

MARITAL RAPE- AN UNADDRESSED STIGMA OF INDIAN SOCIETY

Written by Animesh Nagvanshi

3rd Year BA LLB Student, ICFAI University, Dehradun, India

DOI: doi.org/10.55662/JLSR.2022.8602

ABSTRACT

Marital rape ranks among the most horrifying crimes perpetrated in India. Marriage-related rape is a type of rape and shall not be considered a lesser offence. The majority of times, marital rapes target married women. It is one of the greatest threats to India's system of gender justice. It is the ideal illustration of a social malady that has long affected India and is still wreaking havoc today. In India, the issue of marital rape has never been addressed. In Indian culture, it is rarely contested by anybody for a variety of reasons. The paper discusses about the definition of rape, definition of rape under IPC, causes, effects, constitutional provisions available against him and current status of marital rape for better understanding of readers.

Keywords: Rape, Indian Penal Code, criminalized, Law, Nation

INTRODUCTION

Even though India just celebrated its 75th year of independence, women in the nation continue to face discrimination, lack true independence, and are unable to carry out their regular day-to-day activities. The position of the women in the Indian society have been drastically downgraded day by day leading to the ill-treatment of woman in the society. The woman plays a dominant part in the evolution of society and their abuse or mistreatment is a hindrance to the growth of the society.

DEFINITION OF RAPE

Rape is defined as a “The act of having sex against one's will, under duress, with a juvenile, or with a person who is incapable of consenting willingly due to mental illness, a mental handicap, intoxication, unconsciousness, or deception is usually considered to be unlawful sexual activity. Rape, to put it simply, is when a woman is subjected to forcible intercourse against her will and against her will. Rape is an act that breaches a woman's self-respect and damages her dignity, reducing her to the status of objects primarily utilised for sexual gratification or desire.

DEFINITION OF RAPE UNDER INDIAN PENAL CODE

A man is said to commit rape if he does any of the following

- (a) compels a woman to have his penis in her vagina, mouth, urethra, or anus, or penetrates it there in any way, whether with him or another person.; or
- (b) inserts any object or body part into a woman's vagina, urethra, or anus to any degree, other than the penis.; or
- d) puts his mouth to a woman's vagina, anus, or urethra or makes her do so with him or any other person, or

(e) manipulates any area of a woman's body in a way that encourages penetration into her urethra, anus, or any other part of her body,

under conditions matching any one of the following seven definitions:

In the beginning, against her

Secondly, without her consent.

Thirdly, having her consent means after winning her approval by making her feel threatened or vulnerable, whether it's herself or someone she cares about.

Fourth, getting her consent, even if she knows he's not her husband and is just providing it out of erroneous belief that she is actually legally wedded to him or another man.

Fifthly, with her permission if, at the time of providing such consent, due to mental instability, drunkenness, or the administration of any stupefying or unhealthy drug by him directly or via another, she is unable to comprehend the nature and effects of that which she provides consent to.

Sixthly, when she is less than eighteen years old, with or without her permission. Seventhly, when she is unable to express permission.

EXPLANATIONS UNDER IPC

Explanation 1. The term "vagina" as used in this section includes the labia majora.

Explanation 2. Any verbal or nonverbal signal a woman makes to indicate that she is open to participating in a particular sexual act qualifies as her clear, informed consent.

EXCEPTION UNDER IPC

With the exception that a woman who does not physically resist the act of penetration should not be deemed as consenting to the sexual activity simply because of that fact.

1. An intervention or surgery for a medical condition does not qualify as rape.
2. As long as his wife is over the age of 15, a man is not guilty of rape if he engages in sexual intercourse with her.

HOW DID THE EXEMPTION REGARDING MARITAL RAPE GET INCLUDED IN THE IPC?

British Colonial empire

- In India, the IPC was put into effect in 1860 during British colonial control.
- The marital rape exemption was once only applicable to women above the age of 10, but in 1940 that age was lifted to 15.

1847 Draft of Lord Macaulay

Amicus curiae (friend of the court) claimed in January 2022 that the IPC was based on Lord Macaulay's 1847 blueprint, who served as the head of the First Law Commission formed in colonial-era India. The exception from the draft removed all age limitations on the legalisation of marital rape.

DEVELOPMENT OF MARITAL RAPE IN WORLD

First foreign nation to pass performs for marital rape was Australia in 1976 and after its many Scandinavian and European countries also recognised marital rape as an offence.

HISTORY OF MARITAL RAPE IN INDIA

Domestic Violence Act, 2005

It raises the possibility of marital rape through any type of sexual abuse in a live-in or marital relationship. It does, however, solely offer civil remedies. In India, victims of marital rape are unable to file a criminal complaint against their assailant.

