BLOGS

Marital Rape in India

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Introduction

Marriage, a sacred institution, raises complex questions about rights and consent. Legal definitions of rape, based on the absence of consent, create challenges when applied within marital contexts.

The contentious issue of marital rape remains unaddressed by the law in India, placing it among the last 36 countries that have not criminalized this form of violence within marriage.

Globally, many jurisdictions do not recognize marital rape as a criminal offense, often due to exemptions in the law for spouses. Generally termed the “marital rape exception clause,” this legal gap leaves victims unprotected within marital unions. India, similarly, lacks laws that categorize marital rape as a crime, despite providing safeguards against other forms of abuse.

This absence of legal protection underscores a gap in addressing the complete spectrum of women’s rights within marriage. Instances of non-consensual sexual activity perpetrated by a husband are left unaddressed, undermining the dignity and autonomy of women.

As we explore the concept of marital rape, its prevalence globally, and the specific Indian context, it becomes evident that safeguarding women’s rights within marriage requires urgent attention.

Marital Rape And Laws In India

Within the Indian legal framework, the understanding and treatment of marital rape vary and often rely on judicial interpretations. Section 375 of the Indian Penal Code (IPC) addresses rape, and its exception clause reads, “sexual intercourse by a man with his own wife, the wife not being under 15 years of age, is not rape.” Consequently, the legal stance on marital rape hinges on the

age of the wife, leading to a complex landscape of legal protection and accountability.

Section 376 of the IPC outlines the punishment for rape, stipulating that a rapist should face imprisonment for a term not less than 7 years, extendable to life imprisonment, or for a term up to 10 years, along with a fine.

However, if the victim is the husband's own wife and is not below 12 years of age, the punishment is reduced to imprisonment for up to 2 years or a fine, or both. This disparity highlights a concerning absence of legal safeguards for women above the age of 15, contradicting established human rights principles.

The Indian Penal Code's provisions on marital rape are as follows:

- Rape of a wife aged between 12 – 15 years, punishable by imprisonment up to 2 years or a fine, or both.
- Rape of a wife below 12 years of age, punishable by imprisonment not less than 7 years, extendable to life imprisonment, and fine.
- Rape of a judicially separated wife, punishable by imprisonment up to 2 years and a fine.
- Rape of a wife above 15 years of age is not punishable under the law.

In 2005, the enactment of the Protection of Women from Domestic Violence Act recognized marital rape as a form of domestic violence. This Act enables women to seek legal remedies for marital rape, offering an avenue for seeking legal separation from an abusive spouse. However, the laws and mechanisms intended to protect victims of marital rape are insufficient and fall short of addressing the gravity of the issue.

The crux of the matter lies in the fact that while a woman can demand her rights to life and freedom, she is not accorded the same autonomy over her own body within marriage. The very definition of rape as per Section 375 of the IPC must be re-evaluated to address this imbalance. Presently, Section 498-A of the IPC, pertaining to cruelty, serves as a means for women to protect themselves against such instances.

Relevant Judicial Concepts and Case Laws on Marital Rape

Right To Live With Human Dignity

The concept of the right to life enshrined in Article 21 of the Indian Constitution has been a cornerstone in discussions of human rights and legal interpretations. The Supreme Court has consistently ruled in numerous cases that the crime of rape constitutes a violation of the victim's right to life and the right to live with human dignity.

An illustrative instance of this perspective is found in *The Chairman, Railway Board v. Chandrima Das*. The apex court has asserted that rape is not merely a legal offense under the Indian Penal Code, but rather a crime that affects the entire society. Another case that highlights this viewpoint is *Bodhisattwa Gautam v. Subhra Chakraborty*, where the court declared that rape is not solely a sexual offense but an act of hostility aimed at demeaning and humiliating women.

Hence, the concept of marital exception, which excludes marital rape from the realm of criminal offenses, is inherently contradictory to a person's right to live with human dignity. It allows for the violation of an individual's autonomy and well-being within the institution of marriage. Any law or provision that infringes upon a woman's right to live with dignity and grants her spouse the authority to engage in non-consensual sexual intercourse undermines the very essence of her autonomy.

Right To Sexual Privacy

Although the right to privacy is not explicitly mentioned in the Indian Constitution, the Supreme Court, through a series of cases such as *Kharak Singh v. State of U.P*. has recognized that the right to privacy is implicitly protected within the ambit of Article 21. Under Article 21, the Right to Privacy encompasses the right to be left alone and free from unnecessary intrusions. Sexual privacy, an integral aspect of this right, is infringed upon by any form of non-consensual sexual activity. The concept of marital exemption to rape infringes upon a married woman's right to sexual privacy by compelling her into a sexual relationship against her will.

