

"BREAKING THE SILENCE: THE URGENT FOR CRIMINALIZING MARITAL RAPE"

AUTHOR – A.N. SIRISHA SWAMY, STUDENT AT CHRIST UNIVERSITY

BEST CITATION – A.N. SIRISHA SWAMY, BREAKING THE SILENCE: THE URGENT FOR CRIMINALIZING MARITAL RAPE, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (1) OF 2024, PG. 367-371, APIS – 3920 – 0001 & ISSN – 2583-2344.

Introduction

In India's complicated social fabric, where deep-rooted cultural mores meet complex legal frameworks, marital rape poses a tremendous problem at the junction of private morality and public law. Despite advances towards gender equality and increased awareness of gender-based violence, marital rape is still a controversial and sometimes disregarded problem in the Indian legal system.⁷⁶⁶ Historically, the institution of marriage has been respected, with its sanctity often hiding heinous crimes like sexual assault under the guise of conjugal privileges and marital solitude. This research seeks to explore the complex interplay between entrenched cultural norms and India's changing legal environment, with a particular emphasis on marital rape.⁷⁶⁷ It investigates how these cultural and legal paradigms affect the identification and reaction to marital rape, raising serious concerns about the sufficiency of current laws and the tremendous effect that society institutions have on human rights and safety.



⁷⁶⁶ Sankaran, M. V. (1978). THE MARITAL STATUS EXEMPTION IN RAPE. *Journal of the Indian Law Institute*, 20(4), 594–606. <http://www.jstor.org/stable/43950556>.

⁷⁶⁷ Gangoli, G. (2011). Controlling women's sexuality: rape law in India. In G. Gangoli & N. Westmarland (Eds.), *International approaches to rape* (1st ed., pp. 101–120). Bristol University Press. <https://doi.org/10.2307/j.ctt9qgkd6.9>*

The problem of marital rape arises as a fundamental challenge in the fabric of Indian society, which is characterised by the intertwining of profound legal frameworks and rich cultural traditions. This issue tests the boundaries between private life and public law. Marital rape continues to be a controversial and sometimes ignored topic within the Indian judicial system, despite the fact that there have been considerable gains in the rights of women and a rising awareness of gender-based violence.⁷⁶⁸ Throughout the course of human history, the sanctity of marriage has been held in such high regard that breaches within it, notably sexual assault, have been hidden from judicial scrutiny under the pretence of marital seclusion and conjugal rights. The purpose of this study is to investigate the intricate relationship that exists between long-standing cultural norms and the developing legal framework in India, with a specific focus on the issue of rape within the context of marriage. It investigates the ways in which these cultural and legal landscapes affect the identification of marital rape as well as the reaction to it. Through this investigation, substantial issues are raised about the sufficiency of the laws that are already in place as well as the pervasive effect that society institutions have on individual rights and safety.⁷⁶⁹ Social Structures and the Cultural Context of the World The Function of the Patriarchy It is the patriarchal structure that has a significant impact on the social norms and behaviours that are seen in India. Within the majority of traditional Indian households, the power dynamics are highly skewed towards male authority. This means that the choices and acts of the man are often not questioned by the other members of the home. This power encompasses all aspects, including the wife's personal and sexual liberty, and it extends to all directions. Within such a framework, rape within the context of a marriage is often seen not as a

transgression but rather as a right of the husband. A normalisation of such activities occurs as a result of the fact that the agreement of the wife is commonly assumed rather than purposefully sought. This normalisation is backed by the cultural stigma against speaking out, since women who oppose their husbands may suffer ostracism, isolation, or even worse. This makes it exceedingly hazardous for victims to seek aid or defend their rights, which contributes to the continued normalisation of the situation. Religious and cultural traditions have an impact. The ideas that people in India have regarding marriage and sexuality are significantly influenced by both religion and tradition's influence. There are several faiths that are followed in India, and many of them place a strong emphasis on the sanctity of marriage. In these religions, the marriage tie is often seen as indestructible and holy. The permission of the woman is often taken for granted when it comes to sexual encounters within the context of a marriage, which are regarded through the prism of marital obligations. The unwillingness of the legal system to meddle in what is believed to be a private family problem is further strengthened by the fact that these conventional beliefs are instilled from a young age and are reflected in social behaviours and expectations. Legal Framework and Historical Perspectives⁷⁷⁰ The Indian Penal Code and Marital Rape The legal position in question is rooted in regulations that were enacted during the colonial period and has not undergone considerable change in relation to adult women. It is a clear indicator of the past and current effect of patriarchal norms on legal principles that the suggestion that marriage entails eternal permission for sexual actions is a consequence of this influence.⁷⁷¹ Not only does this exception in the law deny justice to a large number of women, but it also tacitly endorses the idea that marriage eliminates the

⁷⁶⁸ Supra

⁷⁶⁹ Bhat, M., & Ullman, S. E. (2014). Examining Marital Violence in India: Review and Recommendations for Future Research and Practice. *Trauma, Violence & Abuse*, 15(1), 57–74. <https://www.jstor.org/stable/26638333>