Law Commission of India

The Law Commission of India rejected the need to eliminate this provision for marital rape in 2000 while taking into consideration several proposals to modify India's laws on sexual assault.

Justice JS Verma Committee

The Justice JS Verma Committee was given the responsibility of recommending changes to India's rape laws in 2012. While some of its ideas were implemented into theⁱ, others, such as the one regarding marital rape, were not.

Parliament

Additionally, the Parliament has discussed this issue. The idea of criminalizing marital rape was rejected in 2015 at a Parliamentary session with the justification that "marriage was seen as a sacrament or sacred in the Indian society, therefore, criminalizing marital rape cannot be applied in the country".

MEANING OF MARITAL RAPE

Any unwanted sexual acts by a spouse or ex-spouse that are carried out without consent or that are obtained against the will of the victim under the threat of death, coercion, or force constitute marital rape or spousal rape. In India, marriage is considered as a sacred bond between two individuals for their joint pursuit of dharma, karma and moksha.

The law of the nation also does not see or endorse this archaic view and refuses to acknowledge that marital rape is no less than a rape defined underⁱⁱ. Historically also our society has found it very strenuous to comprehend the notion of marital rape. They hold the opinion that

cohabitation between married couples is not rape since there is implied or supposed marital consent, therefore how can it be rape if they are married. The incidence of marital rape is rising in our nation, but it is still not recognised as a crime in India, where it only exists "de acrobat, not de jure." In contrast, marital rape is recognised as a crime in other nations either because the legislature has criminalized it or because the judiciary has played a significant or deciding role in doing so.

CAUSES OF MARITAL RAPE

There are many causes for marital rape discussing about the few and the most prime factor which are dominance, treating women as property, unemployed men and sexual dissonance between the couple.

Indian society which is mainly a patriarchal society and in which women is dependent on the husband for the day-to-day expense or for his livelihood cannot resist the man for marital rape and seeking for a divorce is also not an option as marital rape is not ground for divorce in Hindu Marriage Act 1955ⁱⁱⁱ, Muslim Personal Law Application Act 1937^{iv} and Special Marriages Act, 1954^v. The married women only have resources to civil remedies provided under the protection of women from Domestic Violence Act, 2005^{vi}. Indian society is foremost an orthodox society which believes that a women should be kept within the four walls of the house which does not let women to become financially independent and this becomes the root causes for marital rape or any kind of domestic violence.

Talking about the second factor which is women treated as a property of husband, historically rape was seen as a property (usually either a man's property or father). Property damage in this case meant that the crime was not legally recognised as harm to the victims but rather as damage to her father's or her husband's property. As a result, by definition, a husband could not rape his wife since she was in his ownership. However, if another man committed a rape of another man's wife, this was effectively theft of property (a woman's sexuality). The existing marital rape mentality and regulations in India are based on the idea that women are property.

Talking about the third factor which is unemployed men, men who carry out marital rape have a very low self-esteem and a person who is low self-esteem may not resort to force himself on

his wife against her will for sexual pleasure. A prudent man will have enough dignity to either respect her will or seek sexual pleasure outside for that particular period.

Speaking of the final factor, sexual dissonance in the relationship, the wife may have declined sexual activity for a variety of reasons, such as menstruation, stress, mood swings, or a physical injury, but the husband does not want to cede his position of dominance over the wife and insists on having sex with her.

EFFECTS OF MARITAL RAPE

The women or wife who were subjected to marital rape have long term implications on them. They suffer clinical depression after being forcefully raped by their own husband, their desire to live diminishes from time to time, they live under constant fear of rape which causes both psychological and physical effects on their body such as shocks, stress, suicidal tendencies, injury to private organs, torn muscle, fractures etc. Other complications that affect women who experience rape or physical abuse include darkened eyes and injuries from any type of weapon used during sexual contact.

CONSTITUTIONAL PROVISIONS

Constitutional rights given against marital rape under the Indian constitution are under article^{vii}

Article 14^{viii}, Indian Constitution states “equality before law”, therefore Indian women should be treated equally under article 14 and an individual human right should not be ignored by anyone, even by their partner. The exception 2 of section 375 discriminates against married and single women, violating the article 14 right to equality. It also discriminates against equality before law penalising the rape of stranger and not criminalizing the husband who committed the similar crime.

Article 15^{ix} states “restriction of discrimination on the basis of racial, ethnic, caste, sexual orientation, or place of birth. Discrimination is faced by married women on grounds of sex

where they are not given option of consent or will to get into sexual relationship, if they are not having mood or desire to get into physical relationship at that particular time.