In the case of *State of Maharashtra v. Madhkar Narayan*, the Supreme Court emphasized that every woman has the entitlement to her sexual privacy and that it is not permissible for anyone to invade her privacy at their own discretion. Therefore, the marital exception doctrine, which decriminalizes marital rape, impinges upon this right to sexual privacy of a married woman, rendering it illegal.

The right to sexual privacy entails that an individual has the autonomy to make decisions about their own body and engage in intimate relationships consensually. Any non-consensual sexual act,

including within marriage, violates this right and breaches the boundaries of personal autonomy and dignity. The marital exception doctrine undermines this fundamental right by granting a spouse the authority to force sexual relations upon their partner without their consent, leading to the violation of their sexual privacy.

Right To Bodily Self-Determination

In the case of *State of Maharashtra vs. Madhukar Narayan Mandikar*, the Supreme Court referenced to the right to bodily integrity. However, it is disheartening to observe how the court has conveniently omitted the wife, not affording her protection over her own body.

This disparity is evident when comparing the criminalization of rape by a stranger versus the lack of criminalization of marital rape. The court's decision in this case affirmed the right of a sex worker to refuse sex if unwilling.

In *Sree Kumar vs. Pearly Karun*, the Kerala High Court determined that the offense under Section 376A of the Indian Penal Code would not be applicable if the wife was not living separately from her husband under a decree of separation or any custom or practice.

This ruling effectively exempts a husband from the crime of rape even if he engages in non-consensual sexual intercourse with his wife without her consent. The judiciary's stance seems to imply that rape within marriage is implausible, or that the stigma of rape can be absolved by marrying the perpetrator.

Justification for Marital Rape not being a crime in India

The absence of criminalization of marital rape in India has raised significant debate, with proponents arguing that it is a necessary step towards gender equality and protection of women's rights, while opponents put forth a range of arguments to justify its exclusion from the legal framework.

Preservation of Family Values and Social Fabric

A central argument against criminalizing marital rape is rooted in the preservation of traditional family values and societal structure. It is argued that recognizing marital rape as a crime would disrupt the sanctity of marriage and disrupt the social order. Some assert that Indian society thrives on the institution of marriage, and criminalizing marital rape would lead to instability

within families.

This perspective reflects a deeply ingrained patriarchal mindset that views women's autonomy as secondary to the preservation of societal norms. However, it is essential to question whether preserving family values should take precedence over upholding individual rights and human dignity, especially in cases of violence and oppression.

Cultural and Social Norms

The argument of cultural relativism is often employed to justify the exclusion of marital rape from criminal legislation. It is contended that different cultures have varying attitudes towards sexual relations within marriage, and imposing Western concepts of marital rape on Indian society would be inappropriate.

This argument, however, fails to acknowledge that human rights are universal and transcendent of cultural boundaries. The notion that cultural norms can be used to excuse violations of personal autonomy and human dignity undermines the principles of justice and equality.

Consent within Marriage

A widely-held belief is that consent to sexual activity is implied within the institution of marriage. This view, rooted in historical notions of conjugal rights, assumes that once a woman is married, she is deemed to have given perpetual consent to her husband.

Such an assumption disregards the fundamental principle that consent must be continuous, voluntary, and informed in any sexual encounter. The notion of implied consent within marriage negates a woman's autonomy over her body and perpetuates unequal power dynamics.

Potential for Misuse

Another argument often presented is the concern of false accusations and misuse of the law by women. Opponents suggest that a law criminalizing marital rape could be weaponized against husbands, leading to false accusations.

This perspective reflects a lack of trust in the legal system's ability to discern genuine cases from false ones. While misuse is a concern in any legal framework, it should not undermine the necessity of protecting women from violent and coercive acts.

Legal Remedies Available

Critics argue that women have legal avenues available to seek protection against domestic violence, making a separate provision for marital rape redundant. The Protection of Women from Domestic Violence Act, 2005, for instance, addresses issues of violence within the domestic sphere.

However, this argument fails to recognize that criminalizing marital rape is not only about addressing violence but also about affirming a woman's right to bodily autonomy and agency within her marriage.

Conclusion

While proponents of not criminalizing marital rape often present arguments grounded in cultural, social, and familial contexts, these arguments ultimately fall short in addressing the fundamental principles of equality, dignity, and autonomy. The exclusion of marital rape from criminal legislation perpetuates gender-based discrimination and reflects a disregard for the individual rights of women.

As India strives to uphold the principles of justice and human rights, the legal framework must evolve to ensure that women are protected from all forms of violence, including violence perpetrated within the institution of marriage. It is imperative to recognize that individual rights and societal values can coexist harmoniously when approached with sensitivity and a commitment to gender equality.