve the investigation and processing of rape cases. However, despite these legal amendments, lawmakers and government officials have yet to take action to confront the issue of marital rape. Even the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which India has ratified, states that discrimination against women contradicts the principles of equal rights and human dignity. Furthermore, during its fifty-first session, the Human Rights Commission urged that marital rape be classified as an offence under the “Eradication of Violence against Women” in Resolution No. 1995/85 dated 8-3-1995. Article 21 of the Indian Constitution guarantees the right to life.

CONCLUSION

Marriage represents the partnership of two individuals who hold mutual respect. According to the United Nations, it is equally crucial to educate boys and men to recognise women as valuable contributors to life, societal development, and the pursuit of peace, as it is to

implement legislative measures that protect women's human rights. To accomplish this, it is essential to incorporate marital rape into legal frameworks and to initiate educational programs starting from elementary school. Marital rape stands as one of the most atrocious forms of sexual violence that can occur within a family setting. Victims, often women, frequently refrain from disclosing their experiences due to the nature of the act and the associated issues of relationship secrecy, the internalisation of patriarchal oppression, and often their financial dependence. The patriarchal perspective has led the law to ignore the severe suffering of women who are abused, with marital rape not even being recognised as a crime, much less subject to any legal penalties. Rape can happen in any type of marriage, regardless of age, socioeconomic status, race, or ethnicity. There is a lack of research data on this issue, and this absence of information significantly hinders the government and legislative bodies from making sufficient efforts to create an effective legal framework to address the concerns of traumatised victims.

Our criminal laws do not encompass the principle of culpability regarding marital rape. This situation seems to contravene Articles 14 and 21 of the Indian Constitution. The Indian legal system is troubled by the failure to criminalise marital rape. The judiciary must take proactive measures to protect women. Married women deserve to be treated with dignity and should not endure sexual violence or assault. Consequently, this area adopts a very narrow interpretation of sexual assault, and there is currently no legal protection for married women. The Supreme Court has ruled that the rape of a minor wife constitutes a crime and has made a significant decision advocating for a legislative framework to render child marriages illegal from the outset. Nevertheless, the primary spouses have struggled to obtain judicial support for the recognition of marital rape by the Supreme Court. The inadequate and restrictive definition of rape, which permits marital exemption, serves as a feeble claim that provides a loophole for numerous offenders of sexual violence, and the quest for justice persists relentlessly.

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