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Marital Rape: A Comprehensive Analysis

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Abstract

Marital Rape is the demonstration of sex or sexual assault with one's partner without the partner's assent. The absence of assent is the fundamental component and need not include physical violence. Conjugal rape is viewed as a type of aggressive behavior at home and sexual maltreatment. Albeit, truly, sex within marriage was viewed as a privilege of companions, taking part in sexual intercourse without the life partner's assent is now extensively categorized as sexual assault or rape all around the world, denied by global caucuses, and progressively criminalized.

A wife is presumed to deliver a never-ending agreement to have intercourse with her better half subsequent to going into marital relations. While unwilling sexual intercourse between married couples is perceived as a criminal offense in pretty much every nation of the world now, India is one of those few nations that despite everything have not criminalized marital rape.

The idea of marital rape in India is the height of what we call an implied consent. Marriage between a man and a woman in India infers that both have assented to sex and it can't be inferred otherwise. The Indian Penal Code, 1860 also conveys the same, section 375 describes the offense of rape with the six categories. It also has several exceptions to this offense one of which is sex or sexual acts by a man with his own significant other or spouse, the spouse not being under fifteen years old, isn't rape. This paper traverses the statistics on marital rape, its consequences on people, the legal aspect for the same in our country, the issues that occur in prosecuting marital rape, laws regarding the same around the world, and relevant judgments and case laws that brought a change in perspective of people and shone a light upon such a serious issue.

Keywords: Marital Rape, Sexual Intercourse, Criminalized, Wife, Marriage.

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1. Introduction

Any sexual activity that includes intercourse, oral sex, anal or, involuntary carnal conduct with other persons, or any other conduct that is considered as degrading, humiliating, painful, and unwanted by the spouse between a married couple is referred to as marital rape. Society and the people around us need to understand that it does not matter if a person is unmarried or married forcing someone to engage in sexual activities without their consent will always be rape. In a marital relation, if a woman assents to sexual intercourse due to intimidation or threat of harm to her kids or herself, denying the woman the right to remain in the house or get maintenance, it is not a legitimate consent. It is no less than rape.

Rape is a crime, which centers on the lack of consent of the woman. It is crucial to realize that the lack of consent need not be present only in the form of the word ‘no’. It must be presumed from the context of the situation. Indian law does not even consider marital rape as a crime. Females who are sexually assaulted by their partners are likely to be diagnosed with severe psychological consequences as well. A few of the immediate consequences of marital rape comprise apprehension, fright, depression, intense fear, suicidal thoughts, and post-traumatic stress. Whereas, lasting effects mostly include disorderly eating, depression, sleeplessness, and difficulties in forming relations, and intensified pessimistic feelings about themselves. Psychological effects are likely to be more long-lasting.⁴⁹

2. Statistics on Marital Rape

The legal age to marry in India for girls is 18 years, and our legal system and section 375 of the Indian Penal Code considers only those situations where the wife is below the age of 15 and is enforced to perform sexual intercourse as a crime,⁵⁰ nothing in our legal system says or suggests that if a married woman is involuntarily forced to have sex with her spouse who Is

⁴⁹ *Marital Rape*. (n.d.). Lawteacher.Net. Retrieved August 29, 2020, from <https://www.lawteacher.net/free-law-essays/family-law/marital-rape.php>.

⁵⁰ Delhi March 12, I. T. W. D. N., March 12, 2016 UPDATED:, & Ist, 2016 16:06. (2016, March 12). *Marital rape in India: 36 countries where marital rape is not a crime*. India Today. <https://www.indiatoday.in/education-today/gk-current-affairs/story/marital-rape-312955-2016-03-12>.

above 18 years i.e. the legal age, it will also amount to rape because the fact that a person is married or unmarried or is of any age is inconsequential. Consent is the same for everyone and force, abuse and unwilling sexual intercourse affects everyone equally.

