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Marital Rape: Legal perspectives and the need for criminal law reforms

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Abstract

Marriage is a sacred bond that binds a couple and their family together. On the other hand, things may go south in a marriage when neither partner is happy or if consent is lacking. Our culture's patriarchal system has its roots in the Stone Age, when people subsisted mostly on hunting and gathering. Dominance complexes are hardwired within men. Norms for human conduct are established and regulated by law and order on a global scale. A body of legislation and associated punishments known as the Indian Penal Code was enacted in 1860. But most people don't realize that the British instituted these rules a long time ago. Perhaps because it was not considered a crime at the time, marital rape was not subject to criminal legislation. The effects of marital rape and its breach of India's Constitution are the focus of this research study, which also looks at the expansion of women's rights more generally.

Keywords: Marital, rape, woman, section 375, dowry, harassment, legality, domestic violence, wife

Introduction

Marital rape denotes sexual assault perpetrated by a spouse against the victim. The definition of rape remains unchanged, specifically referring to sexual intercourse or penetration occurring without permission. Two Consequently, a fundamental element in establishing the crime of rape is demonstrating the absence of consent. The onus to demonstrate the absence of consent often falls with the victim. In many cases, such as those involving children, consent is considered absent, since the law deems them incapable of agreeing to such sexual actions. Three Conversely, there are situations in which permission is assumed to be present. This inference often arises when the victim and the offender are spouses. Four In such cases, the concept of marital rape becomes contradictory.

Rape is a sexual attack perpetrated against a woman without her permission. The act may be perpetrated by coercion, maltreatment, or against an individual unable to provide permission, such as a lady who is unconscious or inebriated. If a man forces his wife to have sexual relations with him because of their marital status, he is committing marital rape. It is a kind of domestic rape in which the husband physically assaults his wife while they are at home. Rape is

the legal term for what is essentially an assault or mistreatment. The only distinction in this case is that the accused is the spouse of the victim. Marital rape happens regardless of age, social status, educational background, race, or ethnic origin. Studies indicate that spousal rape is equally horrifying and humiliating as rape perpetrated by strangers. Marital rape is seldom afforded the recognition or legitimacy of other types of sexual assault, although it may be equally damaging. In ancient India, marital rape was legally and socially sanctioned, justified by the notion that a spouse has the right to engage in sexual intercourse with their partner. This claim is clearly patriarchal given the context. Court decisions on the legality of marital rape in India have been contradictory and based on vague language in the country's constitution and penal code.

Literature Review

Yadav, Chandra. (2017) ^[5]. It damages the wife's trust. Regardless, the Indian legal system does not consider it rape. Is a married lady considered nothing more than a possession by her husband? This situation brings up the question of whether a married woman may legally shield her body from her husband's sexual advances. The fundamental

purpose of marriage is to provide the spouse the legal right to have sexual contact with each other. In this study, we look at the possibility that this privilege is linked to coercion or whether it is based only on the husband's desire or consent for the wife to participate in sexual relations. The objective of marriage, regarding the freedom to engage in sexual relations, should only be to fulfill biological needs without societal or legal constraints. Despite the fact that women have a special place in Indian culture, the country has a male-dominated history. We are here today to talk about women's empowerment. The Indian government has granted women a plethora of privileges. Is it possible for women to have true agency in a patriarchal society without making interracial rape a crime? Doctrinal research is the method that this study will use.

