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Marital Rape In India: Study Of Society And Law

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ABSTRACT:

The legal, social, and historical aspects of marital rape in India are critically examined in this study, with an emphasis on the contradiction that, despite rape being illegal, non-consensual sex within marriage is nevertheless protected by Section 375 of the Indian Penal Code. Marital rape is still not prosecuted as a crime in India, despite significant changes to the country's rape legislation after 2013. This leaves married women defenseless and without legal options. The study highlights the psychological pain and social stigmatization that victims experience by examining domestic and international legal viewpoints, pertinent case law, and survivor testimonies. The study reveals how women's autonomy and sexual rights are suppressed by patriarchal norms and the idea of implied spousal consent through a sociological and legal lens. It makes the case for the immediate elimination of the marital rape exception by drawing parallels with countries that have made the crime illegal, bringing Indian law into line with the fundamental values of equality, dignity, and bodily autonomy. The study's conclusions include policy and educational suggestions to improve laws, raise awareness among the public and courts, and protect married women's rights and dignity.

INTRODUCTION

"I just want to go to sleep." A coma would be lovely. Or forgetfulness. Anything, just to get rid of his, these thoughts, whispers in my head. Did he also rape my head?"

- Laurie H. Anderson¹

Rape is now universally considered as one of the worst crimes, and those found guilty suffer draconian punishments². The law and the social reality of rape have been huge difficulties in India. Women of all ages, even babies and kids, are affected by the very real fear of rape. The United Nations says that every year, there are more than 250,000 reports of rape or attempted rape around the world. Even though rape is a terrible crime that is punished by law, there is no clear and universal definition of it. Before the 1960s, common law defined rape as "A carnal knowledge of a woman not one's wife by force or against her will." This means that any sexual contact forced on one person by another is rape.

Rape is a violation against women's rights and is seen as the worst crime against women and all of humanity. Violence against women during wars and conflicts takes various forms, and rape is commonly one of the ways that women are targeted. It is important to understand and accept that rape is a crime that happens

¹ An American writer portrays the anguish and helplessness a victim of rape feels, every day, for the rest of her life

² Post World War II, Rape is crime against humanity. In 2008, the UN Security Council

during times of conflict and is used for political and strategic reasons to hurt women. The Statutes of International Courts and Tribunals and its current judicial interpretation made it clear that rape is an international crime. Rape is a breach of human rights and a form of gender-based violence against women and girls, according to international human rights law and jurisprudence. In 2020, some 240 million women between the ages of 15 and 50 were sexually or physically abused by their spouses or intimate partners. With the epidemic going on, the number above is expected to go up. Phumzile Mlambo-Ngcuka³ said that the epidemic has a big effect on "women's wellbeing, their sexual and reproductive health, their mental health, and their ability to participate and lead in the recovery of our societies and economy."

Women in India still have to cope with rape a lot. The National Crime Records Bureau (NCRB) of India's Home Ministry released new crime statistics that show that 28,153 women were raped in India in 2020. Women in India still have to cope with rape all the time. The National Crime Records Bureau (NCRB) of India's Home Ministry released new numbers that show that 28,153 women were raped in India in 2020. There were 2,655 girls or kids under 18 among them. India's rape laws have altered over the years from being crimes against morality, public decency, honour, family, or society to crimes against the rights to bodily integrity and sexual freedom. India's rules against rape didn't alter for more than a hundred years. Even with these modifications, the legislature still doesn't state anything about marital rape.

India makes rape a crime and makes sure that the punishment for it is quite harsh. Over time, the laws about the crime of rape have changed. The Indian Penal Code, 1860, the Criminal Procedure Code, 1973, and the Evidence Act, 1872 all provide rules about the crime. The meaning of these laws has varied over the years. The Indian Penal Code stipulates that a man can have intercourse with his wife without her permission (if she is 18 or older) and not be charged with rape. This hasn't changed much over the years. Marital rape is a prevalent and very bad sort of violence against women. Marital rape is any "unwanted intercourse or penetration obtained by force, threat of force, or when the wife is unable to consent."

It is disturbing to imagine a situation where a married woman, who is above the age of eighteen, in India is raped every day at the whims and fancies of her husband, where the victim knows that the law and society provides her no protection, that, there is no criminality in the repeated acts of violation of her body and there is no escape for her, that, she has no choice but to succumb and to comply; a situation where the perpetrator is the person who is her companion for life, the person who she is supposed to turn to for sustenance, protection, companionship, etc.; that there is no alternative but to be numb and bear the assault again and again. To understand the law on marital rape in India as it stands now and the reasons as to why there is a need for a change, it is pertinent to study the evolution of rape laws through out the world especially those nations that follow the common law system which have already criminalised marital rape but India still resists.

The question is, why are Indian lawmakers so hesitant to make marital rape a crime under Section 375 of the IPC when many other countries that use the common law system have already done so? Some people would say that every woman in India has the choice to get a divorce or separate; that the law does not force her to go through such horrible things; that she can file a criminal complaint under Section 498A of IPC or go to court under the Domestic Violence Act, 2005; and that there is no need to make marital rape a crime because the current laws are enough to protect a woman's rights in marriage. But we should take these arguments with a grain of salt. It has to be looked at in light of the fact that in many parts of India, most marriages are arranged and women don't have much choice. Being divorced or a single parent is still seen as a social stigma, and most women depend on their husbands for food and social security. Also, the fact that marital rape is not a crime affects the psychology of both the husband and the wife, as well as society as a whole.

