



Concerns Associated with Marital Rape in India: Need to Change the Narrative

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ABSTRACT

This Research paper devolves into a comprehensive overview of the issue of marital rape in India, highlighting the societal, legal, and psychological aspects associated with it. It emphasizes the prevalence of patriarchal norms and gender bias that perpetuate violence against women, both within the confines of marriage and in broader society. Despite progressive reforms in rape laws over the years, marital rape remains largely unrecognized and unaddressed by legislation.

Various statistics and case studies underscore the severity of the problem, revealing alarming rates of sexual violence against women, particularly within the institution of marriage. The document explores the psychological effects of marital rape on survivors, including trauma, fear, and long-term emotional impacts.

The paper examines the existing legal framework, particularly Exception 2 of Section 375 of the Indian Penal Code, which includes an exception that excludes non-consensual sexual activity between spouses from the definition of rape. The document critiques this legal loophole and argues for its repeal, advocating for specific laws criminalizing marital rape.

Additionally, the paper offers suggestions for addressing the issue, including the establishment of women's support centres, proper investigation procedures, awareness campaigns, and judicial reforms. It underscores the importance of recognizing marital rape as a serious crime, safeguarding women's rights, and promoting gender equality in India's legal system and society.

Keywords: Marital, Rape, Patriarchal, Legislation, Criminalizing, Gender bias, Investigation

Introduction

In India, patriarchal social norms, and gender bias foster violence against women in the home and in public. The phrase "from the womb to the grave" underscores the fact that many women experience violence throughout their lives. Several interlocutors indicate, among other things, that sexual assault against women in the home, where the perpetrator may be the woman's husband, her in-laws or other family members, is tolerated by both society and the State. Most women who experience sexual assault reside in families with strong patriarchal and customary traditions that may be harmful to them. Women are subservient to their husbands and other family members due to their socioeconomic reliance that is prevalent. The absence of effective responses to sexual abuse and women's fear of social rejection and marginalisation lead to a dead-end by trapping them in the ongoing reality of sexual violence.¹

One facet of marriage that current laws expressly do not address is marital rape. There are many opposing views about marital law, but few believe that making it illegal will undermine the institution of marriage and that judges should not be allowed to do it to interfere within what goes around with a husband and wife. India is currently the seventh largest country in the world, and the rate at which the crime rates are going up is highly alarming and embarrassing for a thriving, multi-cultural, large, and secular country like India.

Rape continues to be a serious issue for women in India. The latest crime statistics released by the Home Ministry of India in National Crime Records Bureau (NCRB, 2020) shows that the total number of rape victims (female) in India for the year 2020 was 28,153.² Out of which there were 2,655 girl/child victims below the age of 18 years. Over the years the rape laws in India have transformed from being a crime against morality, public decency, honour,

¹ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum: Mission to India, Rashida Manjoo (A/HRC/26/38/441(2014) (7)-(8)

² Government of India, "National Crime Records Bureau" (Ministry of Home Affairs, 2020) available at : https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/TABLE%203A.3.pdf (last visited on Apr. 04, 2024).

family, or society to crime against the rights to bodily integrity and sexual autonomy. The evolution of rape laws in India was not a work of a decade but work of, more than a century. Even with such progressive reforms, the legislature is silent on the issue of marital rape.

However, the exception to the provision on rape, as enacted in the Indian Penal Code, refusing to recognize it as a crime of forced or non-consensual sexual intercourse by a man upon his wife (where the wife's age is eighteen years and above) has changed, but little, over the years. One severe and common kind of violence against women is rape in marriage. Any "unwanted intercourse or penetration obtained by force, threat of force, or when the wife is unable to consent" is considered marital rape.

A different report which is based on the survey conducted by National Family Health Survey of India (NFHS)-III- between the year 2005 - 2006, interviewed 1.25 lakh women in 29 states. Statistics says that out of all the women who have experienced domestic violence, 62% women have experienced physical or sexual violence within first two years of marriage. Studies have revealed that in most cases of rape, the accused is a person that the victim knows, as mentioned that, "rape by intimate partners is more common than stranger rape."

It is deeply troubling to envision a scenario where a married woman in India, over eighteen, endures daily rape at the whims of her husband, feeling utterly powerless as the law and society offer her no protection. She is trapped with no recourse, forced to endure the violation by the very person meant to be her life partner, provider, and protector. Some argue that Indian women have options like divorce or legal action under Section 498A of IPC or the Domestic Violence Act, suggesting there is no need to criminalize marital rape. However, these arguments overlook the reality for many Indian women. In many parts of India, arranged marriages are the norm, leaving women with little choice. Divorce or being a single parent is stigmatized, and many women depend on their husbands for support and security. Not criminalizing marital rape has profound effects on both the psychological well-being of the husband, wife, and society at large.

