

LAWS RELATING TO MARITAL RAPE IN INDIA

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ABSTRACT

Marital rape cases are a significant concern in this era. Women in both rural and urban areas have faced such occurrences in their lives. Marital rape can significantly impact the physical health of the women and it can also detrimental effect on the mental health of victims. One of the significant long-term effects of marital rape is post-traumatic stress disorder which can usually be found in war and natural disaster victims. Marital rape is also a significant concern in countries such as India. This report has highlighted the experiences of women with Marital rape and sexual violence in Indian marriage settings. This report also has emphasised different acts in the Indian judiciary system which address marital rape such as IPC section 375, section 376 and Indian Act of 19,21. This report has also highlighted marital rape and laws in India and discussed IPC section 498 A which addresses marital rape and violence against women. This report has also highlighted different challenges of deploying marital rape laws such as concerns of the Indian government about communalising Marital rape. The old law of IPC section 375 is still maintained which has created difficulties for women has been highlighted here.

Keywords: marital Rape, Sexual Violence, Women's Health, Mental Health, Post-Traumatic Stress Disorder, Indian Judiciary, IPC section 375, IPC section 376, IPC section 498A, Legal Challenges, Communal Concerns, Women's Rights, India.

I. INTRODUCTION

Laws regarding marital rape are important due to these laws which help to address the protection of women from sexual abuse and domestic violence. The risk of marital rape increases by 70% when there is a domestic violence in the relationship. There are several Marital rape cases as about 30% of adult rape cases are committed by a partner and 29% of adult sexual assaults are committed by a partner.¹ Laws regarding marital rape also ensure that women are not denied their fundamental rights. This aspect is significantly important for India as according to a survey of NFHS-5 nearly 34% of women in rural areas and 27% of women in urban areas have experienced spousal violence in their lives.² These laws also provide legal remedies for women and provide the opportunity to seek legal separation from abusive spouses. The primary aim of this research is to evaluate how the Indian judiciary system addresses marital rape and different laws regarding it.

¹ Institut national de santé publique du Québec. (2022). Prevalence of sexual abuse among adults | INSPQ. [online] Available at: <https://www.inspq.qc.ca/en/sexual-violence/statistics/adults>

² Government of India (2022). INDIA REPORT. [online] Available at: <https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf>.

II. MAIN BODY

Women's experience of Marital rape and sexual violence within Indian marriage:

India broke into outrage after there was a murder of health professionals regarding rape and assault in 2012. This has created several public demands to address the issue regarding violence against women and changes within the criminal justice system. The Indian government had created a response by introducing amendments to the criminal law. The **Indian domestic violence act** was previously one of the earlier ways for penalising marital rape in India as it regarded marital rape as a form of domestic violence³. The **law of 2005** provided a lesser jail term than non-marital rape. This revolutionary verdict allowed the woman to go to court and obtain judicial separation from their husband. India is among the 32 countries that are far away from criminalising rape.

Section 375 of the Indian penal code has identified sexual intercourse with a woman against her will is considered as rape.⁴ However, if the husband and wife are living separately, there will be a significant exception. The court has also identified that it will be very difficult to determine the withdrawal of consent by a married woman. The Centre of the Indian government has also highlighted that the laws regarding marital rape can apply in other countries but not in India as multiple socio-economic factors have set India apart. Multiple petitioners have argued regarding the criminalisation of marital rape as an irregularity regarding fundamental life and dignity protected under the **Indian Act of 19,21** of the Indian constitution⁵. The petitioners have also highlighted that rape exception can create an identified difference between married and unmarried women. The assumption regarding consent will not be valid as it is highlighted that the consent can be easily withdrawn.

The Biggest change which was found in marital rape and sexual violence had been the Nirbhaya case in 2012. Justice Rajiv Shakhder had identified that married women should not be treated differently and consent should be taken when compared to unmarried women⁶. Article 15 has provided equality which has included that conjugal expectations cannot be considered with unbridled Access. It was also highlighted as a fact that if the rapist is the husband of the victim, it might not make it as an act of sexual assault any less injurious. Equality needs to be provided to all the citizens within marriage and recognition is to be a serious offense for the protection of the victims.