According to statistics from the National Coalition against Domestic Violence (NCADV), 10 to 14 percent of wedded women encounter and suffer marital rape. 18% of woman survivors of marital rape express that their children witnessed the crime, said the same report.

77 percent of females raped by their spouse or partner did not report it to the police, whereas, in comparison, 61 percent of women were raped by an acquaintance and 54 percent by a stranger.⁵¹

Conferring to a report released in 2019, there are 17 states which still have a certain form of legal defenses for people who rape their partners when they are incapacitated or under the influence. The states which exempt the same are- Alabama, Connecticut, Alaska, Idaho, Kentucky, Iowa, Maryland, New Hampshire, New York, Ohio, Oklahoma, Rhode Island, South Carolina, Michigan, Mississippi, Washington, and Wyoming.⁵²

Marital rape is an enormous issue in India. 1 in 3 men confess to have sexually assaulted their wives, and 1 Indian female is raped by her spouse every 3 seconds. It is awful that even now when we call ourselves a developing country, marital rape has not been criminalized in this nation.⁵³

3. Psychological and Physical effects on Victim

It has been recorded that most women who are raped in marriage also experience severe forms of physical abuse. Studies found that half of the women had been forced to have sex when ill, and almost half were intimidated or mistreated immediately after discharge from the hospital, often after childbirth. Almost half of the females had been burned, beaten or kicked, during

⁵¹ Callie Marie Bjs Rennison, Statistician, Callie Marie Rennison, Bjs, S., Callie, M., Rennison, B., & Rennison. (n.d.). <https://www.bjs.gov/content/pub/pdf/rsarp00.pdf>.

⁵² Smith, E. W. (2019, October 4). *5 Statistics That'll Change How You Think About Marital Rape*. Refinery29.Com; Refinery29. <https://www.refinery29.com/en-us/marital-rape-in-relationships-statistics>.

⁵³ *Marital rape is not a crime in India. It needs to be*. (n.d.). Equality Now. https://www.equalitynow.org/marital_rape_is_not_a_crime_in_india_it_needs_to_be.

sex. It was seen that common injuries of ruthlessly abused and raped women involved black eyes, cracked bones, and blood clots in their heads, and stab gashes.⁵⁴

Married women may be indecisive to question involuntary and forced sex because most of them deem that they have no right to deny sexual advances made by their partners. Rather, raped wives will often not recognize themselves as such. Instead, a wife may regard the rape as part of a marital conflict for which she is to blame or that her sexual insufficiency was responsible. The severe result is that the individual shame and self-blame that women who are raped experience is every so often reinforced by an equivalently blaming society.⁵⁵

Not only this but Bodily injuries include damage or wounds to the vaginal and anal parts, torn muscles, cuts, soreness, fatigue, bruising, and vomiting. Gynecological results include vaginal stretching, unsolicited pregnancies, pelvic infections, and miscarriages, death of a fetus, bladder diseases, STD's, HIV, and infertility.⁵⁶ Women in our society are taught from a very tender age that adjustments are necessary in marriage and even though things are tough you do not fight, go against or leave your husband, and even though times have changed a lot still there are a no. of women out there who are struggling and suffering just because of some notion ingrained in their brain or responsibility and some of them due to helplessness because they have nowhere to go and their families refuse to accept or help them.

Maximum rape survivors suffer a deeper psychological impact in the initial period after their assault, however, numerous survivors may experience long-term psychological damage. Many survivors of rape have post-traumatic stress disorder (PTSD). The National Victim Center and the Crime Victim's Research and Treatment Centre published information that found 31% of women who were raped develop PTSD at some point in their lives following their attack. The same report projected that 1.3 million females have rape-induced PTSD.⁵⁷

Not only this, but rape victims are subjected to inquiries and, in certain cases, maltreatment. Sufferers endure medical examinations and are questioned by police. Throughout the criminal trial, victims undergo a loss of privacy and their credibility may be questioned. Sexual

⁵⁴ Mahoney, P., & Williams, L. M. (n.d.). *Sexual Assault in Marriage: Prevalence, Consequences, and Treatment of Wife Rape*. http://www.ncdsv.org/images/nnfr_partnerviolence_a20-yearliteraturereviewandsynthesis.pdf.

