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MARITAL RAPE IN INDIA: A LEGAL AND SOCIAL DILEMMA

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INTRODUCTION

Marriage is a structured arrangement that permits sexual intimacy, whether through a contract or a religious ritual. All sexual conduct within a marriage is seen as permissible, making marital rape acceptable. Marital rape, which refers to sexual activity without consent within a marriage, is a common problem in India. Although both partners have the potential to commit marital rape, it is usually the husband who does so. Marital rape happens when a husband or wife forces sex on their spouse, though there are few instances of wives raping husbands. Although intimacy is vital in marriage, rape within a marriage goes against its fundamental nature. There is a lack of widespread reporting on spousal rape worldwide. Sexual intercourse is typically anticipated within marriage, however marital rape goes against this norm.²

STATUS OF MARITAL RAPE IN INDIA

Marital rape is not considered a criminal offense in India. As *Exception 2* to Section 375 of **IPC** states "non-consensual sexual intercourse by a man with his wife, if she is over 15 years, does not amount to rape. The assumption that marriage implies permanent consent for sexual intercourse has led to high rates of sexual violence against married women. In a 2015-16 National Family Health Survey, it was found that 83% of married women in India aged 15-49 reported sexual violence by their husbands, with 7% accusing former husbands. The report showed 4% were coerced into intercourse, 2.1% into sexual acts, and 3% threatened for refusing sex. A 2017 article in *The DailyO* discussed a study by the International Center for Research on Women and UNFPA, revealing 17% of wives experiencing sexual violence and 31% of men admitting perpetration.³

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² VARUN SURATI & NEELAM DABHADE , IS MARITAL RAPE A NON CRIMINALIZED OFFENCE? , NA <<https://www.whiteblacklegal.co.in/public/details/is-marital-rape-a-non-criminalized-offence-by---varun-surati-neelam-dabhade>>

³ Bhagyashikha Saptarshi, Marital Rape and Law, Apr 9, 2024 <<https://articles.manupatra.com/article-details/Marital-Rape-and-Law>>

LAWS ADDRESSING SEXUAL ASSAULT AGAINST WOMEN

- BNS Section 63 (corresponds to section 375 IPC) defines rape but excludes forced sex between husband and wife. But, exception 2 of BNS Section 63 : Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape.⁴
- BNS Section 67 - Whoever has sexual intercourse with his own wife, who is living separately, whether under a decree of separation or otherwise, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years but which may extend to seven years, and shall also be liable to fine.⁵
- One can seek help from constitutional provisions such as:
Article 14 (Right to Equality): The exception of marital rape under section 63 of BNS may violate equality clause.
Article 21 (Right to Life and Personal Liberty) : The failure to recognize marital rape violates woman's right to dignity and bodily autonomy.
- Protection of Women from Domestic Violence Act (PWDVA) 2005 : Under this, civil remedies are there for marital rape victims. They can approach for divorce and judicial separation on ground of 'CRUELTY'. This act recognizes marital rape as a form of domestic violence but does not criminalize it.

ISSUES IN MAKING MARITAL RAPE IN INDIA A CRIME (CONS)

The challenges India is encountering in criminalizing marital rape include:

- Undermine the foundation of marriage: The concept of "marital rape" holds no significance as marriage signifies a consensual agreement between two individuals for exclusive sexual relations.
- Abuse of Section 498A IPC: Just like the increasing misuse of section 498A of the IPC (harassment of a married woman by her husband and in-laws), it could easily be used as a

⁴ Bhartiya Nyaya Sanhita, Section 63, <https://www.indiacode.nic.in/show-data?abv=CEN&statehandle=123456789/1362&actid=AC_CEN_5_23_00048_2023-45_1719292564123&orderno=63&orgactid=AC_CEN_5_23_00048_2023-45_1719292564123>

⁵ Bhartiya Nyaya Sanhita, Section 67, <<https://devgan.in/bns/section/67/#:~:text=Whoever%20has%20sexual%20intercourse%20with,shall%20also%20be%20liable%20to>>

tool to harass husbands. There is no way to ascertain if this is consensual sex or rape as the evidence cannot be presented in a truly genuine way.

