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A New Perspective to Marital Rape: Men's Insight

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ABSTRACT

"You can use marriage as far as your consciousness is to beget a child and grow him like a devotee Marriage is not just a bond between two lovers but also a blessing to start a family and bring in a life into this world".³

Hindu marriage is "a religious sacrament in which a man and a woman are bound in a permanent relationship for the physical, social and spiritual need of dharma, procreation and sexual pleasure."⁴

The irony with our laws is that mostly and solely they are women-centric. However, one should also think from men's perspective. The term marital rape should not be avoided absolutely. Nonetheless criminalizing it straightaway is also not the way ahead. There is always an alternative for everything and hence there has to be an alternative for this particular term i.e., MARITAL RAPE. This term instead of helping women will only be used by the women. Men will be afraid of marrying if marital rape is criminalized since it will somewhere lead to acting as a catalyst for the pseudo-feminist movement. It is presumed that women aren't safe in their own house and after criminalizing "MARITAL RAPE", the same will become applicable to men to a very great extent. This is most likely to happen because sometimes women will give consent and sometimes will deny it. So now what happens with men? Saying a yes or sometimes saying no can also be the case with men. And this substantiates the need for affording some sort of protection to them as well. Why do women need to be the focal point of all Laws? Why can't laws be men-centric? Why always women empowerment? Why not Men Empowerment?

We have seen for years the laws which are made for women are often mistreated and misused, therefore there should be men-centric laws as well. Women will exploit the marital rape legislation, which is partially accurate because rape is no longer about gender but rather about power, position, and supremacy.

The Justice Verma Committee⁵ which was constituted after the Nirbhaya incident had also recommended that rape within marriages be punished.

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³ See Bhagwat Geeta.

⁴ IPLEADERS, <https://Blog.Ipleaders.In/Nature-Hindu-Marriage-Hindu-Law/#:~:Text=Hindu%20marriage%20is%20E2%80%9ca%20religious,%2c%20procreation%20and%20sexual%20pleasure.%E2%80%9d> (Last Visited 17 May 2022).

⁵ PRSINDIA.ORG, <https://Prsindia.Org/Policy/Report-Summaries/Justice-Verma-Committee-Report-Summary>

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I. INTRODUCTION TO MARITAL RAPE?

The word rape is derived from the Latin term *rapio*, which means to “seize”.

*“Marital rape or spousal rape is the act of sexual intercourse with one's spouse without the spouse's consent. The lack of consent is the essential element and need not involve physical violence. Marital rape is considered a form of domestic violence and sexual abuse. Although, historically, sexual intercourse within marriage was regarded as a right of spouses, engaging in the act without the spouse's consent is now widely classified as rape by many societies around the world, repudiated by international conventions, and increasingly criminalized.”*⁶

A forcible seizure is referred to as rape. It refers to the ravishment of a woman against her will, without her consent, or with her assent obtained by force, terror, or fraud, as well as the forcible carnal knowledge of women.⁷

(A) Defining ‘Rape’ as given under Section 375 of the Indian Penal Code, 1860:

“Section 375 of the Indian Penal Code defines rape as sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped or is of unsound mental health and in any case if she is under 18 years of age.”⁸

If it comes into one of these criteria, it is said to be rape:

1. *Against her will (she was forced to do so).*
2. *Without her consent (her choice was not there).*
3. *She has given her consent by placing herself or anybody she cares about in danger of being killed or harmed.*

The person knows that he is not her husband and that she is providing her permission because she thinks he is just another man to someone she is or believes she is legally married, he would do so with her consent.

4. *If she is not able to comprehend the things and acts to which she consents due to “insanity, drunkenness, or the administration by him directly or indirectly of any stupefying or unwholesome substance” at the time of providing such agreement, he may do so with her consent.*

(Last Visited May 27, 2022.)