Nigam, Shalu. (2015) ^[4]. The Indian Parliament recently rejected a bill that would have made marital rape a crime. Some lawmakers in the legislature have the view that marriage is a holy institution that, if touched, would cause couples to divorce. They believe that "the nation has low divorce rates" and that this fact should make Indians proud of their heritage. Opposition to criminalizing marital rape has been voiced in statements that fail to recognize the reality that the majority of marriages in India persist due to the quiet suffering of women who undergo violence and abuse inside these relationships. In India, women are encouraged to practice a culture of "silence," "tolerance," "adjustment," and "compromise" in order to "save and respect the 'honour,' the 'pride,' and the 'values'" of the family. However, this culture fails to address the reality that women bear the brunt of incest, violence, suicide, and homicide. However, there is a men's organization that is actively trying to get the word out that domestic violence laws have been abused by women and should be softened. The idea that women would take advantage of a criminal statute prohibiting marital rape was also spread by them. Those who hold this view portray women who speak out against domestic violence as anti-family warriors who disrupt the holy ties of marriage and turn the bedroom into a battleground. Both camps fail to acknowledge the fact that this "sanctified" space is really a breeding ground for emotional and sexual abuse, as well as physical assault and psychological trauma, mostly targeting women due to their inherent weakness and the societal conditioning to be submissive, obedient, and docile. The report comes to the conclusion that this idea should be handled appropriately when it is analyzed within the broader context of violence against women.

Yebisi, (2017) ^[3] The common law principle that a man cannot rape his wife leads to the downplaying of marital rape, a kind of sexual assault. Some places have passed legislation making it illegal, while others have not yet done so. This study looks at the criminal implications of rape inside marriages and takes a look at the rape laws in Nigeria and South Africa. South African law makes marital rape a crime, whereas Nigerian law does not. The report finds that rape and marital rape legislation in South Africa (SA) is

generally sound, but that the government might do more to ensure that its citizens are subject to the law. It goes on to say that Nigeria should follow South Africa's lead and create a court for sexual offenses and make it a crime to rape a spouse.

Dr. Mirza Moziz (2019) ^[2] The purpose of this study is to draw attention to the psychological and physiological effects of marital rape and to argue that women must be protected from this horrible crime. The researchers have also attempted to make comparisons between the laws of different countries regarding this type of crime, as well as the urgent need to criminalize rape within marriage and punish offenders with the same penalties as rape in India. Consequently, it seeks to educate married women about the terrible crime of marital rape and to provide them with tools to avoid becoming victims. Its creators hope that by making people think about marital rape, they will help bring more attention to the issue and its impact on women. After then, the Indian legal system views marital rape differently.

Mohanty, Sneha. (2019) ^[1]. The current legal framework does not adequately address marital rape, which is a significant facet of marriage. There are many divergent views on the subject of marital law, but few would argue that making it illegal would be a betrayal of marriage itself or that the courts have no business meddling in the private lives of married couples. The frightening and humiliating rate of crime growth in India, the seventh biggest nation in the world, is particularly noticeable given the country's dynamism, multiculturalism, size, and secularism. In addition to being the most pressing issue in women's rights right now, marital rape is a violation of many fundamental prohibitions all at once. Someone made the valid argument that the status and respect shown to women is an indicator of a country's progress and development. This paper aims to provide an overview of marital rape in India, the laws that it violates, a comparison with effective countries' laws, an analysis of why it hasn't been legalized yet and why it should be, and finally, some suggestions and a conclusion.

Marital rape laws in India

Although our nation has made great strides in almost every area and enacted several reforms and new laws, marital rape is still not illegal here. There are no rules in place to safeguard women in marriage, and the courts have wide latitude to decide on such issues. An exemption to the general rule that any sexual relations between a man and his wife, provided that the woman is not younger than fifteen, are not considered rape, is found in Section 375 of the Indian Penal Code.

As a result, it is safe to say that a wife's human rights are directly violated when she is subjected to sexual harassment by her husband when she reaches the age of fifteen. This is very troubling since, according to the Constitution, marriage must take place at the age of 18, but the law only protects girls under the age of 15 from sexual assault; beyond this age, no legal recourse is available to them.