⁵⁵ Bennice, J. A., Resick, P. A., Mechanic, M., & Astin, M. (2003). The relative effects of intimate partner physical and sexual violence on post-traumatic stress disorder symptomatology. *Violence and Victims, 18*(1), 87–94. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2981038>.

⁵⁶ *Marital Rape: New Research and Directions*. (2016). VAWnet.Org. <https://vawnet.org/material/marital-rape-new-research-and-directions>.

⁵⁷ RESICK, P. A. (1993). The Psychological Impact of Rape. *Journal of Interpersonal Violence, 8*(2), 223–255. <https://doi.org/10.1177/088626093008002005>.

assault victims may also experience secondary victimization like slut-shaming and victim-blaming and cyberbullying.⁵⁸

A topic that has not been highlighted yet in a sufficient manner is how marital rape disturbs children. In one of the few researches to inspect this problem, it was found that 5% of the females in the research put forward that their children had been enforced by their significant other to take part in the sexual violence and 18 percent of the females disclosed that their children had witnessed the occurrence of marital rape at least once.⁵⁹

4. Legal Aspect of Marital Rape

The exemption or defense of marital rape became more broadly seen as incompatible with the emerging notions of human rights and parity. Marriage does not give anyone a right to exploit someone and degrade their choice and privacy. In December of 1993, the High Commissioner for Human Rights, United Nations announced the *Declaration on the Elimination of Violence against Women*. This institutes marital rape as a human rights violation. The significance of the right of women is progressively being acknowledged as fundamental to women's rights.

In 2012, Navi Pillay, High Commissioner for Human Rights stated that-

Infringements of women's human rights are every so often connected to their sexuality and reproductive role. In several nations, married women who are not able to deny having sex with their partners, often have no say in whether or not they use birth control. Ensuring that women have complete freedom of their bodies is an important first step in achieving a dignified balance between women and men. Personal opinions such as when, with whom, and how to choose to have sex, and when to choose to have children, and with whom are at the heart of living a dignified life.⁶⁰

Although as a nation we have progressed in a lot of arenas, marital rape is yet not counted as a crime in India. Despite amendments, law committees, and novel statutes, one of the most

⁵⁸ *Effects and aftermath of rape.* (2020, August 28). Wikipedia. https://en.wikipedia.org/wiki/Effects_and_aftermath_of_rape#Psychological_impact.

⁵⁹ Bergen, R. (n.d.). *Marital Rape: New Research and Directions.* https://vavnet.org/sites/default/files/materials/files/2016-09/AR_MaritalRapeRevised.pdf.

⁶⁰ *Wayback Machine.* (2017, March 13). Web.Archive.Org. https://web.archive.org/web/20170313210726/http://www.chr.up.ac.za/images/files/news/news_2012/Navi%20Pillay%20Lecture%2015%20May%202012.pdf.

mortifying and devastating acts is not a crime in our country. The list of next to nothing options a female has to safeguard herself in a marriage, clearly conveys that the rules and laws have been abstruse and absent and every case just depends on the interpretation by the Courts.

In India, marital rape exists factually but is not recognized by the law. Whereas, in another country each the judiciary or legislature has criminalized marital rape, portrayed an active role in recognizing it as an offense, in India however, the judiciary seems to be operating at cross-purposes. Marital rape is the most familiar, vulgar, and objectionable form of sadism in our society, it is hidden behind the iron curtain of marriage.⁶¹

Section 375, the provision of rape in the Indian Penal Code (IPC), echoes outdated sentiments as set out in Rule 2 of its Exemption, which states that sex between husband and wife when the wife is above the age of fifteen years is not considered as rape.