The Supreme Court of India made it very clear in the case of *State of MP v. Madanlal*⁴ that "in a case of rape or attempt of rape, the idea of compromise can never be thought of." These are crimes against a woman's body, which is like her own temple. A woman's dignity is a part of her eternal and unbreakable self, and no

³ Interview with Phumzile Mlambo-Ngcuka, Executive Director, United Nations Women, *UN News*, April 6, 2020,

⁴ *State of MP v. Madanlal* (2015) 7 SCC 681, Para. 16 to 23, p.no. 1, available at : <http://www.scconline.com>

one should ever think about painting it in clay. There can't be a compromise or settlement because it would hurt her honour, which is the most important thing to her. It is sacred.

There is no other way to look at the remark except to say that rape is a crime that cannot be compromised. But how does it make sense that a woman has to keep compromising with her rapist for every act of rape, or more precisely, for every act that would normally be considered rape? When you are married, do will and consent stop meaning anything? Is a woman's dignity and freedom worth nothing when she gets married? When a woman gets married, does she lose her basic human rights? Does she give up her rights when she gets married? So why would a woman choose to join a group that takes away her rights instead of protects them? Is "marital rape" an oxymoron? What does it mean to rape your spouse? Why do the laws regard rape and marital rape differently? This study tries to determine the answers to these questions.

HISTORY OF MARITAL RAPE IN INDIA

Rape

"I am a 'fortunate' survivor of a rape by a stranger—'lucky' because people believed me, a jury found the man guilty, and he is still in prison ten years later. I know a lot of women who have been raped who weren't as lucky because they thought the rape was their fault, because no one else believed them, because they knew their rapist, or because they were married to him and it wasn't a crime. We have certain things in common, like rage, agony, misery, and terror, but not everything. now, this is what I wanted after I was raped and now want: Never again, not for any woman. "Rape is evil⁵."

The social reality of rape has been a big worry in India, and if you want to understand marital rape, you need to know and understand rape. The number of rapes in this country is shockingly high, and the threat of rape impacts the lives and freedoms of all women, including babies and young children. The United Nations says that there are more than 250,000 cases of rape or attempted rape reported each year around the world. There hasn't been a clear agreement on what rape is, even though it is a crime that can be punished by law. Different countries have different laws about what rape is. Rape is against the core rules of human rights, and it is seen as the worst crime against women and all of humanity. This chapter tries to look at rape as a crime by looking at the law of rape again. To start, it talks about how important ideas like consent, will, force, and resistance are, and it defines rape as a crime. It also explains where the definition of rape comes from in common law and how the laws around rape have changed throughout time⁶. The latter portion of the chapter seeks to figure out what the criminal intent was behind the act of rape. In short, having sex with someone without their consent is rape. The idea behind the word "rape" is "any sexual contact forced on one person by another." The dictionary says that rape is "unlawful sexual activity, usually sexual intercourse, done against a person's will or with someone who is under a certain age or unable to give valid consent because of mental illness, mental deficiency, intoxication, unconsciousness, or deception."

Laws Against Rape in India: Women in India still have to cope with rape. The National Crime Records Bureau (NCRB) says that in India in 2020, there were 28,1532 female rape victims. Of those, 2,655 were girls or minors under 18. The Criminal Law (Amendment) Act 2013 changed the definition of rape in Section 375, IPC to say that a man commits "rape" if he (a) penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a woman or makes her do so with him or any other person; (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 do so with him or any other person; (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 do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her do so with him or any other person, under the circumstances falling under any of the following seven descriptions: First, she didn't want to. Second, without her consent. Third, with her approval, which is only possible if you put her or someone she cares about in danger of death or injury. Fourth, the man knows that he is not her spouse and that she is agreeing to marry him because she thinks he is another man she is or thinks she is legally married to. Fifth, she can only agree if she is not mentally stable or is drunk,

⁵ Lynne Henderson, "Rape and Responsibility", 11 Law and philosophy 127 (1992)

⁶ Manish Dalal and Raj Kumar, *Marital Rape: The Indian and Global Perspective* 1 (Shandilya Publications, New Delhi, 2021)

or if he gives her a substance that makes her feel horrible or makes her mind go blank. Sixth, when she is under 18, with or without her permission. Seventh, when she can't say yes. 1. The term "vagina" in this section also encompasses the labia majora. Explanation 2: Consent is that a woman clearly and willingly agrees to do a certain sexual act by saying, doing, or otherwise communicating verbally or nonverbally that she wants to do it. But just because a woman doesn't fight back when someone tries to penetrate her doesn't mean she agreed to the sexual activity. Exception 1: Rape does not include medical procedures or treatments. Exception 2: If a guy has sex with his wife and she is not "fifteen" years old, it is not rape.

