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BREAKING THE BOUNDARIES: LEGAL AND SOCIETAL RESPONSES TO MARITAL RAPE

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ABSTRACT

The prohibition of marital rape in India is a highly debated issue encompassing legal, social justice, and societal dimensions gender boundaries. Although it is widely recognized as prevalent and harmful, India currently does not... Possess any specific laws addressing marital rape. This provides a comprehensive legal analysis. A strategic plan to advocate. The ban on marital rape in India is a contentious topic that crosses legal, social justice, and gender lines. While it is widely known to be prevalent and harmful, India does not currently have any laws that particularly address marital rape. This it presents a thorough legal study and lobbying plan for making marital rape a crime in India. Legalizing marital rape does not alter the climate of impunity that upholds gender inequity and prevents victims from seeking redress. This study says that the legal and societal obstacles that keep marital rape from being made a crime in India. advocate for the criminalization of marital rape India. Recognizing marital rape as legal does not change The environment of unaccountability that sustains gender inequality and hinders victims from pursuing justice. This ponder highlights insufficiencies in legitimate security and organization reactions to survivors by fundamentally analyzing administrative dialogs and legal translations around conjugal assault. India's need of specific enactment making conjugal assault a wrongdoing differentiate strongly with worldwide human rights standards and other nations' creating legitimate frameworks. This ponder fundamentally looks at the verifiable and lawful factors such as patriarchal demeanors, predominant societal measures, and the thought that marriage is sacrosanct that have contributed to the nonappearance of lawful acknowledgment of conjugal assault. It moreover looks at the patriarchal states of mind and sociocultural standards that back conjugal assault, normalize it, and decrease its detailing. The impact that social disgrace, monetary dependence, and family weight have on survivors' capacity to seek after legitimate plan of action is secured. It underpins enactment for lawful alter, dispersing myths and teaching the open

Keywords: India, marital rape, cultural sanctity, equality, liberty, legal analysis

INTRODUCTION

The term "rape" comes from the Latin "rapier," which means "to steal or carry off," referring to the common practice of ancient Romans who abducted brides from neighboring tribes.

Because rape is intrinsic to human evolution, it is considered a crime against humanity. Ancient texts frequently mention instances of spousal rape. All countries, societies, religions, cultures, and ethnic groups still commit this heinous crime against women today.

Considered a human rights transgression "Rape" is the term used to describe when a man (a husband) forces a woman (a wife) to have sex against her will or permission. Rapists frequently use violence, intimidation, and the threat of severe repercussions to dominate their helpless victim and force them to give in to their lustful impulses. Incest, gang rape, date rape, child rape, serial rape, marital rape, statutory rape, mass rape by invading armies, and several other ubiquitous types of sexual assault on women's dignity are only a few examples of the various manifestations of rape. In the past, women in patriarchal societies such as our own were considered their father's property and, at marriage, their husband's property.

RAPE AND MARITAL RAPE

Rape was viewed as harm to the victim's father or spouse rather than to the lady herself. The two opposing schools of thought that are most prevalent in our nation are the belief that marriage itself grants consent to sexual activity and, on the other hand, the claim that forced sexual activity against free will or consent is rape, regardless of the nature of the relationship between the man and woman.

* The idea that males are superior to women served as the foundation for the previous understanding of the husband-and-wife relationship. Men should have been given more control and respect in families when they are the primary breadwinners and women are subordinated. Regardless of the woman's own preferences, likes, dislikes, wishes, or desires, her husband's control over her body was regarded as a marital right. Horrible customs like as "Sati" were common in Rajasthan, when wives would jump into their husbands' funeral pyres in order to protect their honour from the advancing troops. Folklore extolled the sacrifice as a model of women's virginity and faithfulness.

* The voices in favour of equal rights for women started to become more prominent in Indian society as a result of the global winds of change that caused women to flourish in various spheres of life and carve out their own space. The issues surrounding women's independence, dignity, and right to autonomy over their bodies are no longer a silent revolution; instead, they are now being discussed in Parliament, on social media, and through public interest lawsuits that are currently being monitored by the Supreme Court of India.

* The only distinction between marital rape and other types of rape is that the victim is the spouse who consents to the act, not the other way around. In all forms of rape, the fundamental component of power dynamics is apparent. Marital rape is characterised by a sense of entitlement based on the relationship, and it is often committed without fear of reprisals or punitive measures. This is particularly true in civilizations and nations where the law remains mute on the subject, allowing the problem to fester beneath unstable marriages.