Section 376 of IPC prescribes a penalty for rape. According to this section, the offender should be imprisoned for a minimum of 7 years or more, but this can be punishable by up to life imprisonment or up to 10 years and a fine unless the woman who was raped by his wife, and above 15 years of age. Under Article 21 of the Constitution of India, there is a right to life with human dignity and it is considered a fundamental right. The Supreme Court has stated in several cases that the crime of rape violates the right to life and the right to live with human dignity of the person who has suffered the crime of rape.⁶²

the Law Commission of India proposed more than nine years ago to the Government of India advising that Legislature should substitute the present definition of rape under Section 376 IPC with an extensive definition of sexual assault, which is both age and gender-neutral, yet nothing has been done till date.

The misfortune is that it has been accepted that a marital relationship is practically sacrosanct. Rather than, making the wife obey and follow the man's every impulse, especially sexual, it is supposed to thrive, mutual respect and trust. It is much more traumatic being raped by someone known, a family member, someone whose responsibility is to protect and provide comfort in times of need, and worse to have to cohabit with him. Exactly how can the law and the

⁶¹Mishra, A. (2018, April 13). *Law On Marital Rape – A Much Needed Reform In Our Legal System - Criminal Law - India*. Wwww.Mondaq.Com. <https://www.mondaq.com/india/crime/691482/law-on-marital-rape-a-much-needed-reform-in-our-legal-system>.

⁶² Id.

government ignore such a gigantic violation of a fundamental right of freedom of any married woman, the right to her body, to protect her from any abuse?⁶³

5. Prevalence of Marital Rape

The commonness of marital rape rests upon the predominantly legal, cultural, national, and social context. The government of India has put forward that those on the lookout to stop females from being raped by their spouses were thoughtlessly following Western customs. This nation has its distinctive complications due to several factors like illiteracy, deficiency of financial empowerment to the majority of females, the patriarchal mentality of the society, poverty, immense diversity, etc., and these should be considered cautiously before criminalizing marital rape.⁶⁴

The government states that since the majority of people in our country are illiterate, destitute, uneducated, poor, environmentally friendly, and religious, unlike the USA, our government chooses to believe that a man cannot rape his wife on the grounds that the Indian wife will agree and devote herself to her partner forever, and anything that happens is a implied consent.⁶⁵

The Supreme Court also agrees that criminalizing marital rape does not threaten marriages in any way. Through *Independent thought v. Union of India*⁶⁶, the court made it clear that marriage is personal and criminalizing marital rape will not destroy the institution of marriage in any way. The court stated that if judicial separation and divorce have not wrecked the foundation of marriage, criminalizing marital rape certainly cannot either.⁶⁷

⁶³ Gupta, B., & Gupta, M. (2013). Marital Rape: -Current Legal Framework in India and the Need for Change Marital Rape -An Understanding. *Galgotias Journal of Legal Studies*, 1(1). <https://www.galgotiasuniversity.edu.in/pdfs/issue2.p>.

⁶⁴ *What the Union government's submissions on marital rape in the Delhi high court reveal*. (2017, August 30). Times of India Blog. <https://timesofindia.indiatimes.com/blogs/jibber-jabber/what-the-union-governments-submissions-on-marital-rape-in-the-delhi-high-court-tell-us>.

⁶⁵ Swaddle, T. (2020, January 20). *Why It's Still Legal For Indian Men to Rape Their Wives*. The Swaddle. <https://theswaddle.com/marital-rape-india-decriminalized-crime>.

⁶⁶ *Independent Thought vs Union Of India*, (D Gupta October 11, 2017).

⁶⁷Supra at 65.

6. Difficulties in Prosecuting Marital Rape

Recognition is the primary phase for any solution. Only when we recognize that marital rape is an age-old issue that needs to be addressed, we can fight it. Labeling it as “an act against the institution of marriage” and characterizing it as western is an attempt to belittle and disparage the crime and escape responsibility.⁶⁸

The reason that government always gives in marital rape situation is that how will it be proved that a person was raped, but the evidence of rape has always been circumstantial, and if in case of marital rape the probability of the same happening multiple times is way more and so the government needs to come with stronger laws to protect the women of our country rather than excuses to avoid or delay defense on such severe crimes.