⁶ https://en.wikipedia.org/wiki/Marital_Rape (Last Visited May 19 2022)

⁷ Bhupinder Sharma V. State Of Himachal Pradesh AIR 2003 SC 4684, (2003) 8 SCC 551.

⁸ Indian Penal Code, 1860, § 375, No. 45, Act Of Parliament, 1860 (India).

5. *When she is under the age of sixteen, with or without her consent. Explanation: Simply penetrating the skin is enough to establish the sexual intercourse required for rape.*

(B) The Exception To Marital Rape:

Non-consensual intercourse between a spouse over fifteen years of age is not considered "rape" under Section 375 and hence is not penalized.

Even the Amendment Act of 2013 doesn't fully recognize marital rape as a crime except if a woman under the age of 16 is sexually abused or rape occurs when the couples are separated. Section 498 A of the Indian criminal code, which prohibits cruelty to women, already provides a remedy.

Non-consensual sexual intercourse by a man with his wife, if she is over fifteen years old, does not constitute rape, according to the exemption to Section 375. It so excludes forceful and non-consensual sexual intercourse by a husband with his wife beyond the age of fifteen from the definition of rape is included under Marital Rape.⁹

(C) Petitions filed in the courts to criminalize 'Marital Rape':

In *RIT Foundation & Ors. v. Union of India*¹⁰, a group of petitions contesting "*exception 2 to section 375 of the IPC*" were filed in the Delhi high court. "The RIT foundation, the All-India Democratic Women's Association (AIDWA)", and survivors of marital rape are among the petitioners. Both sides are delivering impassioned arguments in front of the court.

(D) Arguments opposing such a law, on the other hand, include:

- It's hard to tell when the wife's permission was revoked once they entered the bedroom together.
- If all sexual activities between a man and his wife qualify as marital rape, the woman will be the only judge of whether or not it is marital rape.
- Why Criminalizing sexual conduct in marriage would influence the family structure and the social fabric of the country and is prone to abuse.

In a landmark decision¹¹, "*the Kerala High Court declared marital rape to be a legitimate reason for divorce.*"

Criminalizing marital rape will weaken the basic principle of marriage and every man before

⁹ KI Vibhute, "*Rape Within Marriage*" In *India: Revised*", 27, Indian Bar Review, 167, (2000).

¹⁰ RIT Foundation & Ors. V. Union Of India, AIR 2015 SC 2084.

¹¹ Mr. Justice A.Muhamed Mustaque & Dr. Justice Kauser Edappagath, https://images.assettype.com/barandbench-hindi/2021-08/988f2bc9-4fb7-40e4-babc-b58172396477/Kerala_High_Court_Judgement_on_Marital_rape.pdf (Last Visited 1 June, 2022)

managing into his bedroom will seek permission from his wife. Which will ultimately deficit the basic value of marriage in our Hindu mythology?

II. A WOMEN SOCIAL CONSTRUCT:

Women's independence, dignity, and right to live are all alienable; she is sometimes staked and diced as a possession¹², yes sometimes she is compelled to prove her fidelity by entering fire, and sometimes her survival is legally and politically challenged. But that does not mean that every time we should put a woman in that weighing machine sometimes, we should also see men's social construct. Seeing everyman with the same viewpoint is not good. Criminalizing the man from this particular point will put men at stake.

Man is a social being who cannot live in isolation. He needs society for his survival. Many of his needs like safety, security, companionship, livelihood, recreation, etc. are fulfilled by society. But every society also suffers from several social evils that every person living in that society has to confront. So, society has various merits as well as demerits.¹³

III. CAN MARITAL RAPE LAWS BE MISUSED?

Legislation criminalizing marital rape is desperately needed in our country, and the possibility of it being exploited must also be examined. The sorrows of those women who are victims of such a crime are as real as those of those men who are falsely accused of having perpetrated such a crime.

Numerous instances where wives have falsely accused their husbands to obtain a divorce and a large sum of money. Such allegations not only lead to men being extorted for money, but also to him being defamed and shamed in his community, as well as family defamation issues.

