
MARITAL RAPE IS NOT A CRIME? WITH RESPECT TO THE MARITAL RAPES IN INDIA WITH THE FOREIGN COUNTRIES

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ABSTRACT

When we hear the word rape we just think that rape is something that happened to the unknown parties or well-known person without their permission of having sex with other person. And we all know that is a crime. But we didn't recognize or take any action for the marital rapes which are still did not come out from their home or domestic circle. Most of the women are not aware that sexual assault or the nonconsensual intercourse by her husband is a crime. The moral values in many families will not accept this as a crime. Even in section 375 of Indian Penal Code includes all forms of sexual assault involving nonconsensual intercourse with a woman. However, Exception 2 to Section 375 exempts unwilling sexual intercourse between a husband and a wife over fifteen years of age from Section 375's definition of "rape" and thus immunizes such acts from prosecution. It is one's own wish to have sex with another but forcing for having sex. These rights have increasingly been recognised, and consequently marital rape has been criminalised by about 150 countries as of 2019. In some cases, marital rape is explicitly criminalised; in other cases the law makes no distinction between rape by one's husband and rape by anyone else. India is one of the thirty-six countries that still have not criminalized marital rape. India is not amending the marital rapes as a crime even in this modern era. The general public has many visions for the marital rape cases.

REVIEW OF LITERATURE

Understanding the concept of marital rape and implementing a law over this is very rigid. The complex that thing is to imply or to execute the said rules. Below are some relevant studies that have been taken up for the purpose of literature review;

Jennifer A. Bennice and Patricia A. Resick (2003) in their article **Marital Rape: History, Research, and Practice** highlight its seriousness in terms of prevalence and post trauma distress, as well as the limitations of extant research; barriers to treatment and recommendations for professionals are also included in the discussion.

Meenakshi Gupta (2019) in her article **Marital rape by Meenakshi Gupta** have given a brief idea of the existing problems in the case of marital rapes in India and also compares the issue with fundamental rights and the Domestic violence act,2005. She also describes the inequality in the society.

INTRODUCTION

India is one of the countries which have highest numbers of the rape cases. We only consider the rape cases registered in the police station, but there is more number of cases which is not registered or told to anyone. People thinking of their dignity and respect in the society they hardly report to the stations, even some never discloses these to their closed one. We still didn't recognize the marital rape as a crime and people don't even accept this as violence in the society.

India is still regretting to bring a separate law for the marital rapes. Most of the people don't even recognize the nonconsensual intercourse by her own husband is a crime. There are no laws protecting women's from marital rapes. India is a country of unity and diversity. It's hard to make a law which is more crucial and sensitive in nature.

RESEARCH QUESTIONS

- ☐ Do the nonconsensual spouse rape is punishable in India?
- ☐ What restricts India to make separate law for marital rapes?

OBJECTIVES OF THE STUDY

- ☐ To know marital rape is crime
- ☐ To know the problems for amendment of law
- ☐ To analyze the public view about the marital rape

SCOPE OF THE STUDY

This study is related to the subject matter marital rapes which are not considered as crime in India, and the reason why it takes a long time to create awareness to the general public.

RESEARCH METHODOLOGY

☐ **RESEARCH DESIGN**

The following study is done in an analytical and descriptive way, so as to provide clarity with each topic mentioned and discussed.

☐ **SOURCES OF DATA**

The study was done with the help of primary and secondary sources. The collection of data will be from survey, published papers, relevant articles, case laws. Legislations, internet sources, secondary sources were referred to. Various texts were also used.

CHAPTER – 1

MARITAL RAPE LAWS

Before understanding about marital rape, we can first understand what rape is and what amounts to rape in India. Under section 375 of Indian Penal Code states the following seven descriptions:

1. Against her will.

2. Without her consent.
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married
5. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. With or without her consent, when she is under eighteen years of age.
7. When she is unable to communicate consent¹

But in the same section this gives an exception to rape as “Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape”.² In India normally marriage age is 18 for a girl but in this exception they have stated not under the age of fifteen, the married women can be at the age of minor that is between sixteen and eighteen.