The law only applied to penile-vaginal intercourse before the Criminal Law (Amendment) Act, 2013. The 2013 revision to Section 375 of the IPC, on the other hand, made any kind of body penetration rape. The age of consent went up from 16 to 18, and Explanation 2, which described what permission is, was added. Section 376(2) now covers rape committed by a member of the armed forces who was dispatched to an area by the Central or State Government. Section 376 A was introduced to declare that if rape caused the victim's death or left them in a chronic vegetative condition, the rapist would suffer a punitive penalty of at least twenty years in prison, which might be life in prison, meaning the rest of that person's natural life, or death. If a husband has sex with his wife when they are separated, he could go to jail for two years, but the punishment might be as long as seven years. He might also have to pay a fine. Section 376C made it illegal for someone in a position of authority, as a fiduciary, public servant, jail or hospital manager, to have intercourse with someone else. The sentence could be up to 10 years in prison, which could be extended to life in prison, and a fine. A new Section 376 D was established to deal with the crime of group rape. It made it a crime that could get you up to 20 years in prison, or maybe life in prison, and a fine. Section 376E specified that anyone who broke the law again would get life in jail or death. The rape cases also led to changes in the Indian Evidence Act of 1872. Section 53A was inserted to say that evidence on the victim's character or sexual history with other people is not relevant if consent is in issue. The Indian Evidence Act, 1872, Section 146 was changed to include a new provision that says that in rape cases where consent is an issue, the victim cannot be cross-examined about their sexual history or general immoral behaviour.

The Criminal Law (Amendment) Act, 2013, was seen as a big move by lawmakers to stop violence against women, especially in situations of rape. But even with these changes to the law that are meant to help, there haven't been many fewer rapes in India. In 2018, the Government of India passed the Criminal Law (Amendment) Act again. This amendment changed the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973, and the Protection of Children from Sexual Offences Act, 2012. The sentence for raping women under Section 376(1) was raised from a minimum of seven years to a minimum of ten years after the 2018 revision. Section 376AB has been added to the IPC, 1860. It says that if a lady is raped and is under 12 years old, the rapist can be sentenced to strict imprisonment for at least 20 years, but perhaps for life, and with a fine or death. Section 376DA has been added to the IPC, 1860. It says that if a group of people rapes a girl under the age of sixteen, they will all be punished with life in prison and a fine. IPC 1860 now has Section 376DB, which says that anyone who gang rapes a woman under the age of 12 will be punished with life in jail, a fine, or even death. Over the years, India's rape laws have changed from being crimes against morality, public decency, honour, family, or society to crimes against the rights to bodily integrity and sexual freedom⁷. The changes to India's rape laws didn't happen over the course of a decade; they took more than a century. Even with these progressive changes, the legislature has not said anything about marital rape. The Justice Verma Committee Report made it very clear that marital rape should be seen as a crime.

Catharine Mackinnon says that "The law of rape divides women into spheres of consent according to indices of relationship to men." A woman's supposed consent category rests on who she is in relation to a male who wants her, not what she says or does. genuine consent or nonconsent, or even genuine desire, is not very important. If rape laws were meant to give women control over who may have sex with them, like the consent defence says, then no would mean no, and marital rape would not be a common exception.

⁷ The first codified rape law was introduced in the Indian Penal Code, 1860, followed by subsequent amendments through Criminal Law (Amendments) Acts of 1983, 2013 and 2018

Rape in Marriage

"What's going on in our personal lives is mirrored by events on a larger stage, including politics and
If you want to really get to know someone, you should check into their bedroom.

- Shereen El Feki⁸

Marital rape, commonly known as "wife rape," is a common and serious type of abuse against married women. For a lot of people, forced sex in marriage isn't "real rape." For them, "real rape" is when a stranger attacks or threatens a woman's life. In this study, the questions we have to answer, which is also the main topic of this chapter, are: What do we mean when we talk about marital rape? Is the phrase "marital rape" an oxymoron? What is the difference between rape by a stranger and rape by a spouse? Are there distinct kinds of marital rape? What are the repercussions or harm of marital rape on the people who survive it? And is it necessary to consider marital rape as a crime?

Defining Marital Rape: To better comprehend the complexity of marital rape, we need to know how women identify their experiences of it. To stop the violence, it is important to first name it, then characterise the abuse as rape, and finally halt the violence. Several investigations have found that many victims of marital rape do not see themselves as such. Diana Russell's research showed that married women who have been raped don't consider themselves as victims. One reason could be the myth that surrounds the word "rape," which says that it only happens between strangers. However, in Russell's research, it was clear that almost all of the victims/wives felt that their husbands had sexually abused them. This chapter is mostly about how wives/survivors define their experience of rape within marriage. To answer the question, this study will look at three important pieces of research that look at how survivors of marital rape or wife rape make sense of their personal experiences of rape and define the violence. Also, as part of this study, a few survivors of marital rape were talked to and some informal personal interviews were done to learn more about their experiences with marital rape.