Even if it is a serious issue, it has been downplayed by the fact that every legislation may be exploited; thus, is such a fear a good reason to not propose a law?

On the surface, this argument appears to be reasonable, but if we are genuinely concerned about equal rights for all citizens, we must consider the facts of the situation while enacting new legislation.

Targeting and abusing males to extort them should also be addressed, resulting in a critical need for gender-neutral rape legislation. Equal rights to protect one's body and property should be

¹² Sally Sutherland, *Sita, And Draupadi: Aggressive behaviour And Female Role Models In The Sanskrit Epics*, Vol 109, No 1 Journal Of American Oriental Society (JAOS) 63, 63-79 1989.

¹³ Monika Arora, *Opinion With Social Stigma And Rampant Illiteracy, Will Declaring Marital Rape An Offense help Women?*, <https://www.news18.com/news/opinion/opinion-with-social-stigma-and-rampant-illiteracy-will-declaring-marital-rape-an-offence-help-women-2132303> (Last Visited 21 May 2022).

granted to both men and women.

Rape is defined as aggravated sexual assault between a man and a woman without the partner's consent or even against her choice under any of the situations listed in the section.¹⁴

IV. CAN WE CRIMINALIZE MARITAL RAPE?

Even though the constitutionality of 375's exception clause has never been explicitly upheld, there have been cases where courts have simply avoided the question,⁵¹ dismissed petitions to strike down the clause, or otherwise used the exception clause to avoid answering questions about whether a husband raped his wife.¹⁵

*"In a judgment delivered by Justice Virender Bhat, an Additional Sessions Judge of the Special Fast Track Court, he noted that forced sex cannot be considered rape in a marriage and hence, an analysis of the fact situation was not required."*¹⁶

(A) Why can't domestic rape be made a crime?

Marital rape or spousal rape is defined as forced non-consensual sex with another spouse. one wife perceives marital rape may not be perceived as such by another. As a result, It is vital to establish what constitutes marital rape and what would constitute marital non-rape before giving it an incriminating nature.It's only common logic; if a woman is granted vast discretion to select which sexual encounters are rape and which are consensual, what about her spouse's conjugal rights? Will,this one not be used to annoy your spouse?Numerous essential concerns must be addressed and answered before any moves to criminalize Marital Rape are taken.

(B) Acceptance in society:

Is society prepared to adapt to this change which we call NEW REALITY? India is a country that has been extensively graded. It is home to a diverse range of religions, cultures, languages, and traditions. According to the 1961 census, There are 1,652 different languages and dialects in the world. India is a multi-religious country with many different religions. Followers of numerous religions, including Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, Zoroastrianism, and others, can be found here. The country's population causes a slew of issues, the most serious of which is poverty and illiteracy. These social dilemmas are crucial in determining whether or not marital rape should be criminalized. According to a World Bank report on India's poverty situation, 270 million Indians are poor, accounting for 22% of the

¹⁴ Aman Kumar V. State Of Haryana AIR 2004 SC 1497, (2004) 4 SCC 379.

¹⁵ Apoorva Mandhani, *Marital Sex Even If Forcible Is Not Rape; Delhi Court, Livelaw (Delhi) May 14, 2014*, [Http://Www. Livelaw.In/Marital-Sex-Even-Forcible-Rape-Delhi-Court-Read-Judgment-Close-Look-Law-Relating-Marital-Rape-India/](http://www.livelaw.in/Marital-Sex-Even-Forcible-Rape-Delhi-Court-Read-Judgment-Close-Look-Law-Relating-Marital-Rape-India/) (Last Visited On January 1, 2018).

¹⁶ Id.

country's overall population. Rural India is home to 80% of India's poor. In terms of literacy, it is at 74.04 percent. It gives the impression that there are still a large number of people affected by the downgrades. People must comprehend how the legal system works, and they must be sufficiently educated to do so. People who have not been exposed to education will have no understanding of what constitutes Marital Rape These two considerations should be considered and explored before criminalizing Marital Rape.