In *Nimeshbhai Bharatbhai Desai v. State of Gujarat*, the Gujarat High Court emphasized that there is a high rate of marital rape in India. It was stated that it is a dishonest behavior that erodes confidence in the institution of marriage and that a sizable portion of the married female population is responsible for it.

The hon'ble Supreme Court of India in *State of MP v. Madanlal³* has unequivocally stated that, "in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple.....Dignity of a woman is a part of her nonperishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct."

Marital Rape

*"I am a 'lucky' survivor of a rape committed by a stranger- 'lucky' because people believed me, a jury convicted the man of raping me, and he is still in prison ten years later. I know many women who have been raped who were not so fortunate, because they believed the rape was their fault, because no one else believed them, because they knew their rapist, or because they were married to him and it wasn't a crime. We share some things - the anger, the pain, the anguish, the fear - and not others; nevertheless, this is what I wished after I was raped and still wish: Never again, not for any woman. Rape is evil."*⁴

Some people believe that rape is only committed between strangers. Nonconsensual sex during marriage is also widespread. Sexual assault can take numerous forms, including rape. It rarely occurs in a vacuum and may be accompanied by other abusive behaviors. Forced sex is still sexual assault, even in marriage and personal relationships, and the victim is never to blame.

Marital rape, also known as spousal rape, is sexual intercourse between a man and his own wife without her consent.

It lacks an element of consent, and the spouse does not agree to it but is coerced into performing it as a marital obligation and duty. It is classified as both domestic violence and sexual abuse. Although sexual intercourse within marriage was once considered a moral duty and an unavoidable right of the spouses, doing so without the spouse's consent is now universally referred to as rape in practically every country.

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Rape was previously deemed uncommon, and during the 1950s and 1960s, rape theorists were largely psychiatrists who saw rapists as having mental illnesses and irrepressible impulses. Rape was thought to always be a manifestation of some type of psychological disturbance, whether acute and fleeting or chronic and recurring.....The rapist is, in fact, a person who suffers from major psychological issues that impede his interactions with others and that he expresses when stressed through sexual behavior.

Almost every country in the world has either passed new legislation or altered current legislation to make marital rape a crime. In about 150 countries around the world, governments have modified their laws to make marital rape a crime, the act is now outlawed. However, there is currently no legal

³ 2015) 7 SCC 681

⁴ Lynne Henderson, "Rape and Responsibility", 11 Law and philosophy 127 (1992) available at : <http://www.jstor.org/stable/3504906> (last visited on March 13, 2018).

provision for marital rape in India. In general, we understand marital rape. In general, marital rape is the act of forcing a woman to have sex with her husband after they marry, against her choice and without her consent.

According to Section 375 of the Indian Penal Code,

*"Rape means unlawful sexual intercourse or any other sexual penetration of the vagina, anus, or mouth of another person, with or without force, by a sex organ, other body part, or foreign object, without the consent of the victim."*⁵

However, there is a provision that specifies it will not constitute rape if non-consensual sexual activity occurs between a married couple in that situation⁶. The term "domestic violence" describes violent or aggressive behaviour committed against a spouse or partner inside the home.⁷ which occurs with a woman because the husband is always in a position of power and because most men understand that marriage gives them the right to have sex with their wives whenever they want, whether they want to. This behaviour is harmful to the institution of marriage and represents the face of a patriarchal culture. Sections 375 and 376 of the IPC, 1860, deal with rape and its punishment, respectively.

In the case of *Bodhisattwa Gautam v. Subhra Chakraborty*⁸, Justice Ahmad stated that since marriage is a form of social bonding between the spouses and everything in this institution requires their consent, this "cruel act, in turn, destroys the entire psychology of a woman and pushes her into deep emotional crises."⁹

Marital rape is inhumane, and the victim understands that she must spend the rest of her life with the perpetrator, which has a negative influence on her physical and mental health. Because most of these women understand that reporting the crime to the police would be fruitless because there are no laws against marital rape and they face social rejection, the crime is highly underreported in the country.

Need and Scope of Laws relating to Marital Rape in India

Statistics indicate that 14% of women experience spousal rape, often going unreported, leading to an underestimation of the actual prevalence.