Marital Rape in India: While doing research for this paper, a young woman who had just gotten married told her story of being raped by her husband. Like all other marriages in India, hers was also arranged and they didn't date for long before getting married. But nothing could have prepared her for what she was going to go through on the first night after her marriage. "If I had known that after marriage, I would have to go through the horrific experience of having sex with my husband, I would have never been married in the first place. He was a savage who pushed himself on me. I kept saying no, but he wouldn't stop until I was horribly bruised, bleeding a lot, in a lot of agony, and unable to sit or walk for days. The survivor left her husband's house within a week of getting married. She was in shock and amazement, and she was still in a lot of pain even as she told her story. "If this isn't rape, then what is rape? Before we got married, I only met him a few times. We were basically strangers who agreed to go on the path of marriage together in the hopes of getting to know each other better and spending our lives together⁹. "I feel betrayed because the one person who promised to protect me was the one who ruined my life forever," she said in the conclusion. She has asked for a divorce, but she wants justice by seeing her rapist prosecuted for marital rape. It is important to include some studies, statistical data, and publications that talk about cases of marital rape in India. The International Centre for Research on Women (ICRW) gathered and put together this information. The study found that most women named their husbands as the main abuser, but the report also showed that women were often beaten in homes where other family members either encouraged or didn't stop the abuse. The report's review of case notes demonstrated that the police rarely recognised or used women's own statements and definitions of cruelty in marriage. So, the whole despair or tragedy of her experience, as shown in her own story, was not seen as real. The survey also said that when a wife talks about violence in a legal way, a lot of specifics and subtleties are lost in more general and misleading words and phrases. This is especially true when it comes to sexual abuse in marriage.

⁸ Shereen El Feki, *A Little Told Tale of Sex and Sensuality*, TED Global, Held on (Long Beach, California, June 2013),

⁹ George E. Panichas, "Rape, Autonomy, and Consent" 35 *Law and Society Review* 231 (2001)

SOCIOLOGICAL ASPECTS OF MARITAL RAPE

PETRUCHIO: "Will be master of what is mine own: She is my goods, my chattels; she is my house, my household stuff, my field, my barn, my horse, my ox, my ass, my anything."¹⁰

People often see and hear that men use violence (physical, emotional, sexual, etc.) against women to show, keep, and strengthen their power and control. Violence against women, in any form, has become a tool to dominate and subdue them. One kind of violence is marital rape. Most people don't think of forced sex in marriage as "real rape." Forced sex in marriage "brings up an unpleasant, but not very serious, marital argument." This view of marital rape comes from the "social understanding that women were the property of men, first their fathers and then their husbands." William Blackstone, a legal theorist, argued in the late 1760s that "by marriage the husband and wife are one person in law; that is, the very being or legal existence of woman is suspended in marriage." Following this rule, a married woman's legal identity would become one with her husband's. She would have to give up her right to file charges against her husband, and it would be hard to say he raped her. Marriage was a key aspect of talks about women's rights in the 1800s. Gender and class-based ideas about equality limited women's rights in marriage. This chapter talks on the sociology of marriage and the distinct responsibilities that society's rules and beliefs give to the husband and wife. It talks about several beliefs concerning marriage, such as "marital unity," "right of chastisement," "rights of individuals within marriage," and "conjugal rights." This chapter is mostly about the social and legal status of women in India. It brings attention to the issue of domestic abuse, which includes the issue of marital rape. This chapter talks on women's rights as people, the right to be treated equally, and the right of a married woman to her own body.

A social study of marriage looks at the duties that society places on husbands and wives

"SIR PETER: That's fine! Yes, ma'am. So a husband shouldn't have any power or say?

LADY TEAZLE: Power! No, for sure. If you wanted to be in charge of me, you should have adopted me instead of marrying me. I'm sure you were old enough."¹¹

Marriage is a common component of life for most cultures, religions, and societies around the world. Different groups of people have different beliefs and ways of doing things when it comes to marriage, but the notion of marriage is the same for everyone. Marriage is a safe bond between a man and a woman that lets them have kids without losing their status in society. Marriage has been a part of most cultures and communities for a long time. "Marriage is a socially accepted union of two or more people that is thought to be stable and long-lasting, at least in part because of a sexual bond." All legal and unlawful bodies respect and appreciate the social relevance of marriage. People and the law both regard marriage as an institution today. The husband and wife "mould their marriages to suit their purposes and identities" in this institution. The idea of marriage evolves over time, but the institution itself stays the same. What did people in the 1800s think about marriage? In the 1840s, getting married meant that a man and woman became husband and wife. This meant that their separate identities will never be the same again. A marriage is a formal promise between a husband and woman to live together. Because of this, they both have legal and social rights and duties. John Stuart Mill's article about the perfect marriage really goes to the heart of what marriage should be: a place where both husband and wife are equal in every manner. "What would marriage be like between two people with developed faculties who agree on everything, have the same goals, and have the best kind of equality—similar powers and abilities with reciprocal superiority—so that each can enjoy the luxury of looking up to the other and can have the pleasure of leading and being led in the path of development? This is the ideal of marriage."

The idea of conjugal rights in marriage

In a marriage, both people have the right to be with each other. One of the reasons people get married is to feel safe living together, and both the husband and wife are responsible for this. When two people become married, they have certain rights and responsibilities towards one other. These rights are also called marital rights. Once a couple gets married, the law says that they must stay together as husband and wife. But if one

¹⁰ William Shakespear, *Taming of The Shrew* Act III Scene II (1590-1592).

