

## CRITICAL ANALYSIS OF MARITAL RAPE IN INDIA

*by*

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### ABSTRACT

India is one of 36 countries worldwide that also exclude husbands from rape against their spouses and grants them moral protection. Sometimes, women have attempted to fight this in a case that may not prevail nor offers support for the perpetrator. Marital rape is an important issue.

The current paper focuses on how in the constitution of contemporary India, the concept of marital abuse is thought unlikely.

The paper further analyses the need for marital violation law as an entity in the legal system of marriage, rather than only in the sense of a penal overhaul. It further concludes that it is important to specifically enforce marital rape laws for adult women and not just single women to curb continuing conflicts in India.

**KEYWORDS:** marital rape, offence, women, section 375

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## **REVIEW OF LITERATURE**

### **1. Category- Article**

- **Feminismindia.com**

Marital rape is an act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element. It is considered as a form of domestic violence or sexual abuse.

In more broader terms marital rape is any unwanted sexual acts by spouse or ex-spouse, committed without consent or against a person's will, obtained by force, threat of force, intimidation, or when a person is unable to consent. These sexual acts include intercourse, anal or oral sex, forced sexual behaviour with other individuals and other sexual activities that are considered by the victim as degrading, humiliating, painful, and unwanted.

### **1. Indianexpress.com**

- **Category- Article**

Rape is an offence, which hinges on the absence of consent of the woman. It is important to realize that the absence of consent does not have to be only in the form of the word 'no'. It should be assumed from the context of the situation. Within a marriage, if a woman gives consent to sexual intercourse because of threat of injury to children or herself, depriving the woman of the right to stay in the house or receive maintenance, it is not valid consent. It is still rape.

## **INTRODUCTION**

“You can tell the condition of a nation by looking at the status of its women.”

— Pandit Jawaharlal Nehru

While marital rape is an abominable offence, it is not seen as such by Indian legislation. Notwithstanding the growing instances, no legislation can even describe marital rape. 1 in 3 men cause their wives to be raped, and one Indian woman per 3 seconds is raped by her spouse. Marital rape is the rape that takes place while the victim's partner is the attacker. Even the word rape considers the act as sexual assault or sexual abuse in the absence of permission. Lack of consent is also an integral factor of evidence of the crime of rape. Under paragraph 375, the word rape is specified.

Crime code of Indian. It is known as a felony. The concept of rape is broad and requires sexual intimacy and sexual penetration, for example oral sex.

However, the operation of this provision on sexual relations or sexual actions between a husband and a wife is omitted under exception.

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## **HYPOTHESIS**

The statute would not evaluate Article 14 when coping individually with married and single women in breach.

## **DOMESTIC VIOLENCE**

Domestic violence means when one partner abuses other in an intimate relationship such as marriage, dating or within the family.

There are five types of domestic violence:

- Physical
- Social
- Sexual
- Economic

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It starts when one partner feels superior and tries to dominate the other. Male have all the privilege and it operates on an individual as well as societal level.

Women throughout the world is found to be married and settled off in life. No others things apart from this can women do, the society thinks that.

Rights of women, power and position were accorded to men. In the 21<sup>st</sup> century though women were educated but still society interferes in between directly or indirectly.

The violent abuse of life is a widespread problem in India. Rape may be a sort of sexual abuse usually involves sexual activity which is initiated by one or more persons without the consent of another.

Gang rape also exists where more than two persons are involved. Minors are the victims of rape and they are being forced to do so. Rape has many forms: date rape, gang rape, marital rape, prison rape, war rape, statutory rape. The impacts of assault can incorporate both physical injury and mental injury.

Physical power isn't generally. The outcomes experienced by assault casualties incorporate vaginal contamination, torment, etc.

Brutal or constrained sex can build the threat of transmitting HIV.

The vast majority have the craving that they have including those that cause assault. Assault has become the most social I'll that have infiltrated the general viewpoint.