³ Deosthali, P.B., Rege, S. and Arora, S., 2022. Women's experiences of marital rape and sexual violence within marriage in India: evidence from service records. *Sexual and reproductive health matters*, 29(2), p.2048455. <https://www.tandfonline.com/doi/pdf/10.1080/26410397.2022.2048455>

⁴ Narayan, C.L., Narayan, M., Agarwal, K., Seth, L. and Deepanshu, M., 2023. An overview of criminal laws in India about sex and sexuality. *Journal of psychosexual health*, 5(1), pp.23-29. <https://journals.sagepub.com/doi/pdf/10.1177/26318318221133723>

⁵ Pandey, G. (2024). India government says criminalising marital rape 'excessively harsh'. [online] Bbc.com. Available at: <https://www.bbc.com/news/articles/c80r38yeempo>.

⁶ Gupta, A. and Mehta, A., 2023. Nuptial Rape: Rape Within Marriage. *Indian Journal of Social Science and Literature*, 3(1), pp.6-11. <https://www.ijssl.latticescipub.com/wp-content/uploads/papers/v3i1/A1067093123.pdf>

Marital rape and Laws in India:

The legal stance, regarding marital rape, is dependent on the age of the wife which can lead to a complicated situation of legal protection. Section 376 of the Indian penal code states that there should be definite imprisonment for at least 7 years⁷. This can be further extended to almost 10 years based on the severity and the issue. The accused needs to serve imprisonment along with a fine. However, there can be exceptions regarding the victim if she is someone's wife and not under 12 years of age. In this case, the punishment for the accused can be mitigated to imprisonment for less than 2 years or just a fine. This inequality can provide concern regarding the safety standards for women above the age of 15 which is quite different from the popular human rights principles. Human rights organisations that have included the All India Democratic Women's Association have tried to stress marital rape as a serious case of violence and pledged the government a response. The new code has to be shifted from the colonial era as this might violate the sanctity of marriage.

Indian penal code has highlighted that rape of a wife above 15 years of age is not punishable under the law system. The law has also stated that a rape of a separated wife by jurisdiction can create a punishment of 2 years and a fine. **The 2005 act of enactment** regarding the protection of women from domestic violence had inspected marital rape just like domestic violence⁸. This act has strengthened the women for taking help in legal answers for marital rape. This law is vital in creating a chance of separation for a wife from an abusive husband. However, the loss and mechanism need to be strengthened as victims are multiple times safeguarded and there is lesser evidence regarding addressing the importance of the sensitive issue. The law has been created for a woman to have a demand regarding her own life and freedom within marriage. The definition of rape is needed to be redesigned as there are certain imbalances which are highly visible for the age gap. In the present time, **section 498 A** has been related to cruelty which is emerged for protecting women from multiple issues of violence and marital rape.

The United Nations has assessed that India is one of the few counterchanged have not changed their stance regarding marital rape. The country which has more than 2.6 Billion women has not been explicitly criminalised. It is also found from the National Health Survey that Indian women can have chances to face 17 times more sexual violence from their husbands than anyone.⁹. In the present time, marital rape is historically changed and shaped within private areas

⁷ India code (2024). India Code: Section Details. [online] www.indiacode.nic.in. Available at: https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=425.

⁸ Osborn, M. and Rajah, V., 2022. Understanding formal responses to intimate partner violence and women's resistance processes: A scoping review. *Trauma, Violence, & Abuse*, 23(5), pp.1405-1419. https://www.researchgate.net/profile/Valli-Rajah/publication/344905874_Understanding_Formal_Responses_to_Intimate_Partner_Violence_and_Women's_Resistance_Processes_A_Scoping_Review/links/5f9878d4a6fdccfd7b84a879/Understanding-Formal-Responses-to-Intimate-Partner-Violence-and-Womens-Resistance-Processes-A-Scoping-Review.pdf

⁹ Kayser, G.L., Chokhandre, P., Rao, N., Singh, A., McDougal, L. and Raj, A., 2021. Household sanitation access and risk for non-marital sexual violence among a nationally representative sample of women in India, 2015-16. *SSM-Population Health*, 13, p.100738. <https://www.sciencedirect.com/science/article/pii/S2352827321000136>

and protected from being a criminal offence. This provides an in-depth problem regarding criminal offence and patriarchal ideologies that are inbound within the conceptions of marriage.