Victims of marital rape experience trauma "both in the immediate aftermath and over the long term that has a special quality not shared even by victims of stranger-rape." The sentiments that a victim of marital rape experiences are sometimes too complex to define; yet, they can be summarized as rage, betrayal, shame, and guilt. 4 Many wives/survivors were stunned and despairing when their husbands raped them for the first time. These emotions are typically felt as an immediate result of the violation, but they tend to change or dissipate with time. Most women's marital rape experiences have a long-term emotional impact.

The long-term consequences of marital rape include fear of being abused again, dislike to closeness and sex, and an inability to trust men.

Efforts, such as the committee led by Justice J.S. Verma, were made to address the issue of marital rape, advocating for the removal of exceptions and challenging the idea that marital relationships could be a defense for rape. However, no concrete recommendations were made following the committee's decision.¹⁰

Article 14 of the Constitution protects the right to equality and equal protection under the law, emphasizing justice for all citizens. However, women in India have always been considered inferior, and patriarchy continues despite their enormous achievements. The marital rape issue presents a dual perspective, with the goal of protecting vulnerable women from violence while also acknowledging concerns about potential exploitation and false claims. Despite ongoing talks, there is a lack of comprehensive legislation on the subject, emphasizing the need for legal reforms to protect women's rights. Despite the fact that men and women have been legally recognized as different entities since independence, women are being exploited by their counterparts. It is critical to combat archaic attitudes that subordinate women after marriage, and to value the dignity and bodily autonomy of women.

Causes of Marital Rape

Rape is an act of aggression, which does not arise from the physical strength of a man but from a patriarchal understanding that men have more social power than women which draws strength from the laws which justifies male domination.

- **Rape as a Form of Power and Control:** There are such husbands who would prefer consensual sex with their wives, but end up raping or try raping their wives when their sexual advances are refused.
- **Rape as Punishment:** There is another category of husbands, who prefer raping their wives to consensual sex with them. These husbands sexually abuse their wives as a part of wife battering. Some abusive husbands are also sadists who prefers forcing sex on their wives to consenting sex with them.

⁵ The Indian Penal Code, 18610 (45 of 1860), 375

⁶ The Indian Penal Code, 1860 (45 of 1860), Exception to s. 375

⁷ The Protection of Women from Domestic Violence Act, 2005. (No 43 of 2005)., s.3

⁸ (1996) ISCC 490

⁹ *Bodhisattwa Gautam v. Subhra Chakraborty* (1996) ISCC 490

¹⁰ *Bansari Kamdar*, In India man can still legally rape his wife; *The Diplomat*; August 17, 2021

- **Husband's Entitlement to Sex:** There are husbands who are able to enjoy both rape and consensual sex with their wives, who believe that the wives have a duty to satisfy their desire to any form of sex and if the wives would not do it voluntarily, then they can force their wives to do so.

Effects of Marital Rape

1. **Psychological Effect** - Instances of depression, PTSD, fear, low self-esteem, rape trauma syndrome, as well as sexual instability, inaccessibility, or dysfunction, have been reported in women who have experienced Marital rape.¹¹

Rape survivors experience what is termed medically as "rape trauma syndrome," which is the natural reaction of a psychologically healthy individual to the trauma of rape. This could happen right away or over the course of months or even years. The victims may feel degraded or embarrassed. Because this issue is not even addressed, victims may feel humiliated and embarrassed to discuss it with others. They believe that communicating this with others will bring attention to it and raise inquiries.

2. **Health Issue** - Although there is a provision in the Protection of Women from Domestic Violence Act of 2005¹², it only addresses civil culpability for sexual abuse. The purpose of a violent act may be to establish dominance or to instill fear that they may resort to violence if they do not get their way. Most women suffer from chronic agony as a result of repeated rapes. This ultimately leads to black eyes, cracked ribs, knife wounds, and body marks from the assault. These are just a few examples of what women can go through.

The Defence for Marital Rape Exemption

Historical common law justifications for the act of rape by husband, hold no legitimate ground in this century.

1. One Supporters of marital rape exemption argue for the 'Claim of Privacy.' The defenders say that interfering with the institution of marriage will ruin its sanctity and eliminate the possibility of reconciliation; in fact, such meddling violates marital privacy. The proponents of marital rape exemption further argue that the relationship between a man and his wife is sacred, and that any legal involvement would undermine the spirit of the institution of marriage.