Part 44 of the Sexual Offences Act for Children, 2012, allows the use of the POCSO Act for the following opinions: -

- Designation of Special Courts;
- Appointment of Special Public Prosecutors;
- Designation and introduction of modules to train new accomplices;
- Measures taken to diffuse the communication on the POCSO Act intervention;
- Setting up the Children 's Services Commissions (CWCs), DCPUs and special youth policing units Special Infant Safety Units (SJPU)s;
- Amount of beginning cases of attack pending with the Court over a genuine duration of 1 year;

- Amount of benefit uses earned from the District Legal Services Authority, amount of special court proceedings approved, multiple proceedings ongoing for more than 30 days' salary measures etc.

### **OBJECTIVES**

- To understand the concept of marital rape in context of India.
- To analyze the cultural argument put forth by the court to not criminalize marital rape.
- To analyze the amendments taken place post Independent Thought V Union of India.

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## **RESULTS AND DISCUSSION**

### **ISSUE OF MAYOR LAW ON MARITAL RAPE:**

In Indian rule, marital breach is not an offence. Section 375 of the 1860 Indian Code describing rape not includes marital rape but includes the first two conditions of this provision in regard to marital rape. The only punishment for marital rape in two situations is I where a person is legally divorced from her spouse or (ii) whether the person is under age 15 and they continue to believe in patriarchal traditions which culminated in the concept that domestic abuse should be abolished indoor. The Indian Code states: (ii) the individual is separate in Section 375 of the Indian Code. (1860). The raping of women by a legitimately divorced individual was carried out in 1983 under Section 376-A of the Indian Code, 1860. Judge J.S. Verma 's study advises that marital rape should be avoided. This is the most relevant suggestion of every marital rape committee.

### **MARITAL RAPE: VIOLATION OF CONSTITUTIONAL RIGHTS:**

KuB. KuB. "Rapes are a fundamental infringement of freedom and a denial of fundamental rights for all victims, in other terms, of the right of rich citizens to live under Article 21 of the Indian Constitution," Gautam v. Subhrachakraborty, the top court of India, upheld. But the present penal statute is opposed by the marital rape in this decision. Finally, it breaches Article 21 's constitutional right to live with equality, for example. Consequently, legislative bodies shall reform Section 375 of the Indian Penal Code, 1860 and safeguard the violence by marital rape of women.

## **WHY IS MARITAL RAPE STILL NOT RECOGNIZED AS A CRIME?**

One issue we have in mind so far in the explanation of marital rape is that everyone knows why marital rape is not recognised as a crime in India, and how complicated this problem is. In India, it has been questioned for a long time whether rape is a crime in marriage. The UN seemed to propose to India that a man rape his wife as a crime.

The case of marital rape was one of the recommendations of the Verma Committee, a three-member panel appointed to enforce India's sexual harassment laws in the wake of the 2012 gang rape case. The Verma Justice Committee had suggested that rape should be carried out in violation of the law, a great need for women's rights activists. According to the committee the IPC should distinguish between marital rape and extramarital affairs. Under the IPC having unprotected sex is not allowed. However, the difference in the rape case is in the case of unacceptable sexual intercourse between a man and a woman. The Committee recommended that alternatives to marital rape be removed. Marriage should not be construed as an intractable act of sexual intercourse. Therefore, in the case of an investigation into whether a complainant consents to a sexual act, the relationship between the victim and the respondent should not be mutually exclusive. The government of the day, led by Congress, had rejected the proposal. A panel of lawyers opposed to the move at the time said it "has the power to destroy a marriage, if marital rape is done under the law, the whole family system will be under great pressure." The government finally passed a new law on sexual harassment, which did not bring a 2013 rape case.<sup>1</sup>

Culture and traditional law is used as a defense to resist the reform of marital rape.

Marital rape is a feature of the historical legacy that the Indian legal system still adheres to.

IPC was drafted during colonial rule and still follows the pattern of English law formed back then.

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<sup>1</sup> <https://www.whatishumanresource.com>



The constitution guarantees sexual autonomy to every individual in which dignity is at the core. The presumption of implied consent or lack of consent after marriage of a woman is antithetical to constitutional values.

