



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

MARITAL RAPE AND CRIMINALIZATION OF SEXUAL ASSAULT WITHIN MARRIAGE

BY ISHIKA VERMA

INTRODUCTION

Rape that occurs when the offender is the victim's husband is referred to as marital rape.¹ The concept of rape retains its fundamental definition, which encompasses any instance of sexual intercourse or penetration without the explicit and voluntary consent of all involved parties. This means that any sexual act imposed upon an individual without their clear agreement or against their will constitutes rape. Therefore, a vital aspect in proving the crime of rape is confirming the absence of consent. This burden of proving the absence of consent often falls upon the victim. In specific circumstances, such as cases involving minors, it is assumed by law that consent cannot be given as they are deemed incapable of consenting to such sexual acts. This legal presumption acknowledges the inherent vulnerability of minors and underscores the need for enhanced protections in situations where consent cannot be freely and knowingly given. Conversely, there are situations where consent is assumed to be present. This presumption commonly occurs within marital relationships, where the assumption is that consent is implicit. Consequently, the concept of marital rape contradicts this presumption, as it challenges the notion of consent within the context of marriage.

Although numerous countries have acknowledged the seriousness of marital rape and have enacted laws to prohibit it, India, stands out as one of the few exceptions where it is not explicitly classified as a criminal offense. This particular aspect of the Indian legal system has attracted significant attention and critique, both domestically and globally. It highlights the intricate intersection of legal and societal dynamics concerning gender, consent, and women's rights within the nation.

INDIAN LAWS REGARDING MARITAL RAPE

Despite advancements in various fields, marital rape remains unrecognized as a criminal offense in India. Despite amendments and legislative efforts, the absence of legal protection against one of the most degrading acts is glaring. Current laws provide limited recourse for victims, often relying on court interpretations rather than explicit legislation. The existing clause in Section 375 of the Indian Penal Code reflects outdated sentiments, with an exception for sexual intercourse by a husband with his wife above 15 years of age not being considered rape. The piecemeal amendments have only partially addressed the issue, with acts of marital

¹ Raveena Rao Kallakuru & Pradyumna Soni, *Criminalisation of Marital Rape in India: Understanding Its Constitutional, Cultural And Legal Impact*, 11, NUJS L., 121 (2018).

rape being treated inconsistently based on circumstances such as the age of the wife or the nature of the assault. The Protection of Women from Domestic Violence Act of 2005 acknowledged marital rape as a form of domestic violence but fell short of criminalizing it.² Marital rape not only violates a woman's body but also undermines her emotional well-being and trust. The current legal framework fails to adequately protect victims and upholds outdated Victorian morality, denying women agency over their own bodies.³ The argument that marriage implies consent to sexual activity is flawed, as it does not equate to consent to sexual violence. International norms recognize marital rape as a form of violence against women, emphasizing the importance of consent in every aspect of sexual activity. However, the Indian legal system lacks clarity and consistency in addressing the issue, leaving victims vulnerable and unprotected.

LEGAL CHANGES REGARDING THE CRIMINALIZATION OF MARITAL RAPE

1. Delhi High Court Split Verdict (May 2022)

The Delhi High Court delivered a divided ruling on a series of cases contesting the validity of Exception 2 in Section 375 of the Indian Penal Code (IPC), which exempts marital rape from criminalization. Justice Rajiv Shaktiher invalidated the provision that shields husbands from being charged with rape for coercive sexual activity with their wives, deeming it unconstitutional. Conversely, Justice C Hari Shankar held a differing opinion, arguing that the exception was justified by a discernible distinction and was not unconstitutional. Following the pronouncement of their respective judgments, both judges permitted appeals to be filed in the Supreme Court due to the significant legal questions involved.

2. Karnataka High Court Ruling (March 2022)

The Karnataka High Court declared that any instance of sexual assault perpetrated by a husband on his wife constitutes rape, as it declined to dismiss proceedings against a man accused of raping his spouse. Justice M Nagaprasanna emphasized, "A man is a man; an act is an act; rape is rape, whether it is committed by a man, the 'husband,' on the woman, the 'wife.'" The court highlighted the responsibility of the legislature to address the issue of 'marital rape' by

² The Protection of Women from Domestic Violence Act, 2005, Section 3 Explanation 1 (ii).