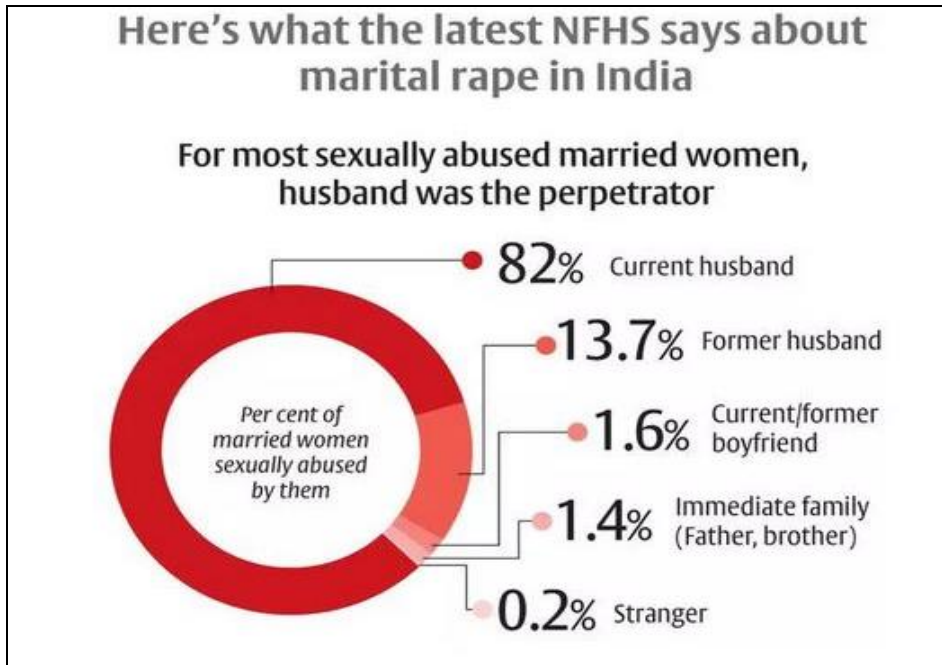


Fig 1: Status in India

Historically seen as a marital right, this is now predominantly categorized as rape by several nations globally.

In the instance of victims of marital rape, the law that is meant to safeguard them falls short since, according to the antiquated legislation, a woman's consent is not required to have sexual relations after she is married; the act of being married itself constitutes consent. When a woman is the victim of domestic violence, she is forced to engage in sexual behaviour, which may lead to both physical and mental harm. The question of whether or not marriage legitimizes rape remains unanswered by our legislative and judicial branches.

The 42nd Law Commission Report calls for the repeal of the IPC's Section 375 exemption, arguing that it is unlawful and discriminatory against women. Despite the fact that the

172nd Law Commission recommended making marital rape a criminal offence by eliminating the exemption to Section 375, no change has been made to the law in almost a decade.

Marital Rape Statistics

This isn't just an American issue; it's a global one. The main difference is that it is considered a serious violation in some countries, whilst others perceive it as a holy matrimonial tradition.

Some countries do not consider marital rape a crime, including Sri Lanka, Afghanistan, Pakistan, India, China, and Egypt.

Marital rape is not classified as a crime in Australia, Canada, Germany, France, and the United States, among others.