HISTORICAL CONTEXT ARE EVOLUTION MARITAL RAPE LAWS

Marital rape refers to the act of a husband engaging in sexual intercourse with his wife without her consent. Some husbands resort to sexual abuse as a means of asserting dominance and control over their wives. Historically, marriages across various cultures have often been viewed primarily as a means of procreation, where the necessity for consent may not have been acknowledged. Consequently, numerous traditions and cultures fail to recognize the absence of consent during sexual activity as an act of violence. The issue of marital rape has significant implications for women's rights within a country, and in India, the evolution of these rights is evident compared to previous eras. While many nations have criminalized marital rape, India, along with 36 other countries, has yet to do so, raising questions about why this form of violence remains unaddressed in a nation where both developed and developing countries have taken action. Women often find themselves vulnerable to sexual assault or coercive sexual acts, and the dynamics of what occurs behind closed doors between spouses can be complex. It is imperative to ensure protections for women's safety and autonomy regarding sexual relations. The concept of consent is crucial, as the marriage act stipulates that both partners must engage in sexual activity willingly; coercion is unacceptable, and prolonged refusal can be grounds for divorce. Furthermore, societal norms often condition women to believe that their husbands should govern all aspects of their lives. Cultural attitudes and traditions have ingrained in women the notion that they must always fulfill their husbands' sexual desires. A prevalent misconception is that the concept of marriage is rooted in consent, which suggests that due to deep-seated

patriarchy and biases, marriage is perceived as a contractual agreement between two individuals. This agreement implies that the husband has the right to engage in any form of interaction with his wife as he sees fit, and that all occurrences within the marriage are contingent upon permission. The perspectives of the bride are often disregarded, as her parents typically orchestrate the marriage. As a result, men tend to believe that their wives lack authority over their sexual conduct, rendering the notion of permission insignificant in the context of marriage.

LEGAL AND CULTURAL SANCTITY?

The existence of a marital rape exception in India's penal code, similar to that found in several former British colonies, is directly linked to its colonial history and the incorporation of this exemption in British law. This concept was initially introduced by the then Chief Justice of England in 1736 in the History of the Crown's Petitions. He argued that a wife, by giving her marital consent—which she cannot retract—essentially submits herself to her husband, thereby absolving him of any guilt for raping his legally wedded wife. This principle later became known as the Hale doctrine and formed the foundation of the common law exception that a husband cannot be prosecuted for raping his own wife, meaning that a wife cannot be considered a victim of rape by her husband.

LAWS

According to Section 63, rape is defined as the act of a man penetrating a woman or another individual through his own penis, any object, or any part of his body, or manipulating any part of a woman's body to engage in anal, vaginal, or oral sexual acts. Rape is characterized as the coercion of a woman into oral-vaginal or oral-anal intercourse with a man or another person, or the execution of these acts on her behalf. This section outlines seven distinct scenarios that must be considered when determining an act of rape:

1. When rape occurs against the will of the woman.
2. When rape occurs without the woman's consent.
3. When consent is obtained through instilling fear of harm in the woman.
4. When the man is aware that he is not the woman's husband, and her consent is given under the false belief that he is a man to whom she is or believes herself to be lawfully married.
5. When, at the time of giving consent, the woman is incapacitated due to mental illness,

intoxication, or the administration of any harmful substance, rendering her unable to comprehend the nature and consequences of her consent.

6. Engaging in sexual acts with women under the age of 18, regardless of consent.
7. When a woman is unable to communicate her consent

EXCEPTION

1. A medical procedure or intervention does not constitute rape.
2. Sexual intercourse or acts performed by a man with his wife, provided she is over 18 years of age, is not classified as rape.

CAPITAL

In contemporary society, where all citizens, regardless of gender, are considered equal, one must question whether women truly possess rights and whether they feel secure within society. The primary argument for criminalizing marital rape is to protect women's dignity. Men often mistakenly believe they have ownership over women post-marriage, which is fundamentally incorrect, as stated in Bns, where it is emphasized that a woman or wife is not property, and any violation of this principle is a punishable offense. Therefore, it is imperative that men seek their wives' consent prior to engaging in sexual intercourse, breaking the cycle of tradition that has perpetuated this misunderstanding through generations. The tradition of male superiority has been passed down through generations, allowing men to exert control over others, particularly their wives, simply due to the institution of marriage. Do women lack self-respect, or are they not considered human? Countless women suffer from molestation or rape at the hands of men, often through coercion or deceit. Behind closed doors, the true extent of these violations remains hidden, with many women experiencing sexual assault from their husbands. Women often find it difficult to speak out, as there are no legal protections against marital rape; the constitution permits husbands to engage in sexual relations with their wives under the guise of tradition. However, should we continue to uphold customs that allow husbands to force intercourse against their wives' will? Many women fall victim to marital rape but feel powerless to advocate for themselves due to the absence of legal recourse or the belief that their husbands cannot be perpetrators. The Indian legal system must address the realities and cases that arise within the confines of marriage, where victims are often trapped in false unions and exploited, with no laws in place to safeguard their dignity.