Social morality can include the preservation of the exception to marital rape. This suggests a culture where women have a secondary position in marriage, which is feudal, weak and reverse and refrain from reforming when civil strife and disorder are brought on.

The exception to marital rape may be called for through social morality. This refers to a culture in which women perform subordinate roles in marriage, which is feudal, weak, and backward and refrains from reforming because it creates societal instability and confusion. Old actions that breach the simple.

### **RIGHTS OF WOMEN HAVE BEEN AMENDED. WHY NOT THIS ONE?**

“any legislation which results in the denial” of Constitutional guarantees to women “cannot pass the test of constitutionality”

-Justice D Y Chandrachud

- CASE LAW- INDEPENDENT THOUGHT V. UNION OF INDIA

In this case the plaintiff addressed the matter that under section 375 of the IPC there is an exception saying that a husband is permitted to have intercourse without consent with her wife, between the ages of 15 and 18. I independent Thought v. Union of India and Another (2017) 10 SCC 800. The legitimacy and constitutionality of this was challenged.

## **FACTS**

The Act on the Criminal Law Reform of 2013 expanded the age of sexual consent from 16 to 18 years and the POCSO Act set a minimum age for consensus sex in 2012. Under exception 2 of section 375, a spouse can be intimate with a minor (i.e. under 18) in nonconsensual terms if she is older than 15 years. The plaintiff of public interest lodged a written petition pursuant to Article 32 of the Constitution questioning the lawfulness and constitutionality of Exception 2, as it is both unconstitutional and prejudice against the girl's child.

## **ANALYSIS OF JUDGEMENT**

The division bench consisted of three judges all of them were in favor of the petitioner.

Earlier the law stated that consensual sex with a minor outside of marriage is rape but not so if the minor is married. This is a form of institutionalized pedophilia.

The exception 2 of section 375 creates an unreasonable distinction between a married child and unmarried child. This distinction jeopardizes article 14, 15(3), 21. Article 14 – the distinction between married and unmarried became non-existent. Doctrine of equality

Article 21 – a teenage girl has a privilege to live dignified lives that are breached by Exception 2. This rule is arbitrary in that it threatens a girl's physical dignity and option of reproduction. It indicates that a child is trafficked.

The amended definition states “Sexual Intercourse or Sexual acts by a man with his own wife, the wife not being 18 years, is not rape.” There is no double-edged sword and there are currently no regulations covering an adult woman confronted with sexual assault from her wife; this is a double-edged sword.

Thus, the debate above explicitly illustrates the violation of Articles 14 of the Constitution, exception 2 of Section 375 of the IPC. This indicates that the hypothesis according to the statute fails to verify Article 14, which is that married or single women are punished differently for abuse. It is time for Indian law to recognize and condemn the barbaric existence of this law.

Dilaasa, a rehabilitation center centered in K.B, notes a study that marital rape is reported in hospitals, such as Bhabha Bandra Hospital. However, it is barely recorded as it is exempt from the Indian Penal Code (PC) definition of rape.



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## **STATISTICS:**

Dilaasa has studied 13 emergency sexual assault reports from two public hospitals in Mumbai, Rajawadi in Ghatkopar and Bhabha (in cases of sexual abuse trained) during 2011-2014 and it finds that the police have reported just five cases, mostly under Section 498(A) (house violence), or the notorious Section 377 (unnatural off eats) Examples: A 31-year-old came to the hospital with injuries in her body, and although the police reported her declaration, they had not reported a case; a 22-yr-old boy who had a husband placed on her and then consequently kerosene was not registered in the case. For some cases, when a woman disclosed her husband's sexual aggression, officers have not understood what to do. 60% of married women experience sexual harassment, coercive sex being its prevalent type, according to the data on Dilaasa domestic abuse.

Its removal from the legal range also assured that it was never taken to Nagpada Police Hospital where all sexual harassment reports, including rape, are received and registered. Police surgeon Dr. S.M. Patil claims he has not seen a married woman in one situation during the five years he was posting to Nagpada Police Hospital. "Mainly the police carry the events."