Article 19(1)(a)^x which states “freedom of speech and expression to each and every citizen of India, if freedom is given to everyone then why it is curtailed for women in case of marital rape. The voice of women has equal rights as compared to men or unmarried girls. There are roughly 6500 languages that are spoken throughout the globe and the meaning of ‘no ‘is the same in all the languages. Despite the fact that the world is progressing each day towards modernisation there are some social prejudices that still dominate our social paradigm. It’s high time for society to stand for the voice of women at large.

Article 21^{xi} of the constitution talks about “right to life and personal liberty. The article interpreted liberty by our Indian judiciary in numerous cases where it held “Right to Live with Human Dignity in cases such as **Maneka Gandhi V Union of India^{xii}** case where the court decided that the right to life encompasses more than just the bodily and includes the right to live with dignity. The court further explained its position by citing its ruling in **Francis Coralie v. Union Territory of Delhi**, where it was decided that the right to life encompasses more than only the ability to survive physically. The right to "live" includes the "right to live with human dignity, and all that goes along with it, including the bare necessities of life like adequate nutrition, clothing, and shelter as well as facilities for reading, writing, and expressing ourselves in diverse ways, freely moving around, and mixing and mingling with fellow human beings.". In **Suchita Srivastava v. Chandigarh Administration^{xiii}**, the Supreme Court equated the right to sexual freedom with the rights to personal liberty, privacy, dignity, and physical integrity under Article 21 of the Constitution. In **State of Karnataka v. Krishnappa^{xiv}**, the Supreme Court ruled that sexual assault is an illegal violation of a woman's right to privacy and to the divinity of her person. It was ruled in the same case that non-consensual sexual activity qualifies as both physical and sexual violence. The second sub-point which can be discussed under the ambit of Article 21 is “Right to Sexual Privacy” which was discussed in the case of **State of Maharashtra V Madhukar Narayan^{xv}**. The court ruled that every woman has a right to sexual privacy and it is not permissible to infringe on that privacy at any time.

CURRENT STATUS OF MARITAL RAPE IN INDIA

In India, domestic violence is a pervasive issue that has only become worse in recent years. The 'Crime in India' 2019 report from the ^{xvi} estimates that domestic abuse affects over 70% of Indian women.

Domestic violence includes, as one example, marital rape. Marital rape, or coercing your spouse into having sex without getting their consent, is an unjust but common way to degrade and undermine women. Unfortunately, India is one of the 36 nations where marital rape is still not criminalised, despite the fact that it has been criminalised in more than 100 other nations today. The non-criminalization of marital rape in India undercuts the dignity and human rights of women, despite the fact that several legislative changes have been made to the criminal code for the protection of women.

CURRENT ISSUE CONCERNING MARITAL RAPE

The issue started when petitions were filed in Delhi High Court for criminalizing Marital Rape. The Delhi High court asks central government regarding criminalization of marital rape to which central government says that criminalizing marital rape may disestablish the institution of marriage. In the year 2017, the Delhi High Court starts hearing the matter. In the year 2022, the Delhi High Court delivered a split decision, with one judge favouring the repeal of the law's provision protecting husbands from prosecution for extramarital sex with their wives while the other judge declined to declare it illegal. Nevertheless, both justices concurred to award the certificate of leave to appeal to the Supreme Court in this case since it includes important legal issues that call for the highest court's ruling. The matter will now be heard by the Supreme Court in February 2023.

MARITAL RAPE AROUND THE WORLD

According to data from Amnesty International, 77 out of 185 (42%) nations have laws that make marital rape a crime. In other countries rape laws either don't mention it or specifically omit it, both of which can result in sexual violence.

CONCLUSION

With the advent of separate and independent legal identities for husbands and wives under Indian law, the protection of women is a major focus of contemporary jurisprudence. Therefore, it is past due for the legislature to recognise this legal flaw and repeal^{xvii} (Exception 2) in order to bring marital rape inside the ambit of rape legislation.

ENDNOTES

-
- ⁱ Criminal Law Amendment Bill, 2013
 - ⁱⁱ Section 375 of Indian Penal Code
 - ⁱⁱⁱ Hindu Marriage Act, 1955
 - ^{iv} Muslim Personal Law Application Act, 1937
 - ^v Special Marriages Act, 1954
 - ^{vi} Domestic Violence Act, 2005
 - ^{vii} Article 14, 15, 19, and 21 of Indian Constitution
 - ^{viii} Article 14 of Indian Constitution
 - ^{ix} Article 15 of Indian Constitution
 - ^x Article 19(1)(a) of Indian Constitution
 - ^{xi} Article 21 of Indian Constitution
 - ^{xii} AIR 1978 SC 597
 - ^{xiii} (2009) 9 SCC 1
 - ^{xiv} AIR 2000 SC 1740
 - ^{xv} AIR 1991 SC 207
 - ^{xvi} National Crime Records Bureau Report on Marital Rape
 - ^{xvii} Section 375 of Indian Penal Code, 1860