- The Law Commission did not recommend: After a thorough assessment, both the Indian Law Commission and the Parliamentary Standing Committee on Home Affairs did not suggest criminalizing marital rape. Legalizing marital rape is not needed as it is a rare event that impacts only a few individuals.
- Challenges with putting it into action: Making marital rape a criminal offense will result in major operational issues, including questioning the credibility of witness statements and court evidence. The court struggles with this uncomfortable predicament as it cannot be conclusively proven or effectively dismissed.⁶

NEED TO MAKE MARITAL RAPE IN INDIA A CRIME

(PROS)

- The right to give consent is a basic human right. Making marital rape a criminal offense would acknowledge that marriage does not automatically equal consent to sex. Women should have the right to decline sexual activity, even in the confines of marriage, just as they would in any other circumstance.
- Gender justice and equality: The current exemption in Section 375 of the IPC continues to maintain gender inequality. It implies that a woman loses control over her body once she gets married. This infringes on her right to equality as stated in Article 14 and her right to personal liberty as stated in Article 21 of the Constitution. Making marital rape a criminal offense would align Indian law with gender justice as per constitutional values.
- Dealing with Domestic Violence: Numerous women experience domestic violence, with marital rape frequently being part of this mistreatment. Making marital rape a criminal offense would allow the legal system to better address abuse within marriages, providing women with protection from sexual violence in their own homes.
- Legal cases in different nations: Marital rape has been made a criminal offense in over 100 countries, such as the United States, United Kingdom, and various European countries. This shows that there is a worldwide acknowledgment that rape is unacceptable even when

⁶ VARUN SURATI & NEELAM DABHADE, IS MARITAL RAPE A NON CRIMINALIZED OFFENCE? , NA <<https://www.whiteblacklegal.co.in/public/details/is-marital-rape-a-non-criminalized-offence-by---varun-surati-neelam-dabhade>>

it occurs in a marriage. India's lack of action in this regard is in opposition to the global legal norms.⁷

LEGAL CASE

R Vs Miller : The wife departed from her husband and submitted a petition for divorce. Prior to being informed about the petition, the husband raped his wife without her consent and, in the process, he inflicted physical harm on her by causing her to experience a nervous breakdown after throwing her on the ground. The defendant faced charges for causing physical injury, not for committing rape. The judiciary took note of a number of similar cases that prompted them to reassess the significance of Hale's proposition as outdated in the contemporary era. In 1992, the common law exception for marital rape was abolished and marital rape was defined as non-consensual penile penetration. Under specific circumstances, the penalty for marital rape in the UK ranges from 4 to 19 years. In certain instances, a life imprisonment sentence may also be given.⁸

Independent Thought vs. Union of India: In this instance, Independent Thought, an organization advocating for children's rights, lodged a public interest lawsuit in the Supreme Court of India contesting Exception 2 to Section 375 of the IPC for infringing on the rights of married girls aged 15 to 18 years, as it deems marital rape by the husband. In a landmark ruling, the Supreme Court declared Exception 2 to Section 375 of the IPC as unconstitutional. As per this section, forcing a husband to have sex with his wife who is over 15 years old and unwilling is not considered as rape. The ruling deems it illegal for a husband to have sex with his under 18-year-old wife without her consent.⁹

CONCLUSION

Marital rape continues to be a controversial topic in India, as cultural standards and legal structures do not sufficiently safeguard married people from sexual assault. While some contend that making marital rape a crime diminishes the sanctity of marriage and poses evidentiary difficulties, others

⁷ VARUN SURATI & NEELAM DABHADE, IS MARITAL RAPE A NON CRIMINALIZED OFFENCE? , NA <<https://www.whiteblacklegal.co.in/public/details/is-marital-rape-a-non-criminalized-offence-by---varun-surati-neelam-dabhade>>

⁸ Ashok Sharma ,Marital rape: India's legal labyrinth, November 29, 2023 <<https://blog.ipleaders.in/marital-rape-indias-legal-labyrinth/>>

⁹ AIR 2018 SC (CRIMINAL) 229, (2017) 12 SCALE 621

emphasize the critical necessity of promoting gender equality and individual autonomy. Cases such as *Independent Thought vs. Union of India* have opened the door to reevaluating outdated legal provisions, yet substantial effort is still needed to bring Indian laws in line with international standards and constitutional principles. Acknowledging marital rape as a crime goes beyond punishing offenders; it is about upholding the essential rights of consent, dignity, and equality in the context of marriage.