Marital rape in simple terms we can say that rape done by the spouse of the victim. It is not new in India, and people of India also do not think as a crime because they used to it. Only for the reason for being married people think that they have all rights over their spouse. “The concept of marital rape in India is still counted in those crimes which are not fully recognized yet. We do have laws in our country that are designed for the protection of women against rape. Under Indian Laws

¹ Indian Penal Code, 1860, Section 375, Central Government act, 1862

Rape.—A man is said to commit “rape” if he— (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person

² Supra 1

the ‘rape’ is defined as a crime under Section 375¹ and criminalized under Sections 376² of the Indian Penal Code 1860. But none of the provisions of these sections of the IPC considers marital rape as a crime rather in section 375; marital rape is given as an exception.”³

The report of this Commission was made on the basis of the case of *Sakshi v. Union of India*⁴. It was pleaded in the case that sexual acts by husband with his own wife without her consent should be considered under the exception 2 of section 375. This is mainly because of factors like illiteracy, religious ideology, customs, old practices, and the mindset of Indian society to treat the marriage as a holy sacrament.⁵

There are three types of marital rapes:

Forced rape: it is a type of rape in which the abuser forced himself upon the wife to cohabit with him without her will; it may be oral, anal or simple sex.

Battering rape: it is another form of rape in which the abuser beats the victim and at the same time assaults the victim physically.

Obsessive rape: in this kind of rape the abuser is obsessed with sex and the act itself is violent, because of his obsessive sexual habit it is possible that the abuser will use violence to become aroused.

In paragraph 7 of *Nimeshbhai Bharatbhai Desai vs. State of Gujarat*⁶ states that “Marital rape is in existence in India, a disgraceful offence that has scarred the trust and confidence in the institution of marriage. A large population of women has faced the brunt of the non-criminalization of the practice”⁷

Marital rape refers to unwanted intercourse by a man with his wife obtained by force, threat of

³ Marital Rape Laws in India and internationally: All you need to know - Law Circa (April,15.2021.9.16p.m),<https://lawcirca.com/marital-rape-laws-in-india-and-internationally-all-you-need-to-know/>

⁴ *Sakshi v. Union of India* 2004 (5) SCC 518

⁵ Marital rape by Meenakshi Gupta, Legal bites, (April,17.2021,7.28a.m),https://www.legalbites.in/marital-rape/#_edn2

⁶ *Nimeshbhai Bharatbhai Desai vs. State of Gujarat* 2018 SCC .

⁷ *Supra* 6

force, or physical violence, or when she is unable to give consent. It is a non-consensual act of violent perversion by a husband against the wife where she is abused physically and sexually.⁸

Though the definition of rape as per Section 375 does not include sexual activity committed by husband against his wife (Exception-2).⁹

Marital Rape is not an offense in the country as it is believed that it would become a potent tool in the hands of an unscrupulous wife to harass her husband and might destabilize the institution of marriage. The court then went on discussion and comparing the Marital Rape laws in other countries like:

USA- The criminalization of Marital Rape in US started in mid 70s and by 1993 marital rape was a crime in all the 50 states.¹⁰

UK- The marital rape exemption was abolished in England and Wales in 1991 by the Appellate Committee of House of Lords in *R. v. R.*¹¹

Scotland- The High Court of Justiciary took a different view abolishing marital immunity in *S. v. H.M. Advocate*, 1989.¹²

Germany- It criminalized marital rape in 1997 as a change was brought in the legislative definition of Rape.¹³

The 172nd Law Commission Report suggested to delete the exception given to husband and hence marital rape to be criminalized.¹⁴ Justice Verma Committee had proposed deletion of the exception of Marital rape from the definition of rape was not included in the Criminal Law (Amendment) Bill 2013.¹⁵

⁸ Supra 6

⁹ Supra 1

¹⁰ <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=201457>.