The thinking of men has been also highlighted as there is a preservation regarding power dynamics within the material unit. The hierarchical culture has highlighted that women and their bodies are secondary to maintaining societal norms of male dominance in the domestic area.¹⁰. The issues regarding women's rights have displayed societal problems and old traditions that have highlighted male privilege. It has also been assessed that gender inequalities need to be reshaped as the hierarchical culture can create a strange amount of terror and problems within women. The reports have also highlighted that legal recognition and protection for marital rape victims are quite less. In recent times the Global area has highlighted that Global violence is an international issue that needs to find a remedy. The United Nations has created CEDAW which has required signature states that includes acquaintance and rape based on freely given consent.

Challenge to the Marital Rape Exception:

The centre of the Indian government has highly displayed concerns regarding issues of marital rape as not just a constitutional question but also a complex social problem. The government has tried to highlight the dangers regarding the social and legal problems which are criminalising marital rape. Prosecutors have tried to pledge to the court to create an in-detailed approach for creating a strict legal framework for issuing any broader social consequences. An affidavit had been created for providing petitions regarding the constitutionality of marital rape exception. The Exception provided the husband from being prosecuted for rape if the wife was an adult. This old rule of section 375 has been still maintained which has created a challenge for the women.¹¹. This was highlighted more when the supreme court of India had provided its judgement regarding rape as an excessively harsh and disproportionate thing. This judgement by the renowned petitioner has also highlighted that there is a certain change within the Indian judiciary system. The honourable court has also tried to adopt a balanced approach to providing an engagement within the fundamental rights. The biggest gap which has been faced in India is the issue of underreporting as marital rape is often highlighted as a Taboo issue.

Multiple times women face problems as it is very difficult to display and prove whether consent has been given as married couples often have sex¹². This issue is an offence less serious than rape outside of marriage. Women also face ambiguity in the law and split judgements can

¹⁰ Sivakumar, I. and Manimekalai, K., 2021. Masculinity and challenges for women in Indian culture. Journal of International Women's Studies, 22(5), pp.427-436. <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2461&context=jiws>

¹¹ Sinha, K., Kumari, R., Kumari, P., Parween, S. and Singh, K.P., 2022. Policies and social work against women violence. In Research Anthology on Child and Domestic Abuse and Its Prevention (pp. 241-261). IGI Global. https://www.researchgate.net/profile/Keshav-Sinha-2/publication/351902769_Policies_and_Social_Work_Against_Women_Violence/links/60af2d9192851c168e43cdd/e/Policies-and-Social-Work-Against-Women-Violence.pdf

¹² Dandona, R., Gupta, A., George, S., Kishan, S. and Kumar, G.A., 2022. Administrative data deficiencies plague understanding of the magnitude of rape-related crimes in Indian women and girls. BMC Public Health, 22(1), p.788. <https://link.springer.com/content/pdf/10.1186/s12889-022-13182-0.pdf>

create further difficulty for the survivors in pursuing legal actions¹³. Multiple women have argued that criminalising marital rape can disrupt traditional family values and societal structure. This can further create chances of threat to a woman's life by her husband and in-laws. Multiple people believe that dissatisfied and vengeful wives might charge their innocent husbands with false cases of marital rape. Judicial activism such as infighting constitutional guarantees and protecting bodily autonomy. The exceptions regarding marital rape can be highlighted and justified that women can need protection and this can instil a belief that there are lesser chances of belief that a man cannot commit a crime against their possession. The notion of cultural and social norms of India has connected families through the community¹⁴. For this reason, multiples have created a thought that intrusion of criminal law can have an impact on religious sanctity. More than this, the non-interference in the government can separate the public.

Overall the severity of the issue is going through a certain change as the two-judge division bench in Delhi High Court has created a constitutionality regarding marital rape and its exclusion regarding different factors of age.

III. CONCLUSION

This research has successfully delved into the procedure regarding the Indian judiciary system addressing marital rape and different laws regarding this aspect. This research has highlighted that section 375 of the Indian penal code has tagged sexual intercourse against the will of her as rape. Section 376 of the IPC has mentioned that there should be imprisonment for marital rape of at least 7 years. This research has also highlighted marital rape and laws regarding it. It has also discussed that IPC section 498 A which has emerged for protecting women from multiple issues such as violence and Marital rape. This report has also demonstrated different challenges to the Marital rape exception where it has discussed that marital rape is not just a concern for the judiciary system of India but it is a complex social issue. The government has also demonstrated its concern about criminalising Marital rape which has been concluded here.