Similar observation was made by Hon'ble Justice Rajiv Shakhder, regarding the 'invasion of private space' argument put forth in the case of *RIT Foundation v. Union of India*.¹² The judge believed that this reasoning was legally untenable because, in the event of other types of violence that occur inside the bounds of a married couple's private space, the law has unrestricted access to the same space to bring the guilty to justice.

2. The supporters' next defense is the "vindictive wife" argument. This claim states that the marital rape exemption should not be repealed because it prohibits spouses from filing false charges of marital rape in order to influence a divorce proceeding. This is the most typical argument, originating with forced rape. For years, this argument was used to oppose rape convictions under traditional rape laws, finally drawing the attention of feminists and intellectuals. The vengeful woman argument says that an unscrupulous wife brings a hostile case based on manufactured evidence in order to blackmail her husband in exchange for favorable court settlements. However, this defense by the defenders of marital rape exemption is not compelling for several reasons.

First, there is no scientific evidence to support the claim that spouses are more likely to file false allegations of marital rape. Second, non-supporters say that the criminal justice system is equipped to handle fraudulent claims.

In the case of *RIT Foundation v. Union of India*¹³, Justice Shakhder gave a counter argument stating that the courts in India are fully equipped to deal with false cases. In fact lodgement of false cases is not confined to rape, it permeates, to an extent, to other provisions of IPC as well and the Courts have been able to deal with such cases appropriately.

3. Third, Due to the societal shame associated with rape, many women choose not to be publicly acknowledged as victims.
4. Another argument set forward by the defenders of marital rape exemption has also surfaced, which says that victims of marital rape can seek legal protection through a variety of other legal remedies, including cruelty, divorce, and protection from domestic violence.
5. Victims of marital rape are often advised to seek divorce from their rapist. However, it is rarely advised that if a husband is dissatisfied with a marital sexual relationship, he should seek a divorce rather than rape his wife and enforce his right by violence.
6. The last important legal argument posted by the supporters of marital rape exemption is the problem of proving a marital rape case as it involves the act of consensual sex in the past. Once again, in the case of *RIT Foundation v. Union of India*¹⁴, It was argued that gathering

¹¹ Campbell, R., Dworkin, E. and Cabral, G., An ecological model of the impact of sexual assault on women's mental health. *Trauma, Violence, & Abuse*, 2009

¹² 6 RIT Foundation v. Union of India, 2022 SCC OnLine Del 1404, para. 261, p. no. 59, available at : <http://www.scconline.com> (last visited on Apr. 5, 2024).

¹³ 2022 SCC OnLine Del 1404

¹⁴ 2022 SCC OnLine Del 1404

evidentiary material would be difficult in cases of marital rape, to which Justice Shakti Dharam responded that collecting/gathering evidence in marital rape cases is no different from the challenges faced by an investigator investigating other offences that occur in marital space.

7. There are various crimes that are difficult to prosecute, yet they are nevertheless crimes under the law. Is the difficulty in proving a case of marital rape significant enough to exclude the conduct from the criminal legal system.

Conclusion

The rules regarding rape in India are riddled with contradictions. India's failure to adopt strict and effective legislation against marital rape has created legal gaps that prevent women from being empowered against it. Recognizing a violent act as an offense is the first step toward achieving a broader goal: protecting and preserving women's inherent dignity and autonomy. Recognition leads to the development of laws that can be utilized as a tool to achieve the true objective of the legislation. One of the primary goals of a democratic state is to protect and promote the rights of its citizens, regardless of gender, marital status, or social level.

Most married women give up all sexual autonomy and control over their bodies and passively consent to sex. They are socially conditioned to view non-consensual sex within marriage as the obvious standard, particularly in a nation like India where it is questionable what a woman's economic, social, educational, and cultural standing is.

Marital rape is considered a crime under the law since it satisfies all the necessary requirements to be classified as such.

With the exception of those 34 countries, every other country in the globe has made marital rape a crime in one way or another. India should follow these countries' lead and demonstrate its commitment to women in this country by recognizing and defending their rights to equality and sexual autonomy. It is not possible to close the gap left by Section 375 of the IPC piecemeal; rather, careful consideration is needed to eliminate the inadequate and ineffectual legal protections against marital rape. Rather than upholding women's dignity, Indian lawmakers have resorted to defending the institution of marriage, disregarding Article 263 which states that "the government has no constitutional mandate to protect marriage, it does, however, have the duty to protect the rights of its citizens."