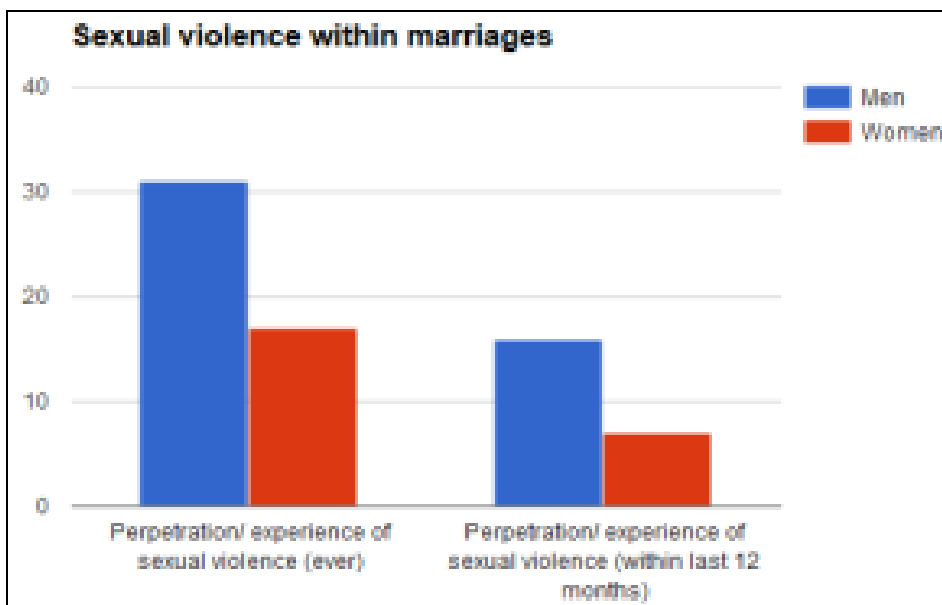


Fig 2: Marital Rape Statistics

- To demonstrate power and control
- To convey rage
- Stereotypes about 'women and sex' suggest that their 'yes' signifies 'no' and vice versa, resulting in the ignoring of protestations.
- Historically, women have been led to think that individuals who do not willingly engage in sexual activity are deemed inadequate spouses.



Fig 3: 97.6% committed by husbands

Constitution of India on Marital Rape

Several reasons may be used to dispute this statute that seems to allow marital rape. Some of these arguments are listed below. The Indian Constitution states that all legislation made by the legislature must adhere to the Constitution's essential structural philosophy. Legal proceedings may be used to declare a statute invalid if it runs counter to this. The fundamental principle of the Constitution must be upheld for any legislation or provision that legalizes marital rape.

Article 14

According to Article 14 of the Indian Constitution, everyone residing in India has the inherent right to be treated fairly and protected from legal action. The criminal justice system pays little attention to the discrimination that victims of rape in marriage face. The Exception to Section 375 of the IPC disproportionately targets married women, which creates a new class of women who are not protected from legal action in the event that their husbands engage in sexual harassment. This law fails to meet the criteria for intelligible differentiation due to its arbitrariness, artificiality, and evasiveness.

If a husband commits rape against his wife, he cannot be held criminally liable under Section 375. Discrimination against a person because of their marital status in excluding them from the application of Section 375 of the Indian Penal Code is a violation of Article 14 of the Indian Constitution. A victim's marital status is the only distinguishing feature between rape and marital rape; all other aspects of the crime are identical. As a result, a married woman has it tough as she is reliant on her spouse and must spend her whole life with the abuser. The reality is that this loophole really encourages spouses to engage in forced sexual relations since they are aware that it is not illegal. The lack of equal

protection for female victims and the failure to meet the twin tests of intelligible differentia and reasonable linkage outlined in Article 14 of the Indian Constitution make marital rape an obvious violation of that article.

Article 21

A person in India cannot be "deprived of his life or personal liberty except according to a procedure established by law," as stated in Article 21 of the country's constitution.

As stated by the Hon'ble Supreme Court in *Kharak Singh v. State of Uttar Pradesh*, "[b]y the term "life" as here used something more is meant than mere animal existence." The Supreme Court has repeatedly reshaped this article via its interpretations of various decisions. Firstly, it stated that "[s]exual violence apart from being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female." Secondly, the court emphasized that rape is a particularly devastating crime because it humiliates the victim and leaves her with a lasting trauma.