¹¹ Richard Brinsley Sheridan, *The School for Scandal* Act II Scene 1 (P.F. Collier & Son, 1909-14).

spouse leaves the other without a good reason and the other spouse wants to get back together, they may be able to get a legal remedy called restitution of conjugal rights. Following common customs and principles, it has been noted that the law on restitution of conjugal rights applies when the wife actually leaves home, even if the husband is to blame for making the home unfit for her to live in with dignity and directly or indirectly encouraging her to leave the marriage. Restitution of conjugal rights is the only positive way to fix a marriage. Other ways to fix a marriage, like judicial separation, annulment of marriage, and divorce, are negative. The basic goal of restitution is to bring people back together, not to end their marriage. "In the past, both English and Hindu law required that a restitution decree be enforced with some kind of positive sanction." According to old Hindu rules, "only women had conjugal rights known as Ritu¹²." The means season is the 12 nights after the start of the menstrual cycle, not including the first three or four nights. Many holy books say that it was the husband's responsibility to have sex with his wife at this time. This was called Ritu Gamana¹³, and the husband couldn't say no. This right is now available to both men and women. If this right is broken, the person who is hurt can go to court and ask for their rights to live with their spouse again. Indian laws have taken the idea of restoring conjugal rights from English common law. That being stated, in the case of *T. Sareetha v. T*¹⁴ The court said that the origin of restitution of conjugal rights was not the English common law, but the mediaeval Ecclesiastical law of England. In that law, there was no remedy for desertion, and the Ecclesiastical courts provided the remedy of restitution. Later, the ordinary courts enforced the same remedy. The same remedy was enshrined in the Matrimonial Causes Act, 1923, in England. Since then, this law has become a part of the municipal laws of those nations that were once English colonies. The first time the principle of restitution of conjugal rights was used in India was in the case of *Moonshee Buzzoor v. Shumsoonissa Begume*¹⁵. The Lordships of the Privy Council saw the act of living with a spouse as a suit for restitution of conjugal rights, similar to a suit for specific performance. Section 9¹⁶ of the Hindu Marriage Act, 1955, and section 22¹⁷ of the Special Marriage Act, 1954, made the idea of restitution of conjugal rights legal. Even though the victim and the criminal are married, the law's true objective is to penetrate this institution of marriage and accomplish the end of justice. In the same way, the law should respect people's privacy when it comes to the remedy of restitution. Even now, most marriages are still dominated by men. In a lot of civilisations, after marriage, a woman's identity is linked to her husband's. The culture of a society shows how women and men are treated. The roles a woman plays in economics, politics, religion, and culture are what largely determine her social and legal standing. To determine the position of women in a culture, it is important to look at the opportunities that are available to both men and women.

THE LEGAL AND SOCIAL STATUS OF WOMEN IN INDIA

Since the beginning of time, women have been oppressed in a planned and conscious way, as history shows. The answer to this question will help us understand the truth about a woman's place in society and whether she is as essential as a man. Historian Romila Thapar says, "Within the Indian subcontinent there have been infinite variations on the status of women diverging, according to cultural milieu, family structure, class, caste, property rights and morals." A short summary of the status of women in ancient India shows that it was very unclear and complicated. The reason is that contradictory statements are used in many Vedic writings, religious texts, and even in the same text at different points. During the Vedic period, women in India were held in great regard in society. They were given the same chances as males to reach high levels of intelligence and spirituality. The Vedic period is well known as the time of women's glory. Women had a lot of independence in their lives, including the right to choose their husbands and be married on their own terms. People didn't know about sati, the purdah system, or marrying off girls. In this time period, women had a lot of the same rights and freedoms as women do now in the Western world. But the women's position didn't last long; their standing dropped after the Vedic period and continued to do so during the Epics and

¹² Pandit Sri Rama Ramanuja Achari, *The Hindu Sacrament of Marriage* 79 (Simha Publications) available at : http://www.srimatham.com/uploads/5/5/4/9/5549439/the_hindu_sacrament_of_marriage.pdf

¹³ Ibid

¹⁴ *T. Sareetha v. T. Venkata Subbiah*, AIR 1983 A.P 356

¹⁵ *Moonshee Buzzoor v. Shumsoonissa Begume*, II M.I.A 551 P.C,

¹⁶ Hindu Marriage Act, 1955, s. 9

¹⁷ Special Marriage Act, 1954, s. 22

Puranas. Women were seen as personal property during this time. Women in the higher caste had to follow tight regulations. This time saw the start of the practice of child marriage. During the Mauryan Dynasty, the writings of Arthashastra and Chanakya Niti set strict rules for women. Without her husband's permission, a lady couldn't even move about freely. Manu's famous injunction in Manusmriti, which said, "As a girl she should obey and seek protection of her father, as a woman her husband and as a widow protection of her son," made it obvious that women were subordinate. and that her husband is her God. The years from the 11th to the 18th centuries saw women's status go even worse. Women, especially Hindus, couldn't possess or inherit property. This was another reason why women were submissive: they depended on the men in their families for money. Women in India had a hard time at this time. Some of the evil customs that hurt women's status in the country were female infanticide, child marriage, sati, the purdah system, devdasis, and slavery. These became rituals or norms. The growing power of men over women and the birth of rituals and norms that pushed women into subservience were major setbacks for women's status.