The silence is modelled: women remain silent while they are young, but are able to reveal the attack later. In fact, the lawyer Manisha Tulpule, who manages cases of domestic abuse and family problems, remembered an especially appalling case in which the man had given a woman electric shocks to a vagina of his child. She said that after 25 years of protests, the woman had protested "The woman was over 50 before she protested."

In the past, complaints have become much rarer. A legislation might literally offer women more knowledge and trust in reporting the problem. Vrinda Grover, a prosecutor and a women's right activist assured me that "we can't believe women won't be safe disclosing this abuse." "Look at 498 (A) – in all its ways, women have submitted to the court brutality. The 13 women reported by Dilaasa who wished to

file a police report represents the increased visibility and concern in the issue.  
"Women have a stronger understanding that they should be viewed as human beings."<sup>2</sup>

### **SUGGESTIONS**

1. The law must specify that the marriage as a relation is not a defense.
2. Removal of the exception clause under section 375. In fact, it should be specifically mentioned to be a crime instead.
3. Just because a woman is in marriage doesn't mean her consent to sexual intercourse is implied. The best will be to handle agreement in the same way as in other situations.
4. The sentencing policy should be the same as given under section 376 of the IPC.<sup>3</sup>

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<sup>2</sup> <https://legalserviceindia.com>

<sup>3</sup> [https://www.researchgate.net/publication/303910426\\_MARITAL\\_RAPE\\_WHETHER\\_MARRIAGE\\_IS\\_A\\_LICENSE\\_TO\\_RAPE](https://www.researchgate.net/publication/303910426_MARITAL_RAPE_WHETHER_MARRIAGE_IS_A_LICENSE_TO_RAPE)

## **CONCLUSION**

It has been established that the argument of culture being a defense is baseless and does not qualify legally either. No substantive argument can be noted. These arguments against criminalization do not have any legal standing. The exception 2 clauses under section 375 is unconstitutional and fails doctrine of equality. In India, Marital rape as a concept is a big example of “implied consent”. There are no efficient solutions in legislation, but we do not rely on solutions, but on criminalizing them. Community that does not recognize marital rape does not constitute an excuse not to criminalize it.

In spite of all this, the exemption provision was proposed to be abolished. Secondly, the bond between husband and wife is clearly stressed will not be a defense. Third, the sentencing policy should be the same. Marital rape is rape. Laws which allow marital rape further allow the wife to be treated as a property of the husband and makes her vulnerable to sexual violence and abuse within marriage. Sex discrimination in Laws which silence issues such as marital rape

Actually, promote and perpetuate violence against women as there is legally no way to deter perpetrators from committing crimes. These laws are inadequate with respect to the fact that victims get no relief or have no legal remedy. In the Indian society, marital rape is the most common and repugnant form of masochism. Marital rape cases are dismissed in the court on the grounds that they are a personal matter and not a public cause or that the country isn't ready to accept such a reform.

Marital rape comes under matrimonial and criminal law but is stubborn and resistant to reform. Distancing marital rape from the constitution is infringement of fundamental rights. There is an urgent need to strike down the marital rape exception under section 365 of the Indian penal code. Ensure marital abuse

Criminalized justice, independent of marital sex, will become more available to all women.

It may also give a clear indication that a woman still has the freedom to chose whether or not she has sex with.<sup>4</sup>



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[https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/recent\\_issues\\_pdf/2015/October/October\\_2015\\_1444889658\\_\\_50.pdf&ved=2ahUKEwjpsarvj sAhXK73MBHV21BV0QFjADegQIDRAB&usg=AOvVaw3H1ULhQDPxbGgvOpTz9UYK](https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.worldwidejournals.com/global-journal-for-research-analysis-GJRA/recent_issues_pdf/2015/October/October_2015_1444889658__50.pdf&ved=2ahUKEwjpsarvj sAhXK73MBHV21BV0QFjADegQIDRAB&usg=AOvVaw3H1ULhQDPxbGgvOpTz9UYK)

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