¹¹ *R. v R.* [1992] 1 AC 599.

¹² *PGA v The Queen* (2012) 245 CLR 355 (PGA).

¹³ *Nimeshbhai Bharatbhai Desai v. State of Gujarat* 2018 SCC OnLine Guj 732, [104] 62.

¹⁴ *Independent Thought v. Union of India*, (2013) 382 SCC (2017) (India)

¹⁵ One Hundred And Sixty Seventh Report, The Criminal Law (Amendment) Bill, 2012

There exist various theories given by various authors like the Feminist Theory, The Social Constructionism Theory and the Sex Role Socialization theory, The government has also given the reason for not criminalizing the Marital Rape which is that it would be used as a tool to harass husbands, however the domestic violence act is in existence which covers both physical and sexual abuse as grounds for legal system to intervene and it seems ironical that a complaint of domestic violence will ruin a marriage and a complaint of domestic violence will not.¹⁶

It also defines marital rape into three kinds, as generally prevalent in the society;

1. Battering rape: In this type of marital rape, women experience both physical and sexual violence in the relationship and in many ways. Some instances are those where the wife is battered during the sexual violence, or the rape may follow a physical violent episode where the husband wants to make up and coerces his wife to have sex against her will. In most cases, the victims fall under this stated category.
2. Force only rape: In this type of marital rape, husbands use only that amount of force, as it is necessary to coerce their wives. In such cases, battering may not be a characteristic and women who refuse sexual intercourse usually face such assaults.
3. Obsessive rape: In obsessive rape, assaults involve brutal torture and/or perverse sexual acts and are most commonly violent in form. This type has also been labeled as sadistic rape.¹⁷

According to the UN Population Fund, more than two-thirds of married women in India, aged 15 to 49, have been beaten, or forced to provide sex. In 2011, the International Men and Gender Equality Survey revealed that one in five has forced their wives or partner to have sex.¹⁸

WHY INDIA STILL NOT CRIMINALIZED MARITAL RAPE:

Rape isn't a criminal offense against individual but it's against the law against the full society. There are laws to forestall rape cases still people are stricken by it, the lads also are not safe but

¹⁶ Id. [167] 74

¹⁷ Supra 6

¹⁸ UK Government, chapter 19, (April.18,2021.6.15 p.m.), <https://ujala.uk.gov.in/files/ch19.pdf>

due to shame they don't file report or sometimes the officers don't believe it. As a mindset that rape only happens with women and also that it's a male dominating society where men are those who rape and aren't the victim.

Marital rape has no provision in Indian laws because it is believed that the most object of marriage is procreation of youngsters and it's the duty of a perfect wife to meet the wants of the husband. Many Indian jurists have stated that in India the divorce rate is low compared to other countries but they don't see that ladies in India keep one's mouth shut and permit the boys to try and do whatever they desire thanks to society, culture, etc. They keep their mouth shut and suffer the ill treatment of their husband.

According to the legal point of view it absolutely was observed that there are plenty of false cases associated with rape, molestation, and force to require revenge from the husband or their relatives or to achieve monetary benefit from the property.

There is still an ongoing debate discussing to criminalize marital rape or not, the government needs time to amend laws and make provisions as they need to seem into every aspect and non-secular sentiments before making any act.

EFFECTS OF MARITAL RAPES:

It's a heavy crime which we must always not neglect, a lady isn't an object of enjoyment and it's due to marital rape that a lady suffers lots. The physical violence and also the sex offense leaves a long-term effect within the victims' life, a number of the results of marital rape are:

- a. Difficulties in falling or staying in sleep
- b. Flashbacks
- c. Psychological state problem
- d. Depression
- e. Anxiety
- f. Fear

- g. Low self- esteem
- h. Sexual dysfunction
- i. Bodily weakness etc.

Along with this there are many reasons, but they are not considered or recognized by the society or even in their own families.

