

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 1

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Marital Rape Laws in India

AKANKSHYA KAUSHIK MISHRA¹

ABSTRACT

Marital rape is considered illegal in many countries. In India it is yet to be considered illegal, there is a need to understand the importance of criminalization of marital rape. There were many progressive changes in the rape laws of India, but it is yet to implement laws relating to marital rape. The main problem lies with the fact that sexual intercourse by the husband on the wife is treated as an exception in the Indian Penal Code, which affects women who are married, under which their consent is not taken into consideration. In 2012 it was recommended to criminalize marital rape by a judicial committee, in response to this recommendation The parliament claimed that the criminalization of marital rape will put families under a lot of stress, and in return, the family system may get affected. Political leaders claim that this law will destroy marriages and create absolute anarchy in families. 52 countries around the world have criminalized marital rape. Marital rape laws will allow women and men to give importance to sexual consent. Making marital rape illegal will not only make changes in the law but also change the fixed mindset of people that Women are property we transfer from their fathers to their husbands, It makes people more educated about sexual consent and this leads to the betterment of women in society.

I. INTRODUCTION

Rape is considered as a despicable crime. Rape is sexual intercourse with a woman without her proper consent. In India Rape is considered as a heinous crime but Marital Rape is yet to be illegal. As the marital rape is not considered as a criminal offence, it makes all married women vulnerable who got raped by their husband. Marital rape is legal in India and it's an exception to section 375 of the Indian Penal Code which defines Rape. It describes sexual intercourse by a man on his wife cannot be rape. In January last year, The Delhi High Court passed a split judgment on marital rape, which paved the way for the Supreme Court to review the matter. Sex between a married couple can never be constituted rape, according to Justice C Hari Shankar, who disagreed with Justice Rajiv Shakhder's vote to overturn the exemption. He continued by saying that it was not illegal for the legislation to treat consensual or forced sexual actions between husband and wife as being different from non-consensual sexual acts between strangers. Last year supreme court passed a new judgement on right to safe abortion in the

¹ Author is a student at Presidency University, India.

country. The Medical Termination of Pregnancy (MTP) Act guarantees all women access to safe and legal abortions up to 24 weeks of pregnancy, and the Supreme Court declared on Thursday that making any distinctions based on a woman's marital status is "constitutionally unsustainable." This indicates that a married woman who requests an abortion on the grounds of marital rape has the full legal right to do so under the MTP. In addition, the top court ruled that for the purposes of the MTP Act, marital rape must be included in the definition of rape. A victory for women's rights advocates working to make marital rape a crime is the top court's recent statement that it must be included in the definition of rape for the purposes of the Medical Termination of Pregnancy Act. Activists have clarified that the IPC section 375's current scope must be expanded in order to make the order an offence. Activists contend that the issue will persist until marital rape is recognized as an offence under the IPC, despite the fact that the SC's comment on the subject of the MTP Act is progressive and a step in the right direction. Despite being progressive, the ruling makes no mention of expanding the definition of rape to include situations where a husband has sex with his wife against her will. The scope of Section 375 is still constrained. However, campaigners concur that the SC's stance has set things in motion and that the Parliament is now in the driver's seat. They are discussing rape and marital rape, so that is the most important aspect of the verdict. The government has adopted a progressive position, and the SC has removed a significant barrier for women. A wife was expected to provide her husband with sex as part of the "marriage contract," with consent playing no part in it. Following years of feminism discourse about women's autonomy and agency as well as the right to protection and action against sexual violence of all types, the shift toward criminalizing marital rape gained traction in various western countries in the 1970s. A wife was expected to provide her husband with sex as part of the "marriage contract," with consent playing no part in it. After years of feminist rhetoric regarding women's autonomy and agency as well as the right to sex, the movement toward criminalizing marital rape gathered steam in various western countries in the 1970s. The women's rights movements of the 20th century included a significant portion of the anti-rape campaigns, which advocated sexual autonomy for all women over their bodies, including married women. In 2019 many countries criminalized marital rape in one way or other, some of them criminalized them explicitly and others introduced punishments for husbands who violence to have sexual intercourse with their wives. In Liberia rape laws do not specifically criminalize the marital rape but they removed the exception of the marital rape. And several countries criminalize the sexual violence by spouses but not specifically outlaw marital rape. For example, in Malaysia the marital rape is not criminalized but the husband can be penalized for using sexual violence on the wife. Contrarily, India is

on the list of countries where marital rape is "explicitly excluded." For instance, intercourse between a husband and wife is specifically mentioned in India's rape laws, and it is acknowledged as legal in all forms. In any case, the neighbouring countries of India, Nepal, and Bhutan have all explicitly decriminalised marital rape.

Last month supreme court of India announced that the hearing of petitions relating to criminalization of marital rape from March 14. The Karnataka High Court has previously ruled that if a husband engages in forcible intercourse with his wife, he may be prosecuted with rape under the Indian Penal Code (IPC). In a subsequent affidavit submitted to the Supreme Court, the Karnataka government had endorsed the High Court's ruling. The second exception to Section 375 of the IPC declares that sexual contact between a man and his own wife who is not under the age of 18 without her agreement is not rape and decriminalizes marital rape. Karnataka High court observed that, "A man is a man; an act is an act; rape is a rape, be it performed by a man the 'husband' on the woman 'wife'."

In a different case involving the same question, a Division Bench of the Delhi High Court had issued a split decision in May of last year. The exception to Section 375 of the Indian Penal Code was declared unconstitutional by Justice Rajiv Shakhder, who presided over the two-judge Bench (IPC). Justice C. Hari Shankar, an associate judge on the High Court Bench, rejected the request to make marital rape a crime, stating that any change to the law should be made by the legislature because the matter required taking into account a number of factors, including social, cultural, and legal ones.

The final decision is yet to be taken. But we know that it is very essential for the country to criminalize marital rape to protect the dignity and autonomy of every woman irrespective of whether they are married or unmarried. Rape is a heinous crime, which should be punished, committed in any form, against married or unmarried women.