⁷⁷⁰ Han, T. C. (1989). MARITAL RAPE – REMOVING THE HUSBAND'S LEGAL IMMUNITY. *Malaya Law Review*, 31(1), 112–128. <http://www.jstor.org/stable/24865602>

SUPRA 3

⁷⁷¹ SUPRA 2

need for continuous and unambiguous permission. Important Cases and the Responses of the Judiciary When it comes to redefining rights within the context of the married relationship, the court has traditionally been slow to act, despite the fact that there have been progressive movements and several major judicial judgements that have increased safeguards for women under numerous statutes. Certain parts of marital rape are addressed in cases such as Independent Thought vs. Union of India; nonetheless, these cases often fall short of a comprehensive reform that would safeguard all married women, regardless of their age. It is possible that the hesitation of the court might be related to the risk for reaction in a community that is culturally conservative as well as the conventional notion of judicial non-interference in relationships including marriage.

Influence of the Media and the Public's Perception

The Function of the Media The media is a strong force that has the ability to play a dual function in affecting public opinion at the same time. On the one hand, traditional media often upholds the sanctity of marriage, and in some cases even romanticises the hardship and sacrifice that the woman is expected to make.⁷⁷² New-age media and campaigns, on the other hand, have started to question these myths, bringing topics like marital rape and women's autonomy into the public conversation at the same time. It is essential to make this adjustment in order to change attitudes and to encourage a more critical perspective of the standards that are now in place.

They do this by questioning firmly held ideas and advocating for legislative changes. One of their activities is to educate the general public, while another is to organise demonstrations and collaborate with legislators to design laws that are more egalitarian. Recognition and

prosecution provide a number of challenges. The Obstacles of Society When it comes to identification and prosecution, victims of rape that occurs within the context of a marriage encounter a multitude of cultural obstacles. It is possible for victims to be dissuaded from coming forward due to factors such as the sacredness of marriage, the fear of being shunned, economic reliance, and a lack of support from their own families. Underreporting and a lack of statistical data to assist reform measures are both results of the lack of public acceptance that marital rape is a crime. These difficulties are reinforced by the fact that society does not recognise that rape in marriage is a crime. The Obstacles of the Law and Procedures The legal procedure is made more difficult by the lack of particular legislative remedies for rape that occurs inside a marriage. Due to the fact that these cases are private, there is a lack of clear legal requirements, and the complicated dynamics that are involved in marital relationships, law enforcement and the court may be hesitant to address them. Suggestions for Alteration and Change To Reform the Law A comprehensive legislative change is required in order to eliminate the marital exemption in rape legislation and to guarantee that all instances of sexual actions that occur within the context of a marriage that are not consented to by the partner are considered to be rape.⁷⁷³ This should be supplemented with support networks for victims throughout the whole of the legal process, including sensitive treatment by law enforcement, access to legal assistance, and protective measures. Loss of Self-Esteem and Autonomy Marital rape deeply impacts the survivor's self-view and autonomy.⁷⁷⁴ The act itself is a violation of personal space and body, which can lead to:

- Diminished Self-Worth: Survivors might internalize the trauma, leading to feelings of

⁷⁷² Marriage and Rape: We need a law on marital rape but such acts cannot be separated from the structure of the Indian family. (2013). Economic and Political Weekly, 48(12), 7–8. <http://www.jstor.org/stable/23527135>.

⁷⁷³ SUPRA 7

⁷⁷⁴ West, R. (2015). MARITAL RAPE, CONSENT AND HUMAN RIGHTS: COMMENT ON "CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS." *AJIL Unbound*, 109, 197–201. <https://www.jstor.org/stable/27003138>

shame and guilt. The societal tendency to blame the victim only intensifies these feelings, causing a significant drop in self-esteem.

- **Loss of Control:** The control taken away during the act of marital rape can extend into other areas of life, leading survivors to feel they have no control over their lives or bodies. This loss can lead to dependence and helplessness, isolating them further from potential support systems and making it challenging to advocate for themselves or seek help. **Physical Health Impact** **Immediate Health Concerns**

- **Physical Injuries:** Injuries might include bruises, cuts, and genital trauma. These require immediate care, but survivors might avoid seeking help to hide evidence of rape or due to fear of their spouse.

- **Sexually Transmitted Infections and Pregnancy:** The risk of STIs and unwanted pregnancies increases significantly, adding layers of health complications and emotional distress. **Long-Term Health Issues**

- **Chronic Pain and Gastrointestinal Problems:** Stress and anxiety can manifest physically, causing chronic pain, muscle tension, and gastrointestinal issues like irritable bowel syndrome.

- **Gynecological Problems:** Long-term sexual abuse can result in chronic gynecological problems, including pelvic pain, menstrual irregularities, and increased risk of cervical cancer.
- **Stress-Related Disorders:** Conditions like chronic fatigue syndrome and fibromyalgia are more common among survivors of sexual trauma, reflecting the profound impact of sustained stress on physical health.