The Protection of Women from Domestic Violence Act, 2005 states that any act of domestic violence in which a consenting adult harms or endangers a woman's mental, physical, health, safety, life, physical injury or well-being and so on, and may involve physical, sexual, verbal, emotional and financial insults. "Sexual harassment" is sexual behavior that abuses, damages, degrades, or violates a woman's dignity.⁶⁹

Even after this, the punishment as per the DVA for domestic violence is not imprisonment but according to the discretion of the magistrate along with all the reliefs granted to the aggrieved party the accused could be made to pay compensation for the damages induced by him for both physical and mental injuries. Although it says that the husband on failing to pay compensation will be imprisoned for a month.

So basically, the domestic violence act is civil and even if it is proven in a court of law that a woman was raped by her husband during the marriage he will only have to pay for damages and compensate and will not be imprisoned for the same. The laws of our country are in itself hypocritical because at one time the law and the court say rape is a heinous crime and infringes one's fundamental rights and is punishable by the law but at the same time it also does not criminalize marital rape. The simple question that arises is why? Are married women not

⁶⁸ Chaudhuri, P. C. (2017, September 1). “*Marital Rape Laws Will Be Misused By Women*” Is A Flawed Argument; Here’s How The Accused Can Be Punished. Thelogicalindian.Com. <https://theologicalindian.com/story-feed/awareness/marital-rape-can-be-proven/?infinite-scroll=1>.

⁶⁹ Id.

supposed to have their own choices and once they get married they lose their privilege to fundamental rights?

the Indian law gives ‘marital immunity’ to a man for raping his wife, penalizing him only with monetary compensations or one month jail time, that too only if he does not pay the damages.

7. International Perspective

If we talk about the rape laws in different nations, more than several countries punish rape within marriage and outside of marriage. Now starting with different countries by 1991 every state in Australia had abolished the marital rape exception, and it was also the first common law country to do so after several feminism movements. The first country to have a law explicitly making it a criminal offense was Poland in 1932.⁷⁰

In New Zealand, a person under 20 years of age but over 16 years old can only marry with a guardian’s consent. The age of sexual consent for women is also 16 years. There was no exception for marital rape in the Crimes Act, 1961 of New Zealand. The marital rape immunity was put an end to in 1985.

In the United Kingdom, a marriage under the age of 16 does not apply. The election of marital rape was completely abolished in 1991. The average age for being in all legal services outside of marriage in Egypt is 21 years. The age of consent is 18 years and the law says that having sex with a girl under the age of 18 is rape. In the United States of America, different countries have different laws. Not only this, but marital rape has been eliminated in all 50 US States. Indonesian Domestic Violence Laws Punish for Domestic Violence with a maximum punishment of fifteen years.⁷¹

Nepal dismissed the issue of marital rape in 2002 after the Supreme Court ruled that it violated the constitutional right to equal protection and the right to privacy. According to a UN Women's

⁷⁰ Nair, S. (2017, August 31). *Marital rape a crime in many countries, an exception in many more*. The Indian Express. <https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403>.

⁷¹ *Marital Rape*. (2019, July 18). Wwww.Lawteacher.Net. <https://www.lawteacher.net/free-law-essays/family-law/marital-rape.php>.