(C) Marriage's Obligation in Acknowledging Marital Rape as an Offense:

In India, marriage is a sacred institution regulated by religious personal laws. Marriage is a legally recognized union between multiple people that is considered a stable, long-term partnership based at least in part on sexual ties. "A Hindu marriage is a religious sacrament in which a man and a woman are bonded in permanent partnership for the physical, social, and spiritual purposes of dharma, procreation, and sexual pleasure," according to R.N. Sharma. Marriage is regarded as sacred in Hinduism, as evidenced by the above definition, and cohabitation is the essence of marriage. Will it not jeopardize the institution's integrity if a woman is granted the power to determine the male's right to cohabitation? As a result, it raises an important concern about the law's sustainability, as it could be used to harass husbands.¹⁷ The Arabic word "Nikah," which means "civil contract," is used to describe Muslim marriage. "Marriage, according to Mohammedan law, is not a sacrament but a civil contract," Mulla argues. Marriage is governed primarily by "Shariat," or Islamic personal law, under the Muslim social order.¹⁸ "Muslim marriage is a contract to legalize sexual intercourse and the propagation of offspring," Ronal Wilson writes. Because it can be broken at any time, it is a contract. The primary question that is presented is whether sexual abuse or cruelty in a Muslim marriage constitutes a violation of the contract, because living in harmony and protecting the women might be considered an implied element of the contract, and if they have been irrevocably tainted, compensation can indeed be provided. people just cannot condemn a civil matter without sufficient deliberation in this case. Marriage is defined by Christian law as a permanent relationship between one man and one woman to execute others. Marriage, according to Christian tradition, is neither only a civil nor purely a religious contract. Marriage was considered a sacrament by the Roman Catholic Church. Before moving further with criminalization, it paints a grim picture in which there appears to be no unanimity in the personal rules of numerous religions, and there is no obvious and distinct path to follow in order to take

¹⁷ Shauni, Essay On Muslim Marriage, YOUR ARTICLE LIBRARY, (July. 5, 2018), [Http://Www.Yourarticlelibrary.Com/Essay/Essay-On-Muslim-Marriage/47622](http://Www.Yourarticlelibrary.Com/Essay/Essay-On-Muslim-Marriage/47622).

¹⁸ Ibid

a consistent line of action. The biggest roadblock to criminalization is "procreation," which is the objective of all marriages as an institution: to contribute to human growth. The question is whether procreation would be hampered, which is vital to all couples regardless of religion.

V. CONSENT THEORY IN MARRIAGE

The age of marriage consent was determined entirely by Hindu shastras. According to Hindu scriptures, the *garbadharna* ritual was the first of ten fundamental life-cycle ceremonies for high-born Hindus, and it required a female to have sexual intercourse with her husband within sixteen days of her first menstruation. That means even the Hindu theology also states that it is an obligation upon women to have sexual intercourse with their husbands. This does not mean that a man is treating a woman as a legitimate instrument to fulfill their desires.

VI. WHAT DOES THE CURRENT LAW SAY?

The act of rape is criminalized under Section 375 of the IPC, although there is an "exception." "Sexual intercourse by a man with his wife, the wife not being under fifteen years of age, is not rape," the exemption states. You must be wondering why there is the only law that states that a woman must be under the age of 15, even though the marriage age is 18 years in our legislation. But in Muslim law woman can do married when she is 15. On the other hand, the Union Cabinet granted permission to raise the legal marriage age for women from 18 to 21 years. The administration went on to say that the change in marriage age will affect all personal laws, including Muslim and Christian ones. In such a situation, the rationale would also apply to the Section 375 exception. "Sexual intercourse by a man with his wife, the wife not being under twenty-one years of age, is not rape," this rule would logically state.