³ Kumari, Ved, "Gender Analysis of the Indian Penal Code in Engendering Law: Essays in the honour of Lotika Sarkar" (Amita Dhanda & Archana Parashar eds.) , p. 143.

amending the provision that grants husbands an exception under IPC Section 375, with Justice Nagaprasanna condemning the exception as "regressive." He stressed the profound impact such sexual assaults have on the mental and physical well-being of wives, describing them as scars on their souls. Justice Nagaprasanna urged lawmakers to heed the silent voices of victims. The court criticized the exemption granted to husbands under IPC Section 375 as discriminatory, suggesting that the legislature reconsider this provision.

THE GOVERNMENT'S STANCE ON MARITAL RAPE AND SEXUAL ASSAULT WITHIN MARRIAGE

The government has justified the marital rape exception, expressing apprehensions regarding potential misuse of the law by wives and emphasizing the importance of upholding the institution of marriage. It contends that false accusations may arise in marital disputes, and the criminalization of marital rape could lead to unintended repercussions. Despite its defence of the exception, the government has recognized the necessity for broader discussions on the matter. It has highlighted the establishment of a committee by the Ministry of Home Affairs in 2019 to review criminal laws as evidence of its dedication to addressing the issue.⁴ This indicates the government's willingness to engage in dialogue and possibly entertain modifications.

The Delhi government has upheld the law by proposing that married women facing potential rape by their husbands have alternative legal options, such as pursuing divorce or lodging a domestic violence case. This perspective prompts inquiries into whether these alternatives offer sufficient protection and redress for victims of marital rape.

To summarize, recent legal events in India, such as the divided verdict from the Delhi High Court and the ruling by the Karnataka High Court, have thrust the topic of marital rape into the spotlight of legal debate. The government's stance remains multifaceted, defending the exception while also recognizing the necessity for more extensive discussions. The discourse on marital rape in India persists, marked by ongoing advocacy efforts, legal contests, and appeals for reform.

⁴ Standing Committee on Home Affairs, Fifteenth Lok Sabha, Report on The Criminal Law (Amendment) Bill, 2012, One Hundred and Sixty Seventh Report, 45.

CONCLUSION

In conclusion, the issue of marital rape and the criminalization of sexual assault within marriage remains a contentious and complex topic in India. Despite advancements in various legal systems and societal norms, marital rape is not explicitly classified as a criminal offense in the country. Recent legal developments, such as the split verdict from the Delhi High Court and the ruling by the Karnataka High Court, have brought significant attention to this issue, highlighting the need for comprehensive reform.

The government's stance on marital rape is multifaceted, with arguments both defending the exception and acknowledging the necessity for broader discussions. While some authorities propose alternative legal avenues for married women facing rape by their husbands, questions persist regarding the adequacy of such options in providing protection and justice for victims.

Overall, the discourse on marital rape in India continues, characterized by ongoing advocacy efforts, legal challenges, and calls for reform. It is evident that further dialogue and action are needed to address this issue effectively and ensure the protection of individuals' rights within marriage.

BIBLIOGRAPHY

- <file:///C:/Users/hp/Downloads/Marital-Rape-and-the-Imperative-for-Criminalization-of-Sexual-Assault-within-Marriage.pdf>
- <https://www.galgotiasuniversity.edu.in/pdfs/issue2.pdf>
- <https://www.deccanherald.com/india/marital-rape-delhi-high-court-delivers-split-verdict-1108299.html>
- <https://www.deccanherald.com/india/karnataka/rape-is-rape-even-when-done-by-husband-karnataka-hc-1094047.html>
- <http://nujlawreview.org/wp-content/uploads/2018/01/11-1-Raveena-Rao-Kallakuru-Pradyumna-Soni.pdf>