Social and Relational Impact **Social and Relational Impact** **Isolation and Relationship Strain** **Survivors often withdraw from relationships or face shame, which has substantial social consequences:**

Impact on Family Dynamics **Marital rape may harm all family members:**

- **Children may observe the psychological and physical effects of violence** **Economic Impact** **Economic Impact** **Financial Dependence and**

Stability **The economic cost is a significant obstacle to exiting abusive circumstances.**

- **Trauma may negatively effect focus and physical health, leading to decreased work performance and attendance.**

- **Financial Dependence:** Survivors may be financially reliant on their abusers, making it difficult to leave or seek treatment and prolonging the cycle of abuse. **Legal and societal repercussions** **Lack of legal recourse** **The lack of legal acknowledgment for marital rape invalidates survivors' experiences and denies them justice, extending their anguish.**

- **Legal Neglect:** This communicates to the victim and society that the damage they have endured is unworthy of reparation, heightening emotions of powerlessness and insignificance. **Societal perceptions** **Society's downplay of marital rape may deter survivors from seeking help:**
 - **Trivializing marital rape perpetuates damaging misconceptions about marriage and consent, discouraging survivors from reporting for fear of being dismissed. A thorough knowledge of these consequences emphasises the critical need for cultural, legal, and structural reforms to successfully address and prevent marital rape. This includes acknowledging the significant and widespread impacts of marital rape on survivors and taking efforts to ensure they get the appropriate help and justice.**⁷⁷⁵

Conclusion

The investigation of marital rape in the Indian context uncovers a distressing juxtaposition of outmoded legal exclusions and deeply rooted cultural norms that jointly impair women's safety and dignity in marriage. The judicial system's inability to recognise and handle marital rape not only perpetuates violence, but it also strengthens patriarchal systems that undermine women's autonomy. This research emphasises the urgent need for a paradigm

⁷⁷⁵ West, R. (2015). MARITAL RAPE, CONSENT AND HUMAN RIGHTS: COMMENT ON "CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS." *AJIL Unbound*, 109, 197–201. <https://www.jstor.org/stable/27003138>

change in both public attitudes and legal structures. Comprehensive legislative changes are required to eliminate the marital rape exception and provide unambiguous, enforceable safeguards for all women, regardless of marital status. Furthermore, cultural change is required, needing strong educational and awareness initiatives to dispel the stigmas associated with marital rape. Only through such concentrated measures can we expect to ensure that all persons within the sanctity of marriage get the respect, safety, and fairness they deserve. These changes will not only challenge current conventions, but will also pave the way for a more equal and just society in which every individual's rights are protected and the sanctity of consent is seen as fundamental within the ties of marriage.

Reference

1. West, R. (2015). MARITAL RAPE, CONSENT AND HUMAN RIGHTS: COMMENT ON "CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS." *AJIL Unbound*, 109, 197–201. <https://www.jstor.org/stable/27003138>
2. Marriage and Rape: We need a law on marital rape but such acts cannot be separated from the structure of the Indian family. (2013). *Economic and Political Weekly*, 48(12), 7–8. <http://www.jstor.org/stable/23527135>
3. Han, T. C. (1989). MARITAL RAPE – REMOVING THE HUSBAND'S LEGAL IMMUNITY. *Malaya Law Review*, 31(1), 112–128. <http://www.jstor.org/stable/24865602>
4. Sankaran, M. V. (1978). THE MARITAL STATUS EXEMPTION IN RAPE. *Journal of the Indian Law Institute*, 20(4), 594–606. <http://www.jstor.org/stable/43950556>
5. Gangoli, G. (2011). Controlling women's sexuality: rape law in India. In G. Gangoli & N. Westmarland (Eds.), *International approaches to rape* (1st ed., pp. 101–120). Bristol University Press. <https://doi.org/10.2307/j.ctt9qgkd6.9>
6. Bhat, M., & Ullman, S. E. (2014). Examining Marital Violence in India: Review and Recommendations for Future Research and Practice. *Trauma, Violence & Abuse*, 15(1), 57–74. <https://www.jstor.org/stable/26638333>
7. Gelles, R. J. (1977). Power, Sex, and Violence: The Case of Marital Rape. *The Family Coordinator*, 26(4), 339–347. <https://doi.org/10.2307/581754>
8. West, R. (2015). MARITAL RAPE, CONSENT AND HUMAN RIGHTS: COMMENT ON "CRIMINALIZING SEXUAL VIOLENCE AGAINST WOMEN IN INTIMATE RELATIONSHIPS." *AJIL Unbound*, 109, 197–201. <https://www.jstor.org/stable/27003138>
9. rape in marriage. (1977). *Off Our Backs*, 7(2), 8–8. <http://www.jstor.org/stable/25792214>
10. Goodwin, M. (2015). MARITAL RAPE: THE LONG ARCH OF SEXUAL VIOLENCE AGAINST WOMEN AND GIRLS. *AJIL Unbound*, 109, 326–331. <https://www.jstor.org/stable/27003163>