CASES

Nimeshbhai Bharatbhai Desai v. State of Gujarat (2018)

The Gujarat High Court pondered whether compelling one's spouse to have oral sex with one another is considered rape under Section 376 of the Indian Penal Code in NimeshbhaiBharatbhai Desai v. State of Gujarat (2018). The court underlined the necessity of addressing marital rape while noting that it has not been criminalised because of concerns about upsetting married couples. It identified three common types of marital rape: obsessive rape, which is marked by excessive violence or sadistic behaviours, force-only rape, which involves compulsion but does not involve physical violence, and battering rape. The court emphasised that although violence committed during a marriage is illegal, marital rape goes unpunished because marriage is recognised by the law, exposing a disparity in women's rights. While addressing worries about unfounded accusations, the court emphasised how crucial it is to provide victims' protection and justice.

Independent Thought vs Union of India (2017)

In the 2017 Supreme Court case Independent Thought v. Union of India, the court considered whether a husband's sexual relations with a girl between the ages of 15 and 18 constituted rape. The court invalidated Section 375 of the IPC's Exception 2 by ruling that such acts are rape regardless of a person's marital status. It referenced the Protection of Children from Sexual Offences Act and the values of equality and non-discrimination found in the Constitution. A number of historical instances were cited to emphasise the need of preserving women's bodily autonomy in marriage. The court emphasised respect for one another and married women's fundamental right to bodily integrity, criticising legislative loopholes and societal stigmas that ignored marital rape.

THE ROLE OF CULTURE IN DETERMINING WHETHER MARITAL RAPE MUST BE CRIMINALISED

Historically, the interplay between culture and law has been a subject of intense examination. Law and culture exist in a mutually influential relationship, each shaping and being shaped by the other. This dynamic has been thoroughly analyzed from a jurisprudential perspective. However, this paper posits that such discussions are ultimately irrelevant. Firstly, we assert that the issue of criminalizing marital rape pertains to fundamental rights protected by the Constitution. Secondly, it is not uncommon in our legislative history for laws to challenge entrenched cultural norms. This is evident in the fact that many gender-specific laws or those

aimed at marginalized communities often do not align with prevailing societal perceptions and structures. In relation to the argument for the criminalization of marital rape being rooted in constitutional principles rather than cultural ones, we draw a parallel to the discourse surrounding freedom of speech and obscenity laws in India. Article 19(2) identifies 'morality' as a basis for limiting freedom of speech. The Supreme Court has interpreted 'morality' to refer to 'public morality', suggesting that speech deemed immoral by the general public may be classified as such by the Court. This public perception of morality may conflict with the moral standards envisioned by the Constitution, which is referred to as 'constitutional morality'. This argument holds particular significance in discussions of rape, especially in the context of spousal rape, due to the pervasive 'rape culture' in society. Therefore, we contend that the assertion that 'our culture may not condone rape' does not negate the unconstitutionality of failing to address this issue. On the contrary, it should serve as a catalyst for both the judiciary and the legislature to act decisively.

CONCLUSION

Individuals who experience rape are subjected to violence, and the gravity of such incidents is heightened when the victim is married to the perpetrator. The act of rape should not be trivialized or categorized merely as forcible rape leading to domestic violence solely because the accused is a husband and the victim is a wife. The right to individual liberty, as enshrined in Article 21, is paramount. 'Rape is rape—whether within marriage or outside of it—and it predominantly impacts women as victims.' We have thoroughly analyzed the validity of these arguments, which are intertwined with concepts of marriage, family dynamics, and the societal role of women. Our findings indicate that there is no legal basis for the objections against the criminalization of marital rape. We assert that the current formulation of Section 63 of the bns exception clause is invalid, as it fails to meet the equality requirement outlined in Article 14. Additionally, we have established that there are no feasible legal alternatives; thus, rather than focusing on alternatives, we should prioritize criminalization. We also highlighted that the cultural rejection of marital rape does not exempt it from being criminalized.

RECOMMENDTION

Women should not be regarded as the property of their husbands. In contemporary society, marriage is founded on mutual respect and equality between partners, and the notion of treating a partner as property is deemed unacceptable. In fact, many individuals consider this perspective

to be outdated and detrimental. It is crucial to acknowledge that all individuals, regardless of gender, deserve respect and dignity.

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