The National Commission for Women

The Committee on the Status of Women in India, 1971, advised almost twenty years ago that a National Commission for Women be set up to keep an eye on things, help women file complaints, and speed up women's social and economic growth. In 1990, the federal government talked to NGOs, social workers, and experts on how the Commission would be set up, what its roles and powers would be, and other topics. The Bill was first brought up in the Lok Sabha in May 1990. There was a conference for the whole country. The Ministry of Human Resource Development (HRD) requested for thoughts concerning the Bill in July 1990. In August 1990, the government made a number of amendments and established new provisions that gave the Commission the same power as a civil court. On August 30, 1990, the President signed the Bill into law. The "National Commission for Women" (NCW) was set up as a legal group in January 1992 to look at the constitutional and legal protections for women, suggest changes to the law, help women get their complaints heard, and advise the government on all policy issues that affect women.

LAWS FOR MARITAL RAPE IN INDIA AND ITS LIMITS

The Indian Penal Code of 1860 and the Domestic Violence (DV) Act of 2005 both show that the assertion that marital rape is not a crime in India is not true. In India, marital rape is just a crime in a very limited sense. The DV Act of 2005, on the other hand, Victims of sexual abuse can only get civil help. There is no explicit law under Indian Criminal Law that uses the phrase "marital rape." However, terminology like "sexual intercourse with his own wife without her consent," "sexual acts by a man with his own wife," and "sexual abuse" all incorporate parts of what happens during marital rape. This brings us to India's many criminal and civil laws, which, in a limited way, have recognised marital rape as a crime. In India, marital rape or rape inside a marriage only happens when the wife is younger than 18. The Indian Penal Code's Exception 2 to Section 375¹⁸ says that "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape." In India, this means that having sex with a wife who is under 18 without her consent is considered marital rape. But if the wife is older than 18, this exception means that the husband can't be held responsible for having sex with her without her consent. The recent requirement that people be at least 18 years old is really based on the Supreme Court's landmark decision in the case of Independent Thought v. Union of India and Others¹⁹. The Supreme Court said that having sex with a girl under the age of eighteen constituted rape, no matter if she is married or not. The Court said that the exception doesn't make sense in relation to any unclear aim being pursued. Instead, it introduces an arbitrary and unnecessary difference between married and unmarried female children. There is no need to treat the IPC, 1860 and POCSO requirements differently.

The law of 2012. The court further said, "The rapist cannot be changed into a non-rapist because he is married to the victim." This kind of fake difference is unfair and random, and it is definitely not in the best interests of the girl youngster.

Section 376(B) of the Indian Penal Code says, "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

¹⁸ Indian Penal Code, Exception 2 to s. 375

¹⁹ Independent Thought v. Union of India, (2017) 10 SCC 800, p. no. 1, 2

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." This section also recognises the act of marital rape. This section's regulation is rather limited because it only applies to cases where men rape their wives while they are living apart from them (for example, due of a separation decree or something else).

The problem with this rule is that it makes a clear difference between rape and cruelty, which are not the same thing. Section 498A of the IPC does not cover the offence of rape as defined in Clauses (a) to (d) of Section 375, IPC.

Section 498A's remedies aren't enough to deal with cases of marital rape because the crime and act of rape are different from the crime and act of cruelty. The main goal is to show the crime of rape for what it is. If these laws are enough to make sure that all Indian women get the same amount of justice. Dr. Chitra Awasthi says²⁰, "Having the tool to validate is the first step to breaking the silence." The last thing that men have power over is women's bodies and sexuality. It will take some time to break it. But as a society, we need to start talking and put pressure on lawmakers to do something. Laws are made to reach certain ends. These goals are what the law is all about. To protect all women from all kinds of assault, we need a fair law right away. Law for the sake of law doesn't do anything and eventually loses its ability to rule a country and its people. The legislation on marital rape is not good enough because it says that a husband can't be imprisoned for raping his own wife because marriage implies consent to sex. Does this indicate that the husband can have sex like this whenever and wherever he wants without asking his wife?

The legal system in India handles rape within marriage this way:

In the last chapter, we spoke about how the courts took the lead in acknowledging women's rights and then protecting those rights with creative, brave, and forward-thinking decisions that are still seen as significant today. But the legal community hasn't yet come to a clear agreement on the rules on marital rape. Everyone knows that the English common law system was the basis for the written laws that protected couples from being sued. It's funny that England has totally gotten rid of marital immunity through court decisions and later writing down the rules on marital rape. In India, though, marital rape is not against the law, with very few exceptions. This part talks about how the Indian courts deal with cases of marital rape and the examples that different High Courts are making in this area. The most recent and keenly awaited case that deals directly with the issue of marital rape is "RIT Foundation v. Union of India."²¹ The Delhi High Court's two-judge bench has come to a divided conclusion in this case. One judge wants the marital rape exception to be removed, while the other does not. The decision in this case was made on May 11, 2022. Because this case is so important, we need to go into great detail on the issues it highlighted and the two different decisions rendered by the Delhi High Court's division bench.