CHAPTER – 2

GENERAL VIEW BY THE SOCIETY

RELIGIOUS BELIEF ASSOCIATED WITH MARITAL RAPE:

Marriage may be a union between the 2 individual. From ancient time women are treated as a weaker section compared to men, as we all know, that India is land of diversity, here people from different religions live together.

But one thing is common altogether supernatural virtue that the most motive of marriage is that the procreation of youngsters and to meet the wants of the husband. The wife is an object of enjoyment and it's her ideal duty to supply the identical to her husband whenever he demands it.

According to the Hindu marriage act 1955¹⁹, marriage gives cohabiting right to both the partner, and an assurance for the family or children in order that they are doing not suffer from parental issues. Marriage may be a guidance through which someone knows the way to lead their marital life.

According to Islamic law²⁰ - a women should leave whatever work which is keeping her occupied, if the husband demands pleasure from her. If the lady refuses to labor under her husband's desire, for no reason, she should be exposed to god's displeasure.

¹⁹ Hindu marriage act 1955, Act of Parliament, 1955

²⁰ Muslim Personal Law (Shariat) Application Act, 1937

According to Christian beliefs bible doesn't recognize marital rape and wife should consent to sex.

All these beliefs give power to a person to dominate their wife and misuse it for his or her pleasure and to cover their BEASTLY behavior.

SOME OF THE ROOT CAUSE FOR MARITAL RAPE:

- ☐ A way of showing dominance over spouse
- ☐ sexual disagreement between couples
- ☐ Marital infidelity either from wife or the husband
- ☐ Alcohol and drug dependency
- ☐ Stress and disturbed emotions
- ☐ Family never consider these type of issues

REASONS FOR WHICH THE MARITAL CASES ARE NOT BEEN REPORTED:

- ☐ Fear of bringing shame to the family
- ☐ Fear of losing a relationship if the perpetrator as the victim's/survivor's husband
- ☐ Do not consider marital rape to be a crime
- ☐ Feeling obliged to be faithful to a husband and submit to his sexual needs
- ☐ Fear that such violence might be considered the victim/survivor's fault
- ☐ The wife or victim will not like her husband to be criticized by the society
- ☐ The fear of future in which society would criticize

DOMESTIC VIOLENCE ACT 2005 AND MARITAL RAPE:

Under the Protection of Women from Domestic Violence Act, 2005²¹, women can go to the court

²¹ Domestic violence act,2005,Central Government Act,2005.

and get a legal separation from her husband in case of marital rape because Explanation – I provided for Section 3 of this Act states that sexual assault shall include any conduct of sexual nature which demean, embarrasses or affects the dignity of woman. So, this kind of rape obviously diminishes the dignity of the women but living separately from her husband is not enough as the victim would always demand an equal punishment for the offence committed against her.²²

Many of the domestic violence cases in India are reported for the aggressive act of the husband and his family but in these case itself the victim's doctor are noticing many harm and hurt in the private part of the victim. These are not separately treated as the marital rape instead the case is filed under only Domestic violence act.²³

People should be educated, the 21st century people are aware of the offence and they are giving the equality between all genders. But still people in some of the rural side they are not much aware about these issue.

Due to the religious and customs that we are following in our country, it takes a lot of time to make people understand about the unsounded crimes that are happening in the country.

SUGGESTIONS:

To develop and implement the rule or law over the marital rapes, the following suggestions are given:

1. Legislation should provide Secret panel for this.
2. Educate everyone regarding the unsounded crimes.
3. Allow women to spoke up regarding their issues in their sexual life.
4. It may give confidence for the victims to sound their statements.

²² Supra 5

²³ Domestic violence act,2005,Central Government Act,2005.

CONCLUSION:

Marital rapes and understanding the reason why India did not criminalize the said problem is a wide range and difficult to analyze and bring under one roof. It is difficult to bring law or amend a single provision for the issue and it is not as easy as to do because of the situations, culture and customs prevailing in India.

There are many provisions where women can speak up for their own rights. The people should be educated about the unsounded crimes. Women should come out and fight for their rights and fight against the domestic crimes faced by them.

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