2011 report, out of 179 countries where statistics were available, 52 had amended their laws to make marital rape a criminal offense. The remaining countries include those that do not have marital rape in their rape laws, as well as those where there are exceptions.⁷²

Only 36 countries in the world have still not outlawed marital rape. India needs to get out of this list which stocks, among others including, Pakistan and Afghanistan. Unfortunately, we are still questioning whether or not a married woman has rights over her own body. Nearly all developed and developing countries around the world have criminalized marital rape. It is way past the appropriate time for India to join them.⁷³

8. Case Laws

The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), of which India is a participant, has regarded that this sort of discrimination against females violates the norms of equality of rights and respect for human dignity. Further, the Commission on Human Rights, at its 51st session, in its report titled "The elimination of violence against women", suggested that marital rape should be criminalized.⁷⁴

In *Bodhisattwa Gautam v. Subhra Chakraborty*,⁷⁵ the court declared that rape is a crime in contradiction of the basic human right and violation of the right to life preserved in Article 21 of the Constitution and provided a selection of guidelines for granting compensation to the rape victim. The Supreme Court of India has ruled in many cases that rape is a violation of the right to life and the right to live in the dignity of the victim.

⁷² Nair, S. (2017, August 31). *Marital rape a crime in many countries, an exception in many more*. The Indian Express. <https://indianexpress.com/article/explained/marital-rape-a-crime-in-many-countries-an-exception-in-many-more-4821403/>

⁷³ *Do you think marital rape isn't a crime? Here are five reasons why you are wrong*. (2019, February 7). Wwww.Dailyo.In. <https://www.dailyo.in/variety/marital-rape-shashi-tharoor-countries-where-marital-rape-is-legal-consent-sexual-assault/story/1/29347.html>

⁷⁴ Mishra, A. (2018, April 13). *Law On Marital Rape – A Much Needed Reform In Our Legal System - Criminal Law - India*. Wwww.Mondaq.Com. <https://www.mondaq.com/india/crime/691482/law-on-marital-rape-a-much-needed-reform-in-our-legal-system>.

⁷⁵ 1996 AIR 922.

One example is *The Chairman, Railway Board v. Chandrima Das*⁷⁶. The Apex court noted that rape is not just a crime according to the Indian Penal Code, but a crime against society as a whole.

In a chain of cases like *Kharak Singh v. State of U.P.*, *Govind v. State of Madhya Pradesh*, *Neera Mathur v. LIC* etc., the Highest Court has remarked that a right to privacy is inherently ensured under the extent of Article 21.⁷⁷

In the case of *State of Maharashtra v. Madhukar Narayan*⁷⁸, the Highest Court has held that every single woman is warranted her sexual privacy and it is not ajar for every person to violate her privacy whenever he wished.

Also, In the landmark case of *Vishakha v. State of Rajasthan*, the Apex Court expanded this right of privacy in employed atmospheres as well. Further, along a parallel line, we can interpret that there exists a right of privacy to get into a sexual relationship even within a marriage.⁷⁹

9. Conclusion

In conclusion, it is verified to say first and foremost that marriage is not a license to rape one's spouse and a woman is no one's property irrespective of the fact that whether she is married or single. As a person, a woman has equal rights to say no to any activity which makes her feel ashamed or uncomfortable, and the countries that still reside with the patriarchal belief system that anything in a marital relationship is justified and should be between two people, and have no laws against marital rape should not consider themselves as developed or developing countries because a nation cannot be recognized as a developing nation if it cannot understand the basic concept that rape affects everyone equally and with severe consequences, that has nothing to do with a woman's relationship status.

It's the duty of the state to protect and provide justice to its citizens against such offenses, sadly India is one of those few nations that still doesn't consider marital rape as a crime in

⁷⁶ 28 January, 2000.

⁷⁷ legal Service India. (2018). *Marital Rape*. Legalservicesindia.Com. <http://www.legalservicesindia.com/article/2369/Marital-Rape.html>.

⁷⁸ AIR 1991 SC 207.

⁷⁹ Supra at 74.

India. No laws speak directly of marital rape neither in the domestic violence act nor the Indian Penal Code which is also a reason that this crime has increased so much and has a comparatively very low report rate. It's high time now that this issue should be more highlighted and brought to notice so that changes are made and women can at least have a positive ray of hope towards justice.