The question in this case was "Should a husband be held criminally liable for raping his wife who is not under the age of 18?" or more specifically, "Should Exception 2 that is appended to Section 375 of the Indian Penal Code, 1860 remain on the statute?" The judge also said that "those who seek striking down Exception 2 to Section 375 of the IPC also seek striking down Section 376B, which concerns sexual intercourse by a separated husband with his wife, without her consent." Therefore, a motion is also made to invalidate Section 198B of the Code of Criminal Procedure, 1973, which forbids a court from considering an offence punishable under Section 376B of the IPC unless the facts constituting the offence are satisfied after a wife files a complaint against her husband. It's important to remember that there were two other petitions related to this issue. The first one, number , was also a public interest petition, and the third one, number , was about a woman named Ms. Khushboo Saifi. In the third petition, the person who filed it said that her husband had raped her and done other sexual abuse to her. She says she can't go through with the complaint about the rape claims against her husband since the marital rape exception is still in place.

The Independent Thought v. Union of India and Others²² case was also brought up, which shows that the Supreme Court's rationale and logic in the case in issue are very important and should not be ignored.

The Supreme Court basically said that Exception 2 to Section 375 IPC does not cover sexual acts or contact between a man and his wife if they are both under the age of 18. This means that the court did not create a

²⁰ Dr. Chitra Awasthi is an educationist, writer and philanthropist. RIT Foundation is a non-profit organisation founded in the year 2009 under her leadership

²¹ RIT Foundation v. Union of India, W.P.(C) 284/2015 & CM Nos.54525-26/2018, p. no. 5

²² Independent Thought v. Union of India, (2017) 10 SCC 800, p. no. 1, 2

new crime by interpreting Exception 2 to Section 375 IPC. Justice Shakti Singh²³ said that Exception 2 to Section 375 IPC violates Article 21 of the Indian Constitution. The reason for this is that the crime of rape and the devastation it does are always the same, no matter who the perpetrator is. A woman has the right to life and liberty, which includes the right to protect her mental and physical health. This right is based on the fact that she can change her mind at any time. Non-consensual sex violates her autonomy, agency, bodily integrity, dignity, and choice to have children or not. The "marital rape exemption" is a legal loophole that ignores the victim's safety and well-being. The Judge says that the exemption from marital rape goes against both Article 15 and "Article 19(1)(a)" of the Constitution. This exception is against Article 15 of the Constitution because it allows discrimination against women based on their marital status. Justice Shakti Singh says that the exemption from marital rape also goes against Article 19(1)(a) of the Constitution because it takes away the freedom of expression that married women who are citizens of this country are guaranteed by the Constitution, among other things. The freedom of expression provision includes women's right to proclaim their sexual agency and autonomy.

The Supreme Court's decisions were also very crucial in the matter of *Suchita Srivastava and Others v. Chandigarh Administration*²⁴. In this case, the Supreme Court ruled that women's rights should be protected. Article 21 of the Indian Constitution says that making reproductive choices is part of "personal liberty." The court said that a woman's right to reproductive choices, such as the right to choose birth control methods and have or not have sex, should be protected along with her right to privacy, dignity, and bodily integrity. These are just a few examples of how the Indian judiciary has been responsible for protecting women's rights in the country. It doesn't make sense to say that the courts shouldn't set rules for making marital rape a crime in India because the courts have often taken the lead in recognising and protecting the rights of married women. India should learn from the courts of countries like the United Kingdom, Nepal, Australia, and the United States, which helped remove the marital rape exception.

CONCLUSION AND SUGGESTIONS

India's laws around rape are full of contradictions. India has not passed stringent and effective laws against marital rape, which makes it difficult for women to fight against it. To recognise a violent act as the first step towards a broader goal, which is to protect and uphold the women's inherent dignity and freedom, is a crime.

When people know the laws, they can use them to reach the underlying aim of the law. One of the main purposes of a democratic state is to preserve and promote the rights of all citizens, regardless of their gender, marital status, or social level. India must protect the rights of women as citizens because of a number of international accords. But instead of protecting and supporting women's rights, the country is dodging its responsibilities by arguing it is doing so to protect marriage, culture, and values.

Rape is an act of violence that isn't based on a man's physical strength but on the concept that men have more social power than women, which is supported by laws that encourage male domination. The study "License to Rape" by Finkelhor and Yllo indicates that the anguish that victims of marital rape go through shortly after and for a long time after is distinct from the suffering that victims of stranger rape go through. The feelings that a victim of marital rape goes through can be too hard to put into words, although they can be described as anger, betrayal, shame, and guilt. Years later, most women still feel the emotional impact of being raped by their spouses. Long-term effects of marital rape include fear of being assaulted again, not wanting to be close to people or have sex, and not being able to trust men. In her book *Rape in Marriage*, Diana Russell talks about how people often think that rape in marriage is less traumatic than rape by a stranger. Judges are more likely to be tolerant with husband rapists than with other rapists because of this assumption.