VII. ARGUMENTS MADE BY THE GOVERNMENT IN THE COURT

The Modi government has stated that rather than adopting piecemeal amendments to criminalize marital rape, it is necessary to revamp the IPC. This argument was reportedly based on parliamentary standing committee papers from 2008 and 2010. The government also highlighted the Law Commission of India's 172nd report on "Review of Rape Laws" from March 2000, which stated that removing the exception clause in Section 375 "may amount to a disproportionate interference with the marital relationship."

What are the grounds for not making marital rape a crime, as well as the legal traps to avoid?

Activists pushing for the criminalization of marital rape have yet to completely address several genuine concerns that have been raised.

(D) Misusing the Law –

Due to the abuse of the law, the prohibition of marital rape has disturbed several people, including jurists and even men's rights campaigners. The data cited to argue against criminalizing marital rape come from the misapplication of Section 498A, dowry legislation. Some activists claim that up to 85% of dowry claims are false, and India is incapable of dealing with yet another failed disastrous law that would amount to "legal terrorism." Many men's rights advocates fear that criminalizing marital rape would be abused even more than anti-dowry laws. In 2020, men's rights activist Deepika Narayan wrote an article about the misuse of 498A. She stated:

“A total of 111,549 cases were registered under 498A in 2020. Of these, 5,520 were closed by Police citing as false, and overall 16151 cases were closed by police either because they were false or there was a mistake of fact or law or it was a civil dispute, etc. That is 14.4% of cases were closed by police for not finding merit in the case. 96,497 men and 23,809 women were arrested under 498A last year making total arrests under this section 120,306. 18,967 cases were tried in courts of which 14,340 led to acquittal and 3,425 led to a conviction. 498A cases pending trial at the end of 2020 are 651,404 with a pendency percentage of 96.2%.”

In several cases, innocent husbands committed suicide because they were falsely implicated and charged under section 498A. What was even more startling was that these claims were brought forth as soon as the matrimonial relationship ended and the sole purpose was to harass the family by instituting vexatious cases. If marital rape is made illegal, the argument goes, it will become yet another statute that outraged wives may use to their advantage. There is no denying that real victims exist and there are occasions where marital rape happens, the only contention which is being put forward for not criminalizing marital rape is that there is a high probability that instead of bringing justice to the actual victims, this would be misused for harassing and bothering innocent men.

(A) Laws in India-

There are laws in existence in India to punish rape perpetrators. Rape is punishable under Section 376 of the Indian Penal Code. However, there are no explicit laws dealing with the evil of marital rape. The sole statute in India that protects victims of marital rape is Section 375, Exception 2 of the Indian Penal Code. It stipulates that if a husband engages in sexual activity with his wife under the age of 15, he can be charged with rape. However, the Supreme Court of India, in its judgment in the case of *Independent Thought v. Union of India*, substituted the 15-year-old age with 18-year-old age.¹⁹ As a result, the law in India currently states that if a

¹⁹*Independent Thought V Union Of India*, (2017), 10 SCC 800.

husband engages in sexual intercourse with his minor wife, he can be charged with rape, but a major wife has no such protection.²⁰ As a result, Indian laws only offer limited protection to victims of marital rape. In India, there is no universal protection from the evil of marital rape.

(B) The burden of Proof –

This is one of the complicated issues that have precluded the criminalization of marital rape. When it comes to marital rape, it's important to remember that intercourse is a natural component of every relationship. Supposing we criminalize marital rape, it will still be very difficult to fix the burden of proof and determine what that burden is. If the woman is to blame, for example, the notion maintains that simple accusations like dowry abuse might destroy not only the husband's but the entire family's lives. Even if we fix the burden of proof on the husband, he still has to show a negative, which is a difficult idea to fathom.

Many people believe that if a woman claims she was raped in her marriage, there will hardly be any evidence, CCTV, for example, to prove if she was raped or not and that in many cases, the burden of proof will be difficult to apply.