Suggestions

1. Repeal of Exception 2 of Section 375 IPC

It is recommended that Section 375 of the Indian Penal Code be repealed, as exemption 2 violates stipulations stipulated in the Indian Constitution and other legislation. The second exception indicated in section 375 goes against the provisions of Articles 14 and 21 as well as other similar articles pertaining to the Indian constitution that directly address inherent and fundamental rights.

In addition to being against the principles of international law, exception 2 to section 375 of the Indian Penal Code violates both the Indian Constitution and other legislative requirements of several Indian statutes. Surveys also reveal that marital rape is a major global cause of mortality; therefore, in order to stop and prevent it as well as ensure that women everywhere be treated equally, it is crucial that there be no discrimination based on such a serious offense is unacceptable.

2. Specific Law for Marital Rape

It is proposed that exception 2 to section 375 be repealed as well as that marital rape be made a crime in accordance with a specific provision, similar to many other crimes under the Indian Penal Code that are specifically related to upsetting a woman's modesty, hurting her, or sexually harassing her. The discrepancy that has been discovered is that, although the Indian Penal Code's provision exception 2 of section 375 states that a wife under the age of 15 will be protected from marital rape, the legal age of marriage for women in India is 18 years.

It is long overdue that marital rape be recognized as a crime, even though the penalties may differ slightly from those for other rape offenses.

3. Establishment of women support centers

It is recommended that the government establish district-level women's support centers where women can go to seek assistance if they are victims of marital rape, in addition to drafting appropriate legislation regarding this crime. She receives rapid assistance from the knowledgeable and skilled staff at these locations. Support systems that assist victims of marital rape in locating answers or offer them appropriate assistance on formal actions as well as outside the court settlement are necessary. These kinds of centers will offer the women professional and beneficial guidance in every aspect. It is difficult for rural women to approach the authorities since there is less money and knowledge, but these support groups can help these women by providing them with guidance and solutions for little or no money.

These support centers can offer the women assistance with food, shelter, child facilities, legal assistance, and other necessities while also helping them deal with their problems and providing shelter if they feel unsafe going it alone.

4. Proper investigation

Marital rape is a crime that is nearly identical to rape and carries the same punishment, so it is also the state's responsibility to ensure that inquiry procedures are impartial and fair. This is to make sure the evidence is not tainted in any way. It is necessary to establish certain guidelines for the policies and procedures of the inquiry, particularly those that address the manner in which a search of the husband in cases of this kind must be carried out. To address the delicate and significant problem of marital rape involving offenses based on gender, training is required.

From the creation of an offense to the issuance of a verdict, the judiciary plays a significant role. When it comes to a significant relationship, judicial authorities should also ensure that this gender-specific matter is handled delicately and cautiously to avoid hurting either parties. To ensure that justice is served and all the factors are thoroughly examined, even they need to receive a certain level of instruction and rules. It has frequently been stated that the punishment need not be as harsh as it would be in the event of a stranger raping a woman because the parties are in a relationship that is equivalent to that of husband and wife.

5. Awareness Campaign

Another reason marital rape has never been publicly acknowledged and continues to be a taboo subject is society. They fear that since it involves such a delicate subject, it should not be discussed by women. They never objected, and they never considered the fact that it is significant and ought to be treated carefully. They are the reason why such a significant issue was first unknown; other nations have since acknowledged the need to put an end to such a threat. India is currently far behind and has yet to recognize marital rape as a criminal offense.

The Indian Supreme Court has ruled in the matter of *Navtej Singh Johar v. Union of India*.

observed that "human dignity is the fundamental, intrinsic worth of every human being, despite the fact that it is an ill-defined, nebulous concept." It is believed that dignity is necessary for a meaningful existence. There is undoubtedly a distinction between a person's private and public lives, but it does not mean that cruel acts will occur within a home or that the law should remain mute about them.

6. Judicial Practices

It is evident that neither the legislature nor the courts have been able to pass a suitable statute that addresses the crime of marital rape. There are times when lawmakers failed to act to effect change, and the judges did nothing either. The judiciary was unable to start justice by setting precedents. Due to traditional thinking, adhering to norms, and other factors, there have been several gaps throughout the years, and it is clear that the entire system pertaining to this particular offense is flawed and disorganized. The following list includes the primary problems that have been encountered when addressing this topic.

7. Amendment of Law

On a daily basis, women are subjected to cruelty and physical violence, and strict rules must be put in place to prevent this. Marriage laws must be changed accordingly, with additions and revisions made to ensure that no prejudice against women occurs.