SUGGESTIONS

Professor Sandra Fredman from the University of Oxford told the Justice Verma Committee that "training and awareness programs should be provided to make sure that everyone in the criminal court system and regular people know that getting married does not mean the wife loses her legal or sexual freedom. The proposals and recommendations are based on the same school of thinking as Professor Fredman and also on

²³ RIT Foundation v. Union of India, W.P.(C) 284/2015 & CM Nos.54525-26/2018, p. no. 5

²⁴ *Suchita Srivastava v. Chandigarh Administration*, 14 SCR 989 (2009) p. no. 5

the in-depth research and analysis done for this study on the topic of marital rape in India. They are split into two parts.

Education The main goal of this study has been to make people more aware of how severe marital rape is. The first step is to recognise that marital rape is a crime. To protect its victims and stop the crime from happening. The easiest approach to do this is to teach people about the crime and make sure they understand what it is. There are a lot of misconceptions and social beliefs about marital rape that need to be taken away. This study showed that survivors of marital rape typically have trouble calling their experience rape because of the traditional, conventional ideas of coverture, marital commitment, and husbands' dominance over their wives. The ideals and beliefs about marriage that society had made it hard for the wife to call what happened to her marital rape. Teaching people that calling forced sex by husbands rape is not only empowering for women, but it is also a step towards change.

Teaching both men and women the difference between marital sex and marital rape will help. The myth and taboo surrounding the topic of marital rape can only go away if people are more aware of it. This can be done in the following ways:

- To use information that is available to everyone to raise awareness of the problem of marital rape.

This can help people who have been raped by their spouse realise that they are not alone and that there are other survivors.

- To let women understand that rape in marriage isn't only an issue for them. They should be able to talk about it and get support without feeling bad about it.
- To teach women that they have a basic human and legal right to their own bodies and that saying "yes" to marriage does not mean saying "yes" to sex with their spouses or partners. Marriage does not give the husband power over the wife, and both the husband and wife have the same rights in marriage.
- To help women understand that getting married doesn't mean they have to give up their right to choose their own sex life. They can say yes to sex with their husband or no.
- To help them teach their daughters and other women in the family about their basic human rights and how to get help if these rights are ever abused.
- To teach women that their husbands have responsibilities to them as well, like respecting their wives' rights and not breaking them. Rape is a crime and a violation of a wife's rights.

Service providers and outreach to the community

One strategy to help the victims of marital rape is to reach out to them. Another reason why victims of marital rape have such a hard time talking about or naming their experience as marital rape is that society has made the issue of rape in marriage seem normal and less serious. There is not enough information available for victims of marital rape, and there aren't enough people to help them. Non-Governmental Organisations (NGOs) and other government officials who are already helping survivors of marital rape can raise awareness and consciousness in the larger community through educational forums and community development programs that talk about what marital rape is, how it is a crime, and what resources are available for survivors. The way service providers treat victims of marital rape and try to comprehend what they went through will influence the way people think about marital rape not being as severe a crime as stranger rape. Here are some suggestions based on what was said above:

- Talking about it on TV, on numerous websites, in newspapers, magazines, and on the radio are all ways to reach out to victims.
- Service providers can learn about this type of violence through proper education, presentations, programs, seminars, orientations, and trainings.
- Women who are victims of marital rape live in continual fear of violence from their husbands. These women need extra protection, and in many cases, the only way out is to find a new place to live. It is also

necessary to provide shelter homes for these survivors so that women can leave their homes in an emergency without worrying about their stay, rent, or the health of their children. • Staff and volunteers at women's shelters should get the right training so that the survivors of marital rape can get the treatment and support they need. Service providers should learn how to ask victims questions in a systematic and sympathetic way. This will help the victim see their experience as marital rape. Service providers should be taught how to spot survivors of marital rape, how common this sort of violence is, and what resources are accessible to these survivors. Education will also help service providers learn about the laws of marital rape and the legal choices accessible to victims, such as filing police reports, getting restraining orders, getting money right away, and more.

Legal reforms

The reasons or defences given to justify not punishing marital rape are not convincing. It is an issue and a reason for it to happen. Not making marital rape a crime lets both men and women think that it is okay. So, the first thing to do is to make marital rape a crime in India by declaring it illegal in the country's criminal law. The researcher's suggestion is that India should get rid of the marital rape exemption provision in exception 2 to s.375 IPC and make marital rape a crime. The idea that wives were their husbands' property led to the idea and law of marital rape exemption, which meant that a husband could not be charged with raping his wife. So, the only way to fix this is to stop seeing wives and women as property or as people who are less important than their husbands. When the law doesn't say anything about husbands raping their wives, it violates their basic rights to life and liberty, equality, integrity, and sexual freedom.

The legislature has the power to make any law valid, and since the equal protection approach says that everyone should be treated the same, the legislature should get rid of the exception for marital rape. Also, the law should be very clear that any relationship, whether married or not, between the accused and the victim cannot be used as a defence against rape and sexual assault. The law should also say that marriage does not mean that the parties automatically agree to have sex. Being married does not mean that you have given your consent.

People need to change how they think and act, especially men towards women. Changing or adding to laws on marital rape may help a little, but until there is a big change in society as a whole. The problem of marital rape will continue to exist even with the legislation and legal changes that are now in place. We can't look at the problem of marital rape on its own since it doesn't happen in a vacuum.

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