Right to Healthy and Dignified Life

Having the means to maintain one's health and dignity is fundamental to a person's ability to feel at home in their country. This right includes this right, according to the decision of the Hon'ble Supreme Court in *C.E.S.C. Ltd. v. Subhash Chandra*. The exception to Section 375 infringes against a married woman's right to well health since rape inside a marriage may produce physiological, psychological, and social problems, including depression. Additionally, when a victim undergoes coerced sexual relations, she runs the risk of contracting sexually transmitted diseases. The Hon'ble Supreme Court of India has repeatedly affirmed that rape is a social crime since it breaches Article 21 of the Indian Constitution. No woman has the right to a dignified and healthy existence when she is subjected to sexual intercourse without her permission; hence, the exception to Section 375 of the IPC is obviously unconstitutional.

Right to Sexual Privacy

On many occasions, the highest court in the land has upheld the constitutional right to privacy as outlined in Article 21. Because a woman's body is sacred and her freedom to decide whether or not to have sexual relations with another person is absolute, any kind of coercive sexual behaviour against a woman is an invasion of her privacy. The Hon'ble Supreme Court addressed the issue of sexual privacy in the case of *State of Maharashtra v. Madhkar Narayan*, ruling that "[e]very woman is entitled to her sexual privacy and the same is not open to for any and every person to violate her privacy." Nobody has the right to coerce a married woman into having sexual relations against her choice, and the fact that the IPC exempts marital rape violates her right to sexual privacy. Consequently, the Right to Privacy has been violated and the exemption should be declared illegal.

Right to Bodily Integrity

No one has the authority to tell a woman how to behave sexually or physically, including whether or not she has sexual relations. According to the Indian Penal Code (IPC), a woman is guilty of rape if she denies having sexual relations and is then coerced into having them, but a married woman's husband cannot be held legally responsible for

coercing her into having sexual relations. Since being married does not absolve a woman of the duty to get permission before engaging in sexual relations, the exception to Section 375 violates her right to autonomy over her own body.

Immediately upon reading Section 375 of the Indian Penal Code, it becomes clear that the exception for Marital Rape violates Articles 14 and 21 of the Indian Constitution. To be considered a "just, fair, and reasonable law" or appropriate categorization, this exception must not be biased against married women. This exception is no longer applicable; the IPC should do away with it. The Domestic Violence Act and Section 498A of the Indian Penal Code are the only legal safeguards that many victims of marital rape in India possess, leaving them with little recourse to seek justice. India must take strong action to safeguard the rights of married women. *Madhukar Narayan Mandikar v. State of Maharashtra* was a case decided by the Supreme Court, which found that "A prostitute possesses the right to refuse sexual intercourse if coerced, and non-consent in such circumstances constitutes Rape." The Indian court has criminalized almost all forms of rape in many instances; yet, it has exempted marital rape, resulting in the victimization of a significant number of women.

172ND Law commission report

The 172nd Report of the Law Commission of India, titled "Review of Rape Laws," was published in March 2000. This comprehensive report was initiated in response to a directive from the Supreme Court of India, which sought an examination of existing rape laws to address increasing incidents of custodial rape and sexual abuse against minors. The 172nd Report significantly influenced legal reforms in India. Many of its recommendations were incorporated into the Criminal Law (Amendment) Act, 2013, which expanded the definition of sexual offenses and introduced stricter punishments. However, the recommendation to criminalize marital rape has not been implemented to date. The report remains a pivotal document in the evolution of India's legal framework concerning sexual offenses, reflecting a progressive approach to addressing and mitigating sexual violence.

Conclusion

Marital rape cannot be enforced unless the residents of the country are well informed about it. Should marital rape be criminalized, a comprehensive elucidation of the legislation would be necessary. Raising awareness of marital rape is essential to attain the pinnacle of justice. Numerous organizations have been dedicated to this cause; but significant action will not occur unless individuals draw the judiciary's attention to the severity of the matter. This runs counter to the fundamental freedoms that our ancestors fought for. Rights to life, liberty, and equality are guaranteed under Article 14 and Article 21 of India's constitution, respectively. India, a country that reveres and honors deities, must speak out on this issue. Such action would constitute a severe miscarriage of justice.

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