REFERENCES

- [1]. Institut national de santé publique du Québec. (2022). Prevalence of sexual abuse among adults | INSPQ. [online] Available at: <https://www.inspq.qc.ca/en/sexual-violence/statistics/adults>
- [2]. Government of India (2022). INDIA REPORT. [online] Available at: <https://dhsprogram.com/pubs/pdf/FR375/FR375.pdf>.
- [3]. Deosthali, P.B., Rege, S. and Arora, S., 2022. Women's experiences of marital rape and sexual violence within marriage in India: evidence from service records. *Sexual and reproductive health matters*, 29(2), p.2048455. <https://www.tandfonline.com/doi/pdf/10.1080/26410397.2022.2048455>

¹³ Goodmark, L., 2021. Gender-based violence, law reform, and the criminalization of survivors of violence. *International journal for crime, justice and social democracy*, 10(4), pp.13-25. <https://search.informit.org/doi/pdf/10.3316/informit.182448386996612>

¹⁴ Van Hook, J. and Glick, J.E., 2020. Spanning borders, cultures, and generations: A decade of research on immigrant families. *Journal of Marriage and Family*, 82(1), pp.224-243. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10135437/>

- [4]. Narayan, C.L., Narayan, M., Agarwal, K., Seth, L. and Deepanshu, M., 2023. An overview of criminal laws in India about sex and sexuality. *Journal of psychosexual health*, 5(1), pp.23-29.<https://journals.sagepub.com/doi/pdf/10.1177/26318318221133723>
- [5]. Pandey, G. (2024). India government says criminalising marital rape 'excessively harsh'. [online] Bbc.com. Available at: <https://www.bbc.com/news/articles/c80r38yeempo>.
- [6]. Gupta, A. and Mehta, A., 2023. Nuptial Rape: Rape Within Marriage. *Indian Journal of Social Science and Literature*, 3(1), pp.6-11.<https://www.ijssl.latticescipub.com/wp-content/uploads/papers/v3i1/A1067093123.pdf>
- [7]. India code (2024). India Code: Section Details. [online] www.indiacode.nic.in. Available at: https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=425.
- [8]. Osborn, M. and Rajah, V., 2022. Understanding formal responses to intimate partner violence and women's resistance processes: A scoping review. *Trauma, Violence, & Abuse*, 23(5), pp.1405-1419.https://www.researchgate.net/profile/Valli-Rajah/publication/344905874_Understanding_Formal_Responses_to_Intimate_Partner_Violence_and_Women%27s_Resistance_Processes_A_Scoping_Review/links/5f9878d4a6fdccfd7b84a879/Understanding-Formal-Responses-to-Intimate-Partner-Violence-and-Womens-Resistance-Processes-A-Scoping-Review.pdf
- [9]. Kayser, G.L., Chokhandre, P., Rao, N., Singh, A., McDougal, L. and Raj, A., 2021. Household sanitation access and risk for non-marital sexual violence among a nationally representative sample of women in India, 2015-16. *SSM-Population Health*, 13, p.100738.<https://www.sciencedirect.com/science/article/pii/S2352827321000136>
- [10]. Sivakumar, I. and Manimekalai, K., 2021. Masculinity and challenges for women in Indian culture. *Journal of International Women's Studies*, 22(5), pp.427-436.<https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2461&context=jiws>
- [11]. Sinha, K., Kumari, R., Kumari, P., Parween, S. and Singh, K.P., 2022. Policies and social work against women violence. In *Research Anthology on Child and Domestic Abuse and Its Prevention* (pp. 241-261). IGI Global.https://www.researchgate.net/profile/Keshav-Sinha-2/publication/351902769_Policies_and_Social_Work_Against_Women_Violence/links/60af2d9192851c168e43cdde/Policies-and-Social-Work-Against-Women-Violence.pdf
- [12]. Dandona, R., Gupta, A., George, S., Kishan, S. and Kumar, G.A., 2022. Administrative data deficiencies plague understanding of the magnitude of rape-related crimes in Indian women and girls. *BMC Public Health*, 22(1), p.788.<https://link.springer.com/content/pdf/10.1186/s12889-022-13182-0.pdf>
- [13]. Goodmark, L., 2021. Gender-based violence, law reform, and the criminalization of survivors of violence. *International journal for crime, justice and social democracy*, 10(4), pp.13-25.<https://search.informit.org/doi/pdf/10.3316/informit.182448386996612>
- [14]. Van Hook, J. and Glick, J.E., 2020. Spanning borders, cultures, and generations: A decade of research on immigrant families. *Journal of Marriage and Family*, 82(1), pp.224-243.<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10135437/>