(C) Deteriorating of Marital Relationship:

In a 2010 article titled 'Rape within Marriage in India: Revisited,' Prof (Dr) K I Vibhute stated that the "maintenance of the institution of the family" is what permits the provision to obtain legitimacy. "... the maintenance of the family institution by eliminating the possibility of fraudulent, faked, and motivated charges of 'rape' by a 'wife' against her 'husband,' as well as the actual procedural challenges that such a judicial procedure may create."

One of the fundamental arguments emphasizing for non-criminalization of marital rape is that with wives wrongly accusing husbands, it would destabilize the marriage system. If such assertions are made, the reasoning equally applies to both spouses in a relationship who are attempting to be "legally cautious" in the usual course of the marriage.

(D) Gender Equality

Numerous scholars argued to make the idea of 'rape' gender-neutral, similarly, in the case of marital rapes, the same justification is made. Many contend that even if the IPC section 375 exemptions are deleted or criminal provisions to the Domestic Violence Act are inserted, husbands will still be unable to use them.

²⁰Patel, Krina. (2019). *The Gap In Marital Rape Law In India: Advocating For Criminalization And Social Change.*, <https://Ir.Lawnet.Fordham.Edu/Cgi/Viewcontent.Cgi?Article=2760&Context=Ilj> (Last Visited 31May 2022).

VIII. CONCLUDING REMARKS AND SUGGESTIONS

The behaviors and rituals that surround the institution of marriage reveal a power imbalance between husband and wife. Husbands regard their women as personal property. When women were reduced to mere objects with no economic or social freedom, the concept of ownership was very archaic. Their husbands made the decisions, and women's moral obligation was to obey and serve their husbands wholeheartedly. As a result, wives were bound by law to meet their husbands' wants, giving husbands complete authority over their wives' bodies. In 2013, the Justice Verma Committee, which was established in 2012 in the aftermath of the Nirbhaya event in New Delhi, delivered its findings on sexual assault and rape. It was said that "rape and sexual assault are not merely crimes of passion but an expression of power," as cited by PRS India.

Justice Hari Shankar recently said that treating sexual activities between a husband and wife, regardless of permission, differently from sexual acts between a man and a woman who are not married is not unconstitutional. According to an older story in *India Today*, the then Union Minister for Women and Child Development declared in 2016 that marital rape cannot be regarded within a marriage because of the culture of Indian people who believe matrimony is holy.

In conclusion and as a result of the above discussion, the researchers would contend that there is no need to criminalize Marital Rape because it is already covered by numerous sections of the Indian Penal Code, such as section 498A, section 354, section 354 A, and so on. There will be a phenomenal increase in frivolous and vexatious claims if at all marital rape is recognized in any form since it is likely to be used as a tool to harass husbands. India has its own set of problems, which are impediments to criminalizing marital rape. This method will necessitate widespread societal agreement. The first and foremost thing to do is to raise public consciousness apart from judicial awakening. The authors believe that public awareness programs should be implemented by the appropriate authorities. People will be made aware of their rights and obligations as a result of this. If there are any assaults, women should alert the appropriate authorities and seek justice using the provisions of the Indian Penal Code outlined above.

As The United Nations says, "Educating boys and men to view women as valuable partners in life, in the development of society and the attainment of peace is just as important as taking legal steps to protect women's human rights".

The most pre-emptive suggestion about marital rape is to maintain the institution of marriage

and, as a result, not to interfere with it to ensure that it stays sacrosanct.

The second deals with the alternative remedies that already exist for a woman to seek recourse through, within the family and in the law itself such as §498A of the IPC, the Protection of Women from Domestic Violence Act, 2005 ('PWDVA, 2005') and various other personal laws dealing with marriage and divorce. This is used to enforce the idea that criminalization is not important because women have existing recourses thereby reducing the urgency of the advocacy to criminalize marital rape. The third is focused on the cultural values in India, emphasizing how these values should hamper us from criminalizing marital rape.
